



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

Division of Marketing Practices

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Dear Mr. Lapin:

You have requested a staff opinion on whether the FTC Funeral Rule requires a funeral provider to make its facilities available for a memorial service to families who do not wish to make any other funeral arrangements with the provider. It is staff's opinion, for the reasons which follow, that the Rule does not require a funeral provider to do so.

As you know, Section 453.4(b)(1)(i) of the Rule makes it unlawful for a "funeral provider" to "[c]ondition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part."¹ Section 453.4(b)(2)(ii) grants a safe harbor, however, providing that "[a] funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide."²

Section 453.1(i) of the Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public."³ Because funeral providers are, by definition, in the business of providing both funeral goods and funeral services to the public, staff has determined in a prior opinion that the Rule is premised on the understanding that "funeral providers are persons who furnish funeral arrangements, and not persons who simply sell a particular good or service as a separate sales transaction."⁴ Staff concluded in that ruling that "for a business operation thus defined to be required to function as

¹ 16 CFR § 453.4(b)(1).

² 16 CFR § 453.4(b)(2)(ii).

³ 16 CFR § 453.1(i).

⁴ Staff Opinion, Casket & Funeral Supply Association of America (July 18, 1995) at 1-2, *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion95-3.pdf>.

Mr. Harvey I. Lapin, Esq.

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