consent order. When a consent agreement cannot be reached, the FTC issues an administrative complaint and a formal proceeding before an administrative law judge usually follows (Richards 1990a).

The most recent effort at summarizing the FTC's policy was made in 1983, when the following was established as an omnibus statement describing the elements of deception: “the Commission will find an act or practice deceptive if first, there is a representation, omission, or practice that second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material” (Deception Policy Statement, appended to Cliffdale Assoc., 103 F.T.C. 110, 1984; hereafter referred to as Deception Policy Statement 1983).

In determining whether an ad is deceptive, the FTC may rely on the facial examination of an advertisement when the claim in question was explicitly made. When explicit advertising information suggests multiple interpretations, and the Commission cannot determine with confidence whether at least one of those interpretations is likely to mislead consumers, it may require extrinsic evidence in the form of consumer surveys or expert testimony (see Figure 1).

When research is submitted as evidence to the FTC or the courts, it is generally in the form of copy tests conducted after consumers are exposed to the advertisement in question. During these copy tests, consumers are first asked open-ended questions in order to determine what the advertisement “said or suggested” to them. Subsequent open-ended questions are narrower in focus, and are followed by close-ended questions that probe more deeply to determine whether specific representations were conveyed to consumers (Maronick 1991).