

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

BABYAGE.COM, INC.,

Plaintiff-Counterclaim Defendant,

v.

LEACHCO, INC.,

Defendant-Counterclaim Plaintiff,

and

JAMIE S. LEACH,

Counterclaim Plaintiff,

v.

JOHN M. KIEFER, JR.,

Counterclaim Defendant.

No. 3:07-cv-01600-ARC

(Judge A. Richard Caputo)

(electronically filed)

ANSWER AND COUNTERCLAIMS

The Defendant, Leachco, Inc., hereby answers and responds to the numbered paragraphs of the Complaint as follows:

1. Admitted.
2. Admitted except that the Defendant's correct corporate name is Leachco, Inc.
- 3-9. Admitted.
- 10-16. Denied.

## Counterclaims

### COUNT ONE

The Defendant-Counterclaim Plaintiff Leachco, Inc. ("Leachco") and the Counterclaim Plaintiff Jamie S. Leach counterclaim against the Counterclaim Defendants Babyage.com, Inc. ("Babyage.com Inc.") and John M. Kiefer, Jr. as follows:

- I. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.
2. Jamie S. Leach is individual residing in Oklahoma.
3. Babyage.com, Inc. is a corporation having a residence in this District and having a regular and established place of business in this District, and has committed acts of infringement within this District.
4. John M. Kiefer, Jr. is an individual having a regular and established place of business in this District, and has committed acts of infringement within this District.
5. Jurisdiction is based on 28 U.S.C. § 1338(a).
6. United States Patent No. 6,760,934 was issued on July 13, 2004.
7. At all times material hereto, Jamie S. Leach has been the owner of U.S. Patent No. 6,760,934.
8. At all times material hereto, the Leachco has been the exclusive licensee of U.S. Patent No. 6,760,934 from Jamie S. Leach.
9. Babyage.com, Inc. has infringed U.S. Patent No. 6,760,934 by its manufacture, use, sale and offer for sale of pillow products.
10. Babyage.com, Inc. has actively induced infringement of U.S. Patent No. 6,760,934 by others, including its customers for pillow products.
- II. Babyage.com, Inc. has engaged in contributory infringement of U.S. Patent No. 6,760,934 by sale of pillow products to its customers.

12. John M. Kiefer, Jr. has actively induced infringement of U.S. Patent No. 6,760,934 by others, including Babyage.com, Inc. and its customers.

13. Leachco and Jamie S. Leach have complied with the marking requirements of 35 U.S.C. § 287(a).

14. The actions described in paragraphs 9, 10, 11 and 12 have been willful.

15. Leachco and Jamie S. Leach have been damaged by the actions described in paragraphs 9, 10, 11, 12 and 14.

### COUNT TWO

Leachco counterclaims against Babyage.com, Inc. as follows:

16. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.

17. Babyage.com, Inc. is a corporation having a residence in this District.

18. Jurisdiction is based on 28 U.S.C. §§ 1337(a) and 1338(a).

19. Leachco is a manufacturer of baby-related goods as well as adult comfort and maternity pillows, and sells these products in interstate commerce through a network of retailers.

20. Babyage.com, Inc. has sold and continues to sell baby-related goods in interstate commerce by means of an Internet website that it operates and controls. This website is found at found at [www.babyage.com](http://www.babyage.com).

21. On the website identified in paragraph 20, Babyage.com, Inc. has caused the display of, and continues to display, at least one web page describing products of the Counterclaim Plaintiff Leachco. At least one instance of such a web page is found at: <http://www.babyage.com/brands/leachco.htm>.

22. The web page or pages identified in paragraph 21 purportedly describe Leachco products, show images of Leachco products, and include multiple usages of Leachco trademarks, including "Leachco." Links within the purported Leachco product descriptions on these web pages bring up other web pages on the babyage.com web site. Rather than displaying Leachco products, however, these linked web pages instead offer to sell the products of competitors of Leachco, including products manufactured at the instance of Babyage.com, Inc.

23. The web pages described in paragraphs 21 and 22 constitute false designations of origin, false and misleading descriptions of fact, and false and misleading representations.

24. The web pages described in paragraphs 21 and 22 are likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection and association of Babyage.com, Inc. with Leachco, and as to the origin, sponsorship and approval of the goods and commercial activities of Babyage.com, Inc.

25. The web pages identified in paragraphs 21 and 22 are used in commercial advertising and promotion, and misrepresent the nature, characteristics and qualities of the goods of Leachco.

26. Leachco is likely to be damaged, and has been damaged, by the actions described in paragraphs 21-25.

WHEREFORE, Defendant/Counterclaim Plaintiffs hereby request judgment in their favor, as follows:

- a. Babyage.com, Inc. is entitled to no relief on the claim asserted in its Complaint, and judgment thereon should be entered in favor of Leachco.
- b. On Counterclaim Count I, as to each Counterclaim Defendant, the Counterclaim Plaintiffs request awards of damages, increased damages, interest, attorney fees and costs, an injunction against infringement, active inducement of infringement and contributory infringement, and such other relief to which the Counterclaim Plaintiffs are entitled.
- c. On Counterclaim Count 2, as to Babyage.com, Inc., Leachco requests awards of profits, damages, triple damages, interest, attorney fees and costs, an injunction against future violations, and such other relief to which Leachco is entitled.

Respectfully Submitted,

s/ Sean V. Kemether      s/ Gary Peterson

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Plaintiffs

DEMAND FOR TRIAL BY JURY

A jury trial is demanded by Defendant and Counterclaim Plaintiffs. A jury of 12 jurors is requested.

CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Dr. Mitchell A. Smolow

Attorney for Plaintiff, on November 2, 2007.

s/ Sean V. Kemether