Where the advertisements are not literally false, plaintiff bears the burden of proving actual deception by a preponderance of the evidence. Hence, it cannot obtain relief by arguing how consumers could react; it must show how consumers actually do react. (Sandoz Pharmaceuticals Corp. v. Richardson-Vicks, Inc., 902 F.2d at 228-229, 3d Cir. 1990)

Summary

The previous section was intended as a brief summary of concepts related to the processing of advertising information and how these relate to legal issues of deception. From the above review, one can assume that consumers rarely elaborate on advertised information at the time of exposure. Their interest and opportunity to elaborate beyond the information presented will be limited in the absence of a specific need or problem (MacInnis and Jaworski 1989). However, given a personally relevant purchase decision, consumers are likely to attend to material claims with a higher degree of care.

The process of inference generation can be represented along a continuum ranging from automatic to controlled. Interpretive inferences may be considered automatic because they are generated unintentionally and in the absence of conscious control (Bargh 1996; 1989). However, the ease with which they are generated depends on the advertising stimulus and the extent to which it triggers well-rehearsed processes that are difficult to control. Specifically, the content and format of the ad will determine which rules are activated and how these rules are applied to interpret the message. For instance, when faced with implied claims, consumers apply well-rehearsed rules of language to arrive at the meaning of an advertisement. The nature of the inferences generated and whether they are accurate or misleading is therefore under the direct control of the advertiser (Pechmann 1996; Preston 1994; Barone and Miniard 1999).