

IN THE MATTER OF  
JOCKEY INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3494. Complaint, May 10, 1994--Decision, May 10, 1994*

This consent order requires, among other things, a Wisconsin-based manufacturer of underwear, hosiery, and sportswear to disclose the country where its clothing is made and to use the correct generic fiber name for clothing. The consent order also requires the respondent to distribute copies of the order to each of its employees, agents, licensees and other representatives who are selling or advertising any of its textile products through mail order catalogs and promotional materials.

*Appearances*

For the Commission: *Robert E. Easton.*

For the respondent: *Charlotte Shapiro*, in-house counsel,  
Kenosha, WI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Jockey International, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act and of the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby alleges:

PARAGRAPH 1. Respondent Jockey International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 2300 60th Street, Kenosha, Wisconsin.

PAR. 2. Respondent is now, and for some time past has been, engaged, directly or through licensees, by means of mail order catalogs, in the advertising, offering for sale, sale and distribution of a variety of products in or affecting commerce, including textile

wearing apparel and other textile fiber products as "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) (hereafter referred to as the Textile Act). The allegations in this complaint relate to mail order catalogs published prior to June 1993.

PAR. 3. In September 1984 Congress amended the Textile Act to require that catalogs and other mail order promotional material disclose whether textile fiber products offered for sale are imported or domestically produced or both. The amendment states:

Misbranding and False Advertising of Textile Fiber Products

(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both. (15 U.S.C. 70b(i))

PAR. 4. The Commission, pursuant to authority under the Textile Act to make such rules and regulations as may be necessary and proper for the enforcement of the Textile Act (15 U.S.C. 70e), promulgated a rule effective April 17, 1985 relating to country of origin in mail order advertising. Rule 34 states:

When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised. (16 CFR 303.34)

PAR. 5. Section 4(b) of the Textile Act requires that a label attached to an imported or domestic textile product disclose the identity of the constituent fibers by their generic names. Section 4(c) of the Textile Act states that if fiber content is mentioned or implied in a written advertisement, then the proper generic names as required under Section 4(b) of the Textile Act must be disclosed. Section 4(b) of the Textile Act reads, in part, as follows:

. . . a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefore authorized by section 5, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name . . . (15 U.S.C. 70b(b))

Section 4(c) of the Textile Act reads:

(c) For the purpose of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product, unless the same information as that required to be shown on the stamp, tag, label, or other identification under section 4(b) (1) and (2) is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated. (15 U.S.C. 70b(c))

PAR. 6. The Commission, pursuant to authority under the Textile Act to make such rules and regulations as may be necessary and proper for the enforcement of the Textile Act (15 U.S.C. 70e), promulgated Rules 40, 41 and 42 relating to fiber content disclosures in advertising. Rules 40, 41 and 42, in relevant part, read:

**Rule 40 - Use of Terms in Written Advertisements Which  
Imply Presence of a Fiber.**

The use of terms in written advertisements which are descriptive of a method of manufacture, construction, or weave, and which by custom and usage are also indicative of a textile fiber or fibers, or the use of terms in such advertisements which constitute or connote the name or presence of a fiber or fibers, shall be deemed to be an implication of fiber content under section 4(c) of the Act, except that the provisions of this section shall not be applicable to nondeceptive shelf or display signs in retail stores indicating the location of textile fiber products and not intended as advertisements.

**Rule 41 - Use of Fiber Trademarks and  
Generic Names in Advertising.**

(a) In advertising textile fiber products, the use of a fiber trademark shall require a full disclosure of the fiber content information required by the Act and regulations in at least one instance in the advertisement.

(b) Where a fiber trademark is used in advertising textile fiber products containing more than one fiber, other than permissible ornamentation, such fiber

trademark and the generic name of the fiber must appear in the required fiber content information in immediate proximity and conjunction with each other in plainly legible type or lettering of equal size and conspicuousness.

