

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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In the Matter of)	
)	
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS.)	Docket No. C-4124
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)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the Virginia Board of Funeral Directors and Embalmers (the “Board”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of the Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to section 2.34 of the Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34 (2004), the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Proposed Respondent, the Virginia Board of Funeral Directors and Embalmers, is an industry regulatory board established by the Commonwealth of Virginia with its principal office and place of business located at 6603 West Broad St., 5th Fl. Richmond, VA 23230-1712.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "Board" means the Virginia Board of Funeral Directors and Embalmers, its officers, members, committees, subcommittees, representatives, agents, employees, successors and assigns.
- B. "At-need or preneed funeral products, goods, or services" means any product, good, or service that the Board is authorized to regulate under Title 54.1 of the Virginia Code, Va. Code Ann. §§ 54.1-100 to 116, 54.1-200 to 204, 54.1-2800 to 2825 (Michie 2003). For the purposes of this Order, at-need or preneed funeral products, goods, or services includes any products, goods or services that are advertised, offered for sale, or sold to be used in a funeral service at the time of death, while death is imminent, or at any other time.
- C. "Board licensee" or "licensee" means any person or corporation that is entitled under the rules of the Board to provide at-need or preneed funeral products, goods, or services to consumers.
- D. "Discounts from ordinary prices" means any reduction of the price ordinarily charged by a Board licensee in exchange for at-need or preneed funeral products, goods, or services.
- E. "Enforcing" a restriction or a regulation means any manner in which Respondent requires compliance with any of its regulations, including, but not limited to, investigations or hearings of purported violations of the regulation, dissemination of the terms or Board interpretations of the regulation in any manner to Board licensees, and assignments of penalties for any violation of the regulation.
- F. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. "Prices" means any consideration proposed in exchange for at-need or preneed funeral products, goods, or services.

- H. “Truthful and non-misleading advertisements” means any advertisements that would not subject a Board licensee to disciplinary action under 18 Va. Admin. Code § 65-20-500(3) (West 2003) or Va. Code Ann. § 54.1-2806 (Michie 2003). For the purposes of this Order, truthful and non-misleading advertisements of prices or discounts from ordinary prices, includes advertisements that do not contain any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading; contain inaccurate statements; or create an impression of things not likely to be true.
- I. 18 Va. Admin. Code § 65-30-50(C) (West 2003) means the Virginia regulation corresponding to that citation in place on June 28, 2004.

II.

IT IS FURTHER ORDERED that Respondent, in or in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from, directly or indirectly, or through any rule, regulation, policy, or other conduct:

A. Prohibiting, restricting, impeding, or discouraging any person from engaging in truthful and non-misleading price advertising, including advertising prices, and discounts from ordinary prices, of at-need or preneed funeral products, goods, or services;

B. Enforcing any regulation or restriction on Board licensees, including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

Provided, however, that nothing contained herein shall prohibit the Respondent from adopting and enforcing reasonable rules, regulations or policies, or taking any other action, to prevent or prohibit advertising that the Board reasonably believes to be both materially fraudulent, false, deceptive or misleading and in violation of 18 Va. Admin. Code § 65-20-500(3) (West 2003) or Va. Code Ann. § 54.1-2806 (Michie 2003), or any future recodifications thereof.

III.

IT IS FURTHER ORDERED that Respondent shall, within one hundred and eighty (180) days after the date this Order becomes final, amend its rules to eliminate any regulation or restriction, including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent Board licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

IV.

IT IS FURTHER ORDERED that, within ninety (90) days after the date this Order becomes final, Respondent shall prominently publish this Order, and the letter attached hereto as "Appendix," in the Newsletter for the Board of Funeral Directors and Embalmers.

V.

IT IS FURTHER ORDERED that, within thirty (30) days after the date this Order becomes final, Respondent shall mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each current licensee of Respondent, and for a period of three (3) years from the date of service of this Order, and Respondent shall mail or deliver a copy of this Order to each new licensee of Respondent within thirty (30) days of each such licensee's acceptance by Respondent as a Board licensee.

VI.

IT IS FURTHER ORDERED that, within sixty (60) days after the date this Order becomes final, and for a period of sixty (60) days thereafter, Respondent shall publish this Order on its World Wide Web site. Notice of such publication shall be made in a manner calculated to be viewed by all of Respondent's licensees and customers of Respondent's licensees. For purposes of this provision, notice will be deemed satisfactory if it is made by providing a direct link to the Order from a notice in the following language: "The FTC and the Board Settle Antitrust Charges Regarding Price Advertising Rules" posted as the first link under the "Important Announcements" section of the main Board web page (<http://www.dhp.state.va.us/fun/default.htm>). In the event that the Board changes its site structure, a notice, equivalent in terms of ease of access and conspicuousness, must be provided. After such sixty (60) day period, Respondent shall maintain a link from the "Laws and Regulations Governing Funeral Directors and Embalmers" page (http://www.dhp.state.va.us/fun/fun_laws_regs.htm), or its equivalent, to the Order in a manner that provides reasonable notice to interested parties. Respondent shall maintain its World Wide Web site in compliance with this Paragraph for five (5) years from the date this Order becomes final.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent or its regulations that may affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2024.

By the Commission, Commissioner Leibowitz not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: October 1, 2004

APPENDIX

(Letterhead of the Virginia Board of Funeral Directors and Embalmers)

Dear Licensee:

The Federal Trade Commission has ordered the Virginia Board of Funeral Directors and Embalmers (the “Board”) to cease and desist the enforcement of any rule or regulation restricting the use of truthful and non-misleading advertising of prices and discounts by licensees. A copy of the Commission’s Decision and Order is enclosed.

In order that you may readily understand the terms of the Order, we have set forth its essential provisions, although you must realize that the Order itself is controlling, rather than the following explanation of its provisions:

(1) The Board must cease and desist from enforcement of any regulation or restriction on Board licensees, including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services

(2) The Board must amend its rules to eliminate any regulation or restriction, including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent Board Licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

Sincerely yours,

[appropriate Board member or officer]

Enclosure