

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

CPSC
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Office of the Secretary
FOI

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In the Matter of))
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BABY MATTERS, LLC))
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Respondent.))
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_____)

CPSC DOCKET NO. 13-1
HON. WALTER J. BRUDZINSKI
Administrative Law Judge

**COMPLAINT COUNSEL'S
FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO RESPONDENT
BABY MATTERS, LLC**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Baby Matters, LLC serve upon Complaint Counsel, within thirty days, written responses to each of the requests set forth below, and, within thirty days, produce at Complaint Counsel's office each of the documents and things requested below.

DEFINITIONS

1. "You," "your," "Respondent," the "Firm," and "Baby Matters, LLC" means the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present members, officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present parents, subsidiaries, divisions, or branches of the Respondent.

2. "Answer" means the Answer and Defenses of Respondent filed in this action.

3. “Communications” means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to, emails, voice mails, fax, memoranda, inquiries, reports, claims, and complaints.

4. “Complaint” means the Complaint, and any amendments to the Complaint, filed in this action.

5. “Distribute” means to deliver, sell, give, allot, or otherwise provide in commerce, and includes the giving away of free samples and promotional items.

6. “Documents” means the original and any nonidentical copy of any written, printed, reproduced, graphic, photographic, electronic, audio, visual, or computer records, however produced or reproduced, of any kind or description, whether prepared by you or by any other person, that is in your possession, custody, or control, including, but not limited to, the following: electronic mail; electronically stored information; papers; notes; books; letters; telecopies; facsimiles; photographs; motion pictures; videotapes; video disks; audio recordings; drawings; schematics; manuals; blueprints; intra- and interoffice communications; transcripts; minutes; reports; audio recordings; affidavits; statements; pleadings; summaries; indices; analyses; evaluations; agreements; calendars; appointment books; diaries; telephone logs; tabulations; charts; graphs; data sheets; computer tapes, disks, cards, printouts, and programs; microfilm; microfiche; social media communications, including, but not limited to, information posted on or transmitted through social networking platforms (*e.g.*, MySpace, LinkedIn, and Facebook), digital file-sharing services (*e.g.*, Flickr), blogs and microblogs (*e.g.*, Twitter); instant messages, customer reviews and/or comments posted on the your website(s) relating to the Subject Product; and all drafts, alterations, and/or amendments of or to any of the foregoing. The term includes all drafts of a document and all copies that differ in any respect from the

original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in or accessible through computer or other information retrieval systems (including computer archives or backup systems), together with instructions and all other materials necessary to use or interpret such data compilations.

7. “Identify” or “identity” when used with respect to a person means to provide the person’s present or last known name, residential address, e-mail address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person’s relationships or associations, if any, to the Respondent.

8. “Identify” or “identity” when used with respect to a business, entity, building, or place means the present or last known name, address, and telephone number, website, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondent.

9. “Identify” or “identity” when used with respect to a document means the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

10. “Identify” when used with respect to a communication means to describe in detail the nature and content of the communication, state the date of the communication, identify all

persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

11. “Import” means to bring into the United States a product that has been manufactured in whole or in part outside the United States.

12. “Interrogatories” means Complaint Counsel’s Interrogatories served upon the Respondent.

13. “Manufacture” means to “manufacture, produce, or assemble” as defined in 15 U.S.C. § 2052(a)(10).

14. “Person” means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental and whether foreign or domestic.

15. “Relating to” or “related to” means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

16. “Requests for Production” means Complaint Counsel’s Requests for Production of Documents and Things served upon the Respondent.

17. “Subject Product” means all generations, designs, configurations and prototypes of the Nap Nanny and Nap Nanny Chill and any covers for the Nap Nanny and Nap Nanny Chill.

INSTRUCTIONS

1. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, unless the request is objected to, in which event the reasons for objection shall be stated. If

objection is made to only part of a request, item, or category, that part shall be specified. A response should not be supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

2. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

3. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, insurers, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

4. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

5. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

6. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word “including” shall be construed to mean without limitation. The words “any” and “all” shall be construed so as to make the request inclusive rather than exclusive.

7. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

8. The singular shall include the plural, and vice versa.

9. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondent’s attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

10. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

- i) State the date, nature, and subject matter of the document;
- ii) Identify each author of the document;
- iii) Identify each preparer of the document;
- iv) Identify each person who is an addressee or an intended recipient

of the document;

- v) Identify each person from whom the document was received;
- vi) State the present location of the document and all copies thereof;
- vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;
- viii) State the number of pages, attachments, appendices, and exhibits; and
- ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

11. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

12. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

- i) Identify each author of the document;
- ii) Identify each preparer of the document;
- iii) Identify each addressee or intended recipient of the document;
- iv) Identify each person who received the document;
- v) State the date of the document;
- vi) State the subject matter of the document;
- vii) State the reason for disposal of the document;
- viii) Identify each person who authorized disposal of the document; and
- ix) Identify each person who disposed of the document.

13. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

- i) State the disposition of the document;
- ii) State the date such disposition was made;
- iii) Identify the present custodian of the document, or, if the document no longer exists, so state;
- iv) Identify the person(s) who made the decision regarding the disposition of the document; and
- v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

14. Pursuant to 16 C.F.R. § 1025.31, the Respondent is under a continuing duty to supplement its responses to these discovery requests without further request from Complaint Counsel. Where the Respondent has responded to a discovery request with a response that was complete when made, it is under a duty to supplement that response to include information later obtained.

15. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

16. Please provide all responsive documents, including hardcopy, electronic and e-mail documents in electronic format on CD or DVD. Document level searchable text, all fielded data, and meta-data should be delivered in Concordance® load file (DAT and OPT) accompanied by Bates-numbered single page Group IV TIFF images representing each page of production.

REQUESTS FOR PRODUCTION

1. All documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses.

2. All documents identified in answers to the Interrogatories and all documents relating to your answers to the Interrogatories, in support of your answers, and used or relied upon in preparing your answers.

3. All documents refuting or tending to refute the allegations of the Complaint.

4. All documents supporting or tending to support the allegations of the Complaint.

5. All reports of any expert expected to testify in this proceeding, a current curriculum vitae for each such person, and all documents and other evidence reviewed, considered or relied upon by any such person for his or her opinions.

6. All of your written document retention policies in effect at any time(s).

7. All of your written policies in effect at any time(s) relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the

Subject Product, between, among, by, or with any persons, including, but not limited to: the Respondent; the Respondent's employees, former employees, agents, and/or representatives; and customers or users.

9. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

10. All documents relating to the design, manufacture, and engineering of the Subject Product, including, but not limited to, the following:

- a. Any differences in the manufacturing processes regarding different generations, models, or versions of the Subject Product;
- b. All plans, designs, and prototypes for the Subject Product's harness and restraint system;
- c. All documents relating to changes at any time in the design, specifications, manufacture, and procedures for the manufacture of the Subject Product, including changes to its materials, component parts, composition and construction;
- d. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices; and
- e. All engineering reports or evaluations of each version of the Subject Product.

11. All documents relating to the design, development, design modification, and manufacturing of the packaging, labeling, warnings and instructions for the Subject Product, including any changes made to the packaging, labeling, warnings and instructions of the Subject Product.

12. Provide one example of each iteration or version of every label, warning, instruction and packaging relating to the Subject Product.
13. All documents describing and/or relating to the purpose and uses of the Subject Product.
14. All documents relating to age and weight grading and labeling of the Subject Product.
15. All documents, including studies, evaluations, and analyses, that evaluate the effectiveness of all warnings relating to the Subject Product.
16. All documents, including studies, evaluations, and analyses that evaluate the safety and effectiveness of the Subject Product's harness and restraint mechanism and any studies, evaluations, and analyses of possible alternate restraint mechanisms.
17. All documents, including studies, evaluations, and analyses that evaluate the risks of use and foreseeability of use of the Subject Product in a crib, bassinet, play yard or other enclosed area.
18. All documents, including studies, evaluations, and analyses that evaluate the risks of use and foreseeability of use of the Subject Product without using the harness or restraint system.
19. All documents relating to any statement on your website at any time relating to the purpose of the Subject Product, intended use of the Subject Product, and warnings concerning the Subject Product, including documents reflecting any changes to any such statements on your website.

20. All documents reflecting every version of the following sections of your website and any changes to the text in such sections, including the dates of any such changes:

“Frequently Asked Questions”/“FAQ,” “Testimonials,” “About Us,” and “Our Story.”

21. All documents relating to any tests, analyses, and evaluations of the Subject Products, including all results and conclusions of any testing facility, and all responses by you to the testing facility. This request includes, but is not limited to, documents related to:

- a. Testing or certification to determine if the Subject Product meets or fails to meet any mandatory or voluntary standard;
- b. Testing to evaluate the safety of the Subject Product;
- c. Testing to assess how a consumer will interact with and operate the Subject Product, including any human behavior analysis whether by a Human Factors expert or any other expert or person;
- d. Testing and analysis related to age and weight grading the Subject Product;
- e. All documents related to any changes made in the design, manufacture, importation, distribution, sale, marketing, promotion, or advertising of the Subject Product based on any tests, analyses, and evaluations of the Subject Product.

22. All documents relating to the advertising, marketing, and promotion of the Subject Product, including all changes in the marketing and promotion strategy, or in the advertisements, for the Subject Product. This request includes, but is not limited to, documents related to:

- a. Any research and analysis of competitive products;
- b. Any analysis of the pricing of the Subject Product;

- c. Any advertising, marketing, and promotion of the Subject Product including, but not limited to, that which appeared online, on the radio, in newspapers and magazines, or on television. Included in this request is any advertising, marketing, promotion, or product giveaways appearing on the Internet, including on any blogs or social media sites. Also included in this request are signs, brochures, direct mailings, email messages, and advertising, marketing, and promotion in retail stores and directed to retail customers;
- d. Any special offers related to the Subject Product, including any discounts, sales, coupons, free products, or other incentives to retail customers or other consumers to purchase or promote the Subject Product; and
- e. Any public relations designed to promote, or related to the sale of, the Subject Product.

