

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

COMMISSIONERS: **William E. Kovacic, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 J. Thomas Rosch

In the Matter of

**MISSOURI BOARD OF EMBALMERS AND
FUNERAL DIRECTORS**

Docket No. C-4223

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Missouri Board of Embalmers and Funeral Directors has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

NATURE OF THE CASE

This case involves Respondent Missouri Board of Embalmers and Funeral Directors (the "Board"), which is the sole licensing authority for the practices of embalming and funeral directing in Missouri. The Board is composed of six members, five of whom must be licensed embalmers or funeral directors. At the time it adopted the regulation at issue in this matter, the Board included five licensed funeral directors. Funeral directors compete in the sale of funeral caskets at-need to consumers in Missouri. Respondent is authorized to promulgate, adopt and enforce rules that it deems necessary for the public good and consistent with the laws of the State of Missouri. The Missouri statute that created and empowered Respondent to regulate the professions of embalming and funeral directing includes a provision stating that its licensing qualifications and conditions (Mo. Rev. Stat. Chapter 333 (2005)) shall not apply "to any person engaged simply in the furnishing of burial receptacles for the dead." Mo. Rev. Stat. § 333.251 (2005). The Board promulgated a regulation that defined the practice of funeral directing to include selling funeral merchandise on an at-need basis to consumers in the State of Missouri. This regulation deterred competitive entry into the retail sale of funeral caskets.

RESPONDENT

1. The Board is an agency of the State of Missouri, established and existing pursuant to Mo. Rev. Stat. § 333.151, for the purpose of administering and enforcing Chapter 333 and portions of Chapter 436, Mo. Rev. Stat., and the regulations promulgated thereunder. It has authority to license and regulate those persons in the businesses of embalming and funeral directing in Missouri.
2. The Board's principal office and place of business is located at 3605 Missouri Boulevard, Jefferson City, Missouri, 65102-0423.
3. The Board is comprised of six members; one public member and five members that hold a license in either funeral directing or embalming, or both. Each member is appointed by the governor with the advice and consent of the state senate.
4. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed funeral directors in Missouri compete with each other and with funeral director members of the Board in, among other activities, the sale of funeral caskets at-need to the public.
5. The Board is the sole licensing authority for those who engage in the business of embalming and funeral directing in Missouri. It is unlawful for an individual to practice or offer to practice embalming or funeral directing in Missouri unless he or she holds a current license to practice.
6. Under Mo. Rev. Stat. § 333.241 (2005), the Board is empowered to seek a court order to enjoin any person from engaging or offering to engage in any act that would require a license from the Board.
7. The unlicensed practice of embalming or funeral directing in Missouri may be prosecuted as a class A misdemeanor under Mo. Rev. Stat. § 333.261 (2005).

JURISDICTION

8. The Board is a state agency and is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.
9. The acts and practices of the Board, including the acts and practices alleged herein, have been or are affecting "commerce" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, funeral directors in Missouri purchase and receive funeral caskets and other funeral merchandise that are shipped across state lines by manufacturers and suppliers in other locations, transfer substantial sums of money that cross state lines in payment for that merchandise, perform funerals for residents of other states, and receive substantial sums of money that cross state lines in payment for funeral services and merchandise including funeral caskets. Furthermore, the regulation at issue deterred competitors

in other states from selling funeral caskets to Missouri consumers at need, and affected interstate commerce in funeral merchandise in neighboring states.

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

THE CHALLENGED CONDUCT

11. The “practice of funeral directing” is defined in Mo. Rev. Stat. § 333.011(7) (2005) as “[E]ngaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control or supervision or management of the operations of a funeral establishment.”

12. Mo. Rev. Stat. § 333.251 (2005) states that: “Nothing in this chapter shall apply to nor in any manner interfere with the duties of any officer of local or state institutions, nor shall this chapter apply to any person engaged simply in the furnishing of burial receptacles for the dead, but shall only apply to persons engaged in the business of embalming or funeral directing.”

13. Beginning on or about June 30, 1998, and continuing through approximately July 29, 2004, Regulation 4 CSR 120-2.060(18) stated that: “No person other than a duly licensed and registered funeral director may make the following at-need arrangements with the person having the right to control the incidents of burial: . . . (C) For the sale or rental to the public of funeral merchandise, services or paraphernalia from a funeral establishment.”

14. Prior to July 30, 2004, Regulation 4 CSR 120-2.060 (18) prohibited the sale of at-need funeral merchandise “from a funeral establishment” by anyone other than a licensed funeral director.

15. Beginning on or about July 30, 2004, and continuing through approximately September 29, 2006, 4 CSR 120-2.060(18) stated that: “No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition: . . . (C) Sale or rental to the public of funeral merchandise, services or paraphernalia.”

16. During the process leading up to the amendment of 4 CSR 120-2.060 that took effect in July 2004, the Board sought to amend other portions of the regulation but not 4 CSR 120-2.060(18)(C).

17. After the period for public comments for amending 4 CSR 120-2.060 was completed, the Board amended subsection 4 CSR 120-2.060(18)(C) by deleting the phrase “from a funeral establishment.”

18. Regulation 4 CSR 120-2.060(18)(C) as amended was published in the Missouri Register on June 1, 2004. This amended regulation, which was in effect beginning on or about July 30, 2004, and continuing through approximately September 29, 2006, is hereinafter referred to as the “Regulation at Issue.”

19. Funeral directors in Missouri sell funeral caskets and provide funeral services to consumers.

20. Non-licensed persons who market and sell funeral caskets to consumers in Missouri compete with funeral directors for those sales.

21. Adoption and publication of the Regulation at Issue had the effect of restraining competition and injuring consumers in the following ways, among others:

- A. discouraging non-licensed persons from selling funeral caskets to the public at-need in Missouri;
- B. depriving consumers of the benefits of price competition that could have been offered by retail sellers of funeral caskets who were not licensed funeral directors; and
- C. reducing consumer choices in Missouri concerning the purchase of funeral caskets.

22. The Board filed an amended order of rulemaking on February 16, 2006 to initiate the process for rescinding the Regulation at Issue. After receiving public comment on a proposed amendment, the Board voted unanimously to rescind the Regulation at Issue on May 10, 2006. The amended regulation, published at 20 CSR 2120-2.060(18)(C), became effective on September 30, 2006.

VIOLATION

23. The combination, conspiracy, acts and practices described above constitute anticompetitive and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices or the effects thereof, continued for approximately two years and may recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this nineteenth day of June, 2008, issues its Complaint against Respondent Missouri Board of Embalmers and Funeral Directors.

By the Commission.

C. Landis Plummer
Acting Secretary

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