

Kellogg's loses legal challenge against new rules on sugary cereals

Kellogg's has lost a legal challenge against the government over new food regulations that would stop some of its cereals being prominently displayed in shops.

The maker of Coco Pops and All-Bran [took legal action against the Department of Health and Social Care](#) (DHSC) over the rules, which come into force this October.

Under the plans, there will be restrictions on where certain types of foods can be displayed in supermarkets or on their websites.

Another part of the regulations taking effect next year will ban multi-buy promotions of foods deemed high in fat, sugar or salt.

Shops will not be allowed to promote these types of foods in high-profile locations such as checkouts, shop entrances and aisle ends.

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[Kellogg's](#) argued the regulations are unlawful because the nutritional value of breakfast cereals will be determined by their dry weight as sold, as opposed to how they are eaten – usually with milk.

Speaking in the High Court, the manufacturer's barrister Tom Hickman QC said: "It is self-evident that breakfast cereals are not eaten dry."

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“They are not designed to be eaten in that way, they are not marketed to be eaten in that way and they are not in practice

eaten that way.”

More than half of Kellogg’s cereals ‘to be classed as less healthy’

Mr Justice Linden dismissed the claim in a judgment on Monday, concluding that the issue of how cereals are consumed and should be measured had been considered and resolved in consultations.

“In my judgment, the true position is that the fact that, in their detailed responses, none of the breakfast cereal manufacturers raised the issue during the consultation period of more than a year tends to support the view that the ‘as sold versus as consumed’ issue had long since been resolved, was well understood and was accepted in the sector,” he ruled.

He said there is “no dispute” that breakfast cereals can be part of a healthy diet.

He continued: “But the argument that there are nutritional benefits to the consumption of a given breakfast cereal does not affect the point that if it contains excess fat, sugar or salt, that feature of the product is adverse to a child’s health.

“Still less is it an argument against seeking to encourage, for health-related reasons, the promotion and consumption of breakfast cereals which contain less fat, sugar or salt.

“Nor does mixing a breakfast cereal which is high in, for example, sugar, with milk alter the fact that it is high in sugar.”

Mr Justice Linden said 54.7% of Kellogg’s current cereals will be categorised as less healthy under the new regulations.

He added that 30% of Kellogg’s products that are high in fat, sugar or salt are sold through location promotions – deals with retailers to put products in high-profile places, as well

as online promotions.

Kellogg's previously estimated that restrictions on these location promotions would cost the company £5 million in annual profits, the judge said.

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Mr Justice Linden said there is an "irony" to this evidence, adding "the adverse impact on Kellogg's which he predicted directly correlates with what the Government is trying to achieve".

The court heard that 100g of Frosties contains 37g of sugar.

"The suggestion that Frosties should not be regarded as a less healthy product because of the nutritional value of the milk with which they may be consumed is surprising," Mr Justice Linden wrote.

Rules to 'deliver £57bn in health benefits'

A DHSC spokesman said: "We strongly welcome today's judgment. The government is committed to tackling obesity, which is the second biggest cause of cancer in the UK and costs the NHS billions of pounds a year.

"The judgment backs the government's approach to restricting the promotion of less healthy breakfast cereals, which contribute a significant amount of sugar to children's diets.

"Location promotion restrictions will come into force in October 2022 and are expected to deliver over £57bn of health benefits.

"Together with the volume price restrictions, these changes will protect children up and down the country from products high in saturated fat, sugar or salt."

Kellogg's UK's managing director, Chris Silcock, said the firm is "disappointed" with the ruling but said the firm does not intend to appeal.

"We still believe that it is important that cereals are measured in a way which reflects how most people eat them – with milk," he said.

"We also remain concerned at the way the government introduced these regulations – which, in our view, was without proper parliamentary scrutiny.

"By restricting the placement of items in supermarkets, people face less choice and potentially higher prices.

"That's why, in the midst of a cost-of-living crisis, we would strongly urge the government to rethink these regulations and put the consumer first."