

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

The New Hampshire Protection Act ("CPA") prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce. N.H. Rev. Stat. Ann. § 358-A:2. The CPA prohibits:

- "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services." N.H. Rev. Stat. Ann. § 358-A:2, II;
- "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . ." N.H. Rev. Stat. Ann. § 358-A:2, V;
- "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." N.H. Rev. Stat. Ann. § 358-A:2, VII; and
- "Advertising goods or services with intent not to sell them as advertised." N.H. Rev. Stat. Ann. § 358-A:2, IX.

Does New Hampshire law provide any special protections for child consumers?

The CPA does not contain any special protections for child consumers.

Who can bring a lawsuit?

The Attorney General, N.H. Rev. Stat. Ann. § 358-A:4, III(a), individual consumers, N.H. Rev. Stat. Ann. § 358-A:10, and classes of individual consumers (class actions), N.H. Rev. Stat. Ann. § 358-A:10-a, I, may file suit.

What needs to be shown to make out a claim?

To make out a claim under New Hampshire's Consumer Protection Act, a plaintiff must show that he or she was "injured by [the defendant]'s use of any method, act or practice declared unlawful under [the Act]." N.H. Rev. Stat. Ann. § 358-A:10, I. Certain enumerated trade practices require the consumer to show intent on the part of the defendant. *See, e.g.*, N.H. Rev. Stat. Ann. § 358-A:2, IX ("[a]dvertising goods or services with intent not to sell them as advertised." However, the majority do not require that the consumer plead "intent."

**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 addition, to recover, "a plaintiff must show that the defendant's acts attained a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce. Selfish bargaining and business dealings will not be enough to justify a claim for damages under the Consumer Protection Act." *Hair Excitement, Inc. v. L'Oréal U.S.A., Inc.*, 965 A.2d 1032, 1038-39 (N.H. 2009) (internal citations omitted).

Plaintiffs need not plead or prove reliance. *See, e.g., Mulligan v. Choice Mortgage Corp.* USA, 1998 U.S. Dist. LEXIS 13248, at *34 (D.N.H. 1998) (citing *Fraser Eng'g Co. v. Desmond*, 26 Mass. App. Ct. 99 (1988)).

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

The New Hampshire Attorney General may seek injunctive relief and restitution for consumers, N.H. Rev. Stat. Ann. § 358-A:4, III(a), as well as a civil penalty of up to \$10,000 per violation. N.H. Rev. Stat. Ann. § 358-A:4, III(b). In ordering a civil penalty, a court "shall determine the number of unlawful acts or practices that have occurred without regard to the number of persons affected thereby" and may not order such civil penalty unless the process of appeal has been exhausted. N.H. Rev. Stat. Ann. § 358-A:4, III(b). The CPA does not confer rule-making authority on the Attorney General.

How does the law compensate consumers?

Prevailing plaintiffs are entitled to injunctive relief and actual damages or \$1,000, whichever is greater. N.H. Rev. Stat. Ann. § 358-A:10, I. If the court finds that the act or practice was a "willful or knowing" violation of the Act it shall award up to three times, but not less than two times, the amount. N.H. Rev. Stat. Ann. § 358-A:10, I.

Who is liable for attorney's fees?

Prevailing plaintiffs shall be awarded "costs of the suit and reasonable attorney's fees, as determined by the court." N.H. Rev. Stat. Ann. § 358-A:10, I.

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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