

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE OF OHIO *EX REL.*

ATTORNEY GENERAL JIM PETRO,

PLAINTIFF,

v.

CRAFTMATIC ORGANIZATION, INC.

And

J. KAZ, INC. d/b/a

CRAFTMATIC OF PITTSBURGH,

DEFENDANTS.

CASE NO. 05-CVH-06-06060

JUDGE LYNCH

AGREED FINAL JUDGMENT  
ENTRY AND ORDER

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

JUL 25 2005

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

FILED COURT  
2005 JUL 25 AM 9:00  
CLERK OF COURTS

This matter came to be heard upon the filing of a Complaint by the Attorney General of Ohio, Jim Petro, charging the Defendants with violations of Ohio's Consumer Sales Practices Act and Substantive Rules, Ohio Revised Code 1345.01 et seq. and Ohio's Home Solicitation Sales Act, 1345.21 et seq. The Attorney General has reached agreement with Defendants Craftmatic Organization, Inc. (Craftmatic) and J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh (J. Kaz) and this Agreed Final Judgment Entry and Order ("Agreed Order") is intended to resolve the claims against the Defendants in this case. By signing this Agreed Order the Defendants submit to the personal jurisdiction of this Court, and consent to the Entry of this Judgment pursuant to R. C. 1345.07(F).

### **AGREED FINDINGS OF FACT**

1. Defendant Craftmatic Organization, Inc. (Craftmatic) is a foreign corporation with its principal place of business at 2500 Interplex Drive, Trevose, Pennsylvania, 19053. Craftmatic causes Craftmatic Adjustable Beds to be manufactured, creates advertisements for its distributors, and sells those beds to its distributors, including J. Kaz. Craftmatic does not sell beds directly to Ohio consumers nor does it extend credit or arrange financing for any purchasing Ohio consumer.
2. Defendant, J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh (J. Kaz) is a foreign corporation with its principal place of business at 4230 Verona Road, Verona, Pennsylvania, 15147. J. Kaz is currently the exclusive authorized Craftmatic distributor in Ohio, and it advertises and sells Craftmatic Adjustable Beds to individuals in various Ohio counties, including Franklin County.
3. Craftmatic 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 then forwarded to distributors, including J. Kaz, for the purpose of attempting to arrange an in-home sales presentation.
4. Craftmatic creates and distributes print, audio and video advertising to and for its distributors, including J. Kaz, to use in connection with the solicitation and sale of Craftmatic beds.
5. J. Kaz trains salespersons through a training program which is in part based on a written training program.

6. Craftmatic, during a portion of the time period relevant to this case, operated a “Special Counsel for Consumer Affairs” hotline to address problems that consumers have with distributors; said hotline number appears on the back of some J. Kaz purchase contracts.
7. J. Kaz’s sales leads are obtained, in whole or in part, through the advertising created by Craftmatic.
8. J. Kaz contacts the sales lead, makes a sales appointment, and notifies the salesperson of such appointment, whereupon the salesperson arrives at the consumer’s home and makes an in-home sales presentation to the consumer.
9. Craftmatic’s sweepstakes entry form does not state that the request for a telephone number thereon is in part for the purpose of J. Kaz contacting the participant to attempt to arrange an in-home sales presentation of Craftmatic beds.
10. Some advertisements in Ohio represent that consumers can obtain a Craftmatic Model II Adjustable Bed at a price comparable to, or less than, prices charged for “quality flatbeds.”
11. Craftmatic advertisements in Ohio offer for sale four different beds, the Monaco, Model I, Model II and Model III.
12. Approximately 85% of the actual Craftmatic bed sales in Ohio are of the Model I bed with less than 1% of actual sales consisting of the advertised Monaco or Model III beds.
13. Craftmatic’s and J. Kaz’s “sweepstakes” advertised prize is a Craftmatic Model III bed with an estimated minimum retail value of \$437.
14. J. Kaz’s salespersons utilized a retail price in excess of \$437 for the Craftmatic III twin bed in Ohio.

15. During the in-home sales presentations, the J. Kaz salespersons often advise the consumer that the Craftmatic III bed is intended for temporary use only and is of a lower quality than the other beds offered by J. Kaz.
16. J. Kaz's in-home sales presentations often last several hours and in some instances extended well into the late evening hours.
17. During the in-home sales presentations, J. Kaz instructs its salespersons to perform a number of sales steps, including: bringing a small "gift" to the consumer; obtaining detailed information about the consumer's medical condition and medical problems; showing the consumer a Craftmatic video; often engaging in price "negotiations" then executing a series of documents related to the purchase, including a contract, supplemental warranties, mattress replacement "guarantees," an "Information and Benefits" form, and in some cases completing credit applications.
18. Since the J. Kaz sales presentations occur in the home of the consumers, the consumers, prior to the delivery of their 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 most instances prior to the expiration of the consumers' three-day right to cancel.
19. During the in-home sales presentations, the J. Kaz salespersons make oral, visual, and written representations regarding the quality, comfort, characteristics, uses, and benefits of the Craftmatic bed.
20. Once the consumer contracts to purchase the adjustable bed from J. Kaz, delivery and assembly of the bed usually occurs in one to three weeks, but in almost every

transaction, delivery and assembly occurs after the consumer's cancellation right has expired.

