

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BABYAGE.COM, INC.,

Plaintiff-Counterclaim Defendant,

CIVIL ACTION NO: 3:07-CV-1600

v.

LEACHCO, INC.,

(JUDGE CAPUTO)

Defendant-Counterclaim Plaintiff,

and

JAMIE S. LEACH,

Counterclaim Plaintiff,

v.

JOHN M. KIEFER, JR.

Counterclaim Defendant.

MEMORANDUM ORDER

Presently before the Court is Defendant-Counterclaim Plaintiff Leachco, Inc.'s ("Leachco") motion to dismiss Counterclaim Defendant John M. Kiefer, Jr.'s counterclaim. (Doc. 30.)

Plaintiff-Counterclaim Defendant Babyage.com, Inc. ("Babyage.com") brought the instant action against Defendant-Counterclaim Plaintiff Leachco on August 30, 2007 for declaratory judgment that Babyage.com's sale of the Cozy Comfort pillow does not constitute patent infringement of the Symmetrically Contoured Support Pillow. (Doc. 1.)

Defendant-Counterclaim Plaintiff Leachco filed its Answer on November 2, 2007. (Doc. 5.) At that time, Counterclaim Plaintiff Jamie S. Leach joined as a Counterclaim Plaintiff. (Doc. 5.) In its Answer, Leachco and Counterclaim Plaintiff Leach filed

counterclaims against Babyage.com and John M. Kiefer, Jr. for patent and trademark infringement. (Doc. 5.) On November 7, 2007, Defendant-Counterclaim Plaintiff Leachco filed a Third Party Complaint against John M. Kiefer, Jr. (Doc. 8.) On February 1, 2008, Counterclaim Defendant Kiefer filed an Answer to the Third Party Complaint and a counterclaim against Leachco for violations of the Sherman Act, 15 U.S.C. § 1. (Doc. 25.)

On February 19, 2008, Plaintiff-Counterclaim Defendant Leachco filed the present Motion to Dismiss and supporting brief. (Docs. 30, 31.) Leachco's motion seeks to dismiss the Kiefer Counterclaim pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rule of Civil Procedure. (Doc. 30.)

On March 4, 2008, Counterclaim Defendant Kiefer moved to withdraw his claim against Plaintiff-Counterclaim Defendant Leachco. (Doc. 38.) On March 6, 2008, the Court approved Kiefer's withdrawal of the counterclaim against Leachco. (Doc. 40.) The claim that is the subject matter of Leachco's motion to dismiss has been withdrawn. Therefore, the motion to dismiss Kiefer's counterclaim by Leachco is moot.

NOW, this 20th day of March 2008, IT IS HEREBY ORDERED that Plaintiff's motion to dismiss (Doc. 30) is **DENIED as moot**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge