

**A NEW WEAPON IN THE OBESITY
BATTLE:
COORDINATED STATE ATTORNEYS
GENERAL *PARENS PATRIAE*
CONSUMER PROTECTION
LAWSUITS**

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Food marketing to children has received increasing attention as a significant contributor to obesity. Studies show that nearly thirty-four percent of children and teens in America are either overweight or at risk of becoming overweight, and slightly more than twenty percent of children in America between the ages of two and five are already overweight or obese. Since the 1970s, the number of advertisements per year that children see on television has doubled from 20,000 to 40,000, and the majority of advertisements targeted to children are for candy, cereal, and fast food. Children spend more of their own money at younger ages, and they influence a substantial portion of the total sales of certain foods, including salty snacks, soft drinks, frozen pizza, and cold cereals. In 2005, the Institute of Medicine (IOM) Committee on Food Marketing and the Diets of

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Children and Youth wrote that “before a certain age, children lack the defenses, or skills, to discriminate commercial from noncommercial content, or to attribute persuasive intent to advertising...[Young children have] limited ability to comprehend the nature and purpose of advertising.”

The IOM concluded that the current pattern of marketing “represents, at best, a missed opportunity, and, at worst, a direct threat to the health of the next generation.” Further, the IOM recommends restrictions on television advertising if the food and beverage industries do not voluntarily shift their advertising emphasis away from non-nutritious products. In addition, many advocacy groups, such as the Campaign for a Commercial-Free Childhood and Commercial Alert, have demanded congressional action along with prominent health organizations such as the American Academy of Pediatrics, the American Public Health Association, and the American Psychological Association (APA).

The most common proposals seek to restrict the quantity and content of advertisements during children’s television programs and require that broadcasters provide equal time for messages that promote good nutrition and physical activity. Regulation also targets print media, the Internet, in-

store promotional campaigns, and product tie-ins to children's television programs. However, as described in Section (II)(A) of this article, federal regulation is impeded by various factors including a history of vigorous political opposition, judicial interpretations disallowing restrictions of advertising under the First Amendment, and federal agency preference against permitting broad restrictions on advertising. While more promising, state regulation also faces political and industry opposition, and may be more limited in its influence over corporate behavior. Litigation, including either tort litigation against food producers and suppliers or personal injury claims, discussed in Section (II)(B), may provide impetus for industry modification of marketing practices. However, state legislation restricting tort litigation and the etiological causation requirement threaten the success of individual plaintiff litigation against food marketers.

In contrast, as described in Section (III) (A), state Attorneys Generals may act on behalf of vulnerable child consumers, under the authority granted to these officials to protect the state's health and welfare against unfair, unconscionable, and deceptive marketing practices. Acting as plaintiffs, states can provoke industry change, and obtain

damages and potential injunctive relief by adopting successful strategies from the landmark litigation against the tobacco industry, such as the coordinated state investigatory approach, as explained in Section III(B). By using their *parens patrie* authority, as elaborated in Section III(C), state Attorneys Generals can circumvent the court-created pressures placed on consumer class actions in recent years and thereby provide an important state function to protect well-deserving child consumers.