

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

BABYAGE.COM, INC. et al.,)	
)	
Plaintiff-Counterclaim Defendants/)	
Third Party Defendants,)	No. 3:07-cv-01600-ARC
)	
v.)	(Judge A. Richard Caputo)
)	
LEACHCO, INC. et al.,)	
)	
Defendant-Counterclaim Plaintiffs/)	
Third Party Plaintiffs.)	

DECLARATION

Pursuant to 28 U.S.C. § 1746, Jamie S. Leach declares as follows:

1. I am the Counterclaim Plaintiff in this action, as well as Vice President of Leachco, Inc., the Defendant and Counterclaim Plaintiff in this action. I am knowledgeable about the matters addressed in this declaration.

2. Leachco is located in Ada, Oklahoma, and is a manufacturer of quality baby and maternity merchandise. Leachco’s products are distributed through a worldwide network of retailers, who sell from conventional retail stores, catalogs, and the Internet. Leachco has been in its business since 1988, and its trademark, “Leachco,” is the subject of federal Trademark Registration No. 3,414,067. Over the past 20 years, the Leachco brand and trademark have been applied to a wide range of baby and maternity products, and have been extensively promoted and advertised, both in print, in conventional retail stores, and on the Internet.

3. I am the inventor and owner of U.S. Patent No. 6,760,934. Leachco is the exclusive licensee of this patent. Exhibit 2 is an accurate copy of my patent.

4. Since October of 2002, Leachco has offered a product known as the Back'n'Belly contoured body pillow. The Back'n'Belly is covered by the claims of the '934 patent.

5. The Plaintiff Babyage.com is an Internet retailer of baby-related goods. Babyage began ordering the Back'n'Belly pillow from Leachco, for resale to its retail customers, starting in June of 2003. Babyage continued to order the Back'n'Belly through 2007.

6. In January of 2007, I learned from the Babyage web site that Babyage was offering for sale a pregnancy pillow that competed with the Back'n'Belly, known as the Today's Mom Cozy Comfort pillow. Babyage has continued to sell the Cozy Comfort pillow through the present. I am knowledgeable about the structure and use of the Cozy Comfort pillow.

7. Exhibit 3 is an accurate copy of a screen shot of the Babyage.com web site, as it existed on March 13, 2007. The web page offers the Cozy Comfort pillow for sale, and includes several images of it. Exhibit 4 is an accurate copy of an enlarged image taken from the Babyage web page shown in Exhibit 3. Exhibits 5 and 6 are accurate copies of enlarged images showing a model using the Cozy Comfort, and were taken from the Babyage web page shown in Exhibit 3.

8. Disregarding the semi-circular crown element for the moment, the Cozy Comfort pillow includes each element of each claim of the '934 patent. Exhibit 7 is a

chart that accurately summarizes how the elements of the claims are satisfied by the Cozy Comfort pillow. Exhibit 7 makes reference to Exhibits 8, 9 and 10, which are annotated copies of the Babyage web site images of the Cozy Comfort pillow, Exhibits 4, 5 and 6.

9. The purpose of the crown in my invention is to provide a headrest that can support the head and neck of a woman using the pillow. The reason that the crown is semi-circular is so that it can better conform to the circular curve of the head and neck, for the best comfort and support. In order to accomplish this result, only the lower contour or base of the crown needs to be semi-circular, since this is the only contour of the crown that contacts the head and neck. Because a user's head and neck do not touch the upper contour of the crown, the shape of the upper contour is of no practical importance.

10. As shown in Exhibit 8, the lower contour or base B of the crown C of the Cozy Comfort pillow is semi-circular, while the upper contour U has square corners. When a woman's head is resting on the crown of the Cozy Comfort pillow, the square-corner portions of the crown do not touch any portion of the woman's head or neck, and thus cannot provide either support or comfort. This is illustrated in Exhibit 9, a Babyage image that shows a model resting her head on the crown C. The square corner of the upper contour U of the crown C, shown in the foreground, does not touch the model, and performs no function.

11. If a woman chooses to rest her head on the overlapping toes of the Cozy Comfort pillow, as shown in Exhibit 10, the crown extends from side to side between

the woman's legs. When the Cozy Comfort pillow is used in this way, the square corners of the crown again do not touch the user, and provide neither comfort nor support. This is shown in Exhibit 10, where the square corner of the upper contour U of the crown C, shown in the foreground, does not touch the model, and performs no function.

