

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

The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") is modeled off of the Federal Trade Commission Act and prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...." Fla. Stat. Ann. § 501.204(1). When interpreting the FDUTPA "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to ...the Federal Trade Commission Act." Fla. Stat. Ann. § 501.204(2).

Does Florida law provide and special protections for child consumers?

The FDUTPA does not contain any special protections for child consumers.

Who can bring a lawsuit?

The "Enforcing Authority" or any consumer or class of consumers affected by the acts may bring a lawsuit for a violation of the FDUTPA. "'Enforcing authority' means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction. "Enforcing authority" means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney." Fla. Stat. Ann. § 501.203.

What needs to be shown to make out a claim?

To establish a FDUTPA claim, the plaintiff must allege three basic elements: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. *KC Leisure, Inc. v. Haber*, 972 So.2d 1069, 1073 (Fla. 5th DCA 2008). An additional element adopted by many courts in Florida requires the plaintiff to also allege the defendant was a "direct participant" in the improper dealings. *See Arden v. Litinsky*, 472 So.2d 825 (Fla. 4th DCA 1985); *General Dev. Corp. v. Catlin*, 139 So.2d 901 (Fla. 3d DCA 1962); *Aboujaoude v. Poinciana Development Company II*, 509 F.Supp.2d 1266, (S.D. Fla. 2007).

Class certification on a FDUTPA damages claim requires the plaintiffs to show a "'reasonable methodology for generalized proof of class-wide impact and damages.'" *Rollins, Inc. v. Butland*, 951 So.2d 860, 872 (Fla. App. 2 Dist. 2006) (quoting *Excutech Bus. Sys. v. Appleton Papers, Inc.*, 743 So.2d 19, 22 (Fla. 4th DCA 1999)).

**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?

In order to bring a claim on behalf of consumers, the Attorney General must be the "Enforcing Authority," as discussed *supra*. The Attorney General of Florida may enforce and seek redress for violations of the FDUTPA by pursuing declaratory or injunctive relief, and suits for actual damages on behalf of one or more consumers. Fla. Stat. Ann. § 501.207. The Attorney General may also pursue a civil penalty of not more than \$10,000 per violation for "willful" violations of the statute. Fla. Stat. Ann. § 501.2075. "Willful" violations means conduct in which the individual knew or should have known the act or practice was prohibited by the statute. // The statute also confers rulemaking authority, within certain limitations, to the Florida Department of Legal Affairs. Fla. Stat. Ann. § 501.205.

How does the law compensate consumers?

A consumer's damages under a FDUTPA claim are limited to actual damages, attorney's fees, and court costs. *See* Fla. Stat. Ann. § 501.211.

Who is liable for attorney's fees?

In general, the prevailing party can be awarded attorney fees. Fla. Stat. Ann. Sec. 501.2105. A successful plaintiff may be awarded reasonable attorney's fees under the FDUTPA (Fla. Stat. Ann. § 501.211(2)).

A defendant to a FDUTPA claim may, upon motion to the court alleging the suit is frivolous, require the plaintiff to post bond. Fla. Stat. Ann. § 501.211(3). The Enforcing Authority, however, cannot be required to post bond under this statute.

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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