
IN THE MATTER OF

LAKELAND NURSERIES SALES CORP. trading as

LAKELAND NURSERIES SALES ET AL.

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8670. Complaint, Nov. 1, 1965—Decision, May 12, 1966

Order dismissing a complaint against a New York City distributor of
nursery products charging that it misrepresented the blooming charac-

teristics of its plants; the order also reserves the right to reopen the complaint and order against respondent's predecessor company, Docket No. 6666, 53 F.T.C. 1189.

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 Lakeland Nurseries Sales Corp., a corporation trading as Lakeland Nurseries Sales, and Henry L. Hoffman and Chester Carity, individually and as officers of said corporation, hereinafter referred to as respondents, have 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. Respondent Lakeland Nurseries Sales Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 16 West 61st Street in the city of New York, Borough of Manhattan, State of New York. Said corporate respondent also trades as Lakeland Nurseries Sales.

Respondents Henry L. Hoffman and Chester Carity are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rose plants, chrysanthemum plants and other nursery products to the public.

As used in this complaint and in the attached proposed form of order the term "nursery 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.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products when sold, to be shipped from independent nurseries in the States of Minnesota, Maryland and other States to purchasers thereof

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located in States other than those in which said shipments originate and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, the respondents have distributed circulars, brochures, catalogues and other advertising material through the United States mails to prospective purchasers located outside the State of New York, and have furnished advertising material to others for use in soliciting sales, containing numerous statements and representations respecting respondents' status as a grower or propagator of the nursery products they offer for sale.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

* * * * *

The reason we are willing to release part of our precious propagating stock at this time is simply this:

* * * * *

Yes, as one of America's largest nursery organizations, we've sold many, many magnificent rose varieties throughout the years—a good number of them international prize winners. On our annual trips all over the country to visit leading hybridizers, as well as to inspect our own crops of roses produced in vast growing fields in 6 states, we usually see a total of more than 10 million roses each summer, including the crops of "friendly rival" nurserymen.

* * * * *

If you should come and visit the vast greenhouses and experimental "GARDENS OF TOMORROW" where our Azaleamums are hybridized you would see the answer!

* * * * *

The respondents' Azaleamum brochure contains a picture of several rows of plants in bloom growing in a field. Beneath the picture is the caption, "You are now looking at a few rows in the growing fields—showing how Azaleamums look the very first season you plant them."

* * * * *

PAR. 5. Through the use of the aforesaid corporate name, "Lakeland Nurseries Sales Corp." and through the use of the trade name, "Lakeland Nurseries Sales," separately or in connection with the statements, representations and illustrations set forth in Paragraph Four hereof, and others similar thereto but not expressly set out herein, and through the use of said statements, representation and illustrations and of a Garden City, New York mailing address, respondents have represented, directly or by implication that they actually grow or propagate the nursery prod-

ucts which they offer for sale and sell and that they own, operate or control nurseries, farms or properties in or on which the said products are grown or propagated.

PAR. 6. In truth and in fact the respondents do not actually grow or propagate the nursery products which they offer for sale and sell, nor do they own, operate, or control nurseries, farms, or properties in or on which said products are grown or propagated.

Therefore, the statements and representations as set forth in Paragraph Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. There is a preference on the part of members of the purchasing public for dealing directly with nurseries and growers of nursery products rather than with retailers, dealers or other intermediaries, such preference being due to a belief that by dealing directly with the nurseries or growers, various advantages may be obtained. The Commission takes official notice of the preference.

PAR. 8. In the further course and conduct of their business as aforesaid, respondents have made numerous statements and representations respecting the amount and size of blossoms, duration of blooming period, and other blooming characteristics of the nursery products they offer for sale and the rate of growth, appearance, height, size and other physical characteristics which can and will be achieved with said products by purchasers thereof.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

A. In connection with the offering for sale of the "Nearly Wild" rose, also advertised as a Superblooming Hedge Rose:

Yes, just imagine the incredible gardening thrills that now await you, if you accept this offer promptly. The thrill of seeing fresh, colorful, fragrant 3-inch roses burst into lavish clusters of 10, 12 and even 15 blossoms to a single stem . . . roses that erupt into fiery red 'n pink MASSES OF 30, 40 and even 50 NEW ROSES day after day, week after week from one single plant . . . roses to fill every room in your house with their color and exotic fragrance all summer long from just one single plant . . . roses that literally pour out their blossoms like a never-ending fountain of beauty in June, July, August, September, October, November . . . right up to first frosts and even beyond . . . and all from one single plant! Roses that start blooming a few weeks from now in your garden and once established will literally give you THOUSANDS OF BLOOMS each year . . . from each single plant!

* * * * *

Leading Eastern Agriculture College Reports: This Fabulous Rose Variety Produced 4,076 Roses all from one single plant!

