

## 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

Sec.

- 18.0 Definitions.
- 18.1 Deception (general).
- 18.2 Deception through use of names.
- 18.3 Substitution of products.
- 18.4 Size and grade designations.
- 18.5 Deception as to blooming, fruiting, or growing ability.
- 18.6 Plants collected from the wild state.
- 18.7 Misrepresentation as to character of business.
- 18.8 Deception as to origin or source of industry products.

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.