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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT

11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 HARRY DENNIS, on behalf of himself and
13 all other Californians similarly situated,

14 Plaintiff,

15 v.

16 KELLOGG COMPANY, a Delaware
corporation,

17 Defendant.

Case **09 CV 1786 IEG**

WMC

CLASS ACTION COMPLAINT

BY FAX

- 1. Violation of Unfair Competition Law, Business and Professions Code §17200
- 2. Unjust Enrichment

[JURY TRIAL DEMANDED]

18 NATURE OF THE ACTION

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21 1. Defendant manufactures, distributes and sells the Frosted Mini-Wheats® line of
22 products (the "Products") in California and throughout the United States.

23 2. This is a class action challenging Defendant's long term practice of misrepresenting
24 on Product packaging, in commercial advertisements, on its website and in other marketing materials
25 and media that the Products have unique, drug-quality properties that will improve kids'
26 attentiveness by nearly 20%. Plaintiff, on behalf of himself and a Class of California consumers, is

27
28 CLASS ACTION COMPLAINT

ORIGINAL

CR

1 seeking a refund of the purchase price of the Products and disgorgement of Defendant's profits
2 derived from the sale of the Products.

3 **JURISDICTION AND VENUE**

4 3. This Court has original jurisdiction over this class action under 18 U.S.C. §1332(d)
5 which, under the provisions of the Class Action Fairness Act ("CAFA"), explicitly provides for the
6 original jurisdiction of the federal court in any class action in which any member of the Class is a
7 citizen of a state different from any Defendant and in which the matter in controversy exceeds the
8 sum of \$5 million exclusive of interest and costs. Plaintiff alleges that the claims of individual class
9 members in this action exceed \$5 million in the aggregate, exclusive of interest and costs, and that
10 the total number of members of the proposed Class is greater than 100, as required by 28 U.S.C. §
11 1332(d)(2), (5). As set forth below, Plaintiff is a citizen of California, whereas Defendant is a citizen
12 of Delaware and/or Michigan.

13 4. Venue lies within this District pursuant to 28 U.S.C. § 1391(b)-(c) in that: Defendant
14 Kellogg Company conducts business in this District; certain acts giving rise to the claims asserted in
15 this Complaint occurred within this District; the illegal actions of Defendant, as alleged in this
16 Complaint, caused damage to Plaintiff and Class members within this District; and Plaintiff resides
17 within this District.

18 **THE PARTIES**

19 5. Plaintiff Harry Dennis is an individual residing in San Diego County, California.
20 During the Class period, he purchased the Product, suffered injury in fact and has lost money and
21 property as a result of the unlawful, unfair, misleading and deceptive advertising described herein.

22 6. Defendant Kellogg Company is a Delaware corporation with its principal place of
23 business in Battle Creek, Michigan. Defendant is responsible for researching, developing,
24 manufacturing, marketing and distributing its Products to consumers throughout the United States,
25 including tens of thousands of consumers in California.

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DEFENDANT’S UNLAWFUL CONDUCT

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7. Defendant manufactures and distributes a line of nine (9) varieties of Frosted Mini-Wheats® ready-to-eat cereals including Strawberry Delight, Unfrosted, Big Bite, Maple and Brown Sugar, Blueberry Muffin, Bite Size, Honey Nut Little Bites, Cinnamon Streusel, and Chocolate Little Bites (collectively, “Frosted Mini-Wheats” or the “Products”).

8. Defendant extensively markets the Products wherein it prominently promotes the Products’ ability to improve kids’ attentiveness by nearly 20%. For example, appearing on the front and back panels of the Product packages Defendant represents that, *inter alia*, the Product is “clinically shown to improve kids’ attentiveness by nearly...20%.”

9. The back panel of the Product packaging states that:

Based upon independent clinical research, kids who ate Kellogg’s® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast.

10. Defendant’s television advertising similarly represents that “A clinical study showed kids who had a filling breakfast of Frosted Mini-Wheats cereal improved their attentiveness by nearly 20 percent.”

11. Defendant’s print advertising provides:

3 Strategies to Start Their Day Off Right
Does your child need to pay more attention in school? Use the following tips to help keep your little ones ahead of the class:

√ Start the Day with Breakfast.
Kids need an energy boost after a long night’s sleep. A recent clinical study showed that a whole grain and fiber-filled breakfast of Frosted Mini-Wheats helps improve children’s attentiveness by nearly 20%.

12. And, Defendant issued a press release in March 2008 that stated:

Keeping ‘Em Full and Focused
Kellogg recently commissioned research to measure the effect on kids of eating a breakfast of Frosted Mini-Wheats® cereal. An independent research group conducted a series of standardized, cognitive tests on children ages 8 to 12 who ate either a breakfast of Frosted Mini-Wheats® cereal or water. The result? The children who

1 ate a breakfast of Frosted Mini-Wheats® cereal had a nearly 20%
2 improvement in attentiveness.

3 13. Defendant's Product packages, internet advertising and print advertising refer the
4 consumer to Defendant's website for further information. Defendant's website similarly represents
5 that: "A breakfast of Frosted Mini-Wheats® cereal is clinically shown to improve kids' attentiveness
6 by nearly 20%."

7 14. Defendant's website also represents that:

8 The Daily Wheat: Attentiveness Put to the Test:
9 This is Mini™, reporting from an event that has captured our
10 attention. A team of kids are attempting to show that a breakfast of
11 Kellogg's® Frosted Mini-Wheats® cereal can help keep them
12 attentive all morning long.

13 It was apparent from the first test that the Frosted Mini-Wheats®
14 team's attentiveness was strong. And as the morning progressed, it
15 didn't waiver.

16 In the end, a round of enthusiastic cheers could be heard coming from
17 the moms' viewing section as the 8-layers of whole grain fiber in
18 Frosted Mini-Wheats® cereal proved to improve kids' attentiveness
19 by nearly 20%!

20 15. Defendant represents in all of its advertising that its claim that consumption of the
21 Products improves kids' attentiveness by nearly 20% is: "Based upon independent clinical research,
22 kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better
23 attentiveness three hours after breakfast than kids who ate no breakfast."

