

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

Hawaii's Unfair and Deceptive Acts and Practices ("UDAP") law is modeled off of the Federal Trade Commission Act ("FTCA"). It generally prohibits unfair and deceptive trade practices: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Haw. Rev. Stat. Ann. § 480-2(a).

Does Hawaii law provide any special protections for child consumers?

Hawaii's UDAP statute has no specific provision protecting children as vulnerable consumers. The UDAP law requires that "the courts and the office of consumer protection give due consideration to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting" the FTCA. Haw. Rev. Stat. Ann. § 480-2(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?

Consumers, the Attorney General or the Director of the Office of Consumer Protection are authorized to bring an action based upon unfair or deceptive acts or practices. Haw. Rev. Stat. Ann. § 480-2(d). Class actions are permitted. *E.g., Yakoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087 (9th Cir. 2010).

What needs to be shown to make out a claim?

The essential elements of a UDAP claim are: (1) a violation of Hawaii's consumer protection law; (2) injury to plaintiff's business or property resulting from such violation; and (3) proof of the amount of damages. *Tokuhisa v. Cutter Management Co.*, 223 P.3d 246 (Hawai'i App. 2009). Proof of individual reliance is not required. *Yakoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1092-93 (9th Cir. 2010).

**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.

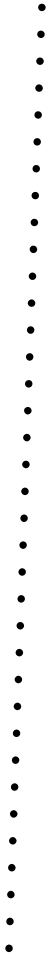


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What are the powers of the Attorney General to protect kids from junk food marketing?

The Hawaii Attorney General has investigatory powers, Haw. Rev. Stat. Ann. § 480-18, and may pursue civil actions for violation of the consumer protection statute. The AG may recover not less than \$500 and not more than \$10,000 per violation. The AG may also bring class action suits on behalf of consumers and the state. Haw. Rev. Stat. Ann. § 480-14(c). Further, the AG may pursue injunctive relief. Haw. Rev. Stat. Ann. § 480-15.

How does the law compensate consumers?

A consumer is entitled to the greater of \$1000 in statutory damages or treble the amount of actual damages sustained. Haw. Rev. Stat. Ann. § 480-13(a)(1). A consumer may also obtain injunctive relief. Haw. Rev. Stat. Ann. § 480-2(b)(2).

Who is liable for attorney’s fees?

A prevailing plaintiff is entitled to costs and reasonably attorneys’ fees. Haw. Rev. Stat. Ann. § 480-13(a)(1).

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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