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Deception in Advertising: A Content Analysis of the Legal Parameters of Deception

E. Carla Mitchell
Old Dominion University

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DECEPTION IN ADVERTISING:
A CONTENT ANALYSIS OF THE LEGAL PARAMETERS OF DECEPTION

by

E. Carla Mitchell
B.S.B.A. May 1986, Old Dominion University
M.B.A. December 1989, Old Dominion University

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Approved by:

Earl D. Honevcutt, Jr (Director)

Kiran Karande (Member)

Ted Englebrecht (Member)

ABSTRACT

DECEPTION IN ADVERTISING: A CONTENT ANALYSIS OF THE LEGAL PARAMETERS OF DECEPTION

E. Carla Mitchell
Old Dominion University, 2002
Director, Earl D. Honeycutt, Jr.

One of the primary attributes of a free market economy is the uninhibited flow of truthful information regarding the goods and services available in the marketplace (Azcuena 1995). This free flow of information, in the form of advertising, enhances market performance by informing consumers and enabling firms to compete equitably based on the attributes of their offerings. Studies reveal that, for the vast majority of marketing managers, the regulatory environment serves as the primary influence in advertising strategy development and decision-making (Davis 1994). However, in their theory development, behavioral researchers often ignore the legal aspects promulgated by the FTC. Furthermore, ambiguity in the FTC's guidelines regarding deception in advertising continues to impede advertisers in their ability to reduce the possibility of potentially deceptive advertising claims (Owen and Plyler 1991; Preston 1992; Davis 1994). Such ambiguity can cause potentially deceptive advertising claims to be presented by marketing managers even though these managers believe that they are in full compliance with the law.

A review of the marketing literature reveals two apparent gaps that this study seeks to fill. These two gaps are: (1) research regarding deceptive advertising has been narrowly focused and (2) no comprehensive case research detailing recent FTC decisions exists in the marketing literature. This study addresses the first gap in the literature by analyzing the legal parameters associated with multiple dimensions of deception in advertising. This research addresses the

second gap in the literature by conducting a comprehensive analysis of recent FTC decisions rendered.

The complete set of 299 administrative decisions, recorded in published volumes of *Federal Trade Commission Decisions* from 1990 through 1998, was examined. Using content analysis methodology, a number of the legal parameters involved in FTC decisions were analyzed. The results of this analysis revealed: (1) that, when faced with FTC litigation, the vast majority of advertisers enter into consent agreements (choose not to defend themselves); (2) that certain types of implied claims (Preston 1977) vary (a) according to the type of internal evidence presented by the FTC, and (b) according to the industry category included; and (3) that the severity of FTC orders varies (a) according to the existence of multiple implied claims, and (b) according to the type of industry involved.

This study has expanded the existing research by providing insight regarding the legal parameters associated with three dimensions of deception in advertising: (1) evidence of deception; (2) implied advertising claims; and (3) regulatory predictability. Based on the research findings, this study offers an updated typology of relevant implied claims.

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I consider the achievement of this goal to be more of a group effort than an individual accomplishment. Hence, there are several individuals to whom I would like to express my appreciation. First, I would like to express my sincerest thanks to my Dissertation Committee: Dr. Earl Honeycutt, Dr. Kiran Karande, and Dr. Ted Englebrecht. I am deeply indebted to each of these individuals. Dr. Englebrecht has been a wonderful mentor to me through the entire Ph.D. program regarding numerous aspects surrounding academia, and especially, in the arena of publishing. Dr. Karande has been ever so patient, providing much-needed assistance through the complete methodological process, from development of the research hypotheses to actual implementation of the research design. Dr. Honeycutt has been a guide and a mentor, as well as, a deeply valued friend to me through the entire Ph.D. program. Dr. Honeycutt's own standard for excellence, set through example, was a key factor in my success. There are no words to express the depth of my gratitude to Dr. Honeycutt, for without his dedication and encouragement, I could not have accomplished this goal.

I would also like to thank my family and friends for their support and prayers, and I would like to thank my coders for the numerous hours each devoted to the coding of data. I thank my Dad, Carlton Mitchell, for his mental and financial support through the entire Ph.D. program. I could never have pursued, much less completed, this goal without his support. Also, I thank Bob Phillips for his patience through the dissertation process. Bob shouldered numerous additional responsibilities at home, including my stressed-out, ill temperament, allowing me to have the focus necessary to complete this dissertation. Lastly, I dedicate this dissertation to the memory of my Mom, Maryann Rouse Mitchell. While I was unable to achieve this goal prior to her death, I was able to keep a promise.

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DECEPTION IN ADVERTISING: A CONTENT ANALYSIS OF THE LEGAL PARAMETERS OF DECEPTION

CHAPTER ONE: INTRODUCTION AND PURPOSE OF STUDY

Advertisements contain the only truth to be relied on in a newspaper.

- Thomas Jefferson

Advertising is legalized lying.

- H.G. Wells

INTRODUCTION

One of the primary attributes of a free market economy is the uninhibited flow of truthful information regarding the goods and services available in the marketplace (Azcuena 1995). According to the U.S. Supreme Court: “the free flow of commercial information is indispensable to the proper allocation of resources in a free enterprise system because it informs the numerous private decisions that drive the system” (*Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 1976, at 765). This free flow of information, in the form of advertising, enhances market performance by informing consumers and enabling firms to compete equitably based on the attributes of their offerings. Also, the uninhibited flow of information in the marketplace advances the diffusion of innovation, and thereby, enhances the innovative activity of firms. Advertising greatly impacts consumers’ lives by providing essential information to assist in the evaluation of goods and services in the purchase decision-making process (Davis 1994). Hence, advertising that provides truthful detailed product information as well as advertising that discourages detrimental behavior (drug use, drunk driving, etc.) enhances market performance (Attas 1999; Azcuena 1995). Through the free flow of information, it is believed that

unwanted products will cease to exist in the marketplace, and prices will stabilize (Attas 1999; Azcuenaga 1995; Davis 1994).

Consequently, misleading, deceptive and/or false advertising claims, which infiltrate the market with imperfect information, can result in misinformed purchase decisions often to the detriment of reasonable consumers. By violating the principle of free flow of truthful information, deception¹ in advertising inhibits the consumer's ability to make informed purchase decisions, and adversely affects market performance (Azcuenaga 1995; Davis 1994). Market forces will usually correct for consumer dissatisfaction in certain categories of products, provided that the ordinary consumer is able to evaluate the products' performance. For instance, products whose attributes fail to meet consumer expectations will suffer in the long run from lack of repeat purchases. However, for many types of products, such as medical devices, nonprescription drugs, and fire safety, assessment of product performance by ordinary consumers is difficult, and thus, consumer dissatisfaction cannot be corrected by market forces alone. Therefore, government regulation of deception in advertising enhances market performance since regulations protect the free flow of truthful information in the marketplace and increase the consumer's ability to make informed purchase decisions (Azcuenaga 1995).

THE REGULATORY ENVIRONMENT AND ADVERTISING

The Federal Trade Commission (FTC) is the only federal agency that possesses legal jurisdiction over consumer protection as well as protection of competition for sectors of the US economy. Even though the Federal Trade Commission was created by Congress in 1914 as an antidote for antitrust litigation and dissatisfaction with the Sherman Anti-Trust Law; nonetheless, it was given authority under Section 5(a) of the *Federal Trade Commission Act* to prohibit

“unfair methods of competition in commerce.” As a result, the FTC has sought to enforce honesty in competition (Alexander 1967; Cohen 1974). Furthermore, *the Wheeler-Lea Act of 1938* amended Section 5 and increased the FTC’s authority to include the elimination of “unfair or deceptive acts or practices in commerce” (Cohen 1974, p. 8). Hence, the critical statement of Section 5(a) of the *Federal Trade Commission Act* reads as follows:

“Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” (15 U.S.C. 45 (a)(1))

More specifically, pursuant to the Federal Trade Commission (1983), all deceptive advertising litigation includes the following three elements:

- (1) there is a representation, omission, or practice that is likely to mislead the consumer;
- (2) the consumer acts reasonably under the circumstances; and
- (3) the representation, omission, or practice is material.

These three elements constitute the regulatory definition of deception in advertising, and each of these elements is further detailed in the second chapter of this study.

For the fiscal year end 2002, the FTC’s budgeted resources for identifying and preventing deceptive advertising in the marketplace exceeds \$ 82 million annually (FTC 2001). The legal system in the United States recognizes that advertising plays a crucial and indispensable role in ensuring that consumers possess the ability to make informed purchase decisions based on information which they receive via advertisements concerning products and services. The ruling issued by the Court of Appeals for the Seventh Circuit in *Kraft, Inc. v. FTC* (1993) states that the Commission may utilize its own “reasoned analysis” in determining the context of an advertising

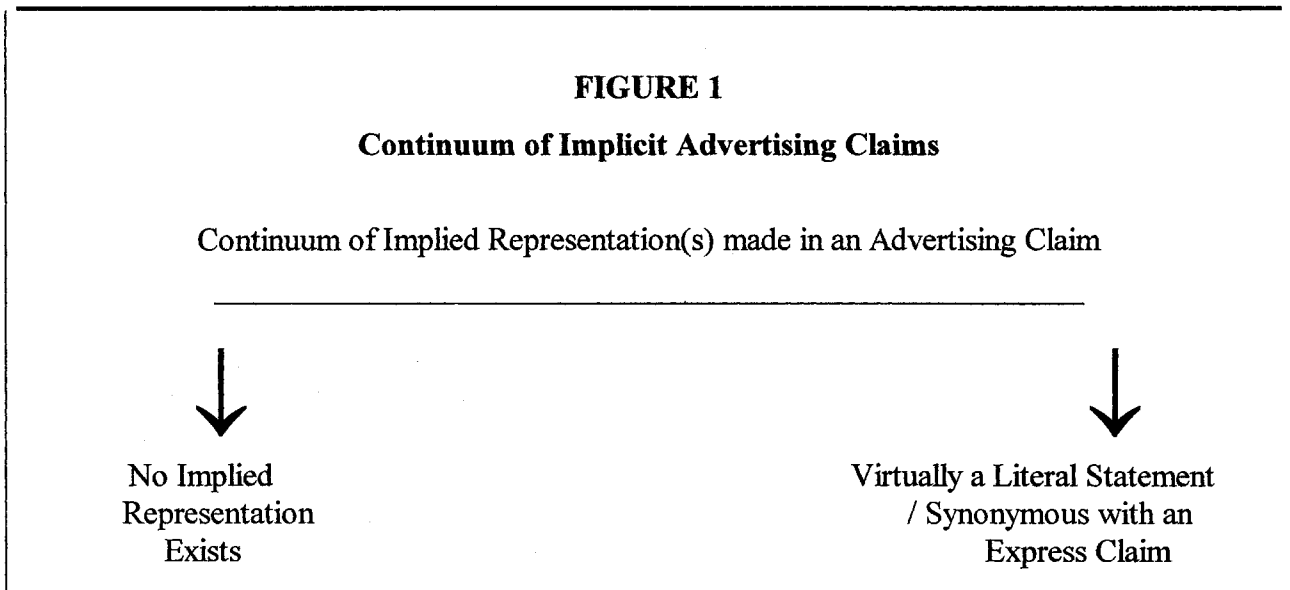
claim. This ruling illustrates the extensiveness of the Federal Trade Commission's discretion in deciding whether an advertisement is deceptive.

STATEMENT OF THE PROBLEM

The issue of deceptiveness in advertising is far from new. That is, claims made over a hundred years ago concerning the attributes of such products as medicinal remedies were, according to today's standards, beyond deceitful. On the surface, the issue of deception in advertising would appear to be clear-cut. Deceptive advertising is only economically beneficial to the business enterprise that is not concerned with the repeat customer (Dillon 1973). Hence, advertisers need only follow governmental regulations regarding deceptive advertising in order to avoid problems. However, as the literature reveals, not only the issue, but even the definition of deception in advertising is in reality quite far from clear. For example, advertisements make both *explicit* (literal statements) and *implicit* (implied representations) claims (Preston 1994). Because explicit or express claims are literal statements, deception in explicit claims is usually easily determined. However, because implicit claims are more a function of the consumer's cognitive structure, deception in implicit claims is more difficult for consumers, advertisers, and/or regulators to assess.

Since express claims unequivocally state the representation made, the actual claim itself establishes the meaning (*Coca-Cola v. Tropicana Products, Inc* 1982). In other words, unlike cases involving implied claims, when an express claim can be shown to be literally false then consumer reaction to the claim is usually not an issue. Conversely, implied claims range on a continuum (Figure 1) from those that are "virtually synonymous with an express claim" to those

that use “language that relatively few consumers would interpret as making a particular representation” (*Thompson Medical Co.* 1984).



Implied claims, as opposed to literal statements, refer to claims that convey false impressions and/or are misleading in context. Hence, the FTC’s assessment of whether an implied claim is made by the advertiser must begin with the advertisement itself. In determining deception in implicit claims, the FTC examines the advertisement as a whole (not isolated excerpts) in order to assess the “net general impression” conveyed to the consumer by the advertisement (FTC 1983). Examination of certain factors: such as the placement of various phrases in the ad; the nature of the representation made; and the nature of the transaction; assist the FTC in determining the meaning derived from an implied claim (FTC 1983). When the FTC concludes with confidence through a surface examination of the ad that there is an implied false claim, then an examination of the ad will be sufficient (FTC 1983). That is, the FTC will rely on its own reasoned analysis and

interpretation in deciding whether the implied claim is deceptive. However, in cases where a surface examination of the ad is insufficient to determine the existence of an implicit claim, then the FTC will refer to extrinsic (external) evidence in order to determine if a reasonable consumer would reach the implied claim (FTC 1983). Examples of extrinsic evidence include the testimony of expert witnesses, generally accepted principles of marketing, dictionary definitions, market research studies, consumer surveys or any other reliable evidence of consumer (behavioral) interpretation. A more detailed discussion of extrinsic evidence, the nature of implications, and a typology of implied claims is offered later in this study.

Under the current regulatory standards, an implied advertising claim may be found to be deceptive by the FTC in cases where *no intent* to deceive exists on the part of the advertiser. The legal boundaries for deception, as well as the scope of the FTC's authority, remain broad. According to the FTC's most recent Policy Statement on Deception (1983), an advertising claim can be deemed deceptive according to its *likelihood to mislead*, and hence, proof that consumers were actually deceived is **not** required. The FTC uses deceptiveness as the legal criterion, and hence, from a regulatory perspective, deceptiveness is a separate and distinct concept from deception (Richards 1990; Wright 1995). According to the legal boundaries, deceptiveness exists when an advertising claim possesses the *capacity to deceive*, and proof of actual deception is not necessary (Richards 1990; Wright 1995). Therefore, since implied claims are a function of consumer perception and because neither intent nor actual deception is a necessary prerequisite for an FTC ruling of deception, marketing managers need to be knowledgeable regarding the regulatory boundaries of deception in advertising. However, due to the lack of consistency as well as the ambiguity inherent in the FTC's guidelines regarding deception in advertising, ensuring

that an advertising message meets legal standards can be difficult for marketing managers (Owen and Plyler 1991; Preston 1992; Davis 1994).

PURPOSE AND OBJECTIVES OF THIS STUDY

Studies reveal that, for the vast majority of marketing managers, the regulatory environment serves as the primary influence in advertising strategy development and decision-making (Davis 1994). While the goal of the FTC is to *detect* deceptive claims in advertising, the goal of behavioral researchers is to determine *why* advertising claims deceive (Richards 1990). Thereby, in their theory development, behavioral researchers often ignore the legal aspects promulgated by the FTC. The FTC's scrutiny of implied claims and the FTC's use of external evidence to prove deception in implied claims has steadily increased (Owen and Plyler 1991). However, ambiguity in the FTC's guidelines regarding deception in advertising continues to impede advertisers in their ability to reduce the possibility of potentially deceptive advertising claims (Owen and Plyler 1991; Preston 1992; Davis 1994). For instance, the FTC has never issued official guidelines that articulate the proper use of evidence in deceptive advertising cases. Such ambiguity can cause potentially deceptive advertising claims to be presented by marketing managers even though these managers believe that they are in full compliance with the law.

The purpose of this study, therefore, is to gain insight into the regulatory predictability of deception in advertising through a comprehensive analysis of the legal parameters involved in FTC decisions, including the FTC's methodology for interpreting implied advertising claims. A primary goal of this study is to gain a clearer understanding of how to identify and interpret deception in advertising. The goals of this study include seeking answers to the following research questions: (1) What types of evidence does the Commission use to prove deception in

FTC decisions rendered? (2) What types of evidence do respondents (advertisers) offer as defense against FTC allegations? (3) What types of methodology does the FTC use most often in the interpretation of implied advertising claims? (4) Is there a relationship between the type of implied claim and the type of FTC order rendered? (5) Is there a relationship between the type of advertising media involved and the type of FTC order cited? and (6) Is there a relationship between the type of industry involved and the type of FTC order rendered?

There are four objectives of this study. The first objective is to identify the legal parameters of deception in advertising by examining the frequency and the types of evidence used by both the Commission and the advertiser (respondent) in FTC decisions rendered. This study will be operationalized by conducting a content analysis of the data gathered through an examination of the decisions rendered by the Federal Trade Commission from 1990 through 1998. The second objective of this study is to identify the FTC's methods of ad interpretation for implied claims based upon the information provided in the FTC's decisions and relying on a typology of implied claims developed in the literature. The third objective of this study is to determine regulatory predictability regarding deception in advertising based on factors inherent in each case such as the type of industry involved, the type of implied claim, and the type of external evidence used. The fourth, and final, objective of this study is to develop an empirically supported model to assist marketing managers in: (1) identifying potentially deceptive advertising claims, (2) preventing deception in advertising claims, and (3) defending against FTC litigation.

Given that the FTC has failed to define and articulate detailed, objective guidelines regarding the Commission's methods of advertising claim interpretation, a comprehensive analysis of FTC decisions rendered is the best method available to attain an accurate understanding of the legal boundaries of deception. Researchers and marketing managers must comprehend the legal

boundaries of deception in advertising since “the game is always played” in the regulatory arena (Richards 1988; Preston 1982, cited in Richards 1988, p. 6)

CONTRIBUTIONS TO MARKETING THEORY AND PRACTICE

Gardner (1975) argues that the Federal Trade Commission (FTC) “nor anyone else” appears to possess a clear understanding of deceptive advertising as based on any theoretical model supported by reliable research. The study of regulation in advertising has implications for marketing managers, public policy makers, behavioral researchers, and consumers. Owen and Plyler (1991, p.7) argue that “there is still a dearth of information about how the Commission interprets an advertisement.” Furthermore, the use of detailed, objective, formal guidelines for interpreting and identifying deception in advertising can assist marketing managers in identifying potentially deceptive advertising claims (Owen and Plyler 1991; Davis 1994). However, since the FTC has failed to issue such detailed guidelines, a comprehensive examination of decisions rendered can assist marketing managers in understanding the legal boundaries of deception and can provide a model to reduce the incidence of potentially deceptive advertising claims.

THE RELEVANCY OF THE TOPIC OF DECEPTION IN ADVERTISING

Gardner (1975, p. 46) states: “It is also apparent that as advertisers learn more about deception, they will learn more about the process by which consumers process advertising information.” That is, an understanding of the methods by which consumers process advertising information will lead, not only to fewer deceptive advertisements, but to more effective advertising practices as well (Gardner 1975). Advertising expenditures in the U.S. exceed \$ 60 billion annually (Advertising Age 2000). As this dissertation will demonstrate, the disciplines of

marketing, consumer behavior, public policy, and business ethics are each affected by the issues associated with deception in advertising. For instance, Davis (1994) finds that legal considerations, rather than ethical considerations, serve as the primary influence for the vast majority of marketing managers in their advertising strategy development and decision making.

The study of regulation in advertising is an area of importance for marketing managers. An investigation by the FTC can be initiated in response to letters of complaint from consumers or businesses, Congressional inquiries, or articles on consumer or economic issues. The FTC can initiate enforcement action following its initial investigation if the Commission finds a “reason to believe” that a violation of the law has occurred. The FTC can enforce consumer protection law through both administrative and judicial processes. When there exists a reason to believe that a violation of law has occurred, the Commission may issue a complaint detailing its charges. If the advertiser (respondent) decides to settle the charges, it may agree to voluntary compliance by entering into a consent order with the Commission. In a consent order, the advertiser need not admit any violation of the law; however, the advertiser must agree to cease the disputed advertising practice outlined in the FTC’s complaint and waive all right to judicial review. When the advertiser decides to contest the charges, the FTC will issue an administrative complaint. An administrative complaint results in a formal proceeding adjudicated by an administrative law judge. An administrative complaint is similar to a court trial where testimony, evidence, and witnesses are presented on behalf of both the advertiser (respondent) and the FTC.

If the initial decision rendered by the administrative law judge finds that a violation of law has occurred, the FTC can issue a cease and desist order, consumer redress, corrective advertising, or other appropriate injunctive relief. An initial decision rendered by an administrative law judge can be appealed to the full Commission. Final decisions rendered by the Commission can be appealed

to the U.S. Court of Appeals and finally to the U.S. Supreme Court. Violation of FTC orders can result in civil penalties up to \$ 11,000 per violation, mandatory injunctions, and further equitable relief. Finally, the FTC can issue Trade Regulation Rules if evidence of unfair or deceptive acts or practices is found on an industry-wide basis. These rules have the force of law, and the Commission can assess civil penalties up to \$ 11,000 per violation.

According to the decisions rendered in recent court cases, the consequences of adjudication can be quite costly and extremely time consuming for the advertiser. Specifically, cases adjudicated under the **Federal Trade Commission Act** may result in injunctive relief in the form of: cease and desist orders, imposed orders of affirmative disclosure, orders of consumer redress, corrective advertising orders, and/or stringent record keeping requirements that may extend up to ten years. Additionally, cases litigated under Section 43(a) of the **Lanham Trademark Act** are subject to damages due to lost sales for competitors as well as injunctive relief for false advertising practices. Thus, the results of litigation can be quite costly to the advertiser in many ways. Cease and desist orders require the removal of advertisements, to which the firm has often devoted a great deal of its resources. Corrective advertisements imposed as a result of litigation can result in negative goodwill for the particular advertiser. Also, stringent record keeping requirements can be costly, and the costs associated with defending such litigation are high. That is, the development of extrinsic evidence such as consumer surveys and expert witness testimony are costly defense mechanisms for the firm. One of the most costly remedies for advertisers is an order by the FTC for consumer redress. In essence, as a mandatory injunction (as opposed to a mere cease and desist order), consumer redress can range from an order directing replacement of products to the issuance of full refunds. Consumer redress can and does cost advertisers millions. For instance, in 1999, *American TelNet*, one of the largest providers of audio entertainment

services, agreed to provide over \$39 million in redress to consumers for failing to properly disclose price information in advertising its 900-number services.

ORGANIZATION OF THIS DISSERTATION

A discussion of the legislative background as well as a review of the relevant theoretical and empirical literature is provided in chapter two. Chapter two includes research questions and the formal hypotheses development. Chapter three details the research methodology employed in this study. Proposed data collection and analyses are also included in chapter three. Analyses of the data collected and the results of the hypotheses tested are presented in chapter four. Finally, chapter five discusses the relevant findings of this study, the limitations, conclusions, and implications and recommendations for future research.

¹ In the literature, the terms “deceptive” and “false” are often used interchangeably in regard to advertising claims. However, the term “false” by definition refers to claims that are explicitly or literally false. It is quite possible for an advertising claim to be explicitly true, and yet produce or imply false meanings (Preston 1994). Also, the term “misleading advertising” is sometimes used in the literature, and the term “misleading” is often quoted in the literature by researchers, as well as by the Federal Trade Commission, as being a critical component of the definition of deception in advertising. Since the legal criterion is deceptiveness, not falsity, for purposes of this discussion, the term “deceptive advertising” is used.

CHAPTER TWO: LEGISLATIVE BACKGROUND AND LITERATURE REVIEW

It is worth recognizing that the advertising man in some respects is as much a brain alterer as is the brain surgeon, but his tools and instruments are different.

- Advertising Age (1957)

Chapter two begins with a brief explanation of the legislative background regarding deceptive advertising by discussing Federal Trade Commission policy related to this topic. Both the significant role and the visibility of advertising in the US economy cause it to be a prime focus of government regulation (Abernethy and Franke 1998). In that the empirical analyses included in this study are based on the elements involved in recent decisions rendered by the FTC, a discussion of the legislative policy is paramount to an understanding of the legal parameters of deceptive advertising.

An analysis of the literature reveals that there are numerous aspects associated with the topic of deception in advertising. In order to organize the many sub-areas associated with this topic, chapter two provides a classification scheme that separates the relevant deceptive advertising literature into six categories (Exhibit 1, Tables A-F). The literature is then discussed according to its placement in this classification scheme. Lastly, chapter two discusses hypotheses development, and relationships between the hypotheses included in this study and the existing literature are detailed.