24 16. Upon investigation, the FTC found Defendant's representations as set forth above to
25 be "false or misleading." See Exhibit A, FTC Complaint, No. 082 3145.

26 17. The FTC found that "eating a bowl of Kellogg's® Frosted Mini-Wheats® cereal for
27 breakfast is not clinically shown to improve kids' attentiveness by nearly 20%." The FTC stated that
28 in the clinical study referred to by Defendant, "only about half the kids who ate Frosted Mini-
Wheats® cereal showed any improvement after three hours as compared to their pre-breakfast
baseline. In addition, overall, only one in seven kids who ate the cereal improved their attentiveness
by 18% or more, and only about one in nine improved by 20% or more." See Exhibit A, FTC
Complaint, No. 082 3145.

1 18. The FTC also found that “eating a bowl of Kellogg’s® Frosted Mini-Wheats® cereal
2 for breakfast is not clinically shown to improve kids’ attentiveness by nearly 20% compared to kids
3 who ate no breakfast.” The FTC stated that in the clinical study referred to by Defendant, “kids who
4 ate Frosted Mini-Wheats® had an average of 10.6% better attentiveness three hours later than kids
5 who had skipped breakfast; relatively few kids experienced better attentiveness near the 20% level.”
6 See Exhibit A, FTC Complaint, No. 082 3145.

7 19. Based on the results of its investigation, the FTC filed a complaint against Defendant
8 alleging “unfair or deceptive acts or practices” and “false advertising” in violation of the Federal
9 Trade Commission Act (“FTCA”). See Exhibit A, FTC Complaint, No. 082 3145.

10 20. In response to the FTC’s complaint, on April 20, 2009, Defendant agreed to refrain
11 from representing that “eating a bowl of Kellogg’s® Frosted Mini-Wheats® cereal for breakfast is
12 clinically shown to improve kids’ attentiveness by nearly 20%, or by any other specific percentage”
13 or that “eating a bowl of Kellogg’s® Frosted Mini-Wheats® cereal for breakfast is clinically shown
14 to improve kids’ attentiveness by nearly 20%, or by any other specific percentage, as compared to
15 children who ate no breakfast” unless, at the time the representation is made it is “true and non-
16 misleading.” See Exhibit A, FTC Complaint, No. 082 3145.

17 21. Currently, Defendant’s advertising represents that eating Frosted Mini-Wheats
18 Products leads to “Better Attentiveness – A clinical study showed kids who ate a filling breakfast of
19 KELLOGG’S® FROSTED MINI-WHEATS® cereal had 11% better attentiveness compared to kids
20 who missed out on breakfast.” See <http://www.frostedminiwheats.com/study-hall>, available as of
21 June 17, 2009.

22 22. In addition, Defendant’s advertising represents that eating Frosted Mini-Wheats
23 Products leads to “Better Quality of Memory – A clinical study showed kids who ate a filling
24 breakfast of KELLOGG’S® FROSTED MINI-WHEATS® cereal had 23% better quality of memory
25 when compared to kids who missed out on breakfast.” See [http://www.frostedminiwheats.com/study-](http://www.frostedminiwheats.com/study-hall)
26 [hall](http://www.frostedminiwheats.com/study-hall), available as of June 17, 2009.

1 Defendant's representations was reasonable given that Defendant has a reputation as a reliable and
2 trustworthy company.

3 29. Plaintiff had his children consume the Frosted Mini-Wheats® as directed to improve
4 their attentiveness.

5 30. On or about June 2009, Plaintiff learned of the unlawful, unfair, misleading or
6 deceptive labeling and advertising practices concerning Defendant's attentiveness claims.

7 31. Plaintiff has suffered injury in fact and lost money and property as a result of the
8 alleged misconduct. He has been injured in the amount paid for the Products.

9 **CLASS ALLEGATIONS**

10 32. Plaintiff brings this action on his own behalf and as a Class action pursuant to Rule
11 23(a) and (b)(2) of the Federal Rules of Civil Procedure and seeks certification of the following
12 Class:

13 All California residents who from and after August 14, 2005,
14 purchased any of the Frosted Mini-Wheats Products.

15 33. Excluded from the Class is Defendant, any person, firm, trust, corporation, officer,
16 director or other individual or entity in which the Defendant has a controlling interest or which is
17 related to or affiliated with the Defendant, and the legal representatives, heirs, successors-in-interest
18 or assigns of any such excluded party.

19 34. Plaintiff and the members of the Class are so numerous that joinder of all members
20 individually, in one action or otherwise, is impractical.

21 35. This action involves questions of law and fact common to Plaintiff and all members
22 of the Class which include:

23 (a) Whether Defendant has engaged in an unlawful, unfair, misleading or
24 deceptive business act or practice through its labeling and advertising practices;

25 _____
26 ¹ The "Frosted Mini-Wheats Products" include: Strawberry Delight, Unfrosted, Big Bite, Maple and
27 Brown Sugar, Blueberry Muffin, Bite Size, Honey Nut Little Bites, Cinnamon Streusel, and
28 Chocolate Little Bites.

1 (b) Whether Defendant's labeling and advertising misrepresented the nature of the
2 Products; and

3 (c) Whether Plaintiff and Class members are entitled to restitution of the monies
4 they paid to purchase the Products and disgorgement of profits Defendant received from the sale of
5 its Products.

6 36. Plaintiff's claims are typical of the claims of the members of the Class. The named
7 Plaintiff is a member of the Class of victims described herein.

8 37. The named Plaintiff is willing and prepared to serve the Court and proposed Class in
9 a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly
10 and adequately protect the interests of the Class and has no interests adverse to or which directly and
11 irrevocably conflict with, the interests of the other members of the Class.

12 38. The self-interests of the named Class representative are co-extensive with, and not
13 antagonistic to, those of the absent Class members. The proposed representative will undertake to
14 represent and protect the interests of the absent Class members.

15 39. The named Plaintiff has engaged the services of counsel indicated below. Said
16 counsel are experienced in complex class litigation, will adequately prosecute this action, and will
17 assert and protect the rights of, and otherwise represent the named Class representative and absent
18 Class members.

19 40. This action is brought under Rule 23(b)(2) because Defendant has acted on grounds
20 generally applicable to all members of the Class and final injunctive relief is appropriate to the Class
21 as a whole.

