

Complaint

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IN THE MATTER OF

NORTHERLIN CO., INC. T/A VULCAN BASEMENT
WATERPROOFING COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2830. Complaint, July 12, 1976—Decision, July 12, 1976*

Consent order requiring a Flushing, N.Y., franchisor of residential basement waterproofing products, among other things to cease misrepresenting the nature and effectiveness of its products or services; failing to respond to requests for service or maintenance; failing to maintain adequate records; failing to disclose relevant facts concerning its two forms of waterproofing services; misrepresenting guarantees; misrepresenting the size of its business; using misleading sales plans and furnishing means and instrumentalities of misrepresentation or deception.

Appearances

For the Commission: *William F. Connolly.*

For the respondent: *Mark Weinstein, Norwalk, Conn.*

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 Northerlin Co., Inc., a corporation, doing business as Vulcan Basement Waterproofing Company, hereinafter referred to as respondent, has 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76-78 Parsons Boulevard, Flushing, New York. Respondent has established and operated a substantial number of wholly-owned corporate subsidiaries for the purpose of engaging in the business of selling residential basement waterproofing products and services. Respondent currently operates subsidiaries which are located in the States of Massachusetts, Connecticut, New York, Georgia, Maryland, Illinois, Ohio, Wisconsin, North Carolina, and Virginia. Respondent, in the operation of certain of these subsidiaries, does business as Vulcan Basement Waterproofing Company.

Respondent is engaged in the franchising of persons, firms and organizations with respect to the operation of offices located in several States which use the registered service mark "Vulcan" in their trade names and use respondent's "Vulcan Rights and Know-How" in their business operations. Each franchisee is authorized by means of a franchise agreement to engage in the advertising and selling of residential basement waterproofing products and services under the service mark "Vulcan" within a specified geographical territory. Under the terms of the agreement, each franchisee is obligated to pay to respondent a fixed royalty based on their gross dollar volume of basement waterproofing business.

PAR. 2. Respondent, through its own subsidiaries and through its franchisees, is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of residential basement waterproofing products and services to the public.

Respondent, through its own subsidiaries and through its franchisees, places into operation and implements 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 salesmen and 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 respondent's basement waterproofing products and services.

Respondent receives substantial income from the results of such agreements.

In the manner aforesaid, the respondent dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its subsidiaries and franchisees, including the acts and practices hereinafter set forth. Moreover, respondent, directly or indirectly, profits and benefits by and through the acts and practices hereinafter set forth and accepts the pecuniary and other benefits flowing from the acts and practices of respondent's own subsidiaries and its franchisees.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes and for some time last past has caused its advertising and promotional material, and its said products, sales contracts, invoices, billing statements, commission statements, progress reports, checks, monies and other business papers and documents, to be shipped and transmitted to, from and between the several places of business operated by its subsidiaries and its franchisees located as aforesaid, and to prospective purchasers and purchasers thereof

located in various other States of the United States, other than the State of origination; and maintains, and at all times mentioned herein has 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 its business as aforesaid, for the purpose of obtaining leads or prospects for the sale of basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees, cause prospective purchasers of its basement waterproofing products and services who have answered respondent's advertisements to be interviewed by salesmen at the place of residence of individual prospective purchasers. Said salesmen endeavor to sell respondent's basement 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, regarding such products and services, both orally and by means of brochures and other printed material displayed by salesmen to prospective purchasers, which are furnished by respondent to its subsidiaries and franchisees.

In conjunction therewith, respondent has made certain statements concerning the efficacy, value, worth and performance of the waterproofing products and services offered for sale to prospective purchasers and the guarantee offered by the respondent. Typical and illustrative, but not all inclusive of said statements and representations relating to the respondent's products and services are the following:

A. Newspaper Advertisements

Vulcan Waterproofs Basements Completely - Inexpensively.

24 - Hour Service

Written Guarantee

No Digging - No Damage to Shrubs, Walks, Driveways, etc.

