

FEDERAL TRADE COMMISSION DECISIONS

Complaint 104 F.T.C.

IN THE MATTER OF

CYNEX MANUFACTURING CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3139. Complaint, Aug. 6, 1984—Decision, Aug. 6, 1984

This Consent Order requires a Hillside, N.J. manufacturer and seller of a power factor controller (a device claimed to reduce the amount of electricity used by any motorized electrical home appliance or tool), among other things, to cease making any energy-related claim for its product unless the claim is based on competent and reliable substantiation. The order also bars respondent from making energy-related claims using the term "up to" or words of similar import, unless a significant number of consumers can achieve the maximum levels of savings or performance claimed; and where consumers cannot reasonably foresee the major factors or conditions affecting the maximum levels of savings or performance, respondent is required to clearly and prominently disclose the class of consumers who can achieve those levels. The firm is further prohibited from misrepresenting the purpose, content or conclusions of any test or study; and required to retain records substantiating claims for a period of three years.

Appearances

For the Commission: *Brinley H. Williams* and *Mitchell Paul*.

For the respondent: *Maurice H. Bitner*, Parsippany, N.J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Cynex Manufacturing Corporation, 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 aspect 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 Jersey, with its office and principal place of business located at 28 Ger Place, Hillside, New Jersey.

PAR. 2. Respondent is now, and at all times relevant to this complaint has been, engaged in the manufacture and sale to the public of

a device known as a power factor controller which is sold by respondent under the name "Watt Wizard Model PFC 1000".

PAR. 3. In the course and conduct of its business, respondent has caused its power factor controller, when sold, to be shipped from its place of business in New Jersey to its distributors, retailers and individual customers in various States of the United States. Respondent's manufacture, sale and distribution of its power factor controller constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent at all times mentioned herein has been and now is in competition with individuals, firms and corporations engaged in the sale of power factor controllers and other products.

PAR. 5. In the course and conduct of its business, and for the purpose of promoting the sale and distribution of its power factor controller, respondent has disseminated and caused the dissemination of advertising for its power factor controller in magazines, newspapers and catalogs distributed by mail and across state lines and in radio and television broadcasts transmitted by stations located in various States of the United States and the District of Columbia having sufficient power to carry such broadcasts across state lines. In addition, respondent has distributed by mail or other means, product brochures and other sales literature directly to consumers or to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 6. Typical of said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the advertisements and promotional materials attached hereto as Exhibits A, B, C, D, E, F, and G. An example of the statements contained in said advertisements is "Save up to 60% of the cost of running your motorized home & shop appliances" (Exhibit B).

PAR. 7. Through the use of the advertisements and promotional materials referred to in Paragraph Six and others not specifically set forth herein respondent has represented, and now represents, directly or by implication, that:

Use of the Watt Wizard Model PFC 1000 power factor controller will save an appreciable number of consumers 60 percent or close to 60 percent of the electricity used by and cost of operating any motorized electrical home appliance or tool under circumstances reasonably foreseen by consumers.

PAR. 8. In truth and in fact, contrary to respondent's representation set forth in Paragraph Seven:

(a) Few, if any, consumers, using Watt Wizard Model PFC 1000, will save 60 percent or close to 60 percent of the electricity used by and

the cost of operating any motorized electrical home appliance or tool under reasonably foreseen circumstances.

(b) The Watt Wizard Model PFC 1000 power factor controller can only be used with appliances having electric alternating current motors, and therefore it cannot save electricity or reduce the cost of operating motorized electrical home appliances or tools powered by universal or brush motors.

Therefore, said representation is false, misleading and deceptive.

PAR. 9. In Exhibits A, B, C, D, E, F, G, and other advertisements and promotional materials substantially similar thereto, respondent has represented, directly or by implication, that at the time of the initial and each subsequent dissemination of the representation set forth in Paragraph Seven, it possessed and relied upon a reasonable basis for that representation.

PAR. 10. In truth and in fact, respondent did not possess and rely upon a reasonable basis for the representation set forth in Paragraph Seven, because, *inter alia*, respondent's test protocols and calculations were not designed or conducted to assess product performance under circumstances reasonably foreseen by consumers in operating motorized electrical home appliances or tools. Therefore, the advertisements and promotional materials containing the representation set forth in Paragraph Seven were and are false, misleading and deceptive.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive representations and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others may have used the aforesaid false, misleading and deceptive representations have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations were and are true and complete, and into the purchase of respondent's power factor controller by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioners Pertschuk and Bailey voted in the negative.

