

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

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

THIRD-PARTY COMPLAINT

Third-Party Plaintiffs, Jamie S. Leach and Leachco, Inc. (hereafter, "Leachco"), hereby assert submit their Third Party Complaint against Third Party Defendant, John M. Kiefer, Jr., as follows:

COUNT ONE

1. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.
2. Jamie S. Leach is individual residing in Oklahoma.

3. Plaintiff/Counterclaim Defendant, 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. Third-Party Defendant, 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.

11. 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.

WHEREFORE, Defendant/Counterclaim Plaintiffs/Third Party Plaintiffs hereby request judgment in their favor as to this Third-Party Complaint, as follows:

- a. On Count 1 above, as to the Third-Party Defendant, the Counterclaim/Third Party 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/Third Party Plaintiffs are entitled.

Respectfully Submitted,

s/ Sean V. Kemether s/Gary Peterson
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Attorneys for Defendant and Counterclaim/
Third Party Plaintiffs

DEMAND FOR TRIAL BY JURY

A jury trial is demanded by Defendant and Counterclaim/Third Party 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 7, 2007.

s/ Sean V. Kemether