

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

New York law prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state . . .” N.Y. Gen. Bus. Law § 349(a). And expressly prohibits “[f] also advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state....” N.Y. Gen. Bus. Law § 350. “‘False advertising’ means advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a. To determine whether advertising is misleading a court shall take into account “(among other things) . . . representations made by statement, word, design, device, sound or any combination thereof,” and “the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity . . . to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.” N.Y. Gen. Bus. Law § 350-a.

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

New York’s consumer protection law does not contain any special protections for child consumers.

Who can bring a lawsuit?

The Attorney General, N.Y. Gen. Bus. Law § 349(b), individual consumers, N.Y. Gen. Bus. Law § 349(h), and classes of individual consumers (class actions), *Super Glue Corp. v. Avis Rent A Car System, Inc.*, 517 N.Y.S.2d 764, 767 (1987), may file suit.

What needs to be shown to make out a claim?

To make out a claim under N.Y. Gen. Bus. Law § 349, a plaintiff must show three elements: 1) that the challenged act or practice was consumer-oriented; 2) that it was misleading in a material way; and 3) that the plaintiff suffered actual injury as a result of the deceptive act. *Stutman v. Chemical Bank*, 95 N.Y.2d 24, 29 (2000).

Proof that the defendant intended to deceive the consumer is not required. *Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank*, 85 N.Y.2d 20, 26 (1995). Proof that the consumer actually relied on the deceptive or unfair practice is not required. *Id.*

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

• The New York Attorney General may seek injunctive relief and restitution for consumers, N.Y. Gen. Bus. Law § 349(b), and a civil penalty of not more than \$5,000 per violation, N.Y. Gen. Bus. Law § 350-d.

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• **How does the law compensate consumers?**

• State law allows a court to award consumers compensatory damages or fifty dollars, whichever is greater . . . and, if the violation was made "willfully or knowingly," the court may "increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars." N.Y. Gen. Bus. Law § 349(h). Injunctive relief is also available to private plaintiffs, but requires a showing of injury to the public at large. Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 446 (2005).

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• **Who is liable for attorney's fees?**

• A defendant is 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. N.Y. Gen. Bus. Law § 349(h).

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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