

Complaint

79 F.T.C.

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

substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 4. In the course and conduct of their aforesaid business, respondents, their salesmen and representatives have employed, and are employing a method of telephone solicitation in connection with the sale of their products which deceived companies, and other business entities, as to the nature and purpose of the solicitations.

Typical and illustrative of statements and representations employed, but not all inclusive thereof, are the following:

1. That a person or persons employed by the company or other business entity receiving the call has expressed an interest in respondents' products or has made inquiry with respect to said products, and that respondents are calling in response to said expression of interest or inquiry;
2. That respondents' products, Jet-Kleen #100 and Varco Solv-212 are offered for sale and sold only in quantities of 20, 30, and 50 gallon drums, and are not available for purchase in smaller quantities.
3. That a small sample of either of the aforesaid products, or both, will be sent.
4. That initial orders are sent on approval and may be returned and cancelled without cost merely by calling respondents' salesman for shipping instructions.

PAR. 5. By and through the use of the foregoing statements and representations, and others of similar import and meaning, but not expressly set forth herein, and by means of the manner in which these statements are made, respondents have represented and are now representing directly or by implication:

That the telephone solicitations are made in response to inquiries or expressions of interest made to respondents by some named or unidentified person employed by the company or other business entity which is the recipient of the solicitation.

That respondents' Jet-Kleen #100 and Varco Solv-212, are available for purchase only in large quantities and may not be purchased in less than 20 or 30 gallon drums.

That a small sample of said products will be sent without cost or obligation.

That initial orders are readily cancellable and returnable without further obligation on the part of the purchaser, except for return freight cost.

PAR. 6. In truth and in fact;

1. Respondents have not received any inquiries from any person or persons employed by the firm being solicited, nor do they call in response to said communication or inquiry, and the decision to solicit for sales purposes is made by respondent or its representatives.

2. Respondents' products, Jet-Kleen #100 and Varco Solv-212, are available for sale in quantities as small as 6 gallons.

3. Small samples of respondents' products are not shipped free of charge or obligation. Instead, respondents have shipped and are shipping their products in quantities of 20 gallon drums and above to companies and other business entities and billing said companies and other business entities for said products without their knowledge and consent.

4. Initial orders are not readily returnable and cancellable by telephoning respondents' salesman and obtaining shipping instructions. Instead, companies and other business entities that agree to receive respondents' product on approval, but which later desire to return said product, are told that advance written authorization must first be obtained from respondent. Respondents then thwart, delay and prevent return and subsequent cancellation of said unwanted products.

THEREFORE, The aforesaid statements, representations and practices were and are unfair, false, misleading and deceptive, and constitute the shipment of unordered merchandise.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead companies and other business entities into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondents named in the caption hereof with violation of

Section 5 of the Federal Trade Commission Act, and respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

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, and Joel Winston is general manager of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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 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, and respondents' agents, representatives or employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of industrial cleaners and solvents, or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting directly or by implication that any person making a sales solicitation, by telephone or otherwise, in connec-

tion with the sale of any of respondents' products is calling in response to an inquiry made to respondents by some named or unidentified person employed by the company or other business entity receiving the call.

2. Misrepresenting directly or by implication the container sizes or quantities of its products which are offered for sale on approval or which are offered for final sale.

3. Misrepresenting directly or by implication that any sample will be sent without cost or obligation.

4. Thwarting, delaying, refusing to accept, or preventing by any method or means, the return or cancellation within the approval period of all or part of any shipment sent on approval when the material is in the same condition and container as it was at time of receipt by the consignee.

*It is further ordered,* That respondents maintain full and accurate records of any and all complaints, inquiries, and the like, received from customers or prospective customers, pertaining to any of the acts or practices prohibited by this order, for a period of one year after their receipt, and that such records be made available upon request for examination and copying by a duly authorized agent of the Federal Trade Commission during the normal business hours.

*It is further ordered,* That respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services and shall secure from each such salesman or other person a signed statement acknowledging receipt of a copy of this order.

*It is further ordered,* That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure 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 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 of their compliance with this order.

SCHOOL SERVICES, INC., ET AL.