B. Radio Advertisements

Call Famous Vulcan Basement Waterproofing Company now and find out how you can dry out your basement completely; inexpensively, without digging.

Say* * * Do you have water in your basement every time it rains? If you do, you'll be mighty interested in a very special company that can eliminate that problem for you* * *completely* * *

Say - Do you have water in your basement every time it rains? If you do, you'll be interested in a very special company that can eliminate that problem for you * * * permanently.

Vulcan's exclusive, patented process is applied from the outside * * * which means no costly digging * * * no damage to shrubs, walks or driveways.

C. *Statements In Brochures and Pamphlets*

Only with Vulcan do you receive the exclusive patented Vulcan Method.

The exclusive patented Vulcan method - guaranteed success without digging * * * fast too.

Pressure pumping is a proven Vulcan method of applying a water resistant expandable inorganic mineral which forms a seal on exterior walls without excavation. This seals all types of foundation walls.

Vulcan's exclusive patented process can solve your basement water problems once and for all * * * without costly excavations.

Let Vulcan keep your basement dry. Permanently. Inexpensively.

Vulcan is the only below grade basement waterproofing company that can guarantee you service 12 months of the year as you need it, when you need it.

Vulcan - the only nationwide waterproofing company specializing year-round in basement water problems.

The material (Vulcote) is flexible and, when applied according to the patented pressure Pumping Process, automatically seals walls against seepage * * *

It (Vulcote) does not deteriorate with age or soil condition and does not evaporate or wash away.

The material (Vulcote) is flexible and not affected by weather and soil conditions * * *

Vulcan Offers You Guaranteed Protection Against Water Damage To Walls - Floors - Foundations.

Vulcan Guarantee - We Guarantee:

That the Vulcan Method will waterproof your basement walls against all seepage.

Vulcan - Now Available to 709 Cities through 40 Fully - Staffed Branches and Offices in 101 Principal Cities.

Only With Vulcan Do You Get * * * Termite Shielding.

D. *Oral Statements by Sales Representatives*

The Vulcan pressure pumping system is an exclusive patented process which seals the basement walls and floor and prevents water from leaking into the basement.

The Vulcan pressure pumping method is a patented process where Vulcote is pumped into the ground under pressure in a water solution which dries out and seals the entire basement and prevents water from coming in the walls and through cracks in the floor.

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You won't need a pressure relief system. The pressure pumping job will eliminate your basement water problem completely.

The Vulcan pressure pumping method is guaranteed to eliminate your basement water problem.

The work is guaranteed. Once the pressure pumping job is done there won't be any more water.

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 respondent and its franchisees and licensees have represented, and are now representing, directly or by implication, that:

1. Respondent's method of basement waterproofing is an exclusive patented process.
2. Respondent's method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks.
3. Respondent's method of basement waterproofing will stop basement water damage completely and will keep basements dry permanently.
4. Respondent provides 24-hour repair and maintenance service to customers.
5. Respondent specializes in providing year-round basement waterproofing installation, repair and maintenance service to customers.
6. The waterproofing material (bentonite) used by respondent in its basement waterproofing services is not affected by soil conditions and the water table level.
7. Respondent's basement waterproofing services are unconditionally guaranteed in writing.
8. Respondent has branch offices with complete sales and service facilities in over 101 cities in the United States.
9. Respondent's method of basement waterproofing provides customers' homes with termite shielding and termite control treatment.
10. Respondent's basement waterproofing process, which is applied from the outside, waterproofs basements without digging and without causing damage to shrubs, walks or driveways.

PAR. 6. In truth and in fact:

1. Respondent's method of basement waterproofing is not an exclusive or unique process but has been and is utilized by other competing basement waterproofing companies.
2. Respondent's method of basement waterproofing will not seal all types of basement walls, floors and foundations against water leaks.
3. Respondent's method of basement waterproofing will not stop

basement water damage completely and will not keep basements dry permanently.

4. Respondent does not provide 24-hour repair and maintenance service to customers. Respondent has, in many cases, failed to complete basement waterproofing contracts and has failed to perform and provide the servicing obligations which it agreed to provide under its basement waterproofing contracts.