22 41. Judicial determination of the common legal and factual issues essential to this case
23 would be far more efficient and economical as a class action than in piecemeal individual
24 determinations.

25 42. Plaintiff knows of no difficulty that will be encountered in the management of this
26 litigation which would preclude its maintenance as a class action.

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FIRST CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION LAW
BUS. & PROF. CODE § 17200

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3 43. Plaintiff incorporates by reference each of the preceding allegations as though fully
4 set forth herein.

5 44. California Business & Professions Code §17200, *et seq.* prohibits acts of unfair
6 competition, which means and includes any “unlawful, unfair or fraudulent business act or practice,”
7 or any “unfair, deceptive, untrue or misleading advertising.”

8 45. Defendant violated California Business & Professions Code §17200’s prohibition
9 against engaging in an “unlawful” business act or practice, by, *inter alia*, misrepresenting on Product
10 packaging, in commercial advertisements, on its website and in other marketing materials and media
11 that the Products have unique, drug-quality properties that will improve kids’ attentiveness by nearly
12 20% in violation of the Federal Trade Commission Act, Cal. Bus. & Prof. Code §17500 and
13 common law.

14 46. Defendant also violated California Business & Professions Code §17200’s
15 prohibition against engaging in an “unfair” business act or practice by, *inter alia*, misrepresenting on
16 Product packaging, in commercial advertisements, on its website and in other marketing materials
17 and media that the Products have unique, drug-quality properties that will improve kids’
18 attentiveness by nearly 20%. Defendant engaged in its deceptive marketing campaign to, *inter alia*,
19 gain an unfair competitive advantage over other ready-to-eat cereal manufacturers who did not
20 engage in similar misleading advertising practices. Further, Defendant’s conduct caused and
21 continues to cause substantial injury to consumers. The gravity of Defendant’s alleged wrongful
22 conduct outweighs any purported benefits attributable to such conduct.

23 47. The foregoing conduct also violates Business & Profession Code §17200’s
24 prohibitions against “fraudulent” or deceptive business practices. Defendant’s misrepresentations on
25 Product packaging, in commercial advertisements, on its website and in other marketing materials
26 and media that the Products have unique, drug-quality properties that will improve kids’
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1 attentiveness by nearly 20% are likely to and did deceive reasonable consumers, including Plaintiff,
2 into believing the Products had specific drug-quality properties.

3 48. Plaintiff reserves the right to allege other violations of law which constitute other
4 “unlawful, unfair or fraudulent business act[s] or practice[s].”

5 49. Plaintiff has been actually injured by Defendant’s unlawful, unfair, deceptive and
6 fraudulent business acts and practices.

7 50. As a result of Defendant’s violations of the UCL, Plaintiff and Class members are
8 entitled to equitable relief in the form of full restitution of all monies paid for Defendant’s Products.

9 **SECOND CAUSE OF ACTION**
10 **UNJUST ENRICHMENT**

11 51. Plaintiff incorporates by reference each of the preceding allegations as though fully
12 set forth herein.

13 52. Plaintiff and Class members conferred a benefit on Defendant by purchasing the
14 Products.

15 53. Defendant appreciated and/or realized the benefits in the amount of the profits it
16 earned from sales of the Products to Plaintiff and Class members.

17 54. Defendant has profited from its unlawful, unfair, misleading and deceptive practices
18 and advertising at the expense of Plaintiff and Class members, under circumstances in which it
19 would be unjust for Defendant to be permitted to retain the benefit.

20 55. Plaintiff and Class members do not have an adequate remedy at law against
21 Defendant.

22 56. Plaintiff and Class members are entitled to disgorgement of the profits derived from
23 the sale of the Products.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for a judgment:

26 A. Certifying this action as a Plaintiff class action as set forth above;
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B. Awarding Plaintiff and Class members equitable relief in the form of restitution of all monies paid for the Products and disgorgement of the profits derived from the sale of the Products;

C. Awarding Plaintiff pre-judgment and post-judgment interest as provided by law;

D. Awarding Plaintiff attorneys' fees and costs; and

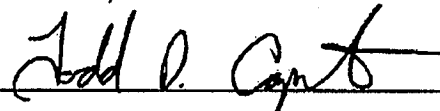
E. Awarding such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 17, 2009

BONNET, FAIRBOURN, FRIEDMAN
& BALINT, P.C.



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Attorneys for Plaintiff

Exhibit A

082 3145

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch**

In the Matter of KELLOGG COMPANY, a corporation.))))))))))	DOCKET NO. C-
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COMPLAINT

The Federal Trade Commission, having reason to believe that Kellogg Company, a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kellogg Company is a Delaware corporation with its principal office or place of business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan, 49016.
2. Respondent has labeled, advertised, promoted, offered for sale, sold, and distributed Kellogg’s® Frosted Mini-Wheats® cereal to consumers.
3. Kellogg’s® Frosted Mini-Wheats® cereal is a “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
5. Respondent has disseminated or caused to be disseminated advertisements for Kellogg’s® Frosted Mini-Wheats® cereal, including but not limited to the attached Exhibits A through H. These advertisements contain the following statements:

A. Television Advertisement: “Where Were We?” (Exhibit A - CDROM and storyboard)

Teacher: “Okay. Where were we?”

School Boy: "We were on the third paragraph of page 57 and you were explaining that the stone structures made by Ancient Romans were called aqueducts. And as you were writing that up on the board, your chalk broke. Into three pieces."

Teacher: "Right."

Mini-Wheat: "I've never been so proud."

Female Announcer: "A clinical study showed kids who had a filling breakfast of Frosted Mini-Wheats cereal improved their attentiveness by nearly 20 percent."

On screen: [appears in small, white font, for five seconds, against two different backgrounds, the first of which is in motion]

"Based upon independent clinical research, kids who ate Frosted Mini-Wheats cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com."

On screen: "20%"

Mini: "Nearly twenty percent? Okay, even I'm impressed by me."

Female Announcer: "Keeps 'em full. Keeps 'em focused."

B. Television Advertisement: "Crossing Guard" (Exhibit B – CDROM and storyboard)

Mini-Wheat 1: "Ah, the first day of school. New pencils, new books."

