

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

Michigan's Consumer Protect Act ("MCPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce" including:

- "Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services." Mich. Comp. Laws Ann. § 445.903(l)(a);
- "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have" Mich. Comp. Laws Ann. § 445.903(l)(c);
- "Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer." Mich. Comp. Laws Ann. § 445.903(l)(s);
- "Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability." Mich. Comp. Laws Ann. § 445.903(l)(x);
- "Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is." Mich. Comp. Laws Ann. § 445.903(l)(bb); and
- "Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner." Mich. Comp. Laws Ann. § 445.903(l)(cc).

**Does Michigan law provide any special protections for child consumers?**

The MCPA's provision outlawing knowingly taking advantage of consumers who are reasonably unable to protect their own interests is a potentially powerful protection for child consumers. Mich. Comp. Laws Ann. § 445.903(l)(x). 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 conduct "knowingly" sought to take advantage of that group's disabilities.

Michigan's provision barring the failure to reveal material facts in light of positive representations of fact also may be beneficial to consumers challenging deceptive food marketing to children and parents. *See* Mich. Comp. Laws Ann. § 445.903(l)(cc). For example, a child's drink product that contains positive representations including "No Artificial Colors or Flavors," "Low Calorie," "Helps Hydrate Kids," and "Flavored with Other Natural Flavor" but makes no mention of the fact that the product is artificially sweetened other than listing the name of the sweetener in the FDA mandated ingredients list may be deceptive to a reasonable parent concerned with making good food purchasing decision for her child. The representations about natural flavors and reduced calories, may be deceptive when made absent a clear disclosure that the product contains artificial sweetener if a parent would not have bought the product had she realized the presence of an artificial sweetener.

**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.

