

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
BABY MATTERS LLC,)	
)	
)	CPSC DOCKET No. 13-1
)	
Respondent.)	
)	
)	

**BABY MATTERS' SECOND SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS TO THE
CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. 1025.33, Baby Matters LLC (“Respondent,” or “Baby Matters”) hereby propounds the following Second Set of Requests for Production of Documents and Things to the Consumer Product Safety Commission (“the Commission”). These Requests are to be responded to in writing and you are directed to produce and permit inspection of the following documents and things in your possession, custody or control at the offices of Blank Rome, LLP, 600 New Hampshire Ave., N.W., Washington D.C. 20037, c/o Raymond G. Mullady, Jr. or at some other convenient location within thirty (30) days.

INSTRUCTIONS AND DEFINITIONS

1. The term “you” or the possessive “your” shall refer to the United States of America Consumer Product Safety Commission and its Commissioners, employees, officers, directors and other agents.
2. The term “Baby Matters” shall refer to Respondent Baby Matters LLC.
3. The term “Commission” shall have the same meaning as used in 16 C.F.R. Part 1025.3(b).

4. The term “Commissioner” shall have the same meaning as used in 16 C.F.R. Part 1025.3(c).

5. The term “Gen1” shall refer to the first generation model of the Nap Nanny[®] infant recliner manufactured and sold by Baby Matters from approximately January 2009 through August 2009.

6. The term “Gen2” shall refer to the second generation model of the Nap Nanny[®] infant recliner manufactured and sold by Baby Matters from approximately August 2009 through December 2010.

7. The term “Chill” shall refer to the model of the Nap Nanny[®] infant recliner manufactured and sold by Baby Matters from approximately January 2011 to present.

8. The term “Subject Products” shall refer to the Gen1, Gen2 and Chill products.

9. The term “document” means all written, printed, typed, and electronic media, and any other media from which information can be derived. It includes, without limitation, original documents, drafts, non-identical copies, diaries, correspondence, proposals, valuations, financial statements, contracts, letters, memoranda, appointment calendars, schedules, books, indices, printed forms, publications, press releases, notices, brochures, pamphlets, guidelines, manuals, minutes, summaries, abstracts, reports, files, file jackets, transcripts, data processing cards, computer tapes, discs, and hard drives, print-outs, information contained in, on, or retrievable from computer programs, bulletins, surveys, charts, exhibits, diagrams, graphs, tables, photographs, recordings, telegrams, cables, telex messages, facsimiles, microfilms, videotapes, studies, work papers, analyses, valuations, and notes.

10. The term “Complaint” shall refer to the Complaint, as amended, filed by Commission in this litigation.

11. These requests are ongoing and require supplementation in accordance with 16 C.F.R. Part 1025.31(f).

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents in support of your claim that the Subject Products contain a product defect.

2. Please produce all documents that establish, set forth or relate to the Commission's policies, methodologies or standards in determining whether a product meets the definition of a "substantial product hazard" or that it contains a product defect, including all documents or other materials that set forth the factors to consider in making these determinations.

3. Please produce all documents in support of your contention in Paragraphs 9 and 10 of the Complaint that Baby Matters is an "importer," "distributor" or "retailer" pursuant to CPSA Sections 3(a)(5), (7), (8), (11) and (13) or a "manufacturer" pursuant to CPSA Section 3(a)(11).

4. Please produce all documents in support of your contention in Paragraph 40 of the Complaint that the Gen1 includes a defective design that "allows the infant to have significant movement within the [Gen1] even when the harness is used."

5. Please produce all documents in support of your contention in Paragraph 41 of the Complaint that the harness straps of the Gen1 "slide easily through the buckles when the infant user moves, preventing a secure, snug fit around the infant's waist."

6. Please produce all documents in support of your contention in Paragraph 42 of the Complaint that the Gen1 contains a design defect that "allows freedom of movement such that

the infant is able to maneuver over the side walls of the [Gen1] and into other compromised positions. This hazardous scenario exists even while the harness is in use.”

7. Please produce all documents in support of your contention in Paragraph 43 of the Complaint that the manner in which the Gen2 harnesses are sewn into the fabric cover, “with no means of attaching it to a fixed point on the foam seat base, [causes] the harness straps the slide easily through the buckles and prevent[s] a secure, snug fit around the infant’s waist.”

