



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

May 12, 2004

T. Scott Gilligan, Esqq.
Statman Harris Siegel & Eyrich, LLC
2900 Chemed Center
255 East Fifth Street
Cincinnati, OH 45202

Re: Third Party Merchandise Issue

Dear Scott:

Thank you for your letter of March 25, 2004. I also was pleased with the meetings I had with NFDA and the state associations in March, and hope that we will continue to keep good lines of communication open.

Your letter requests an informal staff opinion on an issue related to delivery of caskets that consumers have purchased from third-party sellers. You note that you have consistently advised funeral homes that they are not required to sign receipt forms because the homes are not part of the casket purchase contract. In addition, you note that the receipt forms frequently contain written representations that the delivered casket is the merchandise that was originally purchased, is acceptable, and/or was delivered without damage. You have advised funeral homes that they cannot attest to those conditions or representations because they are not a party to the contract. You request an informal FTC staff opinion on whether the FTC's Funeral Rule ("Rule") would prohibit a funeral home from refusing to sign a receipt acknowledging delivery of a casket from a third-party casket seller.

The FTC staff has addressed this issue in the past, in opinions relating to practices that may violate the Rule's prohibition in Section 453.4(b)(1) against conditioning the furnishing of any funeral goods or services to a person arranging a funeral upon the purchase of any other funeral good or service. Staff opinions in 1988 and again in 1997 make clear that this prohibition includes situations in which the funeral provider unreasonably burdens the consumer's choice to purchase the casket elsewhere. Moreover, a staff opinion, dated March 10, 1988, is directly on point. In that opinion, Commission staff stated:

In my view, a funeral provider may not unreasonably burden a consumer's choice to purchase an item such as a casket from a third party . . . I believe that refusal of the funeral provider to sign for the merchandise, or acknowledge delivery, appears

tantamount to refusal to accept delivery and therefore may be in violation of the Rule. [emphasis added] (A copy of the opinion is enclosed..)

Those words reflect the FTC staff's opinion in 1988 and they continue to reflect the current thinking of the FTC staff charged with enforcing the Funeral Rule. Accordingly, I reaffirm the staff opinion that refusal to sign for merchandise or acknowledge delivery is tantamount to refusing to accept delivery and thus may violate the Funeral Rule's prohibition against tying, in Section 453.4(b)(1).

I hope this information is helpful to you. Please note that 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 reflect the opinions of the staff members who are charged with enforcement of the Funeral Rule. If you have any questions, please feel free to contact me at (202) 326-3115 (email cdanielson@ftc.gov).

Sincerely,



Carole I. Danielson
Senior Investigator and
Funeral Rule Coordinator
Division of Marketing Practices



BUREAU OF
CONSUMER PROTECTION

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

March 10, 1988

[REDACTED]
Vice-President
[REDACTED]
[REDACTED]

Pittsburgh, Pennsylvania 15236

Dear Mr. [REDACTED]:

I am writing in response to your request for a staff opinion of December 1, 1987, and your follow-up letter of January 22, 1988. Your question is two-fold: In a situation where a person arranging a funeral has elected to purchase a casket from a third party casket seller rather than from the funeral director who is arranging the funeral, (1) can the funeral director require that person or family to be present when the casket is delivered to the funeral home, even if they do not wish to be present; and (2) can the funeral director refuse to sign for the casket when it is delivered to the funeral home.

Please be advised that 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 upon the Commission. However, they reflect the opinions of the staff members charged with enforcement of the Funeral Rule.

As you know, under Section 453.4(b)(1) of the Rule, a funeral provider cannot condition the furnishing of any funeral goods or services to a person arranging a funeral upon the purchase of any other funeral good or service (except as required by law or otherwise permitted by the Rule). Under this section, the funeral provider cannot require the purchase of a casket from the funeral home as a condition of arranging a funeral for the individual or family. The FTC staff has taken the position that funeral providers can assess a casket handling fee to cover any added labor or liability costs incurred because a family chooses to provide a casket purchased elsewhere.

In my view, a funeral provider may not unreasonably burden a consumer's choice to purchase an item such as a casket from a third party. I believe that requiring a family to be present for delivery, when that family has expressly asserted they do not wish to be present for delivery, is placing an unreasonable burden upon the consumer's choice to purchase the casket elsewhere. Moreover, I believe that refusal of the funeral provider to sign for the merchandise, or acknowledge delivery,

appears tantamount to refusal to accept delivery and therefore may be in violation of the Rule.

If, as you allege, there is concerted action among funeral providers in your area to engage in certain practices designed to discourage or halt third party sales of caskets, such concerted action might also constitute a violation of Section 5 of the FTC Act, which prohibits "unfair methods of competition in or affecting commerce." 15 U.S.C. Section 45(a)(1).

Thank you for writing to the Commission. We appreciate your bringing these matters to our attention.

Sincerely yours,



Carol J. Jennings
Funeral Rule Coordinator