5. Respondent does not specialize in providing year-round basement waterproofing installation, repair and maintenance service to customers. Respondent has failed, in many cases, to provide year-round service to its customers and has, in many cases, conditioned its service and installation agreements on weather and temperature considerations.

6. The waterproofing material (bentonite) used by respondent in its 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 is not sufficiently low, the bentonite mixture will not act as an effective sealant.

7. Respondent's basement waterproofing services are not unconditionally guaranteed in writing.

8. Respondent does not have branch offices with complete sales and service facilities in over 101 cities in the United States.

9. Respondent's method of basement waterproofing does not provide customers' homes with termite shielding and termite control treatment.

10. Respondents' basement waterproofing process, which is applied from the outside, does not waterproof basements without digging and without causing damage to shrubs, walks or driveways. Respondent, in many cases, has done extensive digging along the interior and exterior basement walls of the homes of its customers; respondent, in many cases, has dug or drilled holes into walks and driveways adjacent to the basement foundations of the homes of its customers.

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

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

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

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

3. At the time respondent made the representations set forth in Sections (1) and (2) of this paragraph, it had a reasonable basis from which to conclude that its basement waterproofing method will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent 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, respondent had no reasonable basis from which to conclude that its method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent is not affected by soil conditions and 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 the respondent's method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent 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 its business and in the furtherance of its purpose of inducing prospective customers to execute contracts for basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees have represented in their advertisements, brochures and in oral representations made by sales representatives, that the respondent's pressure pumping process sold to its customers at specified selling prices will waterproof its customers' basements permanently and completely with no need for additional services or products by respondent at additional cost to the customer. Respondent thereby has 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 waterproof the basements of such customers.

Therefore, respondent's statements, representations, acts and practices, and nondisclosure 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 its business and in the furtherance of its purpose of inducing prospective customers to execute contracts for its basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees 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 Seven, above, respondent or its representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

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

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

PAR. 14. The use by respondent 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 respondent's products and services by reason of said erroneous and mistaken belief. Respondent's 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 respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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 respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 an agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Northerlin Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76-78 Parsons Boulevard, Flushing, New York.

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

I

It is ordered, That respondent Northerlin Co., Inc., a corporation, doing business as Vulcan Basement Waterproofing Company or any other trade name or names, its successors and assigns, and its officers,

(hereinafter sometimes referred to as "respondent"), and respondent's 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 basement waterproofing and termite control 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 respondent employs an exclusive patented process.
2. Representing, directly or by implication, that such products or services will seal all types of basement walls, floors and foundations against water leakage.
3. Using the words, "permanently," "completely," "perpetually," "once and for all," or other words or phrases of similar import, to describe such products or services; or misrepresenting, in any manner, the nature and effectiveness of such products or services.
4. Misrepresenting the efficacy of the protection against termites and other insects afforded by such products or services; or misrepresenting, in any manner, the degree of protection from termites or other insects provided by such products or services.
5. Using the words "24-Hour," "year-round" or other words or phrases of similar import to describe the availability of respondent's installation, repair and maintenance service to customers.
6. (a) Failing to maintain a customer relations department to which purchasers of such products or services may refer complaints and/or requests for maintenance or replacement of faulty products or services promised under the terms of respondent's contract and guarantee; or failing to furnish to each customer at the time of purchase of such products or services the name, address and telephone number of such customer relations office to which requests for service and/or maintenance may be directed by such customers.
(b) Failing to respond to requests for service or maintenance within seven (7) days from the date of receipt thereof, by customers who previously purchased such products or services.
(c) Failing to maintain for a period of three (3) years, records of customers' service and maintenance requests and related documents in connection with the implementation of Paragraph 6(a) and (b) above.
7. 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:

VULCAN 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.

7a. Failing to disclose in radio and other electronic media advertisements the following notice:

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 THIS PROCESS WILL WORK.

