

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

Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") prohibits unfair or deceptive acts or practices including:

- "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services." 73 Pa. Cons. Stat. Ann. § 201-2(4)(ii);
- "Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another." 73 Pa. Cons. Stat. Ann. § 201-2(4)(iii);
- "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have." 73 Pa. Cons. Stat. Ann. § 201-2(4)(v); and
- "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 Pa. Cons. Stat. Ann. § 201-2(4)(xxi).

Does Pennsylvania law provide any special protections for child consumers?

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

Who can bring a lawsuit?

The Attorney General of Pennsylvania or individual consumers may bring suit. 73 Pa. Cons. Stat. Ann. § 201-1 et seq. The statute does not explicitly state whether or not a class action may be brought on behalf of similarly situated consumers.

What needs to be shown to make out a claim?

A plaintiff must allege that (1) as a result of the use of conduct proscribed by the UTPCPL, (2) she purchased goods for personal, family or household use; (3) and thereby suffered an ascertainable loss of money or property. 73 Pa. Cons. Stat. Ann. § 201-9.2(a). Courts have interpreted the UTPCPL to require a showing that the consumer relied on the unlawful trade practice. *See* Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 547 (2005) (discussing reliance).

**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.

PHAI The Public Health
Advocacy Institute

at Northeastern University School of Law
102 The Fenway
Cushing Hall, Ste. 117
Boston, MA 02115

Phone: 617-373-2026
E-mail: cp@phaionline.org



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

• The Attorney General of Pennsylvania may pursue injunctive relief, 73 Pa. Cons. Stat. Ann. § 201-4, restitution for any violations of the injunctions, 73 Pa. Cons. Stat. Ann. § 201-4.1, and civil penalties of not more than \$5,000 per violation, 73 Pa. Cons. Stat. Ann. § 201-8). The Attorney General also has the authority to promulgate rules under the UTPCPL. 73 Pa. Cons. Stat. Ann. § 201-3.1.

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

• Consumers are entitled to actual damages and, at the discretion of the court, treble damages for violations of the UTPCPL. 73 Pa. Cons. Stat. Ann. § 201-9.2. Additional relief, including equitable relief, is also available for prevailing consumers. 73 Pa. Cons. Stat. Ann. § 201-9.2.

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

• A successful plaintiff may be awarded reasonable attorney's fees. 73 Pa. Cons. Stat. Ann. § 201-9.2(a).

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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Prepared by Cara Wilking, J.D.