23. Provide one copy or sample of every iteration or version of each advertisement and promotion of or for the Subject Product, including, but not limited to, those that are or were audio, video, digital, and/or in writing. This request includes advertisements and promotions by you, or by others at your direction, request or encouragement, that appeared, among other places, on the Internet, on the radio, in newspapers and magazines, on television, and on any blogs or social media sites. Also included in this category are signs, brochures, direct mailings, email messages and advertising, marketing, and promotion in retail stores and directed to retail customers.

24. All documents related to any communications with anyone at the U.S. Consumer Product Safety Commission related to the Subject Product or this proceeding.

25. All documents relating to the importation of the Subject Product or parts for the Subject Product, as well as all documents required to be produced and delivered upon importation to any governmental agency.

26. All documents relating to the sale of the Subject Product to distributors, retailers or resellers, including, but not limited to, the following:

- a. Documents related to your agreements with distributors, retailers or resellers, including agreements regarding marketing and promotions for the Subject Product, and any warnings that must accompany the Subject Product;
- b. Documents related to how you advised distributors, retailers or resellers on effective ways to sell the Subject Product and recommended uses for the Subject Product;
- c. Documents related to providing distributors, retailers or resellers with marketing or advertising material;
- d. Documents related to providing distributors, retailers or resellers with special offers regarding the Subject Products, including free products or discounts; and
- e. Documents related to pricing and profits related to the Subject Products.

27. All documents concerning distributors, retailers, resellers, or other persons who continued to sell the Subject Product after the date of this action, including all documents related to postings on your Facebook page or e-mails sent or received by you relating to any distributors, retailers, resellers, or other persons who were selling the Subject Product after the date of this action.

28. All documents related to communications with any physicians or other medical professionals, regarding risks associated with the Subject Product.

29. All documents related to any claim, complaint, or reports of incidents, injuries or fatalities involving the Subject Product, received from any source, including directly from consumers; through retailers; through hospitals and physicians; through state or local government officials, including state and local government health departments; or through international government agencies. This request includes:

a. All documents associated with the claim, complaint, or reports of incidents, injuries or fatalities, including documents given to you as well as documents you requested from the person making the report. It also includes documents you received from a third party such as medical reports or insurance claims; and

b. All documents generated by you, or generated by a third party at your request, such as witness statements or evaluations and assessments of the claim, complaint, or report.

30. All documents related to negotiations, lawsuits, and alternative dispute resolution proceedings related to any injury, death, or risk of injury or death relating to the Subject Product.

31. All versions of complaints and answers, all documents responsive to or produced in response to any discovery requests, and all deposition transcripts, in any lawsuit concerning any injury or death relating to the Subject Products, including Thiel et al v. Baby Matters, LLC, case number 2:2011cv15112.

32. All documents related to communications with ASTM International regarding the Subject Product.

33. All past and present operating agreements of Baby Matters, LLC and Baby Matters Holdings, LLC.

34. All documents sufficient to identify each of the members, both past and present, of Baby Matters, LLC and Baby Matters Holdings, LLC.

35. All documents sufficient to identify all of your past and present employees; their positions and areas of responsibility, and the dates they held those positions and had those responsibilities; and the dates during which you employed each employee.

36. All documents sufficient to identify any parent company or companies of Baby Matters, LLC and Baby Matters Holdings, LLC, as well as all subsidiaries of the parent company or companies of Baby Matters, LLC and Baby Matters Holdings, LLC.

37. All documents relating to all of your insurance policies since 2009, including general liability and product liability policies, as well as all policies evidencing or describing insurance coverage that may be applicable or related to recalls, repairs, refunds and any other corrective action relating to the Subject Products.

38. All liability or insurance policies since 2009 that provide potential coverage for injuries or deaths involving the Subject Products.

39. All documents related to trademark, patent or intellectual property issues regarding the Subject Product, including but not limited to patents 7,418,572; 7,698,764 B2; and D608,102 S.

40. All documents that reflect sales price and profit per unit of the Subject Products.

41. All federal and state tax returns filed for each tax year from 2009 to the present for you and for and Baby Matters Holdings, LLC.

42. All financial statements for you and for Baby Matters Holdings, LLC each year from 2009 to the present, including asset information, cash flow statements, financial statements, balance sheets, and bank covenants.

43. All loan arrangements and/or other credit agreements between you and any other company or entity, or between Baby Matters Holdings, LLC and any other company or entity.

44. All documents relating to any decision to cease operations or relating to any possible bankruptcy case or filing.

45. All documents referring to, relating to, or describing any intended or proposed dissolution of the Firm.



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CERTIFICATE OF SERVICE

I hereby certify that I have served Complaint Counsel's First Set of Requests for Production of Documents and Things, upon all parties and participants of record in these proceedings by mailing, postage prepaid a copy to each on February 7, 2013.

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