Mini-Wheat 2: "New backpack. Looks good."

Mini-Wheat 1: "Just trying to look our best."

Mini-Wheat 2: "It's going to take more than looks. From what I hear, Ms. Haskins is a toughie."

Mini-Wheat 1: "Oh, we had a good breakfast, so we're ready."

Mini-Wheat 3: "Gonna be another great year, huh guys?"

Mini-Wheat 1: "You bet your eight layers."

Mini-Wheat 2: "Oh, yeah, long distance high five."

Mini-Wheat 3: "Whoa."

Female

Announcer: "A clinical study showed kids who had a filling breakfast of Frosted Mini-Wheats cereal improved their attentiveness by nearly 20 percent when compared to kids who missed out on breakfast."

On Screen: [appears in small, white font, for approximately five seconds, against three different backgrounds, the first of which is in motion]

"Based upon independent clinical research, kids who ate Frosted Mini-Wheats cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com."

On Screen: "Nearly 20%"

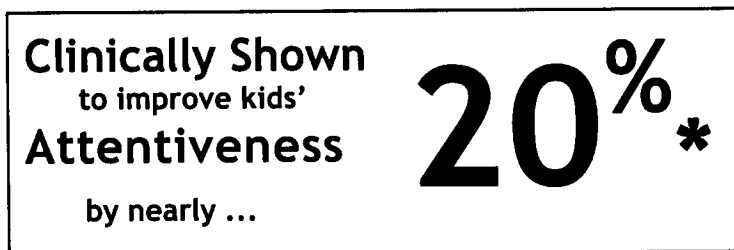
Mini-Wheat 3: "Look, a new kid."

Female

Announcer: "Now available in blueberry muffin. Keeps 'em full, keeps 'em focused."

C. Product Packaging (Exhibit C)

Appearing at the top of the front and back panels of Frosted Mini-Wheats cereal boxes:



Appearing at the bottom of the back panel of Frosted Mini-Wheats boxes, in small type:

"Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com"

D. Internet Website www.mini-wheats.com (excerpts) (Exhibit D)

From the homepage:

“A breakfast of Frosted Mini-Wheats® cereal is clinically shown to improve kids’ attentiveness by nearly 20%.*

* Based upon independent clinical research, kids who ate Kellogg’s® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast.”

From the “News” page:

“The Daily Wheat: Attentiveness Put to the Test:

This is Mini™, reporting from an event that has captured our attention. A team of kids are attempting to show that a breakfast of Kellogg’s® Frosted Mini-Wheats® cereal can help keep them attentive all morning long.

It was apparent from the first test that the Frosted Mini-Wheats® team’s attentiveness was strong. And as the morning progressed, it didn’t waiver.

In the end, a round of enthusiastic cheers could be heard coming from the moms’ viewing section as the 8-layers of whole grain fiber in Frosted Mini-Wheats® cereal proved to improve kids’ attentiveness by nearly 20%*!

* Based upon independent clinical research, kids who ate Kellogg’s® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast.”

E. Other Internet Advertising (Exhibit E)

Sponsored Link on Google.com – results of search for “frosted mini-wheats”:

“Frosted Mini Wheats®
www.mini-wheats.com Frosted Mini-Wheats® has clinically improved kids’ attentiveness by 20%”

F. Milk Carton Labels (Exhibit F)

Clinically Shown
to Improve Kids'
Attentiveness
By Nearly ...
20%*

* Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.

G. Print Advertising (Exhibit G)

**“3 Strategies to
Start Their Day
Off Right**

Does your child need to pay more attention in school? Use the following tips to help keep your little ones ahead of the class:

* * *

✓ Start the Day with Breakfast.

Kids need an energy boost after a long night's sleep. A recent clinical study showed that a whole grain and fiber-filled breakfast of Frosted Mini-Wheats helps improve children's attentiveness by nearly 20%.*

* * *

* Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.”

H. **Press Release (Exhibit H)**

**“HELP YOUR KIDS EARN AN “A” FOR ATTENTIVENESS
WITH A BOWL OF FROSTED MINI-WHEATS® CEREAL FOR BREAKFAST
*Eating a Bowl May Increase Attentiveness by Nearly 20 Percent***

Battle Creek, Mich., March 12, 2008 – Today’s parents are going to great lengths to help their kids do their best in school. They sign them up for tutoring services, buy special learning software and pack their schedules with enrichment activities. While all of these things are great, it’s important that parents not neglect one of the simplest ways to help ensure their kids do their best – a healthy breakfast.

A recent study commissioned by Kellogg helps demonstrate how eating a healthy, nutritious breakfast can help kids stay full and avoid the distraction of mid-morning hunger to help them do their best in school. The study, conducted by an independent research group, shows that eating a breakfast of *Frosted Mini-Wheats®* cereal helped improve kids’ attentiveness by nearly 20 percent.*

* * *

Keeping ‘Em Full and Focused

Kellogg recently commissioned research to measure the effect on kids of eating a breakfast of *Frosted Mini-Wheats®* cereal. An independent research group conducted a series of standardized, cognitive tests on children ages 8 to 12 who ate either a breakfast of *Frosted Mini-Wheats®* cereal or water. The result? The children who ate a breakfast of *Frosted Mini-Wheats®* cereal had a nearly 20% improvement in attentiveness.

* * *

* Based upon independent clinical research, kids who ate Kellogg’s® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.”

6. Through the means described in Paragraph 5, including the statements contained in the advertisements attached as Exhibits A and C through H, among others, respondent has represented, expressly or by implication, that eating a bowl of Kellogg’s® Frosted Mini-Wheats® cereal for breakfast is clinically shown to improve kids’ attentiveness by nearly 20%.

7. In truth and in fact, eating a bowl of Kellogg’s® Frosted Mini-Wheats® cereal for breakfast is not clinically shown to improve kids’ attentiveness by nearly 20%. In the clinical study referred to in respondent’s advertisements, for example, only about half the kids who ate Frosted Mini-Wheats® cereal showed any improvement after three hours as compared to their pre-breakfast baseline. In addition, overall, only one in seven kids who ate the cereal improved their attentiveness by 18% or more, and only about one in nine improved by 20% or more. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 5, including the statements contained in the advertisement attached as Exhibit B, among others, respondent has represented, expressly or by implication, that eating a bowl of Kellogg's® Frosted Mini-Wheats® cereal for breakfast is clinically shown to improve kids' attentiveness by nearly 20% compared to kids who ate no breakfast.

