

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

The Vermont Consumer Fraud Act ("CFA") is modeled off of the Federal Trade Commission Act ("FTCA"). It broadly prohibits "unfair or deceptive acts or practices in commerce." Vt. Stat. Ann. tit. 9, § 2453(a). When construing the CFA, courts are to be guided by interpretations given by the Federal Trade Commission and federal courts to the Federal Trade Commission Act. Vt. Stat. Ann. tit. 9, § 2453(b).

Does Vermont law have any special protections for child consumers?

The Act directs state courts to be guided by interpretations given by the FTC and the federal courts. 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?

The Attorney General, individual consumers and classes of consumers may file suit. Vt. Stat. Ann. tit. 9, § 2458; Vt. Stat. Ann. Tit. 9, § 2465(a); *Elkins v. Microsoft Corp.*, 174 Vt. 328 (Vt., 2002).

What needs to be shown to make out a claim?

In order to determine whether an act or practice is deceptive, the consumer must establish (1) there was a representation, practice or omission likely to mislead consumers, (2) his interpretation of the message is reasonable under the circumstances, and (3) the effect of the practice is likely to affect consumers' conduct or decision, (i.e., is "material."). *Bridge v. Corning Life Sciences, Inc.*, 997 F.Supp. 551, 553 (D.Vt. 1998).

**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 Attorney General can make rules and regulations when necessary to carry out the act. Vt. Stat. Ann. tit. 9, § 2453(c). In promulgating rules and regulations to carry out the act, the Attorney General must stay within the bounds of the rules, regulations and decisions of the Federal Trade Commission and federal courts' interpretations of the Federal Trade Commission Act. Vt. Stat. Ann. tit. 9, § 2453(c). If the proceedings would be in the public interest, the Attorney General is authorized to bring a suit for an injunction or to dissolve a corporation. Vt. Stat. Ann. tit. 9, § 2458(a). The Attorney General may also pursue civil penalties of up to \$10,000 per violation, restitution for consumers, and costs of investigation and prosecution. Vt. Stat. Ann. tit. 9, § 2458(b).

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

• Prevailing consumers may be awarded equitable relief, restitution, and, in some cases, treble damages. Vt. Stat. Ann. tit. 9, § 2461(b).

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

• Prevailing consumers are entitled to attorney's fees. Vt. Stat. Ann. tit. 9, § 2461(b).

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DISCLAIMER: This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.

THANKS: Many thanks for research assistance provided by Northeastern University School of Law Public Health Legal Clinic students Bill Mostyn, Alexandra Geiger and Jordan Barringer. Thanks also to Jennifer Roberston.

FUNDING: This Project is funded by the Robert Wood Johnson Foundation's Healthy Eating Research Program.

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