

**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

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Missouri Board of Embalmers and Funeral Directors (the "Board"), hereinafter sometimes referred to as "Respondent," and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission have voluntarily executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the aforementioned Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested person, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34 (2004), the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent, the Missouri Board of Embalmers and Funeral Directors, is an industry regulatory board established by the State of Missouri with its principle office and place of business located at 3605 Missouri Boulevard, Jefferson City, Missouri 65102-0423.

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

ORDER

I.

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "Board" means the Missouri Board of Embalmers and Funeral Directors, its officers, members, employees, consultants, agents, successors and assigns.
- B. "Licensee" means any person licensed to practice as an embalmer and/or funeral director in the State of Missouri.
- C. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

II.

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from prohibiting, restricting, impeding or discouraging any person from engaging in the sale or rental to the public of funeral merchandise or burial receptacles for the dead, directly or indirectly, or through any rule, regulation, policy, or other conduct authorized by MO. REV. STAT. § 333.251 (2005).

III.

IT IS FURTHER ORDERED that Respondent shall:

Publish in the Newsletter of the Board of Embalmers and Funeral Directors the full text of

1.

MO. REV. STAT. § 333.251 (2005), this Order, and an accompanying statement that:

“The Rules and Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri,” with such prominence as is given to regularly featured articles, and distribute such Newsletter to all Licensees within one hundred and twenty (120) days after the date this Order becomes final. Respondent shall similarly publish the full text of MO. REV. STAT. § 333.251 (2005) and an accompanying statement that: “The Rules and Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri” in subsequent issues of such Newsletter, which shall be distributed to all Licensees at least once each calendar year, for the years 2007, 2008 and 2009;

Display an advisory on its public website (<http://pr.mo.gov/embalmers.asp>) that: “The

2.

Federal Trade Commission and the Board Have Agreed to Settle FTC Allegations Regarding Restrictions and Prohibitions on the Sale of Funeral Merchandise or Caskets.” Such advisory shall link to a new web page on the Board's website that contains the full text of MO. REV. STAT. § 333.251 (2005), a statement that: “The Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri,” a link to MO. CODE REGS. ANN. tit. 20, § 2120-2.060 (2006), and a link to this Order. Respondent shall modify its website as described above no later than ten (10) business days after the date the Order becomes final, and shall display such modifications for no less than ninety (90) days from the date this Order becomes final. The advisory and this Order shall remain publicly accessible through common search terms and archives on the website for five (5) years from the date this Order becomes final, except in the event that the Missouri Office of Administration changes the structure or functionality of the Board’s public website, in which case the Board shall notify the Commission and propose alternative means of access to the advisory, the information on the new web page and this Order;

Publish notice of this Order in three consecutive issues of *Missouri Funeral Director’s*

3.

Association Magazine, beginning with the next available placement opportunity for the Board to include its notice in the magazine following publication of this Order on the Board's website. For purposes of this provision, such notice will be deemed satisfactory if it includes the following language: “The Missouri Board of Embalmers and Funeral Directors (the "Board") announces agreement with the Federal Trade Commission

regarding the FTC's allegations of restrictions and prohibitions on the sale of funeral merchandise or caskets. Persons may offer for retail sale caskets and other funeral merchandise to customers in Missouri without obtaining a license from the Board. Full details of the settlement are posted on the Board's website at www.pr.mo.gov.embalmers.asp." The minimum size of such notice shall be one-half of one page in *Missouri Funeral Director's Association Magazine*; Publish the statement: "The Missouri Board of Embalmers and Funeral Directors (the

4.

"Board") has settled antitrust allegations by the FTC regarding restrictions and prohibitions on the sale of funeral merchandise or caskets. Persons may offer for retail sale caskets and other funeral merchandise to customers in Missouri without obtaining a license from the Board. Full details of the settlement are posted on the Board's website at www.pr.mo.gov.embalmers.asp." on Page 1 in the next version of the Missouri State Board of Embalmers and Funeral Directors Rules and Regulations, Chapters 333, 436, 193, 194, which shall be provided to all Licensees within one (1) year from the date this Order becomes final; and, Notify the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue

5.

N.W., Washington, D.C. 20580, at least thirty (30) days prior to: a) filing with the Missouri Secretary of State any Proposed Order of Rulemaking concerning the Board's rules or regulations; or b) proposing any change in Respondent; if such proposed change may affect compliance obligations arising out of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

V.

IT IS FURTHER ORDERED that this Order shall terminate on June 19, 2018.

By the Commission.

C. Landis Plummer
Acting Secretary

SEAL
ISSUED: June 19, 2008