21. In connection with the price "negotiation" for the Craftmatic Model I bed, the J. Kaz salesperson, by design, offers the consumer a "first day benefit" of \$250, a "benefit" that every prospective purchaser is offered for a Craftmatic Model I bed.
22. In connection with the price "negotiation" for the Craftmatic Model I bed, that bed is offered in combination with a television, VCR or microwave oven for a combined price, and the J. Kaz salesperson, by design, offers the consumer a \$250 price reduction if the consumer chooses to forego the appliance that is offered to the consumer as a "combination" offer.
23. In the event that the price "negotiation" between the J. Kaz salesperson and the consumer fails to result in a purchase agreement, J. Kaz often offers additional "reductions" from the initial price via telephone by its "executive sales team."
24. J. Kaz 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, and there is no smaller type font found on the sales contract. The "TERMS AND CONDITIONS OF SALE" include terms such as "CANCELLATION" rights, "REFUND POLICY," and "RETURN POLICY," the accelerated payment terms upon default and the terms for use of promotional certificates.
25. J. Kaz's sales contract limits the implied warranty of merchantability and fitness for a particular purpose for the Craftmatic beds to the terms of the express warranty set forth in the sales contract.

26. J. Kaz'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.
27. J. Kaz's sales contract includes a provision that requires the consumer to pay "reasonable collection charges and all reasonable attorney's fees whether or not suit is commenced to enforce collection."
28. In many cases, J. Kaz assists in arranging financing for consumer purchasers.
29. In isolated cases, J. Kaz delivered and assembled the Craftmatic bed prior to the expiration of the consumer's three-day cancellation right with the consumer required to sign a Delivery Receipt that, inter alia, stated that all sales were final and that the consumer was 100% satisfied with the bed.
30. J. Kaz provided consumers with a form entitled "IMPORTANT Warranty Registration" which states "Please complete the shaded areas and give this form to the delivery personnel to register your warranty." The shaded area of the form requests the name, address and telephone numbers of three of the consumers' friends or family members for entry into the Craftmatic sweepstakes. The form also states "there's no obligation, you're just entering them in the sweepstakes." The form does not disclose that one of the purposes of the form is to obtain the names and telephone numbers of other consumers that J. Kaz intends to call in an attempt to set up in-home sales presentations.

## **THE ATTORNEY GENERAL'S ADDITIONAL FACTUAL ASSERTIONS**

In addition to the facts contained in the Agreed Findings of Fact, the Attorney General makes the following assertions of fact, based on his investigation, which Craftmatic and J. Kaz specifically dispute, to the extent applicable to each of them:

33. J. Kaz utilizes videos, product information bulletins, and related sales documents executed at the time of the sale, some of which were created, in whole or in part, by Craftmatic.
34. During the initial telephone contact by J. Kaz, consumers are not clearly, affirmatively and expressly informed that the purpose of the contact is to effect a sale of Craftmatic beds.
35. Craftmatic's "sweepstakes" advertisements often picture a different bed than the bed that is the "sweepstakes" award.
36. J. Kaz uses a salesperson compensation plan which is designed to penalize or prevent the salesperson from selling the advertised beds.
37. In addition to those sales steps performed by the J. Kaz salesperson during the in-home sales presentation, as set forth in paragraph 17 of the Agreed Findings of Fact, the Attorney General asserts the following additional facts: during the in-home sales presentation, the salesperson performs a number of specifically required sales steps in addition to those enumerated in paragraph 17 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.

38. J. Kaz, in its sales presentations, quotes an initial price for the adjustable bed, and then the salesperson grants an immediate reduction, representing that the consumer is receiving a discount.
39. Craftmatic and J. Kaz, in the course of advertising and soliciting sales to Ohio consumers, including during face to face solicitation visits in consumers' homes, have made representations either directly, indirectly, or by implication that:
- a. the consumer can receive a special price, a discount or a price reduction from the "regular price" of the Craftmatic Adjustable Bed;
  - b. the discounts offered represent significant reductions in the price at which the beds normally sell;
  - c. the consumer can obtain a Craftmatic Adjustable Bed at a price comparable to prices charged for "quality flatbeds."
40. In some cases, J. Kaz salespersons have represented to consumers that using the Craftmatic bed will resolve the consumer's medical problems.
41. In some cases, J. Kaz salespersons have represented to consumers that the rental cost of a comparable adjustable hospital bed to be \$300 to \$400 a month.
42. In some cases, J. Kaz salespersons have discouraged consumers from utilizing Ohio's three-day right to cancel that is required in home solicitation sales.
43. In some cases, J. Kaz salespersons have failed to correctly complete the legally required Notice Of Cancellation form provided to purchasing consumers in connection with a home solicitation sale.
44. In some cases, J. Kaz failed to honor valid consumer cancellations.