9. In truth and in fact, eating a bowl of Kellogg's® Frosted Mini-Wheats® cereal for breakfast is not clinically shown to improve kids' attentiveness by nearly 20% compared to kids who ate no breakfast. In the clinical study referred to in respondent's advertisements, for example, kids who ate Frosted Mini-Wheats® had an average of 10.6% better attentiveness three hours later than kids who had skipped breakfast; relatively few kids experienced better attentiveness near the 20% level. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this _____ day of _____, 2009, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary



vms

PRODUCT Kellogg's Frosted Mini-Wheats
MARKET Minneapolis/St. Paul, MN
PROGRAM 5 Eyewitness News AM
CODE # 080117527
TITLE Teacher Loses Place, Attentive Boy Remind

LENGTH :30
STATION KSTP
DATE 01/28/2008
TIME 06:25 AM



TEACHER: OK, now where were we?



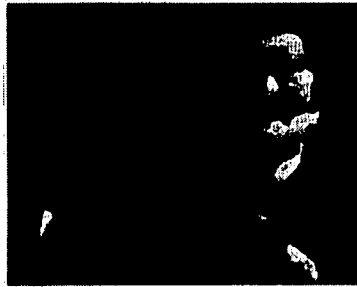
BOY: We--we were on the--on the third paragraph of page 57,



and you were explaining that the stone structures'



made by ancient Romans were called aqueducts.



And as you were writing that up on the board, your chalk broke...into three pieces.



TEACHER: Right!



MINI-WHEAT: I've never been so proud.



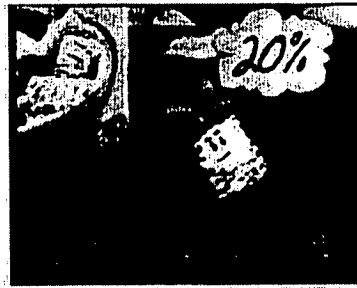
FEMALE ANNCR: A clinical study showed



kids who had a filling breakfast of Frosted Mini-Wheats Cereal



improved their attentiveness by nearly 20 percent.



(SFX: POP) MINI-WHEAT: Twenty percent? OK, even I'm impressed (SFX: POP/SPLAT) by me.



ANNCR: Keeps 'em full, keeps 'em focused.

VIDEO ALSO AVAILABLE IN ANALOG & DIGITAL FORMATS

Exhibit A2

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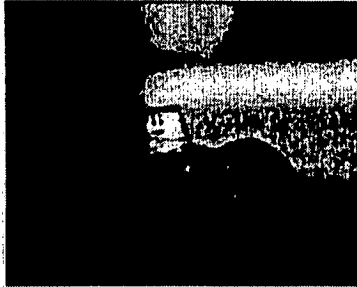
vms

PRODUCT Kelloggs Frosted Mini-Wheats
MARKET Detroit, MI
PROGRAM Good Morning America
CODE # 080716492
TITLE Mini-Wheats On Backpacks & 1st Day Of

LENGTH :30
STATION WXYZ
DATE 07/29/2008
TIME 07:20 AM



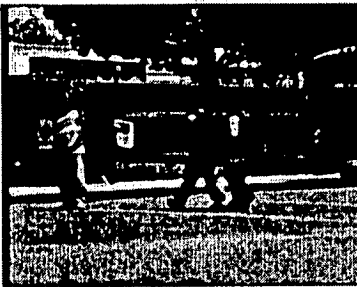
(SFX: OUTDOOR SOUNDS IN) MINI-WHEAT #1 (MALE VO): Ah, the first day of school.



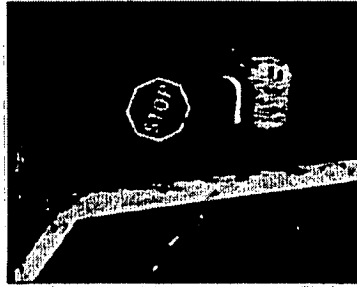
New pencils, new books. MINI-WHEAT #2 (MALE VO): New backpack. Looks good. MINI-WHEAT #1: Just trying to look our best.



MINI-WHEAT #2: Ah, gonna take more than looks.



From what I hear, Ms. Haskins is a toughy. MINI-WHEAT #1: Oh, we had a good breakfast, so we're ready.



MINI-WHEAT #3 (MALE VO): Gonna be another great year. Huh, guys? MINI-WHEAT #1: You bet your eight layers.



MINI-WHEAT #2: Ah yeah! Long distance high-five. MINI-WHEAT #3: Oh, wow!. (SFX: TINK/OUT)



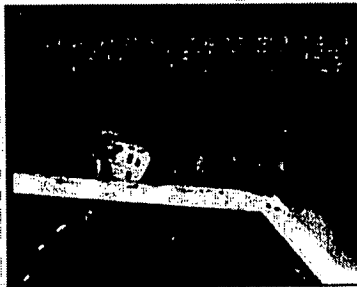
FEMALE:ANNCR: A clinical study showed kids who had a filling breakfast of Frosted Mini-Wheats cereal



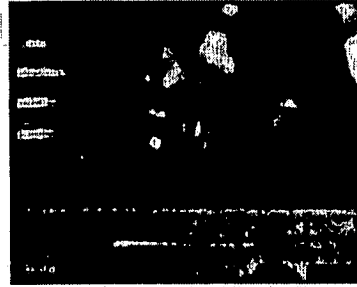
improved their attentiveness by nearly 20 percent



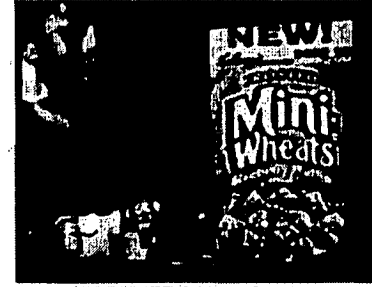
when compared to kids who missed out on breakfast.



MINI-WHEAT #3: Look, a new kid.



