

CHAPTER 1 - INTRODUCTION AND APPROACH

The principal federal statute which proscribes false or misleading advertising in Canada is the *Competition Act* (the "Act"). Other federal laws, such as the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act* and the *Textile Labelling Act*, regulate the content and form of advertising for certain products, but only the *Competition Act* provides a general prohibition against false or misleading advertising in all communications media.

The first significant step in the development of misleading advertising law in Canada was taken in 1960 when, in response to pressure from the business community, a prohibition against misleading price comparisons was enacted. Further provisions, which codified some of the jurisprudence on misleading advertising and created a number of new offences, were enacted in the mid-1970s. With the exception of an amendment made in 1985, there have been no substantive changes to the misleading advertising provisions of the *Competition Act* in this decade.

The Act contains a general prohibition against promoting the supply or use of a product or any business interest by making a representation to the public which is false or misleading in a material respect (paragraph 36(1)(a)). It also contains a number of specific prohibitions with respect to: (a) product claims based on inadequate and improper tests, (b) misleading warranties or guarantees, (c) misleading representations as to ordinary selling price, (d) the use of testimonials, (e) double ticketing, (f) "bait and switch" selling, (g) selling at a price higher than the advertised price, (h) conducting promotional contests contrary to stipulated disclosure requirements, and (i) pyramid and referral selling schemes (see Appendix I for the full text of the provisions).

The misleading advertising provisions of the *Competition Act* are not regulatory in nature. They do not direct an advertiser how to formulate a representation for a product nor do they provide remedies which would require an advertiser to withdraw, amend or correct an advertisement found to be false or misleading.

Under the *Competition Act*, misleading advertising is an offence punishable by fine and/or imprisonment. Although the penalties for such an offence are limited in scope, the purview of the misleading advertising provisions themselves is quite broad. Most notably, they apply to anyone