

Which state consumer protection provisions could be used to protect kids from junk food marketing?

The Idaho Consumer Protection Act (“ICPA”) prohibits acts and practices that are “misleading, false, or deceptive to the consumer” and “unconscionable method[s], act[s] or practice[s] in the conduct of trade or commerce. . . .”

Idaho Code Ann. § 48-603(17-18). The following specific trade practices are prohibited:

- “Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.” Idaho Code Ann. § 48-603(2);
- “Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.” Idaho Code Ann. § 48-603(3); and
- “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have.” Idaho Code Ann. § 48-603(5).

When determining whether a trade practice is “unconscionable” courts shall take into consideration several factors including “[w]hether the alleged violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor.” Idaho Code Ann. § 48-603C(2)(a).

Does Idaho law provide any special protections for child consumers?

The ICPA’s provision outlawing “unconscionable” trade practices when a defendant knowingly takes advantage of consumers who are reasonably unable to protect their own interests is a potentially powerful provision to protect child consumers. Children, by virtue of their age may be ignorant of the distinction between advertising and non-commercial content, they may be fully or partially illiterate, and unable to understand disclaimers and terms of contests and promotions. In addition, food marketing targeted at children typically is blatantly aimed at a certain age group making it easier for a plaintiff to establish that the defendant “knowingly” sought to take advantage of that group. The ICPA also requires that the courts give “due consideration and great weight” to “the interpretation of the federal trade commission and the federal courts relating to” the Federal Trade Commission Act (“FTCA”). Idaho Code Ann. § 48-604(1). The Federal Trade Commission has recognized an exception from the general “reasonable person” standard for FTCA actions when advertising is aimed at a vulnerable or particularly susceptible audience. Federal Trade Commission, *See* Deception Policy Statement, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 (1984), <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>. This lesser standard should be applied when children, who by their very nature are particularly susceptible, are the target audience of food advertising.

**Using State Consumer
Protection Law to Limit
Junk Food
Marketing to Children**

This project conducted a 50-state survey of existing state consumer protection law and the potential role it might play to limit junk food marketing to children. Each State legal summary describes the most relevant existing consumer protection statute and identifies provisions that might be invoked to protect children from junk food marketing. Procedural provisions and criminal penalties are not discussed.