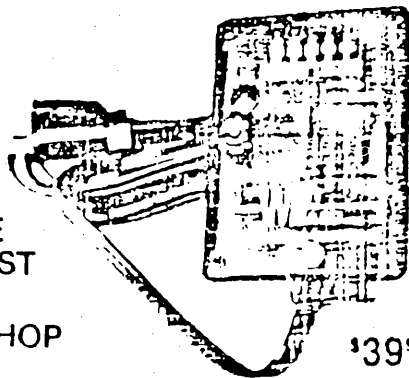
EXHIBIT A

WATT WIZARD

You are wasting money each time you run your electrically-powered motors!

**WATT WIZARD
SAVES MONEY...
MACHINES...
MAINTENANCE!**

**ALLOWS YOU TO SAVE
UP TO 60% OF THE COST
OF RUNNING YOUR
MOTORIZED HOME & SHOP
APPLIANCES!**



\$39.95

HOW IT WORKS:

To put it simply, the WATT WIZARD enables your refrigerator (for example) to run efficiently on just 60 to 80 volts, instead of the full 120 volts direct from the power line. In addition to the wasted electricity cost, the wasted power produces an excess amount of heat within the motor, thus reducing its life and efficiency and increasing the probability of repairs and maintenance.

The WATT WIZARD senses the Power Factor of the motor and applies the exact voltage required to keep the motor running at a constant energy saving speed.

RESULTS:

You save up to 80% on each WATT WIZARD application. Your motor runs more efficiently, quieter, cooler, and knowing it's a more trouble-free longer life!

Since motor life is typically doubled for each 10°C reduction in insulation temperature, the WATT WIZARD could reduce the temperature of a motor up to 25 degrees. Motors like refrigerators and freezers that use large amounts of electricity and run for long periods are excellent applications for this device.

30 Day Money Back Guarantee
Try the WATT WIZARD for 30 days. If you are not satisfied, return it for a full refund. No questions asked. The WATT WIZARD is a revolutionary new device that will save you money on your electric bills. It's the only device that can do this. The WATT WIZARD is the only device that can do this.

**CALL
Professional
Marketing Services
997-6468
VISA or Mastercard
accepted.
8930 Suite J
Oakland Center
Columbia, Md. 21045**

Complaint

104 F.T.C.

EXHIBIT B



Sale Ends 12-14-81

WATT WIZARD

Demonstration

Sunday, December 13
10 a.m. - 4 p.m.
Naperville Store Only

SAVE UP TO 60%

OF THE COST OF
RUNNING YOUR
MOTORIZED HOME
& SHOP APPLIANCES

**IT REALLY
WORKS!**

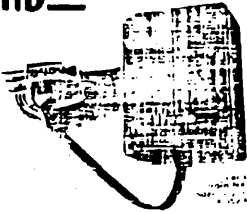
*makes motors run
cooler, longer, more
trouble-free...and
COST LESS TO OPERATE!*

REG. \$39.95



ONLY

34⁹⁵



LESS \$2.00
FACTORY REBATE

NAPOVILLE ACE
1630 E. Washington
Naperville, IL
388-6677

WHEATON NORTH ACE
1705 N. Main
Wheaton, IL
682-2434

WHEATON SOUTH ACE
1245 E. Burlington
Wheaton, IL
686-6334

MONTGOMERY ACE
Chapin & Montgomery Rd.
Montgomery, IL
893-9646

EXHIBIT C

CYNEX Manufacturing Corporation

26 SAGER PLACE • HILLS DE NEW JERSEY 07206
 (201) 395-3334 • Telex 710995-4730 CYNEX • Wire 710995-4730 CYNEX • Post

Ref: Watt Wizard 60' fan

Rate - Moderate to fast.

