**BACKGROUND ON FTC COMPLAINTS AGAINST MAJOR FOOD COMPANIES FOR FALSE AND MISLEADING ADS**

By Briana Dema and Erika Duthely, Environmental Working Group law fellows

Some of the U.S.’s largest food and chemical manufacturers have spent millions of dollars to defeat Prop 37, supporting groups like “No on 37” that are urging California voters to “stop the deceptive food labeling scheme.” In recent years, however, many of the largest manufacturers of food products in this country have heard the same message from the Federal Trade Commission (FTC), a federal agency that polices false, misleading, and unsubstantiated claims about food products under the authority of the Federal Trade Commission Act, which prohibits false advertisements and deceptive practices in or affecting commerce (15 U.S.C. §§ 45, 52). In the past five years, the FTC has taken action against four major food companies for making false and unsubstantiated claims about the health benefits of six nationally-marketed food products: Dannon’s DanActive and Activia dairy products, POM Wonderful’s POM Juice, Nestlé’s BOOST Kid Essentials, and Kellogg’s Frosted Mini Wheats and Rice Krispies cereal lines. The KFC Company and the makers of Wonder Bread have also been involved in enforcement actions with the FTC. Below is a summary of the false and misleading claims widely circulated to the American public about these products.

Several photos of food and beverage companies’ false and misleading ads:

[Nestle’s Boost Kid’s Essentials energy drink claiming to protect the immune system](http://2.bp.blogspot.com/_IBVPgalgRAk/TGGAChe8_iI/AAAAAAAAB9g/GjZ3qXqs81U/s1600/Nestle%2BKid%2BEssentials.jpg)

[Kelloggs Frosted Mini Wheats claiming to improve children’s attentiveness](http://thesidenoteblog.files.wordpress.com/2009/04/miniwheats1.jpg%3Fw%3D655%26w%3D400%26h%3D533%26ei%3Dy29cUL3nEaeciAKwnoGIDQ%26zoom%3D1%26iact%3Dhc%26vpx%3D287%26vpy%3D78%26dur%3D1152%26hovh%3D259%26hovw%3D194%26tx%3D92%26ty%3D113%26sig%3D108077662847577382484%26page%3D1%26tbnh%3D133%26tbnw%3D112%26start%3D0%26ndsp%3D20%26ved%3D)

[Kelloggs Cocoa Krispies also claiming to protect the immune system](http://www.foodpolitics.com/wp-content/uploads/Immunity.jpg)

The Dannon Company, Inc.

* In 2010, the FTC filed a complaint against the Dannon Company, Inc. for disseminating false and misleading advertisements for its DanActive dairy drink and Activia yogurt. The complaint charged Dannon with representing through television and print advertisements and on product packaging that drinking DanActive was clinically proven to reduce the likelihood of getting a cold or the flu. The complaint stated that no clinical studies supported such an assertion. The complaint also charged Dannon with representing through television and Internet advertisements and on its webpage that eating one daily serving of Activia would relieve temporary irregularity when it had no reasonable basis to do so.
* Video link: http://www.brandchannel.com/home/post/2010/12/16/Danone-Activia-FTC.aspx
* Under the terms of a 2011 settlement agreement with the FTC, Dannon may not:
	+ Represent in any manner that any covered product[[1]](#footnote-1) it manufactures, labels, promotes, sells, or distributes reduces the likelihood of getting a cold or the flu, unless such labeling is authorized by the FDA;
	+ Represent in any manner that Activia yogurt relieves temporary irregularity, unless the representation states that three daily servings are required to obtain the benefit or Dannon possesses competent and reliable scientific evidence in the form of two adequate human clinical studies;
	+ Represent in any manner that any covered product other than Activia that it manufactures, labels, promotes, sells, or distributes relieves temporary irregularity unless it possesses competent and reliable scientific evidence in the form of two adequate human clinical studies;
	+ Make any representations about “the health benefits, performance, or efficacy” of any covered product unless it possesses and relies upon adequate scientific evidence based on standards that are generally accepted in the scientific field;
	+ Misrepresent in any manner “the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research” when manufacturing, labeling, advertising, promoting, selling, or distributing any covered product.
* Dannon also agreed to pay $21 million to various states that were investigating the company’s DanActive and Activia advertisements to settle the claims against it. (See http://ftc.gov/opa/2010/12/dannon.shtm).

