

which would allow the Director of Investigation and Research, as well as the Attorney General, to apply for an injunction. In the Committee's view, such a provision would likely expedite proceedings.

*Recommendations:*

- 4.1 The Committee recommends that the criteria established in the *Competition Act* for obtaining an interim injunction be modified to allow such injunctions to be more readily available in misleading advertising cases. Consideration should be given to lowering the burden of proof, and establishing threat to the public interest or the creation of a *prima facie* case as grounds for obtaining an injunction.
- 4.2 The Committee further recommends that the Director of Investigation and Research be empowered to apply direct to a court for an injunction under the *Competition Act*.

2. *Affirmative Disclosure and Corrective Advertising*

In the United States, the Federal Trade Commission (FTC) employs a number of administrative remedies in connection with misleading advertising in addition to its basic sanction, the cease and desist power. Among those used are affirmative disclosure and corrective advertising orders.

The affirmative disclosure remedy developed by the FTC is designed to deal with misrepresentation resulting from an advertisement's failure to disclose material information. Essentially it requires the disclosure of previously omitted facts about a product.<sup>17</sup> The CCAC Study noted that affirmative disclosure orders have been used to (a) safeguard consumer preferences, (b) warn of dangers associated with particular products, and (c) counteract pervasive consumer beliefs about the use and effect of advertised products.<sup>18</sup> The thrust of the remedy is to counter past deception by requiring an advertiser to provide full information in future advertisements.

The Committee believes that considerable benefit could be derived from including in the *Competition Act* an affirmative disclosure remedy for situations where essential facts had been omitted from an advertisement. Since the Act clearly contemplates that a representation may be misleading through a failure to disclose, it would seem appropriate that it also provide a remedy specific to that non-disclosure. In the Committee's view, being