

inadvertence or negligence. They may have little impact on an unscrupulous or repeat offender, and the Committee believes that penal sanctions should therefore continue to be an enforcement option.

B. Remedies and Procedures

The remedies and procedures mentioned most often in connection with misleading advertising are injunctive relief (cease and desist) powers, the ability to require corrective advertising and affirmative disclosure of previously undisclosed facts and consent procedures. Each of these has been used with varying degrees of success in some Canadian provinces and in the United States by the Federal Trade Commission. This section of the report will examine these procedures and remedies in the context of the misleading advertising provisions of the *Competition Act*.

1. Injunctive Relief

The trade practices statutes of the provinces of Alberta, British Columbia, Quebec, Prince Edward Island, Newfoundland and Ontario, provide for the issuance of interim or permanent injunctions or cease and desist orders to restrain a person from carrying on an unfair trade practice. In the United States, the Federal Trade Commission, where it has reason to believe that a person is engaged in an unfair or deceptive act or practice in commerce, and where it appears in the public interest to do so, has authority to issue a complaint, and conduct a hearing with a view to obtaining a cease and desist order.⁹

At present, the *Competition Act* provides for both injunction and prohibition orders for misleading advertising offences. Section 29.1 of the Act, gives a court, on the application of the Attorney General, the authority to issue an interim injunction forbidding a person from "doing any act or thing that ... may constitute ... an offence, pending the commencement or completion of a prosecution or proceedings under subsection 30(2)...".¹⁰ In order for a court to issue an injunction under section 29.1, the prosecution must prove beyond a reasonable doubt that:

- (a) there will be injury to competition that cannot be adequately remedied under any other section of the Act, or
- (b) that a person is likely to suffer damage for which he cannot be adequately compensated under any other section of the Act and