

IN THE MATTER OF

NATIONAL MERIDIAN SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9027. Complaint, Mar. 25, 1975 — Decision, Mar. 28, 1977*

Consent order requiring a Woodbury, N.Y., marketer of a basement waterproofing and termite control process, among other things to cease misrepresenting the size, extent and nature of its business; misrepresenting the qualifications and abilities of its employees; misrepresenting the effectiveness, performance, durability and uniqueness of its products and services. Further, respondents are required to maintain adequate records for a period of three years; make prescribed disclosures regarding limitations of their waterproofing; and respond to requests for maintenance or service within seven days. Additionally, the terms of the order require respondents to provide a three-day cooling-off period during which customers may cancel their contracts and receive prompt refunds of monies paid; maintain a reasonable customer relations department and institute a surveillance program designed to insure compliance with the provisions of the order.

Appearances

For the Commission: *Michael E. K. Mpras and Jerry W. Boykin.*

For the respondents: *Jack Lipson and Stephen Sacks, Arnold & Porter, Washington, D.C.*

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 National Meridian Services, Inc., a corporation, and Meridian Waterproofing Corporation, a corporation, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., 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:

PAR. 1. Respondent National Meridian Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 151 East Jericho Turnpike, Mineola, New York.

Said respondent controls and dominates the acts and practices of

respondent Meridian Waterproofing Corporation, a wholly-owned subsidiary, which 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 151 East Jericho Turnpike, Mineola, New York.

Respondent Michael C. Pascucci is an officer and director of the corporate respondents. Respondent Austin Royle is an officer of the corporate respondents and director of respondent National Meridian Services, Inc. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

All of the aforementioned respondents cooperate and act together in the carrying out of the acts and practices hereinafter set forth.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, services, advertising and promotional material, contracts and other business papers and documents to be shipped and transmitted to, from and among their several places of business located in various states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, as aforesaid, for the purpose of obtaining leads or prospects for the sale of basement waterproofing and related termite control products and services and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen, servicemen and representatives, cause prospective purchasers of their basement waterproofing and related termite control 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' basement waterproofing and related termite control products and services, and for the purpose of inducing the sale of said products and services, said salesmen have made numerous statements and representations, directly or by implication, orally, by means of brochures or other printed material displayed by salesmen to prospective purchasers, and through television and newspaper advertisements, respecting

the nature of their offer and their business, price, time limitations, their guarantee, and the quality of their products and services.

Typical and illustrative of respondents' published advertising and representations, but not all-inclusive thereof, are the following:

Now Meridian, the Nationwide Home Service, will solve your basement problems at a truly amazing Low Cost, WITHOUT DIGGING, INCLUDING AN ALL STEEL SYSTEM, AND SPECIFY THE RESULTS IN WRITING. No job too small. No damage to shrubs or driveway.

MERIDIAN - THE NATION'S LARGEST - roof to basement waterproofing company.

LEAKY BASEMENT? Don't mop it - stop it -Send today for FREE U.S. GOV'T. BULLETIN & EASY DO-IT-YOURSELF HINTS. Learn how to solve leaky basement problems.

Meridian can waterproof any and all water seepage problems - WILL STOP THAT LEAKY BASEMENT ONCE AND FOR ALL.

MERIDIAN STANDS BY ITS WORK WITH A WRITTEN GUARANTEE.

A Meridian Exclusive!

Another Exclusive!

Continued, Guaranteed Protection

Your Problem Solved

No Inconvenience, Done Quickly

Quality Materials

Expert Workmanship

Life Time Protection

Only Recognized Waterproofing And Termite Control In One Application!

Total Foundation Protection

We Must Satisfy You

Termites - Quietly and Unseen Attack Inside - Outside - Underneath * * * No Home Is Safe From Termites Unless It's Treated.

