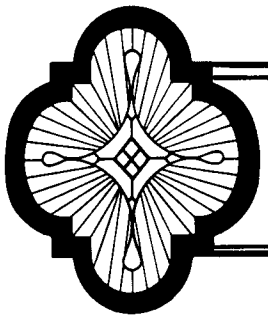

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August 7, 1999

Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: "16 CFR PART 453"

To Whom It May Concern,

I am writing in response to your call for comments regarding the Federal Trade Commission rule on Funeral Service.

By way of background, I am a second generation funeral director in the Greater Pittsburgh, PA area. In addition to my general professional duties and career, I have served in the various offices and am a Past President of both the Allegheny County Funeral Directors Association and the Pennsylvania Funeral Directors Association. I also have served on the Executive Committee of the National Funeral Directors Association. Currently I am the Vice-Chairman of the Pennsylvania State Board of Funeral Directors.

Having been involved in funeral service during not only the entire tenure of the FTC rule and its 1994 revision but also during its inception and debate in 1975, I feel I have some historical as well as some current insight.

I believe that funeral service has, for the most part, adapted to and complied with the spirit and purpose of the rule. It is some of that spirit and those purposes, however, that have spawned new entities and problems which should be addressed.

One of the purposes of the FTC Funeral Rule was to have consumers completely informed as to what they were purchasing, what the cost of those goods and services would be and to prevent providers from requiring families to purchase items they did not need. It also prohibited a funeral provider from requiring anyone to purchase "goods" as a pre-condition to the provision of service, otherwise known as tying. This portion of the law gave rise to companies that sell only merchandise, such as casket stores or door to door marketers of funeral goods. While this gave rise to a greater level of competition, it also resulted in many families purchasing merchandise from the independent marketers and having the mistaken belief that they had also paid for some or all of the expenses of the services that would be needed. Further, since those who sell only the merchandise related to funerals are not covered under the FTC Rule, there have been many reported cases of misrepresentation of Federal and State laws in order to make a sale. Probably the most common ones are, misrepresenting that the use of burial vaults is required by law, that caskets are required for cremation and that a sealed casket is required for transfer by air.

I think that what concerns most funeral providers is that there are different standards for those who provide only merchandise. Adding to that frustration is the fact that often these companies are only separate corporate entities owned by the same people who own full service funeral facilities which are covered by the rule. It's interesting to note that in Federal Pension and benefit law the principle of "Common Interest and Control" is applied so that companies and corporations cannot avoid the intent of the law by merely creating another shell corporation. That, however, is exactly what is occurring in the realm of funeral merchandise. Routinely, companies that provide both funeral goods *and* services and would be subject to the rule, create a separate company to market goods only and consider themselves exempt from the FTC Funeral Rule. That hardly seems fair to either providers or consumers.

Another twist and self serving interpretation to the Rule is one that was recently hatched here in Pennsylvania in which a local religious group of cemeteries developed a marketing plan for funerals. They have a staff of salespersons who make in-home sales presentations using price information provided by various local funeral homes who have signed on to the program. The sales persons then have the family make decisions as to what type of funeral they wish to have as well as what merchandise they wish to use from a "specially developed" price list. They are not provided with the funeral home General Price List prior to making these decision. Once the decisions are made and the cost determined, they then sell an insurance policy to fund the funeral. Their claim is that they are only selling insurance and therefore not subject to the Funeral Rule. After the sale is completed and the funds have been paid to the cemetery's insurance provider the family is then supposedly sent to the funeral provider to complete the paperwork. Never, prior to making the decisions and paying for them is the consumer ever provided with the General Price List and disclosures. By participating in this plan, the cemeteries, the for-profit subsidiary they created, the salesperson making the sale and the funeral provider providing the funeral have all benefitted to a degree dependent on the total cost of the sale, without the consumer ever being provided with the protections and obligations of the FTC Rule. Conversely, the traditional funeral provider making a similar presentation and sale would bear the full obligations of the Rule. That also does not seem equitable.

It would seem, given all of the "escape routes" and variances taken advantage of by the various peripheral providers, that the intent of the Rule as well as the interests of the consumers would be better served if the Rule were expanded to include all providers of Funeral Goods <u>or</u> Services as well as some providing financial services. Simply applying the doctrine of Common Interest and Control would probably bring a majority of the providers into the FTC's jurisdiction. Because the consumers of many of the products and services are among the Nation's growing senior population, I believe that there is a burden on the part of the Federal Government to assure their fair treatment. I believe that having a consistent, evenly applied law covering death care related sales, both at a time of need as well as in advance of need, would be consistent with that mission.

Just as the initial application of the FTC Funeral Rule did not force the closure of funeral home, I do not believe that a universal application of the Rule to all providers would cause the closure of or harm to any legitimate entity.

By involving all entities involved in the sale of Funeral goods or services, then even if the consumer purchased different components from different providers, they could be assured of knowing what their total purchase involved and cost. Under the current rule which covers only those providers who sell both goods and services, the non covered sellers are basically free to provide a less than truthful picture of what they are actually selling without fear of retribution by the Federal Government.

I believe that including all providers under the scope of the rule would be the most beneficial change that could be made. While certain interest groups may feel that modifying the specific items may provide greater levels of choice or protection, I don't believe that rule changes the customs or choices of very many families. Further, regardless of how goods and services are priced and by what "menu", providers will still need to find a way to price their offerings in a manner that continues to be profitable and yet competitive.

I hope that these comments are helpful and perhaps provide some insight into the thoughts of those of us on the "front lines".

Most Sincerely,

James O. Pinkerton

James O. Pinkerton, CFSP