LEGISLATIVE BACKGROUND

Government regulation of advertising may be viewed in positive light since such oversight protects the free flow of truthful information in the marketplace and enhances the consumer's ability to make informed purchase decisions (Azcuena 1995). The Federal Trade Commission

is the only federal agency that possesses legal jurisdiction over consumer protection, as well as protection of competition, for sectors of the US economy. Even though the Federal Trade Commission (FTC) was created by Congress in 1914 as an antidote for antitrust litigation and dissatisfaction with the Sherman Anti-Trust Law; nonetheless, it was given authority under Section 5(a) of the *Federal Trade Commission Act* to prohibit “unfair methods of competition in commerce.” As a result, the FTC has sought to enforce honesty in competition (Alexander 1967; Cohen 1974). The *Wheeler-Lea Act of 1938* amended Section 5 and increased the FTC’s authority to include the elimination of “unfair or deceptive actions or practices in commerce” (Cohen 1974, p. 8). Hence, the critical statement of Section 5(a) of the *Federal Trade Commission Act* reads as follows:

“Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” (15 U.S.C. 45 (a)(1))

The task of the FTC is to protect the public interest by eliminating unfair trade practices before there is injury to the public, in whole or in part (Richards and Preston 1992). From its inception until 1972, the FTC mainly devoted its energy to the elimination of advertising claims/practices that were deemed to be deceptive. However, in 1972, the Supreme Court concluded that the consumer, the merchant, and the manufacturer should each be protected from “unfair” trade practices as well as deceptive trade practices (*FTC v. Sperry & Hutchinson Co* (1972); Cohen 1974). This decision reinforced the FTC’s authority; and resulted in the Commission’s ability to eliminate a trade/advertising practice based on its “unfairness” to consumers, without having to prove deception. According to the Supreme Court, unfairness to consumers, unlike deception, may stretch beyond questions of fact and include public values.

Originally, the Commission had the authority to eliminate a trade practice based on its “capacity or tendency” to deceive (*Sears, Roebuck & Co. v. FTC* 1919). In 1983, the capacity or tendency to deceive standard was changed to “likely” to deceive (*Cliffdale Associates, Inc.* 1984). The rewording under this decision requires that the FTC attain a higher standard of proof when determining deception. However, the Commission’s standards for eliminating deceptive advertisements do not require proof of intent on behalf of the advertiser (*FTC v. Balme* 1928). Cases where it can be proven that the advertiser possessed knowledge or intent of the falsity of the claim are categorized by the FTC as advertising fraud. Also, the Commission’s standards may apply to cases where consumer behavior in general, as opposed solely to consumer purchasing behavior, is likely to be affected by a deceptive advertising claim (*Bockenstette v. FTC* 1943).

An advertising claim may be regulated “where omitted information leads to deceptiveness” (*FTC v. Royal Milling Co.* 1932; Richards and Preston 1992, p. 47). Disclosure requirements refer to the proverbial “small print” often used by advertisers to offset deception in an advertisement via the inclusion of qualifying information. Where the deceptive statement is more noticeable than the disclosure, whether intentionally or unintentionally, then the advertisement may still be deemed to be deceptive by the FTC (Fueroghne 1989). For example, in *Double Eagle Lubricants Inc. v. FTC* (1965), the court found that disclosure information revealing that the product was re-refined from previously used oil was insufficient to overcome a ruling of deception. In this case, the disclosure statement revealing that the oil was re-refined was printed on the side of the can. The trade name of the product was placed on the front of the can, and cans were aligned on shelves such that the trade name faced the consumer. The court ruled that the labeling practice was deceptive. While Double Eagle had made a disclosure, the

disclosure was not sufficient to avoid a “misinformed purchase” (Fueroghne 1989). Moreover, this ruling was determined even though Double Eagle provided witnesses who testified that the labeling practice did not deceive them. The court stated that: “Evidence of deception is not necessary where the exhibits themselves sufficiently demonstrate their capacity to deceive” (Fueroghne 1989, p.48).

REGULATORY DEFINITION: THE LEGAL PARAMETERS OF DECEPTION

Paramount to understanding the literature relating to deception in advertising is an understanding of the legal parameters of deceptive advertising. While the issue of deception in advertising has been formalized since the creation of the Federal Trade Commission in 1914, this issue does not truly gain attention in the literature until the late 1960s and early 1970s. It is during this same time period that the era of consumerism began, and the FTC became more aggressive towards eliminating deceptive, as well as, unfair advertising practices (Wilkes and Wilcox 1974).

The FTC’s rulings make it clear that certain elements exist in all deceptive advertising decisions. The FTC may eliminate an advertising practice according to its *likelihood to mislead* (*Cliffdale Associates, Inc.* 1984). More specifically, pursuant to the FTC (1983), the following three elements undergird all deceptive advertising litigation:

- (1) there is a representation, omission, or practice that is *likely to mislead* the consumer;
- (2) the consumer *acts reasonably* under the circumstances; and
- (3) the representation, omission, or practice is a “*material*” one.

Likely to Mislead

As provided in the first legal parameter, the key issue is whether the advertising act or practice is *likely to mislead*, not whether it causes actual deception. In litigation involving claims that are literally false (express claims), the representation itself will normally be utilized by the Commission to establish meaning (*Coca-Cola v. Tropicana Products, Inc.* 1982). That is, if it can be shown that an express claim is literally false, then in most cases consumer reaction to the claim will not be an issue with the Commission (*Abbott Laboratories v. Mead Johnson & Co.* 1992). In litigation involving claims which convey false impressions or are misleading in context (implicit claims), the representation itself as well as any extrinsic evidence that reasonable consumers reach the implied claims will be “carefully” considered by the Commission (*Johnson & Johnson Merck Consumer Pharmaceutical Co. v. SmithKline Beecham Corp.* 1992). Examples of extrinsic evidence include: consumer surveys, expert witness testimony, copy tests, and direct consumer testimony. Also, in addition to representations, the omission of material information that results in a misleading claim or practice constitutes deception.

Reasonable Consumer

The second legal parameter of deception, according to the FTC, involves a representation, omission or practice that is likely to mislead the *reasonable consumer* under the circumstances (Federal Trade Commission 1983). In applying the reasonable consumer standard, the Commission has evaluated claims based on such criteria as the perspective of the “average listener” (*Warner-Lambert* 1978) and the “net impression” made upon the “general populace” (*Grolier* 1978). Omission cases are no different in that the Commission analyzes the failure to

disclose material information from the perspective of the “typical buyer” (*Simeon Management* 1976). When an advertising claim is aimed at a specific group, the Commission analyzes the effect of the claim on a reasonable member of that group. According to the Supreme Court, the “legal sophistication” of the audience to which an advertisement is directed will be considered in determining deception (*Bates v. Arizona* 1977). That is, a claim will be evaluated based on the perspective of an ordinary member of the group to which the advertisement is directed. In general, the Commission will not pursue claims that involve obviously exaggerated information since the reasonable consumer would not be deceived or take the claim seriously (*Pfizer, Inc.* (1972)). Also, certain subjective claims involving taste, feel, and/or smell are not generally pursued by the Commission since these types of claims are unlikely to mislead consumers acting reasonably.

Materiality

The third legal parameter of deception is materiality. In order for deception to exist, a representation, omission or practice must be material. In this context, materiality refers to the advertisement’s ability to affect a consumer’s “choice of or conduct regarding a product.” (*Volkswagen of America* (1982); Federal Trade Commission 1983). As a result, the concept of materiality is not limited to a claim’s ability to affect a consumer’s purchasing behavior alone, but includes the claim’s ability to affect a consumer’s general behavior regarding the product or service. Consequently, materiality refers to the inclusion of information that is important to consumers in making purchasing decisions. Representations or omissions involving health and/or safety may be considered presumptively material by the Commission.

The Unfairness Doctrine

The element of materiality relates to the FTC's criteria of unfairness. The Supreme Court has held that the consumer, the merchant, and the manufacturer should be protected from "unfair" as well as deceptive trade practices, and that the definition of unfairness should be determined judicially (*FTC v. Sperry & Hutchinson Co* (1972)). This decision strengthened the FTC's ability to eliminate an advertising practice based on its "unfairness" to consumers without having to prove deception. The FTC has identified, and the Supreme Court has upheld, three standards to be considered in prohibiting consumer unfairness:

- (1) whether the advertising practice injures consumers;
- (2) whether the advertising practice violates established public policy; and
- (3) whether the advertising practice is unethical or unscrupulous.

Consumer injury is the first and primary focus of the FTC in prohibiting consumer unfairness. Judicial decisions have refined the definition and criteria of the unfairness doctrine, such that there are three tests that a consumer injury must meet in order for an advertisement to be deemed unfair by the FTC (1980):

- (1) the injury must be substantial;
- (2) the injury must not be outweighed by any benefits to consumers or competition; and
- (3) the injury must be one that could not have been reasonably avoided by the consumer.

The first criterion of consumer injury requires that the injury be substantial. Substantial injury refers to monetary harm as well as to unwarranted health and safety risks. On the other hand, subjective types of harm such as emotional impact will not generally cause an advertising practice to be deemed unfair. Secondly, in the determination of consumer injury, the Commission will consider whether the advertising practice is injurious in its net effects. Finally,

the injury must be one that the consumer could not have reasonably avoided. That is, advertising practices are required to provide consumers with the critical information to promote free and informed consumer transactions.

The second standard identified by the FTC in prohibiting consumer unfairness relates to the violation of established public policy. In this sense, public policy refers to such external standards as statutes, common laws, and /or industry practice. For example, to substantiate that an advertising practice has hindered the free and informed choice of consumers, the Commission has referred to certain First Amendment decisions promoting consumers' rights to receive information. The "public policy" factor is most often utilized by the Commission in cases where objective evidence of consumer injury is difficult to ascertain. Lastly, the third standard identified by the FTC in prohibiting consumer unfairness relates to the unethical, immoral, oppressive, or unscrupulous nature of an advertising practice. In that advertising practices that are unethical or unscrupulous in nature will usually violate the Commission's standards regarding consumer injury and / or public policy, the FTC has never relied on this third standard *alone* as a basis for finding unfairness.

REVIEW OF THE LITERATURE

The topic of deceptive advertising has been formalized since the creation of the Federal Trade Commission in 1914. However, the issues associated with deception in advertising do not receive attention in the literature until the late 1960s. It is during this time period of the late 1960s and early 1970s, that the era of consumerism began, and also, the FTC became more aggressive in its regulation of deceptive advertising practices (Wilkes and Wilcox 1974). In order to enhance the analysis of the many aspects associated with deceptive advertising; this

study provides a classification scheme which separates the relevant literature into six general categories (Exhibit 1, Tables A-F). The titles assigned to these six categories of literature are: (A) Federal Trade Commission case studies, (B) Federal Trade Commission policy regarding deception in advertising, (C) assessing deception in advertising, (D) consumer behavior and deceptive advertising, (E) consequences of deceptive advertising and (F) corrective advertising. These six literature categories are not intended to be presented as mutually exclusive. The classification scheme does, however, provide a degree of structure to the numerous issues associated with the topic of deceptive advertising and enhances the theory and hypotheses development included in this study. The relevant literature within each category is further detailed according to its placement in the classification scheme as follows.

Federal Trade Commission Case Studies

In the literature to date, there are twelve significant FTC case studies regarding deception in advertising (Exhibit 1, Table A). Each of the twelve FTC case studies addresses specific concepts, such as substantiation, the use of extrinsic evidence, or materiality. In that the hypotheses included in this study are based on the theoretical tenets of past case studies, the relevant concepts in each of these twelve case studies is discussed in chronological order below.

Cohen (1974) provides an explanation of the “concept of fairness” in relation to advertising legislation promulgated by the FTC. Cohen’s article is formulated in response to the 1972 Supreme Court case (*FTC v. Sperry & Hutchinson Co.*, 1972) in which the Supreme Court concluded that the FTC should protect the consumer, the merchant, and the manufacturer from *unfair* as well as deceptive trade practices. Cohen identifies five criteria for determining unfairness in advertising practices as determined by an analysis of actual cases from 1970

through 1974: (1) *the unsubstantiated claim*, (2) *the special audience claim*, (3) *the puffing claim*, (4) *the subjective claim*, and (5) *the unconscionable claim* (p. 13). The “unsubstantiated claim” refers to an advertising claim for which the advertiser has no reasonable basis in making. Fairness to consumers may require that the reasonable basis include valid scientific or medical substantiation. The “special audience” claim refers to advertising claims that target or motivate specific audiences such as children or the elderly. The “puffing claim” refers to advertising claims that cannot be objectively disproved but equate to promises that are not likely to be fulfilled (puffing). If an exaggerated claim can be objectively disproved, then it is considered to be deceptive. The “subjective claim” is one that may be based on consumers’ perceptions and is thereby difficult to evaluate objectively. Finally, the “unconscionable claim” is one that contains elements of an unfair surprise. Cohen’s (1974) discussion of the unfairness doctrine and the criteria which emerged based on an analysis of FTC court cases provided practical implications for marketers at that time.

Also utilizing case-oriented methodology, Wilkes and Wilcox (1974) provide marketing managers with practical suggestions in response to recent FTC actions. The authors detail the FTC’s intervention in several cases in order to outline the development of the FTC’s legal policies. The primary conclusions offered by this study include: (1) the finding that the FTC increasingly requires scientific substantiation and (2) the development of six responding guidelines for the advertiser: (a) *assume a truly consumer-oriented perspective*, (b) *adopt a reasonable man perspective*, (c) *do not imply nonexistent uniqueness*, (d) *establish an internal, interdisciplinary advertising screening committee*, (e) *establish better testing procedures*, and (f) *enhance effective self-regulation* (pp. 60-61).

In the most comprehensive case-oriented study to date, Brandt and Preston (1977) analyze 3,337 case decisions rendered from 1914 through 1973. The authors include a discussion of the types of evidence the FTC relies upon in deciding that an advertisement or sales representation possesses the *tendency* to deceive. A major objective of this study is to aid marketers in implementing strategy that increases their firm's chances of success in litigation against the FTC. This article examines whether the FTC relies on its own/internal definition of deception through accumulated expertise or whether the FTC relies on outside/external sources, such as consumer surveys and/or expert witness testimony, to determine the presence of deception in advertising. The results of this study indicate a trend towards increased FTC use of external evidence in determining deception in advertising; and also a trend towards increased FTC challenges of the meaning of a sales claim to the consumer over and above what the sales claim literally states (implied meanings). The authors suggest that marketers present strong external evidence, including survey evidence regarding consumer perceptions and expert behavioral witness testimony, in order to successfully defend against FTC litigation.

Preston (1977) examined the FTC's treatment of deceptive advertising claims made by implication (i.e., not stated literally). Preston analyzes FTC court decisions from 1970 through 1976, and identifies ten types of implications that have been labeled as deceptive by the FTC. Through his analyses of FTC decisions, Preston develops a typology of ten types of implied claims to aid advertisers in preventing deceptive implications in their advertising claims. Much of the research in the 1980s and 1990s regarding implied representations and deception in advertising is based on Preston's (1977) typology of implied advertising claims and his research results regarding the misleading implications of advertising claims (Grunert and Dedler 1985).

A second article by Cohen (1980) examines specific issues surrounding advertising claim substantiation based on the results of a review of FTC decisions rendered from 1970 through 1979. Cohen provides a history of the FTC's substantiation program and recommends that firms adopt an approach that manages the regulatory environment of the firm. Cohen's recommendations include the dissemination of information regarding substantiation throughout the organization and the use of consumer research to determine the meaning and substantiation of implied claims. Also, Cohen offers questions to assist in a comprehensive evaluation of the FTC's substantiation program from a public policy standpoint.

Rotfeld and Preston (1981) discuss issues associated with puffery based on the results of their analyses of FTC decisions rendered from 1971 through 1979. This article examines the issue of puffery to reveal the inconsistencies in determining deception that can occur as a result of the FTC's use of empirical data versus non-empirical data. The findings indicate increased utilization of behavioral empirical evidence by the FTC in decisions involving puffery. The findings confirm that the use of empirical data does not necessarily provide advantages to regulators over advertisers. Advertisers should not fail to see the potential opportunities provided by the use of such empirical evidence. This study finds that, in cases involving puffery, advertisers who base their defense on empirical evidence rather than non-empirical evidence, have the best opportunity to successfully defend against FTC litigation.

A decade later, Owen and Plyler (1991) also examine the role of empirical evidence in advertising regulation. This study uses an analysis of FTC case precedents to discuss the proper use of extrinsic evidence in the interpretation of implied advertising claims. Owen and Plyler (1991) provide the historical evolution of the FTC's interpretation of advertising claims and include discussions on the FTC's reliance upon its own accumulated expertise versus the FTC's

reliance on extrinsic evidence. The authors admit that the ideas examined in their study are in their theoretical infancy. Owen and Plyler's (1991) study reveals that the most difficult problem in determining deception in advertising is the interpretation of the advertising claim and/or the interpretation of the advertising claim's implications. The authors criticize the FTC for its lack of formal standards for ad interpretation, and they conclude that the standards used by the FTC in their interpretation of advertising claims are paramount to the fair and equitable regulation of deception in advertising.

In one of the more comprehensive case studies, Preston (1992) uses content analysis to report on erroneous expert evidence introduced in FTC deceptive advertising decisions rendered from 1970 through 1991. In this study, erroneous evidence refers to substantiating information introduced in deceptive advertising decisions which fails to support the factual finding that it was intended to uphold. Preston (1992) finds that, based on the knowledge of researchers and regulators, this erroneous evidence is avoidable, since the invalidity of such evidence and its rejection in decisions rendered, are predictable in advance. This study discusses the implications of such erroneous evidence, and suggestions for the elimination of avoidable erroneous evidence in deceptive advertising cases are offered.

In 1995, three articles regarding the *Kraft, Inc.* (1991) case appear in the *Journal of Public Policy and Marketing*. Jacoby and Szybillo (1995) discuss the use of consumer research in the *FTC v. Kraft, Inc.* (1991) case. This study includes a review of the principal consumer surveys used as evidence in the case, and especially, a review of the flaws of these surveys is detailed. This study concludes that the survey approach used by the FTC in this case is flawed in definition, wording, experimental design, and analyses. Implications of such drastic flaws in design, as well as inconsistencies in the FTC's decision making, are offered.

Stewart (1995) responds to the review offered in Jacoby and Szybillo's (1995) article, and addresses the specific criticisms regarding survey evidence detailed there. Stewart (1995) examines the materiality survey included in the *Kraft, Inc.* (1991) case, and concludes that the survey failed to truly address the issue of materiality of the claims. Stewart (1995) also discusses issues related to survey research and its use in litigation cases, and details the necessity of formalized standards regarding the use of extrinsic evidence in the interpretation of implied advertising claims.

Sudman (1995) provides comments on both the Jacoby and Szybillo (1995) and the Stewart (1995) articles regarding the *Kraft, Inc.* (1991) case. Sudman (1995) concludes that, due to the complexities associated with questionnaire design, public confidence in consumer survey research should not be diminished by the disagreement of experts. Sudman (1995) discusses the more general issues, of materiality, questionnaire wording, context effects, and experimental design; and the related complexities as revealed in the previous articles regarding the *Kraft, Inc.* (1991) case.

Andrews and Maronick (1995) discuss issues associated with advertising research and the use of extrinsic evidence based on an analysis of the *FTC v. Stouffer Foods* (1994) case. Based on the *Stouffer Foods* (1994) case, the authors review six copy testing and advertising claim interpretation issues: (a) *relative and absolute claims*, (b) *interpretation of multiple ad claims*, (c) *control ad issues regarding application to open-ended questions*, (d) *control ad issues concerning pre-existing beliefs*, (e) *control question issues*, and (f) *the processing of disclosure information*. Trade-offs in copy test development related to the six issues and an overview of generally accepted principles for copy test evidence for FTC decision making are offered. The results of this study indicate that the adherence to generally accepted principles for copy test

evidence increases the relative importance of the extrinsic data in the decision making processes of the FTC. The authors conclude that, in the operationalization of the principles for copy test evidence, trade-offs related to the six issues identified should be given careful attention by advertisers in order to strengthen the weight of their extrinsic data in FTC litigation.

Federal Trade Commission Policy Regarding Deception in Advertising

There are currently seven relevant articles based on FTC policy regarding deception in advertising in the literature (Exhibit 1, Table B). Each of these seven studies provides detailed discussions on FTC policy regarding deception in advertising. In that the theoretical tenets, as well as the hypotheses development included in this study are based on FTC policy regarding deceptive advertising, the relevant concepts in each of these seven articles are discussed in chronological order below.

Millstein (1964) provides a comprehensive discussion of the FTC's proper role in advertising, as well as a discussion of the standard employed by the FTC in determining the meaning of an advertisement, based upon illustrative cases to date. Millstein (1964) provides a historical detail of the FTC's role in advertising based on a legislative review. The FTC's role in advertising does not include the regulation of quantity, taste, social values and/or frequency of advertisements. Also, the author uses illustrative cases to determine the standard employed by the FTC in ascertaining the meaning of promises made in an advertisement. Discussions of such advertising elements as literal truths, statements containing more than one meaning, and subjective claims are provided. Millstein (1964) concludes with discussions surrounding the relationship between the determination of the meaning of an advertisement and the evidence

presented. Millstein's (1964) suggests that the FTC trade its prosecution responsibilities for responsibilities of adviser and coordinator to states' attorney generals and self-regulatory groups.

Ford and Calfee (1986) provide detailed discussions of the FTC's 1983 policy statement on the meaning of deception and how this new statement relates to previous FTC policy. Using illustrative cases, the authors provide detailed definitions and comprehensive applications of the specific elements of deception: likely to mislead, reasonable consumer and materiality, as included in the FTC's 1983 policy statement on deception. Also, the authors discuss the increased role of empirical evidence and consumer research as encouraged by the FTC's 1983 policy statement, and the authors provide implications for future FTC policy and litigation regarding deceptive advertising.

Hyman (1990) discusses the need for a single, comprehensive, unambiguous, workable definition of deception in advertising to be used by researchers, lawyers and regulators. Hyman (1990) proposes new definitions and guidelines for determining deception in an advertisement, and he includes a review of the literature regarding definitions of deception in advertising. Relying on the work of Ford and Calfee (1986), Hyman (1990) concludes that there is currently no statutory definition of deception in advertising. The author builds upon existing works in order to develop a proposed definition of deception in advertising that is comprehensive and workable for researchers, lawyers, and regulators.

Richards and Preston (1992) discuss the concept of materiality as it relates to deception in advertising. The majority of past research focuses on deception, as opposed to, materiality. The authors provide behavioral researchers with an understanding of the concept of materiality so that they may be better able to develop measurement methods of materiality which will satisfy the FTC's requirements in court. The authors argue that the FTC should be required to prove

materiality, as it is currently required to prove deceptiveness. Presently, the Commission's presumptions of materiality cause the burden of proof of materiality to fall on the advertiser, and the FTC has not provided any methodological guidance to aid advertisers in measuring materiality. Richards and Preston (1992) argue for a more equitable stance on behalf of the FTC, and they recommend additional research by academicians regarding the issues associated with measuring materiality.

Preston (1995) discusses the implications of the FTC's 1994 enforcement policy statement on advertising including discussions on the unfairness doctrine and the development of FTC policy regarding unfairness. Preston (1995) details the decline of the FTC's use of unfairness in deceptive advertising decisions, and then describes an amendment to the FTC's 1994 enforcement policy which stipulates a statutory definition of deception including rules of use. The author suggests that such an amendment could cause unfairness to once again play a major role in deceptive advertising litigation. Preston (1995) concludes that an increase in the use of unfairness could increase the scope of the FTC's regulation of deceptive advertising.

Simonson (1995) also discusses the concept of unfairness, as it relates to deceptive advertising litigation, in response to the amendments to the FTC's 1994 enforcement policy statement on advertising. The evolution of the law regarding the unfairness doctrine and deceptive advertising is reviewed, and implications for public policy makers as well as for advertisers are offered.

An analysis by Abernethy and Franke (1998) of 66,000 U.S. advertisements indicates that, during periods of strict FTC regulation, advertisements contain fewer objective type information claims. The authors discuss FTC regulation of deceptive advertising with the intent of determining the effects of such regulation on the content and policy of advertisements. The

results of this analysis indicate that, in response to strict regulatory actions by the FTC, the amount of advertising information available to consumers is reduced.

Assessing Deception in Advertising

With regard to the assessment of deception in advertising, three paradigms emerge from the literature. The first paradigm is based upon the regulatory definition of deception in advertising as proposed by the FTC. Hence the assessment, or measurement, of deception in this context is determined by the FTC's own reasoned analysis and expertise (Brandt and Preston 1977; Grunert and Dedler 1985). This paradigm is criticized both for its lack of objectivity and for its lack of scientific methodology (Grunert and Dedler 1985). The second paradigm regarding the assessment of deception in advertising is based upon the use of extrinsic evidence, such as consumer surveys, in FTC litigation. Hence, the assessment of deception in this context is determined by consumers who, for example, rate advertising claims according to the claim's perceived potential to be deceptive. This paradigm is criticized based on the premise that a consumer who realizes that an advertising claim has the potential to be deceptive has not been deceived. The third paradigm regarding the assessment of deception in advertising is based on the behavioral aspects of deception in advertising. This third paradigm includes consumer perception, as well as consumer interactive cognitive structure, in measuring deception in advertising (Brandt and Preston 1977; Grunert and Dedler 1985; Richards 1990).

There are six relevant articles regarding the assessment of deception in advertising (Exhibit 1, Table C). These articles extend beyond the discussion of FTC policy and relate to the detection or actual measurement of deception in advertising. The studies included in this category use theoretical and empirical analyses in order to detail the assessment of deception in advertising.

In that the measurement of deception in advertising is crucial to the theoretical tenets of this study, the relevant concepts in each of these six articles are discussed in chronological order.

Gelhorn (1969) examines problems associated with proving deception in FTC litigation and discusses the FTC's capability to protect consumer interest from deception in advertising. The author claims that procedural problems within the Commission hinder the FTC's ability to protect consumers, and he stresses the need for less time-consuming procedures in the litigation of deceptive advertising cases. Gelhorn (1969) proposes that the use of consumer survey research in FTC litigation should be expanded and that formal standards for the interpretation of such survey data be developed. Gelhorn (1969) specifically discusses: (1) the basic issues in false advertising cases, (2) the level of consumer intelligence and the truth of the claim, (3) consumer understanding, (4) the hearing examiner's discretion, (5) administration of the survey, and (6) the interpretation of survey findings.

