

Survey of State False Advertising Laws

Introduction

In recent years a growing number of companies have begun to offer genetic tests directly to consumers. As a result, companies offering genetic tests have increased direct-to-consumer (DTC) advertising and marketing campaigns to the public. Concerns have been raised that some DTC testing companies are engaging in unfair or deceptive trade practices, including making claims about their tests that are false or misleading or failing adequately to disclose their privacy policies. While the Federal Trade Commission (FTC) has issued a warning to consumers about some DTC genetic testing companies, and has noted its authority to regulate the false or misleading advertising of genetic tests, that agency has not undertaken any enforcement actions against any DTC testing companies.

State laws are also a potential source of authority to protect consumers against unfair or deceptive trade practices. The Center recently commissioned a survey of state laws that could potentially be used to protect consumers against unfair or deceptive trade practices by DTC genetic testing companies. The survey, conducted by Anya Prince, a student with the Georgetown University Law Center's Harrison Institute for Public Law, included a review of state laws to determine whether any states have legislation that is specific to the advertising of genetic tests. No such statutes were found.

In addition, the survey examined general false advertising laws to determine whether they could be applied to the companies marketing genetic tests. All 50 states have enacted laws regulating false advertising or deceptive marketing, which often include these statutes under the state's deceptive or unfair trade practices act. These statutes were examined to determine whether genetic tests could fall within the scope of the false advertising laws. The survey also gathered information on available remedies to the state and consumer, and noted applicable statutes of limitations. In addition, the survey includes a review of state case law to determine whether any courts have adjudicated claims against DTC genetic testing companies. Finally, the survey reviewed the Web sites of the attorney generals for each state to determine whether they contained any information for consumers regarding DTC genetic tests.

The survey reveals that while all states have general consumer protection statutes, none has laws that directly address genetic testing. A consumer complaint alleging that a company engaged in unfair or deceptive trade practices, such as false or misleading advertising, would need to be brought under the general consumer protection statutes. These statutes are broad enough to encompass DTC genetic testing products and services, but the complexity of DTC genetic testing products and services may make application of such laws challenging. The survey identified no actions against DTC genetic testing companies that had been undertaken based on these general laws, although the attorney general in one state did undertake an investigation against one company advertising genetic testing directly to the public.

Some highlights from the survey:

- Twenty states have adopted the Uniform Deceptive Trade Practices Act (UDTPA). Under this Act, it is a deceptive trade practice to “represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.”
- Failure to state a “material fact” is considered an illegal practice in only fourteen states.
- Twenty-eight states include broad provisions against misrepresentation of goods or misleading practices.
- Two states, California and Nevada, specifically prohibit false or misleading scientific or clinical assertions.
- Two states, Nebraska and Pennsylvania, explicitly prohibit false or misleading statements in privacy policies.

The complete survey follows.

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Alabama

Code section(s) analyzed:

Ala. Code §§ 8-19-1 to 8-19-15 (1975)

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

Penalties:

Equitable relief (temporary restraining order, injunction, license revocation); civil monetary penalties; criminal misdemeanor penalties; private cause of action

Statute of limitations period:

One year after discovery of violation. No more than 4 years from transaction unless a warranty is for more than 3 years.

Alaska

Code section(s) analyzed:

Alaska Consumer Protection Act: Alaska Stat. §§ 45.50.471 to 45.50.561

Advertising: Alaska Admin. Code tit., 9 §§ 05.010 - 05.900

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;
- 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 the person does not have;

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- Engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;
- Using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

Unfair trade practices include making misrepresentations, falsely representing origin or source of merchandise, misrepresenting the quality, causing confusion or misunderstanding over sale of goods or services, and giving incorrect information or omitting information.