45. In some cases, the consumer's three-day right to cancel period required to be provided by J. Kaz commenced prior to financing terms being set.
46. In some cases, J. Kaz salespersons failed to orally inform the buyer, at the time the home solicitation sale contract was signed, of the buyer's right to cancel.
47. In some cases, consumers were not provided material lending terms and conditions by J. Kaz prior to executing the home solicitation sales contract.
48. In some cases, the terms of the J. Kaz assisted financing were less favorable to the consumer than promised by J. Kaz.
49. In some cases, consumers were not provided by J. Kaz with material lending terms as required by the federal Truth In Lending Act, 15 U.S.C.A. 1601 et seq. and 12 C.F.R. Part 226 (also known as Regulation Z).

#### **AGREED CONCLUSIONS OF LAW**

50. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.07 and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
51. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Ohio Consumer Sales Practices Act.
52. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.
53. J. Kaz is a "supplier" as that term is defined in R.C. 1345.01(C) because it, at all times relevant herein, engaged in the business of effecting "consumer transactions" by

soliciting and selling adjustable beds to “individuals” in Franklin County and other counties in Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

54. J. Kaz was, at all relevant times hereto, a “seller” engaged in the business of effecting home solicitation sales by soliciting and selling adjustable beds to “buyers” at the buyers’ personal residences in Franklin County, and other counties in Ohio, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
55. Craftmatic is a “supplier” as that term is defined in R.C. 1345.01(C) because it, at all times relevant herein, engaged in the business of effecting “consumer transactions” by advertising adjustable beds to “consumers,” and conducting a “sweepstakes” with an award by chance in Franklin County and other counties in Ohio for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

**CONCLUSIONS OF LAW ASSERTED BY THE ATTORNEY GENERAL  
AND ADOPTED BY THE COURT**

56. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(8) by representing to consumers that a specific price advantage exists, when such in fact is not true. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).

57. A supplier commits unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-12(E) if their out-of-store advertising used such terms as "... *regularly* \_\_\_\_ *now* \_\_\_\_ ..." when the comparison was not to the supplier's true regular price, or when no fixed pricing existed at the time the consumer transactions were effected.
58. A supplier commits unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-12(G) if their out-of-store advertising made a comparison between the prices of similar, but non-identical goods and the non-identical goods are not of essentially similar quality to the advertised goods unless the dissimilar aspects are clearly and conspicuously disclosed in the advertisements.
59. A supplier commits unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-12(I) if its out-of-store advertising uses such terms as "sale," "discount," "bargain," or any other terms indicating a savings or reduction in price unless: (1) the savings or reduction is a meaningful reduction; or (2) the actual amount of percentage of savings is clearly and conspicuously indicated in the advertisement.
60. A supplier commits unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and OAC 109:4-3-10(A) if it makes representations, claims, or assertions of fact, orally or in writing, which would cause a reasonable consumer to believe such statements are true, unless the supplier, at the time such representations, claims or assertions are made, possessed or relied on a reasonable basis in fact such as factual, objective, quantifiable, clinical or scientific data or other

competent and reliable evidence which substantiates such representations, claims, or assertions of fact.

61. A supplier commits unfair, deceptive and unconscionable acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and 1345.03 if it makes false and misleading statements to consumers during sales presentations. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).
62. A supplier commits unfair, deceptive and unconscionable acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A), 1345.03(B)(1) if it subjects consumers to high pressure sales tactics by creating a false sense of urgency.
63. A supplier commits unfair and deceptive acts and practices in violation of 1345.02, 1345.23(A), 1345.23(B)(3), 1345.23(D)(2)-(4), and Ohio Adm. Code 109:4-3-11(A)(5) if it fails to provide a written agreement with the required Notice of Cancellation, fails to notify consumers of their cancellation rights, fails to accurately complete the cancellation notice prior to providing it to the consumer, misrepresents the consumer's right to cancel, or fails to honor valid notices of cancellation.
64. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and 1345.02(B)(10), if it fails to honor express warranties made, and if it makes specific express representations as to the quality and uses of its goods, then disclaims those representations in its sales and warranty documents. Such acts and practices have been previously determined by Ohio courts to violate the Consumer

Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).

65. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Adm. Code 109:4-3-11(A)(1) if it engages in direct solicitation sales without clearly, affirmatively, and expressly revealing at the time it initially contacts the consumer, before making any statement, asking any question, or entering the residence of the consumer, that the purpose of the contact is to effect a sale, stating in general terms the goods or services the supplier has to offer unless the consumer was solicited by mail.
66. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Adm. Code 109:4-3-11(A)(3) if it engages in direct solicitation sales and during the sales presentation represents that the consumer has been specially selected to receive a bargain, discount, or other advantage when such in fact is not true.
67. A supplier commits unfair and deceptive acts and practices in violation of 1345.02 and Ohio Admin. Code 109:4-3-03(B) if it makes an offer of sale of any goods or services when such offer is not a bona fide effort to sell such goods or services.
68. A supplier commits unfair and deceptive and unconscionable acts or practices in violation of R.C. 1345.02 and 1345.03(B)(1) if it knowingly takes advantage of the inability of the consumer to reasonably protect his or her interests because of his or her physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such

decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).

