

IN THE MATTER OF
EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, Jan. 31, 1977

With certain provisos Commission adopts paragraph nine of ALJ's Jan. 5, 1977, protective order.

*Appearances**

ORDER

The administrative law judge has certified to the Commission paragraph nine of his January 5, 1977, protective order. The certification requests that the Commission approve and adopt the order provision or take such other action as it may deem appropriate. The Commission has determined to adopt paragraph nine subject to the following provisos: 1) with respect to documents only portions of which have been designated as "confidential" pursuant to the protective order, the Commission's assurance of prior notification will extend only to those portions; 2) in the case of release of a document, or portion of a document, designated as "confidential," in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process, the Congressional committee or subcommittee or the court will be advised that the party which supplied the document considers the material to be confidential and the party will be provided ten days' prior notice where possible, and in any event as much advance notice as can reasonably be given.

It is so ordered.

* For reasons of economy, the *Appearances* are not being reproduced herein. Information regarding *Appearances* may be obtained from the Public Reference Branch, Federal Trade Commission, Washington, D.C.

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IN THE MATTER OF
CENTURY 21 COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Feb. 1, 1977

Commission affirms ALJ's ruling that he has authority to issue an access order.

Appearances

For the Commission: *Sandra M. Wilmore, June S. Katz, Donna H. Greenfield, W. Randolph Smith and Anne E. Dewey.*

For the respondents: *G. F. Richman, Frates, Floyd, Pearson, Stewart, Richman & Greer, Miami, Fla.; W. L. Miller, Stein, Halpert & Miller, Washington, D.C.; Jerome S. Richman, Miami, Fla.; Joel Bennett, Washington D.C.; and Joseph S. Paglino, Intervenor for Commodore Plaza, Miami, Fla.*

ORDER

Respondents have applied for review of the administrative law judge's order of December 28, 1976, granting complaint counsel's motion for an order compelling the granting of access to Morgan's Bay, a body of water contiguous to the beach area leased to owners at respondents' condominium project. Pursuant to Section 3.23(b) of the Commission's Rules of Practice, the ALJ determined that his ruling that he has authority to issue an access order was appropriate for immediate review. Confining ourselves to the question of the law judge's authority to issue such an order, we affirm.¹

We would add to the law judge's treatment of the issues that respondents' application does not challenge the Commission's statutory authority to issue such an order. Sections 6(a) and 6(g) of the Federal Trade Commission Act authorize the Commission "[t]o gather and compile information concerning, and to investigate from time to time the * * * business, conduct, [and] practices * * * of any corporation engaged in or whose business affects commerce * * *" and "to make rules and regulations for the purpose of carrying out the provisions" of the FTC Act. The latter provision is to be construed in a manner that will "render the statutory design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment, particularly where * * * that interpretation is consistent with the plain language of the statute." *National Petroleum Refiners Ass'n v.*

¹ We, therefore, have not considered respondents' various arguments going to the relevancy of the requested discovery or their suggestion that an access order would be unlawful because a portion of the lake bottom is owned by other private parties.

FTC, 482 F.2d 672, 689 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974). Orders requiring access to tangible, as well as documentary, evidence are well-established. *See* Fed. R. Civ. P. 34. We, therefore, can discern no reason why the language of Sections 6(a) and 6(g) is not sufficiently broad to authorize such relief, provided that "the inquiry is within the authority of the agency, the demand is not too indefinite and the information is reasonably relevant." *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Accordingly,

It is ordered, That the aforesaid ruling of the administrative law judge that he has authority to issue an access order be, and it hereby is, affirmed.

Complaint

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IN THE MATTER OF

EVERSEAL WATERPROOFING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT.*Docket C-2865. Complaint, Feb. 4, 1977 --- Decision, Feb. 4, 1977*

Consent order requiring a Newton, Mass., seller and distributor of waterproofing products and services, and its subsidiaries, among other things, to cease misrepresenting their guarantees; the nature, efficacy, and performance characteristics of their products; and the size and volume of their business. Further, the order requires respondents to maintain specified records; make prescribed disclosures; and respond to requests for service within seven days. Additionally, respondents must provide a three-day cooling-off period during which customers may cancel transactions and receive prompt refunds; maintain a responsible customer relations department; and institute a surveillance program designed to ensure compliance with the order.