(c) Where a fiber trademark is used in advertising textile fiber products containing only one fiber, other than permissive ornamentation, such fiber trademark and the generic name of the fiber must appear in immediate proximity and conjunction with each other in plainly legible and conspicuous type or lettering at least once in the advertisement.

**Rule 42 - Arrangement of Information in Advertising  
Textile Fiber Products.**

(a) Where a textile fiber product is advertised in such manner as to require disclosure of the information required by the Act and regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 per centum or more of the total fiber weight of the product together with any fibers disclosed in accordance with paragraph (b) of Section 303.3 of this part (Rule 3) shall appear in order of predominance by weight, to be followed by the designation "other fiber" or "other fibers" if a fiber or fibers required to be so designated be present. (16 CFR 303.40-42)

PAR. 7. Pursuant to Section 3 of the Textile Act, 15 U.S.C. 70a, violation of that Act and the Federal Trade Commission rules issued thereunder is an unfair method of competition and an unfair and deceptive act or practice under the Federal Trade Commission Act.

PAR. 8. Respondent advertised or offered for sale textile fiber products in mail order catalogs or mail order promotional material without a clear and conspicuous statement that the products were processed or manufactured in the United States of America, or imported, or both.

PAR. 9. Respondent advertised or offered for sale textile fiber products in mail order catalogs or mail order promotional materials in which fiber content was mentioned or implied in written advertisements, but the generic names were not disclosed.

PAR. 10. Respondent's sale, offering for sale and advertising of textile fiber products in or affecting commerce were in violation of the Textile Act and the Federal Trade Commission rules and regulations promulgated thereunder, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing: a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Jockey International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business presently located at 2300 60th Street, Kenosha, Wisconsin.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## I.

*It is ordered,* That respondent Jockey International, Inc., a corporation, its successors and assigns, trading under its own name or under any other name or names, and its officers, agents, licensees, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act"), do forthwith cease and desist from:

1. Failing to state in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both; and

2. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Act and the rules and regulations thereunder.

## II.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

## III.

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its employees, agents, licensees and representatives acting in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or

direct offering for sale of such textile fiber product, in commerce, as the terms “textile fiber product” and “commerce” are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) (“Textile Act”).

#### IV.

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## IN THE MATTER OF

## SERVICE CORPORATION INTERNATIONAL

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9071. Consent Order, Oct. 12, 1976--Modifying Order, May 12, 1994*

This order reopens the proceeding and modifies the Commission's 1976 consent order by deleting the administrative provisions that required the respondent to distribute a copy of the 1976 order to its funeral homes and affected employees; provide prior notice to the Commission of certain changes in its corporate organization; and periodically notify the Commission regarding the acquisition or sale of any funeral homes. The Commission concluded that these provisions were no longer warranted or were essentially duplicative of requirements in provisions in more recent Commission orders against the respondent and therefore, warranted reopening and modifying the order.

ORDER REOPENING THE PROCEEDING AND  
MODIFYING CEASE AND DESIST ORDER

On January 12, 1994, Service Corporation International ("SCI") filed a petition to reopen the proceeding in Docket No. 9071, *Service Corp. Int'l.*, 88 FTC 530 (1976), pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, to modify the order by deleting Parts III, VI, and VII.

On October 12, 1976, a final order was issued as a result of a consent agreement between SCI and the Commission, to resolve allegations that SCI violated Section 5 of the FTC Act in connection with the marketing of funeral services and merchandise. Part I of the order prohibits certain misrepresentations and practices in connection with the marketing of funeral services and merchandise. Part II provided for consumer redress. Part III requires SCI to transmit copies of the order to all of its funeral homes and to notify all affected employees of the order's requirements. Part IV required SCI to file a compliance report. Part V required SCI to maintain records adequate to disclose its compliance with the order and to furnish such records to the Commission upon request after reasonable notice. The record retention requirements in Part V lasted three years. Part VI



requires SCI to notify the Commission at least thirty days prior to any proposed change in SCI such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in corporate organization which may affect compliance obligations arising out of this order. Part VII requires SCI to notify the Commission by the 10th day of each month as to the acquisition or sale of any funeral homes, occurring in the immediately preceding month. Under Part VIII of the order, paragraphs A(4), B, and E of Part I were automatically deleted from the order seven years after its effective date and paragraphs A(1)-(3), C, and D of Part I were automatically amended to conform to the parallel provisions of the Commission's Funeral Rule on the date the Rule became effective.

