

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,	:	
	:	
Plaintiff-Counterclaim Defendant	:	CIVIL ACTION NO. 3:07-CV-01600-ARC
	:	
v.	:	
	:	Judge A. Richard Caputo
LEACHCO, INC.,	:	
	:	
Defendant-Counterclaim Plaintiff/ Third Party Plaintiff	:	Filed Electronically
	:	
and	:	
	:	
JAMIE S. LEACH,	:	
	:	
Counterclaim Plaintiff/ Third Party Plaintiff	:	
	:	
v.	:	
	:	
JOHN M. KIEFER, JR.,	:	
	:	
Third Party Defendant	:	

**RULE 56.1 STATEMENT**

Plaintiff-Counterclaim Defendant, BabyAge.com, Inc. (hereinafter “BabyAge”), by and through its attorney, Andrew J. Katsock, III, Esquire, herewith submits its Rule 56.1 Statement in connection with its Motion for Partial Summary Judgment with respect to the counterclaims of Defendant-Counterclaim Plaintiff, Leachco, Inc., and Counterclaim Plaintiff, Jamie S. Leach (hereinafter collectively “Leachco”), as follows:

1. Leachco is the exclusive licensee of U.S. Patent No. 6,760,934 (“the ‘934 Patent”). (Counterclaim ¶ 8.)

2. The '934 Patent is comprised of one (1) independent claim and two (2) dependant claims. U.S. Patent No. 6,760,934.

3. The independent claim of the '934 Patent requires, in pertinent part, that the device embody “[a] symmetrically contoured support pillow formed essentially in an inverted U-shape, comprising essentially a semi-circular crown.” U.S. Patent No. 6,760,934.

4. The Court conclusively resolved that “[t]he semi-circular crown means the top of the pillow is shaped like a semi-circle.” (Mem. Op. 09/18/2008 at 8.)

5. The upper portion or “crown” of the accused device (Ex. C of the Complaint), is not semicircular. (Compl. Ex. C.)

6. BabyAge sells baby-related goods by means of a website having the web address [www.babyage.com](http://www.babyage.com) (hereinafter “the Website”). (Counterclaim ¶ 20.)

7. All of the goods that are displayed, identified, and offered for sale at <http://www.babyage.com/brands/leachco.htm>, as originating from Leachco are genuine and authentic products manufactured by or for Leachco. (Counterclaim ¶ 22.)

8. Each and every link at the Website to a product using Leachco’s trademark also has a link that reads as follows: “See More Leachco Products.” (Decl. of John M. Kiefer, Jr.)<sup>1</sup>

9. There are no instances in which any goods displayed and offered for sale on the Website and identified as having been manufactured by or for Leachco have been represented as having been manufactured for or by any other manufacturer or seller of those products. (Counterclaim ¶ 22.)

10. There are no instances in which any goods displayed and offered for sale on the Website and identified as having been manufactured by or for a manufacturer or seller other than

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<sup>1</sup> The Declaration of Mr. Kiefer is attached hereto in support of the relief sought hereby.

Leachco have been represented as having been manufactured for or by Leachco. (Counterclaim ¶ 22.)

11. Leachco's trademark is used on the Website only to identify goods manufactured for or by Leachco. (Counterclaim ¶ 22; Decl. of John M. Kiefer, Jr.)

12. At no time has BabyAge sought to use the Website to suggest or infer in any way, form, manner, or fashion that a product made or sold by a Leachco competitor was made or sold by Leachco as suggested in ¶ 22 of Leachco's counterclaim. (Decl. of John M. Kiefer, Jr.)

13. At no time has BabyAge sought to use the Website to suggest or infer in any way, form, manner, or fashion that a product made or sold by Leachco was made or sold by a Leachco competitor as suggested in ¶ 22 of Leachco's counterclaim. (Decl. of John M. Kiefer, Jr.)

