

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

**IN THE MATTER OF**

**LEACHCO, INC.,**

**Respondent.**

**CPSC DOCKET NO. 22-1**

**LEACHCO, INC.'S MOTION FOR PROTECTIVE ORDER**

Respondent Leachco, Inc., pursuant to 16 C.F.R. §§ 1025.23 & 1025.31(d), respectfully moves for a protective order to stop the Commission's discovery fishing expedition. The CPSC seeks Leachco's internal communications concerning its subjective knowledge of irrelevant matters. But these communications have absolutely nothing to do with the CPSC's allegations, and they are not remotely calculated to lead to the discovery of admissible evidence.

The parties attempted to resolve this dispute without the Court's intervention through correspondence and telephone conferences. They were unable to do so.

The CPSC should be precluded from obtaining responses to **RFP No. 27** and **RFA Nos. 3, 4, & 5--**

**CPSC RFP No. 27:** All electronic communications (including, but not limited to, internal and external emails, instant messages, and text messages) to and from the following persons, whether involving third parties and/or other Leachco personnel, between January 1, 2008 and the date the Complaint was filed in this matter (February 9, 2022) containing the following search terms:

- a. Persons to search:
1. Jamie Leach;
  2. Clyde Leach;
  3. Alex Leach;

4. Mabry Ballard;
5. Tonya Barrett;
6. Dan Marshall; and,
7. Leah Barnes.

b. Search Terms:

1. "Podster" and "safety" or "safe";
2. "Podster" and "suffocation" or "suffocate" or "suffocating";
3. "Podster" and "incident";
4. "Podster" and "breathing" or "breathe";
5. "Podster" and "obstruction" or "obstructing";
6. "Podster" and "injury" or "injure" or "injuries";
7. "Podster" and "hazard" or "hazardous";
8. "Podster" and "death" or "died" or "dying";
9. "Podster" and "sleep";
10. "Podster" and "warnings" or "warn" or "warned";
11. "Podster" and "prone" or "face down";
12. "Podster" and "roll" or "move";
13. "Podster" and "unsupervised" or "supervise";
14. "Podster" and "crib";
15. "Podster" and "bed";
16. "Podster" and "nap";
17. "Podster" and "asphyxia";
18. "Podster" and "defect";
19. "Podster" and "recall"; and
20. "Podster" and "CPSC".

\* \* \*

**CPSC RFA No. 3:** Admit that, prior to the filing of the Complaint, Leachco had knowledge that consumers were allowing infants to sleep on Podsters.

**CPSC RFA No. 4:** Admit that, prior to the filing of the Complaint, Leachco had knowledge that at least one Retailer advertised the Podster as a product in which infants can sleep.

**CPSC RFA No. 5:** Admit that, prior to the filing of the Complaint, Leachco had knowledge that there were reviews on Amazon.com in which consumers referenced infants sleeping on Podsters.

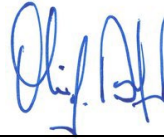
\* \* \*

Leachco sets forth in full its reasons to issue a protective order in the accompanying Memorandum in Support.

A Proposed Order is attached.

**DATED:** November 21, 2022.

Respectfully submitted,



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*Counsel for Respondent Leachco, Inc.*

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CONSUMER PRODUCT SAFETY COMMISSION**

**IN THE MATTER OF  
  
LEACHCO, INC.,  
  
Respondent.**

**CPSC DOCKET NO. 22-1**

**[PROPOSED] ORDER**

This matter, having come before the Presiding Officer on Respondent Leachco, Inc.'s Motion for a Protective Order, dated November 21, 2022, it is:

**HEREBY ORDERED** that Leachco's Motion is Granted.

It is further **ORDERED**:

Leachco is relieved from providing a supplemental response to Complaint Counsel's Request for Production No. 27;

Leachco is relieved from providing answers to Complaint Counsel's Requests For Admission Nos. 3, 4, and 5;

Complaint Counsel is precluded from discovery concerning Leachco's internal communications and/or subjective internal knowledge related to Complaint Counsel's claim that the Podster presents a "substantial product hazard" under 15 U.S.C. § 2064(a)(2); and

Compliant Counsel is precluded from discovery concerning claims other than the claim alleged in Complaint Counsel's Complaint, namely whether the Podster presents a "substantial product hazard" under 15 U.S.C. § 2064(a)(2).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael G. Young  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022, the foregoing was served upon all parties and participants of record as follows:

<p><b>Honorable Michael G. Young</b> Federal Mine Safety and Health Review Commission Office of the Chief Administrative Law Judge 1331 Pennsylvania Ave., N.W., Suite 520N Washington, D.C. 20004-1710 myoung@fmshrc.gov cjannace@fmshrc.gov</p>	<p><b>Mary B. Murphy</b> Director, Div. of Enforcement &amp; Litigation U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p> <p><b>Robert Kaye</b> Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p>
<p><b>Alberta Mills</b> Secretary of the U.S. Consumer Product Safety Commission U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 amills@cpsc.gov ndipadova@cpsc.gov</p>	<p><b>Leah Ippolito</b>, Supervisory Attorney <b>Brett Ruff</b>, Trial Attorney <b>Rosalee Thomas</b>, Trial Attorney <b>Caitlin O'Donnell</b>, Trial Attorney <b>Michael Rogal</b>, Trial Attorney <b>Frederick C. Millett</b> <b>Gregory M. Reyes</b> Complaint Counsel Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n Bethesda, MD 20814 lippolito@cpsc.gov bruff@cpsc.gov rbthomas@cpsc.gov codonnell@cpsc.gov mrogal@cpsc.gov fmillett@cpsc.gov greyes@cpsc.gov</p>

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