The petition was placed on the public record on February 3, 1994. The comment period ended on March 4, 1994. The Commission did not receive any comments regarding the petition. For the reasons stated below, the Commission has determined to grant the petition and modify the order by deleting Parts III, VI, and VII.

#### I. STANDARD FOR REOPENING AND MODIFYING A FINAL ORDER OF THE COMMISSION

Section 5(b) of the FTC Act, 15 U.S.C. 45(b) provides that the Commission shall reopen an order to consider whether it should be modified or vacated if a respondent files a petition that makes a satisfactory showing that changed conditions of law or fact require the order to be modified or vacated. A satisfactory showing sufficient to require reopening pursuant to Section 5(b) is made when a petition to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order, or make continued application of the order inequitable or harmful to competition. *Tarra Hall Clothes, Inc.*, Docket No. C-2797 (October 27, 1992) at 4.

In addition, Section 2.51 of the Commission's Rules invites petitioners to demonstrate in their petitions how the public interest warrants the requested reopening and modification or vacation. In considering whether modification or vacation of an order is warranted on public interest grounds, the Commission balances the reasons favoring the requested modification against any reasons not to make the modification. For example, the Commission has vacated

orders where the reasons for doing so outweighed the reasons for retaining them. *Albertson's, Inc.*, 110 FTC 1, 2 (1987); *see also Redman Industries, Inc.*, 110 FTC 636, 640 (1988) (four orders vacated on public interest grounds because they contained remedies contemplated and rejected as not beneficial to consumers in connection with a proposed rulemaking).

Regardless of whether the modification or vacation is sought because of changed conditions of law or fact or because the public interest warrants it, the burden is on the petitioner to make a satisfactory showing for the Commission to reopen the order. *See* S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). This burden is a heavy one in view of the public interest in repose and finality of Commission orders. *Federated Dep't. Stores, Inc. v. Moitie*, 452 U.S. 394 (1981).

## II. THE COMMISSION'S DISPOSITION OF SCI'S ARGUMENTS

SCI argues that changed conditions of law and fact, and the public interest, warrant modification of the order through the deletion of Parts III, VI, and VII of the order. SCI points out that Part I of the order does not impose any conduct prohibitions on SCI different from those imposed by the Funeral Rule. SCI argues that the only order provisions that continue to impose obligations different from those imposed by the Funeral Rule are administrative provisions designed to ensure order compliance (*i.e.*, distribution of the order, notification of corporate status changes, and monthly reports of SCI's funeral home acquisitions and sales). In addition, SCI notes that it is subject to three antitrust orders that require it to report funeral home acquisitions on an annual basis for the next ten years and to notify the Commission of corporate status changes.<sup>1</sup>

In its petition, SCI appears to argue that the promulgation of the Funeral Rule is a change of law or fact warranting modification of the order. In support, it relies upon *Kroger Co.*, 113 FTC 772 (1990), a case in which the Commission modified an order to eliminate costly

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<sup>1</sup> *See* Service Corp. Int'l., Docket No. C-3440 (June 15, 1993); Service Corp. Int'l., Docket No. C-3372 (February 25, 1992); Sentinel Group, Inc., Docket No. C-3348 (October 23, 1991) (SCI agreed to be bound by the provisions of this order in the consent agreement arising from SCI's acquisition of Sentinel).

compliance procedures where an amendment to a trade regulation rule imposed less onerous compliance requirements than those contained in the order. SCI's reliance on Kroger is misplaced. In Kroger, the Commission modified the order because the amendments to the Retail Food Store Advertising and Marketing Practices Rule ("Unavailability Rule"), which Kroger could not have foreseen when it agreed to the order, brought the terms of the order into conflict with the Unavailability Rule and deprived Kroger of defenses that its competitors could invoke. *Id.* at 775-76.

