

Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Craftmatic Industries, Inc. (“Craftmatic Industries”) is a Delaware corporation with its principal place of business at 2500 Interplex Drive, Trevoise, Pennsylvania 19053. Craftmatic Industries, Inc. has three wholly-owned subsidiaries -- Craftmatic Organizations, Inc., Craftmatic of California, Inc. and Craftmatic Scooters, LLC -- from which it sells and telemarkets its products. Craftmatic Industries, Inc., a seller of adjustable beds and electronic mobility scooters, through its telemarketers -- Craftmatic of California, Inc., Craftmatic Organization, Inc., and Craftmatic Scooters, LLC -- calls consumers to induce the purchase of its goods or services. Craftmatic Industries transacts or has transacted business in this District.
5. Defendant Craftmatic of California, Inc. is a California corporation and a wholly-owned

subsidiary of Craftmatic Industries with its principal place of business at 605 S. Milliken, Suite B, Ontario, California 91761. Defendant Craftmatic of California, Inc. is a telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services from Craftmatic Industries. Craftmatic of California, Inc. transacts or has transacted business in this District.

6. Defendant Craftmatic Organization, Inc. is a Pennsylvania corporation and a wholly-owned subsidiary of Craftmatic Industries with its principal place of business at 2500 Interplex Drive, Trevese, Pennsylvania 19053. Defendant Craftmatic Organization, Inc. is a telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services from Craftmatic Industries, Inc. Defendant Craftmatic Organization, Inc. transacts or has transacted business in this District.
7. Defendant Craftmatic Scooters, LLC is a Florida company and a wholly-owned subsidiary of Craftmatic Industries with its principal place of business at 3550 Gateway Drive, Pompano Beach, Florida 33069. Defendant Craftmatic Scooters, LLC is a telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services from Craftmatic Industries. Craftmatic Scooters, LLC transacts or has transacted business in this District.
8. Defendant Eric Kraftsow is the Vice President of Telemarketing for Craftmatic Industries and its three wholly owned subsidiaries. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Craftmatic Industries, including the acts and

practices set forth in Paragraphs 19 through 32 of this complaint.

THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

9. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108 in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.
10. Among other things, the Amended TSR established a “do-not-call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.
11. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.
12. Since September 2, 2003, sellers and telemarketers and other permitted organizations have been able to access the Registry over the Internet at telemarketing.donotcall.gov to download the registered numbers.

13. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).
14. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person when that person previously has stated he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).
15. A seller or telemarketer may call a consumer's number on the Registry if it can prove that the seller has the "express agreement, in writing" of the consumer to make calls to that number, so long as the consumer has not subsequently made an entity-specific do-not-call request stating that he or she does not wish to receive calls made by or on behalf of the seller. 16 C.F.R. § 310.4(b)(1)(iii)(B)(i); 68 Fed. Reg. 4580, 4634. "Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person." Id.
16. The Commission has explicitly stated that such written agreement must be "clear and conspicuous," and that it must include the consumer's signature demonstrating the consumer's assent to be called by or on behalf of the particular seller for telemarketing purposes. 68 Fed. Reg. 4580, 4634. The Commission staff also has expressly stated that attempting to obtain a consumer's "express agreement" under false pretenses, such as by use of a prize promotion or sweepstakes entry form, does not constitute an affirmative defense to the Rule's do-not-call requirements. "The Written Permission to Call

Exemption,” *Complying with the Telemarketing Sales Rule* at p. 44, available at <http://www.ftc.gov/bcp/online/pubs/buspubs/tsrcomp.pdf>.

