

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

Received CPSC

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In the Matter of )

BABY MATTERS LLC, )

Respondent. )  
\_\_\_\_\_ )

Office of the Secretary  
FOI

CPSC DOCKET No. 13-1

**RESPONDENT’S MOTION FOR LEAVE TO TAKE DEPOSITIONS**

Pursuant to 16 C.F.R. § 1025.35, Respondent Baby Matters LLC seeks leave to take the depositions upon oral examination of the following:

1. A designee or those designees from within the Consumer Product Safety Commission (the “Commission”) with the most knowledge concerning:
  - a. The facts supporting the Commission’s claims that the Generation One Nap Nanny<sup>®</sup>, the Generation Two Nap Nanny<sup>®</sup>, and the Chill<sup>™</sup> (the “Subject Products”) pose a risk of substantial harm to consumers;
  - b. The facts supporting the Commission’s claims that the Subject Products contain defects;
  - c. The Commission’s knowledge of the facts involving injury or death involving the Subject Products;
  - d. The Commission’s decision to seek a recall of the Subject Products, including its deliberations, its reasons for including the Chill in the lawsuit, its method and methodology for determining that the Subject Products presented a “substantial product hazard” within the meaning of Sections 15(a)(1) or (a)(2)

of the CPSA, 15 U.S.C. §§ 2064(a)(1) or 2064(a)(2), its method and methodology for determining that the Subject Products contain defects that create a substantial risk of injury within the meaning of Section 15(c)(1) of the FHSA, 15 U.S.C. § 1274(c)(1);

- e. The Commission's attempts to procure a second corrective action plan ("CAP") in 2012 with Respondent, including its internal and external communications regarding the Subject Products, its internal and external communications regarding the draft press releases provided to Respondent on or around August 31, 2012 ("Release #12-DRAFT 8/29/12"), October 4, 2012 ("Release #12-DRAFT10/3/12") and October 5, 2012 ("Release-DRAFT10/5/12") (collectively, the "Press Releases"), and all data gathered in support of the Press Releases;
  - f. All testing and evaluation of the safety, function, use or other risk in using the Subject Products conducted by the Commission or on its behalf; and
  - g. All reports of injury or death involving (i) the Kids II, Inc. Mombo Pillow, (ii) the Boppy Company, LLC Boppy Pillow, (iii) the Boppy Company, LLC Newborn Lounger, (iv) all Mattel, Inc. by Fisher-Price "Papasan" Chairs (also referred to by Fisher-Price as "Bouncers"), (v) the Leachco, Inc. Cuddle-U Nursing Pillow and More, (vi) the Mattel, Inc. v. Fisher-Price Rock N' Play Sleeper, (vii) the Summer Infant, Inc. Head-n-Back Sleep Positioner, and (viii) the use of crib bumpers by any manufacturer.
2. Scott Wolfson, Director, Office of Communications at the U.S. Consumer Product Safety Commission.

3. All Commission staff with knowledge of the facts alleged in the Complaint, as amended, or who to intend provide any opinion or fact testimony at trial in this matter.<sup>1</sup>
4. All experts that Complaint Counsel and/or the Commission names as an expert witness.

Respondent reserves the right to supplement this motion for leave with any individuals identified by Complaint Counsel in discovery.

If the Presiding Officer grants this motion, Respondent will serve written notice of the depositions on all parties and the Presiding Officers at least ten days before the date noticed for the depositions as required by 16 C.F.R. § 1025.35(b).

February 25, 2013

Respectfully submitted,

Baby Matters LLC  
*By Counsel*

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<sup>1</sup> Respondent served initial discovery in this matter on December 26, 2012. Among those discovery requests, Respondent asked that Complaint Counsel identify all persons with knowledge of the facts alleged in the Complaint. Complaint Counsel were granted an extension to respond to this discovery until February 27, 2012. Complaint Counsel was, however, admonished to begin producing documents and information on a “rolling basis” to avoid additional delay. As of the date of this filing, Complaint Counsel has not provided any information or documents in response to Respondent’s first discovery requests, including to identify any persons with knowledge of the facts alleged in the Complaint.

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Respondent's Motion for Leave to Take Depositions upon the following parties and participants of record in these proceedings by electronic mail and by first-class mail, postage prepaid, on this 25<sup>th</sup> day of February, 2013.

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The Honorable Walter J. Brudzinski  
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