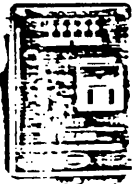
ANNEX:

Listen carefully. I'm gonna tell you about the Watt Wizard. Watt Wizard can save you up to 60% of the electric power needed to run the motor-operated appliances in your home or business. saving up to 60% of the costs, too. Watt Wizard was developed by a team of experts. Use it to save money and your machines life span. How? Just plug your appliance into Watt Wizard and plug Watt Wizard into a wall outlet. Watt Wizard is yours for only \$39.95 plus postage & handling. Look at your electric bills. You need Watt Wizard . . . Today. To order call 800-453-4000 That's 800-453-4000 or send \$39.95 + 2.00 postage & handling to M.E.C. Corp. Box 953, Elizabeth, NJ 07207, that's M.E.C. Corp., Box 953, Elizabeth, N.J. 07207.

Bills miling up? The Watt Wizard can save you, and it comes with a money back guarantee.
 N.J. residents please add sales tax

EXHIBIT D

Watt Wizard



**Saves Energy!
Saves Money!
Saves Machines!**

Only **\$39⁹⁹**

NASA Patent
No. 4,352,941

Watt Wizard Saves Energy! How?

Your AC induction motors run at a heavy, constant speed, using the same current for light or heavy loads. Watt Wizard Power-Factor Controller is a remarkable device that saves energy by sensing the motor's power factor and reduces the supply voltage for light load conditions. The current drawn is then more in phase with the supply voltage. The current and voltage are reduced. LESS ENERGY is consumed by the motor, saving the user energy costs!

The Power-Factor Controller Was Developed and Tested by NASA.

The amazing energy-saving device was developed at NASA by Frank Nola as part of a program to reduce power consumption in spacecraft motors. NASA tested the Power-Factor Controller on 42 types of motors with POWER SAVINGS incredibly verified at UP TO 60%. The motors tested were both single-phase and three-phase induction motors. THE MOST COMMONLY USED MOTORS IN MAJOR HOME APPLIANCES AND INDUSTRY. THE motors you use in YOUR HOME. YOUR BUSINESS. The Power-Factor Controller is in essence a POWER-SAVER!

NASA licensed Cynex, a well-known producer of electrical and electronic products, and a prime contractor for the U.S. Army to manufacture their astounding Power-Saver. Cynex named their product, WATT WIZARD.

Watt Wizard Saves Money! (Your Money.)

No one knows better than you—the cost of electric power keeps rising and rising. The Watt Wizard, by saving up to 60% of the power needed to run motor-operated appliances, saves up

to 60% of the costs of running them, too. Look at your recent electric bill. Typically, you are paying monthly about \$20 to operate a 16.5 cu. ft. frost-free refrigerator and about \$60 to run an air conditioner for the summer. Now count all the motor-operated appliances in your home or business. Think of reducing the costs of running them by 20%—40%—60%. Think of your SAVINGS! Then you will know WHY you need a Watt Wizard for any of them. ALL OF THEM! Just by looking at the Watt Wizard's exclusive LED readout you will KNOW AT ANY GIVEN MOMENT HOW MUCH POWER—HOW MUCH MONEY—you are actually saving.

It's So Easy to Use.

Just choose the right mode. Watt Wizard and you're ready to save money EVERYDAY. For less than \$40, motors (the motors used in most freezers, refrigerators, fans, swimming pool pumps, vacuum cleaners, sewing machines, etc.) Cynex offers the 120V AC model Watt Wizard, when plugged into a wall outlet, is ready to start saving you energy and money. Washers and dryers require the Cynex wire-in Watt Wizard, which you might need an electrician to install. Both come with a power-on light and are solid-state.

Watt Wizard Saves Machines!

Because the Watt Wizard senses the power-factor of your motor and applies only the exact voltage required to run it at a constant, quieter speed, your MOTOR RUNS COOLER AND MORE EFFICIENTLY AND HAS AN ENHANCED LIFE EXPECTANCY! Too. Watt Wizard replaces the need for conventional electro-mechanical motor starters and virtually eliminates the burn-out of starter parts. Watt Wizard is solid-state, fail-safe and has an anti-stall circuit, which makes it virtually impossible for a motor to burn out.

Independent Studies Pro Power Savings of Up To 60 Of Watt Wizard's Efficiency

Study 1: A 16.5 cu. ft. frost-free refrigerator was tested. The Watt Wizard reduced the power consumption by 40% to 60%. Study 2: A 1/2 hp. 115V AC motor was tested. The Watt Wizard reduced the power consumption by 40% to 60%. Study 3: A 1/2 hp. 115V AC motor was tested. The Watt Wizard reduced the power consumption by 40% to 60%.

ORDER TODAY! Only \$39.99. \$2.50 for postage and handling.



