

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

The Tennessee Consumer Protection Act (“TCPA”) prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Tenn. Code Ann. § 47-18-104(a). Unfair or deceptive acts include:

- “Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods,” Tenn. Code Ann. § 47-18-104(b)(2);
- “Representing that goods . . . have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have.” Tenn. Code Ann. § 47-18-104(b)(5);
- “Representing that goods . . . are of a particular standard, quality or grade . . . if they are of another,” Tenn. Code Ann. § 47-18-104(b)(7);
- “Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value . . . or which may otherwise misrepresent the goods . . . in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods . . . to other goods. . .” Tenn. Code Ann. § 47-18-104(b)(21).

The TCPA also contains a catch-all provision that prohibits “[e]ngaging in any other act or practice which is deceptive to the consumer or to any other person.” Tenn. Code Ann. § 47-18-104(b)(27).

Does Tennessee law have any special protections for child consumers?

The TCPA authorizes an award of treble actual damages for violations committed willfully or knowingly. When determining whether to award treble damages, a court may consider, among other things, “the competence of the consumer or other person.” Tenn. Code Ann. § 47-18-109(a)(4)(A). The reduced competence of child consumers could, therefore, play an important role in determining an award of treble damages.

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.



Who can bring a lawsuit?

The Attorney General, Tenn. Code Ann. § 47-18-108(a)(1),(b)(1), and individual consumers, Tenn. Code Ann. § 47-18-109(a)(1), can file suit. Class actions are prohibited. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 310 (Tenn. 2008).

What needs to be shown to make out a claim?

In order to make out a successful claim under the act, plaintiffs must prove that (1) the defendant engaged in an unfair or deceptive act or practice declared unlawful by the act, (2) the defendant's conduct caused the plaintiff an "ascertainable" loss of money, and (3) the defendant's conduct proximately caused the plaintiff's injury. *Cloud Nine, LLC v. Whaley*, 650 F.Supp.2d 789, 797-98 (E.D. Tenn. 2009).

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

The Attorney General has authority to inquire into possible violations of the act and conduct examinations under oath. Tenn. Code Ann. § 47-18-106. Additionally, the Attorney General may seek injunctions if the proceedings would be in the public interest. Tenn. Code Ann. § 47-18-108(a)(1). The Attorney General may also seek civil penalties of not more than \$1,000 for each violation. Tenn. Code Ann. § 47-18-108(b)(3).

How does the law compensate consumers?

Consumers are entitled to actual damages and equitable relief. Tenn. Code Ann. § 47-18-109(b). In private actions, if the court finds a violation of the act was done willfully or knowingly, the court may award treble actual damages. Tenn. Code Ann. § 47-18-109(a)(3). When determining whether to award treble damages, a court may consider, among other things, "the competence of the consumer or other person." Tenn. Code Ann. § 47-18-109(a)(4)(A).

Who is liable for attorney's fees?

In actions brought by the Attorney General, the court may grant attorney's fees. Tenn. Code Ann. § 47-18-108(b)(4). In private actions, if the consumer is successful, the court may award attorney's fees to the consumer. Tenn. Code Ann. § 47-18-109(e)(1). However, if the consumer's action is found to be frivolous, without merit, or brought to harass, the court may order the consumer pay the defendant's attorney's fees. Tenn. Code Ann. § 47-18-109(e)(2).

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

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