

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

Mississippi Consumer Protection Act (“MCPA”) prohibits “unfair or deceptive trade practices in or affecting commerce . . .” Miss. Code Ann. § 75-24-5(1). The broad prohibition on unfair and deceptive trade practices is enforceable by the Attorney general. “Trade” and “commerce” are defined to include advertising. Miss. Code Ann. § 75-24-3(b). The MCPA also prohibits:

- “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . .” Miss. Code. Ann. § 75-24-5(e);
- “Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” Miss. Code. Ann. § 75-24-5(g); and
- “Advertising goods or services with intent not to sell them as advertised. . .” Miss. Code. Ann. § 75-24-5(2)(i).

When construing the MCPA, Mississippi courts are to be “guided by the interpretations given by the Federal Trade Commission and the Federal Courts to . . . the Federal Trade Commission Act [“FTCA”).” Miss. Code Ann. § 75-24-3(c)

Does Mississippi law provide any special protections for child consumers?

The MCPA has no specific provision protecting children as vulnerable consumers, but does state that Mississippi courts are to be “guided by the interpretations given by the Federal Trade Commission and the Federal Courts to . . . the Federal Trade Commission Act [“FTCA”).” Miss. Code Ann. § 75-24-3(c). 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. *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.

**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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Who can bring a lawsuit?

The Attorney General, Miss. Code. Ann. § 75-24-9, and individual consumers, Miss. Code. Ann. § 75-24-15(1), may file suit. Class actions are prohibited. Miss. Code. Ann. § 75-24-15(4).

What needs to be shown to make out a claim?

To make out a claim under the MCPA, a plaintiff consumer must show: 1) that the defendant engaged in an unfair or deceptive practice prohibited under the MCPA; 2) that the plaintiff suffered an “ascertainable loss of money or property, real or personal”; and 3) that this loss was a result of the defendant’s actions. Miss. Code. Ann. § 75-24-15(1).

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

The Office of Consumer Protection within the Office of the Mississippi Attorney General is charged with administering the MCPA. Miss. Code. Ann. § 75-24-1. The Mississippi Attorney General may seek restitution for consumers, Miss. Code. Ann. § 75-24-11, injunctive relief, Miss. Code. Ann. § 75-24-9, and a civil penalty of up to \$10,000 per violation, Miss. Code. Ann. § 75-24-19(1)(a). The Attorney General also may petition the court to recover a civil penalty of not more than \$10,000 per violation from any person who has “knowingly and willfully used any unfair or deceptive trade practice, method, or act . . .” Miss. Code. Ann. § 75-24-19(1)(b). The Mississippi Attorney General may recover “investigative costs and a reasonable attorney’s fee.” Miss. Code. Ann. § 75-24-19(1)(b). The Attorney General may “[i]ssue any necessary rules and regulations in order to carry out the provisions of [the MCPA].” Miss. Code. Ann. § 75-24-27(1)(f).

How does the law compensate consumers?

State law allows a court to award consumers compensatory damages. Miss. Code. Ann. § 75-24-15(1).

Who is liable for attorney’s fees?

Prevailing consumers are not entitled to recover attorney’s fees and costs. The MCPA does, however, authorize a court award a prevailing defendant “costs and a reasonable attorney’s fee, if in the opinion of the court, said action or counter-claim was frivolous or filed for the purpose of harassment or delay.” Miss. Code. Ann. § 75-24-15(3).

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

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