

**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.

