

In studying the regulation of deceptive advertising in the United States, the Committee learned that advertising substantiation is an important component of Federal Trade Commission policy. The FTC requires that advertisers must have a reasonable basis for advertising claims before disseminating them to the public. Thus, information in support of express or implied claims in an advertisement can be requested informally by the FTC or during a formal civil investigation.²¹

The Committee's discussions with Mr. Ralph Nader and with the Consumers Union revealed that there is much support for the advertising substantiation policy among U.S. consumers. The Consumers Union also claimed that the policy is popular with the business community, primarily because it reduces opportunities for competitors to acquire an unfair advantage over each other. The program therefore imposes a form of discipline on industry practices.

Paragraph 36(1)(b) of the *Competition Act* requires representations respecting the performance, efficacy or length of life of a product to be based on adequate and proper tests. The Department's publication, *How to avoid Misleading Advertising-Guidelines*, (hereafter referred to as the *Misleading Advertising Guidelines*) indicates that the test must be completed before the representation is made. Thus, an advertiser who makes a representation respecting a product without substantiating test data runs a risk of prosecution. The Committee notes that under the Program of Compliance initiated by the Director of Investigation and Research, advertisers may voluntarily submit claims substantiation data to the Marketing Practices Branch for review prior to publishing an advertisement. This procedure, albeit informal and voluntary, is already operating as a kind of advertising substantiation.

Recognizing that there is no statutory requirement in Canada that advertisers should have a reasonable basis for advertising claims before disseminating them, and acknowledging that the Director will give advisory opinions on substantiating data at the request of an advertiser, the Committee must ask whether more should be done in this regard.

The Committee believes that it is justifiable and practical that advertisers be required to have a reasonable basis for express or implied claims prior to disseminating an advertisement. A formal advertising substantiation program would enhance compliance with and enforcement of