



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Marketing Practices

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July 19, 2007

Harvey I. Lapin, Esq.  
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Dear Mr. Lapin:

You have requested a staff opinion on whether the FTC Funeral Rule requires a funeral provider to make its facilities available for a memorial service to families who do not wish to make any other funeral arrangements with the provider. It is staff's opinion, for the reasons which follow, that the Rule does not require a funeral provider to do so.

As you know, Section 453.4(b)(1)(i) of the Rule makes it unlawful for a "funeral provider" to "[c]ondition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part."<sup>1</sup> Section 453.4(b)(2)(ii) grants a safe harbor, however, providing that "[a] funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide."<sup>2</sup>

Section 453.1(i) of the Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public."<sup>3</sup> Because funeral providers are, by definition, in the business of providing both funeral goods and funeral services to the public, staff has determined in a prior opinion that the Rule is premised on the understanding that "funeral providers are persons who furnish funeral arrangements, and not persons who simply sell a particular good or service as a separate sales transaction."<sup>4</sup> Staff concluded in that ruling that "for a business operation thus defined to be required to function as

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<sup>1</sup> 16 CFR § 453.4(b)(1).

<sup>2</sup> 16 CFR § 453.4(b)(2)(ii).

<sup>3</sup> 16 CFR § 453.1(i).

<sup>4</sup> Staff Opinion, Casket & Funeral Supply Association of America (July 18, 1995) at 1-2, *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion95-3.pdf>.

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something else, such as a casket seller” would be “impractical,” and that a funeral provider’s refusal to sell caskets at retail to individuals who do not also wish to make funeral arrangements accordingly would fall within the safe harbor provided by Section 453.4(b)(2)(ii).<sup>5</sup>

Your request similarly asks whether the Rule requires a funeral provider to make its facilities available for a memorial service to families who do not wish to make any other funeral arrangements with the provider. Our prior staff opinion quotes the following excerpt from the original Statement of Basis and Purpose for the Rule that is of particular relevance to this question:

“[T]he Commission would not consider it a violation of section 453.4(b) for a funeral provider to refuse doing business with a consumer who said ‘we have our own casket, transportation, flowers, etc., but wish to use your viewing facilities for two hours next Monday.’”<sup>6</sup>

In view of this unambiguous statement of the Commission’s views, it continues to be staff’s opinion that it is not “the Commission’s intention to require a funeral provider to sell an isolated good or service that is not to be used in conjunction with a funeral arranged by that funeral provider.”<sup>7</sup> We see no principled basis for distinguishing the use of a funeral provider’s facilities for a memorial service from their use for a viewing.

As you know, the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/online/edcams/funerals/staffopinions.shtm>.

Sincerely,

/s/

Craig Tregillus  
Funeral Rule Coordinator

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> 47 FR 42260, 42282 n.230 (Sept 24, 1982).

<sup>7</sup> Staff Opinion, *supra* n.4, at 2.