

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ALLCHEM PERFORMANCE
PRODUCTS, INC.,
Plaintiff**

§
§
§
§
§
§
§
§

VS.

CIVIL ACTION NO. _____

**OREQ CORPORATION,
Defendant**

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

ALLCHEM PERFORMANCE PRODUCTS, INC. (“AllChem”), Plaintiff, brings this action against OREQ CORPORATION (“Oreq”), Defendant, in support of which AllChem would respectfully show the following to this Honorable Court:

1. AllChem is a Texas corporation doing business throughout Texas, with its registered office in Houston, Harris County, Texas. Its principal place of business is in Corsicana, Navarro County, Texas.
2. Oreq is a California corporation with its principal office at 42306 Remington Avenue, Temecula, California 92590. It may be served with process through its registered agent Luis Barroso at 31942 Odyssey Drive, Winchester, California 92596.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 because the acts and omissions by Oreq complained of in this petition include violations of federal law, including without limitation 7 U.S.C. §136 *et seq.*, 15 U.S.C. §1051 *et seq.*, including without limitation 15 U.S.C. §1125(a), and regulations of the United States Environmental Protection Agency, including without limitation 40 C.F.R. 158.175.

4. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds U.S. \$75,000.00, exclusive of interest and costs, and because the parties are citizens of different states.
5. AllChem is a distributor of water treatment chemicals. One of the water treatment chemicals it distributes is (“trichlor”). Trichlor is a solid chemical used to chlorinate swimming pools. Swimming pool owners and maintenance providers obtain trichlor from various distributors and retailers under a number of brand names. AllChem distributes trichlor throughout the United States, including in Texas, through sales to many customers at many levels.
6. Oreq is a distributor of trichlor which it sells under several brand names including “Challenger,” “ClearView,” and “PoolPals.” It sells trichlor throughout the United States, including in Texas, through third-party merchants. Oreq offers prospective customers the ability to locate wholesale and retail dealers of its trichlor by conducting searches for such suppliers through Oreq’s website.
7. Trichlor is regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §136 *et seq.* The United States Environmental Protection Agency (“EPA”), acting under authority of that statute and other statutes, regulates the sale and distribution of trichlor. In order to sell trichlor, distributors like Oreq must register their products with the EPA. The EPA publishes and maintains registration eligibility documents (“REDs”) for FIFRA-regulated chemicals including trichlor. The RED for trichlor, which the EPA has assigned CAS Number 87-90-1, is attached to this complaint as Exhibit A.

8. In order to register or reregister trichlor under FIFRA, an applicant must comply with the terms and conditions of the applicable RED. This requirement is to ensure that the chemical being registered is safe for use in the environment and not harmful to individuals in its intended use as described on the EPA-approved labeling.
9. The EPA establishes certified limits concerning the chemical content of the trichlor for which an applicant is seeking registration. A person or entity selling trichlor pursuant to an EPA registration must comply with the certified limits. The certified limits for trichlor appear at 40 C.F.R. 158.175 and they specify the amount of available chlorine that must and may be present in the trichlor product. An applicant seeking a registration for a trichlor product claiming to have ninety-nine percent (99%) active trichloro-s-triazetrione, must have trichlor with ninety percent (90%) available chlorine.
10. The certified limits for trichlor in 40 CFR 158.175 establish a strict limit on the variance permitted in the active trichloro-s-triazetrione concentration of the registered product. The regulations permit a variation of no more or less than three percent (3%) in the level of active trichloro-s-triazetrione. Thus, if a product's registration states a 99% active trichloro-s-triazetrione concentration, the actual concentration may not be lower than 96.03%.¹
11. The certified limits also establish the same strict three percent limitation on the variance permitted in the available chlorine content of the registered product. In an application for registration of trichlor with 99% active trichloro-s-triazetrione and 90% available

¹ 3% of 99% is 2.97%. The upper and lower limits for such a product, therefore, are 100% (99% plus 2.97%) and 96.03% (99% minus 2.97%).

chlorine, this means that the available chlorine level of the product may not be more than 92.7% nor less than 87.3%.²