69. A supplier commits unfair and deceptive and unconscionable acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and 1345.03(B)(3) if it knows at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the transaction. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).
70. A supplier commits unfair and deceptive and unconscionable acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and 1345.03(B)(6) if it knowingly makes misleading statements of opinion upon which the consumers relied to their detriment. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).
71. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 and 1345.23 if it fails to disclose the material terms and conditions of any financing agreements, and if it fails to incorporate directly or by reference into the purchase contract such material terms and conditions, prior to the commencement of the three-day right to cancel. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such

decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).

72. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Adm. Code 109:4-3-02(A)(1) if it makes any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer all material exclusions, reservations, limitations, modifications or conditions.
73. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 if it utilizes sales contracts containing provisions that require the consumer to pay attorney's fees occasioned by a breach of contract. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and such decisions are and have been available for public inspection pursuant to R.C. 1345.05(A)(3).
74. A supplier commits unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Adm. Code 109:4-3-04 if it offers a "gift" to the consumer in connection with the consumer purchasing a product if in reality the sales price is for the combination of goods and it is a fiction that any portion of the offer is a "gift."

#### **NON-ADMISSION**

75. Neither Craftmatic nor J. Kaz admits that it engaged in any wrongdoing and the Court makes no finding that either company has operated in violation of the Consumer Sales Practices Act, R.C. 1345.01, et seq. or the Home Solicitation Sales Act, R.C. 1345.21,

et seq. Craftmatic and J. Kaz enter into this Agreed Final Judgment Entry and Order with the Attorney General to resolve the matters pertaining to them before this Court.

### **ORDER**

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

1. It is hereby DECLARED that the acts set forth above in the Conclusions of Law Asserted by the Ohio Attorney General and Adopted by the Court violate the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq. and/or Ohio's Home Solicitation Sales Act, R.C. 1345.21 et seq.
2. Defendants Craftmatic and J. Kaz, and on behalf of their officers, partners, agents, servants, salespersons, employees, independent contractors, successors or 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 Ohio, are hereby PERMANENTLY ENJOINED from engaging in acts and practices that violate the Consumer Sales Practices Act, R.C. 1345.01 et seq., including but not limited to those acts and practices described in this Order's Conclusions of Law to the extent applicable to each of them.
3. Defendant J. Kaz, and on behalf of its officers, partners, agents, servants, salespersons, employees, independent contractors, successors or 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 Ohio, is hereby PERMANENTLY ENJOINED from engaging in acts and practices that violate Ohio's Home Solicitation Sales Act, R.C. 1345.21 et seq., and/or the federal Truth in



Lending Act, 15 U.S.C.A. 1601 et seq. including 12 C.F.R. Part 226 (Regulation Z), including but not limited to those acts and practices described in this Order's Conclusions of Law related thereto.

4. Craftmatic and J. Kaz further agree, and it is Ordered, Adjudged, and Decreed, that they shall comply with all of the following with respect to the advertisement, solicitation and sale of Craftmatic beds in Ohio to the extent applicable to each of them:
  - a. Craftmatic and J. Kaz shall comply with O.A.C. 109:4-3-06. The sweepstakes entry may contain a space for the consumer's telephone number as long as the rules on the entry contain a statement that the entrant may be contacted by Craftmatic to see if the entrant is interested in learning more about Craftmatic Adjustable Beds. Craftmatic shall not manufacture or cause to have manufactured, and shall not distribute, a sweepstakes entry form that does not comply with this provision.
  - b. Craftmatic and J. Kaz will not make any price comparisons between flat beds and the Craftmatic Model I bed. Craftmatic and J. Kaz will not make any price comparisons between any Craftmatic bed and flat beds that use the words discount, sale, special value, dollar savings or percentage differential or any other language that references a price savings.
  - c. Craftmatic and J. Kaz will not make any price comparison by the use of such terms as "regularly ..., now ...," "...per cent off," "reduced from ... to ...," "save \$...," unless the comparison is to the supplier's regular price. Craftmatic and J. Kaz will not make any price comparisons to the price of the Model I or any model that is offered at a negotiated price.
  - d. Craftmatic and J. Kaz shall not represent to consumers that the Craftmatic Adjustable Bed provides any specific therapeutic benefit or that it will cure or resolve any consumer's medical problem, except that this Agreed Order 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.
  - e. J. Kaz shall not make any price comparison of the Craftmatic Adjustable Bed to a hospital bed and shall not represent that the Craftmatic Adjustable Bed is a hospital bed.

