

**STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS**

**IN THE MATTER OF:**

**CRAFTMATIC ORGANIZATION, INC.,**  
a Pennsylvania corporation

**L04-3-1057**

**Respondent**

\_\_\_\_\_ /

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Pursuant to the provisions of Florida Statutes Chapter 501, Part I, §§ 501.021 - 501.055, relating to Home Solicitation sales, and Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act, the STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (hereinafter referred to as the “Department”) caused an investigation to be made into certain business practices of CRAFTMATIC ORGANIZATION, INC. (hereinafter referred to as “Respondent”), doing business in the State of Florida, and whose principal place of business is located at 2500 Interplex Drive, Trevese, Pennsylvania 19053, and whose business address in Florida is 3550 Gateway Drive, Pompano Beach, Florida 33069.

IT APPEARS THAT Respondent is prepared to enter into this Assurance of Voluntary Compliance (hereinafter referred to as “AVC”) for purposes of resolution of this matter only, and without any admission that Respondent has violated the law, and the Department, by and through the undersigned Director of Economic Crimes and Senior Assistant Attorney General, being in

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agreement, does accept this AVC in termination of this investigation, pursuant to Section 501.207 (6), Florida Statutes, and by virtue of the authority vested in the Office of the Attorney General by said statute.

**I. STIPULATED FACTS**

- 1.1 Respondent Craftmatic Organization, Inc. causes Craftmatic Adjustable Beds to be manufactured, creates advertisements, and sells those beds to consumers in Florida.
- 1.2 Respondent creates advertising and other lead generation programs, including sweepstakes, for the purpose, among others, of securing personal contact information about individual consumers, which information is used by Respondent for the purpose of attempting to arrange an in-home sales presentation.
- 1.3 Respondent creates and distributes print, audio, and video advertising to use in connection with the solicitation and sale of Craftmatic beds.
- 1.4 Respondent's salespersons make sales appointments with consumers. A second Craftmatic employee thereafter confirms the appointment with the consumer. The salesperson then arrives at the consumer's home and makes an in-home sales presentation to the consumer.
- 1.5 Craftmatic advertisements in Florida offer for sale four different beds, the Monaco, Model I, Model II and Model III.
- 1.6 The in-home sales presentations often last from several minutes to several hours depending on the consumer's level of interest. In some instances, the presentation extended well into the late evening hours.

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- 1.7 During the in-home sales presentations, Craftmatic’s salespersons perform a number of sales steps, including: obtaining information about the consumer’s medical condition and medical problems; showing the consumer a Craftmatic video presentation; often engaging in price “negotiations” then executing a series of documents related to the purchase, including a contract, supplemental warranties and “Information and Benefits” form.
- 1.8 Since Craftmatic’s sales presentations occur in the homes of the consumers, the consumers, prior to the delivery of the purchased bed, are unable to feel, touch, sample, sit on, lie on, or in any way tangibly assess the sales representations made about the quality, characteristics, uses, comfort or benefits of the Craftmatic bed prior to the purchase of the bed and in some instances, prior to the expiration of the consumers’ contractual five-day right to cancel.
- 1.9 During the in-home sales presentations, the Craftmatic salespersons make oral, visual and written representations regarding the quality, comfort, characteristics, uses, and benefits of the Craftmatic bed.
- 1.10 Craftmatic utilizes a sales contract whereby “TERMS AND CONDITIONS OF SALE” are listed on the reverse side of the contract, which is a legal size document in eight point type size. The “TERMS AND CONDITIONS OF SALE” include terms such as “CANCELLATION” rights, “REFUND POLICY,” and “RETURN POLICY.”
- 1.11 The Respondent’s sales contract limits the implied warranty of merchantability and fitness for a particular purpose for Craftmatic beds to the terms of the express warranty set forth in the sales contract, and states that the Model III bed has no warranties, express or implied, including the implied warranty of merchantability and fitness for a particular purpose.

