Summary

As Harris argued (1977), implied superiority claims can be interpreted in two ways: (1) the product is superior to all leading brands, or (2) the product performs as well as all leading brands. When the former is inferred but the latter is true, the claim is deceptive. Research on implied comparative claims suggests that consumers generate superiority inferences when presented with various forms of comparative claims. Moreover, consumers easily generalize the sponsor's superiority to unnamed competitors and to missing attribute values. Thus, implied comparative superiority advertisements are very effective in communicating false and inaccurate meanings to consumers, meanings that tend to unfairly benefit the sponsor brand.

Implied Superiority Claims in Adjudicated Cases

The potential of implied claims to deceive consumers has been long recognized by the FTC, and there have been numerous challenges of implied claims under Section 43 (a) of the Lanham Act and at the NAD. The following sections will review some prominent cases and some of the most recent cases involving implied claims.

FTC Challenges to Implied Superiority Claims

The use of implied claims as part of branding and positioning strategy increased along with the increase of regulatory activity at the FTC in the 1970s. As the FTC challenged advertisers to substantiate explicit superiority claims, some found it easier to suggest superiority than to run the risk of litigation. Advertisers have employed clever copy-writing tactics, used visual elements, spokespersons, and other symbols to signal superiority to consumers. Nonetheless, the Commission has been relatively successful in identifying and challenging a significant number of implied claims. One of the most