14. Upon reasonable investigation, there is no instance where a consumer believed that a product manufactured for or on behalf of Leachco was manufactured for or on behalf of BabyAge. (Decl. of John M. Kiefer, Jr.)

15. Upon reasonable investigation, there is no instance where a consumer believed that a product manufactured for or on behalf of BabyAge was manufactured for or on behalf of Leachco. (Decl. of John M. Kiefer, Jr.)

Respectfully submitted,

Date: October 7, 2008

/s/ Andrew J. Katsock, III, Esquire  
ANDREW J. KATSOCK, III, ESQUIRE  
Attorney I.D. 59011  
Attorney for Plaintiff-Counterclaim Defendant,  
BabyAge.com, Inc.

15 Sunrise Drive  
Wilkes-Barre, PA 18705  
Telephone & Facsimile No.: (570) 829-5884

## DECLARATION OF JOHN M. KIEFER JR.

1. I, John M. Kiefer, am Chief Executive Officer of BABYAGE.COM, INC. (hereinafter "BabyAge"), the Plaintiff and Counterclaim Defendant herein. I have personal knowledge of all the facts stated in this Declaration.
2. BabyAge sells baby-related and infant care products via its Website, BabyAge.com (hereinafter "the Website"). Among the products it offers for sale to consumers are products manufactured for or on behalf of BabyAge and sold under that trademark.
3. BabyAge also offers for sale at the Website products made by or for manufacturers under numerous different trademarks, including those manufactured by or for Defendant, Leachco, Inc. ("hereinafter "Leachco"). The consumer can shop for products at the Website by product category or by brand.
4. No individual brand or trademark is displayed more prominently than any other brand or trademark on the Website, except during select scheduled promotional periods.
5. BabyAge does not knowingly or intentionally misrepresent any goods sold on the Website. To the best of its ability, BabyAge seeks to correctly identify the source of each product offered for sale, and where applicable, accurately represent the manufacturer by label, brand, and trademark.
6. BabyAge does not desire and has not sought in the past to infer in any way, form, manner, or fashion on the Website, any relationship with Leachco, commercial or otherwise, other than as a vendor of specifically agreed upon Leachco products.
7. BabyAge is not, and does not knowingly or intentionally represent itself in any way, form, manner, or fashion as being, an authorized or exclusive distributor or seller of Leachco products.

(Attached to this Declaration as Exhibits A-D are true and accurate photocopies of representative pages of the Website made on September 30, 2008.)

8. Each and every link at the Website to a product using Leachco's trademark also has a link that reads as follows: "See More Leachco Products."

9. Leachco's trademark is used on the Website only to identify goods manufactured for or by Leachco.

10. At no time has BabyAge sought to use the Website to suggest or infer in any way, form, manner, or fashion that a product made or sold by a Leachco competitor was made or sold by Leachco as suggested in ¶ 22 of Leachco's counterclaim.

11. At no time has BabyAge sought to use the Website to suggest or infer in any way, form, manner, or fashion that a product made or sold by Leachco was made or sold by a Leachco competitor as suggested in ¶ 22 of Leachco's counterclaim.

12. Upon reasonable investigation, I am not aware of any instance where a consumer believed that a product manufactured for or on behalf of Leachco was manufactured for or on behalf of Babyage.com.

13. Upon reasonable investigation, I am not aware of any instance where a consumer believed that a product manufactured for or on behalf of Babyage.com was manufactured for or on behalf of Leachco.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



John M. Kiefer

Executed on:

October 3, 2008

Wilkes-Barre, Pennsylvania



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SEARCH

Keyword or Item #



Shop All Categories

**leachco**

See more brands

**SORT BY**

Best Seller



View

ITEMS PER PAGE: 20



Home » Brands » Leachco

**Narrow Results**

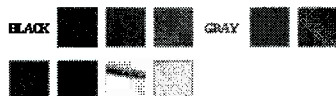
**Category**

CLEAR SELECTION

- Baby Carriers
- Bases & Accessories
- Bathing Essentials
- Blankets and Pillows
- Breast Feeding
- Health Essentials
- High Chairs
- Nursery D&#233;cor
- Safety Essentials

**Color**

CLEAR SELECTION



**Price Range**

RESET



\$9



\$75

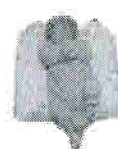


Leachco Walk N Around Safety Strap

**\$9.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK



Leachco Baby Back Napper Infant Sleep Support

**\$13.49**

BabyAge Low Price!