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- 1.12 The Respondent's express warranty appears on the back of the sales contract and provides that, except for unusual repairs, all repairs and replacements will be made at the place of delivery (the consumer's home) and that after the one-year warranty expiration, repairs and/or replacements will be made at the then prevailing parts and labor charges.
- 1.13 The Respondent's sales contract includes a provision which states that the consumer may not bring a claim as part of a class action or as a private attorney general action, and that the consumer may not have the right to act as a class representative or participate as a member of a class of claimants with respect to any claim against Craftmatic.
- 1.14 The Respondent's sales contract includes a provision stating that if a consumer cancels the contract in writing after five business days and the bed has not been delivered, the Respondent may retain liquidated damages equal to the lesser of 20% of the bed cost, as shown in the contract, or \$500.
- 1.15 In many cases, the Respondents advise consumers about the availability of third-party financing.

## **II. FACTUAL ASSERTIONS OF THE ATTORNEY GENERAL**

- 2.1 During the initial telephone contact by Craftmatic, consumers are not clearly, affirmatively and expressly informed that the purpose of the contact is to effect a sale of Craftmatic beds.
- 2.2 Craftmatic's "sweepstakes" advertisements at times picture a different bed than the bed that is the actual "sweepstakes" award.
- 2.3 In addition to those sales steps performed by the Respondent's salespersons, as set forth

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above, the Attorney General asserts the following facts: during the in-home sales presentation, the salesperson performs a number of steps, including, in the consumer's bedroom the salesperson claims to simulate the quality, comfort, uses and benefits of the Craftmatic bed by building a bed using soft pillows, blankets, and a hand-held massager; represents that the Craftmatic bed will resolve the consumer's medical problems; and creates a sense of urgency about the necessity of committing to a purchase.

2.4 The Respondent, in its sales representations, quotes an initial price for the bed, and then the salesperson grants an immediate reduction, representing that the consumer is receiving a discount.

2.5 The Respondent, in the course of advertising and soliciting sales to Florida consumers, including during face to face solicitation visits in consumers' homes, have made representations either directly, indirectly or by implication that:

- (1) the consumer can receive a special price, a discount or a price reduction from the "regular" price of the Craftmatic Adjustable Bed;
- (2) the discounts offered represent significant reductions in the price at which the beds normally sell;
- (3) the consumer can obtain a Craftmatic Adjustable Bed at a price comparable to prices charged for "quality flatbeds."

2.6 In some cases, the Respondent's salespersons have represented to consumers that using the Craftmatic bed will resolve the consumer's medical problems.

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- 2.7 When consumers attempt to cancel a sale within the 5-day cancellation period provided for in the sales contract, the Respondent will sometimes attempt to persuade the consumer to exchange the purchased bed, or any component thereof, for another Craftmatic model, or component thereof, instead of canceling the sale.
- 2.8 Consumers who agree to try another model bed and who are still not satisfied with the bed are then prevented by Respondent from canceling the sale and obtaining a full refund.
- 2.9 In some cases, when consumers attempt to cancel the sales contract within the 5-day cancellation period, the Respondent will offer to reduce the purchase price instead of canceling the sale. Consumers who agree to the price reduction instead of the cancellation of the sales contract thereafter lose their opportunity to cancel the sale and obtain a complete refund.

### **III. COMPLIANCE**

- 3.1 The Respondent enters into this AVC for the purpose of resolution and settlement of this matter only.
- 3.2 Respondent and its officers, partners, agents, servants, salespersons, employees, independent contractors, successors, assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction in Florida, additionally agree to comply with the following provisions in all matters relating to the advertisement, solicitation, and sale of Craftmatic beds:

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(a) Compliance with the provisions of Chapter 501, Part I, §§ 501.021 - 501.055 relating to Home Solicitation sales, and Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act.

(b) Any sweepstakes entry form to be used to obtain personal information relating to a consumer may contain a space for the consumer's telephone number as long as the rules or disclosure section on the sweepstakes advertisement contain a statement that the entrant may be contacted by Craftmatic to see if the entrant is interested in purchasing Craftmatic beds.