Gardner (1975) provides a detailed definition of deception in advertising and argues that the interaction or effect of the advertisement on the consumer's cognitive structure should be included in the definition of deception in advertising. Gardner (1975) presents a conceptual approach to defining, categorizing, and detecting deception in advertising. Gardner (1975) offers the "normative belief technique" in order to detect deception in advertising through the comparison of beliefs with beliefs. The technique is based on the assumption that some *optimal* set of product attributes exists for each product class. Under this approach, the beliefs of two different samples of consumers must be compared. The beliefs which describe the attributes consumers associate with a particular product class are compared to the beliefs consumers relate to a given brand based on perceptions received from advertising claims. If these beliefs which are based on perceptions exceed the "normative beliefs," then the advertising claim can be

considered to possess the potential to deceive. Gardner (1975) notes several limitations to his approach such as the halo effect problem, the carryover brand effect, and consumer expectations. Gardner (1975) makes a strong argument for future research into the behavioral issues of deceptive advertising.

Armstrong and Russ (1975) outline a procedure to assist in reducing the confusion and controversy surrounding the issue of deception in advertising. The authors develop a standard procedure or model that could be adopted by regulators, advertisers, and consumerists. The authors stress that deception in advertising should be based upon consumer perceptions of an advertising claim, as opposed to, subjective assessments by the FTC. The authors recommend that future research focus on the development of more objective procedures for detecting deception. Lastly, Armstrong and Russ (1975) propose that the FTC develop objectively-stated and consistently-enforced standards regarding deception in advertising.

Harris (1977) examines comprehension and memory in regard to asserted and implied claims in advertising. The author develops a methodology for testing consumers' interpretations of advertising claims. Utilizing a sample of 180 undergraduate psychology students, the author tests his methodology in order to gain a better understanding of implied claims in advertising. The results indicate that consumers, when listening to commercial advertising claims, often deal with implied advertising claims as though the claims are assertions of fact. In other words, consumer discrimination between asserted and implied claims is very limited. Harris (1977) provides suggestions for improving consumer information processing such as distinguishing between implied and asserted advertising claims and recommends that future research include the identification of the types of implications that are psychologically equivalent to assertions.

Grunert and Dedler (1985) offer an alternative to past studies by arguing that social science methods have not been sufficiently adapted to address specific problems associated with the detection of deception in advertising. Further, the authors suggest a “misleading components approach” to detect certain types of misleading claims in advertisements and to avoid some problems inherent in both case-oriented methodology and in the application of external standards. In order for a social science approach to deceptive advertising to be effective, the approach must concentrate on the causes of deception, rather than on individual case determinations (case-oriented methodology). In other words, the critical element in detecting deception in advertising is to identify “which components of an advertising message are most likely to mislead consumers” - hence, the “misleading components approach” (p. 158). The researchers compare the cognitive effects of a potentially misleading ad and a qualified advertising claim in order to detect misleading components. The authors chose seven messages deemed to possess potentially misleading components. The first four refer to message types that are listed by either Harris (1977) or Preston (1977) and the latter three are proposed by these authors for the first time. These seven message types are: (a) *incomplete reporting of test results*, (b) *missing qualification concerning product use*, (c) *missing qualification concerning product version*, (d) *expansion of attribute meaning*, (e) *insignificant indicator*, (f) *insignificant comparison*, (g) *metaphorical use of attributes*. From the results of their study, these authors conclude that some types of advertising claims do possess cognitive effects which may be labeled as misleading. Thereby, a content analysis of advertising claims should be sufficient to detect a claims’ capacity to deceive. However, the limitations of this study include the fact that only seven message types are examined and only one example of each message type is presented

Davis (1994) assesses the relative influence of four factors on the decision-making process of advertising professionals in regard to advertising content and policy. The four factors analyzed are: (a) ethics, (b) legal considerations, (c) business considerations, and (d) anticipated approval of management/peers. The findings indicate that the legal considerations factor is the most influential of the four factors, while the ethics factor is the least influential of the four factors for most advertising professionals. Also, the author's findings suggest that the characteristics of age and length of professional experience are related to the relative influence of the four factors on decision-making regarding advertising policy and content. Based on these findings, Davis (1994) identifies elements for increasing ethical considerations in professional decision-making in order to reduce the incidence of deception in advertising. Lastly, Davis (1994) recommends that the FTC issue detailed, formal standards for identifying deception in advertising in order to reduce ambiguity and the incidence of deception in advertising.

Consumer Behavior and Deceptive Advertising

To date, five relevant articles examine consumer behavior and deceptive advertising (Exhibit 1, Table D). One of the three paradigms in the literature related to the assessment of deception in advertising is based on the behavioral aspects of deceptive advertising. Each of the five articles in this category relies on such behavioral aspects as the interaction of consumer perception and cognitive structure in measuring deception in advertising.

Cohen (1969) recommends that the FTC consider the behavioral characteristics of the consumer (i.e. consumer perception), as opposed to economic standards, in the application of regulatory statutes since "behavioral man" is less perfect than "economic man." According to Cohen (1969), while the FTC devotes attention to the concept of full disclosure, little mention is

given to the issue of whether the “selective consumer” is actually aware of or notices the disclosures. Furthermore, research reveals that an individual’s adherence to recommended behavior is inversely related to intense fear appeal (i.e. provided by disclosures). That is, since consumers react to information not solely based on their intelligence but also based on their attitudes, habits, traits, and feelings; they often reject or react in the opposite direction of recommendations made by disclosure. Thereby, Cohen (1969) suggests that the FTC reinforce disclosure information through authoritative sources (i.e. FTC monthly reports), since valid communication from non-authoritative sources is apt to be disbelieved by consumers.

Olson and Dover (1978) conduct one of the first empirical studies related to the presence of deception in advertising and its impact on consumer behavior. The authors blame the literature’s failure to adequately define deception in advertising for impeding past empirical analysis. Olson and Dover (1978) present an operationalized behavioral definition of deceptive advertising and empirically demonstrate their definition in order to measure the effects of the deception on such cognitive elements as brand beliefs, attitude, and purchase intention. An experimental examination utilizing three ad-like communications for an unfamiliar brand, each containing the same deceptive claim concerning a product attribute, is conducted. The results of their study are generalizable to the study of deception in actual ads. In their study, the authors measure several cognitive aspects including: beliefs about the product, the evaluative measure of each belief level, attitude toward the product, and behavioral intentions to purchase the product. The results reveal that deception in advertising can be identified utilizing Olson and Dover’s (1978) “theoretically-based, information-processing” definition, and also, that “belief strength” (product beliefs about the claim) seems to be the “most sensitive measure” of the impact of the deceptive claim. The authors find that, while beliefs between the control group and the

experimental group varied widely prior to tasting the product (coffee), the differences diminished greatly after product trial. Thereby, suggesting that deceptive advertising does effect consumer purchase inclinations. While certain aspects of their study limit its generalizability (i.e. women-only sample, one product tested, unfamiliar brand), theirs is the first study to extend beyond conceptualization and case-oriented methodologies in an attempt to empirically determine the impact of deceptive advertising claims on consumer behavior.

Gaeth and Heath (1987) evaluate the impact of deception in advertising on two groups of adult consumers. The authors examine the cognitive processes of older and younger adults and the interaction of these cognitive processes with the content of advertisements to assess certain aspects of deception in advertising. Three experiments are employed to evaluate: (a) the susceptibility to deception in advertising; (b) the ability of consumers to discriminate between non-deceptive and deceptive advertising claims; and (c) the responsiveness of individuals to training with regards to this topic. The results indicate that in cases where the advertisement is available during assessment, younger adults are less susceptible to deception. The authors find no significant differences in susceptibility between younger and older adults in cases from memory (e.g., where the advertisement is no longer available during assessment). The results indicate that training reduces susceptibility in both younger and older adults. The authors discuss their findings in terms detailing the differences in the cognitive processes (behavioral aspects) of younger and older adults.

Preston and Richards (1993) examine the role of consumer belief in FTC deceptive advertising litigation. The authors discuss the implications associated with the FTC's failure to use a consumer belief test in bringing litigation against advertisers. Preston and Richards (1993) explain how findings of consumer belief might be accomplished. The authors contend that, in

many deceptive advertising cases consumers do not actually believe the deceptive claim, and hence, neither consumers nor competitors are harmed by such claims. In order to prevent questionable FTC rulings, Preston and Richards (1993) conclude that the FTC should include consumer belief as one of the elements of deception in its regulation of deceptive advertising. Therefore, advertising claims that are actually harmful to consumers and competitors, rather than deceptive, will be prohibited.

Johar (1995) analyzes the interaction of consumer involvement, deception, and implied advertising claims to determine deception in advertising. The author identifies potential moderating factors via a detailed analysis of the connection between the processing demands of an advertising claim for non-deception and consumer processing strategy. Johar (1995) finds that the determination of deception is dependent upon the processing demands or the level of consumer involvement of the specific advertising claim.

Consequences of Deceptive Advertising

Three relevant articles detail the consequences of deceptive advertising (Exhibit 1, Table E). These three articles discuss specific consequences of deceptive advertising, such as the legal / FTC-related ramifications and the economic consequences to advertisers. In that the concepts included in these articles contribute to the theoretical development of this study, these articles are presented in chronological order.

Dillon (1973) details the reasons why deceptive advertisements are not economically advantageous to national advertisers, and he discusses the importance of determining deception through consumer analyses. The author reiterates the premise that, for virtually all national advertisers, the cost of advertising is prohibitive for purposes of a one-time sale. That is, the

costs of advertising for national advertisers must be amortizable over initial as well as repeat purchases, and therefore, deceptive advertising is only economically beneficial for the “hit and run” business. Dillon (1973) suggests the use of well-designed consumer research in order to determine the most important aspects of deceptive advertising from the consumer viewpoint, as opposed to, the theorization of academics, regulators and consumerists. The author concludes that such a basis would allow the FTC to focus its limited resources on the areas of deceptive advertising which are most troublesome to the consumer.

In their conceptual analysis, Shimp and Preston (1981) recommend that advertisers utilize “evaluative” advertising techniques since: (1) such advertising techniques may aid in convincing consumers that a brand is unique or superior to its competition, and (2) due to the abstract nature of such claims, the FTC is less likely to challenge evaluative advertising claims. Evaluative advertising techniques refer to advertising claims that describe the intangible product attributes or benefits. While factual claims sometimes lack a certain ability to sell, evaluative claims, on the other hand, possess a certain inherent ability to persuade (Shimp and Preston 1981). Basically, factual claims lack the ability to sell for two reasons: first, true and/or non-deceptive factual claims often fail to differentiate the advertiser’s brand from competition especially in a saturated market; and secondly, factual claims which differentiate the advertiser’s brand are often construed as deceptive and subject to regulatory (FTC) review (Shimp & Preston 1981). The authors recommend an effective, but not deceptive model of evaluative advertising, and for reasons, such as persuasive ability and safe harbor from regulation, they contend that evaluative advertising techniques represent a relatively “risk-free” advertising strategy.

Attas (1999) discusses the moral aspects of the legal definition of deception in advertising. The author focuses on the consequences deceptive advertising has on society as a whole in order

to explain the moral fault involved in deceptive advertising. Attas (1999) places responsibility on the consumer, as opposed to the advertiser, in determining the difference between misleading claims and miscomprehension in advertising. The author examines, and then rejects, several potential moral reasons for condemning deceptive advertising, including: harm to consumers, harm to competitors, and loss of consumer autonomy. The consequences of deceptive advertising on society as a whole should be the basis for determining the difference between misleading claims and consumer miscomprehension in deceptive advertising (Attas 1999).

Corrective Advertising

In the literature, only two relevant articles examine corrective advertising (Exhibit 1, Table F). Corrective advertising refers to the qualifying statements made in an advertisement, required by the FTC, which discloses that the advertiser has been found guilty of deceptive advertising in previous ads. The FTC implemented the strategy of requiring corrective advertising in 1970, as a result of a 1969 proposal from a group of law students. Both articles in this category study the effectiveness of corrective advertising.

Hunt (1973) discusses the effects of the FTC's corrective advertising remedy by analyzing the Chevron (Standard Oil Company of California) case. The author verifies the use of inoculation theory finding that corrective advertising reduces positive attitudes toward the advertiser. Inoculation theory in advertising involves the concept that resistance to persuasion resembles resistance to disease. That is, consumers presented with weakened counterarguments will have greater resistance to later messages than those consumers exposed to supportive information.

Lastly, Dyer and Kuehl (1974) analyze the effectiveness of corrective advertising by examining message source and strength effects of corrective advertisements. The authors found

that certain types of corrective advertising messages may harm the image of the advertiser. The authors conclude that the behavioral and cognitive aspects of consumer attitude are affected by certain types of corrective advertising messages resulting in a reduction in the perceived trustworthiness of the advertiser.

CONTRIBUTIONS TO THE LITERATURE

A review of the marketing literature reveals that research regarding deceptive advertising has been narrowly focused. That is, studies in this area have included only one or two dimensions involving deceptive advertising (Figure 2). For example, Wilkes and Wilcox (1974) and Cohen (1980) analyze FTC decisions to provide information on the issue of substantiation. Preston (1977) and Rotfeld and Preston (1981) research implied claims, but only those contained in FTC cases involving puffery. Cohen (1974), Preston (1995), and Simonson (1995) examine the FTC's unfairness doctrine while Richards and Preston (1992) and Stewart (1995) research the issue of materiality. Brandt and Preston (1977) and Owen and Plyler (1991) study evidence of deception, but neither of these studies include multiple dimensions. This dissertation, as opposed to previous studies, includes multiple dimensions derived through a comprehensive analysis of FTC decisions from 1990 through 1998. This study researches multiple dimensions regarding: (1) evidence of deception; (2) implied advertising claims; and (3) regulatory predictability. Furthermore, multiple issues are included in each of these three dimensions. The first dimension, for example, contains four subcategories classifying the types of evidence.

The only comprehensive case analysis (Brandt and Preston 1977) in the marketing literature analyzes FTC decisions from 1914 to 1973. That is, no comprehensive case research detailing recent FTC decisions exists in the marketing literature. Therefore, this research addresses the

apparent gap in the literature by analyzing multiple dimensions and by examining the more recent FTC decisions rendered from 1990 through 1998. Figure 2 provides a list of the contributions included in the relevant literature, and Exhibit 1 classifies the literature into six categories.

Figure 2

Contributions to the Literature

Year	Author(s)	Publication	Contribution
1964	Millstein	<i>Columbia Law Review</i>	FTC's role in advertising, definitions
1969	Gelhorn	<i>Kansas Law Review</i>	Consumer protection by the FTC
	Cohen	<i>Journal of Marketing</i>	FTC policy and consumer protection
1973	Dillon	<i>Journal of Advertising Research</i>	Deceptive ads are not advantageous
	Hunt	<i>Journal of Advertising Research</i>	Effects of Corrective advertising
1974	Cohen	<i>Journal of Marketing</i>	Unfairness doctrine; case study
	Wilkes & Wilcox	<i>Journal of Marketing</i>	Substantiation; case study
	Dyer & Kuehl	<i>Journal of Advertising</i>	Corrective advertising
1975	Gardner	<i>Journal of Marketing</i>	Measuring deception
	Armstrong & Russ	<i>MSU Business Topics</i>	Detecting Deception
1977	Brandt & Preston	<i>Journal of Marketing</i>	Use of evidence to determine deception; case study
	Preston	<i>Journal of Business Research</i>	Implied claims including puffery; case study
	Harris	<i>Journal of Applied Psychology</i>	Consumer interpretation of implied claims
1978	Olson & Dover	<i>Journal of Marketing Research</i>	Cognitive effects of deceptive advertising
1980	Cohen	<i>Journal of Marketing</i>	Substantiation; case study
1981	Rotfeld & Preston	<i>Journal of Advertising Research</i>	Puffery / behavioral evidence; case study
	Shimp & Preston	<i>Journal of Marketing</i>	Evaluative Advertising
1985	Grunert & Dedler	<i>Journal of Public Policy & Mktg.</i>	Detecting misleading advertising
1986	Ford & Calfee	<i>Journal of Marketing</i>	FTC Policy statements
1987	Gaeth & Heath	<i>Journal of Consumer Research</i>	Cognitive Processing and misleading advertising
1990	Hyman	<i>International Journal of Advertising</i>	FTC policies and definitions
1991	Owen & Plyler	<i>Journal of Public Policy & Mktg.</i>	Empirical evidence; case study
1992	Preston	<i>Journal of Public Policy & Mktg.</i>	Erroneous evidence; case study
	Richards & Preston	<i>Journal of Public Policy & Mktg.</i>	Materiality
1993	Preston & Richards	<i>American Business Law</i>	Consumer belief in FTC cases
1994	Davis	<i>Journal of Consumer Affairs</i>	Detecting deceptive advertising
1995	Jacoby & Szybillo	<i>Journal of Public Policy & Mktg.</i>	Consumer research in the FTC v. Kraft case
	Stewart	<i>Journal of Public Policy & Mktg.</i>	Deception, materiality, & survey research: Kraft case:
	Sudman	<i>Journal of Public Policy & Mktg.</i>	Comments on Articles: by Jacoby & Szybillo and by Stewart (Kraft case).
	Andrews & Maronick	<i>Journal of Public Policy & Mktg.</i>	Stouffer Foods case; Use of extrinsic evidence offered by the FTC.
	Preston	<i>Journal of Public Policy & Mktg.</i>	Unfairness doctrine
	Johar	<i>Journal of Marketing Research</i>	Consumer involvement, deception, and implied claims
	Simonson	<i>Journal of Public Policy & Mktg.</i>	Unfairness doctrine
1998	Abernethy & Franke	<i>Journal of Public Policy & Mktg.</i>	Regulation and objective advertising claims
1999	Attas	<i>Journal of Business Ethics</i>	Wrongness of deceptive advertising

HYPOTHETHESES DEVELOPMENT

The purpose of this study is to gain insight into the regulatory predictability of deception in advertising by conducting a comprehensive analysis of the legal parameters involved in FTC decisions, including the FTC's methodology for interpreting implied advertising claims. Therefore, a primary goal of this study is to gain a clearer understanding of how to identify and interpret deception in advertising. The goals of this study are to seek answers to the following research questions:

- (1) What types of evidence does the Commission use to prove deception in FTC decisions rendered;
- (2) What types of evidence do respondents (advertisers) offer as defense against FTC allegations;
- (3) What types of methodology does the FTC use most often in the interpretation of implied advertising claims;
- (4) Is there a relationship between the type of implied claim identified and the type of FTC order rendered;
- (5) Is there a relationship between the type of advertising media involved and the type of FTC order cited; and
- (6) Is there a relationship between the type of industry involved and the type of FTC order rendered?

There are four objectives of this study. The first objective, which is to identify the legal parameters of deception in advertising by examining the frequency and the types of evidence of deception, is addressed by the first two research questions. The second objective, which is to identify the FTC's methods of ad interpretation for implied advertising claims, is detailed by the

third research question. The third objective, which is to determine regulatory predictability regarding deception in advertising based on factors inherent in each case, is addressed by research questions four, five, and six. The fourth objective is to develop an empirically-supported model to assist marketing managers in: (1) identifying potentially deceptive advertising claims, (2) preventing deception in advertising claims, and (3) defending against FTC litigation. This objective is advanced by compiling and interpreting the results derived from testing the nineteen proposed hypotheses developed below.

Given that the FTC has failed to define and articulate detailed, objective guidelines regarding the Commission's methods of advertising claim interpretation, a comprehensive analysis of decisions rendered is the best method available to attain an improved understanding of the legal parameters and regulatory predictability of deception. The proposed hypotheses, which have been developed to answer the six research questions listed above, are divided into three categories: (1) evidence of deception; (2) implied advertising claims; and (3) regulatory predictability.

Evidence of Deception

The first objective of this study is to identify the legal parameters of deception in advertising by examining the frequency and the types of evidence used by both the Commission and the advertiser (respondent) in FTC decisions rendered. Evidence of deception in advertising, as presented in FTC litigation, may be divided into two general categories: internal evidence and external evidence (Brandt and Preston 1977; Preston 1977; Owen and Plyler 1991; Preston 1994). According to a classification scheme developed by Brandt and Preston (1977), each of

these general categories (internal evidence and external evidence) may be further divided into two subcategories (Figure 3).

Figure 3
Classification Scheme: Categories of Evidence of Deception

Category	Descriptive Category Title	Category Examples
Group I	Internal Commission Evidence	Explicit False Representation <i>Deception Per Se</i>
Group II	Precedential Evidence	Commission Precedents Court Precedents
Group III	External Non-Consumer Evidence	Dictionary Definitions – FTC Trade Literature - FTC Expert Testimony – FTC / Respondent Respondent Testimony Accepted Marketing Principles Other Documentary Evidence – FTC
Group IV	External Consumer Evidence	Consumer Testimony – Respondent Copy Tests – FTC / Respondent Focus Group – FTC / Respondent Other Consumer-oriented – FTC/Respondent

Brandt and Preston (1977)

Internal evidence refers to the Commission's own intuitive decision-making based solely on the legal tenets that govern deceptive advertising. The use of internal evidence in deceptive advertising litigation is most applicable in cases that involve explicit or objective advertising claims. In contrast, external evidence represents the behavioral aspects of deception in

advertising. In cases where a surface examination of an advertising claim is not sufficient to determine the existence of an implied claim, the Commission will refer to extrinsic or external evidence in order to determine if a reasonable consumer would reach the implied claim (FTC 1983; Owen and Plyler 1991). Hence, external evidence presented in deceptive advertising litigation is most applicable to cases that allege the existence of deception in implied representations. Examples of external evidence include: the testimony of expert witnesses, consumer surveys, generally accepted principles of marketing, market research studies, and other reliable evidence of consumer interpretation.

The legal boundaries of deception, as well as the scope of the Commission's authority, remain broad. The lack of standardized guidelines regarding the use of external evidence in FTC litigation is found in at least eight articles detailed earlier in this chapter (Gelhorn 1969; Brandt and Preston 1977; Preston 1977; Cohen 1980; Rotfeld and Preston 1981; Ford and Calfee 1986; Owen and Plyler 1991; Preston 1992). Relying on the classification scheme developed by Brandt and Preston (1977) (Figure 3), that details four categories of evidence of deception in advertising, the following hypotheses are proposed in order to determine the legal parameters associated with deceptive advertising and address this study's first two research questions.

H1(a): The Commission has relied on external evidence more frequently than internal evidence to support its allegations of deception in advertising in FTC litigation from 1990 to 1998.

H1(b): The Commission has relied on external consumer evidence more frequently than external non-consumer evidence to support its allegations of deception in advertising in FTC litigation from 1990 to 1998.

H2(a): Respondents have relied on external evidence more frequently than internal evidence to defend against allegations of deception in advertising in FTC litigation from 1990 to 1998.

H2(b): Respondents have relied on external consumer evidence more frequently than external non-consumer evidence to defend against allegations of deception in advertising in FTC litigation from 1990 to 1998.

Brandt and Preston (1977), Owen and Plyler (1991), and Rotfeld and Preston (1981) provide direct theoretical support for the first four hypotheses in this study. First, in a comprehensive case analysis, Brandt and Preston (1977) document a trend towards an increase in the FTC's reliance on external (consumer) behavioral evidence in determining deception in advertising. In addition, a trend towards an increase in FTC challenges of the meanings of advertising claims over and above what the claim literally states (implied representation) was found. Due to the consumer behavior dimension inherently associated with implied representations, external evidence is most applicable in cases involving implied advertising claims. Therefore, the increase in FTC challenges of implied advertising claims may facilitate the increase in the reliance upon behavioral external evidence by both the Commission and advertisers (Brandt and Preston 1977).

Second, the FTC's increased familiarity with consumer research and the increased use of implied claims by advertisers are two additional factors proposed by Owen and Plyler (1991) as reasons for the Commission's increased use of extrinsic evidence. Consumer behavior research, as a field of study, continues to advance (Owen and Plyler 1991; Johar 1995). Owen and Plyler (1991) propose that the FTC's increased reliance on external evidence may be a function of the Commission's increased understanding of the field of consumer behavior research. The

changing nature of advertising, which includes an increase in the use of implied representations, has forced the Commission to increase its reliance on behavioral extrinsic evidence to support its allegations of deception in advertising (Owen and Plyler 1991). Lastly, Rotfeld and Preston (1981) document an increase in the FTC's reliance on behavioral external evidence by examining decisions involving puffery.

Firms that fail to anticipate the FTC's reliance on external evidence, and/or do not use external evidence themselves, will be at a disadvantage when defending against FTC litigation (Brandt and Preston 1977). Improved understanding of the specific types and frequency of external evidence offered in deceptive advertising cases can assist advertisers in defending against FTC litigation.

Implied Advertising Claims

The second objective of this study is to determine the Commission's methods of ad interpretation for implied claims based on information provided in FTC decisions and relying on a typology of implications developed in the literature. According to the legal tenets, deception exists when an advertising claim possesses the *capacity to deceive*. Therefore, proof of actual deception is not necessary (Richards 1990; Wright 1995). Implied claims, as opposed to literal statements, refer to claims that convey false impressions and/or are misleading in context. Thereby, though they are not literally stated in the advertisement, deceptive advertising claims are allegedly made through implication. Since implied claims are a function of consumer perception, and since neither intent nor actual deception is a necessary prerequisite for an FTC ruling of deception, understanding the Commission's methods of interpreting implied advertising claims can be a critical factor in preventing and/or defending against litigation.

