

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.

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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.

