considered. Given the strict standards that must be met in order to obtain a preliminary injunction, few cases proceed beyond this phase and even fewer continue to a full trial (Wegman 1999). In order to prove irreparable harm and claim damages, for instance, a plaintiff has to provide convincing evidence of consumer deception from the claim(s) in question. Extrinsic evidence is almost always required of the plaintiff at this phase, with absence of such evidence considered a material factor by the courts. Extrinsic evidence need not consist of consumer surveys (Jacoby, Handlin and Simonson 1994). However, if consumer surveys are introduced, they must demonstrate that the misleading claim was conveyed to a “not insubstantial” portion of consumers, usually 15 percent (Preston 1989b; Wegman 1999).

The National Advertising Division of the Better Business Bureau

The National Advertising Division (hereafter NAD) of the Council of Better Business Bureaus is charged with independent responsibility for monitoring and reviewing national advertising for truthfulness and accuracy. NAD reviews complaints regarding national advertising made by any person or legal entity, regardless of whether


12 “It is virtually impossible to prove that so much of one's sales will be lost or that one's goodwill be damaged as a direct result of a competitor's advertisement...The Lanham Act plaintiff must...offer something more than a mere subjective belief that he is likely to be injured as a result of false advertising; he must submit proof which provides a reasonable basis for that belief.” The Coca Cola Company v. Tropicana Products, Inc. 538 F. Supp. 1091; 1982 U.S. Dist; U.S.P.Q. (BNA) 927.