One of the most challenging issues associated with determining deception involves interpreting the meaning of implied representations made by implicit advertising claims (Owen and Plyler 1991). Therefore, the standards that the FTC uses to interpret advertising claims are crucial to the equitable regulation of advertising (Owen and Plyler 1991). Yet, there is a dearth of information and a complete lack of formal standards regarding the FTC's methodology of advertising claim interpretation. Increased determinations of deception in implied advertising claims on behalf of the FTC can result in an increased vulnerability to advertisers (Brandt and Preston 1977). An improved understanding of the Commission's methods of ad interpretation can assist advertisers in preventing FTC litigation. From a public policy standpoint, an improved understanding of the Commission's methods of advertising claim interpretation may enhance the effectiveness of litigation procedures and encourage the free flow of truthful information in the marketplace.

Relying on a typology of implications of deceptive advertising (Preston 1977), this study examines the Commission's methods of interpreting implicit claims in FTC decisions. Preston (1977) conducts an examination of decisions involving puffery in order to develop a typology that categorizes ten implications identified as deceptive by the FTC (Figure 4). Relying on Preston's (1977) typology of deceptive implications, this study examines implied advertising claims included in recent FTC decisions rendered. A byproduct of this examination may be the identification of new types of deceptive implications as evidenced by recent FTC decisions.

Figure 4
Typology of Deceptive Implications

Type of Implication	Description
The Expansion Implication	The literal statement implies some false widening / expansion of value; greater value is implied by the true claim (e.g., Preparation H)
The Demonstration Implication	The demonstration of one truthful effect is used to falsely imply the existence of another, greater effect (e.g., Baggies underwater)
The Inconspicuous Qualification Implication	An expanded claim is literally made and literally qualified. However, the qualification is so inconspicuous that the total message falsely implies the expanded claim. (e.g., Flame-retardant mattress pads)
The Inconspicuous Context Implication	The literal statement relies on the product in context. The claims of product plus context falsely imply that the expanded value will be received from the product alone, without context. (e.g. Carnation I.B.)
The Uniqueness Implication	A literal claim is expanded into a false implication that the product is unique; implication that only that product alone has certain features. (e.g., Crisco, frying chicken)
The Reasonable Basis Implication	A product claim falsely implies that the advertiser has a prior reasonable basis for believing it; whether the claim is true or not. Shifts burden of proof to respondent to show reasonable basis. (e.g., Firestone, stop 25% quicker) (scientific evidence)
The No Qualification Implication	A claim omits some important qualifying information that may be expected to affect consumers' purchasing decisions. Omitted disclosure. (e.g., Grape-Nuts, Euell Gibbons, eating plants is safe)
The Significance Implication	The false implication that a true fact matters when in fact it does not matter. (e.g., Gainsburgers, milk protein for dogs)
The Social Concerns Implication	The false implication that the product eliminates some social problem of broad public concern. (e.g., Standard Oil, eliminating pollutants)
The Third Party Implication	By playing a significant role in advertising, someone other than the manufacturer implies that he supports the ad's claims. (retailer endorse)
Other	Identification of additional implications

Preston (1977)

While a product can give a certain amount of value to a consumer, it may not be able to provide as much value as the consumer would like the product to be able to offer (Preston 1977). Hence, the advertiser may be tempted to convey the true (limited) value of a product in such a manner as to imply the greater value desired by the consumer (Preston 1977). Due to the inherent value potentially provided by certain types of products, such as health and safety, consumers may be more inclined to desire greater value from these products. Such consumer desire for greater value could cause advertisers to convey their message in such a manner that consumers will believe a greater value is implied. Stated more formally:

H3: The expansion implication will be identified more frequently in FTC decisions involving healthcare products than in FTC decisions involving other, non-healthcare, products.

A comprehensive examination of the types of implied claims involved and the types of evidence presented in each case will provide a better understanding of the FTC's procedures for interpreting implied claims. Ten hypotheses were developed in order to analyze the frequency of each of the ten implications included in the literature (Preston 1977) in regard to the type of internal evidence (Brandt and Preston 1977) presented by the FTC. For purposes of this study, deception *per se* refers to the FTC's reliance on its own expertise and intuitive analyses. Other internal commission evidence includes explicit false representations, commission precedents, and court precedents. By examining the frequency of each type of implication in regard to the type of internal commission evidence presented, these hypotheses provide insight into the FTC's procedures for interpreting implied advertising claims. These hypotheses are stated as follows.

H4(a): The expansion implication will be identified more frequently in FTC decisions involving deception per se than in FTC decisions including other forms of internal commission evidence.

- H4(b) The FTC will identify the demonstration implication more frequently in cases involving deception per se than in cases involving other forms of internal commission evidence.*
- H4(c) The inconspicuous qualification implication will be identified more frequently in FTC decisions involving deception per se than in FTC decisions including other forms of internal commission evidence.*
- H4(d) The inconspicuous context implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.*
- H4(e) The uniqueness implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.*
- H4(f) The reasonable basis implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.*
- H4(g) The no qualification implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.*
- H4(h) The significance implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.*

H4(i) The social concerns implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

H4(j) The third party implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

Regulatory Predictability

The third objective of this study is to determine regulatory predictability regarding deception in advertising based on factors inherent in each case, such as: the type of implication identified, the type of advertising media used, and the type of industry involved. Because no prior research has been conducted in the area of determining regulatory predictability, three research questions (questions 4, 5, and 6) arise. In order to answer these research questions, three hypotheses are proposed.

Type of FTC Order and Implied Claims

It is proposed that the FTC will issue multiple (or severe) orders more frequently in cases where multiple implications are identified than in cases involving only one type of implied claim. This dimension of regulatory predictability suggests that the existence of multiple false implied advertising claims will result in more severe action on behalf of the FTC. Two types of orders are common to almost all types of FTC decisions: cease and desist and record keeping requirements. However, multiple (more than two) FTC orders are classified as severe, since the advertiser is subjected to increased penalties and requirements, such as: consumer redress, corrective advertising, and/or customer correction letters. Severe orders, such as consumer

redress, can be extremely costly to advertisers. The hypothesis developed to test the frequency of multiple orders in relation to the existence of multiple advertising claims is:

H5: The FTC will issue severe orders more frequently in cases where multiple implications are identified by the FTC than in cases where only one implication is cited by the FTC.

Type of Advertising Media and FTC Order

Different types of advertising media use varied techniques for presenting implied representations in advertising claims. In determining deception in implicit claims, the FTC examines the advertisement as a whole (not isolated excerpts) in order to assess the “net general impression” conveyed to the consumer by the advertisement (FTC 1983). Examination of certain factors: such as the placement of various phrases in the ad; the nature of the representation made; and the nature of the transaction; assist the FTC in determining the meaning derived from an implied claim (FTC 1983). Deception in advertising can depend upon the processing demands that an advertising representation requires from the consumer (Johar 1995). One variable shown to affect consumer motivation to process advertising representations is the consumer’s level of involvement with an advertisement (Johar 1995). Advertisements located in newspapers and magazines provide significantly more information to consumers than television advertisements (Abernethy and Franke 1998). Also, significant differences exist in consumer processing of print versus broadcast advertising media (Buchholz and Smith 1991). Due to the cognitive processing required, print media possesses less opportunity to influence low-involvement consumers. Broadcast media requires less cognitive effort, and is thereby better

suited to influence low-involvement consumers (Buchholz and Smith 1991). The type of advertising media involved determines the amount of information available and affects the processing demands and motivation level of the consumer. Since deception can depend upon the processing demands the advertising claim places on the consumer, and because the advertising media affects consumer processing demands, it is proposed that the type of FTC order will vary depending on the type of advertising media involved.

H6: The FTC will issue multiple orders more frequently in cases where print advertising media is involved than in cases where non-print advertising media exists.

Type of Industry and FTC Order

Certain industries (health, safety), by their nature, are prone to increased scrutiny from government. For many types of products, such as medical devices, nonprescription drugs, and fire safety, assessment of product performance by ordinary consumers is difficult, and thus, consumer dissatisfaction cannot be corrected by market forces alone. According to FTC chairman, Robert Pitofsky, the FTC scrutinizes certain industries, such as health and safety, as part of its traditional responsibility; and those “posing risk of significant economic harm to consumers.” (Pitofsky 1996). Increased FTC scrutiny of certain industries can place firms in those industries at a greater risk for industry-specific regulation and potential litigation. Increased industry-specific regulation, as well as, increased governmental scrutiny can improve the FTC’s ability to successfully prove deception in cases involving firms categorized in particular industries. Therefore, the type of FTC order will vary according to the type of industry

involved. Two hypotheses were developed in order to examine the frequency of FTC orders in relation to the type of industry category involved.

H7(a): The FTC will issue multiple orders more frequently in cases involving consumer safety products than in cases involving other, non-consumer safety, products (consumer healthcare and other products).

H7(b): The FTC will issue multiple orders more frequently in cases involving consumer healthcare products than in cases involving other products (non- healthcare and non-safety products).

Chapter three details the research methodology employed in this study. Also, proposed data collection and analyses are included in the next chapter.

CHAPTER THREE: METHODOLOGY

Ambiguity in the FTC's guidelines regarding deception in advertising continues to impede advertisers' ability to reduce potentially deceptive advertising claims (Owen and Plyler 1991). A primary goal of this study is to gain a clearer understanding of ways to identify and interpret deception in advertising. The purpose of this study, therefore, is to gain insight into the regulatory predictability of deception in advertising. This will be accomplished through a content analysis of the legal parameters involved in FTC decisions rendered during a nine-year period from 1990 through 1998.

CONTENT ANALYSIS

Content analysis is a research methodology that is used in both academic and in applied situations (Davis 1997). Content analysis is a scientific, objective, systematic, quantitative, and generalizable description of the content of communications (Kassarjian 1977). That is, content analysis is a research method that uses specific procedures in order to make valid inferences from text (Weber 1990). This research methodology has opened new avenues for research, including studies of deception in advertising (Kassarjian 1977). "Content analysis can assess the effects of environmental variables (e.g., regulatory, economic, and cultural) and source characteristics (such as attractiveness, credibility, and likeability) on message content, in addition to the effects (cognitive, affective, and behavioral) of different kinds of message content on receiver responses" (Kolbe and Burnett 1991, p. 244). Content analysis is most useful whenever documentary evidence is available. This is because content analysis categorizes textual information to reduce large amounts of material to manageable bits of data (Weber 1990). The categories used in

content analysis, which represent the purpose, the theoretical development, and the hypotheses development of the study, are the conceptual scheme of the research design. Hence, content analysis is only as valuable as its categories (Kassarjian 1977).

Researchers agree that content analysis must meet three criteria; that is, be: (1) objective; (2) systematic; and (3) quantitative (Kassarjian 1977):

(1) *Objectivity* gives scientific standing to content analysis methodology by requiring that all steps in the research process are conducted according to an explicit set of guidelines that minimize subjectivity. Therefore, content categories should be defined in such a way that different individuals code the same text in the exact manner.

(2) *Systematic* refers to the application of consistently applied rules regarding the inclusion and exclusion of analysis categories. These consistently applied rules must be designed to secure relevant data based on the theory and hypotheses development of the research design. That is, researcher bias must be eliminated so that the findings have both theoretical relevance and generalizability.

(3) *Quantification* demands that the data are amenable to statistical methodology for purposes of interpretation and inference of the findings. The characteristic of quantification is what separates content analysis from the process of simple critical reading (Kassarjian 1977).

Reliability

The most critical problems associated with content analysis relate to the data-reduction process by which numerous words of text are classified into fewer content categories (Weber

1990). Ambiguity in word meanings, definitions of categories, and/or variables, creates problems in reliability and validity in research design. To make valid inferences from text, it is crucial that the classification scheme be reliable (Weber 1990). Three types of reliability associated with content analysis are: (1) stability, (2) reproducibility, and (3) accuracy (Krippendorff 1980).

(1) *Stability* refers to consistency in content classification over time. That is, stability exists to the extent that the same content is coded in an identical manner more than once by the same coder (Weber 1990). If only one person is coding, then stability is considered the weakest form of reliability.

(2) *Reproducibility*, or inter-coder reliability, refers to the consistency between different coders. In order for a classification scheme to be reliable, it must be consistent. That is, different individuals should code the same text in the exact manner. High intercoder reliability is a minimum standard for reliable content analysis (Weber 1990). Classification by multiple human coders allows for the quantitative assessment to achieve reliability (Weber 1990). In general, reported reliability in the literature is quite high. That is, researchers can be satisfied with coefficients of reliability above 85 percent (Kassarjian 1977).

(3) *Accuracy*, or the strongest form of reliability, refers to the comparison of the classification scheme to a pre-established standard or norm. Since established standard coding schemes for text are rarely formally pre-determined, accuracy is seldom applied in the assessment of reliability in content analysis (Weber 1990).

Validity

The validity of the content variables, as based on content classification, creates even more challenging problems. Regarding content analysis, two categories of validity are pertinent: face validity and external validity. The classification scheme must generate variables that are valid (Weber 1990). *Face validity* is determined by the level of correspondence between two sets of items, such as concepts, variables, or methods. A content analysis variable has face validity to the extent that the variable measures the construct that has been developed or that it is intended to measure. Content analysts often rely extensively on face validity (Weber 1990).

The second category of validity, *external validity*, involves the generalizability of the research results, inferences, and theory. There are four types of external validity pertinent to content analysis: (1) construct validity, (2) hypothesis validity, (3) predictive validity, and (4) semantic validity:

- (1) *Construct validity*, which may be classified into convergent and discriminant validity, refers to the generalizability of the construct across different measures (Weber 1990). That is, a measure has high construct validity when it positively correlates with different measures of the same construct (convergent validity), and also, to the extent that it is uncorrelated with measures of dissimilar constructs (discriminant validity) (Weber 1990).
- (2) *Hypotheses validity* refers to the correspondence among variables, as well as the correspondence between theory and relationships (Weber 1990). Hypothesis validity is determined by the extent to which a measure, in relation to other variables, behaves as it is expected or hypothesized.
- (3) *Predictive validity* refers to the ability of inferences from data to be successfully generalized to situations beyond the study. The predictions may involve past, future,

and/or concurrent conditions. Predictive validity is meaningful, especially for purposes of practical application, since the results may be generalized to predict events beyond the control of the researcher.

(4) *Semantic validity* refers to the level of agreement on the meanings or connotations of words according to those familiar with the terminology and language. That is, to increase semantic validity in content categories, words with multiple meanings/connotations should be avoided in the classification process. Also, there should be agreement, according to those familiar with the terminology, that words placed in the same category have similar meanings/connotations.

METHOD OF DATA GATHERING

Federal Trade Commission Decisions

For purposes of this study, data are obtained via a comprehensive examination of Federal Trade Commission administratively adjudicated decisions. The complete set of 300 administrative decisions, recorded in published volumes of *Federal Trade Commission Decisions* from 1990 through 1998, was examined. Federal Trade Commission administrative decisions are published annually by the Commission. The FTC decisions are compiled by the Information Management Branch of the Office of the Deputy Executive Director for Planning and Information, and the decisions are published by the U.S. Government Printing Office. All of the decisions published between 1990 and 1998 relating to deceptive advertising (violations of Sections 5 and 12 of the *Federal Trade Commission Act*), in which the Commission made a formal finding that a representation was or was not deceptive, were analyzed. For purposes of consistency and reliability, FTC decisions involving other violations (*Truth in Lending Act, Consumer Leasing*

Act, Regulation Z, etc...) are not included in this analysis. Each published Commission decision includes detailed transcript information regarding: appearances for the Commission; appearances for the respondent; the complaint; findings of facts; exhibits (copies of challenged advertisements); evidence presented; decisions and orders; and any concurring/dissenting statements made by individual Commissioners. Each FTC administrative decision is identified by an assigned docket number, and dated according to both the complaint and decision. Due to the delay in the publication process, decisions rendered after 1998 were not available in published form at the time of this study.

DEFINITIONS OF CODING CONCEPTS

Evidence of Deception

This study includes numerous concepts related to the coding process. The coding concepts relating to evidence of deception are derived from the classification scheme developed by Brandt and Preston (1977) (Figure 5). Additional examples of categories of evidence, which were not included in Brandt and Preston (1977), are also included in this study. The additional examples added to this analysis reflect changes in the types of evidence of deception presented since the Brandt and Preston (1977) study. This study classifies evidence of deception into four categories (Figure 4). There are two categories of internal evidence: (Group I) internal Commission evidence and (Group II) precedential evidence. Examples of Group I, internal Commission evidence, include deception *per se* and explicit false representations. Examples of Group II, precedential evidence, include precedents set by the Commission and precedents set by the appeals courts. There are also two categories of external evidence: (Group III) external non-consumer evidence and (Group IV) external consumer evidence. Group III, the category of

external non-consumer evidence, includes: expert witness testimony, respondent testimony, accepted marketing principles, and trade understanding. Group IV, the category of external consumer (behavioral) evidence, consists of: consumer testimony, market research, copy tests, surveys presented by respondents, and surveys presented by the Commission.

Figure 5
Classification Scheme: Categories of Evidence of Deception

Category	Descriptive Category Title	Category Examples
Group I	Internal Commission Evidence	Explicit False Representation <i>Deception Per Se</i>
Group II	Precedential Evidence	Commission Precedents Court Precedents
Group III	External Non-Consumer Evidence	Dictionary Definitions – FTC Trade Literature - FTC Expert Testimony – FTC / Respondent Respondent Testimony Accepted Marketing Principles Other Documentary Evidence – FTC
Group IV	External Consumer Evidence	Consumer Testimony – Respondent Copy Tests – FTC / Respondent Focus Group – FTC / Respondent Other Consumer-oriented – FTC/Respondent

Brandt and Preston (1977)

Implied Advertising Claims

The coding concepts related to implied claims are derived from Preston's (1977) typology of deceptive implications (Figure 6).

Figure 6
Typology of Deceptive Implications

Type of Implication	Description
The Expansion Implication	The literal statement implies some false widening / expansion of value; greater value is implied by the true claim (e.g., Preparation H)
The Demonstration Implication	The demonstration of one truthful effect is used to falsely imply the existence of another, greater effect (e.g., Baggies underwater)
The Inconspicuous Qualification Implication	An expanded claim is literally made and literally qualified. However, the qualification is so inconspicuous that the total message falsely implies the expanded claim. (e.g., Flame-retardant mattress pads)
The Inconspicuous Context Implication	The literal statement relies on the product in context. The claims of product plus context falsely imply that the expanded value will be received from the product alone, without context. (e.g. Carnation I.B.)
The Uniqueness Implication	A literal claim is expanded into a false implication that the product is unique; implication that only that product alone has certain features. (e.g., Crisco, frying chicken)
The Reasonable Basis Implication	A product claim falsely implies that the advertiser has a prior reasonable basis for believing it; whether the claim is true or not. Shifts burden of proof to respondent to show reasonable basis. (e.g., Firestone, stop 25% quicker) (scientific evidence)
The No Qualification Implication	A claim omits some important qualifying information that may be expected to affect consumers' purchasing decisions. Omitted disclosure. (e.g., Grape-Nuts, Euell Gibbons, eating plants is safe)
The Significance Implication	The false implication that a true fact matters when in fact it does not matter. (e.g., Gainsburgers, milk protein for dogs)
The Social Concerns Implication	The false implication that the product eliminates some social problem of broad public concern. (e.g., Standard Oil, eliminating pollutants)
The Third Party Implication	By playing a significant role in advertising, someone other than the manufacturer implies that he supports the ad's claims. (retailer endorse)
Other	Identification of additional categories of implications

Preston (1977)

The standards that the FTC uses to interpret implied advertising claims are crucial to the equitable regulation of advertising (Owen and Plyler 1991). This study categorizes implied representations into ten categories by relying on Preston's (1977) typology of deceptive implications. Additional categories of deceptive implications may be identified in this study as evidenced by recent FTC decisions.

Regulatory Predictability

The coding concepts related to regulatory predictability are categorized as: the type of FTC order rendered, the type of advertising media used, and the type of industry category (Figure 7).

Figure 7

Concept Categories Related to Regulatory Predictability

Type of FTC Order	Type of Advertising Media	Type of Industry Category
Cease and Desist Corrective Advertising Consumer Redress Disclosure Requirement Customer Correction Letter Three-year Record Keeping Five-year Record Keeping Other Orders	Print TV Internet Radio Mailings Yellow Pages	Consumer Healthcare Consumer Safety Other Products (Non-health and Safety)

This study proposes that the frequency of implications identified can affect the severity of FTC orders. Hence, the type of FTC order rendered will vary according to the type of implication presented. This study also proposes that the type of FTC order will vary depending upon the type of advertising media involved since different types of advertising media provide varied degrees of information to consumers. Lastly, because certain industries (e.g., health and safety) by their nature are prone to increased government scrutiny, this study proposes that the FTC order rendered will vary according to the type of industry involved.

CONTENT CATEGORIES, CODE BOOK, AND CODE SHEET

In content analysis, the conceptual framework of the research design is based upon the categories of interest and their specific dimensions. Categories of interest are used to represent the universe of information that will be extracted during the content analysis (Davis 1997). The content categories are selected in such a way as to represent the purpose, the theoretical development, and the hypotheses development of the study (Kassarjian 1977). The specific categories, and their dimensions, must be relevant to the goals and objectives of the content analysis (Davis 1997). It is crucial that the set of content categories be comprehensive so as not to exclude important data (Davis 1997). Furthermore, the measure of reliability depends upon the researcher's ability to construct categories and convey the definitions of these categories to competent judges (Kassarjian 1977).

To provide a reference of the content analysis, the definitions of all relevant terms related to the content categories are listed in a code book that can provide a common frame of reference for all coders. This common frame of reference increases the chances that independent coders will

view and respond to the same stimulus in a similar manner; thereby, increasing objectivity (Davis 1997).

A code sheet is used in order to assess inter-coder reliability or reproducibility. The code sheet, which is similar to a survey questionnaire, is used by the independent coders to record their observations. The code sheet must be clearly designed and provide detailed instructions for the recording of data by judges. Judges work independently and record their observations on the code sheet. Therefore, reliability in coding is evidenced when two judges independently assign the same code to the same dimension in the content categories.

SELECTION OF JUDGES

Researchers agree that content analysis must be objective (Kassarjian 1977; Kolbe and Burnett 1991; Davis 1997). Objectivity in content analysis is enhanced when:

- (1) there are clear and objective rules for advertising selection and examination;
- (2) coding categories are well defined;
- (3) coders are well-trained and work independently of one another; and
- (4) data analysis is appropriate to the measurement level of data collected (Davis 1997).

Reproducibility, or inter-coder reliability, refers to the level of consistency between different judges in the coding process. Classification by more than one human coder allows the quantitative assessment to achieve reliability (Weber 1990). A crucial factor in the success of this measure is the researcher's ability to formulate content categories with definitions that allow judges to agree on the items that belong in a particular category and those that do not (Kassarjian 1977). Detailed coding instructions and procedures reduce judges' subjective biases and allow a

system for replication (Kolbe and Burnett 1991). Therefore, the use of multiple, trained, independent judges enhances the objectivity of a study (Kolbe and Burnett 1991).

Judges were selected and trained after the code book and code sheet were developed. Davis (1997) suggests that two or more independent individuals of similar background and training should be selected as judges / independent coders. In a review of content analysis research in 128 consumer behavior/marketing articles, Kolbe and Burnett (1991) found that the use of two coders is the most frequent. Coder independence from each other, and from the principal researcher, is also crucial. For this study, two judges, one female and one male were selected. Both judges possess similar educational, cultural, and economic backgrounds; and each judge possesses study at the university level and professional expertise/certification in the field of accounting.

Training of Judges

The judges were trained to insure that each possessed an in-depth understanding of the previously defined concept categories. Each judge was provided with individual copies of Figures 4, 5, and 6; a copy of the code book; and a copy of the code sheet. The concepts included in Figures 4, 5, and 6; the code book; and the code sheet were explained to each judge in detail.

All content analyses can be improved through pretesting and subsequent revision of the research design. Pretesting in content analysis also improves content category definitions, category structure, and coding procedures (Davis 1997). Coders were trained separately, and time was allotted in each training session for open discussion/questions to resolve any potential ambiguity. Following the training of coders, a pretest was conducted using a set of FTC decisions rendered prior to 1990 which were not included in this study. The responses revealed by the pretest were analyzed and used to reevaluate content category definitions and category structure.

Following the pretest, coders worked independently to observe and record their observations on the code sheet.

METHOD OF ANALYZING DATA

A Code Sheet was developed using information provided in FTC decisions rendered from 1990 through 1998. The judges coded the concepts in the 300 FTC decisions according to the category dimensions. A reproducibility check was then made by comparing the coding of content categories to assess inter-coder (category) reliability. Low levels of inter-coder reliability can reduce the level of confidence in the data (Davis 1997). Holsti (1969) suggests that inter-coder reliability for nominal data be determined by assessing the overall percentage of agreement between coders. For purposes of this study, inter-coder reliability was assessed by calculating the percentage of times that both coders independently assigned the same code to the same content category.

In content analysis, data analysis often begins with descriptive statistics such as percentages, means, medians, and modes (Davis 1997). Analysis of frequencies, One Sample t-tests, and Independent Samples t-tests were computed using SPSS 10.1. An analysis of calculated measures, which are variables formed using a combination of existing variables, followed the analysis of coded variables. Calculated measures reflect the researcher's analytical needs specific to the particular content analysis (Davis 1997). To gain a deeper insight into how to identify and interpret deception in advertising, cross-tabulations and significance testing of hypotheses were performed. The results and findings of these tests are presented in Chapter Four. Extensions and/or modifications of existing theory based upon these results are explored in Chapter Five of this study.

CHAPTER FOUR: ANALYSIS OF DATA

Chapter Four discusses the methodology surrounding data collection, as well as testing of the hypotheses. In addition, the study's results and findings are presented in this chapter. Chapter Five will detail the implications of the results of the hypotheses testing.

