



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

Division of Marketing Practices

Craig Tregillus
ctregillus@ftc.gov

Direct Dial: (202) 326-2970
Facsimile: (202) 326-3395

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Mr. Mark W. Duffey, President
Everest Funeral Package, LLC
1300 Post Oak Blvd. - Suite 1210
Houston, TX 77056

Dear Mr. Duffey:

You have requested a staff opinion on whether the Commission's Funeral Rule permits a funeral provider to decline to provide detailed price information in response to a telephone request made by or on behalf of your company. The Funeral Rule is clear: funeral providers must provide price information by telephone to anyone who calls seeking such information.

Everest is a nationwide funeral planning and concierge service that provides its customers with pre-need and at-need funeral planning assistance. A key feature of Everest's services is its "PriceFinder Report, an online tool that allows consumers to obtain comparative price information for funeral homes in their area. In order to obtain this information from the more than 20,000 funeral providers in the United States, Everest contracts with a telephone call center that telephones each provider annually to ask for the information on its General Price List ("GPL").

Section 453.2(b)(1) of the Funeral Rule requires funeral providers to "[t]ell *persons* who ask by telephone about the funeral provider's offerings or prices any accurate information from the prices lists described in paragraphs (b)(2) through (4) of this section [the Casket Price List, the Outer Burial Container Price List, and the GPL] and any other readily available information that reasonably answers the question."¹ Section 453.1(o) of the Rule defines a "person" as "any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity."² Thus, Everest and its call center agents are "persons" entitled by the Rule to obtain price information by telephone from all "funeral providers."

In the original Statement of Basis and Purpose for the Rule ("SBP"), the Commission emphasized that the requirement that funeral providers give price information by telephone upon request advances one of the Rule's primary goals; namely, to allow for comparison shopping:

¹ 16 C.F.R. § 453.2(b)(1) (emphasis added).

² 16 C.F.R. § 453.1(o).

The second disclosure requirement, the telephone price disclosure requirement, addresses directly the record evidence that funeral directors have failed to respond to telephone inquiries about prices. Consumers will thus have the ability to call several funeral homes and compare their offerings before deciding where to purchase. . . . In many instances, obtaining price information by telephone represents the only practical opportunity for comparison shopping, since many options are foreclosed once the funeral home is [chosen].”³

The FTC’s Compliance Guide for funeral providers, *Complying with the Funeral Rule* (“Compliance Guide” or “Guide”), emphasizes that if a call requesting price information is received by a funeral provider, the call must be returned and the price information requested must be provided.⁴ The Guide also makes it clear that funeral providers “cannot require callers to give their names, addresses, or phone numbers before [giving] them the requested information,” and cannot refuse to provide price information to callers who refuse to identify themselves.⁵ The Guide also indicates, as the Rule provides, that the telephone price disclosure must be made by a “funeral provider” that receives a telephone inquiry about prices.⁶ Nothing in the Rule authorizes a funeral provider to require a caller to place a second telephone call to a third party (*e.g.*, an attorney) to obtain price information by telephone.

The Funeral Rule is a trade regulation rule duly issued by the Commission that has the full force and effect of federal law. As the Commission noted in the SBP, unless a state has obtained an exemption pursuant to § 453.9 of the Rule, “any state laws which conflict with this rule after its effective date are preempted to the minimum extent necessary to resolve that conflict.”⁷ The same would be true for any state law enacted since that time.

³ 47 Fed. Reg. 42260, 42272 (1982). The Commission also noted that “[c]onsumer groups and state officials in numerous states reported substantial resistance or flat refusals when they attempted to gather price data by telephone for survey purposes.” 47 Fed. Reg. at 42268. When it amended the Rule in 1994, the Commission cited evidence that “the Rule overall is contributing to increased consumer ‘price sensitivity’ that leads some additional consumers to . . . seek comparative price information from non-industry sources . . . such as calling memorial societies, media price ‘hotlines,’ or state agencies that make comparative price information available.” 59 Fed. Reg. 1592, 1602 (1994).

⁴ Compliance Guide (2004), p. 20.

⁵ *Id.*

⁶ *Id.* (“**You** must give consumers who telephone your place of business and ask about your prices or offerings accurate information from your General Price List, Casket Price List, and Outer Burial Container Price List”) (emphasis added). *See also* 16 C.F.R. § 453.2(b)(1).

⁷ 47 Fed. Reg. at 42287 (footnote omitted).

For these reasons, it is a violation of the Funeral Rule for a funeral provider to refuse to provide price information by telephone upon request to any person for any reason, such as:

- State law does not require a funeral provider to disclose price information by telephone, or permits a funeral provider to refuse to provide price information by telephone;
- Price information can be provided only by a third-party other than the funeral provider (*e.g.*, the funeral provider's attorney);
- The caller will not disclose information about their organization, or what it intends to do with the information;
- The caller is not a consumer seeking to make funeral arrangements with the provider;
- The caller will or may profit from receipt of the pricing information requested;
- The caller has not requested price information in person at the funeral home;
- The caller has not requested price information in writing; or
- The caller has not paid a fee, or agreed to pay a fee, for the price information.

At the same time, as the Guide recognizes, funeral providers may: (1) use answering machines to record incoming calls or to advise callers to call a specified number during business hours to get price information; (2) decline to provide price information outside of regular business hours if that is the provider's normal practice; and (3) take a message if in the middle of an arrangements conference, and call back to provide price information at a later time.⁸ In each of these cases, the Rule requires that the funeral provider furnish price information promptly by returning the telephone call.

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

⁸ *Id.*