

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

Alaska's Unfair Trade Practices and Consumer Protection Act ("UTPCPA") is modeled off of the Federal Trade Commission Act ("FTCA"). In general it prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce . . ." Alaska Stat. § 45.50.471(a). Specific prohibitions that could apply to food marketing include trade practices that:

- Cause a "likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services." Alaska Stat. § 45.50.471(b)(3);
- Represent 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, or connection that the person does not have." Alaska Stat. § 45.50.471(b)(4);
- Represent "that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." Alaska Stat. § 45.50.471(b)(6);
- Engage in "any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services." Alaska Stat. § 45.50.471(b)(11); and
- Use or employ "deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." Alaska Stat. § 45.50.471(b)(12).

**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.

**Does Alaska law provide any special protections for child consumers?**

Alaska's UDTPCA has no specific provision protecting children as vulnerable consumers. Alaska courts give great weight to interpretations of the federal FTCA. Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 20 (2005), and 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, private consumers and classes of private consumers can file suit.

### What needs to be shown to make out a claim?

Plaintiffs must establish a prima facie case: "(1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice occurred." *Odum v. Fairbanks Memorial Hosp.*, 999 P.2d 123, 132 (Alaska 2000) (internal citations omitted). A plaintiff need not suffer actual injury. Rather, "all that is required is a showing that the acts and practices were capable of being interpreted in a misleading way." *Odum v. Fairbanks Memorial Hosp.*, 999 P.2d 123, 132 (Alaska 2000). In a private action, a plaintiff must suffer an "ascertainable loss of money or property." Alaska Stat. § 45.50.531(a).

A showing of reliance is not required. *Odum v. Fairbanks Memorial Hosp.*, 999 P.2d 123, 132 (Alaska 2000). A showing of intent to deceive is only required when a claimant alleges that a defendant knowingly concealed, suppressed or omitted a material fact. Alaska Stat. § 45.50.471(b)(12) (expressly requiring the actor to possess the requisite intent).

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

The Alaska Attorney General has the power to investigate and enforce the UDTPCA. The Attorney General may issue an injunction, Alaska Stat. § 45.50.501, and may petition the court for civil penalties of not less than \$1,000 and not more than \$25,000 per violation of an injunction or restraining order. Alaska Stat. § 45.50.551(a). The Attorney General may pursue civil penalties of up to \$5,000 per violation of the UDTPCA. Alaska Stat. § 45.50.551(b). The Alaska Attorney General may also promulgate rules under the UDTPCA. Alaska Stat. § 45.50.491. Current rules, however, do not pertain to food marketing, but rather involve regulation of insurance, retail, and mortgage sales.

### How does the law compensate consumers?

Under Alaska law, private plaintiffs may recover treble damages: plaintiffs may recover "for each unlawful act or practice three times the actual damages or \$ 500, whichever is greater." Alaska Stat. § 45.50.531(a). If, however, "a person receives an award of punitive damages [treble damages] . . . the court shall require that 50 percent of the award be deposited into the general fund of the state." Alaska Stat. § 45.50.531(i). Other relief is available at the discretion of the court. Alaska Stat. § 45.50.531(i). Private parties may seek injunctive relief. Alaska Stat. § 45.50.535.

### Who is liable for attorney's fees?

A successful plaintiff is entitled to reasonable attorney's fees. Alaska Stat. § 45.50.537(a). If the court finds the action was frivolous, the plaintiff will be liable for defendant's attorney's fees. Alaska Stat. § 45.50.537(b).

**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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