

Which state consumer protection laws may protect kids from junk food marketing?

The South Carolina Unfair Trade Practices Act is modeled off of the Federal Trade Commission Act and declares “[u]nfair methods of competition and unfair or deceptive acts or practices” unlawful. S.C. Code Ann. § 39-5-20(a). When construing the South Carolina Unfair Trade Practices Act, courts are to be “guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a)(1) of the Federal Trade Commission Act . . .” S.C. Code Ann. § 39-5-20(b).

Does South Carolina law provide any special protections for child consumers?

The South Carolina Unfair Trade Practices Act directs state courts to be guided by interpretations given by the FTC and the federal courts. 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.

Who can bring a lawsuit?

The Attorney General may bring actions to protect the public interest. S.C. Code Ann. § 39-5-50(a). Individual consumers may file suit. S.C. Code Ann. § 39-5-140(a). Class actions are prohibited under the law. S.C. Code Ann. § 39-5-140(a).

What needs to be shown to make out a claim?

To make out a claim a consumer must establish 1) a violation of the act, 2) actual, ascertainable damages, and 3) that the unfair or deceptive act had an adverse impact on the public interest. *City of Charleston, SC v. Hotels.com, LP*, 487 F.Supp.2d 676, 680 (D.S.C. 2007). To prove adverse impact of the public interest, plaintiffs can show “that unfair or deceptive acts or practices . . . have the potential for repetition.” *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480 (1986).

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.