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, and through oral statements and representations made by their agents and representatives, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents' methods of basement waterproofing and related termite control are an exclusive process; and that respondents use a unique method of combined waterproofing and termite control application.
2. Respondents are the nation's largest waterproofing company and have offices from coast to coast.
3. Respondents have received praise and acclaim for their waterproofing and termite control services, from, among other publications, *The New York Times*, *Better Homes and Gardens*, *Popular Science*, and the *Sunday News* (New York).
4. A purchaser dealing with respondents can be sure of carefully inspected and carefully performed quality workmanship.
5. Respondents will provide prompt service, where needed, following completion of any waterproofing or related termite control job.
6. Respondents' method of combining termite control with their waterproofing service provides homeowners with a complete termite service and complete termite barrier or shield, and that such termite barrier or shield is permanent.
7. Respondents' representatives and employees have the training, experience, ability, or equipment to waterproof leaky basements completely and to keep them dry permanently.
8. Respondents' waterproofing and termite control services are guaranteed.
9. Respondents' method of waterproofing will waterproof basements without digging and without causing damage to shrubs, driveways, walls, floors or foundations.
10. Respondents will mail any homeowner who so requests waterproofing bulletins that will provide him with enough information to waterproof his leaky basement without professional assistance.
11. The pumping of bentonite or the chemical substance $\text{Na}_4\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal", around the basement foundation walls is a completely effective or permanent method of basement waterproofing.
12. The homes of prospective purchasers of waterproofing or termite control services are in immediate danger of serious termite or water damage.
13. Complete termite control treatment or protection is included in the basement waterproofing service.
14. Respondents' services are being offered for sale at special or reduced prices and that savings are thereby offered to purchasers from respondents' regular selling prices.

15. Respondents' services are designed to render basements impermeable to water and moisture.

PAR. 6. In truth and in fact:

1. Respondents' methods of basement waterproofing and related termite control are not exclusive or unique but have been and are utilized by other competing basement waterproofing companies.

2. Respondents are not the nation's largest waterproofing company and do not have offices from coast to coast.

3. Respondents have not received praise and acclaim for their waterproofing and related termite control services from any publications, and specifically not from *The New York Times*, *Better Homes and Gardens*, *Popular Science*, or the *Sunday News* (New York).

4. A purchaser dealing with respondents cannot be sure of carefully inspected and carefully performed quality workmanship. Further, services offered by respondents have, in many instances, been performed in a manner indicating lack of skill or training, incompetence or indifference, and have, in many instances, been of poor quality.

5. Respondents do not, in many instances, provide prompt service to their customers following completion of any waterproofing or related termite control job but, in many cases, respondents' customers wait for weeks or months before any such service is rendered.

6. Respondents' method of combining termite control with their waterproofing service does not provide homeowners with a complete termite service and complete termite barrier or shield, and such termite proofing is not permanent. In fact, in many cases, respondents' representatives and employees lack the training and experience to inspect, diagnose, or treat the existence of termites in a home.

7. Respondents' representatives and employees are not trained, experienced, able or equipped to waterproof leaky basements completely or permanently, but are, in many instances, engaged in diverting water, once it has penetrated into the basement, out of the basement walls and floors.

8. Respondents have failed, in many instances, to provide the servicing obligations which they agreed to provide under their basement waterproofing contracts and guarantees. Further, representations of guarantee have been made without setting forth the extent and nature of the guarantee, and the manner in which the guarantor will perform thereunder.

9. Respondents' method of waterproofing, has, in many instances, caused damage to shrubs, driveways, walls, floors or foundations.

10. Respondents in a number of instances, have failed to mail to homeowners who so request waterproofing or termite control bulle-

tins but sent instead a Meridian salesman; and such bulletins, when mailed, do not, in many instances, provide enough information to enable homeowners to waterproof or termite proof their leaky basements without professional assistance. Further, such bulletins are used by respondents to obtain leads in selling their waterproofing and termite control services.

11. The pumping of bentonite or the chemical substance $\text{Na}_2\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal," around the basement foundation walls is neither a completely effective nor a permanent method of basement waterproofing. Further, soil conditions and the water table affect such substances to the extent that it is difficult to predict when such substances can be effective sealants without ascertaining the level of the water table and the type of soil conditions surrounding the basement walls.

12. In many cases, the homes of prospective purchasers of waterproofing or related termite control services are in no immediate danger of serious water or termite damage.

13. Complete termite control treatment protection is often not provided with respondents' basement waterproofing service.

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

15. Respondents' services are, in many instances, not designed to render basements impermeable to water and moisture, but rather such services are designed to divert water out of the basement floors and walls by means of sump pumps, cove plates and other methods once the water has penetrated the basement walls or floors.

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

PAR. 7. 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 and related termite control 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 false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respon-

dents or their 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. 8. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their waterproofing and related termite control products and services, respondents have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading and deceptive acts and practices.

PAR. 9. In the course and conduct of their business, as aforesaid, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of basement waterproofing and termite control products and services of the same general kind and nature as those sold by respondents.

PAR. 10. 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. 11. The acts and practices of the 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 or affecting commerce and unfair or

deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedures described in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

Respondent National Meridian Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 175 Crossways Park West, Woodbury, New York.

Respondent Meridian Waterproofing Corporation, a wholly-owned subsidiary of National Meridian Services, 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 175 Crossways Park West, Woodbury, New York.

