

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

Oklahoma's Consumer Protection Act ("OCPA") prohibits unfair or deceptive trade practice, Okla. Stat. Ann. 15 § 753(20). "Unfair" is defined as "any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers," Okla. Stat. Ann. tit. 15, § 752(14). "Deceptive" is defined as "a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person...[occurring] before, during or after a consumer transaction," Okla. Stat. Ann. tit. 15, § 752(13).

The OCPA specifically prohibits knowingly:

- "Mak[ing] a false or misleading representation . . . as to the source, sponsorship, approval, or certification of the subject of a consumer transaction." Okla. Stat. Ann. tit. 15, § 753(2);
- "Mak[ing] a false or misleading representation . . . as to affiliation, connection, association with, or certification by another." Okla. Stat. Ann. tit. 15, § 753(3);
- "Mak[ing] a false representation . . . as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith." Okla. Stat. Ann. tit. 15, § 753(5).

Does Oklahoma law provide any special protections for child consumers?

The OCPA authorizes courts to assess additional civil penalties of up to \$2,000 per violation of the statute that is found to be "unconscionable." To determine whether a trade practice is unconscionable, courts are to assess several criteria including "whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor." Okla. Stat. Ann. tit. 15, § 761.1(B). 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. Food marketing targeted at children typically is blatantly aimed at a certain age group making it easier for a plaintiff to establish that the conduct "knowingly" sought to take advantage of that group's disabilities. The OCPA also permits actions for deceptive acts occurring before, during or after the actual consumer transaction. Many child food product packaging contains marketing material directing children to visit a website or participate in a contest after the purchase. If such post sale activity is deceptive, unfair or unconscionable then it may be actionable under the OCPA.

**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.





at Northeastern University School of Law
 102 The Fenway
 Cushing Hall, Ste. 117
 Boston, MA 02115

Phone: 617-373-2026
 E-mail: cp@phaionline.org



Who can bring a lawsuit?

The Attorney General, Okla. Stat. Ann. tit. 15, § 756.1(A), and individual consumers, Okla. Stat. Ann. tit. 15, § 761.1(A), may file suit.

What needs to be shown to make out a claim?

In order to establish a violation of the OCPA a consumer must allege: "(1) that the defendant engaged in an unlawful practice as defined [] [by the OCPA]; (2) that the challenged practice occurred in the course of defendant's business; (3) that the plaintiff, as a consumer, suffered an injury in fact; and (4) that the challenged practice caused the plaintiff's injury." *Patterson v. Beall*, 19 P.3d 839, 846 (Okla. 2000).

What are the powers of the Attorney General to protect kids from junk food marketing?

The Oklahoma Attorney General or a district attorney may seek declaratory relief, injunctive relief, actual damages, civil penalties and reasonable expenses and investigation fees. Okla. Stat. Ann. tit. 15, § 756.1(A). A violator of the OCPA who willfully violates an injunction or court order may be assessed a civil penalty of up to \$10,000 per violation. Okla. Stat. Ann. tit. 15, §761.1(C). The OCPA does not expressly provide that the Attorney General may make rules and regulations to accomplish the objectives of the law.

How does the law compensate consumers?

Prevailing plaintiffs are entitled to recovery of actual damages. Okla. Stat. Ann. tit. 15, § 761.1(A). Violations of the OCPA that constitute an "unconscionable" act or practice entitled the aggrieved consumer to a civil penalty of up to \$2,000 per violation. Okla. Stat. Ann. tit. 15, § 761.1(B). The OCPA sets out four criteria to be considered by the court when determining whether a practice is "unconscionable." The two factors relevant to marketing of food products to children are: "(1) whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor," and "(4) whether the violator knew or had reason to know that the transaction he or she induced the consumer to enter into was excessively one-sided in favor of the violator." Okla. Stat. Ann. tit. 15, § 761.1(B).

Who is liable for attorney's fees?

The OCPA allows for consumers to recover the "costs of litigation including reasonable attorney's fees . . ." Okla. Stat. Ann. tit. 15, § 761.1(A). Upon a finding of bad faith or groundless action, a court may order the non-prevailing party to pay up to \$10,000 for attorneys' fees and costs. Okla. Stat. Ann. tit. 15, § 761.1(A).

DISCLAIMER: This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.

THANKS: Many thanks for research assistance provided by Northeastern University School of Law Public Health Legal Clinic students Bill Mostyn, Alexandra Geiger and Jordan Barringer. Thanks also to Jennifer Roberston.

FUNDING: This Project is funded by the Robert Wood Johnson Foundation's Healthy Eating Research Program.

Prepared by Cara Wilking, J.D.