

### **Which state consumer protection laws may protect kids from junk food marketing?**

The Illinois Consumer Fraud and Deceptive Business Practices Act (“Act”) prohibits “any deception, fraud, false pretense . . . misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . whether any person has in fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. § 505/2. The Act defines “advertisement” to include attempts to “induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise . . .” 815 Ill. Comp. Stat. § 505/1(a). When construing the Act, “consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts” of the Federal Trade Commission Act [“FTCA”]. 815 Ill. Comp. Stat. § 505/2.

### **Does Illinois law provide any special protections for child consumers?**

The Act has no specific provision protecting children as vulnerable consumers, but does state that in construing the Act “consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts” of FTCA. 815 Ill. Comp. Stat. § 505/2. 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. In addition, the Act defines advertising to include direct and indirect marketing strategies. Advertising aimed at children intended to generate “pester power” whereby children pester their parents into buying a product for them is a classic form of “indirect” food marketing. In cases where parents are the ultimate purchaser, but children were the targets and the victims of the deceptive food marketing, the recognition of “indirect” advertising is beneficial to consumers.

### **Who can bring a lawsuit?**

Consumers and the Attorney General can file suit. 815 Ill. Comp. Stat. § 505/7(a); 815 Ill. Comp. Stat. Ann. § 505/10a(a),(c).

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

A consumer must establish that (1) the advertiser committed a deceptive act or practice; (2) the advertiser intended that the consumer rely on the deception; (3) that the advertiser's deception occurred in the course of conduct involving trade and commerce, and that; (4) the consumer experienced actual damages that were; (5) proximately caused by the advertiser's deception. *Langendorf v. Con-seco Senior Health Ins. Co.*, 590 F. Supp.2d 1020, 1022 (N.D.II. 2008).

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

The Attorney General is authorized to inquire into violations of the act and issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations that are necessary to carry out the act. 815 Ill. Comp. Stat. §505/3; 815 Ill. Comp. Stat. § 505/4. The Attorney General may also pursue civil penalties of up to \$50,000. 815 Ill. Comp. Stat. § 505/7(b).

### How does the law compensate consumers?

Courts are authorized to award individual consumers "actual economic damages" or "any other relief which the court deems proper." 815 Ill. Comp. Stat. § 505/10a (a).

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

In individual actions brought under the Act, the court may award attorney's fees to the prevailing party. 815 Ill. Comp. Stat. § 505/10a(c). Defendants may be awarded attorney's fees if the plaintiff acted in bad faith. *Krautsack v. Anderson*, 223 Ill.2d 541, 559 (Ill. 2006).

**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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