

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

Indiana is one of just a few states that itemizes a long list of prohibited trade practices but does not contain a "catch-all" provision outlawing deceptive trade practices in general. Dee Pridgen, CONSUMER PROTECTION AND THE LAW (VOL. 1) 41 (2003; Colo. Rev. Stat. § 6-1-108 et seq. The Indiana Deceptive Consumer Sales Act ("IDCSA") prohibits representations "made orally, in writing, or by electronic communication" that:

- "[A good] has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have." Ind. Code Ann. § 24-5-0.5-3(a)(1); or
- "[T]he supplier [of a good] has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have." Ind. Code Ann. § 24-5-0.5-3(a)(7).

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

The IDCSA does not contain any special protections for child consumers. The IDCSA is unique in that it specifically includes "electronic communication" in its list of types of representations.

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

The Attorney General and individual consumers may bring suit. Class actions are permitted. Ind. Code Ann. § 24-5-0.5-4(b).

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

To state a claim under the IDCSA, a plaintiff must allege that the defendant engaged in one or more deceptive acts, as defined in the IDCSA. Deceptive acts fall into two categories: "uncured" deceptive acts and "incurable" deceptive acts. *McKinney v. State*, 693 N.E.2d 65, 68 (Ind. 1998). Stated simply, "uncured" deceptive acts are acts that a supplier fails to cure within 30 days of a demand letter. *See* Ind. Code Ann. § 24-5-0.5-2(7). "Incurable" deceptive acts are "'done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead.'" Ind. Code Ann. § 24-5-0.5-2(8). Courts have concluded that "intent to defraud or mislead is a required element of an 'incurable' deceptive act" but "it is not required for other deceptive acts." *Young v.*

### **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.