Penalties:

Equitable relief ; civil monetary penalties; private cause of action and attorneys' fees

Statute of Limitations period:

None

Arizona

Code section(s) analyzed:

Consumer Fraud Act: Ariz. Rev. Stat. Ann. §§ 44-1521 to 44-1534

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- The act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

Penalties:

Equitable relief (injunction); civil monetary penalties for willful violations; criminal misdemeanor

Statute of Limitations period:

None specified

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Arkansas

Code section(s) analyzed:

Deceptive Trade Practices: Ark. Code Ann. §§ 4-88-101 to 4-88-115

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model;
- Knowingly taking advantage of a consumer who is reasonably unable to protect his or her interest because of: (A) Physical infirmity; (B) Ignorance; (C) Illiteracy; (D) Inability to understand the language of the agreement; or (E) A similar factor;
- Engaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.

Penalties:

Equitable relief (injunction or restitution); civil penalties; criminal misdemeanor

Statute of Limitations period:

Five years from violation or the date upon which cause of action arises

California

Code section(s) analyzed:

Cal. Bus. & Prof. Code §§ 17500-17509 and §§ 17530-17539.6

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- It is unlawful for any person... with intent directly or indirectly... to perform services... to make or disseminate or cause to be made or disseminated before the public in this state, or... the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- It shall be unlawful for any person... to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the

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product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

Penalties:

Equitable relief (injunction); civil monetary penalties; criminal misdemeanor

Statute of Limitations period:

None specified

Colorado

Code section(s) analyzed:

Colorado Consumer Protection Act: Colo. Rev. Stat. Ann. §§ 6-1-101 to 6-1-115

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Knowingly making a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;
- Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;
- Representing that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
- Failing to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

Penalties:

Equitable relief (injunction); civil monetary penalties; private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

Three years from violation (four if delay was caused)

Connecticut

Code section(s) analyzed:

Unfair Trade Practices Act: Conn. Gen. Stat. Ann. §§ 42-110a to 42-110q

Could the definitions of products or services in the statute include genetic tests?

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Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

Penalties:

Equitable relief (restitution, injunction, temporary or permanent restraining orders); civil penalties for injunction violation or willful violations; private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

Three years after occurrence of violation

Delaware

Code section(s) analyzed:

Consumer Fraud Act: Del. Code Ann. tit. 6, §2511-2527 and Deceptive Trade Practices Act: Del. Code Ann. tit. 6, § 2531-2536

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice;
- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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 the person does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates likelihood of confusion or of misunderstanding.

Penalties:

Equitable relief (injunction, cease and desist order, temporary restraining order); civil monetary penalties (heightened for willful violations); criminal misdemeanor for false advertising; private cause of action and attorneys' fees

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Statute of Limitations period:

Five years from the time the cause of action accrued.

Florida

Code section(s) analyzed:

Deceptive and Unfair Trade Practices Act: Fla. Stat. Ann. §§ 501.201- 501.213

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Penalties:

Equitable relief (cease and desist orders and enjoinders); civil monetary penalties for willful violations; Criminal misdemeanor for violation of false advertising laws; private cause of action and attorney's fees

Statute of Limitations period:

Four years after occurrence of violation or more than two years after last payment in transaction, whichever is later.

Georgia

Code section(s) analyzed:

Uniform Deceptive Trade Practices Act: Ga. Code Ann., §§ 10-1-370 to 10-1-375 and Fair Business Practices Act of 1975: Ga. Code Ann., §§ 10-1-390 to 10-1-407

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

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Penalties:

Equitable relief (injunction, temporary restraining order, restitution, and cease and desist order); civil monetary penalties; criminal misdemeanor to violate false advertising laws; private cause of action and attorneys' fees

Statute of Limitations period:

Two years after the person bringing the action knew or should have known of the occurrence or two years after the termination of any proceeding or action by Georgia, whichever is later.

Hawaii

Code section(s) analyzed:

Uniform Deceptive Trade Practice Act: Haw. Rev. Stat. §§ 481A-1 to 5

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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 the person does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Penalties:

Equitable relief (injunction); criminal misdemeanor for false advertising; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Idaho

Code section(s) analyzed:

Idaho Consumer Protection Act: Idaho Code Ann. §§ 48-601 to 48-619

Could the definitions of products or services in the statute include genetic tests?