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* * * * *

Requires Less Care! An ideal Rose for Beginners! So Easy To Plant and Grow for a Lifetime of Gorgeous Bloom! And because it can so easily withstand conditions that would kill off its more tender cousins, Nearly Wild is almost a foolproof rose—guaranteed to thrive and produce heavy masses of bloom for you even if you've never planted a seed before in your life!

* * * * *

In addition, the brochure, advertising this rose, contains a close-up photograph of rose blossoms which purports to be a photograph of the blossoms produced by the "Nearly Wild" rose plant.

B. In connection with the offering for sale of the Ray Bunge Scarlet Showers Rose:

* * * * *

Soars 20 Feet High . . . Spreads 40 Feet Wide The *First Growing Season*" . . . For this wonder rose streaks skyward at a rate simply unheard of in roses . . . as much as 18 inches in a single week . . .

* * * * *

Up To 300 Giant Roses In Bloom At One Time—Dramatic Fountains of Color 5 Months of The Year!

* * * * *

So, if you can spare a few minutes of time and a few inches of ground in your yard to plant it, you can own the rose that defies rubber tree roots, 20° below zero winters, even semi-shaded conditions . . . to soar higher than any other everblooming, climbing rose has ever been known to grow before!

* * * * *

Imagine the glory of a rosebush that bursts into gigantic blossoms up to 5 inches across . . . roses that burst again and again into fiery masses of color in June, July, August, September, October . . . until snow starts to fly!

* * * * *

As little as 3 hours daily sunlight produces ravishing masses of bloom!

* * * * *

In addition the brochure, advertising this rose, contains a picture of a house with roses growing over it from the ground to the roof.

C. In connection with the offering for sale of the Wilson's Climbing Doctor rose, also known as the Climbing Doctor:

Roses that burst into everblooming fountains of color . . . soaring up to 11 feet high . . . up to 20 feet wide!

* * * * *

Roses that flare again and again into living walls of color in June, July, August, September, October . . . right up to wintry frost.

* * * * *

Gives you a lavish outpouring of exquisite hybrid tea-like roses from June

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to Frost. Blossoms are truly gigantic . . . usually measuring 6 to 8 inches across!

Soars Approx. 11 feet high . . .

* * * * *

A few Minutes to Plant and A Bare Spot Becomes The Showplace of the Neighborhood.

* * * * *

In addition the brochure advertising this rose contains a picture of a rose 8 inches wide at the widest point described as "Actual Size of Bloom"; a picture of a young lady before a background of roses most of which are large enough to cover the major portion of her face; and a picture of a woman standing beside a wide spreading rose bush which is approximately twice her height.

D. In connection with the offering for sale of chrysanthemums known as Fragramums:

. . . they're the first fragrant chrysanthemums in garden history!

* * * * *

You'll Get Hundreds of Sweet-Scented Mums This Season From Each Single Plant—Thousands More Year After Year.

* * * * *

And you can do it in just 20 minutes whether you're an expert gardener or the greenest beginner. Because they're shipped to you ready-to-plant in a special "grow enroute" wrap, and it only takes a few minutes to scoop out a few holes and plant them.

* * * * *

It means mounds and mounds of fiery-hued chrysanthemums . . . as many as 200 . . . 300 . . . even 400 blossoms on a single plant . . . some up to 4" across . . . blossoms clustered so closely on the plant, you can barely push your hand into the mass to try to count them.

* * * * *

A Fragramum Planting Gives you Lovely, Sweet-Scented Banks of Color in August, September, October, November . . . Right Up To Frost And Beyond!

E. In connection with the offering for sale of chrysanthemums known as Azaleamums:

* * * * *

. . . and then cover themselves with solid unbroken masses of dazzling 2 to 4 inch blossoms!

* * * * *

. . . beginning in August (sometimes even in July) . . . each of these wonder-plants erupts into a gigantic fireball of color spreading nearly a full 8 feet around. Then in September, October, November—instead of fading, instead of dropping its blooms—each and every Azaleamum bursts again and again into a continuous never-ending shower of hundreds, even thousands of colorful gold, white, pink or flaming red blossoms!

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* * * * *

"PROBABLY WORLD'S GREATEST FLOWERING PLANT!" . . . said garden editor of N. Y. Journal American: "500 or 600 blooms open at one time is moderate; many people have reported over 1,000 blooms and in a few cases the record even stretches up to 2,000 blooms."

G. A. Bernard, Illinois, writes:

"You say 600 flowers. I'll bet there are 1,000 flowers on one single plant."

* * * * *

And you can do it all with just 6 plants we send you . . . in just 20 minutes . . . whether you're an expert gardener or the greenest beginner. Because they're shipped to you packed in their own "grow en route" containers and it only takes 20 minutes to scoop out a few holes and plant them! . . .

PAR. 9. Through the use of the aforesaid statements and representations and others similar thereto but not expressly set out herein, the respondents have represented, directly or by implication, that all purchasers of plants offered for sale and sold by them would obtain or could obtain the results listed below for each plant irrespective of the purchaser's lack of gardening experience or horticultural knowledge or of any required special care and handling of the plant.

