

14 August 2008

The National Society of Allied and Independent Funeral Directors



Dear Sirs,

Transparency of ownership of a business.

It has come to our attention that in some instances Funeral Directors are not displaying details of the ultimate ownership of the business. I have therefore tried to set out some of the relevant legislation that controls this requirement which I trust you find helpful and would ask that you pass it onto your members.

The Consumer Protection from Unfair Trading Regulations 2008 came into force on 26th May 2008 and effectively replaced the Trade Descriptions Act 1968.

These new Regulations prohibit unfair commercial practices (as defined in Regulation 5) which contravene the requirements of professional diligence and which are likely to materially distort the economic behaviour of the average consumer with regard to the product or service.

Regulation 5 sets out a misleading action as one that contains false information and is therefore untruthful in relation to such matters as the nature, attributes and rights of a trader. This is further defined as including the trader's identity, assets, qualifications; status; approval; affiliations or connections; ownership of industrial, commercial or intellectual property rights, and awards or distinctions. Failure to comply with a commitment contained in a code of conduct they indicate they are bound by is also a misleading action

Regulation 6 sets out a misleading omission in as one that omits, hides or provides unclear, unintelligible, ambiguous or untimely material information. Where material information includes the identity of the trader, such as his trading name and the identity of any other trader on whose behalf the trader is acting as well as the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting.

Any person who contravenes these Regulations are liable on summary conviction to a fine not exceeding the statutory maximum or on indictment to a fine or imprisonment for a term not exceeding 2 years, or both.

The Business Names Act 1985 currently applies to:

- a company which trades under a name that is not its corporate name;
- a partnership which does not trade under the names of all the partners;
- an individual who trades under a name other than that person's surname, with or without his or her first names or initials.

If a person trade under their own name, e.g. John Smith trading as J Smith, they are not covered by the provisions of the Act, but if they add any words other than their initials or forenames, e.g. John Smith trading as Smith's Autos, they are covered.

If the Act applies to a trader (see above), they must comply with all the disclosure requirements. They will need to disclose (as appropriate):

- the corporate name;
- the name of each partner, or
- the individual's name, and
- in relation to each person named, an address in Great Britain at which documents can be served.

They must display the information in a prominent position so that it can be read easily, in all the places where they carry out their business and where they deal with customers or suppliers.

Abbreviations of company names are not acceptable nor are simply logo's or trade marks.

The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 came into force on 1st January 2007, which amended the Companies Act 1985 and, amongst other things, applied new rules to business stationery.

A company must now state its name in legible lettering on the following business stationery, whether in hard copy, electronic or other form:

- All the company's business letters or order forms.
- All its notices and other official publications.
- All bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by, or on behalf of, the company.
- All its bills of parcels, invoices, receipts and letters of credit.
- All its websites.

They will need to show, in legible lettering, on all business letters, order forms and any of the company's websites: of

- their place of registration;
- their registered number;
- their registered office address; and,
- if it is being wound up, that fact.

Whenever an email is used where its paper equivalent would be caught by the stationery requirements, the email would also be subject to the same requirements.

The same requirements are also applicable to Limited Liability Partnerships.

In short, from 26th May 2008, the true ownership of a business must be conveyed to a consumer before he makes a transactional decision. I.e. if a company is trading as "I'M A SOLE TRADER FUNERALS LTD.", is owned by "NATIONAL FUNERALS UK LTD". The customer has the right to know whom they are really dealing with **BEFORE** they make their choice.

Further details on Business Names can be obtained by contacting Companies House either by telephone (0870 33 33 636) or by visiting the Companies House website.

Yours faithfully,

Derek Hoskins, Trading Standards Officer