ANNCR: Now available in Blueberry Muffin.



(SFX: FORKLIFT SOUNDS) Keeps 'em full, keeps 'em focus.

VIDEO ALSO AVAILABLE IN ANALOG & DIGITAL FORMATS

Exhibit B2

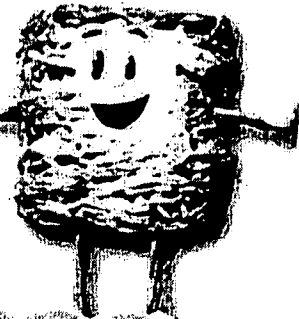
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Clinically Shown
to improve kids'
Attentiveness
by nearly...

20%

Kellogg's



Calories	Total Fat	Sodium	Sugars	Fiber
200	1g	5mg	12g	6g
10%	2%	0%		24%

Each 24 biscuit (59g) serving provides these per
of the GDA based on a 2,000 cal
See side panel for more info

FROSTED

**Mini
Wheats**

Bite Size

LIGHTLY SWEETENED WHOLE GRAIN WHEAT CEREAL

ENLARGED
TO SHOW
TEXTURE



Exhibit C

Clinically Shown
to improve kids' **Attentiveness**
by nearly... **20%**

The combination of Kellogg's® *Frosted Mini-Wheats*™ 8 layers of whole grains and fiber work together to keep kids full so that they can stay focused throughout the morning. Fiber helps slow down the eating process and may contribute to a feeling of being full. Whole grain slows digestion of carbohydrates to release energy over a longer period of time.

fo-cus-do

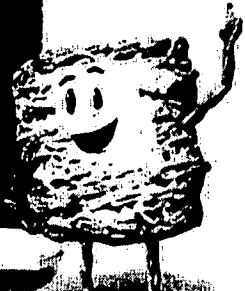
Every row, column, and mini-grid must contain the numbers 1-6. You won't have to guess when you focus!

	4			
1	6	4	3	
6	1	3		
			6	
		1	2	
2	5			

concentration station

D	W	G	D	B	H	X	B	T	S	ATTENTIVE BREAKFAST CEREAL FOCUSED FULL GRAIN LAYERS MINI WHEAT WHOLE
W	E	I	R	A	H	L	R	B	R	
H	D	S	F	A	A	K	E	O	E	
E	A	H	U	E	I	F	A	F	Y	
A	M	S	R	C	U	N	K	R	A	
T	Q	E	E	L	O	O	F	X	L	
U	C	P	L	J	Y	F	A	I	W	
W	H	O	L	E	S	R	S	A	I	
H	E	V	I	T	N	E	T	T	A	
L	L	X	D	J	U	I	N	I	M	

Stay focused and find the words listed hidden in the letter grid.



Mini's Focusizer Focus on what you hear to figure out each saying. Read them aloud and listen for the solution!

FOLK IS SON'S COOL

BEEF OAK KISSED HILL HUNCH

DEAL IS SHUSH HOLE GRAY INN VIBE BURR

To PLAY MORE "Mini's Focusizer" GAMES, GO to www.frostedminiwheats.com and SEARCH for *Frosted Mini-Wheats*®.

Based upon independent clinical research, kids who ate Kellogg's® *Frosted Mini-Wheats*® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.

LOOK FOR THE ANSWERS INSIDE THIS BOX



Nutrition & Layers Products Mini Mind Games Communication Advertising News

Turn your speakers ON
Use your mouse to explore
this focused workspace



Daily Wheat

TODAY'S WEATHER: Sunny & Perfect

A breakfast of Frosted Mini-Wheats® cereal is clinically shown to improve kids' attentiveness by nearly **20%**

Click Here to learn more

BACK 2 SCHOOL Frosted Mini-Wheats® is proud to sponsor the back to school program.

* Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast.

Home | Nutrition | Layers | Products | Mini Mind Game | Communication | Advertising | News
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Kelloggs.com | Keebler.com

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Exhibit D



Nutrition & Layers Products Mini-Mind Games Communication Advertising News

The Daily Wheat

TODAY'S WEATHER Sunny & Pleasant

ATTENTIVENESS PUT TO THE TEST



Story by Mini™

This is Mini™, reporting from an event that has captured our attention. A team of kids are attempting to show that a breakfast of Kellogg's® Frosted Mini-Wheats® cereal can help keep them attentive all morning long.

It was apparent from the first test that the Frosted Mini-Wheats® team's attentiveness was strong. And as the morning progressed it didn't waiver.

In the end, a round of enthusiastic cheers could be heard coming from the moms' viewing section as the 8-Layers of whole grain fiber in Frosted Mini-Wheats® cereal proved to improve kids' attentiveness by nearly 20%!*

> Learn more about the study



< Back



Frosted Mini-Wheats® is proud to sponsor the back to school program.

*Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast.

Home | Nutrition | 8-Layers | Products | Mini-Mind Game | Communication | Advertising | News | ©, TM, & 2008 Kellogg NA Co. | Privacy | Legal | My Account | Contact Us

kelloggs.com | Keebler.com

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frosted mini-wheats

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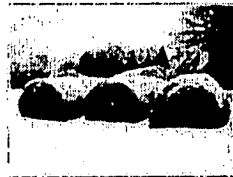
Web Images Video Results 1 - 10 of about 101,000 for **frosted mini-wheats**: (0.11 seconds)

Frosted Mini Wheats®

Sponsored Link

www.mini-wheats.com Frosted Mini-Wheats® has clinically improved kids' attentiveness by 20%

Image results for frosted mini-wheats



Kellogg's Mini-Wheats – Keeps 'em Full and Keeps 'em Focused

Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours' ...
www.mini-wheats.com/ - 14k - [Cached](#) - [Similar pages](#)

- [Nutrition](#)
- [Products](#)
- [Advertising](#)
- [8 Layers](#)
- [Mini Mind Game](#)
- [News](#)
- [Try Mini-Wheats® HOT](#)

[More results from mini-wheats.com »](#)

Kellogg's Frosted Mini-Wheats – 6 Delicious Flavors

Browse through our product lineup of 6 delicious, nutritious flavors:
www.mini-wheats.com/products.shtml - 30k - [Cached](#) - [Similar pages](#)

Frosted Mini-Wheats - Wikipedia, the free encyclopedia

Frosted Mini-Wheats (**Frosted Wheats** in the United Kingdom and **Mini-Wheats** in Canada) is a breakfast cereal manufactured by Kellogg's consisting of shredded ...
en.wikipedia.org/wiki/Frosted_Mini-Wheats - 22k - [Cached](#) - [Similar pages](#)

Calories in Kellogg, Co. - KELLOGG'S FROSTED MINI-WHEATS, bite size

Calorie and nutrition facts for KELLOGG'S FROSTED MINI-WHEATS, bite size from Calorie-Count.com.
www.calorie-count.com/calories/item/8319.html - 28k - [Cached](#) - [Similar pages](#)

Skip navigation Home Products New Products Baking Products ...

