LAURENCE J. RICH & ASSOCIATES
ATTORNEYS AT LAW
5675 DTC BOULEVARD, SUITE 210
GREENWOOD VILLAGE, COLORADO 80111
PHONE: 303.721.0700 FAX: 303.721.0703

LAURENCE J. RICH
JENNIFER A. GORDON
OF COUNSEL

BETH R. GOLDSTEIN*
TODD A. MYERS
*ALSO ADMITTED IN NEW YORK

April 9, 2002

Via e-mail tsr@ftc.gov & Federal Express

Federal Trade Commission
Office of the Secretary
Room 159
600 Pennsylvania Ave.
Washington D.C. 20580

Re: Federal Trade Commission File Number R411001

Dear Sir or Madam:

Please be advised that this office represents Success Marketing, Inc., a Colorado Corporation. Our client has requested that we provide you with comments regarding their business and their involvement with the telemarketing industry for your consideration in discussing the proposed rules.

Success Marketing, Inc. is a distributor of the Craftmatic Adjustable Bed in Colorado, Utah, Washington, Oregon, Idaho and Wyoming. Success Marketing, Inc. began selling the electric adjustable bed in 1992 in the State of Colorado and has greatly expanded its market since it started business. The Craftmatic Adjustable Bed is promoted heavily through local, regional and national television advertising, direct mail advertising, magazine and newspaper inserts and in recent years telemarketing to prospective consumers. The proposed rules will have a profound adverse economic impact upon our client and all people with whom they deal.

Telemarketing for Craftmatic and its distributors has two aspects:

1. Customers who respond to the Company's advertising and insert programs by mail or by calling an independent 800 telephone company. The mail responses request a telephone number where the consumer may be reached. The 800 telephone company acquires the consumer's name, address and telephone number. Those telephone numbers are stored in Predictive Dialers for a later call by a telemarketing operator from either the Company or the local distributor; and

2. Consumers whom Craftmatic believes, because of their demographics, would have an interest in a Craftmatic Adjustable Bed. Existing Craftmatic bed owners are also called to determine if they would like to trade-in their existing bed for an upgraded or larger size

model or to replace an old mattress.

In both instances the consumer is asked to set an appointment with Craftmatic sales representative for a visit with the consumer in their home to present the Bed and its benefits. There is no attempt to sell the bed during these telemarketing calls. No sales presentation occurs without a prior appointment.

Our client employs approximately 45 telemarketing operators working two (2) shifts per day, five (5) days per week. The demographics of a typical operator/telemarketer are: (i) an undereducated individual in the lower range of the economical scale. (Our client provides transitional and permanent telemarketing employment to troubled youth and others who are not easily employable elsewhere. This also includes, but is not limited to the handicapped); (ii) a person providing a second income to a household through either a second job or a spouse; or (iii) a senior citizen seek to augment their social security-retirement income. Operator/telemarketer is an entry level position where success build self-esteem providing the incentive to seek or move up to a better position. These are the people who can least afford a reduction in income and those who would be most affected by the proposed Telemarketing Sales Rule.

In 2001 telemarketing, business to business and business to consumer, provided six million (6,000,000) jobs and had total sales of $661 Billion with sales to consumers accounting for $278 Billion. While there may be a small vocal group demanding that telemarketing be prohibited or severely restricted, the consumer has supported telemarketing by casting their vote with their wallet to the tune of $278 Billion annually. There can be no doubt that further restrictions on telemarketing will drastically affect those numbers and will do so in a time when the object of the government should be strengthening a weakening economy rather than further weakening it by restrictive action that is not needed.

Since our client's sales emanate primarily from personal face to face visits set up by their telemarketing department in the customer's home, the possibility of telemarketing fraud or trickery is eliminated. Sales concluded in a consumers home is already effectively regulated by each state's statutes and enforced by each state's Attorney General's staff. The suggested rule only adds an unnecessary additional layer of governmental supervision. Each sale will demand additional administrative and personal time and expense at the company level. This will decrease productivity and profit resulting in reduced sales and a reduced sales force. The purposed rule directly chills commerce. Further, governmental funding of an enforcement arm to support an unnecessary additional layering of government supervision is wasteful.

The "domino effect" of these regulations has to be considered as well. If the business and employment of Craftmatic and other telemarketers is reduced, so too are the number of sales representatives, office personnel as well as the business and employment of their suppliers, manufacturers, advertising companies, printing businesses, television, newspapers, etc. Our client employs approximately 50 other corporate employees, independent delivery contractors, advertising suppliers, pays the landlord, telephone service providers, and financing providers which economy supports all of their families. This will also negatively impact our clients potential customers, many of whom do not have the ability, for whatever reason, to be able to contact our client on their own. The list of those affected is endless.

Our client supports the position offered to you by the Craftmatic Organization Inc.'s regulatory counsel in his comments made to you by separate letter.

First, the existing State regulations properly address the need and enforcement procedures for “Do Not Call Lists”. Suggested regulations add unnecessary additional layers of government supervision and enforcement to address the same issues.

Second, the existing statutory exemption for Craftmatic as set forth in §310.6 (c) makes sense. The proposed new limitation on that exemption not only unreasonably burdens our clients operations, but also provides consumers with a contrived ability to contest or breach a valid contract made in a face to face sale, through a wrongful court claim of an “abusive telemarketing act or practice.” It also conflicts with other state laws that require calls to consumers. In Colorado there exists a law that requires auto repair garages to telephone the consumer to obtain consent for additional needed vehicle repairs. Under the proposed definitions, these calls would be considered prohibited telemarketing calls if the consumer happened to be listed on a Do Not Call List. The conflict of the two laws is obvious.

Finally, we do not believe that “potential personal inconvenience” is a federally protected interest that requires the implementation of a federal law to control what existing federal and state laws already control. The success of telemarketing sales and its monetary impact on the economy proves that many people are not inconvenienced by the calls and welcome the ability to conduct business on the telephone. The implementation of a “National Do Not Call List” unreasonably limits their first amendment protection of free speech.

Our client understands the concerns for individual privacy and deterrence of telemarketing fraud or trickery that gave impetus to the proposed rulemaking. However, our client feels that current federal regulations combined with state laws restricting the telemarketing industry adequately address those concerns. At a minimum, the proposed rulemaking should be modified to allow an exception for companies like Craftmatic and Success Marketing, Inc. who employ telemarketing only to arrange appointments for sales presentations rather than to make direct sales over the telephone. The separate face to face sales presentation provides consumers with ample opportunity to make an informed and reflective decision regarding any purchase.

Our client also understands that the proposed rulemaking likely enjoys large public support because the public often feels inconvenienced by intrusions by the telemarketing industry as a whole. The general public, however, does not typically consider the overall economic impact such restrictions would have. Our client respectfully urges that FTC weigh the economic impact of the regulation against public concerns. Given the certain negative effect of the proposed regulation on the economy and the already extensive federal and state controls that govern the telemarketing industry. The rules are too broad to control only the telemarketing industry. Success Marketing, Inc. requests these proposals **<u>NOT</u>** be enacted in the proposed form and companies who do not complete sales over the telephone be left to conduct business as usual.

Thank you for your consideration.

Yours very truly

Laurence J. Rich

LJR/jma
xc: Success Marketing, Inc.