COLLECTION OF DATA

A content analysis of 300 FTC decisions rendered over the nine-year period, from 1990 through 1998, was conducted. For purposes of this study, data were obtained via a comprehensive examination of Federal Trade Commission administratively adjudicated decisions. The complete set of 300 administrative decisions, recorded in published volumes of *Federal Trade Commission Decisions* from 1990 through 1998 was analyzed. Federal Trade Commission administrative decisions are published annually by the Commission and are compiled by the Information Management Branch of the Office of the Deputy Executive Director for Planning and Information, and then published by the U.S. Government Printing Office. All decisions published between 1990 and 1998, in which the Commission made a formal finding that a representation was deceptive, were included in this study.

Davis (1997) suggests that two or more independent individuals of similar background and training should be selected as judges/independent coders. For this study, two judges, one female and one male, were utilized. Both judges possess similar educational, cultural, and economic backgrounds; and each judge completed study at the university level and earned professional expertise/certification in the field of accounting.

Content analyses can be improved through pre-testing and subsequent revision of the research design. Pre-testing in content analysis also improves content category definitions,

category structure, and coding procedures (Davis 1997). Coders were trained separately and time was allotted in each training session for open discussion/questions to resolve any potential ambiguity. Following the training of coders, a pretest was independently conducted using a set of FTC decisions rendered in 1989—a year that was not included in this study. The responses revealed by the pretest were analyzed and used to evaluate content category definitions and category structure. Following the pretest, several revisions were made to the content category definitions and category structures of the survey.

The judges independently coded the content categories contained in the 300 FTC decisions and recorded his/her responses on a computer spreadsheet (Microsoft Excel/Lotus 123 compatible), designed to enhance the coding process. The data spreadsheets (code sheets) were collected from each judge, and reviewed for completeness. While all 300 FTC decisions were coded by the judges, one of the cases was eliminated by the author. This particular decision was inconsistent with the other 299 decisions. One FTC decision involved a modifying order related to a decision rendered prior to the time period included in this study. Therefore, for consistency purposes, this decision was eliminated from the data analysis. The judges completed coding the content categories included in the FTC decisions over a three-week period in the fall of 2002. The code sheet is attached as Exhibit 2.

AGREEMENT OF CODING BETWEEN JUDGES

Reproducibility, or inter-coder reliability, refers to the consistency between independent coders. In order for a classification scheme to be reliable, it must be consistent. That is, different individuals should code the same text in the exact manner. High inter-coder reliability is a minimum standard for reliable content analysis (Weber 1990). Classification by multiple

human coders allows the quantitative assessment to achieve reliability (Weber 1990). In general, reported reliability in the literature is quite high. Researchers can be satisfied with coefficients of reliability above 80% (Kassarjian 1977).

Reliability in coding is evidenced when two judges independently assign the same code to the equivalent dimension in the content categories. Holsti (1969) suggests that inter-coder reliability for nominal data be determined by assessing the overall percentage of agreement between coders. For purposes of this study inter-coder reliability was assessed by calculating the percentage of times that both coders independently assigned the same code to the identical content category. Figure 8 lists the percentage of agreement between coders for each content category. "Type of implication" is the only content category that required subjective decision-making on behalf of the judges. The data required for each of the remaining categories is clearly defined and objectively listed in each case. Both judges have education and experience in researching tax cases. Their knowledge of court case methodology enabled them to identify the objective data for the content categories. However, the subjective nature of the type of implication category required intuitive reasoning, and was the category of most concern for inter-coder reliability. Definitions for each of the dimensions included in the type of implication category were redefined, and specific criteria were designated following weaknesses discovered in the pretest. Only one dimension, "other implications," did not meet the minimum requirement of 80% for inter-coder reliability. This dimension was not used in any of the hypotheses testing. The "other implications" dimension will be discussed in Chapter 5. All cases that resulted in a coding disagreement were reviewed and resolved of discrepancies.

Coder reliability percentages for the type of advertising media category are not included in Figure 8. The coding concepts (print, TV, radio, internet, mailings, yellow pages) included in

this category are clearly listed and detailed in each case. The clearly stated and defined nature of these concepts in each case resulted in 100% coder agreement for this entire category.

Figure 8
Percentage Agreement between Coders

Coding Categories	Percentage	Coding Categories	Percentage
<u>Internal Commission Evidence</u>		<u>Type of Implication</u>	
Explicit false claims	96%	Expansion	82.1%
Deception <i>per se</i>	96%	Demonstration	83.3%
<u>Internal Precedent Evidence</u>		Inconspicuous qualification	100%
Commission precedent	100%	Inconspicuous context	84.6%
Court precedent	100%	Uniqueness	92.3%
<u>External Non-consumer Evidence</u>		Reasonable basis	86.3%
Trade literature – FTC	98.7%	No qualification	88.3%
Trade literature – Respondent	98.9%	Significance	100%
Expert testimony – FTC	100%	Social concerns	85.3%
Expert testimony – Respondent	100%	Third party	81.4%
Respondent Testimony	99.3%	Other	76%
Other documentary evidence – FTC	99.3%	<u>Type of FTC Order</u>	
Other documentary evidence – Resp.	99.7%	Corrective advertising	85.7%
<u>External Consumer Evidence</u>		Consumer redress	91.1%
Consumer testimony - Respondent	98.3%	Disclosure order	87.7%
Copy test – Respondent	97.7%	Customer correction letter	96.7%
Copy test – FTC	99.3%	Three-year records	93.6%
Focus group – Respondent	99%	Five-year records	93.6%
Other consumer-oriented – Resp.	98.6%	Other	88.1%
Other consumer-oriented – FTC	98.6%	<u>Type of Industry</u>	
		Consumer healthcare	92.6%
		Consume safety	91.7%
		Other	95.9%

RESULTS OF TESTING RESEARCH HYPOTHESES

SPSS 10.1 was employed to test each of the hypotheses included in this study. Eight categories of data and forty-five variables were coded by the judges. In addition, several variables, or calculated measures, based upon existing variables were created by the author. Frequencies were calculated, and to determine if the results were statistically meaningful, *t*-tests that employed the One Sample *t* Test and the Independent-Samples *t* Test in SPSS 10.1 were run. The confidence level for each *t*-test was set at 95%.

Evidence of Deception

The first category of hypotheses relates to the evidence presented in the decisions analyzed. The first hypotheses relating to the evidence of deception dimension involves the FTC's use of external and internal evidence, and is as follows:

H1(a): The Commission has relied on external evidence more frequently than internal evidence to support its allegations of deception in advertising in FTC litigation from 1990 to 1998.

In order to test this hypothesis, the data related to the categories of FTC internal evidence and FTC external evidence were examined. The majority of the decisions rendered by the FTC are classified as consent agreements. Of the 299 cases analyzed, 290 were classified as consent agreements, and 9 were classified as final orders. In consent agreements, the respondent does not admit guilt, but does agree to abide by the FTC's orders. Hence, external evidence is not normally presented in consent agreements.

Since only the cases classified as final orders are subject to or involve external evidence, the cases classified as consent agreements were not included in the testing of this hypothesis. As

Figure 9 reveals, the FTC presented external evidence in 6 of the 9 cases classified as final orders. The One Sample t Test using SPSS 10.1 was used to test this hypothesis. According to the results, H1(a) was not supported. As indicated, even in the cases classified as final orders, the FTC relied upon internal evidence more often than external evidence. The implications of the small number of observations (less than 30) will be discussed in Chapter Five.

Figure 9

Results of Analysis of the FTC's Use of External Evidence and Internal Evidence

	FTC External Evidence (coded: 0, 1)	FTC Internal Evidence	Total cases
FTC			
# of cases	6	9	9
% of cases	66.7%	100%	
t -value			
df	N.S.		
level of significance			
(test value = .5)			

The second hypothesis regarding evidence of deception analyzes the FTC's use of consumer, as well as, the FTC's reliance on non-consumer evidence. That is:

H1(b): The Commission has relied on external consumer evidence more frequently than external non-consumer evidence to support its allegations of deception in advertising in FTC litigation from 1990 to 1998.

Data relating to the categories of FTC consumer evidence and FTC non-consumer evidence were examined in order to test this hypothesis. Both of these categories are classified as FTC external evidence. The same methodology as employed in the testing of H1(a) was used in the testing of

H1(b). Only those cases subject to the presence of external evidence were included in the testing of this hypothesis. As Figure 10 reveals, 3 of these cases included the FTC's use of consumer evidence, while 6 of these cases involved the FTC's reliance on non-consumer evidence. According to the data, H1(b) was not supported. In the decisions analyzed, the FTC relied upon non-consumer evidence more often than consumer evidence. The implications of the small number of observations will be discussed in Chapter Five.

Figure 10
Results of Analysis of the FTC's Use of External Consumer Evidence
and External Non-consumer Evidence

	FTC Consumer Evidence (coded: 0, 1)	FTC Non-consumer Evidence	Total cases
FTC			
# of cases	3	6	9
% of cases	33.3%	66.7%	
<i>t</i> -value			
df			
level of significance	N.S.		
(test value = .5)			

The third hypothesis relating to the dimension of evidence of deception examines the respondent's use of internal and external evidence, and is as follows:

H2(a): Respondents have relied on external evidence more frequently than internal evidence to defend against allegations of deception in advertising in FTC litigation from 1990 to 1998.

In order to test this hypothesis, the data assigned to the categories of respondent internal evidence and respondent external evidence were analyzed. Since only the cases classified as final orders are subject to or involve external evidence, the cases classified as consent agreements were not included in the testing of this hypothesis. As Figure 11 reveals, the respondent presented external evidence in 6 of the 9 cases classified as final orders. According to the results of the One Sample t test, H1(b) was not supported. While the respondent relied on external evidence six times as often as internal evidence, the implications of the results are restricted by the low number of observations. This issue will be addressed in the final chapter.

Figure 11

Results of Analysis of the Respondent's Use of External Evidence and Internal Evidence

	Respondent External Evidence (coded: 0, 1)	Respondent Internal Evidence	No Respondent Evidence	Total cases
Respondent				
# of cases	6	1	2	9
% of cases	66.7%	11.1%		
t -value				
df	N.S.			
level of significance				
(test value = .5)				

The last hypothesis relating to the evidence of deception dimension analyzes the respondent's use of consumer evidence, as well as, non-consumer external evidence. Stated more formally:

H2(b): Respondents have relied on external consumer evidence more frequently than external non-consumer evidence to defend against allegations of deception in advertising in FTC litigation from 1990 to 1998.

Data relating to the categories of respondent consumer evidence and respondent non-consumer evidence were examined in order to test this hypothesis. Both of these categories are classified as respondent external evidence. The same methodology as employed in the testing of the previous hypotheses in this category was used in the testing of H2(b). Only those cases subject to the presence of external evidence were included in the testing of this hypothesis. As Figure 12 reveals, four of these cases included the respondent's use of consumer evidence. According to the data, H2(b) was not supported. The respondent relied on non-consumer evidence more often than consumer evidence in cases subject to the use of external evidence. The implications of the small number of observations will be discussed in Chapter Five.

Figure 12

**Results of Analysis of the Respondent's Use of External Consumer Evidence
and External Non-consumer Evidence**

	Respondent Consumer Evidence (coded: 0, 1)	Respondent Non-consumer Evidence	Both consumer and non-consumer Evidence	Total cases
Respondent				
# of cases	4	6	1	9
% of cases	44.4%	66.7%		
<i>t</i> -value				
df	N.S.			
level of significance (test value = .5)				

Implied Advertising Claims

The second category of hypotheses relates to the types of implications identified in the FTC decisions analyzed. The first hypothesis regarding implied advertising claims examines the expansion implication and the consumer healthcare industry. That is:

H3: The expansion implication will be identified more frequently in FTC decisions involving healthcare products than in FTC decisions involving other, non-healthcare, products.

Based on the coding by judges, each of the 299 cases was identified as either consumer healthcare industry (1) or non-consumer healthcare industry (consumer safety and other products) (0). Therefore, two independent samples were created to test for the presence of a common variable: the expansion implication. The purpose of this hypothesis is to see if a significant difference exists between the two industry categories in relation to the expansion implication. According to the data, 165 of the 299 cases involved the consumer healthcare industry, and the remaining 134 cases related to the non-consumer healthcare industry. Of the 73 cases that involved the expansion implication, 55 were associated with the consumer healthcare industry, and 18 related to the non-consumer healthcare industry. An Independent-Samples *t* Test using SPSS 10.1 was conducted in order to determine if, in relation to the expansion implication, a significant difference between the two groups - consumer healthcare industry and non-consumer healthcare industry - existed.

The results for this test are listed in Figure 13. Based upon these findings, H3 was supported. Using Levene's Test for Equality of Variances, an F-value was calculated to determine if a significant difference in the variances of the two distributions existed (heteroschedasticity). Since the null hypothesis assumes equal variances, a significant F-value requires that the unequal variances test be used to test the hypothesis. According to the data, Levene's test revealed significant differences between the variances of the two distributions of the consumer healthcare industry and the non-consumer healthcare industry. In that Levene's test indicated a significant difference in the variances at $p < .001$, the unequal variance *t* test was used to determine the

significance level for testing this hypothesis. The t -value for the unequal variance test was significant at $p < .001$.

The results of this test of proportions between two independent samples indicate that the FTC is more likely to identify the expansion implication in cases involving consumer healthcare products than in cases involving other, non-consumer healthcare, products. Marketers of consumer healthcare products should be aware of the tendency for consumers to desire expanded benefits from these types of products. The desire to receive expanded benefits may cause consumers, and consequently the FTC, to identify implications of benefits that expand beyond the literal meanings of the representations. Marketers of consumer healthcare products should also be careful in designing advertisements so as not to imply expanded benefits.

Figure 13

Results of Analysis of the Expansion Implication and the Type of Industry

	Industry #1: Consumer Healthcare (coded: 0, 1)	Industry #2 & #3: Non-Consumer Healthcare	Total
Total cases	165	134	299
Expansion Implication			
# of cases	55	18	73
% of cases	33.3%	13.4%	
F-value (Levene's)	79.455		
Level of significance	$p < .001$		
Unequal variance test			
t -value	4.215		
df	283.33		
level of significance	$p < .001$		

In order to test H4(a) through H4(j), data included in the internal commission evidence categories (group I and group II on the code sheet) were analyzed. This category was divided into two independent samples: cases involving deception *per se* and cases involving other internal commission evidence (explicit false claims, commission precedents, and court precedents). The deception *per se* dimension contained 253 cases, and the other internal commission evidence group contained 46 cases. The Independent-Samples *t* Test in SPSS 10.1 was then used to test each of the hypotheses (H4(a) through H4(j)) relating to implied advertising claims. In the testing procedure, deception *per se* was used as the grouping variable while each implication was used as the testing variable

The second hypothesis relating to implied advertising claims involves the expansion implication. That is:

H4(a): The expansion implication will be identified more frequently in FTC decisions involving deception per se than in FTC decisions including other forms of internal commission evidence.

To test this hypothesis, data regarding the expansion implication and data relating to internal commission evidence were analyzed. As mentioned, the internal commission evidence category was divided into cases involving deception *per se* and those including other internal commission evidence. As Figure 14 reveals, 73 of the 299 cases involved the expansion implication. Sixty-six of these expansion implication cases were included in the 253 cases involving deception *per se*. The same procedures as discussed in H3 were used to test this hypothesis. Levene's test indicated a significant difference in the variances for the two groups – cases involving deception *per se* and those involving other internal commission evidence. Since Levene's test was significant at $p < .001$, the unequal variances test was used to test this hypothesis. Based upon

the data, H4(a) was not supported. These results indicate that there is not a significant difference in the FTC's identification of the expansion implication in cases involving deception *per se* versus cases including other types of internal commission evidence.

Figure 14

Results of Analysis of the Expansion Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Expansion Implication			
# of cases	66	7	73
% of cases	26.1%	15.2%	
F-value (Levene's)	13.415		
level of significance	p < .001		
Unequal variance test			
t-value	N.S.		
df			
level of significance			

The third hypothesis regarding implied advertising claims relates to the demonstration implication and is as follows:

H4(b) The FTC will identify the demonstration implication more frequently in cases involving deception per se than in cases involving other forms of internal commission evidence.

In order to test this hypothesis, data regarding the demonstration implication and data relating to the internal commission evidence category were analyzed. Once again, the internal commission

evidence category was divided into two independent groups: cases involving deception *per se* and cases involving other internal commission evidence. As Figure 15 reveals, 5 of the 6 cases involving the expansion implication were included in cases involving deception *per se*. Levene's test reveals no significant difference between the variances of the two independent distributions. Hence, the slightly more powerful equal variances *t* test was used to test this hypothesis. Based upon the data, H4(b) was not supported. While the results were not statistically significant, it is worthwhile to note that the FTC did rely on deception *per se* in five out of the six cases where the demonstration implication was present. The demonstration implication was not included in a sufficient number of cases to gain any meaningful insight from the data except to conclude that this type of implication is not often identified by the FTC.

Figure 15

Results of Analysis of the Demonstration Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Demonstration Implication			
# of cases	5	1	6
% of cases	2%	2.17%	
F-value (Levene's)	.031		
level of significance	N.S.		
Equal variance test			
<i>t</i> -value	N.S.		
df			
level of significance			

The fourth hypothesis relating to the dimension of implied advertising claims involves the inconspicuous qualification. That is:

H4(c) The inconspicuous qualification implication will be identified more frequently in FTC decisions involving deception per se than in FTC decisions including other forms of internal commission evidence.

In order to test this hypothesis, the inconspicuous qualification implication data were analyzed. The internal commission evidence category was divided into two independent samples: cases involving deception *per se* and cases including other internal commission evidence. Accordingly, the inconspicuous qualification implication was included in only 4 of the 299 cases. As Figure 16 reveals, two of these four inconspicuous qualification implications were found in cases involving deception *per se* and two were involved in cases related to other internal commission evidence. Levene's test for equality of variances reveals a significant difference in the variances between these two groups. Therefore, an unequal variance *t* test was used to test this hypothesis. Based upon the data, H4(c) was not supported. The inconspicuous qualification implication was not included in a sufficient number of cases to gain any meaningful perspective from the data. According to the data, the FTC relies upon the inconspicuous qualification implication in less than 1.5% (4 out of 299) of decisions rendered.

Figure 16
Results of Analysis of the Inconspicuous Qualification Implication
and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Inconspicuous Qualification			
# of cases	2	2	4
% of cases	0.79%	4.34%	
F-value (Levene's)	14.973		
level of significance	p < .001		
Unequal variance test			
t-value	N.S.		
df			
level of significance			

The fifth hypothesis regarding implied advertising claims involves the inconspicuous context implication and is as follows:

H4(d) The inconspicuous context implication will be identified more frequently in FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

The data regarding the inconspicuous context implication were analyzed to test this hypothesis. The internal commission evidence category was grouped into two independent samples: cases including deception *per se* and cases involving other internal commission evidence. The inconspicuous context implication was included in 13 of the 299 cases. As Figure 17 reveals, 12

of the cases involving the inconspicuous context implication were included in the group of cases involving deception *per se*. According to Levene's test for equality of variances, there was not a significant difference between the variances of the cases involving deception *per se* and the cases including other internal commission evidence. Hence, the *t* test for equal variances was used to test this hypothesis. Based upon the data, H4(d) was not supported. The results confirm that in cases where the inconspicuous context implication is present, no significant difference exists between the FTC's use of deception *per se* and the FTC's use of other internal commission evidence. However, in the interpretation of these results, the implications small number of observations (13) cannot be ignored.

Figure 17
Results of Analysis of the Inconspicuous Context Implication
and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Inconspicuous Context			
# of cases	12	1	13
% of cases	4.74%	2.17%	
F-value (Levene's)	2.578		
level of significance	N.S.		
Equal variance test			
<i>t</i> -value	N.S.		
df			
level of significance			

The sixth hypothesis regarding the dimension of implied advertising analyzes the uniqueness implication and is as follows:

H4(e) The uniqueness implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

In order to test this hypothesis, data regarding the uniqueness implication were analyzed. Under the internal commission evidence category, two independent samples were formed: 235 cases involving deception *per se* and 46 cases including other internal commission evidence. According to the data, the uniqueness implication was included in 13 of the 299 cases. As Figure 18 reveals, the uniqueness implication was identified in 12 of the cases including deception *per se* cases and in one of the cases involving other internal commission evidence. Levene's test for equality of variances revealed no significant difference in the variances between the two groups. Thus, the equal variance *t* was used to test this hypothesis. Based upon the data, H4(e) was not supported. The results imply that there is no significant difference in the FTC's identification of the uniqueness implication in cases involving deception *per se* versus cases including other internal commission evidence. However, in the interpretation of these results, the implications of the small number of observation (13) cannot be ignored.

Figure 18**Results of Analysis of the Uniqueness Implication and Internal Commission Evidence**

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Uniqueness Implication			
# of cases	12	1	13
% of cases	4.74%	2.17%	
F-value (Levene's)	2.578		
level of significance	N.S.		
Equal variance test			
t-value	N.S.		
df			
level of significance			

The seventh hypothesis regarding implied advertising claims relates to the reasonable basis implication, and is as follows:

H4(f) The reasonable basis implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

Data regarding the reasonable basis implication were analyzed in order to test this hypothesis. Also, cases involving internal commission evidence were grouped into cases involving deception *per se* and cases including other internal commission evidence. According to the data, the reasonable basis implication was the most common implication to be identified. The reasonable basis implication was included in 78.6% of the 299 decisions analyzed. As Figure 19 presents,

the reasonable basis implication was identified in 206 of the 253 cases involving deception *per se*. Levene's test for equality of variances revealed a significant difference between the variances of cases including deception *per se* and cases involving other internal commission evidence. Hence, the unequal variance *t* test was used to test this hypothesis. Based upon the data, H4(f) was supported. These results imply that the FTC will identify the reasonable basis implication in cases involving deception *per se* more frequently than in cases including other types of internal commission evidence. The commonality of this implication in FTC decisions should clearly convey to marketers the need to substantiate all advertising claims with appropriate evidence. Additional implications of these results regarding the reasonable basis implication will be discussed in the next chapter.

Figure 19

Results of Analysis of the Reasonable Basis Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Reasonable Basis			
# of cases	206	29	235
% of cases	81.4%	63%	
F-value (Levene's)	19.493		
level of significance	$p < .001$		
Unequal variance test			
<i>t</i> -value	2.418		
df	55.905		
level of significance	$p < .05$		

The eighth hypothesis relating to the dimension of implied advertising claims includes the no qualification implication. That is:

H4(g) The no qualification implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

Under the type of implication category, the data regarding the no qualification implication were analyzed. The internal commission evidence category was grouped into two dimensions: cases involving deception *per se* and cases including other internal commission evidence. According to the data, the no qualification implication was included in 116 of the 299 cases. As Figure 20 reveals, deception *per se* was present in 114 of the 116 cases involving the no qualification implication. Based upon the data, H4(g) was supported. The results imply that the FTC is more likely to identify the no qualification implication in cases involving deception *per se* than in cases including other forms of internal commission evidence in its allegations against advertisers. The no qualification connection was the second most-often cited implication. Marketers should clearly and conspicuously disclose any relevant and/or material information relating to the product that may affect the decision-making of the reasonable consumer.

Figure 20

Results of Analysis of the No Qualification Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
No Qualification			
# of cases	114	2	116
% of cases	45.1%	4.35%	
F-value (Levene's)	889.117		
level of significance	$p < .001$		
Unequal variance test			
<i>t</i> -value	9.324		
df	159.36		
level of significance	$p < .001$		

The ninth hypothesis regarding implied advertising claims is related to the significance implication, and is as follows:

H4(h) The significance implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

The data regarding the significance implication were analyzed in order to test this hypothesis. The internal commission evidence category was divided into two independent groups: cases involving deception *per se* and cases including other internal commission evidence. Accordingly, the significance implication was included in only 4 of the 299 cases. As Figure 21

reveals, deception *per se* was present in all four cases involving the significance implication. Levene's test for equality of variances revealed that there was no significant difference between the two groups regarding the significance implication. Hence, the equal variances *t* test was used to test this hypothesis. Based upon the data, H4(h) was not supported. There is not a significant difference between cases involving deception *per se* and cases including internal commission evidence in relation to the significance implication. Furthermore, the significance implication was not included in a sufficient number of cases to gain any meaningful perspective from the data. According to the data, the FTC relies upon the significance implication in less than 1.5% (4 out of 299) of decisions rendered.

Figure 21

Results of Analysis of the Significance Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Significance Implication			
# of cases	4	0	4
% of cases	1.58%		
F-value (Levene's)	3.033		
level of significance	N.S.		
Equal variance test			
<i>t</i> -value	N.S.		
df			
level of significance			

The tenth hypothesis regarding implied advertising includes the social concerns implication.

That is:

H4(i) The social concerns implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

In order to test this hypothesis, the data regarding the social concerns implication were analyzed. As in the testing procedure for each of the hypotheses in the implied claim category, the internal commission evidence category was divided into two independent samples. According to the data, the social concerns implication was included in 34 of the 299 cases. As Figure 22 reveals, deception *per se* was present in all 34 of the cases involving the social concerns implication. Levene's test for equality of variances indicated a significant difference in the variances of the two groups – cases involving deception *per se* and cases involving other internal commission evidence. Thereby, the unequal variances *t* test was used to test this hypothesis. Based upon the data, H4(i) was supported. It is worthwhile to note that the FTC relied upon deception *per se* in 100% of the cases involving the social concerns implication. The results indicate that there is a significance difference regarding the social concerns implication in relation to cases involving deception *per se* and cases including internal commission evidence.

Figure 22
Results of Analysis of the Social Concerns Implication
and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Social Concerns Implication			
# of cases	34	0	34
% of cases	13.4%		
F-value (Levene's)	39.763		
level of significance	p < .001		
Unequal variance test			
t-value	6.255		
df	252		
level of significance	p < .001		

The final hypothesis examines implied advertising claims that involve third party implication and, is as follows:

H4(j) The third party implication will be identified more frequently in the FTC decisions including deception per se than in FTC decisions involving other forms of internal commission evidence.