12. The crown of the Cozy Comfort pillow performs substantially the same function as the semi-circular crown of claim 1 of my patent: both crowns provide a soft surface for the head to rest on, while also supporting the user's head and neck. The crown of the Cozy Comfort pillow performs this function in substantially the same way as the semi-circular crown of claim 1 of my patent: both crowns have a central area where the head can rest, and both crowns have a semi-circular base that conforms to the user's head and neck. The crown of the Cozy Comfort pillow produces the same result as the semi-circular crown of claim 1 of my patent: both crowns provide comfort and support for the user's head and neck.

13. The only difference between the crown of the Cozy Comfort pillow and a crown shaped like a semi-circle is that the upper portion of the crown of the Cozy Comfort pillow has square corners, while the upper portion of a crown shaped like a semi-circle is rounded. If the upper portion of the crown has square corners, those corners do not come into contact with the user. Because of that, the shape of the upper contour, whether rounded or with square corners, makes no difference in how the two pillows work and how the two pillows are used. The difference in shape between these two kinds of pillows is an insubstantial one.

14. The Babyage web site includes “featured brands” pages purportedly dedicated to the products of certain manufacturers. One of these manufacturers is Leachco. The Babyage “Leachco” brand page is found at:

<http://www.babyage.com/brands/leachco.htm>.

A “Leachco” featured brand page has existed on the Babyage web site since at least 2007.

15. Exhibit 11 is an accurate copy of a screen shot from a video of the “Leachco” brand page on the Babyage web site, as it existed in 2007. The web page prominently displays the “Leachco” trademark. The first section of the brand page is devoted to “Pregnancy Pillows.”

16. Exhibit 12 is an accurate copy of a screen shot from a video of the upper part of the “Pregnancy Pillows” section of the “Leachco” brand page on the Babyage web site, as it existed in 2007. Shown in the image is a clickable web link entitled “Today's Mom Cozy Comfort”.

17. Exhibit 13 is an accurate copy of a screen short from a video showing the web page that was brought up when the “Today's Mom Cozy Comfort” web link described above was clicked in 2007. The web page offers the non-Leachco Cozy Comfort pillow for sale.

18. The complete text of the “Pregnancy Pillow” section of the “Leachco” brand web page on the Babyage web site, as it existed in 2007, was as follows. Misspellings (*e.g.*, “prengancy”) are taken from the original:

Pregnancy Pillows

Designed to ease the sleep discomfort associated with pregnancy. A maternity pillow helps to offer a relaxing night's rest. One of the great features on all pregnancy pillows is that they are comfortable. A mother needs her comfort and a pregnancy pillow will provide that. Most of the maternity pillows keep comfort as a top priority, but also strive to keep support at the forefront as well. A great pregnancy pillow will be able to create support by aligning the hips, elevating the ankles and supporting the belly. One maternity pillow which can do this is the Today's Mom Cozy Comfort. It helps keep all of the major pain areas aligned, separating it from other, older versions of maternity pillows. Pregnancy pillows come in a variety of shapes and sizes. There are different types of padding and colors available for pregnancy pillows. It is important to have breathable material in a maternity pillow. Maternity pillows should also offer up washable fabrics. A great maternity pillow is the Serenity Star from Moonlight Slumber. It is a full length pregnancy pillow which helps to regulate the body temperature with its great fabric. We offer an enormous variety of pregnancy pillows. Every mother will enjoy such a wide selection.


The underlined text "Today's Mom Cozy Comfort" denotes a web link. When this link is clicked by a reader, it takes the reader to a web page offering the competitive, non-Leachco Cozy Comfort pillow. Babyage's retail price for this competitive pillow was \$49.95 in 2007. In contrast, Leachco's suggested retail price for its Back'n'Belly competitive pillow was \$72.00. The underlined text "Serenity Star" also denotes a web link. When this link is clicked by a reader, it similarly takes the reader to a web page offering another competitive, non-Leachco pregnancy pillow.

19. Users of the Babyage web site are end consumers and potential end consumers for baby and maternity merchandise. While many of these consumers will know the "Leachco" brand, they will not be familiar with all of the secondary brand names (*e.g.*, Back'n'Belly) that Leachco uses on its products. When these customers see

the web link, "Today's Mom Cozy Comfort", they will have no way of knowing what they are being offered is a non-Leachco, competitive brand.

20. I state under penalty of perjury that the foregoing is true and correct.

Executed on October 21st, 2008.



Jamie S. Leach