

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1968,
TO DECEMBER 31, 1968

IN THE MATTER OF

DEAN MILK COMPANY ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 8032. Complaint, June 30, 1960—Decision, July 2, 1968

Order modifying, pursuant to a decree dated June 18, 1968, of the Court of Appeals, Seventh Circuit, a cease and desist order dated October 22, 1965, 68 F.T.C. 710, which charged an Illinois milk company and its subsidiary with price discrimination, by narrowing the effective territory of the order from "any city or market area" to Louisville and its suburbs in Jefferson County, Kentucky, and the cities of New Albany, Jeffersonville, Clarksville, and Terre Haute, Indiana.

MODIFIED ORDER

Dean Milk Company and Dean Milk Co., Inc., having filed in the United States Court of Appeals for the Seventh Circuit on December 15, 1965, a petition to review and set aside a final order issued against them on October 22, 1965, by the Commission; and the Court on April 1, 1968, having issued its judgment denying enforcement of the Commission's order with respect to the primary-level violations and remanding the proceeding to the Commission solely for the purpose of modifying its order with respect to the secondary-level violations in conformity with the views set forth in an opinion of the Court rendered on the same date [395 F. 2d 696(1968)]; and the Commission having submitted to the Court a proposed modification of its order, which conforms to said opinion; and the Court on June 18, 1968, having entered a final decree which embodies the proposed modification;

Now, therefore, it is hereby ordered, That the order of October 22, 1965, be, and it hereby is, modified in accordance with the final decree of the Court to read as follows:

Order

74 F.T.C.

It is ordered, That the respondents, Dean Milk Company and Dean Milk Co., Inc., corporations, and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale or distribution in commerce of fluid milk and milk products in the Falls Cities market (comprising the city of Louisville and its suburbs in Jefferson County, Kentucky, and the cities of New Albany, Jeffersonville and Clarksville in Indiana) and in the city of Terre Haute, Indiana, do forthwith cease and desist from discriminating, directly or indirectly, in the price of fluid milk and milk products of like grade and quality by selling any of these products to any purchaser at a price which is lower than the price for products of like grade and quality charged any other purchaser who competes in the resale of such products with the purchaser paying the lower price.

It is further ordered, That the respondents, Dean Milk Company and Dean Milk Co., Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

LAKELAND NURSERIES SALES CORP. FORMERLY KNOWN AS
LAKELAND-DEERING NURSERIES SALES ET AL.

ORDER, OPINION, ETC., DISMISSING AN AMENDED COMPLAINT
IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6666. Amended Complaint, July 20, 1966—Decision, July 5, 1968

Order reopening proceedings and dismissing an amended complaint which charged a seller of nursery stock with headquarters in New York City with misrepresenting the growth potential and other characteristics of its nursery products.

ORDER REOPENING PROCEEDINGS

JULY 20, 1966

Whereas, the Commission on June 25, 1957, issued an order to cease and desist in accordance with a consent order agreement entered into by the respondents and counsel in support of the complaint in the captioned proceedings; and

Order

Whereas, the respondents and the Commission have heretofore caused to be executed and filed, a certain stipulation dated May 4, 1966, in a certain cause hereinafter set forth, in which some of the captioned respondents are plaintiffs and the Federal Trade Commission, jointly and severally, is defendant, said cause having been lately pending in the United States District Court in and for the District of Columbia, designated Civil Action No. 419-66; and

Whereas, the aforesaid stipulation provided for the dismissal of the complaint in said cause in said Court as aforesaid; and

Whereas, the aforesaid stipulation further provided that the ". . . Commission may file an amended complaint in said Docket No. 6666 pursuant to Section 3.28(b)(1) of the Commission's Rules of Practice For Adjudicative Proceedings, 16 C.F.R. (1964 Supp.) § 3.28(b)(1), containing the allegations of the complaint issued in the said Docket No. 8670 and raising the same issues as presented in the proceeding in Docket No. 8670; and the proceeding in Docket No. 6666 may be reopened in accordance with Section 3.28(b)(1) of those Rules except that the plaintiffs herein and all respondents in Docket No. 6666 specifically waive the requirement contained in the said Section 3.28(b)(1) that the Commission establish changed conditions of fact or law or public interest which is ordinarily required to be established under said Section 3.28(b)(1). All respondents in such amended complaint in Docket No. 6666 shall have the right to interpose an answer thereto and to defend in the said reopened proceeding to the same extent as though the Commission has proceeded to raise the issues of the amended complaint by a reopening of the proceeding in Docket No. 6666 under said Section 3.28(b)(1) in the first instance.

"The consent cease and desist order entered in Docket No. 6666 on June 25, 1957 (as reported in 53 F.T.C. 1189) shall remain in effect at least pending the final determination of the issues raised by the amended complaint to be issued therein.

