

## SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

### PART 17—APPLICATION OF GUIDES IN PREVENTING UNLAWFUL PRACTICES

NOTE: Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with the guides may result in corrective action by the commission under applicable statutory provisions. Guides may relate to a practice common to many industries or to specific practices of a particular industry.

(AUTHORITY: Sec. 6(g), 38 Stat. 722; (15 U.S.C. 46(g))

[44 FR 11176, Feb. 27, 1979]

### PART 18—GUIDES FOR THE NURSERY INDUSTRY

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AUTHORITY: Secs. 5, 6 FTC Act; 38 Stat. 719, 721; 15 U.S.C. 45, 46.

SOURCE: 44 FR 11177, Feb. 27, 1979, unless otherwise noted.

#### § 18.0 Definitions.

*Industry products.* As used in this part, the term *industry products* includes all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials and perennials, bulbs, corms, rhizomes, and tubers which are offered for sale or sold to the general public. Included are products propagated sexually or asexually and whether grown in a commercial nursery or collected from the wild state. Such products are customarily used for outdoor planting. Not included are florists' or greenhouse

plants solely for inside culture or use and annual vegetable plants.

*Industry members.* Any person, firm, corporation, or organization engaged in the sale, offering for sale, or distribution in commerce of industry products, as defined above.

*Lining-out stock.* Includes all plant material coming from propagating houses, beds, or frames, and young material such as seedlings rooted or unrooted cuttings, grafts or layers, of suitable size to transplant either in the nursery row or in containers for "growing on."

*Nursery-propagated.* Reproduced and grown under cultivation, including reproduced and grown under cultivation from plants, seeds or cuttings lawfully collected from the wild state.

*Propagated.* Reproduced from seeds, cuttings, callus or other plant tissue, spores or other propagules under a controlled environment that is intensely manipulated by human intervention for the purpose of producing selected species or hybrids.

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

#### § 18.1 Deception (general).

(a) It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products by any method or under any circumstance or condition that misrepresents directly or by implication to purchasers or prospective purchasers the products with respect to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or any other material aspect of the industry product.

(b) The inhibitions of this section shall apply to every type of advertisement or method of representation, whether in newspaper, periodical, sales catalog, circular, by tag, label or insignia, by radio or television, by sales representatives, or otherwise.

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(c) Among practices inhibited by the foregoing are direct or indirect representations:

(1) That plants have been propagated by grafting or bud selection methods, when such is not the fact.

(2) That industry products are healthy, will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not the fact.

(3) That plants will bloom the year round, or will bear an extraordinary number of blooms of unusual size or quality, when such is not the fact.

(4) That an industry product is a new variety, when in fact it is a standard variety to which the industry member has given a new name.

(5) That an industry product cannot be purchased through usual retail outlets, or that there are limited stocks available, when such is not the fact.

(6) That industry products offered for sale will be delivered in time for the next (or any specified) seasonal planting when the industry member is aware of factors which make such delivery improbable.

(7) That the appearance of an industry product as to size, color, contour, foliage, bloom, fruit or other physical characteristic is normal or usual when the appearance so represented is in fact abnormal or unusual.

(8) That the root system of any plant is larger in depth or diameter than that which actually exists, whether accomplished by excessive packaging material, or excessive balling, or other deceptive or misleading practice.

(9) That bublets are bulbs.

(10) That an industry product is a rare or unusual item when such is not the fact. [Guide 1]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

### § 18.2 Deception through use of names.

(a) In the sale, offering for sale, or distribution of an industry product, it is an unfair or deceptive act or practice for any industry member to use a name for such product that misrepresents directly or by implication to purchasers or prospective purchasers its true identity.

(b) Subject to the foregoing:

(1) When an industry product has a generally recognized and well-established common name, it is proper to use such name as a designation therefor, either alone or in conjunction with the correct botanical name of the product.

(2) When an industry product has a generally recognized and well-established common name, it is an unfair or deceptive act or practice for an industry member to adopt and use a new name for the product unless such new name is immediately accompanied by the generally recognized and well-established common name, or by the correct botanical name, or by a description of the nature and properties of the product which is of sufficient detail to prevent confusion and deception of purchasers or prospective purchasers as to the true identity of the product.

(3) When an industry product does not have a generally recognized and well-established common name, and a name other than the correct botanical name of the product is applied thereto, such other name shall be immediately accompanied by either the correct botanical name of the product, or a description of the nature and properties of the product which is of sufficient detail as to prevent confusion and deception of purchasers and prospective purchasers as to the true identity of the product.