(c) Craftmatic will not make any price comparisons between any of its adjustable beds and flat beds that use the words "discount," "sale," "special value," "dollar savings" or show a percentage differential.

(d) Craftmatic will not make any price comparison by the use of such terms as "regularly...., now....," "...percent off," "reduced from...to....," "save \$....," unless the comparison is to its regular price. Craftmatic will not make any price comparisons to the price of any bed that is offered at a negotiated price.

(e) Craftmatic shall not represent to consumers that the Craftmatic bed provides any specific therapeutic benefit or that it will cure or resolve any consumer's medical problem, except that this AVC does not bar those representations that have been the express subject of a concurrence letter issued by the United States Food and Drug Administration ("FDA"), provided that such representations are made in a non-deceptive manner and further provided that any qualifying or limiting language required or suggested by the FDA is incorporated as a part of such representations in each advertisement in which they are made.

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(f) Craftmatic shall not make any price comparison of the Craftmatic beds to a hospital bed and shall not represent that the Craftmatic Adjustable Bed is a hospital bed.

(g) If a consumer requests to have a mattress exchanged prior to the expiration of the 5-day cancellation period, the consumer will have the right to try the replacement mattress for a period of five days.

(h) Respondent shall not use the word “free” or “gift” or any similar term in connection with an item that is offered at a price other than its genuine “regular” price.

(i) Respondent’s advertising shall not use price comparisons using any Craftmatic model bed or type that does not constitute more than 5% of its actual sales in the preceding calendar year.

(j) Respondent shall clearly and conspicuously disclose in writing the price and availability for purchase of the Craftmatic Model II, Model III, Monaco model, or any other model it offers at a fixed price to every consumer during the in-home demonstration. Respondent shall clearly and conspicuously disclose that the price of the Model I, or any other model Respondent may offer at a negotiable price, is a negotiable price; and during the negotiation process therefor, Respondent will not use language such as “discount,” “sale,” “special value,” indicate a dollar amount or percentage off, or use words of similar meaning. Respondent does not violate this provision if it states during the price negotiation that it is reducing its price offer. Respondent will create internal compliance procedures to ensure that those persons identified in Paragraph 3.2, *supra*, comply with this provision.

(k) Respondent shall not use any form indicating a price release waiver or similar form

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representing the future availability of the Craftmatic bed at a specific price.

(l) Respondent shall not use any form to be signed by a consumer wherein the consumer provides a signature in connection with a sales transaction that contains any representation that the consumer is satisfied with the Craftmatic bed until the consumer has had a reasonable opportunity of not less than 30 days to use the bed. However, Respondent may use, on its delivery form, the following: “Your signature constitutes receipt of all merchandise as per order.”

(m) When scheduling an appointment for an in-home sales presentation, Respondent shall disclose to the consumer that such presentations vary in length from several minutes to several hours depending on the consumer’s level of interest.

(n) Respondent will not conduct a bedroom demonstration unless it clearly and conspicuously discloses that the presentation’s purpose is to demonstrate the Craftmatic bed positioning and that any pillows or inflatable mattresses used during the demonstration do not actually represent the feel of the Craftmatic Adjustable Bed mattress. Respondent, including Respondent’s salespersons, will not place a hand-held massager directly against the consumer’s body in connection with the sale of a Craftmatic bed, but may place it under or behind the pillows or inflatable mattress used during the demonstration. Respondent will not use language to state or imply that it provides a warranty, guarantee, or words of similar meaning as to the comfort of the consumer.

(o) Respondent will not charge a liquidated damages fee to consumers who cancel a sales contract after five business days when the Craftmatic bed has not been delivered. For

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purposes of this paragraph only, a bed has been delivered when the truck carrying the bed arrives at the consumer's home.

(p) Respondent will provide consumers with the right to cancel a sale in writing at any time prior to midnight of the fifth business day after execution of the contract. If a consumer cancels, Respondent shall honor such cancellation.