... Eggo™ · Froot Loops® · Kellogg's® Frosted Flakes® · Frosted Mini-Wheats® · Honey Smacks® · Kellogg's Raisin Bran® · Kellogg's Smorz™ · Low Fat Granola ...
www2.kelloggs.com/ - 14k - [Cached](#) - [Similar pages](#)

charles hugh smith-The Healthiest Cold Cereal: Frosted Mini-Wheats

After a careful review of cold cereals at the local Costco, it seems clear that **Frosted Mini-Wheats** have the least harmful combination of bad things (fat, ...
www.oftwominds.com/blogs/cold-cereal.html - 17k - [Cached](#) - [Similar pages](#)

Exhibit E



YouTube - Frosted Mini Wheats

a double 80's commercial for Nabisco Frosted Mini Wheats.

[Watch video](#) - 30 sec - [View it](#)

www.youtube.com/watch?v=esqa1NildvA

Amazon.com: Kellogg's Frosted Mini-Wheats Maple and Brown Sugar ...

Amazon.com: Kellogg's Frosted Mini-Wheats Maple and Brown Sugar, 16.5-Ounce Boxes (Pack of 6): Grocery.

www.amazon.com/Kelloggs-Frosted-Mini-Wheats-Maple-16-5-Ounce/dp/B000FIMWO4 -

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Amazon.com: Kellogg's Frosted Mini-Wheats Strawberry Delight, 16.3 ...

Amazon.com: Kellogg's Frosted Mini-Wheats Strawberry Delight, 16.3-Ounce Boxes (Pack of 3): Grocery.

www.amazon.com/Kelloggs-Frosted-Mini-Wheats-Strawberry-16-3-Ounce/dp/B000FIDLJO -

164k - [Cached](#) - [Similar pages](#)

[More results from www.amazon.com »](#)

Back2School 2007 | Kellogg's Frosted Mini-Wheats

Don't be fooled by the yummy frosting on Kellogg's Frosted Mini-Wheats®. They have 8 deliciously crunchy layers of whole grain wheat that provide 85% of the ...

www.back2school2007.com/kelloggs-frosted-mini-wheats-sponsor-page.html - 23k -

[Cached](#) - [Similar pages](#)

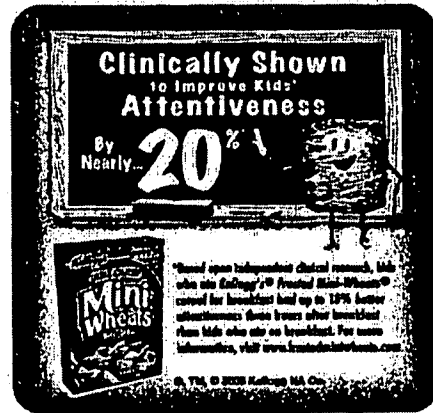
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frosted mini-wheats

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UV <input type="checkbox"/> AM <input type="checkbox"/> PER ROLL/TRAY: <u>5000</u> DESCRIPTION:											2.
											3.
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Exhibit F

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CUSTOMER: <u>BoxTop</u> CUSTOMER # <u>02100</u> ITEM # <u>381</u> LABEL SIZE: <u>3.5</u> ac x <u>2.375</u> ac										2	
UV: <input type="checkbox"/> AM <input type="checkbox"/> PER ROLL/TRAY: <u>5000</u> DESCRIPTION:										3	
										4	
APPROVED: _____ CORRECTIONS NEEDED: _____ DATE: <u>1/7/08</u>										5	
SIGNATURE: <u>Brian Felth</u>										6	
COMMENTS:										7	
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Start Their Day All Right

Does your child need to pay more attention in school? Use the following tips to help keep your little ones ahead of the class:

- ✓ **More Whole Grain + Fiber = Less Distraction**
To help keep your children focused on their schoolwork and not their grumbling bellies, incorporate more whole grain and fiber into their diets. Both have been shown to slow down the digestion process and may contribute to a feeling of being full.
- ✓ **Start the Day with Breakfast**
Kids need an energy boost after a long night's sleep. A recent clinical study showed that a whole grain and fiber-filled breakfast of Frosted Mini-Wheats helps improve children's attentiveness by nearly 20%.*
- ✓ **Make Sleep a Priority**
Lack of sleep may impact a child's performance both in school and at home. To help your kids do their best every day, be sure they get at least eight hours of sleep each night.

For more great tips on setting your kids up for success at school, watch **Mom's Mini-Casts on Parents.TV.** (look under the Top Stories channel)



Keeps 'em full.
Keeps 'em focused.

* Based upon independent clinical research, kids who ate Kellogg's® Frosted Mini-Wheats® cereal for breakfast had up to 18% better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.
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Exhibit G

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CONTACTS:
Susanne Norwitz
Kellogg Company
269-961-3799
media.hotline@kellogg.com

Kate Eyerman
724-612-5379
kate.eyerman@ketchum.com

FOR IMMEDIATE RELEASE

**HELP YOUR KIDS EARN AN "A" FOR ATTENTIVENESS
WITH A BOWL OF FROSTED MINI-WHEATS® CEREAL FOR BREAKFAST**
Eating a Bowl May Increase Attentiveness by Nearly 20 Percent

BATTLE CREEK, Mich., March 12, 2008 – Today's parents are going to great lengths to help their kids do their best in school. They sign them up for tutoring services, buy special learning software and pack their schedules with enrichment activities. While all of these things are great, it's important that parents not neglect one of the simplest ways to help ensure their kids do their best – a healthy breakfast.

