



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

Division of  
Marketing Practices

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March 20, 1995

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Re: Amended Funeral Rule and Guidelines Issues

Dear Scott:

Thank you for your correspondence of January 16, 1995, containing your response to my December 14, 1994 correspondence dealing with the five issues you raised concerning the FTC's June 1994 Funeral Rule Compliance Guidelines. In your letter, you state that the issues you enumerated as numbers 3 and 4--separate fees for off-site viewings, and washing and disinfection of unembalmed remains--are still not fully resolved.

On the issue of separate fees for off-site viewings, our disagreement may indeed be, as you suggest in your letter, a matter of miscommunication between us. If the prices for on-site and off-site viewings are the same, then the GPL must state that the one price applies both to use of facilities and staff for on-site viewing, and to use of just staff services for off-site viewing. The funeral director may accomplish this with one listing and one price, as long as the descriptions of the different services provided with on-site and off-site viewings are accurate. The price required to be listed by Rule section 453.2(b)(4)(ii)(H), "Use of facilities and staff," covers the facilities and staff services provided for on-site viewings. The price for off-site viewings, however, only covers the staff services provided, because the funeral director does not use his own facilities off-site. See page 17 of the June 1994 Compliance Guidelines, first two sentences. Therefore, if the prices for on-site and off-site viewings are the same, only one listing and one price are required on the GPL, but the description for on-site viewing should state "use of facilities and staff," while the description for off-site viewing should state only "use of staff." This tells consumers exactly what they will receive with the particular service they select.

On the issue of washing and disinfection of unembalmed remains, funeral directors may not make the purchase of washing and disinfection of unembalmed remains a nondeclinable charge, unless such washing and disinfection is required by law. 16 C.F.R. § 453.4(b)(1)(ii)(3). Furthermore, this Rule provision requires that, if washing and disinfection are required by law to be purchased, then this requirement must be identified and described on the itemized statement, in accordance with Rule section 453.3(d)(2).

Finally, I believe it is necessary to reiterate our position with regard to another of the five issues mentioned in your letter: package discounts of caskets and basic services fees. In your letter, you state that you will advise your membership of the FTC staff's position that discounting only the basic service fee to consumers who purchase caskets is a violation of the Rule's anti-tying provision [16 C.F.R. § 453.4(b)(1)(ii)], and that it would not be prudent to do so. This statement seems to imply that funeral providers may discount a package that includes the basic service fee. In fact, providers may encourage consumers to purchase caskets through an offer to discount the price of entire packages, all of which may include caskets. See page 2 of my December 14, 1994 letter to you, first paragraph. However, I believe this implied statement requires expansion to be accurate.

Providers may not discount "packages" for casket purchasers that consist of only the basic service fee plus one or two other items. Such sham packages have the same effect as a discount of the basic service fee for casket purchasers, which the Rule's anti-tying provision forbids. In fact, the amended Rule explicitly provides that, if the funeral director elects to include his basic service fee within the price of each casket, he must charge the "same" basic service fee amount to customers who provide their own casket. 16 C.F.R. § 453.2(b)(4)(iii)(c)(2). Funeral directors thus cannot discount a "package" consisting of only the basic service fee and a casket. Funeral directors may only discount bona fide, full-service packages.

Furthermore, the Statement of Basis and Purpose for the original Funeral Rule refers to packages as "a set of goods and services," and while the Commission found no evidence to suggest that there were any significant economies of packaging in funerals, it recognized that any such savings could be passed on to consumers interested in package prices. 47 Fed. Reg. 42260, 42296 (September 24, 1982). Therefore, a discounted "package" should be an entire set of goods and services that a funeral director can offer at less cost to the consumer because he is offering them as a set. A discounted "package" for casket purchasers consisting of just the basic service fee and a few other items does not create any economies of packaging, but

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merely enables the funeral provider to discount the basic service fee to consumers who buy caskets. This is impermissible under the Rule.

I hope that this letter addresses your additional concerns on these issues. Please note that the views expressed in this letter are those of staff only. They have not been reviewed, approved or adopted by the Commission, and they are not binding on the Commission. They do, however, reflect the opinions of the staff charged with enforcement of the Funeral Rule.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas A. Cohn".

Thomas A. Cohn  
Funeral Rule Enforcement Staff