Yes

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What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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, connection, qualifications or license that he does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer.

Penalties:

Equitable relief (temporary restraining order, injunction, and restitution); civil monetary penalty for violation of injunction; private cause of action and attorneys' fees

Statute of Limitations period:

No private action more than two years after the cause of action accrues

Illinois

Code section(s) analyzed:

Consumer Fraud and Deceptive Business Practices Act: 815 Ill. Comp. Stat. Ann. 505/1 – 505/12 and Uniform Deceptive Trade Practices Act: 815 Ill. Comp. Stat. Ann. 510/1 – 510/7

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact;
- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or misunderstanding;
- Deceptive business and trade practices include using deception, fraud, false pretense, false promise, or misrepresentation and concealing, suppressing, or omitting any material fact.

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Penalties:

Equitable relief (injunction, restitution); civil monetary penalties; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Indiana

Code section(s) analyzed:

Deceptive Consumer Sales: Ind. Code §§ 24-5-0.5-1 to 24-5-0.5-12

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Representing that subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have;
- Representing that such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

Penalties:

Equitable relief (injunction); civil monetary penalty for willful violation; private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

Notice must be given the earlier of 6 months after initial discovery of deceptive act, one year following consumer transaction, or the time limitation of the warranty. Action cannot be brought more than two years after occurrence of deceptive act.

Iowa

Code section(s) analyzed:

Iowa Code Ann. § 714.16

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

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- The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice;
- It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed;
- Additionally, Iowa has definitions of deception and unfair practice than most states. “Deception” means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts. “Unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

Penalties:

Equitable relief (temporary restraining order, injunction); civil monetary penalties; private cause of action and attorneys’ fees

Statute of Limitations period:

None specified

Kansas

Code section(s) analyzed:

Deceptive Commercial Practice: Kan. Stat. Ann. § 21-4403 and Consumer Protection Act: Kan. Stat. Ann. §§ 50-623 to 50-639.

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- A deceptive commercial practice is the act, use or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby;
- Representing that property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;
- Representing that property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;
- Representing that property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis for making such representation;

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- Use, benefit or characteristic of property or services has been proven or otherwise substantiated unless the supplier relied upon and possesses the type and amount of proof or substantiation represented to exist;
- The willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;
- The willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.

Penalties:

Equitable relief (temporary restraining order, enjoinder); civil monetary damages; private cause of action and attorneys' fees

Statute of Limitations period:

Actions seeking actual damages are governed by three-year limitations period and actions seeking civil penalties are governed by one-year limitation period.

Kentucky

Code section(s) analyzed:

Consumer Protection Act: Ky. Rev. Stat. Ann. §§ 367.110 to 367.360

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Penalties:

Equitable relief (restraining order, temporary or permanent injunction); private cause of action and attorneys' fees

Statute of Limitations period:

Person must bring action within one year after any action of the AG has been terminated or within two years after the violation, whichever is later.

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Louisiana

Code section(s) analyzed:

Unfair Trade Practices and Consumer Protection Law: La. Rev. Stat. Ann. §§ 51:1401 to 51:1426 and False Advertising: La. Rev. Stat. Ann. §§ 51:411 to 51:414

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful;
- No person, with intent to sell or in any way dispose of [services] directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title, or an interest therein, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or radio broadcasts, telecasts, wire, wireless, motion picture, or in any other way, an advertisement of any sort regarding [services] offered to the public, which advertisement contains any assertion, representation, or statement of fact which is untrue, deceptive, or misleading

Penalties:

Equitable relief (injunction, restraining order, enjoinder); civil monetary penalty for violation of injunction; private cause of action

Statute of Limitations period:

Private action must be brought within one year running from the time of the transaction or act.

Maine

Code section(s) analyzed:

Uniform Deceptive Trade Practices Act: Me. Rev. Stat. Ann. tit. 10, §§ 1211-1216, and Unfair Trade Practices: Me. Rev. Stat. Ann. tit. 5, §§ 205-A - 214

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests ?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

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- 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;
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Maryland

Code section(s) analyzed:

Unfair or Deceptive Trade Practices: Md. Code Ann. Com. Law §§ 13-301 to 13-319

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
- Representing that consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;
- Representing that consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;
- Failure to state a material fact if the failure deceives or tends to deceive;
- Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same.

