

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW TORREGROSSA & SONS, INC.,

a New York corporation;

ANDREW L. TORREGROSSA, individually and

as an officer of the corporation; and

JOHN L. TORREGROSSA, individually and as an

officer of the corporation;

Defendants.

CV 12 - 3198

Civil Action No.

IRIZARRY, J.

MANN, M.J.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), by its undersigned attorneys, for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a permanent injunction and other equitable relief for Defendant's violations of the Commission's Trade Regulation Rule Concerning Funeral Industry Practices ("Rule" or "Funeral Rule"), 16 C.F.R. Part 453.

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK
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JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

3. Venue is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b-c) and 1395(a).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission pursuant to 15 U.S.C. § 56. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged, inter alia, with enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission also is authorized by 15 U.S.C. § 57a(a)(1)(B) to issue trade regulation rules that “define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 45(a)(1)),” and may obtain civil penalties for rule violations pursuant to 15 U.S.C. § 45(m)(1)(A).

DEFENDANT

5. Defendant Andrew Torregrossa & Sons, Inc. (“Torregrossa”), is a New York corporation with its principal place of business located within the State of New York at 1305 79th Street, Brooklyn, New York 11228. In connection with the matters alleged herein, Defendant Torregrossa is located in or transacts business in this District.

6. Defendant John L. Torregrossa is the corporate President and an owner of Defendant Torregrossa. At all times material to this complaint, acting alone or in concert with others, Defendant John Torregrossa has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendant Torregrossa, including the acts and practices set forth in this complaint. In connection with the matters alleged herein, Defendant John Torregrossa transacts or has transacted business in this District.

7. Defendant Andrew L. Torregrossa, is the corporate Vice-President and an owner of Defendant Torregrossa. At all times material to this complaint, acting alone or in concert with others, Defendant Andrew Torregrossa has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendant Torregrossa, including the acts and practices set forth in this complaint. In connection with the matters alleged herein, Defendant Andrew Torregrossa transacts or has transacted business in this District.

THE FUNERAL RULE

8. The Funeral Rule, promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective in its entirety on April 30, 1984, and since that date has remained in full force and effect. Amendments to the Funeral Rule were promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, and became effective on July 19, 1994. The Funeral Rule is codified at 16 C.F.R. Part 453.

9. Since it first took effect, the Rule has prohibited, *inter alia*, a “funeral provider” from requiring the purchase of any funeral good or service, including a casket, as a condition of providing consumers with other funeral goods or services. 16 C.F.R. § 453.4(b)(1)(i). This core prohibition was made part of the Rule to prevent funeral providers from requiring consumers to

“purchase unwanted goods and services as a condition of obtaining those which they do want.”

FTC FUNERAL RULE, STATEMENT OF BASIS AND PURPOSE, 47 Fed. Reg. 42260, 42282 (Sept. 24, 1982).

10. Defendants are “funeral providers,” as that term is defined in Section 453.1(i) of the Rule, 16 C.F.R. § 453.1(i), and sell or offer to sell “funeral goods” and “funeral services,” as those terms are defined in Sections 453.1(h) and 453.1(j) of the Rule, 16 C.F.R. §§ 453.1(h) and 453.1(j).

11. Defendants have informed individuals seeking to purchase Defendants’ funeral goods and services that, as a matter of policy, Defendants would not permit the use of a casket purchased from a third party, and would provide funeral goods and services only to consumers who purchase a casket from Defendants.

12. By making the purchase of a casket Defendants sell a condition of obtaining Defendants’ services, the Defendants have prevented consumers from buying only the funeral goods and services they want, and have violated § 453.4(b)(1)(i) of the Funeral Rule.

VIOLATIONS OF THE FUNERAL RULE

13. In at least two separate incidents, in connection with selling or offering to sell funeral goods and funeral services, Defendants have violated the Funeral Rule by conditioning the furnishing of any funeral goods or funeral services on the purchase of a casket from their funeral home, in violation of 16 C.F.R. § 453.4(b)(1)(i).

CIVIL PENALTIES AND INJUNCTION

14. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$16,000 for each such violation of the Funeral Rule.

15. Defendants have violated the Funeral Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

16. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Funeral Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

17. Section 5(a) of the FTC Act, 15 U.S.C. 45(a), provides that “unfair and deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

18. Defendants sell and offer to sell funeral goods and funeral services in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction enjoining Defendants from violating the FTC Act.

PRAYER

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and pursuant to its own equitable powers:

(1) Enter judgment against Defendants and in favor of Plaintiff for the violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), alleged in this Complaint;

(2) Award Plaintiff monetary civil penalties from Defendants for the violations of the Funeral Rule alleged in this Complaint;

(3) Enjoin Defendants from violating the Funeral Rule and Section 5 of the FTC Act, 15 U.S.C. § 45; and

(4) Award Plaintiff such additional relief as the Court may deem just and proper.

**FOR THE UNITED STATES
OF AMERICA:**

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