The Commission's promulgation of the Funeral Rule was anticipated at the time the Commission issued the SCI order. Indeed, pursuant to its own terms, the order was automatically modified as a result of the Funeral Rule's promulgation. As a result, there is no conflict between the SCI order and the Funeral Rule and hence no change in law or fact warranting modification of the SCI order.

SCI further argues that the costs of Parts III, VI, and VII of the order outweigh their benefits and that for this reason modification of the order would serve the public interest. SCI cites KKR Associates, L.P., Docket No. C-3253 (May 13, 1993), in support of this proposition. SCI argues that while the three provisions it seeks to delete were intended to impose compliance obligations on SCI funeral homes that were not imposed on other funeral homes, these additional obligations are no longer warranted. SCI submits that Part III originally served a useful purpose because the Commission had an interest in having each SCI funeral home advised of the unique obligations imposed by the order. Similarly, SCI recognizes that Part VII served a useful purpose because the Commission had an interest in being apprised of changes in SCI's ownership of funeral homes so that Commission staff knew which homes were subject to the unique obligations imposed by the order. SCI further acknowledges that the Commission had an interest in being notified of extraordinary changes in SCI's corporate structure to ensure that such changes did not operate to relieve SCI funeral homes of the order's unique requirements. SCI contends, however, that these three administrative provisions no longer serve a useful purpose because the order's conduct prohibitions no longer impose any obligations different from those imposed by the Funeral Rule.

Part III provides that SCI shall "transmit copies of this order to all of respondent's funeral homes and notify, orally and in writing, all

affected employees of the requirements of this order.” The order’s conduct prohibitions were automatically amended to conform to the parallel provisions of the Commission’s Funeral Rule on the date the Rule became effective. As a result, the order cannot be understood standing alone, for it is not possible to determine what conduct the order prohibits without consulting the parallel provisions of the Funeral Rule. Accordingly, Part III of the order is no longer warranted.

Part VI provides: “That respondent notify the Federal Trade Commission at least thirty days prior to any proposed change in Service Corporation International such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in corporate organization which may affect compliance obligations arising out of this order.” This provision is perpetual and nearly identical to parallel, perpetual provisions set forth in three other Commission orders to which SCI is subject.<sup>2</sup> Therefore, it is no longer warranted.

Part VII of the order provides: “That respondent notify the Federal Trade Commission by the 10th day of each month as to the acquisition or sale of any funeral homes, occurring in the immediately preceding month.” This provision imposes on SCI a perpetual obligation to submit monthly reports of its funeral home acquisitions and sales. SCI estimates that its compliance with this requirement entails an annual cost to its legal department of about \$840, in addition to the corporate development time involved in assisting the legal department. The Commission notes that SCI’s total cost of complying with this requirement in perpetuity clearly exceeds the cost of complying with it for a limited number of years. This requirement also imposes costs to the extent that it exposes SCI to civil penalty liability if it fails to file the required monthly reports in a timely fashion.

The Commission is unaware of any other administrative order requiring monthly reports of asset acquisitions and sales. Moreover, SCI is already obliged to submit annual reports of its funeral home acquisitions until the years 2001-2003 pursuant to three antitrust consent orders, all of which require annual reports of all funeral home

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<sup>2</sup> Service Corp. Int’l., Docket No. C-3440, Part XII at 9; Service Corp. Int’l., Docket No. C-3372, Part XI at 9; Sentinel Group, Inc., Docket No. C-3348, Part X at 7.

acquisitions for ten years.<sup>3</sup> The Commission recognizes that respondent's obligation to report all acquisitions in accordance with the three outstanding antitrust orders essentially makes the reporting requirement contained in Part VII duplicative. As the Commission's needs are adequately served by receiving acquisition reports until the year 2003, Part VII is no longer warranted.<sup>4</sup>

### III. CONCLUSION

The Commission concludes, in the public interest, that the petition should be granted to modify the order by deleting Parts III, VI, and VII.