12. The individual states also regulate the sale and distribution of trichlor. In order to sell trichlor in any particular state a distributor like Oreq, after obtaining its EPA registration, must also obtain a registration or permit from each state in which it intends to sell the product. State registrations generally follow the requirements of the EPA concerning the certified limits of active trichloro-s-triazetrione and available chlorine.
13. Federal and state statutes and regulations require sellers and distributors of trichlor to label their products to disclose accurately and honestly their federal and applicable state registrations and the percentages of active trichloro-s-triazetrione and available chlorine. Oreq's trichlor's labels represent that the trichlor has 99% active trichloro-s-triazetrione and 90% available chlorine. These disclosures are affirmative representations by Oreq of those chemical concentrations and levels. They are also an inseparable and material part of Oreq's advertising of its trichlor products.
14. Oreq sells its trichlor for less than its competitors, including AllChem. AllChem had numerous samples of Oreq's trichlor from several states, including the State of Texas, tested. These tests revealed available chlorine levels that were below the minimum certified limit. Because the available chlorine levels derive from the active trichloro-s-triazetrione levels³ this means that the Oreq trichlor violated Oreq's EPA registration with respect to both chemical concentrations. The chemical concentration of Oreq's

² 3% of 90% is 2.7%. Thus, the upper limit concentration of available chlorine is 90% plus 2.7% or 92.7%, and the lower limit concentration is 90% minus 2.7%, or 87.3%.

³ Plaintiff's Original Complaint, Paragraphs 10 and 11, *supra*.

trichlor is a significant or even the signal reason why it is able to sell its trichlor for a lower price than its competitors, giving Oreq an unfair advantage in the marketplace.

15. Oreq's practice of selling trichlor as described above violates FIFRA and the EPA's regulations. Oreq is not permitted to sell such trichlor under its existing registrations, and it has no registration permitting it to sell trichlor with the chemical concentrations its product actually has.
16. Oreq's labels affirmatively misstate the levels of active trichloro-s-triazenetrione and available chlorine in its trichlor products. These false and misleading labels are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Oreq's trichlor in violation of 15 U.S.C. §1125(a)(1)(A).
17. Oreq is engaging in commercial advertising and promotion of its trichlor products, and its false and misleading labels misrepresent the nature, characteristics, and qualities of its goods in violation of 15 U.S.C. §1125(a)(1)(B).
18. Trichlor is only one of the chemicals used in the swimming pool water treatment industry. Trichlor serves as an "anchor product" in that the sale of trichlor routinely leads to the sale of many other water treatment chemicals. Oreq therefore profits unlawfully not only from its practices of selling trichlor as described above but from the sales of other products as a result of trichlor's "anchor product" effect.
19. Pursuant to 15 U.S.C. §1117(a), AllChem is entitled to recover from Oreq damages including Oreq's profits for the sale of trichlor and the other products deriving from the trichlor's "anchor product" effect, AllChem's other damages, and AllChem's costs in bringing this action.

20. Oreq's illegal and false mislabeling of its trichlor actively conceals its misconduct from its customers, from end users of the trichlor, and from its competitors. This concealment is intentional and ongoing concealment entitles AllChem to obtain the relief sought in the preceding paragraph for each year in which Oreq sold trichlor not in compliance with its federal and state registrations.
21. AllChem is entitled to recover prejudgment and postjudgment interest from Oreq at the highest rates permitted by law.
22. AllChem is entitled to appropriate equitable relief against Oreq, including (1) a permanent injunction against Oreq, enjoining it from selling or distributing noncompliant trichlor, (2) orders requiring Oreq to recall and recover all noncompliant trichlor it has sold or distributed, (3) orders requiring Oreq to destroy or otherwise lawfully dispose of all noncompliant trichlor, or either to reconfigure it so that it is in compliance with its EPA and other registrations or to apply for and obtain registrations permitting it to sell trichlor with the chemical concentrations its product actually has, and (5) any other equitable relief reasonably required to ensure that Oreq no longer distributes illegal, noncompliant trichlor or other chemicals.
23. AllChem respectfully demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, AllChem respectfully prays that Oreq be notified of this claim, that if it fails or refuses to waive the issuance and service of a summons upon it, such summons be issued and served upon Oreq at its cost, that Oreq be required to appear and answer herein, and that upon final trial of this cause AllChem receive judgment against Oreq:

1. For all relief permitted AllChem under the Lanham Act;
2. For equitable relief including the permanent injunction and other equitable orders specified in this complaint;
3. For prejudgment and postjudgment interest, at the highest rates permitted by law;
4. For AllChem's costs of court; and
5. For such other relief, legal and equitable, as to which AllChem may be justly entitled.

Respectfully submitted,

/s/ James J. Burnett

James J. Burnett
Attorney & Counselor at Law
State Bar Number 03426950
Federal Bar Number 592
11767 Katy Freeway, Suite 425
Houston, Texas 77079
Telephone: 281.206.4418
Telecopier: 832.201.9116
Toll-Free Telecopier: 866.512.7794
E-mail: jburnett@whitley-llp.com
E-mail: Highlander@jamesburnett.com

/s/ Robert G. McConn

Robert G. McConn
State Bar Number _____c

Counsel for AllChem