

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

**BABYAGE.COM, INC.'S AND JOHN M. KIEFER, JR.'S
OBJECTION TO LEACHCO, INC.'S AND JAMIE S. LEACH'S
REQUEST FOR ENTRY AND INSPECTION**

BabyAge.com, Inc. ("BabyAge") and John M. Kiefer, Jr. ("Kiefer") hereby object to the Request of Leachco, Inc. ("Leachco") and Jamie S. Leach ("Leach") for Entry and Inspection, and in support of their Objection, BabyAge and Kiefer state the following:

1. On or about August 7, 2008, Leachco and Leach served upon BabyAge and Kiefer a Request for Entry and Inspection pursuant to Rule 34(a)(2) of the Federal Rules of Civil Procedure, a copy of which is attached and incorporated herein as Exhibit "A".
2. Leachco and Leach request entry onto the property possessed or controlled by BabyAge and/or Kiefer having a facility at which the Today's Mom Cozy Comfort pillow is manufactured.

3. Leachco and Leach indicate the purpose of the entry is to enable them or their counsel to inspect, measure, survey and photograph: (1) the property; (2) the equipment and materials used to manufacture the Today's Mom Cozy Comfort pillow; and (3) the operations for manufacturing the Today's Mom Cozy Comfort pillow.

4. BabyAge and Kiefer object to Leachco's and Leach's Request for Entry and Inspection for the following reasons:

- a. The entry and inspection is not relevant to the claim or defense of Leachco or Leach;
- b. The entry and inspection does not appear reasonably calculated to lead to the discovery of admissible evidence;
- c. The burden or expense of the entry and inspection outweighs their likely benefit.

5. BabyAge would be required to make its facility available during business hours which would have an adverse impact upon its operations.

6. BabyAge would be required to have its personnel and counsel available which would be unduly expensive.

7. BabyAge has previously produced a specimen of its Today's Mom Cozy Comfort pillow to Leachco; as such, there is no need for Leachco or Leach to enter upon BabyAge's property to inspect said pillow.

8. Since Leachco already has a specimen of BabyAge's Today's Mom Cozy Comfort pillow, Leachco and Leach are knowledgeable of the materials used to manufacture said pillow.

9. Further, the Court has ordered the filing of Markman briefs and the issue of patent infringement is pending before the Court. Therefore, the entry and inspection of BabyAge's property are premature and should not be ordered until resolution of the patent infringement issue by the Court.

WHEREFORE, BabyAge.com, Inc. and John M. Kiefer, Jr., respectfully request that this Honorable Court sustain their Objection to Leachco, Inc.'s and Jamie S. Leach's Request for Entry and Inspection and deny Leachco, Inc.'s and Jamie S. Leach's Request for Entry and Inspection.

Respectfully submitted,

Date: September 5, 2008

/s/ Andrew J. Katsock, III, Esquire
ANDREW J. KATSOCK, III, ESQUIRE
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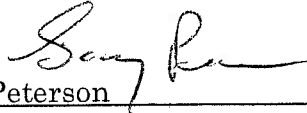
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,)
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Plaintiff-Counterclaim Defendant,)
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v.)
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LEACHCO, INC.,)
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Defendant-Counterclaim Plaintiff/)
Third Party Plaintiff,) No. 3:07-cv-01600-ARC
)
and) (Judge A. Richard Caputo)
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JAMIE S. LEACH,)
)
Counterclaim Plaintiff/)
Third Party Plaintiff,)
)
v.)
)
JOHN M. KIEFER, JR.,)
)
Third Party Defendant.)

**REQUEST FOR ENTRY AND INSPECTION TO
BABYAGE.COM, INC. AND JOHN M. KIEFER, JR.**

Pursuant to Rule 34(a)(2), Federal Rules of Civil Procedure, Leachco, Inc. and Jamie S. Leach request entry onto the following property possessed or controlled by Babyage.com, Inc. and/or John M. Kiefer, Jr.: each facility at which the Today's Mom Cozy Comfort pillow is manufactured ("the property"). The purpose of the entry is so that Leachco, Inc. and Jamie S. Leach, and their counsel, may inspect, measure, survey and photograph: (1) the property; (2) the following objects on the property: equipment and materials used to manufacture the Today's Mom Cozy Comfort pillow;

and (3) the following operations on the property: manufacture of the Today's Mom Cozy Comfort pillow. Such entry is requested on September 19, 2008, or at such other reasonable time as is agreed upon by counsel.



s/ Gary Peterson

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