

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

The Alabama Deceptive Trade Practices Act ("DTPA") prohibits deceptive acts including:

- "Passing off goods or services as those of another, provided that this section shall not prohibit the private labeling of goods or services." Ala. Code § 8-19-5(1);
- "Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services." Ala. Code § 8-19-5(2);
- "Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by another, provided that this section shall not prohibit the private labeling of goods or services." Ala. Code § 8-19-5(3); and
- "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have." Ala. Code § 8-19-5(5).

The DTPA also contains a catch-all provision that prohibits "[e]ngaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." Ala. Code § 8-19-5(27). When construing the DTPA courts are to give "due consideration and great weight" to interpretations of the Federal Trade Commission and the federal courts relating to relevant portions of the Federal Trade Commission Act. Ala. Code § 8-19-6.

Does Alabama law have any special protections for child consumers?

The DTPA does not have any special provisions dealing with child consumers. It does direct 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.

**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.



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Who can bring a lawsuit?

The Attorney General, and individual consumers may file suit. Class actions brought by consumers are not permitted, but the Attorney General may file class actions in a representative capacity to recover actual damages on behalf of consumers. Ala. Code § 8-19-10(f).

What needs to be shown to make out a claim?

In order to make out a claim under the DTPA a plaintiff must allege that the defendant committed an act declared unlawful by the DTPA and that act caused the plaintiff monetary damages. Ala. Code § 8-19-10(a). While not all of the enumerated violations of the DTPA require that the unlawful act be committed knowingly, the statute contains a “defense” provision whereby a defendant may defend a claim “upon a showing by a preponderance of the evidence . . . that such person did not knowingly commit any act or knowingly engage in any activity which constitutes a violation of any provision of this chapter.” Ala. Code § 8-19-13. Thus, plaintiffs should be able to establish that the act was committed knowingly.

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

The Attorney General may conduct investigations and enforce the DTPA by seeking injunctive relief, monetary damages, and civil penalties of up to \$25,000 for violations of an injunction and up to \$2,000 for violations of the DTPA committed knowingly. Ala. Code § 8-19-4(a); Ala. Code § 8-19-8; Ala. Code § 8-19-11.

How does the law compensate consumers?

Prevailing consumers shall be awarded actual damages or \$100, whichever is greater or up to three times any actual damages in the court’s discretion. Ala. Code § 8-19-10(a).

Who is liable for attorney’s fees?

The court shall award prevailing consumers costs and reasonable attorney’s fees. Ala. Code § 8-19-10(a)(3). The court also has the discretion to award a defendant reasonable attorney’s fees and costs upon a finding that an action was frivolous or brought in bad faith. Ala. Code. § 8-19-10(a)(3).

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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