POM Wonderful LLC

* In 2010, the FTC filed a complaint against POM Wonderful LLC for several claims it had been making about POM Juice, including claims that drinking eight ounces of POM Juice each day would prevent or reduce the risk of heart disease, treat heart disease, prevent or reduce the risk of prostate cancer, treat prostate cancer, prevent or reduce the risk of erectile dysfunction, and treat erectile dysfunction. The complaint stated that the statements were false and misleading and unsubstantiated.
* POM Wonderful LLC has strongly contested that the advertisements were false and misleading or unsubstantiated and the FTC proceeding is still ongoing.

Nestlé HealthCare Nutrition, Inc.

* Nestlé, S.A. is the world’s largest food and nutrition company. According to KCET, Nestlé USA, Inc. has spent $1,169,400 to defeat Prop 37.
* In 2010, the FTC filed a complaint against Nestlé HealthCare Nutrition, Inc., a subsidiary of Nestlé, S.A., for disseminating false and misleading advertisements for BOOST Kid Essentials. The complaint charged Nestlé with representing in television and print advertisements and on product packaging and its website that drinking BOOST Kid Essentials prevented upper respiratory tract infections in children, strengthened the immune systems of children, and prevented illness-related absences from school when it had no reasonable basis to do so. The complaint also charged Nestlé with representing that clinical studies proved that drinking BOOST Kids Essentials reduced the general incidence of illness in children, reduced the duration of acute diarrhea in children, and strengthened the immune system when no clinical studies proved such assertions.
* Video link: http://www.prnewswire.com/news-releases/nestle-subsidiary-to-settle-ftc-false-advertising-charges-will-drop-deceptive-health-claims-for-boost-kid-essentials-98373589.html
* Under the terms of a 2011 settlement agreement with the FTC, Nestlé may not:
	+ Represent in any manner that any covered product[[2]](#footnote-2) that it manufactures, labels, promotes, sells, or distributes prevents or reduces the risk of upper respiratory tract infections;
	+ Represent in any manner that any covered product that it manufactures, labels, promotes, sells, or distributes reduces the duration of acute diarrhea in children up to the age of thirteen or reduces illness-related absences from daycare or school, unless it possesses competent and reliable scientific evidence in the form of two adequate human clinical studies;
	+ Make any representations about “the health benefits, performance, or efficacy” of any covered product unless it possesses and relies upon adequate scientific evidence based on standards that are generally accepted in the scientific field;
	+ Misrepresent in any manner “the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research” when manufacturing, labeling, advertising, promoting, selling, or distributing any covered product.