(q) Respondent will remove from its sales contracts any and all references to consumers not being able to bring a claim against Respondent as part of a private Attorney General action.

(r) In advertising, Respondent will comply with the "FTC Guide Concerning Use of Endorsements and Testimonials in Advertising" as it relates to endorsements and testimonials.

3.3 Respondent shall be provided a thirty (30) day period from the signing of this AVC to come into compliance with the provisions of the preceding paragraphs. Respondent shall, within fifteen (15) days of the execution of this AVC, communicate to its salespersons the fact that this AVC has been signed and instruct such salespersons as to their duty to comply with its terms. Notwithstanding the above, it shall not be a violation of the AVC if materials were distributed to third parties prior to the effective date of this AVC.

3.4 Respondent will respond to all future consumer complaints within ten (10) business days. Respondent further agrees that any complaints and related resolutions and/or responses will be kept on file and be subject to review by the Attorney General or his designated representative upon Respondent's receipt of reasonable notice.

3.5 Respondent shall maintain in its possession and control, for a period of three (3) years, all

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business records relating to Craftmatic’s advertising of and sweepstakes related to Craftmatic Adjustable beds in Florida, as well as business records relating to the solicitation and sale of such beds in Florida. Respondent shall permit the Attorney General or his designated representative, upon ten (10) business days notice, to inspect and/or copy any and all such records during normal business hours.

- 3.6 Respondent will work diligently to resolve any future complaints relating to the terms and conditions of this Assurance.
- 3.7 Respondent will make the substantive terms and conditions of this AVC known to all officers, directors, partners, managers, employees, agents, representatives, licensees, franchisees, independent contractors, successors, and assigns engaged in Respondent’s business.
- 3.8 Respondent will not effect any change in the form of doing business or organizational identity as a method of avoiding the terms and conditions set forth in this AVC.
- 3.9 Respondent shall not represent directly or indirectly or in any way whatsoever that the Department has sanctioned, condoned, or approved any part or aspect of its business operations.
- 3.10 The Effective Date of this AVC is the date on which it is fully executed by the parties.

**IV. STIPULATED PAYMENT**

- 4.1 Respondent shall pay the Office of the Attorney General, State of Florida, \$100,000.00 for consumer restitution pursuant to the provisions of Chapter 501.207 (6), Florida Statutes. Distribution of restitution shall be made at the sole discretion of the Attorney General to

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those individuals identified in Addendum A of this AVC.

- 4.2 Respondent shall pay a contribution of \$20,000.00 to the **Seniors vs. Crime, Inc.** project for educational, investigative and crime prevention programs for the benefit of senior citizens and the community as a whole. Payment must be made to **Seniors vs. Crime, Inc.** by cashiers check and shall be forwarded to Senior Assistant Attorney General Rafael S. Garcia, Office of the Attorney General, 110 S.E. 6th Street, 9th Floor, Ft. Lauderdale, FL 33301.
- 4.3 Respondent shall pay the Office of the Attorney General, State of Florida, the sum of \$53,540.00, payable to the **Legal Affairs Revolving Trust Fund**, for use pursuant to Section 501.2101, Florida Statutes, for investigative and attorney's fees and costs of this matter and for costs associated with ongoing and future enforcement initiatives pursuant to chapter 501, Part II, Florida Statutes. Payment must be made by cashiers check and shall be forwarded to Senior Assistant Attorney General Rafael S. Garcia, Office of the Attorney General, 110 S.E. 6th Street, 9th Floor, Ft. Lauderdale, FL 33301.
- 4.4 Respondent shall, within ten (10) days of the effective date of this Assurance of Voluntary Compliance, establish a restitution fund in the amount of \$30,000.00 for consumers who file a complaint with the Office of the Attorney General during a period of thirty (30) days subsequent to the effective date of this AVC . At the end of this thirty day period, the Office of the Attorney General shall provide Respondent with such additional complaints. Respondent shall disburse the \$30,000.00 in accordance with the instructions of the Office of the Attorney General, subject to the following: (a) no consumer shall receive restitution in an amount in excess of the amount the consumer paid for his/her Craftmatic bed(s); (b)

