

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

The Maine Unfair Trade Practices Act (“UTPA”) is modeled off of the Federal Trade Commission Act (“FTCA”). Maine also adopted the Uniform Deceptive Trade Practices Act, but it is rarely used. See Me. Rev. Stat. Ann. tit. 10 §§ 1211-1216. The UTPA broadly prohibits unfair and deceptive trade practices: “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.” Me. Rev. Stat. Ann. tit. 5, § 207. “Trade or commerce” is defined to include advertising. Me. Rev. Stat. Ann. tit. 5, § 206(3).

Does Maine law provide any special protections for child consumers?

The UTPA has no specific provision protecting children as vulnerable consumers, but does state that the Attorney General and “courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to . . . the Federal Trade Commission Act[(“FTCA”)].” Me. Rev. Stat. Ann. tit. 5, § 207 (1-2). 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.

Who can bring a lawsuit?

The Attorney General, Me. Rev. Stat. Ann. tit. 5, § 209, individual consumers, Me. Rev. Stat. Ann. tit. 5, § 213, and classes of individual consumers (class actions), *see, e.g., Oceanside at Pine Point Condominium Owners Ass’n v. Peachtree Doors*, 659 A.2d 267 (Me. 1995); *Sanford v. Nat’l Ass’n for the Self-Employed, Inc.*, 2010 U.S. Dist. LEXIS 11825 (D. Me. 2010), are authorized to file suit under the UTPA.

What needs to be shown to make out a claim?

To make out a claim, a plaintiff must show 1) that the defendant engaged in an unfair method of competition or an unfair or deceptive act or practice in the conduct of any trade or commerce, Me. Rev. Stat. Ann. tit., 5, § 207; 2) that the plaintiff suffered a “loss of money or property, real or personal,” Me. Rev. Stat. Ann. tit. 5, § 213(1); and 3) that the loss resulted from the defendant’s actions. Me. Rev. Stat. Ann. tit. 5, § 213(1).

**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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In order for an act or practice to be "unfair" it: "(1) must cause, or be likely to cause, substantial injury to consumers; (2) that is not reasonably avoidable by consumers; and (3) that is not outweighed by any countervailing benefits to consumers or competition." *State v. Weinschenk*, 868 A.2d 200, 206 (Me. 2005).

Proof that the defendant intended to deceive the consumer is not required. *State v. Bob Chambers Ford, Inc.*, 522 A.2d 362, 365 (Me. 1987) ("a method, practice or act may be deceptive and thus violative of section 207 even though the defendant has no intent to deceive.").

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

The Maine Attorney General "may make rules and regulations interpreting this section. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act) as from time to time amended." Me. Rev. Stat. Ann. tit. 5, § 207(2).

In addition, the Maine Attorney General may seek injunctive relief, restitution for consumers, and a civil penalty of not more than \$10,000 per violation. Me. Rev. Stat. Ann. tit. 5, § 209.

How does the law compensate private plaintiffs?

State law allows a court to award consumers compensatory damages or restitution, and injunctive relief. Me. Rev. Stat. Ann. tit. 5 § 213(1).

Who is liable for attorney's fees?

A defendant is liable for the other party's "reasonable attorney's fees and costs" if a court finds that the defendant committed an unfair or deceptive act or practice. Me. Rev. Stat. Ann. tit. 5, § 213(2).

DISCLAIMER: This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.

THANKS: Many thanks for research assistance provided by Northeastern University School of Law Public Health Legal Clinic students Bill Mostyn, Alexandra Geiger and Jordan Barringer. Thanks also to Jennifer Roberston.

FUNDING: This Project is funded by the Robert Wood Johnson Foundation's Healthy Eating Research Program.

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