Penalties:

Equitable relief (injunction); civil monetary penalty; criminal misdemeanor; private cause of action and attorneys' fees

Statute of Limitations period:

Three-year statute of limitations period under CPA for private right of action.

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Massachusetts

Code section(s) analyzed:

Regulation of Business Practices for Consumers' Protection: Mass. Gen. Laws. Ch. 93A §§ 1-11

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Penalties:

Equitable relief (injunction, temporary restraining order); civil monetary penalty; private cause of action and attorneys' fees

Statute of Limitations period:

Four-year statute of limitations

Michigan

Code section(s) analyzed:

Michigan Consumer Protection Act: Mich. Comp. Laws §§ 445.901 – 445.922 and Mich. Comp. Laws §§ 445.351 – 445.364

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner;

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- A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement which contains a statement or representation which is untrue, deceptive, or misleading;
- In determining whether advertising is deceptive or misleading, the extent to which the advertising fails to reveal facts which are material in light of the representations made or suggested in a positive manner shall be taken into account.

Penalties:

Equitable relief (injunction); civil monetary penalty (for persistent and knowing violations); private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

None specified

Minnesota

Code section(s) analyzed:

Uniform Deceptive Trade Practices Act: Minn. Stat. Ann. §§325D.43-48 and §§325F.68-70

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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 the person does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
- The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby.

Penalties:

Equitable relief (injunction); criminal misdemeanor (for fraud, false pretense etc. per last bullet point above); private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Mississippi

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Code section(s) analyzed:

Miss. Code Ann. §§ 75-24-1 to 75-24-27

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Misrepresentation of the source, sponsorship, approval, or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

Penalties:

Equitable relief (injunction); civil monetary penalty for willful violations; criminal misdemeanor; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Missouri

Code section(s) analyzed:

Mo. Ann. Stat. §§407.010 to 407.130

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce... is declared to be an unlawful practice.

Penalties:

Equitable relief (injunction); civil monetary penalty; criminal misdemeanor; private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

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None specified

Montana

Code section(s) analyzed:

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. §§30-14-101 to 224

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Penalties:

Equitable relief (injunction); civil monetary damages; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

Nebraska

Code section(s) analyzed:

Uniform Deceptive Trade Practices Act: Neb. Rev. Stat. §§ 87-301 to 306

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public.

Penalties:

Equitable relief (injunction); civil monetary penalty; criminal; private cause of action and attorneys' fees

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Statute of Limitations period:

A civil action arising under the Uniform Deceptive Trade Practices Act may be brought only within four years from the date of the purchase of goods or services.

Nevada

Code section(s) analyzed:

Nevada Deceptive Trade Practices: Nev. Rev. Stat. Ann. §§ 598.0903 to 598.0925

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Knowingly making a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease;
- Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
- Representing that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another standard, quality, grade, style or model;
- Knowingly making any other false representation in a transaction; Fails to disclose a material fact in connection with the sale or lease of goods or services;
- Making an assertion of scientific, clinical or quantifiable fact in an advertisement which would cause a reasonable person to believe that the assertion is true, unless, at the time the assertion is made, the person making it has possession of factually objective scientific, clinical or quantifiable evidence which substantiates the assertion.

Penalties:

Equitable relief (injunction); civil monetary penalty; criminal misdemeanor for willful violation; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

New Hampshire

Code section(s) analyzed:

Regulation of Business Practices for Consumer Protection: N.H. Rev. Stat. Ann. §§ 358-A:1 to 358-A:13

Could the definitions of products or services in the statute include genetic tests?

