

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

The Kansas Consumer Protection Act ("KCPA") protects consumers from deceptive and unconscionable trade practices. Kan. Stat. Ann. § 50-623(b). Prohibited "deceptive" trade practices include:

- Knowingly representing that "[p]roperty or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have," Kan. Stat. Ann. § 50-626(b)(1)(A);
- "[T]he willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact," Kan. Stat. Ann. § 50-626(b)(2); and
- "[T]he willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." Kan. Stat. Ann. § 50-626(b)(3).

The KCPA also prohibits "unconscionable" trade practices occurring "before, during or after the transaction." Kan. Stat. Ann. § 50-627(a). The KCPA outlines a series of factors a court shall consider including whether the supplier knowingly took "advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor." Kan. Stat. Ann. § 50-627(b)(1).

Does Kansas consumer protection law provide any special protections for child consumers?

The KCPA's inclusion of knowingly taking advantage of a consumer's inability to protect his own interests as a factor to consider when determining whether a trade practice is "unconscionable" may be a useful tool to protect children from food marketing. Children, by virtue of their age may be ignorant of the distinction between advertising and non-commercial content, they may be fully or partially illiterate, and unable to understand disclaimers and terms of contests and promotions. In addition, food marketing targeted at children typically is blatantly aimed at a certain age group making it easier for a plaintiff to establish that the defendant "knowingly" sought to take advantage of that group.

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.