17. Since October 1, 2003, sellers and telemarketers have been prohibited from abandoning any outbound telephone call by not connecting the call to a representative within two (2) seconds of the consumer’s completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).
18. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS’ BUSINESS ACTIVITIES

19. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as defined by the Amended TSR, 16 C.F.R. § 310.2.
20. Craftmatic Industries, Inc. has caused its telemarketers, Defendants Craftmatic of California, Inc., Craftmatic Organization, Inc. and Craftmatic Scooters, LLC, to call consumers in the United States to induce the purchase of goods or services from Craftmatic Industries, Inc.
21. Craftmatic of California, Inc., Craftmatic Organization, Inc. and Craftmatic Scooters, LLC are telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of goods from Craftmatic Industries such as adjustable beds and electronic mobility scooters. (Hereinafter “Craftmatic” refers to Craftmatic Industries and its three wholly owned subsidiaries.).
22. At all times relevant to this complaint, Defendants have engaged in telemarketing by a

- plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.
23. On or after October 17, 2003, Defendants have placed hundreds of thousands of outbound calls to consumers' telephone numbers that are on the National Do Not Call Registry.
 24. On or after December 31, 1995, Defendants have offered prize promotions to consumers who were interested in winning a Craftmatic bed. The sweepstake entry forms state that the consumers' telephone number is their entry number. The entry form does not advise consumers that by putting down their phone number on the entry form, the consumer is giving express authorization to be contacted by Defendants, nor does it request the consumer's signature to demonstrate assent to receive sales calls by or on behalf of Craftmatic. Nevertheless, Defendants then call these consumers who have entered the sweepstakes and try to convince them to purchase a bed.
 25. In numerous instances, consumers who enter the prize promotions and whose telephone numbers are illegible are then sent a letter requesting verification of their phone numbers. The letter reiterates that the consumer's telephone number is his or her sweepstake entry number. The letter does not advise consumers that by putting down their phone number on the letter, the consumer is giving express authorization to be contacted by Defendants. Once again, the letter does not request that the consumer provide his or her signature for the purposes of agreeing to receive telemarketing calls from or on behalf of Defendants. Nevertheless, Defendants then call those consumers who have responded to the verification letter and try to convince them to purchase a bed.

26. The sweepstake entry forms and verification letters referred to in paragraphs 24 and 25 do not constitute “express agreement” under the Do Not Call provisions or on their face. Defendants, thus, do not have express authorization or other affirmative defense for calls to tens of thousands of consumers’ numbers on the National Do Not Call Registry.
27. On or after October 1, 2003, Defendants have abandoned millions of outbound telephone calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer’s completed greeting. Until April 2006, defendants failed to play a recorded message with abandoned calls. For example:
- (A) During October and November 2003, Defendants failed to maintain a call abandonment rate at or below 3 percent at any of Defendants’ telemarketing call center locations.
 - (B) From December 2003 through April 2004, Defendant Craftmatic Scooters, LLC had a call abandonment rate of 12.94 percent, resulting in approximately 1,192,000 calls abandoned.
 - (C) From December 2003 through April 2004, Defendant Craftmatic Organization, Inc. had a call abandonment rate of 9.23 percent, resulting in approximately 687,000 calls abandoned.
 - (D) From December 2003 through April 2004, Defendant Craftmatic of California, Inc. had a call abandonment rate of 1 percent, resulting in approximately 62,185 calls abandoned.
28. On or after December 31, 1995, Defendants have called thousands of consumers who have previously stated that they do not wish to receive calls made by or on behalf of

Craftmatic Industries, Inc.

29. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I (Violating the National Do Not Call Registry)

30. In numerous instances, in connection with telemarketing, Defendants engaged in or caused others to engage in initiating an outbound telephone call to a person’s telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count II (Abandoning Calls)

31. In numerous instances, in connection with telemarketing, Defendants have abandoned, or caused others to abandon an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv) and § 310.4(b)(4).

Count III (Ignoring Entity-Specific Do Not Call Requests)

32. In numerous instances, in connection with telemarketing, Defendants engaged in or caused others to engage in initiating an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of Craftmatic Industries, Inc. in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

CONSUMER INJURY

33. Consumers in the United States have suffered and will suffer injury as a result of

Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
35. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
36. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A) and 53(b) and pursuant to its own equitable powers:

- A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
- B. Award Plaintiff monetary civil penalties from Defendants for every violation of the TSR;
- C. Permanently enjoin Defendants from violating the TSR and the FTC Act;

- D. Order Defendants to pay the costs of this action; and

- E. Award Plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: _____, 2007

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