Appearances

For the Commission: *William F. Connolly* and *Lois M. Woocher*.
For the respondents: *Harry J. Greenblatt, Kaplan & Arnoldy*,
Boston, Mass.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Everseal Waterproofing Corporation, a corporation, Everseal Waterproofing of New Hampshire, Inc., a corporation, Everseal Corporation of Maine, a corporation, and Irving Silverstein, individually, and William A. Epner, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Everseal Waterproofing Corporation, hereinafter referred to as Everseal, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 958 Watertown St., Newton, Massachusetts.

Respondent Everseal Waterproofing of New Hampshire, Inc., hereinafter referred to as Everseal of New Hampshire, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Hampshire with its principal office and place of business located at 9 Capitol St., Concord, New Hampshire.

Respondent Everseal Corporation of Maine, hereinafter referred to as Everseal of Maine, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine with its principal office and place of business located at 57 Exchange St., Portland, Maine.

Respondent Irving Silverstein is a former officer, director and stockholder of each of the corporate respondents. He has formulated, directed and controlled the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is 42 Sierra Road, Hyde Park, Massachusetts.

Respondent William A. Epner is an officer, director and sole stockholder of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of corporate respondent, Everseal Waterproofing Corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution of residential and commercial waterproofing products and services to the public.

Respondents place into operation and implement a sales program whereby members of the general public, by means of advertisements placed in printed media of general circulation and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of sales personnel and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign agreements (contracts) for the purchase of respondents' waterproofing products and services.

Respondents receive substantial income from the results of such agreements.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause and for some time last past have caused their advertising and promotional material and their said products, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to be shipped and transmitted to, from and between their several places of business located as aforesaid, and to prospective purchasers thereof located in various other States of the United States, other than the state of origination, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said products and services in and

affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of obtaining leads or prospects for the sale of residential and commercial waterproofing products and services, and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen and representatives, cause prospective purchasers of their waterproofing products and services who have answered respondents' advertisements to be interviewed by salesmen at the place of residence of individual prospective purchasers. Said salesmen endeavor to sell respondents' waterproofing products and services and for the purpose of inducing the sale of said products and services, said salesmen make many statements and representations, directly or by implication, both orally and by means of brochures or other printed material displayed by the salesmen to prospective purchasers. In conjunction therewith, respondents have made certain statements concerning the nature of their offer and their business, the efficacy, value, price, worth and performance of the waterproofing products and services and the guarantee offered by respondents. Typical and illustrative, but not all inclusive of said statements and representations relating to respondents' products and services are the following:

A. Newspaper Advertisements

US Gov't. Pat. #2,277,286.

Basements Waterproofed Efficiently,
Inexpensively.

Over 100,000 Basements Throughout the Country
Have Been Successfully Sealed Against Water
Seepage By This Process.

No Problem Too Small or Too Large.

You Hold 25% of Total Price for 1 Year To
Guarantee That We Have Successfully Sealed
Your Basement.

For Free Estimates Call or Write
Everseal Waterproofing Corp.
340 Main Street, Worcester, MA 791-0800
In Boston 969-7800
Lowell 459-7300
Manchester, NH 625-9777
Providence, RI 421-4222
Portland, ME 77-1000.

No Digging. All Work Done From the Outside.

No Damage to Lawns, Shrubs, Walks.

Learn About the Danger Signs of Water Seepage.
Send for Free Everseal Booklet Today.

B. Radio Advertisements

The Everseal method has been used in over 100,000 basements throughout the country, and it's available to you right here and now.

You hold 25% of the total price for 1 year, to guarantee that Everseal has successfully sealed your foundation.

The Everseal process is the most economical and reliable answer for all basement waterproofing problems.

Homeowners * * * Do you have a wet or damp basement? Everseal Waterproofing can solve your problem efficiently and inexpensively.

The Everseal method seals from the outside and there's no damage to lawns, shrubs, walks or driveways.

C. Statements in Brochures and Pamphlets

US Gov't. Pat. #2,277,286.

The most economical and reliable answer for all basement waterproofing problems.

It has also been used in major structures, such as the Coffey Dam across the Columbia River during construction of the Grand Coulee Dam.

Pressure pumping is a method of applying bentonite . . . which forms a perfect seal on EXTERIOR WALLS without excavation and seals the cracks in masonry, concrete brick, or concrete block by following the crack through the wall, thus forming a complete closure against moisture and water.

* * * forming a perfect seal between the foundation and the fill repelling all water seepage attempting to enter the basement.

* * * effectively sealing walls against seepage, dampness, sweating, and surface water.

Bentonite, pumped under pressure, not only seals the outside and inside walls (at the cracks) but also impregnates outside soil to a width of twelve inches from basement walls, thus forming a zone of protection,

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effectively sealing off water.

This material will not evaporate, wash off, or deteriorate through age, or soil condition. It makes a guaranteed waterproofing job.

You hold 25% of total price for 1 year, to guarantee that we have successfully sealed your foundation.

5 year written Everseal guarantee.

D. Oral Statements by Sales Representatives

The Everseal process will definitely solve your problem. You won't have even a drop of water.

The Bentonite is pressure pumped into the ground, pushes the water out of the ground and the walls, and hardens, filling cracks and preventing water from seeping in.

We have done many jobs in this area and successfully solved even the most difficult basement water problems.

Once we pour this stuff in, you'll never have any more problems.

The work is absolutely guaranteed to eliminate your basement water problem.

All work is done from the outside.

The pumping will take from 2 to 3 days to complete.

I'm giving you a 25% discount from our regular price for paying in full.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations of salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' method of basement waterproofing is an exclusive, patented process.
2. Respondents' waterproofing process will seal all types of walls, floors, and foundations against water seepage.
3. Respondents' method of basement waterproofing will stop basement water damage completely and will keep basements dry permanently.

4. Respondents' waterproofing services are unconditionally guaranteed in writing and respondents' customers may hold 25 percent of the total price for one year to guarantee that respondents have successfully sealed the customers' basements.

5. Respondents have branch offices with complete sales and service facilities in several New England States.

6. Respondents' basement waterproofing process, which is applied from the outside, waterproofs basements without digging and without causing damage to shrubs, walks or driveways.

7. Respondents' waterproofing process has satisfactorily sealed over 100,000 basements against water seepage.

8. The waterproofing material (bentonite) used by respondents in their basement waterproofing services is not affected by soil conditions and the water table level.

9. The efficacy of bentonite as a waterproofing agent in the pressure pumping process is demonstrated by the successful use of bentonite as a waterproofing agent in the construction of dams, levees, and other major structures.

10. Respondents' waterproofing services are being offered for sale at special or reduced prices and purchasers are thereby being offered savings from respondents' regular selling price.

11. Respondents will provide prompt service when requested following completion of any waterproofing work.

PAR. 6. In truth and in fact:

1. Respondents' method of basement waterproofing is not exclusive or unique but has been and is utilized by other competing basement waterproofing companies.

2. Respondents' waterproofing process will not seal all types of basement walls, floors, and foundations against water seepage.

3. Respondents' method of basement waterproofing will not stop basement water damage completely and will not keep basements dry permanently.

4. Respondents' waterproofing services are not unconditionally guaranteed in writing but are subject to numerous conditions and limitations. Such conditions and limitations include: the contractual provision that respondents at their discretion may perform and charge for additional waterproofing services; respondents' offer of the 25 percent holdback provision is available only to selected customers; and respondents do not provide service to dissatisfied customers who hold back 25 percent of the total price.

5. Respondents do not maintain branch offices with complete sales and service facilities in several New England States.

6. Respondents' basement waterproofing process does not water-

proof basements from the outside without digging and without causing damage to shrubs, walks, or driveways. Respondents, in many cases, have done extensive digging and patching along the interior and exterior basement walls of the homes of their customers; respondents, in many cases, have dug or drilled holes into walks and driveways adjacent to the basement foundations of the homes of their customers.