8. Please produce all documents in support of your contention in Paragraph 46 of the Complaint that a defect in the Gen2 has allowed “an infant to fall or hang over the side of a [Gen2,] even when the harness is in use, which can result in injury or death.

9. Please produce all documents in support of your contention in Paragraph 48 of the Complaint that the “Velcro tabs in the [Gen2] loosen as the infant moves in the seat.”

10. Please produce all documents in support of your contention in Paragraph 49 of the Complaint that “over time, due to the nature of Velcro, the tabs gradually detach with ease, thereby rendering the restraint system ineffective, posing a risk of injury and death to the infant.”

11. Please produce all documents in support of your contention in Paragraph 50 of the Complaint that “parents and caregivers using a [Gen2] are not likely to immediately know that the Velcro tabs have detached from the “D”-shaped ring.”

12. Please produce all documents in support of your contention in Paragraph 51 of the Complaint that parents and caregivers may be unaware of the importance of ensuring that the Velcro tabs are secured around the “D”-shaped rings after replacing the cover and before every use.

13. Please produce all documents in support of your contention in Paragraph 52 of the Complaint that, “because the harness straps in the Chill are looped through the base and then

inserted into three point buckles on the removable crotch pad, this design makes it difficult for caregivers to adjust the waist straps.”

14. Please produce all documents in support of your contention in Paragraph 53 of the Complaint that “because it is difficult to adjust the waist straps in the Chill, parents and other caregivers are less likely to use the harness.”

15. Please produce all documents in support of your contention in Paragraph 54 of the Complaint that “because both the Chill harness straps and buckles are not securely attached to the base, they can be removed or can be lost. If either or both the harness straps or buckles are removed from the base, the Chill restraint system no longer functions and an infant can no longer be secured in the Chill.”

16. Please produce all documents in support of your contention in Paragraph 56 of the Complaint that “due to the ineffectiveness of the [Gen1] and [Gen2] harness, parents and other caregivers are unlikely to use the harness on those products.”

17. Please produce all documents in support of your contention in Paragraph 57 of the Complaint that “due to the difficulty of use of the Chill harness and foreseeable frequent need to remove the Chill crotch pad and attached buckles for washing, parents and other caregivers are unlikely to use the harness on those products.”

18. Please produce all documents in support of your contention in Paragraph 64 of the Complaint that there is a risk of injury from the foreseeable use and/or misuse of the Subject Products by parents and caregivers.

19. Please produce all documents relating to the modification of the warnings, instructions and labeling on the Gen2 that occurred in conjunction with the first corrective action plan in or around the summer 2010, including all internal memoranda, communications,

deliberations, meeting minutes, analyses, studies, tests or other documents relating to your involvement in the modification of these warnings, instructions and labels on the Gen2.

20. Please produce all documents in support of your contention in Paragraph 83 of the Complaint that, despite the requirement in the corrective action plan requiring that stickers be placed on all Gen2 products directing consumers to a website where they could access revised warnings and instructions, Gen2 products continued to be sold without stickers required by the corrective action plan.

21. Please produce all documents in support of your contention in Paragraph 87 of the Complaint that “subsequent to the July 2010 recall, and despite enhanced warnings and revised instructions on the Subject Products, parents and caregivers continue to use the Subject Products inside of cribs and other sleeping environments, contrary to the warnings on the Subject Products.”

22. Please produce all documents in support of your contention in Paragraph 88 of the Complaint that “subsequent to the July 2010 recall, and despite enhanced warnings and revised instructions on the Subject Products, parents and caregivers continue to use the Subject Products without using the harness or ensuring that the harness is firmly secured around the infant.”

23. Please produce all documents in support of your contention in Paragraph 96 of the Complaint that “[t]he warnings and instructions on the Subject Products are inadequate and defective because they do not and cannot effectively communicate to parents and caregivers the hazard associated with use of the Subject Products inside cribs and other sleep enclosures.”

24. Please produce all documents in support of your contention in Paragraph 97 of the Complaint that “[t]he warnings and instructions on the Subject Products are inadequate and defective because they do not and cannot effectively communicate to parents and caregivers the

hazard associated with use of the Subject Products if the harness is not used or is not snugly secured around the infant.”