A. Results from a single Nearly Wild Rose plant (also called a Hedge Rose) in the first season it is planted:

1. 1,000—4,076 blossoms.
2. The majority of the blooms will be 3 inches in diameter.
3. Continuous blooming from June to November.
4. Blossoms that resemble those shown in the close-up photo in the brochure advertising the Nearly Wild Rose.
5. 30 to 50 blossoms in a single day.

B. Results from a single Ray Bunge Scarlet Showers rose plant in the first season it is planted:

1. A growth of 18 inches in height in a single week, and 20 feet in height and 40 feet in width in the season.
2. The majority of blossoms will be 5 inches in diameter.
3. Repeat blooming in each month from June to October.
4. At least 300 blossoms.
5. Only 3 hours of sunlight a day are necessary to obtain the advertised results.

C. Results from a single Wilson's Climbing Doctor rose plant in the first season it is planted:

1. A growth of 11 feet in height in the season.
2. The majority of blossoms will be 6—8 inches in diameter.
3. Continuous blooming from June to October.

D. Results from a single *Fragrum chrysanthemum* plant the first season it is planted:

1. 200 to 400 blossoms in the first season and at least 1,000 blossoms per season each subsequent season.

2. Many blossoms 4 inches in diameter.

3. Continuous blooming from August to November.

4. The blossoms will be fragrant.

E. Results from a single *Azaleum chrysanthemum* plant in the first season it is planted:

1. 500 to 2,000 blossoms.

2. Many blossoms will exceed 2 inches in diameter.

3. Continuous blooming from August to November.

PAR. 10. In truth and in fact, many purchasers of the nursery products offered for sale by respondents did not obtain the results hereinabove set forth for the Nearly Wild rose plant, the Scarlet Showers rose plant, the Wilson's Climbing Doctor rose plant and the *Azaleum chrysanthemum* plant, and, in the case of the *Fragrum chrysanthemum* plant could not obtain such results.

The statements and representations as set forth in Paragraphs Eight and Nine hereof were and are exaggerated, false, misleading and deceptive.

PAR. 11. In seasons subsequent to the season of initial offering the respondents have distributed advertising material in which they represented that said Scarlet Showers, Wilson's Climbing Doctor and *Fragrums* were new at the time of the then current offer and were being offered to the public for the first time and that all varieties of *Azaleums* were new in 1960 and were being offered to the public for the first time.

PAR. 12. In truth and in fact the said Scarlet Showers, Wilson's Climbing Doctor and *Fragrum* plants were not new at the time of the then current offers and had been offered to the public by the respondents in preceding seasons and some varieties of *Azaleums* had been offered by others in preceding seasons.

Therefore the statements and representations as set forth in Paragraph Eleven hereof were and are false, misleading and deceptive.

PAR. 13. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of nursery products of the same general kind and nature as those sold by respondents.

PAR. 14. Respondents by and through the use of the aforesaid

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acts and practices place in the hands of retailers and dealers, the means and instrumentalities by and through which they may mislead and deceive members of the public in the manner and as to the things hereinabove alleged.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of nursery products offered for sale by respondents by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

On February 17, 1966, respondents brought suit in the United States District Court for the District of Columbia seeking a declaratory judgment and mandatory injunction requiring the Commission to withdraw the complaint in this proceeding and to restrict its action against respondents with respect to the allegations in the complaint herein to the reopening, pursuant to Section 3.28 (b) of the Commission's Rules of Practice, of the proceedings in *Lakeland-Deering Nurseries Sales*, Docket No. 6666. *Lakeland Nurseries Sales Corp., et al. v. Dixon, et al. and the Federal Trade Commission*, Civil Action No. 419-66 (D.D.C. 1966). By stipulation dated May 4, 1966, respondents agreed to entry of an order dismissing the complaint filed in the District Court upon the entry by the Commission of an order dismissing the complaint in this proceeding. It was further agreed that the dismissal of the complaint herein would be without prejudice to the Commission's issuance of an amended complaint in Docket No. 6666, containing the allegations of the complaint issued herein and to the reopening of that proceeding, respondents having waived the requirement that the Commission first establish changed conditions of fact or law or public interest. Accordingly,

It is ordered, That

(1) The complaint in this proceeding be, and it hereby is, dismissed; and

(2) The dismissal of the complaint herein is without prejudice to the reopening of the proceedings in *Lakeland-Deering Nurseries Sales*, Docket No. 6666 and to the issuance of an amended complaint therein, as provided by, and in accordance with, the terms of the stipulation dated May 4, 1966, filed with the United States District Court for the District of Columbia in *Lakeland Nurseries Sales Corp., et al. v. Dixon, et al. and the Federal Trade Commission*, Civil Action No. 419-66.

Commissioner MacIntyre not participating.
