

**Prepared Statement of the Federal Trade Commission**  
**For the Committee on Energy and Commerce**  
**Subcommittee on Commerce, Trade, and Consumer Protection**  
**United States House of Representatives**  
**July 27, 2009**

Mr. Chairman and members of the Subcommittee, I am Charles Harwood, Deputy Director in the Federal Trade Commission's ("FTC" or "Commission") Bureau of Consumer Protection. On behalf of the Commission, I appreciate this opportunity to provide information to the Subcommittee about the Commission's activities and authority with regard to the funeral industry, including cemeteries.<sup>1</sup>

The Commission welcomes the opportunity to work with the Subcommittee in identifying ways in which the Commission can usefully deploy its law enforcement authority, rulemaking authority, and outreach experience in connection with the recent grievous events at the historic Burr Oak Cemetery in Alsip, Illinois.

First, however, the Commission commends the thorough and rapid response of law enforcement authorities in Illinois to the desecrations at Burr Oak Cemetery. We understand that there is an ongoing criminal investigation being conducted by a number of law enforcement agencies and we also understand that the Illinois Attorney General's Office and the Illinois Comptroller's Office have recently initiated litigation to enforce the Illinois consumer protection law with regard to cemeteries. The Commission is prepared to cooperate and coordinate with these agencies; and to the extent additional available relief is called for by a number of law enforcement

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral statement and responses to any questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

of the Commission's statutory authority in fulfilling this mandate is the Federal Trade Commission Act (“FTC Act”).<sup>2</sup> Using its “unfair or deceptive acts or practices” authority under the FTC Act, the Commission is active in a wide range of efforts to protect the public from unfair, deceptive, and fraudulent practices in the marketplace through law enforcement targeting those who harm consumers, through rules that address prevalent and widespread unfair or deceptive practices, through studies, public hearings, and consultations with other government entities, and through education of consumers and businesses about the laws enforced by the FTC.

Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting

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<sup>2</sup> 15 U.S.C. § 45(a). The Commission also has enforcement responsibilities under more than 50 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which governs the privacy, fairness, and accuracy of certain sensitive consumer information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces more than 30 rules governing specific industries and practices, *e.g.*, the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

<sup>3</sup> “Commerce” as used here refers to interstate or foreign commerce.

<sup>4</sup> 15 U.S.C § 45(n). In determining whether an act or practice is unfair, the Commission may also consider established public policies, but these may not serve as a primary basis for such determination.

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shop for them. First, if a consumer visits a funeral home in person, the Rule requires that the funeral director provide the consumer with a copy of the general price list for the consumer to keep, and must show the casket price list and outer burial container price list before showing the consumer those items. These requirements apply to both at-need and pre-need situations when funeral arrangements are being made.

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<sup>10</sup> At the beginning of any discussion of funeral arrangements, funeral directors must provide a copy of the general price list for the consumer to keep, and must show the casket price list and outer burial container price list before showing the consumer those items. These requirements apply to both at-need and pre-need situations when funeral arrangements are being made.

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<sup>11</sup> Section 18 of the FTC Act, 15 U.S.C. § 57a, empowers the FTC to “prescribe rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . .”

<sup>12</sup> In rulemaking under Section 18, the Commission may not issue a notice of proposed rulemaking unless it has “reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.” 15 U.S.C. § 57a(b)(3). The Commission may find prevalence where available information “indicates a widespread pattern of unfair or deceptive acts or practices.” 15 U.S.C. § 57a(b)(3)(B).

For instance, it may be appropriate for the FTC to inittively

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<sup>13</sup> In connection with any such initiative, the Subcommittee may want to consider requesting that the General Accountability Office update its 2003 study of cemetery regulatory practices. It might also be appropriate to approach The National Conference of Commissioners on Uniform State Law (NCCUSL) about a uniform state consumer protection law for cemeteries.

<sup>14</sup> Of course, a vital source of information is consumer complaints, which help define the scope of problems to be addressed. The FTC receives a relatively low number of complaints regarding this industry. For example, during calendar year 2008, it received 241 complaints. In comparison, the FTC received 104,642 complaints about debt collection in 2008.

Thank you again for this opportunity to describe for the Subcommittee the Commission's law enforcement efforts to promote competition and protect consumers in the funeral industry. The Commission will continue to work with the Subcommittee and its staff to explore ways in which FTC can utilize its authority and consumer outreach expertise directly or in support of the Subcommittee's efforts to address the problems highlighted by the terrible events at Burr Oak.