

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,

Plaintiff-Counterclaim Defendant

v.

LEACHCO, INC.,

Defendant-Counterclaim Plaintiff/
Third Party Plaintiff

and

JAMIE S. LEACH,

Counterclaim Plaintiff/
Third Party Plaintiff

v.

JOHN M. KIEFER, JR.,

Third Party Defendant

CIVIL ACTION NO. 3:07-CV-01600-ARC

Judge A. Richard Caputo

Filed Electronically

**MOTION TO WITHDRAW AFFIRMATIVE DEFENSE OF
BABYAGE.COM, INC. AND JOHN M. KIEFER, JR.
WITHOUT PREJUDICE**

Plaintiff-Counterclaim Defendant, BabyAge.com, Inc. ("BabyAge"), and Third Party Defendant, John M. Kiefer, Jr. ("Kiefer"), by and through their attorney, Andrew J. Katsock, III, Esquire, hereby move this Honorable Court for an Order approving the withdrawal without prejudice of their Affirmative Defense alleged in Paragraph 36 of their Second Amended Answer to Counterclaims filed on May 2, 2008, and in support of their Motion, BabyAge and Kiefer aver the following:

1. On March 17, 2008, BabyAge, as the Plaintiff, filed an Amended Complaint in the above-captioned matter.
2. On April 14, 2008, Defendant-Counterclaim Plaintiff/Third Party Plaintiff,

Leachco, Inc. ("Leachco"), filed an Amended Answer and Counterclaims against BabyAge and Kiefer.

3. On May 2, 2008, BabyAge and Kiefer filed their Second Amended Answer to Counterclaims.

4. Paragraph 36 of the Second Amended Answer of BabyAge and Kiefer to Counterclaims alleges that in conspiracy with Babies R Us, its largest customer, Leachco placed anticompetitive price controls on BabyAge as to BabyAge's pricing of Leachco's pillows covered by U.S. Patent No. 6,760,934, and is now refusing without cause to sell pillows covered by U.S. Patent No. 6,760,934 to BabyAge, thereby wrongfully prohibiting competition in the marketplace.

5. BabyAge and Kiefer now wish to withdraw Paragraph 36 of their Second Amended Answer to Counterclaims without prejudice.

WHEREFORE, the Plaintiff-Counterclaim Defendant, BabyAge.com, Inc., and Third Party Defendant, John M. Kiefer, Jr., respectfully request that this Honorable Court enter an Order granting their Motion to Withdraw Affirmative Defense Without Prejudice and approving the withdrawal of Paragraph 36 of their Second Amended Answer to Counterclaims without prejudice.

Respectfully submitted,

Date: June 24, 2008

/s/ Andrew J. Katsock, III, Esquire
ANDREW J. KATSOCK, III, ESQUIRE
Attorney I.D. 59011
Attorney for Plaintiff-Counterclaim Defendant,
BabyAge.com, Inc., and
Third Party Defendant, John M. Kiefer, Jr.

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ORDER

AND NOW, this ____ day of _____, 2008, upon consideration of the Motion to Withdraw Affirmative Defense of BabyAge.com, Inc. and John M. Kiefer, Jr. Without Prejudice, filed in the above-captioned matter, and given that Leachco, Inc.'s counsel, Gary Peterson, Esquire; has concurred in said Motion, it is hereby,

ORDERED AND DECREED that the Motion to Withdraw Affirmative Defense of BabyAge.com, Inc. and John M. Kiefer, Jr. Without Prejudice, is granted. Accordingly, the withdrawal of Paragraph 36 of BabyAge.com, Inc.'s and John M. Kiefer, Jr.'s Second Amended Answer to Counterclaims without prejudice, is hereby approved.

BY THE COURT:

A. Richard Caputo
United States District Judge