In order to test this hypothesis, the data regarding the third party implication were analyzed. The internal commission evidence category was grouped into two independent samples. According to the data, the third party implication was included in 97 of the 299 cases. As Figure 23 reveals, 93 of the third party implication cases involved deception *per se*. Levene's test reveals a

significance difference between the variances of the two independent groups; hence, the unequal variance *t* test was used to test this hypothesis. Based upon the data, H4(j) was supported. The results imply that in cases where the third party implication is present, there is a significant difference between cases involving deception *per se* and cases including internal commission evidence.

Figure 23

Results of Analysis of the Third Party Implication and Internal Commission Evidence

	Deception <i>per se</i> (coded: 0, 2)	Other Internal Evidence (No Deception <i>per se</i>)	Total
Total cases	253	46	299
Third Party Implication			
# of cases	93	4	97
% of cases	36.8%	8.7%	
F-value (Levene's)	163.74		
level of significance	p < .001		
Unequal variance test			
<i>t</i> -value	5.414		
df	99.501		
level of significance	p < .001		

Regulatory Predictability

The category of regulatory predictability is divided into three areas: (1) the type of FTC order and implied claims; (2) the type of advertising media and FTC order; and (3) the type of industry

and the FTC orders. The purpose of the hypotheses included in this category is to gain insight regarding the types, frequency, and relationships of FTC orders.

The Type FTC Order and Implied Claims

The first hypothesis included under the category of regulatory predictability analyzes the types of implied claims and the types of FTC orders. That is:

H5: The FTC will issue severe orders more frequently in cases where multiple implied claims are identified by the FTC than in cases where only one implied claim is cited by the FTC.

Two categories of data were analyzed in order to test this hypothesis: the type of FTC order and the type of implied advertising claim. Under the type of FTC order category, the data regarding all eight types of FTC orders were analyzed. The calculated measure “multiple orders” was created based on the eight variables included in the type of order category. Calculated measures reflect the researcher’s analytical needs specific to the particular content analysis (Davis 1997). Two types of orders are common in almost all FTC decisions: cease and desist and record keeping. Cease and desist orders occur in 100% of the decisions rendered, and record keeping requirements (either three-year or five year) exist in 97% of the 299 cases analyzed. However, in 171 cases, the FTC issued multiple orders. Multiple orders cause advertisers to be placed under additional and more severe requirements, such as consumer redress and customer correction letters.

Under the type of implication category, the data regarding all eleven types of implications were analyzed. The calculated measure “multiple implications” was created based on the eleven variables included in the type of implication category. According to the data, 214 cases include

multiple implications, while 85 cases involve only one implied claim. Multiple orders were present in 135 of the 214 cases involving multiple implications, and the remaining 36 multiple order cases contained only one implied claim. Figure 24 displays the results of the Independent-Samples *t* Test regarding multiple orders as a common variable for cases involving multiple implications versus cases including only one implication. Levene's test for equality of variances indicated no significant difference between the variances of the two independent samples – cases involving multiple implications and cases involving one implied claim. Hence, the equal variances *t* test was used to test this hypothesis. Based upon the data, H5 was supported. The results imply that the FTC is more likely to issue multiple orders in cases where multiple implications are present than in cases involving only one implication. Multiple orders, such as consumer redress, corrective advertising, and customer correction letters, result in more severe requirements for the advertiser. Marketers should be aware of the types of implications the FTC relies upon, in order to reduce the types of potential implied claims in their advertising representations.

Figure 24

Results of Analysis of the Type of FTC Order and Implied Advertising Claims

	Multiple Implied Claims	One Implied Claim	Total
Total cases	214	85	299
Multiple Orders			
# of cases	135	36	171
% of cases	63.1%	42.4%	
F-value (Levene's)	2.356		
level of significance	N.S.		
Equal variance test			
<i>t</i> -value	3.317		
df	297		
level of significance	$p < .005$		

Type of Advertising Media and FTC Order

The second hypothesis relating to regulatory predictability analyzes the type of advertising media and the type of FTC order, and is as follows:

H6: The FTC will issue multiple orders more frequently in cases where print advertising media is involved than in cases where non-print advertising media exists.

Two categories of data were analyzed in order to test this hypothesis: the type of FTC order and the type of advertising media. Under the type of FTC order category, the data regarding the calculated measure, multiple orders, were analyzed. Pursuant to the type of advertising media category, the data regarding print advertising media were analyzed. Based on the media category, two independent samples were formed – cases involving print media (235) and cases not including print media (64). According to the data, multiple orders existed in 171 of the 299 cases. As Figure 25 reveals, 126 cases involving multiple orders included print media. Levene's test indicated a significant difference between the two groups – cases involving print media and cases involving other media. Therefore, the unequal variances *t* test was used to test this hypothesis. Based upon the data, H6 was not supported. The results are significant but are in the opposite direction of that theorized. That is, the results imply that the FTC is more likely to issue multiple orders in cases involving non-print advertising media, than in cases including print advertising media.

Figure 25

Results of Analysis of the Type of FTC Order and Advertising Media

	Print Media (coded: 0, 1)	Non-print media	Total
Total cases	235	64	299
Multiple Orders			
# of cases	126	45	171
% of cases	53.6%	70.3%	
F-value (Levene's)	25.667		
level of significance	p < .001		
Unequal variance test			
t-value	-2.482		
df	295.224		
level of significance	p < .05 N.S.		

Type of Industry and FTC Order

This study suggests that the severity of the FTC order will vary according the type of industry involved. The first hypothesis included in this area examines the consumer safety industry. That is:

H7(a): The FTC will issue multiple orders more frequently in cases involving consumer safety products than in cases involving non-consumer safety products (consumer healthcare and other products).

To test these hypotheses, responses to two categories - type of industry and type of FTC order - were analyzed. The type of industry category was grouped into two independent samples in order to test this hypothesis: cases involving the consumer safety industry (12) and cases

included in the non-consumer-safety industry (287) (consumer healthcare and other). Figure 26 reveals the results of the tests regarding the type of industry and the type of order rendered.

Levene's test for equality of variances revealed a significant difference between the variances of these two industry groups. Therefore, the unequal variance *t* test was employed to test this hypothesis. Based upon the data, H7(a) was supported. The results indicate that there is a significant difference between the consumer safety industry and the non-consumer-safety industry with regard to the FTC's issuance of multiple orders. Only twelve of the 299 cases involved consumer safety products. However, as Figure 28 reveals, that multiple orders occurred in 100% of the cases involving consumer safety products, as opposed to 61% of cases involving healthcare products and 47.5% of cases involving other products.

Figure 26

Results of Analysis of FTC Orders and Consumer Safety Industry

	Industry #2: Consumer Safety (coded: 0, 2)	Industry #1 & #3: Non-Consumer Safety	Total Cases
Total cases	12	287	299
Multiple Orders			
# of cases	12	159	171
% of cases	100%	55.4%	
F-value (Levene's)	1009.741		
level of significance	p < .001		
Unequal variance test			
<i>t</i> -value	15.174		
df	286		
level of significance	p < .001		

The second hypothesis regarding the area of type of industry and type of FTC order is as follows:

H7(b): The FTC will issue multiple orders more frequently in cases involving consumer healthcare products than in cases involving other products (non-consumer healthcare and non- consumer safety).

In order to test this hypothesis, data regarding the created variable multiple orders were analyzed. Also, the type of industry category was grouped into two independent samples: cases involving the consumer healthcare industry (165) and cases including other products (122) (non-healthcare and non-safety). As presented in Figure 27, 101 multiple orders were included in the consumer healthcare industry. Levene's test revealed a significant difference between the two industry groups. Hence, the unequal variances *t* test was used to test this hypothesis. According to the data H7(b) was supported. The results imply that there is a significant difference between the consumer healthcare industry and the other products industries with regard to the FTC's issuance of multiple orders.

Figure 27

Results of Analysis of FTC Orders and the Consumer Healthcare Industry

	Industry #1: Consumer Healthcare (coded: 0, 1)	Industry #2 & #3: Non-Consumer Healthcare	Total Cases
Total cases	165	122	287
Multiple Orders			
# of cases	101	58	159
% of cases	61.2%	47.5%	
F-value (Levene's) level of significance	5.603 p < .05		
Unequal variance test			
<i>t</i> -value	2.308		
df	257.094		
level of significance	p < .05		

In summary of the analysis of regulatory predictability, as shown in Figure 28, orders of consumer redress occur more than twice as often when consumer safety products are involved than for non-consumer safety products. Orders of customer correction letters are employed six times as often when consumer safety products are involved, than when non-consumer safety products are involved. Lastly, other orders occur 1.6 times as often when consumer safety products are involved than when non-consumer safety products are involved.

Figure 28

Frequency Results of Analysis of FTC Orders and Industry Category

Category	Industry #1: Consumer Healthcare	Industry #2: Consumer Safety	Industry #3: Other	Total Cases
Total Cases	165	12	122	299
Multiple Orders # of cases % of cases	101 61.2%	12 100%	58 47.5%	171
Corrective Advert. # of cases % of cases	3 1.8%	0 0	4 3.3%	7
Consume Redress # of cases % of cases	26 15.8%	4 33.3%	15 12.3%	45
Disclosure Order # of cases % of cases	84 50.1%	6 50%	46 37.7%	136
Correction Letter # of cases % of cases	15 9.1%	7 58.3%	8 6.6%	30
Other Orders # of cases % of cases	26 15.8%	3 25%	13 10.7%	42

Based upon the findings presented in this chapter, conclusions will be drawn in Chapter 5. In addition, limitations of the study and suggestions for future research will also be presented.

CHAPTER FIVE: CONCLUSIONS AND IMPLICATIONS

There is nothing so practical as a good theory.

- Kurt Lewin

Chapter Five provides a summary of the results of the hypotheses testing, and discusses the implications of the results. This chapter also includes a discussion of the contributions of this research, limitations, and suggestions for future research.

IMPLICATIONS OF RESULTS

In order to answer the six research questions proposed by this study, three categories of hypothesis were developed: (1) evidence of deception, (2) implied advertising claims, and (3) regulatory predictability. Figure 29 provides a recap of the results of all nineteen of the hypotheses tested in this study. Discussions of the implications and summaries of results are then presented according to each of the three categories listed above.

Figure 29
Recap of Research Findings for Hypotheses 1 through 7

H	Characteristic	Proposition	Result
Evidence of Deception			
1(a)	FTC internal/external evidence	FTC external evidence more frequent than internal evidence	Not supported
1(b)	FTC consumer/non-consumer evidence	FTC non-consumer evidence more frequent than consumer evidence	Not supported
2(a)	Respondent internal / external evidence	Respondent external evidence more frequent than internal evidence	Not supported
2(b)	Respondent consumer / non-consumer evidence	Respondent consumer evidence more frequent than non-consumer evidence	Not supported
Implied Advertising Claims			
3	Expansion implication & Industry	Expansion implication more frequent in consumer healthcare industry	Supported at $p < .001$
4(a)	Expansion implication & evidence	Expansion implication more frequent in deception <i>per se</i> cases	Not supported
4(b)	Demonstration implication & evidence	Demonstration implication more frequent in deception <i>per se</i> cases	Not supported
4(c)	Inconspicuous qualification & evidence	Inconspicuous qualification more frequent in deception <i>per se</i> cases	Not supported
4(d)	Inconspicuous context & evidence	Inconspicuous context more frequent in deception <i>per se</i> cases	Not supported
4(e)	Uniqueness implication & evidence	Uniqueness implication more frequent in deception <i>per se</i> cases	Not supported
4(f)	Reasonable basis & evidence	Reasonable basis implication more frequent in deception <i>per se</i> cases	Supported at $p < .05$
4(g)	No qualification & evidence	No qualification implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$
4(h)	Significance implication & evidence	Significance implication more frequent in deception <i>per se</i> cases	Not supported
4(i)	Social concerns & evidence	Social concerns implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$
4(j)	Third party & evidence	Third party implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$
Regulatory Predictability			
5	FTC order and implied claims	Severe orders more frequent in cases with multiple implied claims	Supported at $p < .005$
6	Advertising media and FTC order	Severe orders more frequent in cases involving print advertising media	Not supported
7(a)	FTC order and consumer safety industry	Severe orders more frequent in consumer safety products industry	Supported at $p < .001$
7(b)	FTC order and consumer healthcare industry	Severe orders more frequent in consumer healthcare industry than other products	Supported at $p < .05$

Evidence of Deception

The first category of hypotheses examines data related to internal and external evidence presented by both the FTC and the respondent. Figure 30 presents the results of the four hypotheses included in this category.

Figure 30
Research Findings for Hypotheses 1 and 2

H	Characteristic	Proposition	Result
1(a)	FTC internal/external evidence	FTC external evidence more frequent than internal evidence	Not supported
1(b)	FTC consumer/non-consumer evidence	FTC non-consumer evidence more frequent than consumer evidence	Not supported
2(a)	Respondent internal / external evidence	Respondent external evidence more frequent than internal evidence	Not supported
2(b)	Respondent consumer / non-consumer evidence	Respondent consumer evidence more frequent than non-consumer evidence	Not supported

Each of the four hypotheses in this category examines types of evidence presented in FTC decisions rendered from 1990 through 1998. The evidence of deception category was designed to answer the first two research questions proposed in Chapter 2: (1) What types of evidence does the Commission use to prove deception in FTC decisions rendered, and (2) What types of evidence do respondents offer as defense against FTC allegations. Analysis of the data revealed two categories of FTC decisions: consent agreements and final orders. In consent agreements, the advertiser agrees to abide by the FTC's administrative findings and orders, but does not admit guilt. In essence, the advertiser agrees with the FTC's findings. Hence, external evidence is usually not applicable to this type of decision. In decisions classified as final orders, the

advertiser does not agree with the FTC's findings. Therefore, in decisions classified as final orders, external evidence is usually presented by both the FTC and the advertiser. Even though the four hypotheses were not supported, the evidence of deception category reveals some of the most surprising findings of this research. According to the data, the vast majority (97%) of the decisions rendered by the FTC were classified as consent agreements. This indicates that, in alleged violations filed against advertisers, 97% of the respondents agree to the FTC's orders without offering any type of defense. While only 9 of the 299 cases involved decisions that were classified as final orders, the frequency of internal versus external evidence, as well as, the frequency of consumer versus non-consumer evidence cannot be tested to confirm the significance of the results. This category provides opportunities for additional research regarding the reasons that advertisers are choosing not to defend against FTC litigation.

Implied Advertising Claims

The second category of hypotheses analyzes the types of implications identified in the FTC decisions rendered. There are two dimensions to this category. H3 examines the frequency of the expansion implication in relation to the type of industry. H4(a) through H4(j) analyze the frequency of each of the ten implications developed in the literature (Preston 1977) in regard to the type of internal evidence (Brandt and Preston 1977) presented by the FTC. Figure 31 portrays the results of testing each of the hypotheses included in this category. The implied advertising claims category was developed to answer the third research question proposed by this study: What types of methodology does the FTC use most often in the interpretation of implied advertising claims.

Figure 31
Research Findings for Hypotheses 3 and 4

H	Characteristic	Proposition	Result
3	Expansion implication and industry category	Expansion implication more frequent in consumer healthcare industry	Supported at $p < .001$
4(a)	Expansion implication and commission evidence	Expansion implication more frequent in deception <i>per se</i> cases	Not supported
4(b)	Demonstration implication and commission evidence	Demonstration implication more frequent in deception <i>per se</i> cases	Not supported
4(c)	Inconspicuous qualification and commission evidence	Inconspicuous qualification more frequent in deception <i>per se</i> cases	Not supported
4(d)	Inconspicuous context and commission evidence	Inconspicuous context more frequent in deception <i>per se</i> cases	Not supported
4(e)	Uniqueness implication and commission evidence	Uniqueness implication more frequent in deception <i>per se</i> cases	Not supported
4(f)	Reasonable basis and commission evidence	Reasonable basis implication more frequent in deception <i>per se</i> cases	Supported at $p < .05$
4(g)	No qualification and commission evidence	No qualification implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$
4(h)	Significance implication and commission evidence	Significance implication more frequent in deception <i>per se</i> cases	Not supported
4(i)	Social concerns and commission evidence	Social concerns implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$
4(j)	Third party and commission evidence	Third party implication more frequent in deception <i>per se</i> cases	Supported at $p < .001$

According to the data, the expansion implication was identified in 33% of the cases involving the consumer healthcare industry, as opposed to, 13% of the cases involving other, non-healthcare products. H3 was supported at $p < .001$. The research results indicate that the FTC is more likely to identify the expansion implication in cases where the consumer healthcare industry is involved than in cases where other, non-consumer healthcare products are included. Marketers of consumer healthcare products should be aware of the tendency for consumers to

desire expanded benefits from these types of products. The desire to receive expanded benefits may cause consumers, and consequently the FTC, to identify implications of benefits that expand beyond the literal meanings of the representations. Marketers of consumer healthcare products should also be cautious to design advertisements so as not to imply expanded benefits in their representations.

H4(a) through H4(j) rely on a typology of implications (Preston 1977) and the evidence of deception categories (Brandt and Preston 1977) in order to examine the frequency of each type of implied claim. An analysis of the data reveals that deception *per se* is the most popular form of internal commission evidence relied upon by the FTC in decisions rendered from 1990 through 1998, indicating that the FTC's authority remains broad. For purposes of this study, deception *per se* refers to the FTC's reliance on its own expertise and intuitive analyses. Other internal commission evidence includes explicit false representations, commission precedents and court precedents. This group of hypotheses was developed to examine the frequency of each type of implication in regard to the type of internal commission evidence presented. The FTC's ability to rely on its own expertise and intuitive reasoning (deception *per se*) reflects the extensiveness of the Commission's authority.

Regarding H4(a), the expansion implication was identified in 26% of the cases involving deception *per se*, and in 15% of the cases associated with other forms of internal commission evidence. While not statistically significant, the results indicate that the expansion implication is identified more frequently in decisions involving deception *per se* than in decisions including other forms of internal commission evidence.

According to the data, five of the ten types of implications resulted in less than 30 observations each. Specifically, these five implications are: (H4(b)) the demonstration

implication (6 cases); (H4(c)) the inconspicuous qualification (4 cases); (H4(d)) the inconspicuous context (13 cases); (H4(e)) the uniqueness implication (13 cases); and (H4(h)) the significance implication (4 cases). The limited number of observations restricts the implications that can be derived from testing these hypotheses. Considering that the observations for these types of claims ranged from 4 cases (1.3%) to a maximum of 13 cases (4.3%), the most notable implication may be that these types of implied advertising claims are not an issue of material concern for advertisers. The typology of implications was developed in 1977. Due to changes in advertising methodology since that time, a goal of this research is to identify potential changes in the types of implications identified by the FTC.

The reasonable basis implication (H4(f)) was observed in 235 (78%) of the decisions rendered; hence, this type of implied claim should clearly be considered significant to advertisers. H4(f) was supported at $p < .05$, and the test results imply that the reasonable basis implication is identified more frequently in cases involving deception *per se* than in cases including other forms of commission evidence. The reasonable basis implication refers to the FTC's substantiation requirements for representations made by advertisers. Advertising claims must be substantiated by "competent and reliable scientific evidence" (*Federal Trade Commission Act*). The definition of competent and reliable scientific evidence varies according to industry characteristics. In general, as evidence of substantiation, the FTC requires research, studies, tests, analyses, or any other type of evidence to be based upon independent professional expertise. In addition, an analysis of the data indicates that the reasonable basis implication is by far the most common type of implication to be identified by the FTC.

The no qualification implication (H4(g)), was identified in 116 (38.8%) of the 299 cases analyzed. H4(g) was supported at $p < .001$, and the test results imply that the no qualification

implication is present more often in cases involving deception *per se* than in cases including other forms of internal commission evidence. The no qualification implication refers to the FTC's requirements that advertisers disclose all relevant and/or material information that may affect the decision-making of the reasonable consumer. The no qualification implication was the second most common type of implication to be identified by the FTC. One of the seven types of FTC orders in this study is the disclosure order which an FTC mandated requirement of disclosure placed on an advertiser. To avoid litigation, advertisers should clearly and conspicuously disclose any relevant and/or material information associated with a product's attributes that may affect the decision-making of the reasonable consumer.

While the social concerns implication (H4(i)) was identified in only 34 cases, the test results suggest that a significant difference exists between cases involving deception *per se* and cases including other forms of commission evidence regarding this type of implied claim. The social concerns implication refers to advertising representations that imply the existence of some type of societal benefit, such as environmental protection. All 34 of the cases in which this claim was identified, involved deception *per se*. Although the social concerns implication was identified in only 34 cases (11.4%), its relevance should not be overlooked. Societal values concerning environmental protection have not waned, and hence, the FTC's scrutiny of such issues remains relevant.

The last hypothesis (H4(j)) in this category analyzes the frequency of the third party implication. According to the data, H4(j) was supported at $p < .001$, and 93 of the 97 cases involving the third party implication also included deception *per se*. With 97 observations, the third party implication is the third most common implication to be identified in the FTC decisions rendered between 1990 and 1998. The third party implication refers to endorsements

and/or testimonials given by independent individuals or organizations on behalf of the advertiser. Advertisers get into trouble in several ways in regard to this area. Two such examples include: making representations that imply independence, when in fact, independence on behalf of the endorser does not exist and/or implying an endorsement by an authenticating organization, when in fact, the product has not been endorsed by said organization.

This study includes a category of “other” implications. According to the data, there were 50 observations of other types of implications that failed to meet the criteria of the existing categories included in Preston’s (1977) typology of implications. An analysis of each of the observations found in the other implications category, led to a discovery of a recurring type of implied claim. For purposes of this study, the author refers to these types of claims as superiority claims. Superiority claims refer to representations made by advertisers that imply product attributes are superior to other products. While similar to the uniqueness claim identified in the literature (Preston 1977), superiority claims use comparative techniques that imply higher performance/product attributes, as opposed to, representations of individuality (uniqueness). Figure 32 presents a typology of implications developed that are based upon the findings of this research. These implications are listed in the typology according to their frequency of observations, implying relevance. Types of implied advertising claims that were observed in less than 5% of the 299 cases are considered not material and are excluded in this typology. The development of an updated typology of implied claims with practical application potential was one of the goals of this research.

Figure 32
Typology of Relevant Implications According to Research Findings

Implication	Description	Frequency
Reasonable Basis	Implied possession of competent and reliable scientific evidence to support claims	78.6%; (235 cases)
No Qualification	Qualifying information is omitted; failure to disclose	38.8%; (116 cases)
Third Party	Implied endorsement and/or testimonial that is false	32.4%; (97 cases)
Expansion	False expansion of benefits implied	24.4%; (73 cases)
Superiority	False implication of superior benefits	14.7%; (44 cases)
Social Concerns	False implication that product provides some benefit to society	11.4%; (34 cases)

Regulatory Predictability

The final category of hypotheses examines factors related to FTC orders. The three dimensions of this category are: (1) the type of FTC order and implied advertising claims, (2) the type of advertising media and FTC orders, and (3) the type of industry and FTC orders. Figure 33 details the results of the hypotheses testing in this category.

Figure 33
Research Findings for Hypotheses 5 through 7

H	Characteristic	Proposition	Result
5	FTC order and implied claims	Severe orders more frequent in cases with multiple implied claims	Supported at $p < .005$
6	Advertising media and FTC order	Severe orders more frequent in cases involving print advertising media	Not supported
7(a)	FTC order and consumer safety industry	Severe orders more frequent in consumer safety products industry	Supported at $p < .001$
7(b)	FTC order and consumer healthcare industry	Severe orders more frequent in consumer healthcare industry than other products	Supported at $p < .05$

The Type of FTC Order and Implied Advertising Claims

This dimension of the regulatory predictability category was designed to answer the study's fourth research question: Is there a relationship between the type of implied claim identified and the type of FTC order rendered. H5 examines the frequency of FTC orders in relation to cases involving multiple implications. This hypothesis was supported at $p < .005$ which implies that the FTC is more likely to issue multiple orders in cases involving multiple implications, as opposed to cases including only one implication. Multiple orders result in more severe penalties and/or restrictions for advertisers, such as: consumer redress; customer correction letters; disclosure orders; and/or corrective advertising. In order to limit their potential exposure to multiple orders, marketers should be knowledgeable and employ caution so as not to make representations involving the types of implications frequently identified by the FTC.

Type of Advertising Media and Type of FTC Order

H6 examines the frequency of multiple orders regarding print, as opposed to non-print, advertising media. This category was developed to test the fifth research question in the study: Is there a relationship between the type of advertising media involved and the type of FTC order. According to the findings, this hypothesis was not supported. The results were significant, but in the opposite direction of that theorized. This finding indicates that the FTC is more likely to issue multiple orders in cases that involve non-print advertising media than in cases involving print advertising media. Specifically, multiple orders were issued in 70% of the cases involving non-print advertising media, as compared to, 54% of the cases in which print media was present. The area concerning the frequency of FTC orders in relation to the types of advertising media holds potential for future research.

Type of Industry and FTC Order

This dimension of regulatory predictability examines the frequency of multiple orders in relation to the type of industry involved. The last research question in this study: Is there a relationship between the type of industry involved and the type of FTC order, is addressed by the two hypotheses in this dimension. H7(a) analyzes multiple orders in relation to the consumer safety industry. Only 12 cases were identified as consumer safety products, but multiple orders were issued in 100% of these cases. This hypothesis was supported at $p < .001$. The low number of observations demands caution in the interpretation of the results. However, 100% of the cases that belonged to the consumer safety industry contained multiple orders, in contrast to 55% of the cases found in non-consumer safety industries. The low number of observations

notwithstanding, the significance of the results implies that advertisers of products included in the consumer safety industry receive more severe penalties in FTC actions.