Kellogg Company

* Kellogg Company is the world’s leading producer of cereal. According to KCET, Kellogg Company has spent $632,500 to defeat Prop 37.
* In 2009, the FTC filed a complaint against Kellogg Company in connection with numerous advertisements for Kellogg’s Frosted Mini-Wheats cereal that claimed the cereal was clinically proven to improve kids’ attentiveness by almost 20%. The complaint stated that no clinical studies supported such an assertion and that the advertisements were false and misleading.
* Ad link: http://thesidenoteblog.files.wordpress.com/2009/04/miniwheats1.jpg%3
Fw%3D655&w=400&h=533&ei=y29cUL3nEaeciAKwnoGIDQ&zoom=1&iact=hc&vpx=287&vpy=78&dur=1152&hovh=259&hovw=194&tx=92&ty=113&sig=108077662847577382484&page=1&tbnh=133&tbnw=112&start=0&ndsp=20&ved=
* Under the terms of a 2009 settlement agreement with the FTC, Kellogg was ordered not to:
	+ Represent in any manner that eating Frosted Mini-Wheats for breakfast is clinically shown to improve children’s attentiveness by nearly 20%, unless the representation is true and non-misleading;
	+ Make any representations “about the benefits, performance, or efficacy” of Frosted Mini-Wheats or any other morning or snack food “for cognitive function, cognitive processes, or cognitive health,” unless the representation is true, non-misleading, and based on adequate scientific evidence;
	+ Misrepresent in any manner “the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research” when labeling, advertising, selling, or distributing any morning or snack food.
* In 2010, the FTC reopened its investigation into Kellogg after the company began circulating advertisements for Kellogg’s Rice Krispies cereal, Kellogg’s Jumbo Multi-grain Krispies cereal, Kellogg’s Frosted Krispies cereal, and Kellogg’s Cocoa Krispies cereal claiming that the cereals helped boost children’s immunity.
* Ad link: http://www.foodpolitics.com/wp-content/uploads/Immunity.jpg
* The FTC modified the original Order it had issued to Kellogg in connection with the company’s Frosted Mini-Wheats cereal, placing further restrictions on the claims the company is allowed to make about food products. It ordered Kellogg not to make any representation about “the benefits, performance, or efficacy of [any food] for cognitive function, cognitive processes, or cognitive health” or “any other health benefit” of any food unless the representation is not misleading and Kellogg possesses reliable scientific evidence in the form of adequate tests, analyses, research, or studies.

KFC Corporation

* In 2004, the FTC filed a complaint against the KFC Corporation for running two television advertisements that claimed that eating KFC fried chicken was better for a person’s health than eating a Burger King Whopper, and that eating KFC fried chicken was compatible with a low carbohydrate weight loss program. The FTC determined that both statements were false and misleading.
* Under the terms of a 2004 settlement agreement with the FTC, KFC Corporation may not:
	+ Represent in any manner that eating KFC fried chicken is better for a person’s health than eating a Burger King Whopper or that eating KFC fried chicken is compatible with a low carbohydrate weight loss program, unless the representation is true and based on adequate scientific evidence;
	+ Make any representation in any manner about the amount of fat, cholesterol, sodium, calories, or any other nutrient in any chicken product it labels, advertises, promotes, sells, or distributes, the compatibility of any such chicken product with a weight loss program, or the health benefits of any such chicken product, unless the representation is true and based on adequate scientific evidence.

Interstate Bakeries Corp.

* In 2002, the FTC filed a complaint against Interstate Bakeries Corp. for disseminating false and misleading advertisements about Wonder Bread, including claims that Wonder Bread was a good source of calcium and, as such, helped improve children’s memories and improved the functionality of children’s brains. In its complaint the FTC stated that Interstate Bakeries Corp. had no reasonable basis upon which to make such assertions.
* Under the terms of a 2002 settlement agreement with the FTC, Interstate Bakeries Corporation may not:
	+ Represent in any manner that, as a good source of calcium, Wonder Bread improves children’s memories or helps children’s minds work better, unless it possesses adequate scientific evidence to support such a representation;
	+ Represent in any manner that any bread, bread product, rolls, or muffins it labels, advertises, promotes, sells, or distributes “helps brain function or memory, or can treat, cure or prevent any disease or related health condition,” unless it possesses adequate scientific evidence to support such a representation.
1. According to the settlement agreement, “covered product” means “(a) any yogurt, including but not limited to, Activia yogurt; (b) any dairy drink; and (c) any food or drink not covered by the foregoing that contains a probiotic, including, but not limited to, DanActive.” [↑](#footnote-ref-1)
2. According to the settlement agreement, “covered product” means “BOOST Kid Essentials, any drink product containing probiotics, or any nutritionally complete drink, other than infant formula, medical foods, and any product not sold primarily through conventional retail channels.” [↑](#footnote-ref-2)