"No party to the proceeding in said Docket No. 6666 will relitigate or seek to relitigate the issues raised by the original complaint in Docket No. 6666 with respect to the specific plants which are now governed by the consent cease and desist order issued therein, except that the parties therein shall have the right to seek modification of the said consent order to cease and desist in the event an order is entered on the amended complaint which may be or appear to any party to be narrower or broader than the said consent order."; and

Whereas, said stipulation further provided that: "Lakeland-Deering Nurseries Sales, one of the respondents in the proceeding in the said Docket No. 6666, is the corporate predecessor of plaintiff Lakeland Nurseries Sales Corp."; and

Whereas, the Commission having reason to believe that the said respondents, or some of them, have violated the provisions of the Federal Trade Commission Act, as is more fully set out in a draft of amended complaint which is hereto attached; and

Whereas, the Federal Trade Commission having authority under Section 5(b) of the Federal Trade Commission Act to reopen a proceeding whenever, in its opinion, conditions of fact or law have so changed as to require such action or the public interest so requires, and said stipulation expressly waives the requirement that the Commission establish changed conditions of fact or law or a showing of public interest, and, that the Commission may proceed to reopen the captioned matter; it is, upon consideration,

Ordered, That the captioned matter be, and it is, reopened for any and all proceedings as may be appropriate under the Commission's Rules for Adjudicative Proceedings insofar as those Rules are applicable hereto, subject only to such matters and things as have heretofore been expressly waived by said respondents in the aforesaid stipulation dated May 4, 1966.

It is further ordered, That the Commission's amended complaint issue forthwith.

AMENDED 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, Chester Carity, Lillian Zogheb and Allen Lekus, 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

2

Amended Complaint

Sales. Said corporation was formerly known by the corporate name of Lakeland-Deering Nurseries Sales.

Respondents Henry L. Hoffman, Chester Carity, Lilliam Zogheb and Allen Lekus 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 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,

Amended Complaint

74 F.T.C.

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 field—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, representations 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 products 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 Paragraphs 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

2

Amended Complaint

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 **MASSSES 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!

* * * * *
 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 . . .

* * * * *

Amended Complaint

74 F.T.C.

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 rose bush 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 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.

2

Amended Complaint

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 wonderplants 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!

* * * * *
"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 enroute" 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 Fragamum 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 Azaleamum 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 could 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 Azaleamum chrysanthemum plant, and, in the case of the Fragramum 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 Fragramums 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 Azaleamums 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 Fragramum 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 Azaleamums 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 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.

Mr. Herbert L. Blume and Mr. J. Michael Frascati supporting the complaint.

Bass & Friend, New York, N.Y., by *Mr. Solomon H. Friend* for respondents Lakeland Nurseries Sales Corp. and *Mr. Henry L. Hoffman*; and *Zalk, Rubel & Perret*, New York, N.Y., by *Mr. Joseph Zalk* for respondents Mr. Chester Carity, Ms. Lillian Zogheb and Mr. Allen Lekus.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

JANUARY 12, 1968

TABLE OF CONTENTS

	<i>Page</i>
PRELIMINARY STATEMENT	13
FINDINGS OF FACT	15
I. Respondents and Their Business	15
II. Representations Regarding Business Status	17
A. The Basic Issue	18
B. Consumer Preference	23
C. Respondents' Involvement in the Nursery Business	29
III. Representations Regarding Plant Characteristics	32
A. Nearly Wild Rose	32
B. Ray Bunge Scarlet Showers Rose	34
C. Wilson's Climbing Doctor Rose	41
D. Fragramums	42
E. Azaleamums	48
IV. Representations of Plants as "New"	49
A. Fragramums	50
B. Azaleamums	50
C. Rose Plants	50
CONCLUSIONS	53
ORDER	56

PRELIMINARY STATEMENT

This proceeding involves an amended complaint, issued by the Federal Trade Commission on July 20, 1966, which was duly served on all respondents, namely, Lakeland Nurseries Sales Corp. (formerly known as Lakeland-Deering Nurseries Sales), a corporation trading as Lakeland Nurseries Sales, and Henry L. Hoffman, Chester Carity, Lillian Zogheb, and Allen Lekus, individually and as officers of the corporation. The amended complaint was issued pursuant to Commission order entered on July 20, 1966, reopening the proceedings in this docket. The original complaint was issued on October 26, 1956, and the proceeding based thereon was concluded by the entry of a consent order on June 25, 1957. This consent order dealt with two plants, Lythrum Morden Gleam and Shasta Daisy. (*Lakeland-Deering Nurseries Sales*, 53 F.T.C. 1189 (1957).)