- f. Prior to the execution of the contract, J. Kaz will clearly and conspicuously offer a mattress exchange program that allows the consumer to request a one-time exchange of their mattress at no cost and no delivery charge to the consumer after 30 days but no later than 60 days after the consumer receives the mattress. If the consumer requests, J. Kaz will promptly exchange the consumer's mattress. Prior to the execution of the contract, J. Kaz will also clearly and conspicuously disclose in writing that the consumer cannot return the sleep system after the expiration of the cooling off period if the consumer finds it unacceptable, that the mattress exchange program is the consumer's sole remedy after the cooling off period if the consumer finds the sleep system unacceptable, and that the express warranties do not include a warranty as to the consumer's perceived comfort of the sleep system.
- g. Craftmatic and J. Kaz will 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."
- h. J. Kaz shall not use the Warranty Registration or any other form or practice that requires the consumer to provide names of friends or family members to J. Kaz or any other person or entity.
- i. Craftmatic and J. Kaz, in advertising, will not engage in price comparisons using any Craftmatic model bed or type that does not constitute more than 5% of J. Kaz actual sales in the preceding calendar year.
- j. J. Kaz shall clearly and conspicuously disclose in writing the price and availability for purchase of the Craftmatic Models II, III, the Monaco or any other model J. Kaz offers at a fixed price to every consumer during the in-home demonstration. J. Kaz will clearly and conspicuously disclose that the price of the Model I, or any model J. Kaz may offer at a negotiable price, is a negotiable price; and during the negotiation process therefor, J. Kaz will not use language such as discount, sale, special value, dollar amount or percentage off, or words of similar meaning. J. Kaz does not violate this provision if it states during the price negotiation that it is reducing its price offer. J. Kaz will create internal compliance procedures to ensure that those persons identified in Paragraph 3 of this Order comply with this provision.
- k. J. Kaz shall not use the "Price Release Waiver" or any similar form or representation regarding the future availability of the Craftmatic bed at a specific price.
- l. J. Kaz shall cease using any form that the consumer signs in connection with the 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.

- m. J. Kaz shall cease making any representation as to the number of satisfied bed purchasers unless and until Craftmatic and/or J. Kaz have conducted scientifically valid and significant survey research that substantiates any such statement. It shall not be a violation of this provision if Craftmatic and/or J. Kaz make a representation as to the number of beds sold and delivered during any specific time period providing said representation is true and can be substantiated.
- n. J. Kaz shall not use a sales plan or method of compensation of sales personnel which is designed to penalize or prevent a salesperson from selling the advertised goods.
- o. J. Kaz shall not complete online financing applications unless it has a consumer's prior written approval.
- p. J. Kaz will present to the consumer and have executed all sales-related financing documents in a face-to-face meeting between the consumer and a J. Kaz agent or representative.
- q. J. Kaz shall not state orally or in writing to the purchasing consumer that "All Sales Are Final."
- r. J. Kaz shall not request or permit a consumer to sign blank or partially completed credit applications or credit card receipts.
- s. J. Kaz shall not use the words "Special Counsel" or any similar term in reference to customer service contacts provided to the consumer.
- t. When the consumer expresses interest in financing their purchase through lenders made available by J. Kaz, then J. Kaz shall provide the consumer with a choice, if available, of financing companies and the following:
  - i. The identity of potential lenders and whether the financing would be open-ended (revolving credit) or close-ended (retail installment credit) and their respective Annual Percentage Rate.
  - ii. All disclosures required by the Federal Truth in Lending Act, 15 U.S.C.A. §1601 *et seq.* including 12 C.F.R. Part 226 (Regulation Z).
  - iii. A copy of the credit application, signed by the consumer, that is used to apply for the financing.
  - iv. Disclosure that financing obtained through J. Kaz is pursuant to agreements between those lenders and J. Kaz and that, based on the consumer's credit rating, the terms may or may not be the best available to the consumer.
- u. J. Kaz 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 the pillows used during the demonstration do not actually represent the feel of the Craftmatic Adjustable Bed mattress. J. Kaz will not use language to state or imply that it provides a warranty, guarantee or words of similar meaning, as to the consumer's comfort.

