

# Connecticut

## Summary of Consumer Protection Law to Protect Kids from Junk Food Marketing

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

The Connecticut Unfair Trade Practices Act ("CUTPA") is modeled off of the Federal Trade Commission Act ("FTCA"). It generally prohibits unfair and deceptive trade practices: "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a). "'Trade' and 'commerce' means the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state." Conn. Gen. Stat. § 42-110a(4).

### Does Connecticut law provide any special protections for child consumers?

The CUTPA has no specific provision protecting children as vulnerable consumers. The Connecticut courts and the Commissioner of Consumer Protection rely on Federal Trade Commission and federal court interpretation of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), Conn. Gen. Stat. § 42-110b(b). 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 Commissioner of Consumer Protection, Conn. Gen. Stat. §§ 42-110k, 42-110m, the Attorney General, Conn. Gen. Stat. §§ 42-110n, 42-110o, individual consumers, Conn. Gen. Stat. § 42-110g(a), or a class of consumers, Conn. Gen. Stat. §§ 42-110g(b), may bring suit under the CUTPA.

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

Connecticut has adopted the FTC's "cigarette rule." Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 85 (2005). To make out a claim, plaintiff must show that the defendant's actions: "(1) offend 'public policy as it has been established by statutes, the common law, or otherwise,' (2) are 'immoral, unethical, oppressive, or unscrupulous,' and (3) caused substantial injury to consumers, competitors, or other businessmen." *Omni Corp. v. Sanitral Corp.*, 476 F.Supp.2d 125 (D.Conn. 2007) (citing *A-B Foods, Inc. v. Pepperidge Farm, Inc.*, 216 Conn. 200 (Conn. 1990)). A "substantial injury" is defined as an injury that is (1) substantial, (2) "not . . . outweighed by any countervailing benefits to consumers or competition that the practice produces," and (3) an "injury that consumers themselves could not reasonably have avoided." *Calandra v. Allstate Ins. Co.*,

### 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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778 A.2d 212, 217 (Conn. App. 2001) (citing *Hartford Electric Supply Co. v. Allen-Bradley Co.*, 736 A.2d 824 (Conn. 1999)). A plaintiff need not prove all three elements, but rather establish that that the practice meets one of the elements, or all three to a lesser extent. Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 446 (2005). Plaintiffs must plead an ascertainable loss of money or real or personal property. Conn. Gen. Stat. § 42-110g(a).

Intermediate courts have held that a plaintiff need not prove reliance to make out a claim under CUTPA. *Hinchliffe v. American Motors Corp.*, 440 A.2d 810, 816 (Conn. 1981).

A plaintiff does not need to prove an intent to deceive to bring a CUTPA claim. *Thames River Recycling, Inc. v. Gallo*, 720 A.2d 242, 255 (Conn. App. 1998).

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

At the request of the Commissioner the Connecticut Attorney General may seek injunctive relief. Conn. Gen. Stat. § 42-110m(a). The Attorney General may also pursue civil penalties of \$25,000 per violation for violations of an injunction, Conn. Gen. Stat. § 42-110o(a), and \$5,000 per violation if the conduct was willful, Conn. Gen. Stat. § 42-110o(b).

Most of the state's powers under CUTPA reside with the Commissioner, including, but not limited to, investigative, injunctive, subpoena, and authority to seek restitution for consumers. Conn. Gen. Stat. § 42-110d.

#### **How does the law compensate consumers?**

Consumers are entitled to actual damages and, at the discretion of the court, equitable relief and punitive damages. Conn. Gen. Stat. § 42-110g(a). Punitive damages may be awarded when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights. *See, e.g., Gargano v. Heyman*, 525 A.2d 1343 (Conn. 1987) (the Connecticut Supreme Court applied to CUTPA the standards applicable to the award of common law punitive damages).

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

A prevailing plaintiff may be entitled to attorney's fees and costs under CUTPA. Conn. Gen. Stat. § 42-110g(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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