NOTE: *Industry recommendation.* The industry recommends that in administering the guide in this section the Commission give consideration to the use of plant names listed in such works as Checklist of Woody Ornamental Plants of California, 1977, University of California; Hillier's Manual of Trees and Shrubs, 1971, Hillier & Sons; Manual of Cultivated Conifers, 1965, P. Den Ouden & B. K. Boom; Hortus III, 1976, L. H. Bailey Hortorium; Naming and Registering New Cultivars, 1974, American Association of Nurserymen, Inc.; and to plant name lists periodically published by the plant societies and the horticultural organizations selected as international and national cultivar registration authorities as enumerated in Appendix of Naming and Registering New Cultivars.

[Guide 2]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

### § 18.3

### 16 CFR Ch. I (1-1-02 Edition)

#### § 18.3 Substitution of products.

With respect to industry products offered for sale by an industry member, it is an unfair or deceptive act or practice for any member of the industry:

(a) To ship or deliver industry products which do not conform to representations made prior to securing the order or to specifications upon which the sale is consummated, without advising the purchaser of the substitution and obtaining the purchaser's consent thereto prior to making shipment or delivery, where failure to advise would be misleading to purchasers; or

(b) To falsely represent the reason for making a substitution: *Provided, however*, That nothing in this section is intended to inhibit the shipment of products different from those ordered, prior to obtaining the purchaser's consent to such substitution, when the order is received by the industry member near the close of the planting season for the products ordered and the substitution involved relates but to a product or products the total price of which is comparatively small, and when:

(1) At the commencement of the planting season for the products ordered the industry member had a supply of such products sufficient to meet normal and reasonably expected orders therefor, and such supply has been exhausted; and

(2) The products substituted are of similar variety and of equal or greater value to those ordered by the purchaser and no additional charge is made therefor; and

(3) Notice of the substitution, with adequate identification of the substituted item or items, and with commitment of the industry member to refund any purchase price received for the substituted products if such products are not acceptable to the purchaser and to compensate the purchaser for any expense involved in the return of the substituted products if refund is conditioned on the return thereof, is given the purchaser at the time of his receipt of such products: *And provided further*, That nothing in this section is to be construed as sanctioning the dissemination of an advertisement of an industry product or products or the personal solicitation of

orders therefor unless at the time of such dissemination or solicitation the industry member has a supply of such product or products sufficient to meet normal and reasonably expected orders therefor. [Guide 3]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

#### § 18.4 Size and grade designations.

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for an industry member to use any term, designation, number, letter, mark, or symbol as a size or grade designation for any industry product in a manner or under any circumstance that misrepresents directly or by implication to purchasers or prospective purchasers the actual size or grade of such products.

(b) Under this section industry members offering lining-out stock shall specify conspicuously and accurately the size and age of such stock when failure to do so may misrepresent directly or by implication such stock to purchasers or prospective purchasers.

(c) Nothing in this section is to be construed as inhibiting the designation of the size or grade of an industry product by use of a size or grade designation for which a standard has been established which is generally recognized in the industry when the identity of such standard is conjunctively disclosed, the product qualifies for the designation under such standard, and no deception of purchasers or prospective purchasers results in the use of such designation.

NOTE: It is the consensus of the industry that the grade and size standard set forth in the current edition of American Standard for Nursery Stock, ANSI Z60.1, as approved by the American National Standard Institute, Inc., is generally recognized in the industry, and that use of the size and grade designation therein set forth, in accordance with the requirements of the standard for the designations, in the marketing of industry products to which such standard relates, will prevent deception and confusion of purchasers and prospective purchasers of such products. [Guide 4]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

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### § 18.5 Deception as to blooming, fruiting, or growing ability.

In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for any industry member to misrepresent directly or by implication to purchasers or prospective purchasers the ability of such products:

(a) To bloom, flower, or fruit within a specified period of time; or

(b) To produce crops within a specified period of time, or to give multiple crops each year, or to produce crops in unfavorable climatic regions; or

(c) To bear fruit through self-pollinization; or

(d) To grow, flourish, and survive irrespective of the climatic conditions, the care exercised in or after planting, or the soil characteristics of the locality in which they are to be planted.

NOTE 1: Under this section, when flower bulbs are of such immaturity as not reasonably to be expected to bloom and flower the first season of their planting, such fact shall be clearly and conspicuously disclosed in all advertisements and sales promotional literature relating to such products: *Provided, however,* That such disclosure need not be made when sales are confined to nurseries and commercial growers for their use as planting stock.

NOTE 2: Under this section, in order to avoid deception of purchasers and prospective purchasers thereof, when rose bushes have been used in a greenhouse for the commercial production of cut flowers, they shall be tagged or labeled so as to clearly, adequately and conspicuously disclose such fact, and such tags and labels shall be so attached thereto as to remain thereon until consummation of consumer sale. A similar disclosure shall be made in all advertising and sales promotional literature relating to such products. And when, by reason of such previous greenhouse use or their condition at the time of removal therefrom or their handling during or subsequent thereto, there is probability that such rose bushes will not satisfactorily thrive and produce flowers when replanted outdoors, or will satisfactorily thrive and produce flowers outdoors only if given special treatment and attention during and after their replanting, such fact shall also be clearly, conspicuously, and non-deceptively disclosed in close conjunction with, and in the same manner as, the aforesaid required disclosure that such products have been used in a greenhouse for the commercial production of cut flowers.