Respondent Michael C. Pascucci is an officer and director of the corporate respondents. Respondent Austin Royle is an officer of the corporate respondents and a director of respondent National Meridian Services, Inc. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents.

The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

A. *It is ordered*, That respondents National Meridian Services, Inc., a corporation, Meridian Waterproofing Corporation, a corporation, their successors and assigns, and their officers and directors, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of residential and commercial waterproofing and related termite control 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, orally or in writing, that respondents employ an exclusive or unique process in their basement waterproofing or related termite control business.

2. Representing, directly or by implication, orally or in writing, that respondents are the nation's largest waterproofing company, or that respondents have offices from coast to coast, unless such are facts, or otherwise misrepresenting in any manner the size, extent or nature of respondents' business.

3. Representing, directly or by implication, orally or in writing, that respondents are the recipients of praise, acclaim or approval for their waterproofing or related termite control process or services from *The New York Times*, *Better Homes and Gardens*, *Popular Science*, and the *Sunday News* (New York), or otherwise misrepresenting, in any manner, that respondents are the recipients of praise, acclaim or approval from any publication, organization or person.

4. Failing to disclose, clearly and conspicuously in all advertising, that respondents do not, in many instances, provide prompt service to their customers following completion of any waterproofing or related termite control work, but, in many instances, keep their customers waiting for weeks or months before any such service is rendered; *provided*, that the foregoing disclosure will not be required so long as respondents:

- (a) Maintain an address and telephone number to which customers

may direct complaints or requests for repair work, contract adjustments, or correction of faulty products or services;

(b) Furnish each customer at the time of sale of any waterproofing or related termite control services the address and telephone number to which such complaints or requests may be directed; and

(c) Respond to such complaints and requests within seven (7) days from the date of receipt thereof from past purchasers of respondents' waterproofing and related termite control services.

5. Failing to maintain (a) adequate records which disclose the date and nature of all service calls, the date and nature of all demands for refunds made by respondents' customers, the date, amount and reason for any refunds given to respondents' customers, and related documents in connection with the implementation of Paragraph 4(a), (b) and (c), and (b) sample copies of each type of advertisement, including newspaper, radio and television advertisements, direct mail solicitation literature, and any promotional material utilized for the purpose of obtaining leads for the sale of waterproofing or related termite control products and services.

6. Using the words "permanently" or "completely," or other words or phrases of similar import or meaning, to describe respondents' basement waterproofing or related termite control process or services; representing, in any manner, that respondents have the training, experience or ability to waterproof leaky basements completely or to keep them dry permanently.

7. Representing, directly or by implication, orally or in writing, that a basement can be waterproofed without digging, or without damage to shrubs, driveways, walls, floors or foundations.

8. Failing to mail to any homeowner who so requests the waterproofing and termite control bulletins so advertised by respondents; and failing to disclose clearly and conspicuously in each advertisement wherein such bulletins are mentioned the following notice set off from the text of the advertisement by a black border:

The purpose of this solicitation is to obtain your name and address so that a Meridian salesman may call upon you. Such waterproofing and termite control bulletins do not provide sufficient information to enable you to waterproof or termite proof your basement without professional assistance.

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

10. Making any claim or representation, orally or in writing,

relating to the efficacy or performance of respondents' waterproofing or related termite control process or services unless, at the time such claim or representation is made, respondents have a reasonable basis for such claim or representation.

11. Failing to maintain accurate records which may be inspected and copied by Commission staff members upon ten (10) days 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 waterproofing or related termite control process of services marketed by the respondents.

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

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

12. Misrepresenting, in any manner, the education, training or experience of any of respondents' employees.

13. Representing, directly or by implication, orally or in writing, that any of respondents' waterproofing or related termite control 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 in any advertisements, brochures, contracts or other printed materials wherein the terms "guarantee" or "warranty" are used, and orally, prior to the signing of any contract, and unless the guarantor will, in fact, perform as stated in the disclosed guarantee.

14. Representing, directly or by implication, orally or in writing, that respondents' method of pumping bentonite or the chemical substance $\text{Na}_2\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal," or any other substantially similar substance, is a completely effective or permanent method of basement waterproofing. Misrepresenting, in any manner, the efficacy of bentonite or "Meridian Seal."

15. Inducing the sale of waterproofing or termite control services, or any other product or service, by employing "scare tactics" to create an exaggerated impression of the risk of serious termite, water, or other damage or injury, or the immediacy of such risk, or misrepresenting in any manner the nature and extent of the threat that water leakage or termites present to property.

