

constitutional law concerns may limit the ambit of similar rules in Canada. For example, the jurisdictional issue would require trade regulation rules to be based upon the federal power to regulate trade and commerce. Another concern arises with respect to the scope of such rules. The Supreme Court of Canada in the *Labatt Breweries* (1979) case²⁵ struck down federal light beer regulations principally because they attempted to regulate a particular industry. The Committee acknowledges that this decision may have serious implications for rules aiming to deal with the practices of a specific industry. Nevertheless, in the Committee's view, federal regulators should not for this reason be deterred from developing rules which purport to cover practices common to several industries.

It is evident to the Committee that the Director has attempted to make known his approach to various misleading advertising issues through statements of Marketing Practices Branch policy, the publication of his position on certain industry practices, and the publication of the *Misleading Advertising Guidelines*. Indeed, the preface to the *Guidelines* states that they are designed to assist the business community in interpreting and applying the law.

Since the *Competition Act* is not a regulatory statute, the Director is not empowered to define misleading practices or to establish standards of conduct. The Committee, however, agrees with the conclusions of the CCAC Study on the benefits of rule-making and is of the view that the creation of rules for advertising practices would clarify the law and increase compliance. The Committee also believes that procedures can be created which include public input yet are not cumbersome and unmanageable.

Recommendation:

- 4.13 The Committee recommends that the *Competition Act* be amended to include specific authority for the Governor in Council to make rules and regulations which would define or specify acts or marketing practices which are misleading or deceptive.

D. The Impact of the Canada-U.S. Free Trade Agreement

Several witnesses before the Committee commented on the possible impact of the Canada-U.S. Free Trade Agreement on Canadian misleading advertising law. Noting that Canada and the United States have different