

# Texas Attorney General Investigating Leading Cereal Company for Allegedly Deceptive Marketing of “Healthy” Cereals

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April 7, 2025   Suzie Trigg, Tim Newman, Luke Nguyen

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**PRACTICES** FDA Regulatory and Compliance, Food, Beverage and Restaurant

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On April 5, 2025, Texas Attorney General Ken Paxton [announced](#) an investigation of W.K. Kellogg Co. (the Company) for potential violation of Texas consumer protection laws. The investigation takes issue with the Company’s marketing of cereals as “healthy” despite the continuing inclusion of artificial food dyes and Butylated Hydroxytoluene (BHT).

The investigation follows growing scrutiny of food additives at the federal and state level. President Trump recently announced the formation of the Make America Healthy Again Commission (MAHA Commission). The MAHA Commission is charged, in part, with assessing the “threat” of certain food ingredients and chemicals and their effects on childhood chronic disease.<sup>1</sup>

The Texas Senate recently passed Senate Bill 25 (SB 25), which if also passed by the Texas House in its current form and subsequently enacted, would require food labels to warn Texas consumers if a food product contains ingredients banned in other countries. For more information about SB 25, see our March 2025 client alert, “[Texas Legislators Seek to Require Warning Labels on Manufactured Foods.](#)”

If enacted, the Attorney General would be charged with enforcing the requirements of SB 25. The Attorney General could enforce SB 25 by civil penalty and/or an injunction. SB 25 is one of several bills pending before the Texas Legislature during the current Regular Session pertaining to new restrictions on food or food additives.

The Attorney General has not yet sued the Company, but such investigations are often the precursor to an enforcement lawsuit and the announcement signals the Attorney General’s focus on food additives and “healthy” claims by food manufacturers.

## **What Prompted Attorney General Paxton’s Investigation?**

Attorney General Paxton’s stated reason for the investigation is the Company’s alleged failure to remove artificial dyes and BHT from cereals advertised as “healthy.” The investigation concerns the Company’s use of artificial food colorings and BHT in its cereals which, according to the announcement, are linked to hyperactivity, obesity, autoimmune disease, endocrine-related health problems and cancer. The announcement notes that the Company stated it would remove artificial food colorings and BHT from its products but has only done so in Canada and Europe, not in the United States. It appears that the Company may have announced the planned removal of artificial colors and flavors nearly a decade ago.<sup>2</sup>

Inclusion of such ingredients, the investigation alleges, directly contradicts advertisements that market the products as “healthy.”<sup>3</sup> The Attorney General is thus investigating whether the Company “unlawfully makes misrepresentations about its food and contributes to a broken health system that

has made Americans less healthy” and promises “accountability for any company” making similar unlawful misrepresentations to Texas consumers.<sup>4</sup>

## **Food Additives to Watch**

Considering not only this investigation but also a growing number of state proposals to ban specific food additives, food manufacturers should analyze new formulations and reformulations to ascertain whether there are feasible alternatives to synthetic dyes and food additives of concern. Now, more than ever, it is critical to consider whether any express or implied claims appearing on labels may lead to unwanted scrutiny from regulators, state attorneys general or the plaintiff’s bar.

We will continue to monitor developments to the investigation and the Texas legislature, providing updates as needed. Our FDA Regulatory and Compliance team and our White Collar and Investigations team stand ready to advise companies assessing risk or facing an inquiry from any regulator and to advise on specific synthetic dyes and additives of potential concern.

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[1] [Exec. Order No. 14212](#), 90 Fed. Reg. 9833 (Feb. 13, 2025).

[2] Lori Grisham, *Kellogg to Stop Using Artificial Ingredients by 2018*, USA Today (Aug. 5, 2015) (available at <https://www.usatoday.com/story/news/nation-now/2015/08/05/kellogg-stop-using-artificial-ingredients-2018/31152815/>).

[3] Texas Attorney General, *Attorney General Ken Paxton Announces Investigation into Kellogg’s for Potentially Breaking the Law After Falsely Claiming to Remove Unhealthy Artificial Dyes* (Apr. 5, 2025) (available at [Attorney General Ken Paxton Announces Investigation into Kellogg’s for Potentially Breaking the Law After Falsely Claiming to Remove Unhealthy Artificial Dyes](#)).

[4] *Id*