The final hypothesis of this study analyzed the frequency of multiple FTC orders in the consumer healthcare industry versus the other products industry. Multiple orders were issued in 61.2% of the cases included in consumer healthcare. Whereas, only 47.5% of cases included in the other products category involved multiple orders. This hypothesis was supported at $p < .05$, indicating that the FTC is more likely to issue severe orders in cases that involve consumer healthcare products than in cases including other products (non-healthcare and non-safety).

CONTRIBUTIONS OF THE STUDY

The study of regulation in advertising has implications for marketing managers, public policy makers, behavioral researchers, and consumers. Ambiguity in the FTC's guidelines regarding deception in advertising continues to impede advertisers in their ability to reduce the possibility of potentially deceptive advertising claims (Owen and Plyler 1991; Preston 1992; Davis 1994). A review of the marketing literature reveals that research regarding deceptive advertising has been narrowly focused. That is, studies in this area have included only one or two dimensions involving deceptive advertising. This research addresses the apparent gap in the literature by analyzing multiple dimensions and by examining the most recent FTC decisions rendered from 1990 through 1998. Through a comprehensive analysis of 299 FTC decisions, this study provides insight into: (1) the frequency of evidence presented by the FTC and the respondent; (2) the number and types of implications identified by the FTC; and (3) the frequency of multiple FTC orders in relation to type of evidence, type of advertising media, and type of industry.

An insightful contribution regarding evidence of deception is the overwhelming presence of consent orders in which advertisers agree to the FTC's findings and orders without offering any type of defense. The FTC's reliance on deception *per se* yields insight into the extensiveness of the FTC's authority. An analysis of implied claims reveals that five of the ten claims developed in the literature were identified in less than 5% of the FTC decisions rendered from 1990 through 1998. A new type of implied claim, the superiority implication, was discovered through an examination of the data. Based on the research findings, an updated typology of relevant implications was presented (Figure 32). This updated typology of implications includes the types of implied claims deemed most relevant by frequency testing.

LIMITATIONS OF THE STUDY

The data analyzed in this study were derived from the administrative decisions published in volumes of *Federal Trade Commission Decisions* from 1990 through 1998. FTC decisions appealed in federal court are not included in this study. A mitigating factor to this limitation is that in general, only final orders are subject to appeal. Therefore, only nine of the 299 cases included in this analysis were subject to appeal. A second limitation of this study is that the data only include cases decided from 1990 through 1998. Due to the delay in publication, cases decided more recently are not yet available for analysis.

In addition, while most of the coding concepts were able to be observed in an objective manner, the type of implication concepts required intuitive reasoning on behalf of the judges. In order to insure the highest possible level of reliability, a pretest was conducted. Following the pretest, more in-depth definitions and categorical criteria were developed to assist in reducing ambiguity and subjective reasoning.

SUGGESTIONS FOR FUTURE RESEARCH

One suggestion for future research is associated with the area of regulatory predictability. The examination of FTC orders in regard to specific types of implications may provide additional insight into circumstances wherein the FTC will issue more severe orders. The data in this study support the hypothesis that multiple orders are more frequent in cases that involve multiple implications. However, the identification of implication types, as they relate to specific FTC orders, was not explored in this study. Secondly, in this particular area, the examination of FTC orders in relation to the each type of advertising media may provide clarity concerning the FTC's issuance of severe orders. In addition, further analysis of one of the most costly FTC orders, consumer redress, may provide support for advertisers in the prevention of this particular order. The research findings identified the presence of consumer redress orders in 45 of the cases analyzed.

A final potential suggestion for future research applies to the evidence of deception category. According to the data analyzed in this study, the vast majority of advertisers sign consent agreements, offering no defense against FTC litigation. Understanding this phenomenon could lead to increased awareness about perceptual issues of the FTC as an authoritative body. That is, do advertisers perceive that it is too costly to defend against litigation, or is it that the FTC's authority is perceived to be so complete that offering a defense is considered moot?

EXHIBIT 1 - Classification Scheme

Contributions to the Literature – by Category

Table A - FTC Case Studies

Year	Author(s)	Publication	Contribution / Major Findings
1974	Cohen	<u>Journal of Marketing</u>	The unfairness doctrine & FTC legislation; A discussion of relevant decisions (1970-1974); The identification of five criteria for determining unfairness.
	Wilkes & Wilcox	<u>Journal of Marketing</u>	Substantiation & FTC regulation; A discussion of recent relevant decisions and recent FTC policies; The development of six suggested procedures for the firm.
1977	Brandt & Preston	<u>Journal of Marketing</u>	The increase in the FTC's use of evidence to determine deception; An analysis of FTC cases from 1914 to 1973 to determine the type of evidence used by the FTC (3,337 cases analyzed); Trend analyses is used.
	Preston	<u>Journal of Business Research</u>	The FTC & implied claims including puffery; Development of a typology of ten types of implied claims that have been deemed deceptive by the FTC (cases 1970-1976).
1980	Cohen	<u>Journal of Marketing</u>	The FTC's substantiation program, A review of relevant cases involving substantiation issues (cases: 1970-1979) and suggestions for managerial policies are offered.
1981	Rotfeld & Preston	<u>Journal of Advertising Research</u>	Research & advertising law: puffery; A discussion of cases involving puffery (through 1979); A discussion of the increased use of behavioral empirical evidence.
1991	Owen & Plyler	<u>Journal of Public Policy & Marketing</u>	The role of empirical evidence in regulating advertising; A discussion of FTC case precedents, and the proper use of extrinsic evidence to aid in FTC interpretation of advertising claims.
1992	Preston	<u>Journal of Public Policy & Marketing</u>	A discussion of erroneous evidence introduced in FTC Cases (FTC case-oriented); Content analysis is reported on evidence introduced; (cases 1970-1991).
1995	Jacoby & Szybillo	<u>Journal of Public Policy & Marketing</u>	A discussion of consumer research in the FTC v. Kraft case; a review of principal surveys offered & their flaws
	Stewart	<u>Journal of Public Policy & Marketing</u>	Deception, materiality, & survey research: Kraft case: A response to a review by Jacoby & Szybillo; examines the Kraft materiality survey.
	Sudman	<u>Journal of Public Policy & Marketing</u>	Comments on Articles: by Jacoby & Szybillo and by Stewart (Kraft case).
	Andrews & Maronick	<u>Journal of Public Policy & Marketing</u>	Advertising research issues from FTC v. Stouffer Foods; Use of extrinsic evidence offered by the FTC.

EXHIBIT 1 – Classification Scheme

Contributions to the Literature – by Category

Table B – FTC Policy Regarding Deception in Advertising

Year	Author(s)	Publication	Contribution / Major Findings
1964	Millstein	<u>Columbia Law Review</u>	A comprehensive discussion of definitions, the FTC's role in advertising, and illustrative cases.
1986	Ford & Calfee	<u>Journal of Marketing</u>	A discussion of the FTC's 1983 policy statement on the meaning of deception, the FTC's 1980 policy statement on unfairness, and the role of consumer research.
1990	Hyman	<u>International Journal of Advertising</u>	A discussion of proposed definitions of deception in advertising and the past literature regarding definitions of deception; including a discussion of the FTC's policies and definitions regarding deception.
1992	Richards & Preston	<u>Journal of Public Policy & Marketing</u>	Proving & Disproving Materiality (FTC); A discussion of the FTC's concept of materiality
1995	Preston	<u>Journal of Public Policy & Marketing</u>	A discussion of the implications of the FTC's 1994 Policy Statement on Advertising, the FTC unfairness doctrine, and FTC policy development regarding unfairness.
	Simonson	<u>Journal of Public Policy & Marketing</u>	A discussion of the structural evolution of "unfairness" law / policy, the FTC Act Amendments of 1994, and the implications for public policy and marketing.
1998	Abernethy & Franke	<u>Journal of Public Policy & Marketing</u>	Advertisements contain significantly fewer objective information claims during a period of strict advertising regulation by the FTC / reduced amount of advertising information available in times of strict regulation

EXHIBIT 1 – Classification Scheme

Contributions to the Literature – by Category

Table C - Assessing Deception in Advertising

Year	Author(s)	Publication	Contribution / Major Findings
1969	Gelhorn	<u>Kansas Law Review</u>	A discussion of the FTC's capability to protect consumers and the problem of proof of consumer deception in FTC false advertising cases.
1975	Gardner	<u>Journal of Marketing</u>	A discussion offering a conceptual approach to understanding, categorizing and measuring deception; including suggestions of research approaches to aid in the measurement of deceptive advertising (NBT, CIT, ESP)
	Armstrung & Russ	<u>MSU Business Topics</u>	A discussion of a general procedure that can assist in reducing confusion and controversy surrounding the issue of detecting deception in advertising.
1977	Harris	<u>Journal of Applied Psychology</u>	A methodology for testing consumers' interpretations of advertisements is developed and used to test understanding of implied claims; includes ramifications for information processing, consumer education and the empirical determination of deceptive advertising.
1985	Grunert & Dedler	<u>Journal of Public Policy and Marketing</u>	Two criteria for a procedure to detect misleading advertising are derived; current concepts for detecting misleading advertising are reviewed; and the misleading components approach is presented as a solution.
1994	Davis	<u>The Journal of Consumer Affairs</u>	A discussion of the relative influence of four factors on decision making regarding advertising content, and ways to detect and reduce the incidence of advertising deception are provided.

EXHIBIT 1 – Classification Scheme

Contributions to the Literature – by Category

Table D – Consumer Behavior and Deceptive Advertising

Year	Author(s)	Publication	Contribution / Major Findings
1969	Cohen	<u>Journal of Marketing</u>	A discussion of FTC policy, the criteria underlying the regulatory environment, and the protection of the consumer. The FTC is criticized for relying on “economic man” instead of “behavioral man” in its policy setting.
1978	Olson & Dover	<u>Journal of Marketing Research</u>	Cognitive Effects of Deceptive Adv. (51 women sample)
1987	Gaeth & Heath	<u>Journal of Consumer Research</u>	Misleading Adv. / Cognitive Processing: In Young & Old Adults
1993	Preston & Richards	<u>American Business Law Journal</u>	Consumer Belief in FTC and Lanham Act Cases; Belief needs to be incorporated into FTC methods
1995	Johar	<u>Journal of Marketing Research</u>	A discussion of consumer involvement, deception, and implied claims; including an experimental examination of consumer involvement, the detection of deception, and a proposed measurement of deception.

EXHIBIT 1 – Classification Scheme

Contributions to the Literature – by Category

Table E - Consequences of Deceptive Advertising

Year	Author(s)	Publication	Contribution / Major Findings
1973	Dillon	<u>Journal of Advertising Research</u>	Why Deceptive Ads are Not Advantageous
1981	Shimp & Preston	<u>Journal of Marketing</u>	Consequences of Evaluative Advertising
1999	Attas	<u>Journal of Business Ethics</u>	What is Wrong with Deceptive Advertising?

EXHIBIT 1 – Classification Scheme

Contributions to the Literature – by Category

Table F – Corrective Advertising

Year	Author(s)	Publication	Contribution / Major Findings
1973	Hunt	<u>Journal of Advertising Research</u>	Effects of Corrective Advertising
1974	Dyer & Kuehl	<u>Journal of Advertising</u>	The Corrective Advertising Remedy

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc/evid - FTC 8= other doc/evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume) health & safe)	1= CA 2= FC
1990 Decisions									
1. Black & Decker (U.S.) Inc. (Docket C-3280)	2				10	1	6	1 2 4	3 1
2. Outdoor World Corporation (Docket 9229)	1					1	6	5	3 1
3. The Hensley Group, et al. (Docket 9230)	2				7	1	4 6	5	3 1
4. Nutronics Corporation, et al. (Docket C-3281)	2				6 9 10	1	4 6	1	2 1
5. General Nutrition, Inc. (Docket 9175)		1 2	2 3 4 5 6 8		1 5 6 10	1	6	1 5	1 2
6. Nature's Way Products, Inc., et al. (Docket C-3285)	2				6	1 3	6	1	1 1
7. R.J. Reynolds Tobacco Company (Docket 9206)	2				6 7	1		1	1 1
8. TV Inc., et al. (Docket C-3296)	2				6 7	1	4 5 6	1 2	1 1
9. The Vons Companies, Inc. (Docket C-3302)	2				1 6	1	6	1	3 1
10. Twin Star Productions, Inc., et al. (Docket C-3307)	2				1 6 7 10	1	3 4 6	2	1 1
11. Money Money Money, Inc., et al. (Docket C-3308)	2				6 7 10	1	3 4 6	2	3 1
12. American Life Nutrition, Inc., et al. (Docket C-3310)	2				6 10	1 2	5 6	1 2 4	1 1
13. Consumer Direct, Inc., et al. (Docket 9236)	2				1 5 6 7	1	4 5 6 8	1 2	1 1
14. NME Hospitals, Inc. (Docket C-3317)	2				6	1	6	1	5 1 1
15. Fertility Institute of W. Mass., et al. (Docket C-3318)	2				1 6	1	6	5	1 1
16. IVF Australia, Ltd., et al. (Docket C-3319)	2				7	1	4 6	1	5 1 1
1991 Decisions									
17. CPC International Inc. (Docket C-3321)	2				1 4 6	1	6	1	1 1
18. Haverhills, et al. (Docket C-3322)	2				6 7 9	1	4 6	5	2 1

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precedt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm precedent 2=court precedent	1= dictionary definit-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony - Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2 = copy test - Resp. 3 = copy test - FTC 4 = focus group - Resp. 5 = focus group - FTC 6 = other consumer - oriented - Resp. 7 = other consumer - oriented - FTC	1 = expansion 2 = demonstration 3 = inconspicuous qualif. 4 = inconspicuous context 5 = uniqueness 6 = reasonable basis 7 = no qualification 8 = significance 9 = social concerns 10 = third party 11 = other	1=cease and desist 2=corrective advise 3=consumer redress 4 =disclosure ordered 5 = mailings 6 = Yellow Pages letter 6="3 year" record keep 7="5 year" record keep 8=other	1 = print 2 = TV 3 = Internet 4 = radio 5 = mailings 6 = Yellow Pages	1= healthcare 2=cons. safe 3= pher (non-consumer) (health & safe)	1=C.A. 2=F.C.
19. Miles Inc. (Docket C-3323)	2				6	1	1 2 4	1	1
20. Kraft, Inc. (Docket 9208)		1 2	4 5	2 3 6	6	11 1	1 2 4	1	2
21. Lewis Galoob Toys, Inc. (Docket C-3324)	2				7	1 2 4 6	1 2 4	3 1	
22. Towne, Silverstein, Rotter, Inc. (Docket C-3325)	2				7	1 2 4 6	1 2 4	3 1	
23. Richard Crew (Docket C-3328)	2				6 7 10	1 4 6 8	2	1	
24. Robert Francis (Docket C-3327)	2				6 7 10	1 4 6 8	2	1	
25. Asics Tiger Corporation (Docket C-3328)	2				6	1	1	3 1	
26. TK-7 Corporation, et al. (Docket 9224)	1				6	1	1	3 1	
27. Canandaigua Wine Company (Docket C-3334)	1					11 1	5	1	
28. Zipatone, Inc., et al. (Docket C-3336)	2				6 9	1	1	3 1	
29. Teleline, Inc. (Docket C-3337)	2				7	1 4 6 8	2	3 1	
30. Audio Communications Inc. (Docket C-3338)	2				7	1 4 6 8	2 4	3 1	
31. The Perrier Group of America, Inc., et al. (Docket C-3339)	1					11 1	1	1	
32. Jerome Russell Cosmetics, U.S.A., Inc., et al. (Docket C-3341)	2				6	1	1	3 1	
33. Taylor Woodcraft, Inc. (Docket C-3343)	1					11 1	5 6	3 1	
34. Wayne Phillips, et al. (Docket 9237)	2				6 7 10	1 3 4 6 8	2	3 1	
35. Spanish Telemarketing Industries, Inc., et al. (Docket C-3353)	2				4 6 10	1 3 4 6	2	1	
36. Reproductive Genetics In Vitro, PC, et al. (Docket C-3357)	2				6 7	1 4 6	5	1	
1992 Decisions									
37. First Brands Corporation (Docket C-3358)	2				6 9	1 4 6	1	3 1	
38. Dr. Scott M. Ross (Docket C-3363)	2				6 7	1 4 6	1	1	

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precdnt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case	
Category Dimensions	1= explicit false claims 2=deception per se	1=comm precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimdny - FTC 5= expert testimdny -Resp. 6= respodent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp 5= focus group - FTC 6= other corsumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consumer health & safe)	1= CA 2= FC	
39. Nestle Food Company (Docket C-3365)	2					11 1	6	1 2	1	1
40. St. Ives Laboratories, Inc. (Docket C-3366)	1				3	11 1	3	1	1	1
41. Volvo North America Corp., et al. (Docket C-3367)	2				7	1	3 6	1 2	2	1
42. Scall, McCabe, Sloves, Inc. (Docket C-3368)	2				7	1	3 6	1 2	2	1
43. Elexis Corporation, et al. (Docket C-3370)	2				6 7	1	6	1	3	1
44. Newtron Products Co., Inc., et al. (Docket C-3375)	2				6	1	6	1	3	1
45. American Enviro Products, Inc., et al. (Docket C-3376)	2				6 9	1	4 6	1 2	3	1
46. Tech Spray, Inc., et al. (Docket C-3377)	2				6 9	1	6	1	3	1
47. Nu-Day Enterprises, Inc., et al. (Docket C-3380)	2				1 6 7	1	3 4 8	2	1	1
48. Sun Company, Inc., et al. (Docket C-3381)	2				5 6 8 11	1	6	2	3	1
49. RMED Internatl., Inc., et al. (Docket C-3382)	2				6 9	1	4 6	1	3	1
50. Slender You, Inc., et al. (Docket C-3383)	2				4 6 10	1	6	1 2 4	1	1
51. Exhart Envirnmntl Sys., Inc., et al. (Docket C-3384)	2				6 10	1	5 6	1	3	1
52. Pyraponic Industries II, Inc., et al. (Docket C-3386)	2				6 11	1	6	1	3	1
53. Viral Response Systems, Inc., et al. (Docket 9245)	2				6	1	6	1	1	1
54. National Center For Nutrition, Inc. (Docket C-3393)	2				1 6 7	1	4 5 6	1	1	1
55. Sandoz Nutrition Corporation (Docket C-3394)	2				1 6 7	1	4 6	1 4	1	1
56. Pacific Rice Products, Inc. (Docket C-3395)	2				6	1	6	1	1	1
57. Bertolli USA, Inc. (Docket C-3396)	2				6 10 11	1	6	1	1	1

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2 = copy test - Resp. 3 = copy test - FTC 4 = focus group - Resp 5 = focus group - FTC 6 = other consumer - oriented - Resp. 7 = other consumer - oriented - FTC	1 = expansion 2 = demonstration 3 = inconspicuous qualif. 4 = inconspicuous context 5 = uniqueness 6 = reasonable basis 7 = no qualification 8 = significance 9 = social concerns 10 = third party 11 = other	1=cease and desist 2=corrective advise 3=consumer redress 4 = disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1 = print 2 = TV 3 = Internet 4 = radio 5 = mailings 6 = Yellow Pages	1 = healthcare 2=cons. safe 3= other (non-consume health & safe)	1 = CA 2 = FC
58. Campbell Soup Company (Docket 9223)	2				1 6 7	1 4	1	1	1
59. NME Hospitals, Inc. (Docket C-3397)	2				5 6 11	1 7	1	1	1
60. The Winning Combination, Inc., et al. (Docket C-3398)	2				6 10	1 7	1	1	1
61. Patricia Wexler, M.D. (Docket C-3400)	2				1 6 7	1 6	2	1	1
62. Belage Plastic Surgery Center, P.C., et al. (Docket C-3401)	2				7	1 4 6	1 2	1	1
63. Jason Pharmactcl, Inc., et al. (Docket C-3392)	2				6 7	1 4 6	1	1	1
64. Pompeian, Inc. (Docket C-3402)	2				1 6 11	1 6	1 2 4	1	1
65. Phone Programs (Docket 9247)	2				7	1 4 6 8	2	3	1
1993 Decisions									
66. Medical Mktg Serv Inc. et al. (Docket C-3409)	2				1 7 10	1 4 7	1	1	1
67. Site For Sore Eyes, Inc. (Docket C-3411)	1				6	1 7	1	1	1
68. The Isaly Klondike Co. (Docket C-3412)	2				1	1 6	1 4	1	1
69. General Electric Company (Docket C-3414)	2				3 7 9	1 4	1 2	3	1
70. Mobil Oil Corporation (Docket C-3415)	2				6 9	1 4 6	1	3	1
71. Alan V. Phan (Docket C-3417)	2				1 6	1 7	1	1	1
72. CC Pollen Company, et al. (Docket C-3419)	2				1 6 7	1 3 4 6	1 2	1	1
73. Value Rent-a-Car, Inc. (Docket C-3420)	2				7	1 4 6	1 2	3	1
74. Dollar Rent-a-Car Syst., Inc. (Docket C-3421)	2				7	1 4 6	1 2	3	1
75. The Clorox Company (Docket C-3427)	1				11	1 6	2 4	1	1
76. Fleetwood Manufacturing, Inc., et al. (Docket C-3428)	2				1 6 10	1 6	1 2 4	1	1
77. Conair Corporation (Docket C-3431)	1				6	1 7	1 2	1	1
78. Fone Telecommunicatns, Inc. (Docket C-3432)	2				7	1 4 6	2	3	1

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Code Sheet for FTC Decisions

Coding Categories	Type of Evidence	Type of Evidence	Type of Evidence	Type of Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
	GROUP I - Internal Comm Evidence	GROUP II - Internal Precedent Evidence	GROUP III - External Non-Consumer Evidence	GROUP IV - External Consumer Evidence					
Category Dimensions	1= explicit false claims 2=deception per se	1=comm precedent 2=court precedent	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
101. Gisela E. Flick (Docket C-3464)	2				1 5 6 7 10	1 4 7	2	1	1
102. James L. McElhaney, M.D. (Docket C-3465)	2				1 5 6 7 10	1 4 7	2	1	1
103. The Texwipe Company (Docket C-3466)	2				6 9	1 6	1		3 1
104. G.C. Thorsen, Inc. (Docket C-3467)	2				6 9 10	1 6	1		3 1
105. Gracewood Fruit Company (Docket C-3470)	2				1 6 10	1 7	1	1	1
106. OSRAM SYLVANIA Inc. (Docket C-3471)	2				3 9	1 4	1		3 1
107. Revlon, Inc., et al. (Docket 9231)	2				6	1 4 6	1	1	1
108. Nutril/System, Inc. (Docket C-3474)	2				4 6 7 10 11	1 4 6 8	1 2 4	1	1
109. Diet Center, Inc. (Docket C-3475)	2				4 6 7 10	1 4 6 8	1	1	1
110. Physicians Weight Loss Centers of America, Inc., et al. (Docket C-3476)	2				4 6 7 10	1 4 6 8	1	1	1
1994 Decisions									
111. White Castle System, Inc. (Docket C-3477)	2				6 9	1 7	1		3 1
112. Redmond Prods, Inc., et al. (Docket C-3479)	2				1 6 9	1 7	1		3 1
113. Presto Food Products, Inc. (Docket C-3480)	1				1	1 6	1 2	1	1
114. The Hairbow Co., et al. (Docket C-3482)	2				1 7	1 3 4 6	1		3 1
115. Homespun Prods, Inc., et al. (Docket C-3483)	2				1 7	1 3 4 6	1		3 1
116. Sandcastle Creations, et al. (Docket C-3484)	2				1 7	1 3 4 6	1		3 1
117. New Mexico Custom Designs, Inc., et al. (Docket C-3485)	2				1 7	1 3 4 6	1		3 1
118. Mr. Coffee, Inc. (Docket C-3486)	2				6 7 9	1 4 7	1		3 1
119. Mace Security Internat, Inc., et al. (Docket C-3487)	2				6 7 10	1 4 5 7 8	1	2	1
120. Nu Skin Interntnl, Inc., et al. (Docket C-3489)	2				1 6 7 11	1 3 4 5 7	1	1	1
121. Archer Daniels Midland Co. (Docket C-3492)	2				5 6 7 9	1 4 6	1 2 4		3 1

