

ENCORE ELECTRONICS, INC., DOING BUSINESS AS CALTRADE
MANUFACTURING & TRADING COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2057. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971

Consent order requiring a San Francisco, Calif., importer of foreign made transistorized radios and distributor of them for resale to cease misrepresenting the number of transistors in the radio sets offered for sale, and selling any radio set which has on its face any misrepresentation as to the number of transistors.

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 the Encore Electronics, Inc., a corporation, also doing business as Caltrade Manufacturing & Trading Company, and Irwin M. Randolph, individually and as officer and director of said corporation, hereinafter referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR § 414) and by this and other means have violated the provisions of the Federal Trade Commission Act, and it appearing to the

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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 Encore Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 360 Ninth Street, San Francisco, California.

Respondent Irwin M. Randolph is president and a director of said corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in importing transistorized radios from foreign manufacturers and distributing these radios to wholesale and retail purchasers for resale to the purchasing public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused their products to be imported into the United States and, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents make or transmit representations in promotional materials and on labels attached to or imprinted on the radios concerning the number of transistors contained in the radios exported as aforesaid and imported, bought and distributed by them in the United States in the manner above described.

PAR. 5. In the course and conduct of their business, respondents make or transmit representations in promotional materials and on labels attached to or imprinted on the radios concerning the number of "Solid State" devices contained in the radios imported, bought and distributed by them and thereby represent, directly or by implication, that a particular set so described contains that number of transistors.

PAR. 6. In representing directly or indirectly the number of transistors or "Solid State" devices contained in their radios, respondents have transmitted transistor counts to their customers that have included in the count transistors that do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals.

PAR. 7. On May 14, 1968, after due notice and hearing, the Commission promulgated its Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), effective December 10, 1968. On the basis of its findings, as set out in the "Accompanying Statement of Basis and Purpose" of the said Trade Regulation Rule, the Commission determined that it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

Represent, directly or by implication, that any radio set contains a specified number of transistors when one or more of such transistors: (1) are dummy transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals.

PAR. 8. Notice is hereby given that the presentation of evidence in the course of a hearing in this proceeding may be required to dispose of the issues that may arise as a result of the allegations contained in Paragraphs One through Seven herein, and that if the issues presented as a result of the allegations contained in those paragraphs should be resolved in substantiation of such allegations then the above Trade Regulation Rule is relevant to the alleged practices of the respondents. Therefore, the respondents are given further notice that they may present evidence, according to Section 1.12(c) of the Commission's Procedures and Rules of Practice, to show that the above Trade Regulation Rule is not applicable to the alleged acts or practices of respondents. If the Commission should find that the above rule is applicable to the alleged acts or practices of the respondents, then it will proceed to make its findings, conclusions, and final order in this proceeding on the basis of that rule. A copy of the rule and Accompanying Statement of Basis and Purpose, marked Appendix A, is attached hereto and made a part of this pleading.

PAR. 9. The aforesaid methods of competition and acts and practices of respondents, as alleged in Paragraph Eight hereof, were and are contrary to the provisions and requirements of the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR § 414) and thereby constituted, and now constitute, unfair methods of competition in commerce and deceptive acts and practices in 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 San Francisco 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Encore Electronics, Inc., also doing business as Caltrade Manufacturing & Trading Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and place of business located at 360 Ninth Street, San Francisco, California.

Respondent Irwin M. Randolph is an officer and a director of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

2. 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

It is ordered, That respondents, Encore Electronics, Inc., and Irwin M. Randolph, individually and as officer and director of said corporation, and respondents' agents, representatives, employees, directly or

through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of radio receiving sets, including transceivers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the terms transistor or "Solid State" or any other word or phrase that any radio set contains a specified number of transistors when one or more such transistors: (a) are dummy transistors; (b) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (c) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals, provided, however, that nothing herein shall be construed to prohibit in connection with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact.

2. Misrepresenting, in any manner, the number of transistors or other components in respondents' products or the functions of any such component.

3. Selling any radio set currently on hand which contains on the face of the product any misrepresentation as to the number of transistors in the product without first removing said misrepresentation or obscuring said misrepresentation in a manner reasonably calculated to prevent reappearance of the misrepresentation.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents 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 this order.

It is further ordered, 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 it has complied with this order.

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IN THE MATTER OF

VARCO CHEMICAL CORPORATION, EL AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2058. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971*

Consent order requiring an Englewood Cliffs, N.J., seller and distributor of industrial cleaner and solvents to cease misrepresenting that sales solicitations are at the invitation of prospective customer, the container sizes or quantities, that any sample will be sent without cost, and refusing to accept return of shipment within approval time.

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 Varco Chemical Corporation, a corporation, and Rubin Newman, individually and as an officer of said corporation, and Joel Winston, individually and as general manager of said corporation, 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 Varco Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 467 Route 9W, Englewood Cliffs, New Jersey.

Respondent Rubin Newman is an officer of said corporation; respondent Joel Winston is general manager of said corporation. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their business addresses are the same as that of the corporate respondent.

PAR. 2. Respondents, in the course and conduct of their business, have been and are now engaged in the advertising, offering for sale, sale and distribution of industrial cleaners and solvents, including Jet-Kleen #100 and Varco Solv-212, which they ship or cause to be shipped from their warehouse in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a