**The Watt Sensor
plugs you into
electric costs...
plugs you into
savings! \$29.95**

Watt Sensor is the only device that...
Watt Sensor is the only device that...
Watt Sensor is the only device that...

30-DAY MONEY-BACK GUARANTEE

To the Watt Wizard \$22.50. If not completely satisfied, return it for a full refund.

The sooner you send for the Watt Wizard, the more you can save on your electric bill. To order, send your check or money order to the address below. Or charge it to your Visa or Mastercard credit card. Using your credit card, you can also order via our toll-free phone number: 800-453-4000.

To order call today!
800-453-4000

N.Y. residents add 5% sales tax.

M.E.C. Corp.

Box 353 Elizabeth, N.J. 07208

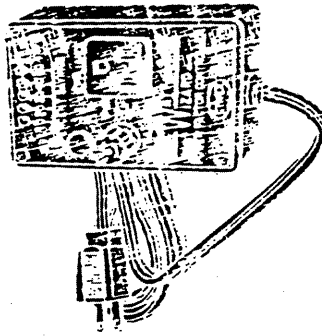
Complaint

EXHIBIT E

EFFECTIVE THROUGH OCTOBER '75

Gem NAME BRANDS

DEPARTMENT STORES



CYNEX THE WATT WIZARD

The WATT WIZARD senses the power factor of the motor, and applies the exact voltage required to keep the motor running at a constant, energy saving speed. Designed and patented by Nasa.

CONSUMER USES

- Refrigerators
- Freezers
- A/C Fans
- Swimming Pool Pumps
- Luminaires
- Electric Motors

39.77

For a full list of products

HOW IT WORKS: The WATT WIZARD senses the power factor of the motor, and applies the exact voltage required to keep the motor running at a constant, energy saving speed. Designed and patented by Nasa.

Complaint

104 F.T.C.

EXHIBIT F

SAVE MONEY!

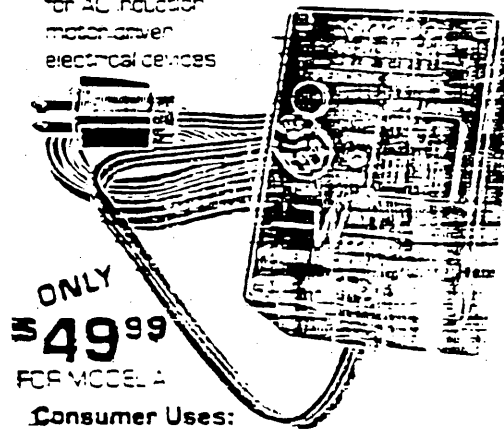
USE **LESS ELECTRICITY** WITH

The
**Watt
Wizard**

PAYS FOR ITSELF

SAVE

up to 60%
of the power used
for AC induction
motor-driven
electrical devices



ONLY
\$49.99

FOR MODEL A

Consumer Uses:

- Refrigerators
- Freezers
- A/C Fans
- Swimming Pools
- Furnaces
- Washers*
- Dryers*
- Air Conditioners*

Industrial Uses:

- Drill Presses
- Lathes
- Food Processing Machines
- Printing Machines
- Textile Machines
- Pumps
- Conveyors

Features:

- Power-on Light
- LED Readout To Show Savings
- Fuse Protected
- Factory Preset
- Solid State Design
- Compact Size
- UL & CSA Approved
- 1 Year Limited Warranty
- Model PLUG-111
- Requires Wire & Bolt
- Licensed From NASA

COLD WEATHER BARGAINS

Glass Enclosures By Fireguard
 Price **79⁹⁵**

Reddy Space Heater
 15,000 BTU. 15,000 BTU. 15,000 BTU.
159⁹⁵
269⁹⁵
 We are the authorized factory warranty service center.

Titan Portable Utility Heater
 15,000 BTU. 15,000 BTU. 15,000 BTU.
28⁸⁸

Boekamp Quartz Heater
 15,000 BTU. 15,000 BTU. 15,000 BTU.
29⁸⁸

SAVE! UP TO 60% OFF THE COST OF RUNNING YOUR MOTORIZED ELECTRICAL SERVICE
 CONSUMER USES INDUSTRIAL USES
 PLUS YOU GET A \$100 ENERGY TAX CREDIT
39⁹⁵
200
37⁹⁵

ALBERT BROS.
 2207 BELLMOORE AVE. BELLMOORE, I.L.
 516 785-2262

True Value
 1000 W. 10th St. Chicago, Ill. 60607

VISA
 Open Daily 9-5:30
 Mon. 9-5:30
 Tues. 9-5:30
 Closed Sundays

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 Bureau of Consumer Protection 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, its attorney, 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 agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Cynex Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 28 Sager Place, in the City of Hillside, State of New Jersey.