*It is therefore ordered*, That the proceeding is hereby reopened and the order issued on October 12, 1976, is hereby modified to read as follows:

### ORDER

#### DEFINITIONS

The term "*alternative container*" means, with respect to each of respondent's funeral homes owned on May 26, 1976, any receptacle or enclosure, made of any material, which is of sufficient strength and retentiveness to hold and transport human remains, and which is made available to customers at a price that does not exceed 60 percent of the retail price charged for the lowest line casket regularly offered by that funeral home as of May 26, 1976; provided, that commencing July 1, 1977, and thereafter annually, the maximum prices for alternative containers that are initially established pursuant to this order shall be adjusted to reflect changes in the Bureau of Labor Statistics' Consumer Price Index subsequent to April 1976; provided further, that with respect to each of respondent's funeral homes that is acquired after May 26, 1976, (1) respondent shall

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<sup>3</sup> Service Corp. Int'l., Docket No. C-3440, Part X at 8; Service Corp. Int'l., Docket No. C-3372, Part IX at 8; Sentinel Group, Inc., Docket No. C-3348, Part VIII at 6.

<sup>4</sup> The Commission recognizes that there is not a complete overlap between Part VII of the order and the reporting requirements of the antitrust orders, in that the latter pertain only to acquisitions, while Part VII covers both sales and acquisitions. We note that the sections of the antitrust consent orders, referenced in footnote two, herein, require respondent to report certain corporate sales. We find this sufficient to meet the Commission's needs.

establish a maximum price for alternative containers at a price not exceeding the mean maximum price for alternative containers chargeable in respondent's funeral homes as of the date of acquisition, and (2) a maximum price established pursuant to (1) shall be adjusted to reflect changes in the Consumer Price Index subsequent to the date of acquisition as provided above.

The term "*casket*" means a rigid container which is designated for the encasement and burial of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

The term "*customer*" means the person making arrangements for the care and disposition of the body of a deceased person.

The term "*discount*" means, with regard to the sale of a particular item, a price adjustment, commission or allowance which is openly and regularly made available by third parties to respondent's funeral homes and to other similarly situated funeral homes and which would not regularly be made available to customers who sought to order that item directly from such third parties; provided, that a price adjustment, commission or allowance made available on the basis of prompt payment shall be considered a "discount" even if such an adjustment, commission or allowance would regularly be made available to customers.

The term "*effective date of this order*" means the date on which this order becomes a final order.

The term "*funeral home*" means an establishment primarily engaged in preparing the dead for final disposition and conducting funeral services.

The term "*funeral services*" means funerals in which the funeral home provides the customary services, necessary facilities and equipment, a casket and other selected merchandise.

The term "*immediate cremation service*" means the removal and disposition by cremation of the remains without embalming, viewing (except for purposes of identification) or visitation and without any pre-cremation service with the body present, which service is arranged by the funeral home.

The term "*item*" refers to both merchandise and services.

The term "*mark-up*" means the excess of the amount charged by respondent to a customer of one of respondent's funeral homes for crematory or cemetery services, pallbearers, public transportation, clergy honoraria, musicians or singers, nurses, gratuities, flowers, or

obituary notices over the net amount actually advanced, paid or owed by respondent to the third party, when such items were furnished by the third party, and when the charges for such items were listed or described as "cash advances," "accommodations," or words of similar import on the contract, final bill, or other written evidence of agreement or obligation submitted to the customer by the funeral home; provided, that it shall not be considered a mark-up when one of respondent's funeral homes charges a customer an amount for an item which exceeds the total amount of the additional or marginal costs to respondent and its subsidiaries for such items when the amount charged to the customer is a fixed and consistent amount for the entire item not exceeding \$20 and when the item consists of services rendered in whole or in part by employees of respondent or any of its subsidiaries while on duty and thereby earning other compensation from respondent or any of its subsidiaries that is not included in the additional or marginal cost described above; provided further, that any excess attributable to a discount shall not be considered a mark-up.

