

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
LEACHCO, INC.,	:	Filed Electronically
Defendant	:	

**COMPLAINT FOR DECLARATORY JUDGMENT**

**THE PARTIES**

1. BabyAge.com, Inc. ("BabyAge") is a Delaware corporation having its principal place of business at 360 Stewart Road, Wilkes-Barre, PA 18706.

2. Defendant C. J. Leachco, Inc. ("Leachco") upon information and belief, is an Oklahoma corporation maintaining its principal place of business at 130 E. 10<sup>th</sup> Street, Ada, OK 74820.

**JURISDICTION AND VENUE**

3. This is an action seeking a declaratory judgment that BabyAge's sale of its Cozy Comfort pillow does not constitute infringement of U.S. Patent No. 6,760,934 for a Symmetrically Contoured Support Pillow ("the '934 patent").

4. This Court has subject matter jurisdiction under the provisions of 28 U.S.C. §§1331 and 1338 in that this action presents a claim arising under the laws of the United States, a claim arising under an act of Congress relating to patents and under the Federal Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

5. This Court has personal jurisdiction over Leachco in that Leachco advertises and does substantial business in the Commonwealth of Pennsylvania.

6. Venue is proper in this judicial district under 28 U.S.C. §1391.

**ACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR DECLARATORY RELIEF**

7. BabyAge is an on-line retailer of pregnancy, baby, infant and toddler products.

8. Leachco, on information and belief, is a manufacturer of pregnancy and baby products.

9. By letter dated April 3, 2007, Leachco's counsel delivered to BabyAge a letter accusing BabyAge's Cozy Comfort pillow of infringing the '934 patent and an unqualified demand that BabyAge cease selling its Cozy Comfort pillow and pay Leachco unspecified damages. Attached as Exhibit A is a copy of the letter. A

copy of the '934 patent is attached as Exhibit B and a photograph of the Cozy Comfort pillow is attached as Exhibit C.

10. BabyAge categorically denies that its Cozy Comfort pillow infringes the '934 patent.

11. The Cozy Comfort pillow is in the form of a rectangle, with legs that extend straight downward and a top portion that extends straight across.

12. The Cozy Comfort pillow does not have a semi-circular crown as required by the '934 patent.

13. The Cozy Comfort pillow does not have legs that extend downwardly and outwardly divergently away from the crown as required by the '934 patent.

14. The claims of Leachco create an immediate and actual controversy between these parties, requiring determination by a Court of competent jurisdiction. BabyAge seeks that determination by filing this action.

15. Leachco's assertions that BabyAge is violating its legal rights irreparably injures and adversely affects BabyAge and unless prevented by this Court will continue to so affect BabyAge's business.

16. To resolve the legal and factual questions raised by Leachco and to afford relief from the uncertainty and controversy which Leachco's assertion has

precipitated, BabyAge is entitled to a declaratory judgment of its rights under 28 U.S.C. §§ 2201-02. The sale of the Cozy Comfort pillow by BabyAge is not in violation of any rights defendant might have pursuant to 35 U.S.C. § 281 *et seq.*

**WHEREFORE, Plaintiff requests the Court to issue its adjudication, declaring that:**

- (A) The Cozy Comfort pillow does not infringe the '934 patent;
- (B) The '934 patent is invalid;
- (C) Leachco does not have a basis to enjoin BabyAge from selling its Cozy Comfort pillow;
- (D) BabyAge has the right to sell its Cozy Comfort pillow free from interference by Leachco, its officers, agents, servants, employees, attorneys, privies, representatives, successors, and assigns, and any and all persons acting by, through, or under authority from Leachco, either separately or jointly;
- (E) Leachco, its officers, agents, servants, employees, attorneys, privies, representatives, successors, and assigns, and any and all persons in active concert or participation with or under authority from Leachco, either separately or jointly, be enjoined permanently from:

- 1) Interfering with, or threatening to interfere with the manufacture, sale or use of the Cozy Comfort pillow by BabyAge, its related companies, successors, assigns or customers;
- 2) Instituting or prosecuting any suit or other proceeding placing in issue the right of BabyAge or its related companies, successors, assigns or customers to make, sell or use the Cozy Comfort pillow;

and

(F) Such other relief as the Court deems appropriate under all the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Smolow". The signature is written in a cursive style with a large, sweeping initial "M".

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