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

Definitions

For purposes of this order, the following definitions shall apply:

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to

energy savings, efficiency or conservation, electricity savings, or electricity cost savings.

A *competent and reliable test* means any scientific, engineering, or other analytical report or study prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation, and analytical procedures that ensure accurate and reliable results.

A *power factor controller* means any device for use with motorized home appliances or tools that reduces the voltage applied to electric alternating current motors by sensing the phase angle between motor voltage and current.

PART I

It is ordered, That respondent Cynex Manufacturing Corporation, a corporation, its successors and assigns, and its officers, 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 any power factor controller or any other product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Making any energy-related claim for any power factor controller unless, at the time that the claim is made, respondent possesses and relies upon a reasonable basis consisting of a competent and reliable test or other objective material which substantiates the claim.

(2) Making any energy-related claim which uses the phrase "up to" or words of similar import unless the maximum level of savings or performance can be achieved by an appreciable number of consumers; and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

(3) Making any claim concerning the performance capabilities of any power factor controller unless, at the time that the claim is made, respondent possesses and relies upon a reasonable basis consisting of a competent and reliable test or other objective material which substantiates the claim.

(4) Misrepresenting in any manner, directly or by implication, the purpose, content, or conclusion of any test or study upon which respondent relies as substantiation for any energy-related claim or performance claim, or making any statement or representation which is inconsistent with the results or conclusions of any such test or study.

PART II

It is further ordered, That respondent, its successors and assigns, and its officers, 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 any power factor controller, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;

2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

PART III

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials, and to each of its distributors, dealers and any other person engaged in the wholesale or retail sale of any power factor controller manufactured by or for respondent.

PART IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to the effective date of 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.

PART V

It is further ordered, That respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in

464

Decision and Order

writing, setting forth in detail the manner and form in which it has complied with the order.

Commissioners Pertschuk and Bailey voted in the negative.

Complaint

104 F.T.C.

IN THE MATTER OF

SOVEREIGN CHEMICAL & PETROLEUM PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3140. Complaint, Aug. 8, 1984—Decision, Aug. 8, 1984*

This consent order requires a Chicago, Ill. manufacturer and seller of automotive products, among other things, to cease representing that any automatic transmission fluid or motor oil possesses certain performance or quality characteristics, including any claim that a motor oil has an American Petroleum Institute (API) service classification or a Society of Automotive Engineers (SAE) viscosity, unless such claims can be substantiated by competent and reliable evidence. Respondent must retain representative samples of motor oil and automatic transmission fluid from its production batches and filling runs, documents its sampling method, and pay for an independent laboratory to test these and other samples obtained in the marketplace. Respondent must also maintain records to substantiate claims covered by the order and distribute a copy of the order to all personnel with responsibility for advertising, quality control or corporate policy.

Appearances

For the Commission: *James K. Leonard.*

For the respondent: *Ira Berman, Zissu, Berman, Halper, Barron & Gumbinger, Chicago, Ill. and Gary B. Homsey, Oklahoma City, Okl.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Sovereign Chemical & Petroleum Products, Inc., hereinafter referred to as respondent, has violated Section 5 of the Federal Trade Commission Act and that an action is in the public interest, issues this complaint and alleges:

PARAGRAPH 1. Respondent Sovereign Chemical & Petroleum Products, Inc., is a Delaware corporation with its office and principal place of business located at 6801 West 66th Place, Chicago, Il. Until August 18, 1982, respondent was known as Sovereign Oil Company, Inc. All of the respondent's business is done through its four wholly-owned subsidiaries: Future Chemical & Oil Corporation (New York), Sovereign Oil Company (Illinois), Sovereign Oil Company of Pennsylvania, Inc., and Sovereign Oil of Florida, Inc.

PAR. 2. Respondent is, and has been, engaged in the manufacture and sale of substantial quantities of motor oils, automatic transmis-