

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-

sion fluids and other automotive products. Respondent packages its products under its own brand names, including "Monarch" and "Route 55," and under the brand names of independent merchandisers.

PAR. 3. In the course and conduct of its business, respondent causes its products to be sent to purchasers throughout the United States. Respondent prepares promotional and labeling materials for its products and disseminates these materials throughout the United States. Respondent maintains, and at all times relevant herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PART I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Three are incorporated by reference.

PAR. 4. In the course and conduct of its business, and in order to induce the sale of its motor oils, respondent has made statements on the labels and tops of its containers of motor oil. Typical of these statements are the following:

1. SAE 10W-40
2. For API Service SF SE SD

PAR. 5. Through the use of these and other similar statements, respondent has represented, directly or by implication, that its motor oils meet standards established by the Society of Automotive Engineers (SAE) and by the American Petroleum Institute (API) and that its motor oils therefore have a certain SAE viscosity and API service classification.

PAR. 6. In truth and in fact, the actual SAE viscosity of respondent's motor oil has frequently been different from the SAE viscosity (for example, 10W-40) marked on the container, and the actual API service classification has frequently been different from the API service classification (for example, SF SE SD) marked on the container. Therefore, the statements described in Paragraph Four and the representations described in Paragraph Five have been and are false and misleading.

PAR. 7. Respondent's false and misleading statements and representations have had the tendency to induce consumers to buy and use motor oils not suited for the purpose of protecting automobile engines from undue wear. This has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 8. The statements and representations described in Para-

graphs Four and Five, respectively, having had the capacity and tendency to mislead the public, and having been to the prejudice and injury of the public, therefore were and are unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PART II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated by reference:

PAR. 9. Through the use of the statements alleged in Paragraph Four, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for making the representations set forth in Paragraph Five at the times they were made. In truth and in fact, respondent did not then possess and rely upon a reasonable basis for making such representations. Therefore, respondent's representations have been and are false and misleading.

PAR. 10. The representations alleged in Paragraph Five, having had the capacity and tendency both to mislead the public to think that respondent had a reasonable basis for those representations and to induce the sale of respondent's motor oils, and having been to the prejudice and injury of the public, therefore were and are unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

The acts and practices of respondent alleged in this complaint are continuing and will continue in the absence of the relief requested herein.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent Sovereign Chemical & Petroleum Products, Inc., and respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago 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

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Sovereign Chemical & Petroleum Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6801 West 66th Place, in the City of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That for purposes of this Order, the following definition shall apply:

Sovereign shall mean respondent Sovereign Chemical & Petroleum Products, Inc., a corporation, and its subsidiaries; their successors and assigns; and their officers, agents, representatives and employees.

II

It is further ordered, That Sovereign, directly or through any corporation, subsidiary, division or other device, in connection with the production, advertising, offering for sale, sale or distribution of any motor oil or automatic transmission fluid in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That any motor oil has any American Petroleum Institute (API) service classification; or

B. That any motor oil has any Society of Automotive Engineers (SAE) viscosity; or

C. That any automatic transmission fluid meets any specification set by General Motors Corporation, Ford Motor Company or any other company; or

D. That any motor oil or automatic transmission fluid possesses any other performance or quality characteristic;

unless such representation is true and unless, at the time of making such representation, Sovereign possesses and relies upon a reasonable basis consisting of competent and reliable evidence which substantiates the representation.

III

It is further ordered, That Sovereign shall draw a representative sample from each production batch or run, and from each filling run, of motor oil or automatic transmission fluid, shall document the method or methods used to draw such samples, and shall for at least one year retain a properly marked portion of each such sample and that for a period of three years after the date of service of this Order Sovereign shall, at the option of the Commission, cause to be tested (as described below) by a competent and independent laboratory, at Sovereign's expense, up to 50 (fifty) samples of motor oil and/or automatic transmission fluid, the samples either being such retained samples or being samples sold by Sovereign, and shall submit to the Commission copies of the results of such tests:

A. Motor oil samples tested pursuant to this Part shall be subjected to the then current version of the following American Society for Testing and Materials (ASTM) tests and other tests or any succeeding tests that have the same force and effect:

1. Kinematic viscosity at 100 degrees C. (ASTM D445);
2. Kinematic viscosity at 40 degrees C. (ASTM D445) (test required only for single-grade oils);
3. Low-temperature viscosity (ASTM D2602) (test required only for multigrade oils);
4. Viscosity index (ASTM D2770) (test required only for single-grade oils);
5. Nitrogen (ASTM D3228 or chemiluminescence);
6. Color (ASTM D1500);
7. Total Base Number (ASTM D664); and

8. Elemental analysis showing parts per million of calcium, magnesium, phosphorus, and zinc (emission spectrometry or other generally accepted method).

