

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

The Oregon Unlawful Trade Practices Act ("UTPA") generally prohibits unconscionable trade practices. Or. Rev. Stat. § 646.607(A)(l). Unconscionable trade practices are defined to include "[k]nowingly tak[ing] advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement; [and] (b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit." Or. Rev. Stat. § 646.605(9).

The UTPA also enumerates a number of prohibited trade practices including:

- "Caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services," Or. Rev. Stat. § 646.608(l)(b);
- "Caus[ing] likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another," Or. Rev. Stat. § 646.608(l)(c);
- "Represent[ing] that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have," Or. Rev. Stat. § 646.608(l)(e);
- "Mak[ing] any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service," Or. Rev. Stat. § 646.608(l)(p); and
- "Engag[ing] in any other unfair or deceptive conduct in trade or commerce" as established by a rule declaring such conduct unfair or deceptive promulgated by the Attorney General. Or. Rev. Stat. § 646.608(l)(u); Or. Rev. Stat. § 646.608(4)).

The UTPA states that representations that are the subject of claims brought under the statute "may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact." Or. Rev. Stat. § 646.608(2).

Does Oregon law have any special protections for child consumers?

The UTPA prohibits unconscionable trade practices including "[k]nowingly tak[ing] advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement." Or. Rev. Stat. § 646.605(9). Children, by virtue of their age may be ignorant of the distinction between advertising and non-commercial content, they may be fully or partially illiterate, and unable to understand disclaimers and terms of contests and promotions. Food marketing targeted at children typically is blatantly aimed at a certain age group making it easier for a plaintiff to establish that the conduct "knowingly" sought to take advantage of that group's disabilities. The UTPA also contains a provision outlawing false or misleading statements in connection with a "prize, contest or promotion used to publicize a product." Or. Rev. Stat. § 646.608(p). When a children's food product targets children with a contest or promotion, the failure to clearly disclose facts related to the contest may amount to the level of misleading child consumers and therefore be actionable under the UTPA.

**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, and consumers may file suit.

What needs to be shown to make out a claim?

The UTPA requires a showing that 1) a person, 2) suffered an ascertainable loss of money or property, 3) as the result of a trade practice declared unlawful by the UTPA, and 4) the defendant acted willfully. Dr. Rev. Stat. § 646.638(1).

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

The Attorney General may conduct investigations and enforce the UTPA. The Attorney General may pursue civil penalties of up to \$25,000 for willful violations of an injunction and up to \$25,000 per willful violation of the UTPA. Dr. Rev. Stat. § 646.642.

How does the law compensate consumers?

Consumers “may bring an individual action in an appropriate court to recover actual damages or statutory damages of \$ 200, whichever is greater.” Dr. Rev. Stat. § 646.638(1). Punitive damages and equitable relief may also be awarded in the discretion of the court or the jury. Dr. Rev. Stat. § 646.638(1). The UTPA also contains a general provision authorizing the courts to “make such additional orders or judgments as may be necessary to restore to any person in interest any moneys . . . of which the person was deprived by means of any practice declared to be unlawful . . . [by the UTPA] or as may be necessary to ensure cessation of unlawful trade practices.” Dr. Rev. Stat. § 646.636.

Who is liable for attorney’s fees?

The court may award prevailing consumers costs and reasonable attorney’s fees. Dr. Rev. Stat. § 646.638(3). The court also has the discretion to award a prevailing defendant reasonable attorney’s fees and costs “only if the court finds there was no objectively reasonable basis for bringing the action or asserting the ground for appeal.” Dr. Rev. Stat. § 646.638(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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