

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

The Maryland Consumer Protection Act ("CPA") prohibits unfair and deceptive trade practices including a:

- "False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers." Md. Code Ann., Com. Law § 13-301(1);
- "Representation that . . . [c]onsumer goods...have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have . . ." Md. Code Ann., Com. Law § 13-301(2)(i);
- "Failure to state a material fact if the failure deceives or tends to deceive . . ." Md. Code Ann., Com. Law § 13-301(3); and
- "Deception, fraud, false pretense, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with...[t]he promotion or sale of any consumer goods. . ." Md. Code Ann., Com. Law § 13-301(9).

Does Maryland law provide any special protections for child consumers?

The CPA does not contain any special protections for vulnerable child consumers. The broad prohibition on trade practices that have the "capacity" or "tendency" to deceive or mislead consumers could be used to capture a range of marketing practices employed to influence child consumers. In addition, actions brought by the Attorney General are permitted "whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice." Md. Code Ann., Com. Law § 13-302. This is an important provision for cases involving child targets of deceptive or misleading advertising due to the unique challenges posed by children's ability to recall a deceptive trade practice and then connect it to their own behavior.

Who can bring a lawsuit?

The Attorney General, Md. Code Ann., Com. Law § 13-406, individual consumers, Md. Code Ann., Com. Law § 13-408(a), and classes of individual consumers (class actions), *see, e.g., Phillip Morris, Inc., v. Angeletti*, 358 Md. 689 (2000); *Green v. H & R Block, Inc.*, 355 Md. 488 (1999).

**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.



at Northeastern University School of Law
102 The Fenway
Cushing Hall, Ste. 117
Boston, MA 02115

Phone: 617-373-2026
E-mail: cp@phaionline.org



Contact Us!

What needs to be shown to make out a claim?

The basic elements of a private claim brought under the CPA are: (1) the defendant engaged in conduct proscribed by the CPA, and (2) the plaintiff suffered actual injury or loss, (3) as a result of the prohibited practice. Md. Code Ann. Com. Law § 13-408(2010); *see also Lloyd v. General Motors Corp.* 397 Md. 108, 148-149 (2007). As noted above, the CPA allows actions by the Attorney General “whether or not any consumer in fact has been misled, deceived, or damaged as a result of . . . [the alleged] practice.” Md. Code Ann., Com. Law § 13-302

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

The Division of Consumer Protection in the Office of the Attorney General is responsible for administering the CPA. Md. Code Ann., Com. Law § 13-201. The Division has the powers and duties to, among other things, “adopt rules, regulations, and standards which: (i) Are necessary to assure the orderly operation of the Division; and (ii) Further define unfair or deceptive trade practices for purposes of this title” Md. Code Ann., Com. Law § 13-204(12).

In addition, the Maryland Attorney General may seek injunctive relief, Md. Code Ann., Com. Law § 13-406(a); restitution for consumers, Md. Code Ann., Com. Law § 13-406(c)(2); a civil penalty of not more than \$1,000 for first violations or \$5,000 for subsequent violations, Md. Code Ann., Com. Law § 13-410.

How does the law compensate private plaintiffs?

State law allows a court to award consumers damages for actual injury or loss. Md. Code Ann., Com. Law § 13-408(a). Private remedies do not include punitive damages. *Golt v. Phillips*, 308 Md. 1, 12 (1986).

Who is liable for attorney’s fees?

A defendant may be liable for the other party’s “reasonable attorney’s fees” if a court finds that the defendant committed an unfair or deceptive act or practice. Md. Code Ann., Com. Law § 13-408(b). However, “[i]f it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney’s fees.” Md. Code Ann., Com. Law § 13-408(c).

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.

Prepared by Cara Wilking, J.D.