8. Making any representations, orally or in writing or in any other manner, relating to the efficacy, effectiveness or performance of such products or services unless, at the time such representations are made, respondent has a reasonable basis for such representations 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 made after the effective date of this order in advertising or sales promotion material concerning the efficacy and performance characteristics of any such products or services marketed by the respondent.

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

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

10. Representing, directly or by implication, orally or in writing, that any of respondent's 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 respondent promptly and fully performs all of its obligations and requirements, directly or impliedly represented under the terms of each said guarantee.

11. Representing, directly or by implication, that an office is maintained by respondent 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 respondent; or misrepresenting in any manner the size of respondent's business.

12. Representing, directly or by implication, that respondent will apply such products or services to waterproof basements without digging, or without the necessity of having waterproofing work done inside the basement.

13. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made, directly or by implication, in order to obtain leads or prospects for the sale of, or induce purchases of goods or services.

14. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by this order.

15. Failing to maintain and produce for inspection and copying, for a period of three years, copies of all advertisements, brochures, sales contracts, salesmen's manuals and sales bulletins, and all other promotional materials utilized in the advertising, promotion and sale of such products or services.

16. Contracting for any sale of such products or services in the form of a sales contract or other agreement which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution of the contract or other agreement.

17. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

18. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and

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easily detachable, and which shall contain in ten point boldface type the following information and statements.

NOTICE OF CANCELLATION

(Enter Date of Transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO (Name of Seller), AT (Address of Seller's Place of Business), NOT LATER THAN MIDNIGHT OF (Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

19. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

20. Failing or refusing to honor any valid notice of cancellation by a buyer and within 3 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale.

II

1. *It is further ordered, That:*

(a) Respondent herein deliver, by registered mail, a copy of this decision and order to each of its present and future franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or to any other person who advertises, promotes, offers for sale, sells or distributes such products or services offered by respondent.

(b) Respondent herein provide each person so described in paragraph (a) above with a form returnable to the respondent clearly stating his intention to be bound by and to conform his business practices to the requirements of this order; retain said statement during the period said person is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondent herein inform each person so described in paragraph (a) above that the respondent will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondent that he will be bound by the provisions contained in this order.

(d) If such party as described in paragraph (a) above will not agree to so file the notice set forth in paragraph (b) above with the respondent and be bound by the provisions of the order, the respondent shall not use or engage or continue the use or engagement of, such party to promote, offer for sale, sell or distribute such products or services included in this order;

(e) Respondent herein inform the persons described in paragraph (a) above that the respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondent herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person described in paragraph (a) above conform to the requirements of this order;

(g) Respondent herein discontinue dealing with or terminate the use or engagement of any person described in paragraph (a) above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this order.

2. *It is further ordered*, That respondent Northerlin Co., Inc., shall forthwith distribute a copy of this order to each of its operating divisions.

3. *It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

4. *It is further ordered*, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided*, that if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

5. *It is further ordered*, That the respondent herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Modifying Order

88 F.T.C.

IN THE MATTER OF

WILLIAM R. CLARK

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8761. Complaint, April 30, 1968—Modifying order, July 13, 1976*

Order modifying an earlier order dated August 6, 1969, 34 F.R. 15348, 76 F.T.C. 207, modified September 1, 1970, 35 F.R. 15807, 77 F.T.C. 1186, by deleting Paragraph 16 of the order because provisions of the newly promulgated *Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses* supercedes it.

*Appearances*For the Commission: *Margery Waxman Smith.*For the respondent: *John W. Norwood, Washington, D.C.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

On June 17, 1976, respondent William R. Clark (Clark) by a paper entitled Motion to Modify Order Issued on August 6, 1969, and Modified on September 1, 1970, which will be treated as a petition to reopen this proceeding, has requested that Paragraph 16 be deleted from the order. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose Clark's request.

The Commission has determined that the request should be granted because the provisions of its newly promulgated Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses have superseded Paragraph 16 of this order.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by deleting Paragraph 16.