

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

Georgia law prohibits unfair and deceptive trade practices under the Fair Business Practices Act of 1975 ("FBPA"), Ga. Code § 10-1-390 *et seq.*, and the Uniform Deceptive Trade Practices Act ("UDTPA"), Ga. Code § 10-1-370 *et seq.* The FBPA is more commonly used for consumer protection cases so will be the focus of this profile.

The FBPA prohibits "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce..." including:

- Causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of goods or services, Ga. Code § 10-1-393(2)
- Causing actual confusion or actual misunderstanding as to affiliation, connection, or association with or certification by another, Ga. Code § 10-1-393(3);
- Representing 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 he or she does not have, Ga. Code § 10-1-393(5)
- Representing 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, Ga. Code § 10-1-393(7).

Does Georgia law provide any special protections for child consumers?

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

Who can bring a lawsuit?

Individual consumers, Ga. Code § 10-1-399, and the administrator of the Office of Consumer Affairs, Ga. Code § 10-1-397, may file suit. Class actions are not permitted under the FBPA. Ga. Code § 10-1-399(a).

What needs to be shown to make out a claim?

In order to make out a claim under the FBPA, a plaintiff must establish (1) a violation of the FBPA, and (2) that she suffered injury or damages as a result of the violation. Ga. Code § 10-1-399(a).

**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.



at Northeastern University School of Law
102 The Fenway
Cushing Hall, Ste. 117
Boston, MA 02115

Phone: 617-373-2026
E-mail: cp@phaionline.org



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

Under the FBPA, an administrator of the Office of Consumer Affairs is to be by the Governor to enforce the provisions of the statute. *See* Ga. Code § 10-1-395. Under the FBPA, “[th]e administrator is authorized to adopt as substantive rules that prohibit specific acts or practices in violation of Code Section 10-1-393 those rules and regulations of the Federal Trade Commission interpreting Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), as from time to time amended.” Ga. Code § 10-1-394(a). The administrator has the authority to investigate complaints and seek civil penalties and equitable relief. Ga. Code § 10-1-397.

How does the law compensate consumers?

The FBPA authorizes consumers to pursue injunctive relief, general damages and exemplary or punitive damages (provided the violation was intentional). Ga. Code § 10-1-399(a).

Who is liable for attorney’s fees?

A prevailing plaintiff in a FBPA action is entitled to reasonable attorney fees. Ga. Code § 10-1-393(d). However, attorneys’ fees will not be provided if the court finds the plaintiff rejected a reasonable written offer of settlement. *Id.* If the court finds the action continued past the reasonable offer in bad faith or for purposes of harassment, the court may award attorneys’ fees to the adverse party. *Id.*

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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Prepared by Cara Wilking, J.D.