7. Respondents' waterproofing process has not satisfactorily sealed over 100,000 basements against water seepage.

8. The waterproofing material (bentonite) used by respondents in their basement waterproofing services is affected by soil conditions and the water table level. In those instances where the soil is not sufficiently porous or where the water table level is not sufficiently low, the bentonite mixture will not act as an effective sealant.

9. The efficacy of bentonite as a waterproofing agent in the pressure pumping process is not demonstrated by the successful use of bentonite as a waterproofing agent in the construction of dams, levees, and other major structures.

10. Respondents' services are not offered for sale at special or reduced prices, and savings are not thereby afforded respondents' purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have a regular selling price and the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

11. Respondents do not provide prompt service to their customers following completion of any waterproofing work, but, in many instances, respondents' customers wait for weeks or months before any such service is rendered.

PAR. 7. Through the use of their advertisements, brochures, pamphlets and oral representations, respondents and their employees, salesmen and representatives, have represented, directly or by implication, that:

1. Respondents' method of basement waterproofing will seal all types of basement walls, floors, and foundations against water seepage completely and permanently.

2. The waterproofing material (bentonite) used by the respondents is not affected by soil conditions or the water table level.

3. At the time respondents made the representations set forth in sections (1) and (2) of this paragraph, they had a reasonable basis from which to conclude that their basement waterproofing method will seal all types of basement walls, floors and foundations against water seepage completely and permanently and that the waterproof-

ing material (bentonite) used by the respondents is not affected by soil conditions and the water table level.

PAR. 8. In truth and in fact, during the time the representations set forth in sections (1) and (2) of Paragraph Seven were made, respondents had no reasonable basis from which to conclude that their method of basement waterproofing will seal all types of basement walls, floors, and foundations against water seepage completely and permanently and that the waterproofing material (bentonite) used by respondents is not affected by soil conditions or the water table level.

Therefore, the statements and representations as set forth in Paragraphs Four and Seven, were and are, false, misleading and deceptive.

PAR. 9. Furthermore, the making of the representations that respondents' waterproofing process will seal all types of basement walls, floors and foundations against water seepage completely and permanently and that the waterproofing material (bentonite) used by respondents is not affected by soil conditions and the water table level without a reasonable basis for making such representations, is, in itself, an unfair act or practice in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. In the further course and conduct of their business and in the furtherance of their purpose of inducing prospective customers to execute contracts for basement waterproofing products and services, respondents and their employees, salesmen, and representatives, have represented in their advertisements, brochures and in oral representations made by sales representatives, that the respondents' pressure pumping process sold to their customers at specified selling prices will waterproof their customers' basements completely and permanently with no need for additional services or products by respondents at additional cost to the customer. Respondents thereby have falsely and deceptively represented that the total selling price set forth in the contract constitutes the total outlay of money necessary to accomplish the waterproofing of customers' basements without disclosing that there is a specific likelihood that additional products and services by way of installation of a pressure relief floor system may be subsequently required at substantial additional cost to the customer in order to completely and permanently waterproof the basements of such customers.

Therefore, respondents' statements, representations, acts and practices, and nondisclosures of material facts, as set forth herein, were and are, false, misleading, unfair or deceptive acts or practices.

PAR. 11. In the further course and conduct of their business and in

the furtherance of their purpose of inducing prospective customers to execute contracts for their waterproofing products and services, respondents and their employees, salesmen and representatives, have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Ten above, respondents have been able to induce customers into signing a contract upon initial contact without giving the customers sufficient time to carefully consider the purchase and the consequences thereof.

PAR. 12. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner as to the things hereinabove alleged.

PAR. 13. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of waterproofing products and services of the same general kind and nature of those sold by respondents.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and complete and into the purchase of respondents' products and services by reason of said erroneous and mistaken belief. Respondents' aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 15. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Everseal Waterproofing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 958 Watertown St., Newton, Massachusetts.

Proposed respondent Everseal Waterproofing of New Hampshire, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with its office and principal place of business located at 9 Capitol St., Concord, New Hampshire.

Proposed respondent Everseal Waterproofing of Maine is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at 57 Exchange St., Portland, Maine.