The amended complaint, which charges violation of Section 5 of the Federal Trade Commission Act, alleges that respondents have misrepresented the nature of their business, the blooming characteristics of the nursery products they sell, the results obtainable by purchasers, and the newness of certain nursery products.

Before reopening this proceeding and issuing the amended complaint, the Commission, on November 1, 1965, had issued a new complaint (Docket 8670) that cited Lakeland Nurseries Sales Corp., Henry L. Hoffman, and Chester Carity as respondents. The allegation of that complaint were substantially similar to those contained in the amended complaint now before us. On December 20, 1965, respondents moved to dismiss the complaint in Docket 8670 on the ground that instead of issuing a new complaint, the Commission should have reopened the proceeding in Docket 6666. When this motion was denied, respondents, on February 17, 1966, filed suit in the United States District Court for the District of Columbia, seeking a declaratory judgment and a mandatory injunction to restrain the proceedings. This suit was dismissed on May 19, 1966, pursuant to a stipulation between the parties that provided for dismissal of the proceeding in Docket 8670 and for reopening of Docket 6666. (*Lakeland Nurseries Sales Corp. v. Dixon* (D.D.C., Civil Action No. 419-66).) The complaint in Docket 8670 was dismissed by the Commission in an order dated May 12, 1966 [69 F.T.C. 732]. Thereafter, by order dated July 20, 1966, the Commission reopened the instant proceeding and issued its amended complaint, which

was ultimately assigned for trial to this hearing examiner.^{1a}

Answers to the amended complaint were filed by respondents Lakeland and Hoffman on August 23, 1966, and by respondents Carity, Zogheb, and Lekus on September 13, 1966. In these answers, the respondents made certain factual admissions, but they denied most of the allegations of the complaint and specifically denied any violation of law.

Following a series of prehearing conferences (Tr. 1-181), there were 17 days of hearings between May 1 and June 1, 1967, in New York, New York; Minneapolis, Minnesota; Dallas, Texas; and Los Angeles, California. At these hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the amended complaint. Such testimony and other evidence were duly recorded and filed in the office of the Commission.

The evidentiary record comprises 2,680 pages of transcript and more than 150 documentary exhibits.

The parties were represented by counsel and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues.

After the presentation of evidence, proposed findings of fact and conclusions of law and a proposed form of order, as well as reply briefs, were filed by counsel supporting the complaint and by counsel for respondents. Under Section 3.51(a) of the Commission's Rules of Practice (effective July 1, 1967), the time for filing this initial decision was extended to January 12, 1968.

Proposed findings not adopted, either in the form proposed or in substance, are rejected as lacking support in the record or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, together with the submittals of the parties, the hearing examiner finds that this proceeding is in the interest of the public; and on the basis of such review and his observation of the witnesses he makes the following findings of fact, enters his resulting conclusions, and issues an appropriate order.

As required by Section 3.51(b) (1) of the Commission's Rules of Practice, the findings of fact include references to principal supporting items in the record. Such references to testimony and exhibits are thus intended to comply with that Rule and to serve as convenient guides to the principal items of evidence supporting the findings of fact, but these record references do not

^{1a} The amended complaint may be referred to hereafter simply as "complaint."

necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by the parties, such references are ordinarily intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used:

CPF—Proposed Findings, Conclusions, and Order of Complaint Counsel.

CRB—Reply Brief of Complaint Counsel.

CX—Commission Exhibit.

RPF—Respondent's Proposed Findings, Conclusions, and Order.

RRB—Respondents' Reply Brief.

RX—Respondents' Exhibit.

Tr.—Transcript.

References to proposed findings and other submittals of counsel are ordinarily to page numbers—for example, CPF 19. Sometimes references to testimony cite the name of the witness and the transcript page number without the abbreviation Tr.—for example, Hoffman 2163.

Counsel supporting the complaint may be variously referred to as complaint counsel, Government counsel, or the Government, and witnesses called by Government counsel may be referred to as Government witnesses.

FINDINGS OF FACT

I. Respondents and Their Business

Respondent Lakeland Nurseries Sales Corp., formerly known as Lakeland-Deering Nurseries Sales, 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, New York, New York. It also trades under the name Lakeland Nurseries Sales. (Amended Complaint, Par. One; Answers of respondents, Par. One; Order Reopening Proceedings, p. 2; Tr. 6, 17, 2162, 2167; CX 2 A; RPF 7.) (Respondent Lakeland Nurseries Sales Corp. may be referred to as Lakeland or as the corporate respondent.)

Respondent Henry L. Hoffman is president of Lakeland, and respondent Chester Carity is vice president. They are the only officers of the corporation. As officers, directors, and principal stockholders, they formulate, direct, and control the acts and practices of the corporate respondent, and they have done so at all times material to the issues involved in this proceeding. Their