Yes

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What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- 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 such person does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

Penalties:

Equitable relief (injunction); civil monetary penalty (heightened penalties for willful violations); criminal misdemeanor; private cause of action (including class action) and attorneys' fees

Statute of Limitations period:

None

New Jersey

Code section(s) analyzed:

Consumer Fraud Act: N.J. Stat. Ann. §§ 56:8-1 to 56:8-184

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

Penalties:

Equitable relief (injunction) civil monetary penalty; private cause of action

Statute of Limitations period:

None specified

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New Mexico

Code section(s) analyzed:

Unfair Practices Act: N.M. Stat. Ann. §§ 57-12-1 to 57-12-26 (1978)

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorneys' fees

Statute of Limitations period:

None specified

New York

Code section(s) analyzed:

Consumer Protection from Deceptive Acts and Practices: N.Y. Gen. Bus. Law §§ 349 – 350-f-1

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful;
- The term “false advertising” means advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

Penalties:

Equitable relief (injunction); civil monetary penalty (heightened for willful violations); private cause of action and attorneys' fees

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Statute of Limitations period:

None specified

North Carolina

Code section(s) analyzed:

N.C. Gen. Stat. Ann. §§ 75-1.1 to 75-42

Could the definitions of products or services in the statute include genetic tests?

Probably, however there is exclusion for “professional services rendered by a member of a learned profession.” It is unclear whether this exclusion would apply to DTC genetic testing services that employ health care providers.

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests? N.C. Gen. Stat. Ann. § 75-1.1

- Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

Penalties:

Equitable relief (injunction); civil monetary penalty; possibility of criminal prosecution; private cause of action and attorneys’ fees

Statute of Limitations period:

Four years after the cause of action accrues

North Dakota

Code section(s) analyzed:

False Advertising: N.D. Cent. Code §§ 51-12-01 to 51-12-15 and Unlawful Sales or Advertising Practices: N.D. Cent. Code §§ 51-15-01 to 51-15-11

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any food, drug, medicine, patent and proprietary product, merchandise, security, service... or anything offered to the public may make, publish, disseminate, circulate, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, or in any other way, an advertisement that contains any assertion, representation, or statement of fact, including the price thereof, which is untrue, deceptive, or misleading regarding

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such food, drug, medicine, patent and proprietary product, merchandise, security... or anything offered to the public;

- The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

Penalties:

Equitable relief (injunction, cease and desist order, impound merchandise); civil monetary penalty; criminal misdemeanor; private cause of action

Statute of Limitations period:

None specified

Ohio

Code section(s) analyzed:

Unfair, Deceptive, or Unconscionable Acts or Practices: Ohio Rev. Code Ann. §§ 1345.01 to 1345.13

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;
- Representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

The law states that it is an “unconscionable practice” for a supplier to enter into a consumer transactions if the supplier knows at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction.

Penalties:

Equitable relief (injunction, cease and desist order, declaratory judgment); civil monetary penalty; private cause of action (including class actions) and attorney’s fees

Statute of Limitations period:

Two years after the occurrence of a violation

Oklahoma

Code section(s) analyzed:

Oklahoma Consumer Protection Act: Okla. Stat. Ann. tit. 15, §§ 751 to 765

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Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Making a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;
- Making a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
- Representing, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;
- Committing an unfair or deceptive trade practice as defined in Section 752 of this title (“Deceptive trade practice” means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral).

Penalties:

Equitable relief (enjoinder, declaratory judgment, license revocation); civil monetary penalty; private cause of action and attorney’s fees

Statute of Limitations period:

None specified

Oregon

Code section(s) analyzed:

Or. Rev. Stat. §§ 646.605 to 656

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services;
- Representing that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have;
- Representing that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another;
- Engaging in any other unfair or deceptive conduct in trade or commerce.

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Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

One year from date of injury.

