

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

Delaware law prohibits “deceptive merchandising practices” under its Consumer Fraud Act (“CFA”). Del. Code. Ann. tit. 6, § 2511 et seq. An unlawful practice under the CFA includes, among other things, “[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise” Del. Code. Ann. tit. 6, § 2513(a).

Does Delaware law provide any special protections for child consumers?

Delaware’s CFA does not provide any special protections for child consumers.

Who can bring a lawsuit?

The Delaware Attorney General, Del. Code. Ann. tit. 6, § 2522) and individual consumers, Del. Code. Ann. tit. 6, § 2525, may file suit.

What needs to be shown to make out a claim?

The elements of a claim under the CFA are: (1) the “act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact, (2) in “connection with the sale, lease or advertisement or any merchandise.” Del. Code. Ann. tit. 6, § 2513(a). Proof of intent is only required for claims alleging the omission or concealment of a material fact. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983). The plaintiff does not need to prove reliance under the CFA. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983).

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

The Delaware Attorney General has the power to investigate, Del. Code. Ann. tit. 6, §§ 2514 - 2516, petition the court for a protective order, Del. Code. Ann. tit. 6, § 2517, issue cease and desist orders and impose fines, Del. Code. Ann. tit. 6, § 2521, seek injunctive relief, Del. Code. Ann. tit. 6, § 2522, petition the court for restraining orders, Del. Code. Ann. tit. 6, § 2523, and petition the court to impose a civil penalty of not more than \$10,000 per violation for willful violations of the CFA, Del. Code. Ann. tit. 6, § 2522.

How does the law compensate consumers?

Consumers may bring private actions to recover (1) actual damages resulting from violations of the CFA or (2) what the plaintiff would have received had the practice not been deceptive minus the actual value. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1076-1078 (Del. 1983).

Punitive damages are available to a plaintiff "if fraud is gross, oppressive, or aggravated, or where it involves breach of trust or confidence . . ." *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1076-1077 (Del. 1983).

Who is liable for attorney's fees?

Prevailing plaintiffs are not entitled to attorney's fees under the CFA unless the victim was elderly or disabled. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1078 (Del. 1983).

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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