16. Representing, directly or by implication, orally or in writing, that any price for waterproofing or related termite control products

or services is a special or reduced price from the price respondents normally charge, unless (a) respondents have made bona fide sales at a higher reference price in the recent past; (b) the reference price is the immediately preceding price or is disclosed to be otherwise; and (c) either the reference price, the dollar savings computed therefrom, or the percentage savings computed therefrom is disclosed.

17. Contracting for any sale of basement waterproofing or related termite control 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 business day, excluding Sundays and legal holidays, after the date of execution of the contract or other agreements.

18. 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.

19. 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 easily detachable, and which shall contain in 10-point boldface type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

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)

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

21. Failing or refusing to honor any valid notice of cancellation by a buyer and within fifteen (15) 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.

22. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) The disclosures, if any, required by Federal law or the law of the state in which the instrument is executed;

(b) Where negotiation of the instrument to a third party is not prohibited by the law of the state in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party.

23. (a) 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 such contract, and in ten point bold face type in all advertisements, promotional materials and similar documents for such process, the following notice:

MERIDIAN 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.

(b) Failing to disclose in radio and other electronic media advertisements for the pressure pumping process 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.

B. *It is further ordered, That respondents:*

1. Deliver a copy of this order to cease and desist to all present and future employees, salesmen, agents, independent contractors, or other representatives engaged in (a) the offering for sale, sale, or servicing of any of its waterproofing or related termite control products and services, or (b) any aspect of preparation, creation, or placing of advertising, and secure a signed statement acknowledging receipt of that order from each such person.

2. Inform all recipients of this order pursuant to subsection 1. above that respondents are obligated by the order to discontinue dealing with any person who commits acts or practices prohibited by it.

3. Institute a program of continuing surveillance to reveal whether respondents' employees, salesmen, agents, independent contractors or other representatives are engaging in acts or practices which violate this order.

4. Discontinue dealing with or terminate the use or engagement of any person described in paragraph 1 above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this order.

5. Maintain complete records for a period of no less than three years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any employee, salesmen, agent, independent contractor or other representative; and to maintain complete records of terminations as required by subparagraph 4 of this paragraph. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the individual involved, the date of communication and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission during normal business hours upon reasonable advance notice.

6. That respondents, for a period of one (1) year from the effective date of this order, provide each advertising agency utilized by

respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of waterproofing or related termite control products and services, with a copy of the Commission's News Release setting forth the terms of this order.

II

It is further ordered:

A. That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents 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 corporations which may affect compliance obligations arising out of the order.

B. That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

C. That the respondents 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 they have complied with this order.

IN THE MATTER OF

BORDEN, INC.

Docket 8978. Interlocutory Order, Apr. 5, 1977

Order granting motion by Department of Commerce to file brief as *amicus curiae*; accepting brief as filed; and granting counsel 30 days to file responsive briefs.

ORDER

On March 8, 1977, the United States Department of Commerce moved for leave to file a brief as *amicus curiae* in this appeal. The Department's brief was conditionally filed therewith. Complaint counsel and counsel for respondent Borden, Inc. have informally indicated to the Office of the Secretary that they do not intend to file in opposition to the motion.

While the Commission's Rules of Practice do not expressly provide for the filing of *amicus curiae* briefs, we have granted *amicus* treatment to certain filings under section 3.14, which governs intervention in Commission proceedings. See, e.g., *Corning Glass Works*, 82 F.T.C. 1082 (March 22, 1973). Section 3.14 is broadly drafted, providing for orders permitting intervention "to such extent and upon such terms as are provided by law or as otherwise may be deemed proper."

A motion for leave to file a brief *amicus curiae* addresses the discretion of the tribunal. As the term itself and the tradition from which it arises make clear, the role of the *amicus* is not to vindicate its own rights but to clarify for the tribunal the broad implications of the question before it. The brief of the Department of Commerce fits squarely within this role.

It would obviously have been preferable to receive this motion and brief at an earlier stage of the appeal.¹ At this point, all briefs have been filed and oral argument heard. Absent special circumstances, leave to file at this point might well be denied to avoid the disruption and possible delay attendant on granting it. In the present instance, however, the importance of the issue involved and the uniqueness of the Department's perspective outweigh these considerations.

It is therefore ordered, That the motion for leave to file a brief as *amicus curiae* be granted, that the brief be accepted as filed, and that complaint counsel and counsel for respondent Borden, Inc., have thirty days to file responsive briefs, if they so desire.

¹ The U.S. Courts of Appeals, by way of analogy, require generally that an *amicus* brief be filed no later than that of the party the brief will support. Rule 29, Federal Rules of Appellate Procedure.