CURRENTLY OUT OF STOCK

Leachco (S)

AVAILA

Origina

SHIPS TOD THE NEJ



Leachco SnooZoo Huggable Body Pillow

ON SALE - SAVE OVER 10%

**\$29.99**

Original Price: \$35.00

CURRENTLY OUT OF STOCK



Leachco Bath 'N Bumper Cushioned Bath Support

**\$23.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK


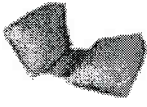


Leachcc

AVAILAE

BabyA

CURRENT



<p>Leachco Natural Contoured Nursing Pillow</p> <p>AVAILABLE IN 3 PATTERNS</p> <p><b>\$19.99</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	<p>Leachco Cush N Caddy Bath Cushion and Shower Caddy</p> <p><b>\$13.99</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	<p>Leachco</p> <p>AVAILAE</p> <p>\$</p> <p>BabyA</p> <p>CURRENT</p>
 <p>Leachco Original Snoogle Total Body Pillow</p> <p>AVAILABLE IN 3 COLORS</p> <p><b>\$41.34 - \$42.36</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	 <p>Leachco Body Double Pillow Set</p> <p><b>\$49.99</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	<p>Leachco Tota</p> <p>AVAILAE</p> <p>\$</p> <p>BabyA</p> <p>CURRENT</p>
 <p>Prop-O's Head Support and Seat Strap Covers</p> <p>AVAILABLE IN 2 COLORS</p> <p><b>\$10.99</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	 <p>Leachco Prop "R Shopper</p> <p><b>\$29.99</b> BabyAge Low Price!</p> <p>CURRENTLY OUT OF STOCK</p>	<p>Take Cover Seat</p> <p>AVAILABI</p> <p>\$</p> <p>BabyA</p> <p>SHIPS TODAY THE NEJ</p>

**SORT BY** Best Seller 

View



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Your child's age  Infant  Toddler  Juvenile  Pregnancy

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\*Coupon code will be emailed upon signup



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- PREGNANCY
- APPAREL
- DIAPERS & FEEDING
- BABY BEDDING
- NURSERY & FURNITURE
- HEALTH & SAFETY

SEARCH Keyword or Item # [Shop All Categories](#)

	<b>Sassy</b>  \$10.99	<b>Evenflo</b>  \$3.99	<b>Evenflo</b>  \$5.90	<b>Dex Products</b>  \$14.99	<b>Safety 1st</b>  \$10.99
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Health & Safety » Health Essentials

**leachco** See More Leachco Products

**Leachco Easy Teether- Pink**

Item #13520-P

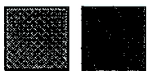
**\$12.99**  
BabyAge Low Price!

**CURRENTLY OUT OF STOCK**

- Shipping Details & Information
- This product ships in the original packaging.

Average Customer Rating  
(Not Yet Rated)

Color Options - Pink



**Product Description**

**Leachco Easy Teether** The teether from Leachco not only protects seasoned teether from splinters, cracks and paint chips, but also keeps baby's favorite teething toys within easy reach. The Velcro on the allows parents to ... [read more](#)

YOU MAY ALSO LIKE

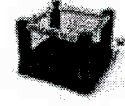




**Todays Mom**  
Nursery Furniture  
**\$199.99**



**Melissa and Doug**  
Wooden Toys  
**\$49.99**



**Little Tikes**  
Outdoor Toys  
**\$149.99**



**Kidc**  
Safety Ess  
**\$7.4**

Description

**Leachco Easy Teether**

The teether from Leachco not only protects a seasoned teether from splinters, cracks and paint chips, but also keep easy reach. The Velcro on the teether allows parents to customize the crib rail with all the toys baby loves most. Th size cribs with a circumference of 8 in. or less.