- v. Craftmatic and J. Kaz, in advertising, will comply with the "FTC Guide Concerning Use of Endorsements and Testimonials in Advertising" as it relates to endorsements and testimonials.
  - w. Craftmatic and J. Kaz will not advertise any item for which there is no genuine attempt to sell such item. J. Kaz will not offer any item for which there is no genuine attempt to sell such item.
  - x. J. Kaz will clearly and conspicuously place on the front page of the purchase contract its return policy. In addition, the following statement in 14-point bold red type shall appear on the front page of the purchase contract: See Reverse Side for Complete Terms and Conditions of Sale. The Terms and Conditions of Sale shall be printed in no less than 12-point type.
  - y. J. Kaz shall, as part of its sales representative training program, instruct present and future sales representatives that they are not to disparage any Craftmatic Adjustable Bed in any respect. It may, however, refer to the Craftmatic Model III Adjustable Bed as the "economy model" or "suitable for short term or temporary use."
  - z. In connection with any advertisements or promotional materials prepared by Craftmatic, it shall not be a violation of this Agreed Order if such material clearly and conspicuously states "Not Valid In Ohio."
5. Craftmatic and J. Kaz are provided a ninety (90) day period from the filing of this Agreed Order signed by the parties and the Court to come into compliance with the provisions of paragraphs 4a-z and a one hundred eighty (180) day period to come into compliance with any provision that involves Craftmatic's television advertisements or its sweepstakes. J. Kaz shall produce and utilize a new purchase contract that is compliant with this Agreed Order and a new mattress exchange policy described in subparagraph 4.f. within a sixty (60) day period. It shall not be a violation of this provision if a third party distributes a sweepstakes entry form that violates this Agreed Order. Within fifteen (15) days of the filing of this Agreed Order, J. Kaz shall

communicate to its salespersons the fact that the Agreed Order has been filed and specifically that it includes the provisions of subparagraphs 4.c., d., e., h., k., o., q and u. This undertaking by J. Kaz will have no impact on the implementation periods described in this paragraph.

6. J. Kaz shall pay \$200,000.00 pursuant to R.C. 1345.07(B) to the Attorney General for reimbursement to the consumers identified on Addendum A, attached hereto and incorporated by reference, payment to be as follows: \$50,000.00 within fifteen (15) days of the entry of this Agreed Order and the balance of \$150,000 within thirty (30) days of the entry of this Agreed Order. The payment shall be made by wire transfer to the Office of the Attorney General, Consumer Protection Section, in accordance with the wire transfer instructions provided by the Attorney General. Restitution distribution shall be at the sole discretion of the Attorney General, but participation in the distribution shall be limited to those eligible individuals identified on Addendum A hereto. The Attorney General agrees to obtain a signed release of liability in the form attached hereto as "Addendum B," from every consumer who participates in this restitution distribution. The Attorney General shall deliver to Craftmatic's or J. Kaz's attorneys the original signed and notarized releases within fifteen (15) days of their receipt by the Attorney General.
7. Within thirty (30) days of the entry of this Agreed Order, Craftmatic shall pay a civil penalty of \$20,000.00 and J. Kaz will pay a civil penalty of \$80,000.00, each pursuant to R.C. 1345.07(D). On or before the first anniversary of the entry of this Agreed Order, Craftmatic will pay an additional civil penalty of \$5,000.00 and J. Kaz will pay an additional civil penalty of \$20,000.00, each pursuant to R. C. 1345.07(D). On or

before the second anniversary of the entry of this Agreed Order, Craftmatic will pay an additional civil penalty of \$5,000.00 and J. Kaz will pay an additional civil penalty of \$20,000.00, each pursuant to R. C. 1345.07(D). On or before the third anniversary of the entry of this Agreed Order, Craftmatic will pay an additional civil penalty of \$5,000.00 and J. Kaz will pay an additional civil penalty of \$20,000.00, each pursuant to R. C. 1345.07(D). The payments shall be made by wire transfer to the Office of the Attorney General, Consumer Protection Section, in accordance with the wire transfer instructions provided by the Attorney General.

8. J. Kaz shall mediate in good faith any consumer complaint received by the Attorney General subsequent to the execution and filing of this Agreed Order.
9. As a means of ensuring compliance with this Court's Order, and with the consumer protection laws of Ohio, Craftmatic shall maintain in their possession and control, for a period of three (3) years, all business records relating to Craftmatic's advertising of and sweepstakes related to Craftmatic Adjustable Beds in Ohio. Craftmatic shall permit the Ohio Attorney General or his designated representative, upon five (5) business days notice, to inspect and/or copy any and all records during normal business hours. J. Kaz shall maintain in their possession and control, for a period of three (3) years, all business records relating to J. Kaz's solicitation and sale of Craftmatic Adjustable Beds in Ohio. J. Kaz shall permit the Ohio Attorney General or his designated representative, upon five (5) business days notice, to inspect and/or copy any and all records during normal business hours.
10. Within thirty (30) days of the entry of this Agreed Order, Craftmatic shall pay the Ohio Attorney General \$15,000.00 and J. Kaz will pay \$35,000.00 for attorney fees and

investigative costs. The payments shall be made by wire transfer to the Office of the Attorney General, Consumer Protection Section, in accordance with the wire transfer instructions provided by the Attorney General.