Pennsylvania

Code section(s) analyzed:

Pa. Stat. Ann. tit. 73, §§ 201-1 to 201-9.3

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

Penalties:

Equitable relief – injunction; civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

None specified

Rhode Island

Code section(s) analyzed:

R.I. Gen. Laws §§ 6-13.1-1 to 6-13.1-12

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

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- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action (including class action) and attorney's fees

Statute of Limitations period:

None specified

South Carolina

Code section(s) analyzed:

South Carolina Unfair Trade Practice Act: S.C. Code Ann. §§ 39-5-10 to 39-5-170

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Penalties:

Civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

None specified

South Dakota

Code section(s) analyzed:

S.D. Codified Laws §§ 37-24-1 to 37-24-48

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Knowingly and intentionally acting, using, or employing any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.

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Penalties:

Equitable relief (injunction); civil monetary penalty; criminal misdemeanor; private cause of action and attorney's fees

Statute of Limitations period:

Four-year statute of limitations period

Tennessee

Code section(s) analyzed:

Tennessee Consumer Protection Act: Tenn. Code Ann. §§ 47-18-101 to 47-18-129

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; 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 such person does not have;
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other act or practice which is deceptive to the consumer or to any other person.

Penalties:

Equitable relief (injunction, license revocation); civil monetary penalty (for willful violations); criminal misdemeanor; private cause of action

Statute of Limitations period:

Any action shall be brought within one (1) year from a person's discovery of the unlawful act or practice, but in no event shall an action be brought more than five (5) years after the date of the consumer transaction giving rise to the claim for relief.

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Texas

Code section(s) analyzed:

Deceptive Trade Practices – Consumer Protection Act: Tex. Bus. & Com. §§ 17.41 to 17.506

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

None

Utah

Code section(s) analyzed:

Truth in Advertising: Utah Code Ann. §§ 13-11a-1 to 13-11a-5

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Penalties:

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Equitable relief (declaratory judgment, enjoinder, injunction); private cause of action and attorney's fees

Statute of Limitations period:

None specified

Vermont

Code section(s) analyzed:

Consumer Fraud: Vt. Stat. Ann. tit. 9, §§ 2451 to 2466a

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

None specified

Virginia

Code section(s) analyzed:

Virginia Consumer Protection Act: Va. Code Ann. §§ 59.1-196 to 59.1-207

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorney's fees

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Statute of Limitations period:

Individual action must commence within two years of accrual

Washington

Code section(s) analyzed:

Wash. Rev. Code Ann. §§ 19.86.010 to 19.86.920

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action and attorney's fees

Statute of Limitations period:

Action must commence within four years after action accrues in most circumstances

West Virginia

Code section(s) analyzed:

Consumer Credit and Protection Act: W. Va. Code Ann. §§ 46A-6-101 to 46A-6-110

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- 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;
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;
- Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
- The act, use or employment... of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent

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that others rely upon such concealment, suppression or omission... whether or not any person has in fact been misled, deceived or damaged thereby.

Penalties:

Equitable relief (injunction); civil monetary damages; private cause of action

Statute of Limitations period:

None specified

Wisconsin

Code section(s) analyzed:

Deceptive Trade Practices Act: Wis. Stat. Ann. § 100.18

Could the definitions of products or services in the statute include genetic tests?

Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of... any [service], directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any [service], shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication,... or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such [service] or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

Penalties:

Equitable relief (injunction); civil monetary penalty; private cause of action (including class actions) and attorney's fees

Statute of Limitations period:

Action must be commenced within 3 years of the unlawful act.

Wyoming

Code section(s) analyzed:

Consumer Protection Act: Wyo. Stat. Ann. §§ 40-12-101 to 40-12-114

Could the definitions of products or services in the statute include genetic tests?

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Yes

What are the unlawful practices concerning advertising and marketing that could pertain to the DTC marketing of genetic tests?

- Representing that merchandise has a source, origin, sponsorship, approval, accessories or uses it does not have;
- Representing that merchandise is of a particular standard, grade, style or model, if it is not;
- Engaging in unfair or deceptive acts or practices.

Penalties:

Equitable relief (injunction, restraining order); civil monetary penalty; private cause of action (including class action) and attorney's fees

Statute of Limitations period:

Notice must be given to violator within one year of discovery of the violation or within two years of the transaction, whichever occurs first.