**Product Features**

- Teether protects a seasoned teether from splinters, cracks and paint chips
- Allows baby's favorite teething toys to keep easily within reach
- Specially placed Velcro tabs allow parents to customize crib rail
- Teether from Leachco has dimensions of 50 x 10 in.
- Fits standard size cribs
- Velcro closures for easy use

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Keyword or Item #

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for **Baby Gear**

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ITEMS PER PAGE: 20

**Baby Gear**

**Category**

CLEAR SELECTION

- Activity Centers
- Baby Carriers
- Diaper Bags
- Kid's Furniture
- On The Move
- Outdoor Toys
- Rocking Chairs
- Swings and Bouncers

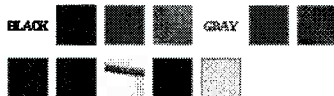
**Brand**

CLEAR SELECTION

- Baby Bella Maya
- Baby Bjorn
- Body Glove
- Cariboo
- Chicco
- Combi
- Continental Quilting
- Cosco

**Color**

CLEAR SELECTION



**Price Range**

RESET



\$4



\$250



Step2 24 Inch Play Mats - 4 Pack

BEST SELLER!

**\$24.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK



Evenflo Exersaucer 3-in-1

BEST SELLER!

**\$109.95**

BabyAge Low Price!

CURRENTLY OUT OF STOCK

Fisher-Price

ON SALE -

Original

SHIPS TODAY, THE NEXT





KidCo PeaPod Plus Travel Bed

AVAILABLE IN 2 COLORS

**\$81.99 - \$84.99**  
Original Price: \$104.00

BUY TODAY! SHIPS IN 3-5 BUSINESS DAYS



Fisher-Price Smart Stages 3 in 1 Rocker Swing

ON SALE - SAVE OVER 30%

**\$69.99**  
Original Price: \$99.99

SHIPS TODAY - IF ORDERED IN THE NEXT 3 HRS 32 MINS



Baby Bjc

FREE SH

**\$**  
Origina

SHIPS TOD, THE NEX

Chicco Little Driver Baby Walker

FREE SHIPPING

**\$69.99**  
BabyAge Low Price!

SHIPS TODAY - IF ORDERED IN THE NEXT 3 HRS 32 MINS



Evenflo Cross Terrain Frame Carrier

BEST SELLER!

**\$89.99**  
BabyAge Low Price!

CURRENTLY OUT OF STOCK



Fisher-F Tod

BE

**\$**  
BabyA

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Melissa and Doug Alligator Push Toy

BEST SELLER!

**\$39.99**  
BabyAge Low Price!

SHIPS TODAY - IF ORDERED IN THE NEXT 3 HRS 32 MINS



Graco Baby Einstein Discover & Play Activity Center

BEST SELLER!

**\$79.99**  
BabyAge Low Price!

SHIPS TODAY - IF ORDERED IN THE NEXT 3 HRS 32 MINS



Combi 3 in

FREE SH

**\$**  
BabyA

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Evenflo ExerSaucer Mega

Little Tikes Push & Ride Doll Walker

Kelty K. Backpack

AVAILABLE IN 2 COLORS

BEST SELLER!

ON SALE -

**\$59.99**

BabyAge Low Price!

**\$24.99**

BabyAge Low Price!

