

**Public Health
Advocacy
Institute**

Wisconsin

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

Current Uncertainty Regarding Applicability of Consumer Protection Laws to Cases Involving Food

The current state of consumer protection law with respect to food in Wisconsin is in flux. The Wisconsin Appeals Court issued an opinion in 2005 setting out a fairly complex framework for assessing consumer protection claims involving food. *Gallego v. Wal-Mart Stores, Inc.*, 707 N.W.2d. 539, 545 (Wis. App. 2005). The Wisconsin Supreme Court accepted the case for review but has yet to issue a ruling. *Gallego v. Wal-Mart Stores, Inc.*, 2006 WI 23 (Wis. 2006).

The Wisconsin Court of Appeals in *Gallego* held that the substantive sections of Wisconsin's Methods of Competition and Trade Practices ("MTC") statute do not apply to cases involving food, unless the plaintiff alleges a violation of an existing food-related order of the Department of Agriculture,

Trade and Consumer Protection ("DATCP") issued pursuant to the rulemaking authority granted to the DATCP by the MTC. *Gallego v. Wal-Mart Stores, Inc.*, 707 N.W.2d. 539, 548 (Wis. App. 2005) (*interpreting* Wis. Stat. Ann. § 100.20(5)). The court held that Wisconsin's "False advertising of food products" statute, which does not allow private causes of action and imposes criminal penalties as its only sanction, provides the exclusive remedy for false, unfair and misleading advertising of food products. *Gallego v. Wal-Mart Stores, Inc.*, 707 N.W.2d. 539, 544 (Wis. App. 2005).

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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As noted above, the *Gallego* case has been accepted for review by the Wisconsin Supreme Court. The future of consumer protection law coverage of claims involving food, absent a food-related DATCP order, hinges in large part upon whether or not the Wisconsin Supreme Court will interpret the term “merchandise” to include food products. Due to the considerable uncertainty in how the courts will treat food-related claims going forward this profile will not go into any further detail.

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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