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if the consumer owes money to a finance company for the bed(s), the restitution for that consumer will be paid to the finance company on behalf of the consumer; if the restitution for that consumer exceeds the amount the consumer owes the finance company for the bed(s), that differential shall be paid directly to the consumer; (c) the total amount of restitution paid to all consumers who file complaints with the Office of the Attorney General during this 30 day period shall not exceed the \$30,000.00 placed in this fund. Respondent shall provide the Office of the Attorney General with copies of all records of payments made pursuant to this paragraph. The \$30,000.00 restitution fund described herein shall be held and distributed by Troutman Sanders, LLP. Any remaining balance in said fund after the distribution of restitution to consumers who filed a complaint within thirty (30) days of the effective date of this AVC shall be returned to Respondent.

4.5 Respondent shall, within ten (10) days of the effective date of this Assurance of Voluntary Compliance, establish a fund in the amount of \$10,000.00 for consumers who filed complaints with the Office of the Attorney General and requested that Respondent remove the Craftmatic bed from their home. The Office of the Attorney General shall provide Respondent with a list of those consumers. Respondent shall remove the Craftmatic beds from the homes of these consumers at its sole cost and expense and, in addition, shall allocate the fund described in this paragraph equally among these consumers, except that the consumers shall not receive more than \$500.00 a piece. Respondent shall provide the Office of the Attorney General with copies of all records of payments made pursuant to this paragraph. The \$10,000.00 fund described herein shall be held and distributed by Troutman

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Sanders LLP. Any remaining balance in said fund after the distribution of monies to consumers pursuant to this paragraph shall be returned to Respondent.

**V. FUTURE VIOLATIONS**

- 5.1 It is hereby agreed by the parties that any subsequent failure to comply with the provisions of this AVC is by statute prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject Respondent to any and all civil penalties and sanctions authorized by law, including attorney's fees and costs. Pursuant to Fla. Stat. § 501.2105, in any civil litigation initiated by the Office of the Attorney General, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.
- 5.2 Failure of the Department to timely enforce any term, condition, or requirement of this AVC shall not provide, nor be construed to provide, Respondent a defense for noncompliance with any term of this AVC or any other law, rule, or regulation; nor shall it stop or limit the Department from later enforcing any term of this AVC or seeking any other remedy available by law, rule, or regulation.

**VI. ACCEPTANCE**

- 6.1 It is hereby agreed by the parties that this AVC shall become effective upon its acceptance by the Attorney General, who may refuse to accept it at his discretion. The receipt of or deposit by the Department of any monies pursuant to this AVC does not constitute

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acceptance by the Attorney General, and monies received will be returned if this AVC is not accepted.

**IN WITNESS WHEREOF** I hereby affirm that I am acting in my capacity and within my authority as a corporate officer of Respondent business, and that by my signature I am binding Respondent business to the terms and conditions of this AVC.

\_\_\_\_\_  
ERIC KRAFTSOW  
Authorized Signatory  
Craftmatic Organization, Inc.  
2500 Interplex Drive  
Trevose, PA 19053  
(215) 639-1310

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized to take acknowledgments in the State of \_\_\_\_\_, personally appeared Stanley Kraftsow, who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_  
Type of identification produced: \_\_\_\_\_

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RAFAEL S. GARCIA  
Senior Assistant Attorney General  
Department of Legal Affairs  
OFFICE OF THE ATTORNEY GENERAL  
110 S.E. 6<sup>th</sup> Street, 9<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
(954) 712-4600

Date: \_\_\_\_\_

Accepted by:

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ROBERT A. HANNAH  
Deputy Chief Counsel  
Department of Legal Affairs  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol  
Tallahassee, FL 32399-1050  
(850) 245-0184

Date: \_\_\_\_\_