**\$**

Original

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SHIPS TODAY - IF ORDERED IN THE NEXT 3 HRS 32 MINS

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**Sort By** Best Seller

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[Diaper Bags](#)

[Baby Carriers](#)

[High Chairs](#)

[Travel Gear](#)

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Diaper bags have certainly come a long way. In the past, a diaper bag was seen as being big and bulky with areas for essentials. However, in a fashion forward world, parents are selecting diaper bags to not only haul the days content but also chances are passerby's will not even know its a diaper bag. There is certainly no shortage of styles, sizes and price. Diaper bags come in many different fashion forms with an assortment of solids, prints and even plaids. There are variety of styles like the diaper bag, and tote diaper bag. The diaper bag backpack is quickly becoming the most popular style of diaper bag for the child. As far as individual baby diaper bags, some of the most popular include the Skip Hop Dash, Outside Baby Diaper Bag.

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View

ITEMS PER PAGE: 20

Pregnancy

Category

CLEAR SELECTION

- Blankets
- Blankets and Pillows
- Breast Feeding
- Get Ready for Baby
- Gifts
- Keepsakes
- Maternity Apparel & Supports

Brand

CLEAR SELECTION

- Baby Bunch
- Basic Comfort
- Boppy
- Cariboo
- Cloud B
- CryBaby Maternity
- Dex Products
- Godinger

Color

CLEAR SELECTION



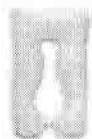
Price Range

RESET



\$5

\$162



Today's Mom Cozy Comfort Pregnancy Pillow

AVAILABLE IN 6 COLORS

\$49.99

Original Price: \$79.99

BUY TODAY! SHIPS IN NEXT BUSINESS DAY



Snoozer Full Body Pillow - Hypoallergenic Synthetic Fiber Filler

ON SALE - SAVE OVER 10%

\$53.99

Original Price: \$60.00

BUY TODAY! SHIPS IN 1-2 BUSINESS DAYS



Cozy Cur Preg

AVAILAE

Original

CURRENT



Boppy Total Body Pillow

Boppy Cuddle Pillow

Snoozer I  
Natural G

**\$54.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK

**\$34.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK

ON SALE -

**\$**

Original

BUY TOD  
BUS



Dex Products Pregnancy  
Pillow Deluxe



Basic Comfort Body Support  
Pillow



Today's I  
Recei

**\$9.99**

BabyAge Low Price!

BUY TODAY! SHIPS IN NEXT  
BUSINESS DAY

**\$48.99**

BabyAge Low Price!

CURRENTLY OUT OF STOCK

**\$**

Original

BUY TOD  
BU:



What To Expect The Toddler  
Years



Boppy Pregnancy Wedge

Graco

**\$16.95**

BabyAge Low Price!

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BUSINESS DAY

**\$14.99**

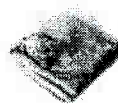
BabyAge Low Price!

BUY TODAY! SHIPS IN NEXT  
BUSINESS DAY

**\$**

BabyA

BUY TOD  
BU:





Cloud B Velboa Mommy Blanket

Cloud B Double Sherpa Baby Blanket Set

Graco  
Liste

ON SALE

**\$74.00**

BabyAge Low Price!

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**\$46.00**

BabyAge Low Price!

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Original

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View  

[Pregnancy Pillow](#)

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[Prenatal Monitors](#)

[Stationary](#)

[Mom to Be](#)

Good maternity pillows are hard to find. It's all about mom's comfort when it comes to a pregnancy pillow and Baby Today's Mom Cozy Comfort Pregnancy Pillow is like sleeping on a cloud. Today's Mom has listened to the biggest complaint that the biggest pregnancy pillow problems has been hard edges digging into mom's shoulder. The Cozy Comfort has a curve to the shoulder and provides a soft sleep. Another problem examined by Today's Mom is lumbar support. The Cozy Comfort while she sleeps. An important upgrade mother's demanded was belly support. This maternity body pillow features support the baby comfortable. Perhaps the best feature is the large, square head rest area. Other pillows feature a Comfort's head support resembles a standard pillow to provide comfort. This is one of the only pregnancy pillows designed. Now, the pillow and case can be separated for washing. Both are machine washable, made of a 50/50 combination percale. This revolutionary pillow is patent pending.

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