Proposed respondent Irving Silverstein is a former officer of said corporations. He has formulated, directed and controlled the policies, acts and practices of said corporations and his address is 42 Sierra Road, Hyde Park, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Everseal Waterproofing Corporation, a corporation, Everseal Waterproofing of New Hampshire, Inc., a corporation, and Everseal Corporation of Maine, a corporation, their successors and assigns, and their officers, and Irving Silverstein, individually, and William A. Epner, individually and as an officer of the corporations, (hereinafter referred to as "respondents"), and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee, or other device, in connection with the advertising, offering for sale, sale and distribution of residential and commercial waterproofing products or services, or other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that respondents employ an exclusive, patented process.

2. Representing, directly or by implication, that respondents' waterproofing process will seal all types of basement walls, floors and foundations against water seepage.

3. Using the words "permanently," "completely," "perpetually," "once and for all," or other words or phrases of similar import, to describe respondents' waterproofing products, services or methods or misrepresenting in any manner the nature and effectiveness of such products, services or methods.

4. Failing to disclose in writing on the face of every contract for the pressure pumping process, in bold print, on an easily detachable form which shall be executed by the customer and retained by the seller and orally, prior to the signing of any contract, and in ten point boldface type in all advertisements, promotional materials and similar documents, the following notice:

EVERSEAL PROVIDES TWO KINDS OF WATERPROOFING SERVICES: CHANNELING WATER AWAY FROM THE BASEMENT AND PRESSURE PUMPING A BENTONITE MIXTURE AGAINST WALLS AND FOOTINGS. THE BENTONITE MATERIAL USED IN THE PRESSURE PUMPING PROCESS WILL NOT PREVENT LEAKS IN YOUR BASEMENT UNDER CERTAIN TYPES OF SOIL AND WATER TABLE CONDITIONS. IF YOU HAVE NOT HAD ENGINEERING TESTS CONDUCTED ON YOUR PROPERTY BY A QUALIFIED ENGINEER, YOU CANNOT BE SURE THE PROCESS YOU HAVE CONTRACTED FOR WILL WORK ON YOUR HOME.

4a. Failing to disclose in radio and other electronic media advertisements the following notice:

THE BENTONITE MATERIAL USED IN THE PRESSURE PUMPING PRO-

CESS WILL NOT PREVENT LEAKS IN YOUR BASEMENT UNDER CERTAIN TYPES OF SOIL AND WATER TABLE CONDITIONS. IF YOU HAVE NOT HAD ENGINEERING TESTS CONDUCTED ON YOUR PROPERTY BY A QUALIFIED ENGINEER, YOU CANNOT BE SURE THIS PROCESS WILL WORK.

5. Representing, directly or by implication, orally, visually or in writing, that any of said products or services are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and unless respondents promptly and scrupulously fulfill all of their obligations and requirements directly or impliedly represented by the terms of the guarantee.

6. Representing, directly or by implication, that an office is maintained by respondents in any city or town other than that in which a fully staffed sales, service and installation office or place of business is, in fact, maintained, occupied and used by respondents; and from misrepresenting in any manner the size or volume of respondents' business.

7. Representing, directly or by implication, that respondents will, by means of their pressure pumping process or in any other manner, waterproof basements without digging, without damage to walks or driveways, or without the necessity of having waterproofing work done inside the basement.

8. Making any claim or representation, orally, visually or in writing, relating to the efficacy, nature and performance characteristics of respondents' waterproofing products or services unless, at the time such claim or representation is made, respondents have a reasonable basis for such claim or representation which shall consist of competent engineering or other similar objective material.

9. Failing to maintain accurate records which may be inspected and copied by Commission staff members upon reasonable notice:

(a) Which consist of documentation to support any and all claims or representations made after the effective date of this order in advertising or sales promotion material relating to the efficacy, nature and performance of any waterproofing process marketed by the respondents.

(b) Which provided the basis upon which respondents relied as of the time those claims or representations were made; and

(c) Which shall be maintained by respondents for a period of three (3) years from the date such advertising or sales promotion material was last disseminated.

10. Using in any manner a sales plan, scheme or device wherein

