

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

The New Jersey Consumer Fraud Act (“CFA”) prohibits unfair and deceptive trade practices including: “unconscionable commercial practice[s], deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . . whether or not any person has in fact been misled, deceived or damaged thereby . . .” N.J. Stat. Ann. § 56:8-2. Advertisement is defined to include attempts “to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof . . .” N.J. Stat. Ann. § 56:8-1(a).

The CFA also prohibits “[a]cts constituting misrepresentation of identity of food.” N.J. Stat. Ann. § 56:8-2.10. A food or food product is misrepresented if:

- “It’s description is false or misleading in any particular.” N.J. Stat. Ann. § 56:8-2.10(a);
- “It’s description omits information which by its omission renders the description false or misleading in any particular.” N.J. Stat. Ann. § 56:8-2.10(b);
- “It purports to be or is represented as a food product for which a definition of identity and standard of quality has been established by custom and usage unless it conforms to such definition and standard.” N.J. Stat. Ann. § 56:8-2.10(d).

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

The CPA does not contain any special protections for child consumers. The CFA’s definition of “advertisement” includes indirect and direct attempts to induce consumers to purchase property. N.J. Stat. Ann. § 56:8-1(a). Advertising aimed at children intended to generate “pester power” whereby children pester their parents into buying a product for them is a classic form of “indirect” food marketing. The inclusion of indirect marketing practices in the definition of “advertisement” may prove beneficial to the AG and consumers in cases where deceptive advertising is aimed at children but the parent is the ultimate purchaser.

Who can bring a lawsuit?

The Attorney General and individual consumers, N.J. Stat. Ann. § 56:8-19, and classes of individual consumers (class actions), *Laufer v. U.S. Life Ins. Co. in City of New York*, 385 N.J. Super. 172, 185 (2006), may file suit.

**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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What needs to be shown to make out a claim?

To make out a claim under the CFA, a plaintiff consumer must show: 1) that the defendant engaged in an act or practice declared unlawful under the Act; 2) that the plaintiff suffered an "ascertainable loss of moneys or property, real or personal . . ." and 3) that this loss was a result of the defendant's actions. N.J. Stat. Ann. § 56:8-19.

When the alleged violation consists of an affirmative act, the plaintiff need not prove that the defendant intended to commit the unlawful act. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 17 (1994). For acts that involve the "concealment, suppression, or omission of any material fact . . . in connection with the sale of advertisement of any merchandise . . ." proof that the defendant acted knowingly and intended that others rely upon such concealment, suppression, or omission is required. N.J. Stat. Ann. § 56:8-2; *Slowinski v. Valley Nat. Bank*, 264 N.J. Super. 172, 190 (1993).

Proof that the consumer actually relied on the deceptive or unfair act is not required. *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 607 (1997).

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

The New Jersey Attorney General may promulgate such rules and regulations that may be necessary "[t]o accomplish the objectives and to carry out the duties prescribed by this act." N.J. Stat. Ann. § 56:8-4.

In addition, the New Jersey Attorney General may seek injunctive relief, N.J. Stat. Ann. § 56:8-8, restitution for consumers, N.J. Stat. Ann. § 56:8-14, and a civil penalty of not more than \$10,000 for first offenses and \$20,000 for second and subsequent offenses, N.J. Stat. Ann. § 56:8-13.

How does the law compensate consumers?

Prevailing plaintiffs are entitled to be compensated for any "ascertainable loss" suffered as a result of the CFA violation and consumers treble damages. N.J. Stat. Ann. § 56:8-19.

Who is liable for attorney's fees?

A defendant is liable for the other party's "reasonable attorneys' fees, filing fees, and reasonable costs of suit." N.J. Stat. Ann. § 56:8-19.

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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