A recent study commissioned by Kellogg helps demonstrate how eating a healthy, nutritious breakfast can help kids stay full and avoid the distraction of mid-morning hunger to help them do their best in school. The study, conducted by an independent research group, shows that eating a breakfast of *Frosted Mini-Wheats*® cereal helped improve kids' attentiveness by nearly 20 percent¹.

"Eating breakfast is crucial for kids and the recent study from Kellogg showing how eating *Frosted Mini-Wheats*® cereal in the morning can positively impact kids' ability to pay attention supports years of research on the importance of breakfast," says pediatrician Dr. Jim Sears. "Unfortunately, too many kids skip breakfast regularly. With many school districts nationwide conducting standardized testing in the coming months, parents need to ensure their kids eat a good breakfast so they are prepared to do their best."

Keeping 'Em Full and Focused

Kellogg recently commissioned research to measure the effect on kids of eating a breakfast of *Frosted Mini-Wheats*® cereal. An independent research group conducted a series of standardized, cognitive tests on children ages 8 to 12 who ate either a breakfast of *Frosted Mini-Wheats*® cereal or water. The result? The children who ate a breakfast of *Frosted Mini-Wheats*® cereal had a nearly 20 percent improvement in attentiveness.

"The study underscores the importance of eating a healthy breakfast," says Dr. Jennifer Garrett, Kellogg, director of nutrition marketing. "*Frosted Mini-Wheats*® cereal is an outstanding choice for kids because it's an excellent source of fiber and is made from whole grain, it's quick and convenient – it can even be portable – and kids love it."

-more-

¹ Based on independent clinical research, kids who ate *Kellogg's*® *Frosted Mini-Wheats*® cereal for breakfast had up to 18 percent better attentiveness three hours after breakfast than kids who ate no breakfast. For more information, visit www.frostedminiwheats.com.

² The clinical research was paid for by Kellogg Company. The results of the study are unpublished at this time.

For more detailed information on the tests that were used in the study, please visit www.frostedminiwheats.com.

What Makes an Ideal Breakfast

Experts agree that eating breakfast is important. But, just what should be included in that first meal of the day? Dr. Sears offers the following advice:

- *Variety Is the Spice of Life* – A nutritious breakfast should include foods from at least three of the five following MyPyramid food groups: grains, vegetables, fruits, milk and meat/beans. Eating from multiple food groups helps ensure you are getting a variety of vitamins, minerals and other nutrients.
- *Fill Up on Fiber* – A good breakfast should have at least five grams of dietary fiber. Fiber helps slow down the eating process and may contribute to a feeling of being full. This may not only help ensure that we don't overeat, but helps stop the distraction of mid-morning hunger.
- *Get a Whole Lotta Whole Grains* – Whole grain is an important component of a healthy breakfast, because it helps slow the digestion of carbohydrates and the release of energy over a longer period of time.
- *Flavor With Fruit* – Breakfast is also a good time to sneak in some fresh fruit. Fruits contain fiber and also add vitamins essential to growing kids' diets.
- *Protein Power* – No healthy breakfast would be complete without a bit of protein. A bowl of high-fiber cereal with low-fat milk and a piece of fruit is a great way to start the day.

"One of my favorite breakfasts for my family is a bowl of high-fiber cereal topped with fresh blueberries and low-fat milk," says Dr. Sears. "*Frosted Mini-Wheats*[®] is one cereal my kids and I agree on – it not only tastes great, but it's an excellent source of fiber and contains whole grain to help us stay focused all morning long."

About Dr. Jim Sears

James M. Sears, M.D., or "Dr. Jim" as he is known in the office, is a board-certified pediatrician in private practice with his father and two brothers in Capistrano Beach, Calif. Dr. Jim earned his medical degree at St. Louis University School of Medicine and completed his pediatric residency at Northeastern Ohio University College of Medicine. During his residency, he received the honor of "Emergency Medicine Resident of the Year." He is co-author of several titles, including *The Healthiest Kid in the Neighborhood*, *Father's First Steps – Twenty-Five Things Every New Father Should Know*, *The Premature Baby Book*, *The Baby Sleep Book* and the best-selling *The Baby Book*, revised edition. Dr. Jim frequently travels the country giving lectures about the importance of good family nutrition.

About Kellogg Company

With 2007 sales of nearly \$12 billion, Kellogg Company (NYSE:K) is the world's leading producer of cereal and a leading producer of convenience foods, including cookies, crackers, toaster pastries, cereal bars, frozen waffles, and meat alternatives. The company's brands include Kellogg's, Keebler, Pop-Tarts, Eggo, Cheez-It, Club, Nutri-Grain, Rice Krispies, Special K, All-Bran, Mini-Wheats, Morningstar Farms, Famous Amos, Ready Crust and Kashi. Kellogg products are manufactured in 18 countries and marketed in more than 180 countries around the world. For more information, visit the Kellogg Company web site at www.kelloggcompany.com.

###

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Harry Dennis, on behalf of himself and all other Californians similarly situated,

(b) County of Residence of First Listed Plaintiff San DiegoTM
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Todd D. Carpenter, Bonnett Fairbourn Friedman & Balint PC, 600 West Broadway, Suite 900, San Diego, CA 92101 619-756-6578

DEFENDANTS

Kellogg Company, a Delaware corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'09 CV 1786 IEG

WMC

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Cal. Bus. & Prof. Code § 17200. Unjust Enrichment.

Brief description of cause:

28 USC 1332

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/17/2009

SIGNATURE OF ATTORNEY OF RECORD

/s/Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # 004273 AMOUNT \$350 APPLYING IFP 8/17/09 BH JUDGE _____ MAG. JUDGE _____

CP

ORIGINAL

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS004273
Cashier ID: bhartman
Transaction Date: 08/17/2009
Payer Name: JANNEY AND JANNEY ATTY. SVC.

CIVIL FILING FEE

For: DENNIS ET AL V KELLOGG CO.
Case/Party: D-CAS-3-09-CV-001786-001
Amount: \$350.00

CHECK

Check/Money Order Num: 234940
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.