The term "*prescribed time period*" means the five-year period immediately preceding the effective date of this order or, with respect to any funeral home acquired by respondent or any subsidiary thereof during that five-year period, the period beginning with the date of acquisition of such funeral home and ending on the effective date of this order.

The term "*public transportation*" means nonlimousine (including as "limousines" hearses, flower cars and other funeral vehicles) transportation by common carriers for hire which is regulated by Federal or State regulatory agencies.

The term "*respondent's funeral homes*" refers to funeral homes owned or hereafter acquired and owned by respondent or a subsidiary thereof and located in the United States.

#### I.

*It is ordered*, That Service Corporation International, a corporation, and its officers, representatives, agents and employees, its successors and assigns, directly or through any corporation, subsidiary, or other device in connection with the sale or offering for sale of funeral services and funeral merchandise by and through its

funeral homes, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. When one of respondent's funeral homes arranges with a third party (including one of respondent's subsidiaries) on behalf of a customer for items to be furnished by such third party and not by the funeral home itself:

1. Charging of the customer by the funeral home for items listed or described as "cash advances," "accommodation" or words of similar import on the contract, final bill or other written evidence of agreement or obligation submitted to the customer by the funeral home, more than the amount actually advanced, paid or owed by the funeral home to such third party on behalf of the customer for such items;

2. Misrepresenting to the customer in any other respect the actual amount advanced, paid, or owed by the funeral home to such third party on behalf of the customer for items represented by the funeral home as having been furnished to the customer by such third party;

3. Listing or describing items to be furnished by the funeral home itself (or any of its employees while on duty) as "cash advances," "accommodations" or words of similar import on the contract, final bill or other written evidence of agreement or obligation submitted to the customer by the funeral home;

4. Charging of the customer by the funeral home for the following items, when furnished by such third party and not by the funeral home itself, more than the amount advanced, paid or owed by the funeral home to such third party for such items:

- a. Cemetery or crematory charges
- b. Pallbearers
- c. Public Transportation
- d. Clergy Honoraria
- e. Musicians or singers
- f. Nurses
- g. Gratuities
- h. Flowers
- i. Obituary notices



Provided, that paragraphs A(1)-(4) shall not require any of respondent's funeral homes to pass on to a customer any discount received by the funeral home if the fact that the funeral home does or may receive such discounts is disclosed to the customer in writing before the customer becomes legally obligated to pay for the funeral arrangements.

B. (1) Requiring customers of respondent's funeral homes who express interest in an immediate cremation service to purchase a casket for such a service, and failing to make available to such customers an alternative container; and (2) failing to affirmatively disclose, at the time the arrangements are made and before agreement, the availability and price of an immediate cremation service and of an alternative container to customers who (i) express interest in an immediate cremation service, (ii) inquire as to the least expensive means of disposition available at the funeral home, or (iii) inquire as to the full range of options respecting disposition of the deceased unless such customer affirmatively expresses an interest in any merchandise or service inconsistent with an immediate cremation service or with the use of an alternative container either at the time of making the inquiry or after the alternative of cremation is presented. Provided, that where one of respondent's funeral homes complies with the foregoing requirements, any of respondent's funeral homes located within two miles of such complying funeral home need not comply with the foregoing requirements if it (i) informs each customer who expresses an interest in an immediate cremation service of the availability and price of such a service at the complying funeral home, and (ii) if it has already received the body of the deceased, offers to arrange for the transfer of the remains to the complying funeral home at no extra charge to the customer for the transfer.

C. Suggesting to customers, directly or by implication, that purchase of a casket for cremation is required by State law or by crematory rule, if such is not the case.

D. Misrepresenting, by statements or suggestions, directly or by implication, the extent to which any casket, including a sealer casket, will be airtight or watertight or will prevent natural processes of decomposition or provide long-term preservation of human remains; provided, that this paragraph shall not prevent respondent's funeral homes from accurately describing, displaying or otherwise making