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp 2 = copy test - Resp. 3 = copy test - FTC 4 = focus group - Resp 5 = focus group - FTC 6 = other consumer - oriented - Resp. 7 = other consumer - oriented - FTC	1 = expansion 2 = demonstration 3 = inconspicuous qualif. 4 = inconspicuous context 5 = uniqueness 6 = reasonable basis 7 = no qualification 8 = significance 9 = social concerns 10 = third party 11 = other	1=cease and desist 2=corrective advise 3=consumer redress 4 =disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1 = print 2 = TV 3 = Internet 4 = radio 5 = mailings 6 = Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2 = FC
122. Del Dotto Enterprises, Inc., et al. (Docket 9257)	2				6 7 10	1 4 7	2	3	1
123. Unocal Corporation, et al. (Docket C-3493)	2				6 8 11	1 5 6	1 2	3	1
124. Synchronal Corp, et al. (Docket 9251) * (Amended Complaint)	2				1 6 7 10	1 4 6	2	1	1
125. Orkin Exterminating Co., Inc. (Docket C-3495)	2				6 9	1 7	1	3	1
126. Samlick Music Corporation (Docket C-3496)	1				11	1 3 6	1	3	1
127. Sonic Technology Products Inc., et al. (Docket 9252)	2				6	1 6	1	3	1
128. Vein Clinics of Amer., Inc., et al. (Docket C-3501)	2				5 6	1 7	1	1	1
129. Nissan Motor Corp. In U.S.A. (Docket C-3502)	2				7	1 4 6	4	3	1
130. America's Favorite Chicken Co. (Docket C-3504)	2				6 7	1 7	1	1	1
131. Lepage's, Inc., et al. (Docket C-3506)	2				6 7	1 4 7	1	3	1
132. Oak Hill Industries Corp., et al. (Docket C-3507)	2				6 7	1 4 7	1	3	1
133. AJM Packaging Corp., et al. (Docket C-3508)	2				6 7 9	1 7	1	3	1
134. Mia Rose Prods, Inc., et al. (Docket C-3509)	2				6 11	1 7	1	3	1
135. Wyatt Mktg Corporation, Inc. (Docket C-3510)	2				6 7	1 4 7	2	3	1
136. James R. Wyatt (Docket C-3511)	2				6 7	1 3 4 7	2	3	1
137. Keyes Fibre Company (Docket C-3512)	2				6 7 9	1 4 7	1	3	1
138. Lifestyle Fascination, Inc., et al. (Docket C-3513)	2				1 6 10	1 4 6	5	3	1
139. Amoco Chemical Co., et al. (Docket C-3514)	2				6 7 9	1 6	1	3	1
140. Hawthorne Communicatns, Inc. (Docket 9264)	2				6 10	1 7	2	3	1
141. Beverly Hills Weight Loss Clinics International, Inc. (Docket C-3515)	2				6 7 10 11	1 4 6 8	1 2 4	1	1
142. Doctors Medical Weight Loss Centers, Inc., et al. (Docket C-3516)	2				6 7 10	1 4 6 8	1 2 4	1	1

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony-Resp. 6= respondent testimony 7= other doc.evid - FTC 8= other doc.evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualificationm 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record kee 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
143. Quick Weight Loss Centers, Inc., et al. (Texas) (Docket C-3517)	2				6 7 10	1 4 6 8	1 2 4	1	1
144. Quick Weight Loss Centers, Inc., et al. (Georgia) (Docket C-3518)	2				6 7 10	1 4 6 8	1 2 4	1	1
145. Egglund's Best, Inc. (Docket C-3520)	2				5 6 7	1 2 4 7	1 2 4	1	1
146. American Institute of Habit Control, Inc., et al. (Docket C-3522)	2				6 10	1 6	1	1	1
147. North Amer. Plastics Corp. (Docket C-3526)	2				6 9	1 6	1		3 1
148. Stouffer Foods Corporation (Docket 9250)		1 2	4 5	2 3 6 7	3	1 6	1 4	1	2
149. L&S Research Corp., et al. (Docket C-3534)	2				5 6 10 11	1 3 4 7	1	1	1
150. BPI Environmental, Inc. (Docket C-3535)	2				6 9	1 6	1		3 1
151. American Body Armor & Equip, Inc. (Docket C-3539)	2				6 10	1 3 5 6 8	1	2	1
152. Schering Corporation (Docket 9232)		1	4 5	2 4 6	1 4 6	1 4 6	1 2 4	1	2
153. Hayes Microcomputer Products, Inc. (Docket C-3543)	1				6	1 7	1		3 1
154. Chemopharm Lab., Inc. (Docket C-3545)	2				6 9	1 7	1		3 1
1995 Decisions									
155. The American Tobacco Co. (Docket C-3547)	2				6	1 7	1	1	1
156. Creative Aerosol Corp. (Docket C-3548)	2				6 7 9	1 4 7	1		3 1
157. RN Nutrition, et al. (Docket C-3549)	2				6 10 11	1 7	1	1	1
158. Bee-Sweet, Inc., et al. (Docket C-3550)	2				1 6	1 5 6	1	1	1
159. Olsen Labs, Inc., et al. (Docket C-3556)	2				5 6 7 10	1 4 7	2	1	1
160. Am. Institute of Smoking Cessation, et al. (Docket C-3560)	2				6 7 10	1 6	1	1	1
161. Gorayeb Seminars, Inc., et al.	1				6	1 6	1	1	1

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Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony - Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
(Docket C-3561)									
162. Louis Bass, Inc. (Docket C-3562)	1				6	1	7	1	3 1
163. Abovo, Inc., et al. (Docket C-3563)	1				6	1	7	1 2	3 1
164. Ninzu, Inc., et al. (Docket C-3566)	2				6 10	1	7	1 2	3 1
165. Forum-3 Internatnl., Inc. et al. (Docket C-3568)	2				6 7	1	4 6 8	1	1 1
166. Taleigh Corporation, et al. (Docket C-3587)	2				4 5 6 7 10	1	4 7 8	1 2 4	1 1
167. Gateway Educational Products, Ltd., et al. (Docket C-3581)	2				6 10	1	7	1 2 4	3 1
168. Haagen-Dazs Company, Inc. (Docket C-3582)	1					11 1	6	1	1 1
169. David Green, MD (Docket C-3589)	1				6	1	6	1	1 1
170. European Body Concpt. Inc. et al. (Docket C-3590)	2				6 7 10	1	4 7	1 2 4	1 1
171. Mattel, Inc. (Docket C-3591)	2				6 9	1	7	1	3 1
172. Orchid Technology (Docket C-3574)	2				6 10	1	7	1	3 1
173. New Bal. Athletic Shoes, Inc. (Docket 9268)	1					11 1	7	1 2	3 2
174. The Eskimo Pie Corporation (Docket C-3597)	2				7 10	1	4 7	1 4	1 1
175. Natl. Dietary Research, Inc., et al. (Docket 9263)	2				6 10	1	3 7	1	1 1
176. Nature's Bounty, Inc., et al. (Docket C-3593)	2				1 6	1	3 7	1	1 1
177. IHI Clinics, Inc., et al. (Docket C-3595)	2				6 10	1	6	1	1 1
178. Original Mktg, Inc., et al. (Docket C-3596)	2				1 6 10	1	3 7 8	1	1 1
179. Alpine Industries, Inc., et al. (Docket C-3614)	2				1 6	1	5 7	1	3 1
180. Quantum Electronics Corp., et al. (Docket C-3615)	2				1 6	1	7	1	3 1
181. Arizona Institute of Reproductive Med., Ltd. (Docket C-3616)	1				6	11 1	7	1	1 1
182. Body Wise International, Inc. (Docket C-3617)	2				4 6 7 10	1	4 6	1	1 1

Coding Categories										
	Type of Evidence	Type of Evidence	Type of Evidence	Type of Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case	
	GROUP I - Internal Comm Evidence	GROUP II - Internal Precednt Evidence	GROUP III - External Non-Consumer Evidence	GROUP IV - External Consumer Evidence						
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC	
183. Live-Lee Productions, Inc. et al. (Docket C-3620)	2				1 6	1 7	2	1	1	
184. J. Walter Thompson USA, Inc. (Docket C-3622)	2				6 10	1 7	1	1	1	
185. Third Option Laboratories (Docket C-3628)	2				1 6 10	1 3 4 5 7	1 4	1	1	
186. Blenheim Expositions, Inc. (Docket C-3633)	1				6 11	1 7 8	1 2 4	3	1	
1996 Decisions										
187. Johnson & Johnson Cons Prod., Inc. (Docket C-3636)	2				6	1 7	1	1	1	
188. BBDO Worldwide, Inc. (Docket C-3637)	1				11	1 6	1	1	1	
189. Genetex Alexandria, Inc. et al. (Docket C-3639)	2				1 7 10	1 3 7	2 4	1	1	
190. Frank A. Latronica, Jr., et al. (Docket C-3640)	2				6 7 10	1 4 5 7	1	2	1	
191. WLAR Co., et al. (Docket C-3641)	2				4 6 7 11	1 4 7	1	1	1	
192. Good News Products, Inc. (Docket C-3642)	2				1 6	1 7	1 4	1	1	
193. The Dannon Company, Inc. (Docket C-3643)	2				1	1 3 6	2	1	1	
194. Mama Tish's Italian Specialties, Inc. (Docket C-3644)	2				1	1 7	1	1	1	
195. Safe Brands Corp., et al. (Docket C-3647)	2				6 7 9 11	1 4 7	1 2 4	3	1	
196. Azrak-Hamway Internl, Inc., et al. (Docket C-3653)	2				2 7 11	1 3 5 6 8	1 2	3	1	
197. Starwood Advertsng. Inc., et al. (Docket C-3654)	2				2 7	1 6	2	3	1	
198. AMOCO Oil Company (Docket C-3655)	2				1 6 9 11	1 6	1 2 4	3	1	
199. Mrs. Field's Cookies, Inc. (Docket C-3657)	2				1	1 6	1	1	1	
200. Benckiser Consmr Prods., Inc. (Docket C-3659)	2				6 9	1 4 7	1	3	1	
201. N.W. Ayer & Son, Inc. (Docket C-3660)	2				1 6	1 7	1 2 4	1	1	
202. Johnson & Collins Research, Inc. et al. (Docket C-3661)	2				6 7	1 4 7	1	1	1	

Coding Categories	Type of Evidence	Type of Evidence	Type of Evidence	Type of Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
	GROUP I - Internal Comm Evidence	GROUP II - Internal Precednt Evidence	GROUP III - External Non-Consumer Evidence	GROUP IV - External Consumer Evidence					
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc.evid - FTC 8= other doc.evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
203. Cancer Treatment Centers of America, Inc. et al (Docket C-3662)	2				6 10	1 4 6	1	1	1
204. The Diet Workshop Inc., et al. (Docket C-3663)	2				6 7 10	1 4 6 8	1 2 4	1	1
205. Timothy R. Dean (Docket C-3665) (dba: DMC Publishing Group)	1				6	1 7	1	3	1
206. Brian Coryat (Docket C-3666) (dba: Enterprising Solutions)	1				6	1 7	1 3	3	1
207. Martha Clark (Docket C-3667) (dba: Simplex Services)	1				11	1 7	1 3	3	1
208. Sherman G. Smith (Docket C-3668) (dba: Starr Communications)	1				6	1 7	1 3	3	1
209. Robert Serviss (Docket C-3669) (dba: Excel Communications)	1				6	1 7	3	3	1
210. Randolph B. Albertson (Docket C-3670) (dba: Wolverine Capital)	1				6	1 7	1 3	3	1
211. Rick A. Rahim (Docket C-3671) (dba: NBDC Credit Resources Publishing)	2				7	1 4 7	1 3	3	1
212. Lyle R. Larson (Docket C-3672) (dba: Momentum)	2				7	1 4 7	1 3	3	1
213. Budget Rent A Car Syst., Inc. (Docket C-3674)	2				7	1 3 4 6 8	1	3	1
214. Nordltrack, Inc. (Docket C-3675)	2				6 11	1 6	1 4	1	1
215. Ford Motor Company (Docket C-3679)	2				6	1 6	1 5	3	1
216. Young & Rubicam, Inc. (Docket C-3680) (advertising agency for Ford Motor Co.)	2				6	1 6	1 2 4 5	3	1
217. Jordan, McGraph, Case & Taylor, Inc. (Docket C-3684)	1				6 11	1 7	2	1	1
218. Zygon Internatl, Inc. et al. (Docket C-3686)	2				6 10	1 3 4 7	1 3 4 5	1	1
219. Home Shopping Network, Inc., et al. (Docket 9272)	2				1 6	1 7	2	1	1
220. Synchronys Softcorp, et al. (Docket C-3688)	2				1 6 10	1 7	1	3	1

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence	Type of Evidence	Type of Evidence	Type of Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
	GROUP I - Internal Comm Evidence	GROUP II - Internal Precednt Evidence	GROUP III - External Non-Consumer Evidence	GROUP IV - External Consumer Evidence					
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= health care 2=cons. safe 3= other (non-consumer health & safe)	1= CA 2= FC
221. Grey Advertising, Inc. (Docket C-3690) (advertising agency for Hasbo, Inc.)	1				2 7	1 7	2	3	1
222. Grey Advertising, Inc. (Docket C-3691) (advertising agency for Dannon, Co.)	2					11 1 7	2	1	1
223. Rustevader Corporation, et al. (Docket 9274)	2				2 6	1 3 7	1	3	1
224. Georgetown Publishing House Limited Partnership, et al. (Docket C-3692)	2				7 10	1 7	5	3	1
225. Hyde Athletic Industries, Inc. (Docket C-3695)	2				9	1 4 7	1	3	1
226. RBR Productions, Inc. et al. (Docket C-3696)	2				6 9	1 4 7	1	3	1
227. Telebrands Corp., et al. (Docket C-3699)	2				6 7 11	1 6	1	3	1
1997 Decisions									
228. Filtration Manufctrng, Inc., et al. (Docket C-3702)	1				6	1 7	1	3	1
229. AAF-McQuay, Inc. (Docket C-3703)	1				6	1 7	1	3	1
230. Computer Business Serv Inc., et al. (Docket C-3705)	2				6 7 10	1 3 4 7	1 3	3	1
231. Victoria Ble (Docket C-3708)	2				6 7 10	1 6	1	1	1
232. Conopco, Inc. (Docket C-3706) (dba: Van Den Bergh Foods Company)	2				1 6 7	1 4 7	1 2	1	1
233. Universal Merchants, Inc., et al. (Docket C-3707)	2				6 7 10	1 4 7	1 2	1	1
234. CA Suncare, Inc., et al. (Docket C-3715)	2				1 6 7 10	1 2 4 5 7	1	1	1
235. Phaseout of Am., Inc., et al. (Docket C-3716)	2				6 10	1 4 5 7 8	1 2 3 4	1	1
236. World Media T.V., Inc. (Docket C-3717)	2				1 6 10	1 4 7	2	1	1
237. Natural Innovations, Inc., et al. (Docket C-3718)	2				1 6 10	1 4 7	1 2	1	1
238. Comtrad Industries, Inc. (Docket C-3719)	2				6 7	1 4 7	1	3	1
239. Premier Products, Inc., et al. (Docket C-3720)	2				6 7	1 4 7	1 2	3	1

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precdnt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary defntns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respodent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp. 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp. 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= incnspicuous qualif. 4= incnspicuous context 5= uniqueness 6= reasonable basis 7= no qualificationm 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record kee 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= health care 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
240. Jeanette L. Douglass (Docket C-3727)	2				6 7 10	1 4 7	1	3	1
241. Pre-Paid Legal Serv., Inc. (Docket C-3729)	2				6 7	1 3 4 5 6 8	1	3	1
242. UNO Restaurant Corp., et al. (Docket C-3730)	1					11	1 7	1 2	1
243. The Administrative Co., et al. (Docket C-3731)	2				6 7	1 4 7	1	3	1
244. 1554 Corporation, et al. (Docket C-3733)	2				6 10	1 7	1 2 3	3	1
245. Nationwide Syndications, Inc., et al. (Docket C-3736)	1				6	1 3 5 7	1	2	1
246. Splitfire, Inc. (Docket C-3737)	2				6 10	1 4 7	1 2	3	1
247. Zale Corporation (Docket C-3738)	2				7	1 4 7 8	1	3	1
248. Schering-Plough Healthcare Prods Inc. (Docket C-3741)	1				6	1 7 8	1 2 4	1	1
249. Gerber Products Company (Docket C-3744)	2				6 10	1 6	1 2 4	1	1
250. Abbott Laboratories (Docket C-3745)	2				6 10	1 7	1 2 4	1	1
251. BST Enterprises, Inc., et al. (Docket 9276)		1			1 6 10	1 4 5 7	1	2	2
252. AmeriFIT, Inc. (Docket C-3747)	1				6	1 3 4 7	1	1	1
253. 2943174 Canada Inc., et al. (Docket C-3748)	2				6	1 3 7	1	1	1
254. William E. Shell, M.D. (Docket C-3749)	2				1 6	1 3 7 8	1 4 5	1	1
255. William Pelzer, Jr. (Docket C-3750)	2				1 6	1 7 8	1 4 5	1	1
256. Interactive Medical Techs, Ltd., et al. (Docket C-3751)	2				1 6	1 3 7 8	1 4 5	1	1
257. KCD Holdings, Inc., et al. (Docket C-3752)	2				1 6	1 7 8	1	1	1
258. Guildwood Direct Limited (Docket C-3753)	2				6 10	1 3 4 7	1	1	1
259. Bodywell, Inc., et al. (Docket C-3754)	2				6 10	1 3 4 7	1	1	1
260. Dean Distributors, Inc. (Docket C-3755)	2				6 7 10	1 4 7	1	1	1
261. Nutrition 21, et al. (Docket C-3758)	2				1 6	1 5 7 8	1	1	1
262. Apple Computer, Inc. (Docket C-3763)	2				6 7	1 3 5 6 8	1	3	1

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence	Type of Evidence	Type of Evidence	Type of Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
	GROUP I - Internal Comm Evidence	GROUP II - Internal Precedent Evidence	GROUP III - External Non-Consumer Evidence	GROUP IV - External Consumer Evidence					
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC 8= other	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= health care 2=cons. safe 3= other (non-consume health & safe)	1= CA 2= FC
263. Icon Health and Fitness, Inc., et al. (Docket C-3765)	2				6 10	1 4 7	2	1	1
264. Life Fitness (Docket C-3766)	1				6	1 7	1	1	1
265. Exxon Corporation (Docket 9281)	2				6 8	1 2 6 8	2 4	3	1
266. Rogerio Montelro, et al. (Docket C-3767)	2				1 6	1 7	1	1	1
267. Efficient Labs, Inc., et al. (Docket C-3768)	2				1 6	1 7	1 2	1	1
268. Kent & Spiegel Direct, Inc., et al. (Docket C-3769)	2				6 10	1 4 7	1 2 3 5	1	1
269. Abflex, U.S.A., Inc., et al. (Docket C-3771)	2				6 10	1 4 7	1 2 3 5	1	1
270. Kave Elahie (Docket C-3770)	2				6 10	1 4 7	1	1	1
271. Global World Media Corp., et al. (Docket C-3772)	2				6 7 10	1 4 5 7 8	1 2 3 4	1	1
272. Metagenics, Inc., et al. (Docket 9287)	2				1 6	1 11 7	1	1	1
273. Mid-South PCM Group, P.C., et al. (Docket C-3773)	2				6 10	1 4 5 7	1 2 3 4	1	1
274. Blue Coral, Inc., et al. (Docket 9280)	2				6 8 10 11	1 5 7 8	1 2 4	3	1
275. Weight Watchers Internatnl., Inc. (Docket 9261)	2				6 10 11	1 4 6 8	1 2	1	1
1998 Decisions:									
276. Venegas Inc. (Docket C-3781)	1				6	1 7	1	1	1
277. Brake Guard Products, Inc. (Docket 9277)		1 2	2 4 5 7 8	1	1 6 10 11	1 5 7	1 5	2	2
278. Ashland, Inc. (Docket C-3775)	2				6	1 7	1 2 3 4	3	1
279. Jenny Craig, Inc. (Docket 9260)	2				6 7 10	1 4 6 8	1 2 4	1	1
280. Beylen Telecom, Ltd. (Docket C-3782)	1				7 11	1 3 6	3	3	1
281. Roger J. Callahan (Docket C-3797)	2				4 6	1 3 7	2 4	1	1
282. Tru-Vanatage Internatnl, L.L.C. (Docket C-3798)	2				6	1 7	2 4	3	1
283. Jeanie Eiler (Docket C-3799)	2				6	1 6	2 4	3	1

Code Sheet for FTC Decisions

Coding Categories	Type of Evidence GROUP I - Internal Comm Evidence	Type of Evidence GROUP II - Internal Precednt Evidence	Type of Evidence GROUP III - External Non- Consumer Evidence	Type of Evidence GROUP IV - External Consumer Evidence	Type of Implication	Type of FTC Order	Type of Advertising Media	Type of Industry Category	Type of Case
Category Dimensions	1= explicit false claims 2=deception per se	1=comm. precednt 2=court precednt	1= dictionary definitns-FTC 2= trade literature - FTC 3= trade literature - Resp. 4= expert testimony - FTC 5= expert testimony -Resp. 6= respondent testimony 7= other doc evid - FTC 8= other doc evid - Resp.	1= con. testimony-Resp 2= copy test - Resp. 3= copy test - FTC 4= focus group - Resp 5= focus group - FTC 6= other consumer - oriented - Resp. 7= other consumer - oriented - FTC	1= expansion 2= demonstration 3= inconspicuous qualif. 4= inconspicuous context 5= uniqueness 6= reasonable basis 7= no qualification 8= significance 9= social concerns 10= third party 11= other	1=cease and desist 2=corrective advise 3=consumer redress 4=disclosure ordered 5=customer correction letter 6="3 year" record keep 7="5 year" record keep 8=other	1= print 2= TV 3= Internet 4= radio 5= mailings 6= Yellow Pages	1= healthcare 2=cons. safe 3= other (non-consumer health & safe)	1= CA 2= FC
284. London Internatl Group, Inc. (Docket C-3800)	2				6 11	1 7	1	1	1
285. Eye Research Associates.. Inc., et al. (Docket C-3807)	2				6 10	1 4 5 6	1	1	1
286. Civic Development Group, Inc. (Docket C-3810)	1				11	1 7 8	5	3	1
287. Mega Systems Interntnl, Inc. (Docket C-3811)	2				1 6 10 11	1 3 4 7 8	1 2 4	1	1
288. Howard S. Berg (Docket C-3812)	2				6	1 7	2	3	1
289. Bogdana Corporation, et al. (Docket C-3820)	2				1 6 10 11	1 4 7	1 2 4	1	1
290. Westn Direct Mktg Group, Inc. (Docket C-3821)	2				1 6 10 11	1 4 7	2	1	1
291. Honeywell Inc. (Docket C-3823)	2				4 6	1 7	1 2	3	1
292. Automotive Breakthrough Sciences, Inc. (Docket 9275)		1	2 4 7 8		1 6 10	1 5 7 8	1	2	2
293. Nutrivida, Inc. (Docket C-3826)	2				1 6 10 11	1 4 7	2	1	1
294. Herbal Worldwide Holdings Corp. (Docket C-3827)	2				6 10	1 4 7	2	1	1
295. TrendMark, Inc. (Docket C-3829)	2			8	6 7 10	1 4 7	3	1	1
296. Calvin P. Schmidt (Docket C-3834)	2				6	1 7	3	3	1
297. Del Pharmaceuticals, Inc. (Docket C-3837)	2			4	6 10	1 4 7	1 4	1	1
298. Care Technologies, Inc. (Docket C-3840)	2				6	1 4 7	1 4	1	1
299. Pfizer Inc. (Docket C-3841)	2			4	6	1 4 7	1 2	1	1

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Curriculum Vita

E. Carla Mitchell, Ph.D., CPA

Education:

Ph.D. in Business Administration and Marketing, 2002, Old Dominion University, Norfolk, Virginia, GPA: 3.58.

MBA, Business Administration, 1989, Old Dominion University, GPA: 3.56.

BS, Accounting, 1986, Old Dominion University, GPA: 3.02.

Teaching Experience:

Assistant Professor of Business, fall 2002 – present, Troy State University – Atlantic Region, MBA and MSM level courses: *Managerial Accounting* and *Advanced Topics and Concepts in Management*.

Instructor of Accounting, fall 2000 – spring 2002, Old Dominion University, twelve/thirteen hours, sophomore level undergraduate and MBA level courses: *Principles of Accounting* and *Accounting for Managers*.

Visiting Instructor of Marketing, fall 1999 – spring 2000, Old Dominion University, nine hours, junior and senior level undergraduate courses: *Consumer Behavior* and *Marketing: Principles and Problems*.

Instructor (GTA), fall 1998 - spring 1999, Old Dominion University, three hours, junior level undergraduate course: *Marketing: Principles and Problems*.

Conference Proceedings and Presentations:

Ted D. Englebrecht, Carla Mitchell, and J. Taylor Sims, "Federal Trade Commission Decisions Affecting Advertising in the 1990s," **2000 Association of Marketing Theory and Practice Conference**, Hilton Head, South Carolina, March / April 2000.

Carla Mitchell and Howard Olsen, "An Eclectic Approach to International Market Selection: Accounting Industry Perspective," **1999 AMA Winter Educator's Conference**, St. Petersburg, Florida, February 1999.

Ted D. Englebrecht, Carla Mitchell, and J. Taylor Sims, "Deception in Advertising: An Analysis of Federal Trade Commission Decisions Rendered During the 1990s," **American Society of Business and Behavioral Sciences**, sixth annual conference, Las Vegas, Nevada, February 1999.

Curriculum Vita
E. Carla Mitchell, Ph.D., CPA

Journal Publications:

Otto B. Martinson, Ted D. Englebrecht, and Carla Mitchell, "How Multinational Firms Can Profit From Sophisticated Transfer Pricing Strategies," *The Journal of Corporate Accounting and Finance*, Winter 1999.

Ted D. Englebrecht, Carla Mitchell, and Otto B. Martinson, "What is Reasonable Compensation in Closely Held Corporations?" *Management Accounting*, March 1998.

Professional Certification:

Certified Public Accountant, state of Virginia

Academic and Professional Organizations:

Virginia Society of Certified Public Accountants, 1990

American Institute of Certified Public accountants, 1990

Society for Marketing Advances, 1999

Beta Gamma Sigma, Honor Society for collegiate schools of business, 1998

Mu Kappa Tau, National Marketing Honor Society, 1998

Academic and Professional Awards:

Doctoral Consortium Fellow, Society for Marketing Advances, Atlanta GA, October 1999.

Institute of Management Accountants, Certificate of Appreciation (for excellence in contributing to the literature), 1997-1998.

Virginia Department of Taxation, Golden Apple Award, November 1995.

Professional Work Experience:

Income Tax Auditor / Criminal Investigator, Virginia Department of Taxation, 1992-1996.

Certified Public Accountant, LaRossa & Co., CPAs, Virginia Beach, 1987-1992.