11. Defendants shall pay all court costs in this case. It is further agreed by the parties that upon the execution and filing of this Agreed Order they will execute and file a Stipulation of Dismissal, pursuant to Civ. R. 41(A)(1)(b), in the related case captioned *State of Ohio v. Craftmatic Organization Inc. and J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh*, Case No. 03-CVH-12-14158. Said Stipulation of Dismissal shall be with prejudice, each side to bear its own attorney fees and costs, with court costs to be paid by Craftmatic and J. Kaz. The form of the Stipulation is attached hereto as Addendum “C.”
12. The Attorney General shall, absent exigent circumstances, give Craftmatic and/or J. Kaz fourteen (14) calendar days notice before filing a motion or other pleading seeking contempt of court or other sanctions for violation of this Agreed Order. The notice shall be in writing and set forth those provisions in the Agreed Order that the Attorney General believes have been violated. The fourteen (14) calendar days notice period shall provide an opportunity for Craftmatic and/or J. Kaz to respond to the assertions of the Attorney General and the parties may use the notice period to attempt a resolution of the concerns. Upon receipt of the written notice, Craftmatic and/or J. Kaz shall respond in writing within seven calendar days and may request a meeting with the Attorney General (or a staff person designated by the Attorney General) for the purpose of attempting to resolve the concerns set forth in the Attorney General’s notice. The Attorney General shall not unreasonably deny the request for such a meeting. This

provision does not preclude the Attorney General from filing a motion or other pleading seeking contempt of court or other sanctions without complying with this provision if the Attorney General believes such immediate action is necessary.

13. The Attorney General may notify or serve J. Kaz as provided under this Agreed Order or in any subsequent action at the following address and telephone number:

J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh  
Attention: John Girty  
4230 Verona Road  
Verona, Pennsylvania 15147  
(412) 242-2200

The Attorney General may notify or serve Craftmatic as provided under this Agreed Order or in any subsequent action at the following address and telephone number:

Craftmatic Organization Inc.  
Attention: Stanley Kraftsow  
2500 Interflex Drive  
Trevose, Pennsylvania 19053  
(215) 639-1310

Craftmatic and/or J. Kaz, if necessary, may notify the Attorney General under this Agreed Order at the following address and telephone number:

Mr. Robert Hart  
Assistant Attorney General  
Consumer Protection Section  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215  
(614) 466-1305

If Mr. Hart is unavailable, notification to the Attorney General at the following address and telephone number:

Senior Deputy Attorney General  
Consumer Protection Section  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215  
(614) 644-9618



14. Failure of the Attorney General to timely enforce any term, condition, or requirement of this Agreed Order shall not provide, nor be construed to provide, Craftmatic or J. Kaz a defense for noncompliance with any term of this Agreed Order or any other law, rule, or regulation; nor shall it stop or limit the Attorney General from later enforcing any term of this Agreed Order or seeking any other remedy available by law, rule, or regulation.
15. J. Kaz shall inform those officers, agents, servants, salespersons, employees, independent contractors, successors or assigns involved in the sale of a Craftmatic Adjustable Bed to consumers in the State of Ohio of the content of this Agreed Order.
16. Craftmatic shall inform those officers, agents, servants, employees, independent contractors, successors or assigns involved in the development and/or placement of advertisements or contests in Ohio of the content of this Agreed Order.
17. Craftmatic and J. Kaz shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.
18. This Agreed Order resolves and terminates any and all claims asserted in this case by the Attorney General, except that this Court retains jurisdiction of this case solely for the purpose of enforcing the terms and conditions of this Agreed Order, if necessary.

IT IS SO ORDERED.

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

\_\_\_\_\_  
Judge Lynch

APPROVED:

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Pittsburgh

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Karen F. Lederer  
Troutman Sanders LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174

Counsel for Craftmatic Organization, Inc.

# Addendum A

	Last Name	First Name
1	Ackley	William and Pansy
2	Aleshire	Kathleen and Jimmy
3	Ball	c/o Barbara (Roy and Bertie)
4	Barnett	Norman
5	Baumgarner	Margaret
6	Baxter	William and Mary
7	Behnke	Catherine
8	Blosser	Helen
9	Bollinger	Natalia & Art
10	Brown	Nellie
11	Bryan	Hilda and William
12	Buffington	Nina
13	Chiappone	Eva
14	Chillo	Antonio
15	Clark	LaDonna & Robert
16	Condit	Milo and Doris
17	Cumba-Rodriguez	Margarita and Alvaro
18	Cutright	Ida
19	Donahue	Richard
20	Estep	Joan
21	Fahrbach	Rosemary
22	Ferguson	Scott
23	Ferguson	Charles and Phyllis
24	Ford	Esther
25	Friedt	Blake & Wilma
26	Fullenkamp	James
27	Gennaro	Anthony
28	Gibson	James & Juanita
29	Gilbert	Dorothy
30	Gillett	Jerry and Judy
31	Goldschmidt	Henry
32	Griffith	Angela
33	Griggs	Rosalie
34	Grove	Raymond
35	Gump, Jr.	Irvin
36	Gundel	Claire
37	Hattery	Lillian
38	Hemmelgarn	Kathryn
39	Hobbs	Douglas
40	Hodgman	Ethel & Glenn
41	Holder	Thora
42	Holeton	Allen and Carol
43	Horning	Oliver
44	Howell	Iris
45	Hughart	Roger and Juanita
46	James	Glenford and Hazel
47	Jodrey	Ella
48	Kaplan	Barbara Jean
49	King	Betty
50	Krenzel	John & Meredith
51	Lampshire	Vera

