



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

Division of Marketing Practices

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

This letter responds to your request for a staff opinion interpreting Section 453.4(e)(2) of the Funeral Rule, which prohibits claims representing “that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.”¹ You ask, in particular, whether this provision bars an advertisement by a funeral provider that expressly claims a burial vault is “waterproof.”

The Commission’s discussion of this provision in the Statement of Basis and Purpose (“SBP”) for the Rule specifically cites claims that caskets and burial vaults are “airtight, watertight, or offer special protection against the elements” or are “waterproof.”² Although the SBP thus makes it clear that Section 453.4(e)(2) applies to a claim that a casket or vault is “waterproof,” the prohibition only applies to such claims by funeral providers if they are untrue; *i.e.*, “when such is not the case.” The SBP points out that it is typically “impossible to estimate how often such claims are false, because consumers are unable to discover whether protective claims are inflated without exhuming the body.”

Your request was prompted by an advertisement in which a funeral provider expressly represents that it sells “a quality VAULT that is water proof and has a warranty in writing” and costs “less than you paid for a plastic or concrete box.” The funeral provider that placed this ad may be held liable for violating Section 453.4(e)(2) of the Rule if the claim is untrue – even if the provider is simply repeating a representation made by the manufacturer. Any funeral provider that repeats a claim that funeral goods have protective features adopts that claim as its own and can be held liable for making false or unsubstantiated claims.

¹ 16 C.F.R. § 453.3(e)(2).

² 47 Fed. Reg. 42280, 42278 & n.186 (Sept. 24, 1982), *available at* <http://www.ftc.gov/bcp/rulemaking/funeral/funrlprac.pdf>.

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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