



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

Division of Marketing Practices

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Ms. Margie Heckman
Universal Casket Co.
P.O. Box 107
Bellbrook, OH 45305

Dear Ms. Heckman:

You have requested staff's views on whether the Funeral Rule prohibits a number of practices by funeral providers that you allege Universal Casket has encountered when attempting deliveries of third-party caskets purchased by consumers from Costco.

As you know, section 453.4(b)(1) prohibits a funeral provider from "tying" or conditioning the purchase of any funeral good or service to the purchase of another funeral good or service from the provider.¹ Prior staff opinion letters have stated staff's opinion that practices by funeral providers "unreasonably" burdening a consumer's choice to purchase an item from a third party" violate § 453.4(b)(1) of the Rule.² Thus, we have previously stated that it is a violation of § 453.4(b)(1) for a funeral provider to:

- Require a consumer's presence at a funeral home at the time of delivery of a third-party casket;³
- Refuse to sign an acknowledgment of delivery of a third-party casket in the consumer's absence;⁴

¹ 16 C.F.R. § 453.4(b)(1).

² Staff Opinion 07-3 (Mar. 21, 2007) at p. 1-2, *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-3.pdf>; *see also*, Staff Opinion 04-1 (May 12, 2004), *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion04-1.pdf>

³ Staff Opinion 07-3; Staff Opinion 04-1.

⁴ Staff Opinion 07-3; Staff Opinion 04-2 (June 22, 2004) *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion04-2.pdf>.

- Charge a fee for storage of a third-party casket delivered in advance of an at-need disposition;⁵ and
- Charge a fee for disposal of the container or packaging in which a third-party casket is shipped.⁶

It continues to be staff's opinion that practices that "unreasonably burden a consumer's choice to purchase an item from a third party" violate § 453.4(b)(1) of the Rule. Restrictions by a funeral provider that unreasonably impede the delivery of a third-party casket create an unreasonable burden on a consumer's right to use such a casket, in violation of § 453.4(b)(1). As a general rule, a funeral provider should avoid acts or practices that treat third-party casket retailers differently from the provider's regular casket supplier. It is staff's opinion that the following acts or practices would violate § 453.4(b)(1), if applied exclusively to third-party casket retailers that contact a funeral provider in advance to arrange delivery:

- Refusal to accept delivery of a third-party casket *more than* a specified number of days in advance of its use;
- Refusal to accept delivery of a third-party casket *less than* a specified number of days in advance of its use;
- Refusal to accept delivery of a third-party casket during regular business hours except by prior appointment;⁷ and
- Refusal to accept delivery of a third-party casket during regular business hours at a particular date and time, unless the provider is unable to receive caskets from any supplier at that date and time (*e.g.*, because the provider will be conducting a funeral).

You also ask whether funeral providers "unreasonably burden a consumer's choice" if they decline to assist in the delivery of a third-party casket by helping the delivery person unload and unpackage the casket, and by withholding standard equipment for wheeling the casket from

⁵ Staff Opinion 07-4 (July 12, 2007), available at <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-4.pdf>; Staff Opinion 07-8 (Aug. 21, 2007), available at <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-8.pdf>.

⁶ Staff Opinion 07-4. Although funeral providers may not charge consumers a fee for disposal of the packaging, nothing in the Rule prevents a funeral provider from requiring, on a non-discriminatory basis, that all of its casket suppliers take any casket packaging with them and dispose of it themselves after a delivery.

⁷ As your inquiry notes, there are some small funeral homes that are not open during regular business hours of 8:00 a.m. to 5:00 p.m. (*e.g.*, because the sole proprietor is employed elsewhere), and thus may not be able to receive caskets from any supplier during some of those hours except by prior appointment.

the delivery truck into the building. While a funeral provider cannot impose restrictions that unreasonably impede a third-party provider's ability to deliver a casket to the funeral home, staff is not prepared to say that the Rule affirmatively requires a funeral provider to pay the labor cost associated with unloading a third-party casket and removing its packaging, particularly when small funeral providers may not have personnel who are physically capable of assisting in unloading a heavy and cumbersome casket.

On the other hand, withholding the use of a funeral provider's standard equipment, such as a utility "church truck" to assist in bringing the casket into the funeral home would impose an unreasonable impediment to the delivery of a third-party casket. Indeed, such equipment is part of the funeral provider's overhead costs, which are charged to and paid by consumers in the form of the funeral provider's non-declinable basic services fee. It is an unreasonable burden to deny consumers the benefits of equipment for which they must pay simply because they have exercised their right to purchase a casket from a third party.

Finally, your inquiry asks whether it is a violation of the Rule for a funeral provider to disparage the quality of third-party caskets or mislead consumers about the savings available from package pricing discounts. A primary purpose of the Rule, and of the price disclosures it requires, is to prevent price and savings misrepresentations by assuring that consumers receive accurate price information. Although disparagement of a competitor's products is not prohibited by the Funeral Rule, material representations that are false, misleading or deceptive may violate Section 5 of the Federal Trade Commission Act,⁸ and expose a funeral provider to an FTC law enforcement action.

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

⁸ 15 U.S.C. § 45.