

Rhode Island

Summary of Consumer Protection Law to Protect Kids from Junk Food Marketing

Which state consumer protection laws may protect kids from junk food marketing?

Rhode Island's Unfair Trade Practice and Consumer Protection Act ("Act") is modeled off of the Federal Trade Commission Act and prohibits "unfair methods of competition and unfair or deceptive acts or practices." R.I. Gen. Laws § 6-13.1-2. Unfair methods of competition and unfair or deceptive acts or practices include:

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services. R.I. Gen. Laws § 6-13.1-1(6)(ii);
- Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another. R.I. Gen. Laws § 6-13.1-1(6)(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 or she does not have. R.I. Gen. Laws § 6-13.1-1(6)(v);
- Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding. R.I. Gen. Laws § 6-13.1-1(6)(xii) ;
- Engaging in any act or practice that is unfair or deceptive to the consumer. R.I. Gen. Laws § 6-13.1-1(6)(xiii) ;
- Using any other methods, acts or practices which mislead or deceive members of the public in a material respect. R.I. Gen. Laws § 6-13.1-1(6)(xiv) ; and
- Advertising claims concerning safety, performance, and comparative price unless the advertiser, upon request by any person, the consumer council, or the attorney general, makes available documentation substantiating the validity of the claim. R.I. Gen. Laws § 6-13.1-1(6)(xvii).

When interpreting provisions of the Act the "due consideration and great weight shall be given to the interpretations of the federal trade commission and the federal courts relating to . . . the Federal Trade Commission Act [FTCA]." R.I. Gen. Laws § 6-13.1-3.

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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Does Rhode Island law provide any special protections for child consumers?

The Act has no specific provision protecting children as vulnerable consumers, but does state that in construing the Act "due consideration and great weight shall be given to the interpretations of the federal trade commission and the federal courts" of the FTCA. 815 Ill. Comp. Stat. § 505/2. The Federal Trade Commission has recognized an exception from the general "reasonable person" standard for FTCA actions when advertising is aimed at a vulnerable or particularly susceptible audience. Federal Trade Commission, *See* Deception Policy Statement, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 (1984), <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>. This lesser standard should be applied when children, who by their very nature are particularly susceptible, are the target audience of food advertising.

Who can bring a lawsuit?

Actions by the Attorney General, individual consumers and class actions are authorized by the Act. R.I. Gen. Laws § 6-13.1-5; R.I. Gen. Laws § 6-13.1-5.2(a),(b).

What needs to be shown to make out a claim?

To make out a claim a consumer must show that he or she (1) purchased a good primarily for personal, family, or household purposes and (2) suffered any ascertainable loss, (3) as a result of the use or employment by another person of a method, act, or practice declared unlawful by the Act. R.I. Gen. Laws § 6-13.1-5.2(a).

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

The Attorney General is authorized to conduct investigations and issue subpoenas. R.I. Gen. Laws § 6-13.1-7. The Attorney General may also seek injunctions and restitution for consumers. R.I. Gen. Laws § 6-13.1-5(a)-(c). If a defendant violates an injunction, the Attorney General may pursue civil penalties of up to \$10,000 per violation. R.I. Gen. Laws § 6-13.1-8

How does the law compensate consumers?

A consumer may recover actual damages or \$200, whichever is greater. R.I. Gen. Laws § 6-13.1-5.2(a). Courts also have the discretion to award punitive damages and other equitable relief when necessary or proper. R.I. Gen. Laws § 6-13.1-5.2(a), (b).

Who is liable for attorney's fees?

In any action brought under the act, a court may award reasonable attorney's fees. R.I. Gen. Laws § 6-13.1-5.2(d).

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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