[Guide 5]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

### § 18.6 Plants collected from the wild state.

It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state; *provided, however,* that plants propagated in nurseries from plants lawfully collected from the wild state may be designated as "nursery-propagated." [Guide 6]

[59 FR 64549, Dec. 14, 1994]

### § 18.7 Misrepresentation as to character of business.

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for any industry member to represent itself directly or by implication to be a grower or propagator of such products, or any portion thereof, or to have any other experience or qualification either relating to the growing or propagation of such products or enabling the industry member to be of assistance to purchasers or prospective purchasers in the selection by them of the kinds or types of products, or the placement thereof, when such is not the fact, or in any other manner to misrepresent directly or by implication the character, nature, or extent of the industry member's business.

NOTE: Among practices subject to the inhibitions of this section is a representation by an industry member to the effect that he is a landscape architect when his training, experience, and knowledge do not qualify him for such representation.

(b) It is also an unfair or deceptive act or practice for an industry member to use the word "guild," "club," "association," "council," "society," "foundation," or any other word of similar import or meaning, as part of a trade name, or otherwise, in such a manner or under such circumstances as to indicate or imply that its business is other than a commercial enterprise operated for profit, unless such be true in fact,

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or so as to deceive purchasers or prospective purchasers in any other material respect. [Guide 7]

[59 FR 64549, Dec. 14, 1994]

### § 18.8 Deception as to origin or source of industry products.

(a) It is an unfair or deceptive act or practice to sell, offer for sale, or advertise an industry product by misrepresenting directly or by implication the origin or source of such product to purchasers or prospective purchasers (e.g., by use of the term *Holland* to describe bulbs grown in the U.S.A.); *provided, however*, that when a plant has an accepted common name that incorporates a geographical term and such term has lost its geographical significance as so used, the mere use of such common names does not constitute a misrepresentation as to source or origin (e.g., "Colorado Blue Spruce," "Arizona Cypress," "Black Hills Spruce," "California Privet," "Japanese Barberry," etc.).

(b) It is also an unfair or deceptive act or practice to advertise, sell, or offer for sale an industry product of foreign origin without adequate and non-deceptive disclosure of the name of the foreign country from which it came, where the failure to make such disclosure would be misleading to purchasers or prospective purchasers. [Guide 8]

[59 FR 64550, Dec. 14, 1994]

## PART 20—GUIDES FOR THE REBUILT, RECONDITIONED AND OTHER USED AUTOMOBILE PARTS INDUSTRY

Sec.

20.0 Definitions.

20.1 Deception as to previous use of products.

20.2 Deception as to identity of rebuilder, remanufacturer, reconditioner or reliner.

20.3 Misrepresentation as to condition of products and misuse of the terms "rebuilt," "factory rebuilt," "remanufactured," etc.

AUTHORITY: Secs. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

SOURCE: 44 FR 11182, Feb. 27, 1979, unless otherwise noted.

## 16 CFR Ch. I (1-1-02 Edition)

### § 20.0 Definitions.

*Industry member.* Any person, firm, corporation or organization engaged in the sale or distribution of any industry product as defined below.

*Industry products.* Industry products are automotive parts and automotive assemblies which have been used or which contain used parts, whether such parts or assemblies have been rebuilt, remanufactured, reconditioned, re-lined, or otherwise. The term *automotive assemblies* as herein used mean any part or assembly designed for an automobile, truck, motorcycle, tractor or similar self-propelled vehicle. Industry products include, but are not limited to, armatures, generators, starters, carburetors, clutches, distributors, connecting rods, crankshafts, cylinder blocks, engine assemblies, fuel pumps, brakes, master and wheel brake cylinders, power brakes, shock absorbers, starter drives, solenoids, automatic transmissions, regulators, spark plugs, springs, windshield wiper motors and water pumps. Automobile tires are not products of the industry.

### § 20.1 Deception as to previous use of products.

(a) It is an unfair trade practice to represent, directly or by implication, that any industry product is new or unused, or that any part of an industry product is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof.

(b) It is an unfair trade practice for an industry member to offer for sale or sell any industry product unless a clear and conspicuous disclosure that such product has been used or contains used parts is made in all the industry member's advertising, sales promotional literature and invoices concerning the product, on the container in which the product is packed and if the product has been rebuilt, remanufactured, reconditioned or has the appearance of being new, on the product with sufficient permanency to remain thereon after installation for a reasonable period of time under ordinary conditions of use, and in such manner that said disclosure cannot be easily removed or obliterated.

(1) *Form of disclosure.* The disclosure that an industry product has been used