B. Automatic transmission fluid samples tested pursuant to this Part shall be subjected to the then current version of the following tests or any succeeding tests that have the same force and effect:

1. Kinematic viscosity at 100 degrees C. (ASTM D445);
2. Flash point (ASTM D92);
3. Brookfield viscosity at -40 degrees C. (ASTM D2983);
4. Copper strip corrosion (ASTM D130) (for automatic transmission fluids represented to meet a General Motors specification, three hours at 150 degrees C.; for automatic transmission fluids represented to meet any other specification, three hours at 100 degrees C.); and
5. Antifoam test (for automatic transmission fluids represented to meet a General Motors specification, the procedure described in General Motors document RLSP73-2, Second Edition, July 1978, or any succeeding document with the same force and effect; for automatic transmission fluids represented to meet any other specification, ASTM D892).

IV

It is further ordered, That for any motor oil or automatic transmission fluid sold by Sovereign for three years after the date of service of this Order, Sovereign shall maintain records which substantiate the representations listed in Part II of this Order, shall retain such records for three years from the last date on which the representation to which it pertains was made and upon reasonable notice shall make such records available to the Commission for inspection and copying. For motor oils and automatic transmission fluids produced or packaged by Sovereign, such records shall include blend formulas; specifications for motor oils and automatic transmission fluids; formulas and specifications supplied to Sovereign by additive companies, and documents describing the physical and chemical characteristics of additives purchased by Sovereign; records describing Sovereign's purchases and inventories of base stocks and additives; records showing for each production batch or run the production date, the gallonage of each ingredient used in production, the date of transfer to a holding or storage tank, the holding or storage tank(s) used, and the results of quality control tests run; records showing for each holding or storage tank the date of each filling run from that tank and the dates on which that tank is emptied; and records showing for each filling run the size and number of containers filled, the results of quality control

tests run, and, if known at the time of the filling run, the shipping destination and intended customer.

V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its subsidiaries and divisions and to all agents, representatives or employees having advertising, quality control or corporate policy responsibilities with respect to the subject matter of this Order.

VI

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

VII

It is further ordered, That respondent, its successors and assigns shall, within sixty (60) days after the date of service 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.

IN THE MATTER OF

AVCO FINANCIAL SERVICES, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3141. Complaint, Aug. 9, 1984—Decision, Aug. 9, 1984*

This consent order requires a Newport Beach, Ca. finance company to cease, in connection with the collection of debts, using obscenities in conversations with debtors and third parties; threatening to use physical force or violence; improperly contacting or communicating with debtors, their friends, relatives and employers; or engaging in any conduct that would harass, abuse or oppress a debtor or third party. The order prohibits the company from contacting consumers known to be represented by an attorney or who request in writing that the company cease communications. The order further requires respondent to maintain a toll-free customer service telephone number; include in certain notices, a prescribed statement informing the recipient of his/her rights under federal law and of the availability of complaint resolution procedures; resolve complaints within 90 days; maintain a plan with explicit policies and procedures for lawful debt collection practices; and impose disciplinary sanctions for violations of this plan.

Appearances

For the Commission: *Christopher Schwartz.*

For the respondent: *Herbert Smith, Newport Beach, Ca.*

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 Avco Financial Services, Inc., a corporation, hereinafter sometimes referred to as respondent or Avco, 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. For purposes of this complaint the following definitions shall apply:

A. *Consumer loan* means a cash advance by Avco, which is received by a consumer, for which the payment of a *finance charge* within the meaning of the Truth in Lending Act, 15 U.S.C. 1601, and Regulation Z, 16 C.F.R. 226 (1980), is or may be required, and which is used primarily for personal, family or household purposes.