	Last Name	First Name
53	Lindsey	Robert & Lula
54	Lindsey	Elsie
55	Little	Alda
56	Loder	Ricky
57	Louden	Mary
58	Love	Kenneth
59	Lucas	Albert & Barbara
60	Manion	Virginia
61	Manning	Alice
62	McNeeley	Margaret
63	Michael	Mary
64	Miller	Jean
65	Monschein	Marilyn
66	Montgomery	Elizabeth
67	Morrison	Mary Lou
68	Mosher, Sr.	Thomas
69	Myers	Marion
70	Park	Thomas
71	Parsons	Dormal
72	Peppard	Joyce
73	Pitts	Charlie
74	Raies	Gregory
75	Rinehart	Vivian
76	Ringebach	Ruby
77	Robinson	Larry and Sharon
78	Sarver	Lelia
79	Schillinger	Patricia
80	Schneider	Ruth
81	Schwarz	Robert
82	Sheridan	Pat
83	Skully	Adeline
84	Smith	Donald & Marion
85	Smith	Rose
86	Smith	Duane & Lucille
87	Smith	David and Helen
88	Stewart	Ronald
89	Stover	Wilda (Geraldine)
90	Stright	Daniel
91	Sweatt	Lorali
92	Terry	Pearlie
93	Thomas	Richard and Regina
94	Thompson	Janice
95	Tilton (Campana)	Gae and Tom
96	Twyman	Earlene
97	White	Carl
98	Wildman	Sara
99	Wittway	Jenny
100	Woods	Mabel
101	Wright	Kathleen

Addendum A

	Last Name	First Name		Last Name	First Name
52	Lewis	Kathryn			

Addendum B

SETTLEMENT AGREEMENT AND GENERAL RELEASE

\_\_\_\_\_ and \_\_\_\_\_ residing at \_\_\_\_\_, Ohio, \_\_\_\_\_ (defined herein as "BUYER/RELEASOR"), in consideration of the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and other good and valuable consideration received from J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh and Craftmatic Organization, Inc. (defined collectively herein as "RELEASEES"), receipt whereof is hereby acknowledged, hereby agree as follows:

BUYER/RELEASOR hereby release and discharge the RELEASEES, RELEASEES' officers, partners, agents, servants, salespersons, employees, independent contractors, successors or assigns, and all persons acting in concert and participation with them (collectively, the "RELEASED PARTIES"), from any and all actions, causes of action, suits, charges and obligations, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which BUYER/RELEASOR ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of time to the date of this RELEASE, against the RELEASED PARTIES or any of them, and more specifically arising out of the purchase of a Craftmatic Adjustable Bed.

Wherever the sense of this SETTLEMENT AGREEMENT AND GENERAL RELEASE requires, a singular number shall be construed to be plural and vice versa, and words of the masculine gender shall be construed to be feminine and vice versa.

This SETTLEMENT AGREEMENT AND GENERAL RELEASE may only be changed in writing signed by both BUYER/RELEASOR and RELEASEES.

IN WITNESS WHEREOF, the BUYER/RELEASOR has executed this SETTLEMENT AGREEMENT AND GENERAL RELEASE on the \_\_\_\_ day of \_\_\_\_\_, 2005.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
BUYER/RELEASOR

\_\_\_\_\_  
BUYER/RELEASOR

STATE OF OHIO, COUNTY OF \_\_\_\_\_ ss.:

On \_\_\_\_\_, 2005 before me Notary Public personally came \_\_\_\_\_ and \_\_\_\_\_ to me known, and known to me to be the individual(s) described in, and who executed the foregoing Settlement Agreement and General Release, and duly acknowledged to me that (t)(s)he(y) executed the same.

\_\_\_\_\_  
Notary Public

Addendum C

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**

STATE OF OHIO <i>EX REL.</i>	)	
ATTORNEY GENERAL JIM PETRO,	)	CASE NO. 03-CVH-12-14158
	)	
PLAINTIFF,	)	JUDGE PFEIFFER
	)	
v.	)	
	)	
CRAFTMATIC ORGANIZATION, INC.	)	
	)	<b>STIPULATION OF DISMISSAL</b>
And	)	<b>WITH PREJUDICE</b>
	)	
J. KAZ, INC. d/b/a	)	
CRAFTMATIC OF PITTSBURGH,	)	
	)	
DEFENDANTS.	)	

Pursuant to Civil Rule 41(A)(1)(b) the State of Ohio ex rel Attorney General Jim Petro, Craftmatic Organization, Inc., and J. Kaz, Inc. d/b/a Craftmatic of Pittsburgh, hereby stipulate to the dismissal of this action with prejudice, each party to bear their own legal fees and costs, Craftmatic Organization Inc. and J. Kaz to pay all court costs.

APPROVED:

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Erin Leahy, AAG [0069509]  
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