25. Please produce all documents in support of your contention in Paragraph 98 of the Complaint that “[b]ecause the warnings and instructions on the Subject Products are inadequate and defective, parents will continue to use the Subject Products in cribs or other enclosures.”

26. Please produce all documents in support of your contention in Paragraph 99 of the Complaint that “[b]ecause the warnings and instructions on the Subject Products are inadequate and defective, parents will not use the harness provided or will not secure it snugly around the infant.”

27. Please produce all documents in support of your contention in Paragraph 100 of the Complaint that “[p]arents and caregivers cannot and do not appreciate the hazard associated with using the Subject Products in locations other than the floor, and its it thus foreseeable that they will use the Subject Products in cribs, play yards, or other enclosures.”

28. Please produce all documents in support of your contention in Paragraph 101 of the Complaint that “[p]arents and caregivers cannot and do not appreciate the hazard associated with not using the harness or not securing the harness securely, and it is foreseeable that they will use the Subject Products without securing the harness or without securing it snugly around the infant.”

29. Please produce all documents in support of your contention in Paragraph 103 of the Complaint that “[i]t is not obvious to caregivers when [the “D”-shaped] rings become loosened or unattached” on the Gen2.

30. Please produce all documents in support of your contention in Paragraph 117 of the Complaint that “[e]ven if the warnings and instructions on the Subject Products were

enhanced, and the attendant advertising were changed, it is foreseeable that parents and caregivers would continue to use the products in cribs, bassinets, and other sleep environments.”

31. Please produce all documents in support of your contention in Paragraph 118 of the Complaint that “[p]arents and caregivers are likely to continue to use the Subject Products in enclosed spaces such as cribs in order to create a barrier to older siblings, pets, or pests in the home.”

32. Please produce all documents in support of your contention in Paragraph 119 of the Complaint that “[p]arents and caregivers are likely to continue to use the Subject Products in cribs because cribs are traditionally viewed as safe sleeping environments.”

33. Please produce all documents in support of your contention in Paragraph 138 of the Complaint that “[t]he harness design in the Chill is defective because the double threaded buckles inhibit a caregiver’s ability to secure the harness around the infant user, thereby reducing the effectiveness of the harness and the likelihood of use of the harness by the caregiver.”

34. Please produce all documents in support of your contention in Paragraph 141 of the Complaint that “[b]ecause of the cost of the Chill, it is likely that users will continue to use them or sell them even if they lose the small, removable crotch pad with attached buckles. Because Respondent has stated that it has ‘closed [its] doors,’ users will be unable to obtain replacement crotch pads with buckles, and may continue to use the Chill even though it lacks a crotch pad and buckles, rendering the Chill’s restraint systems inoperable, thereby endangering users.”

35. Please produce all press releases, internet postings, Twitter postings (“tweets”), or other communications issued by the Commission’s Office of Communications, Office of General Counsel or Commission staff, including but not limited to “tweets” sent via the personal Twitter

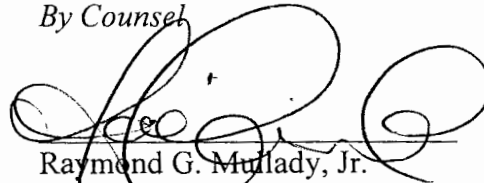
account of the Commission's Director of Communications, Scott Wolfson, regarding the Subject Products.

February 19, 2013

Respectfully submitted,

Baby Matters LLC

By Counsel

A handwritten signature in black ink, appearing to read 'Raymond G. Mullady, Jr.', is written over a horizontal line. The signature is highly stylized with large loops and flourishes.

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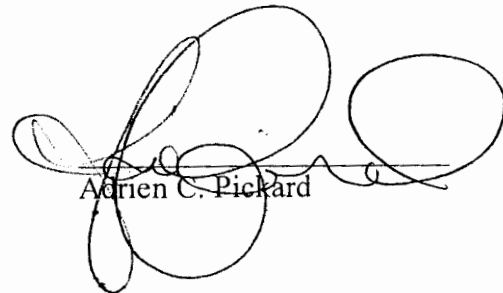
CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Baby Matters' Second Set of Requests for Production of Documents and Things to the Consumer Product Safety Commission upon the following parties in these proceedings by mailing, postage prepaid, and by emailing a copy to each on this 19th day of February, 2013.

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