UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

ANSWER TO AMENDED COMPLAINT

Pursuant to 16 C.F.R. 1025.12, Baby Matters LLC ("Respondent," or "Baby Matters") hereby Answers the Amended Complaint and states as follows:

Nature of Proceedings

1. Paragraph 1 contains legal conclusions to which no response is required. To the extent a response is required, Respondent states that this paragraph contains no factual allegations that require a response but simply seeks to describe the nature of the action. Baby Matters denies that the Nap Nanny® or the Nap Nanny® Chill™ (the "Subject Products") present a substantial risk of injury or death.

2. Admitted.

3. Denied – incident reports are written records that speak for themselves.

4. Paragraph 4 contains legal conclusions to which no response is required. To the extent a response is required, Respondent admits that this proceeding is governed by the rules set forth in 16 C.F.R. Part 1025.

Jurisdiction

5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations within this paragraph.

Parties

6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and on this basis denies the allegations of this paragraph.

7. Admitted.

8. Admitted.

9. Paragraph 9 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 9.

10. Paragraph 10 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 10.

The Consumer Product

11. Respondent admits that it manufactured and distributed in commerce (as those terms are defined in 15 U.S.C. § 2052(a)(7) and (11)) certain models of the Nap Nanny® and the Nap Nanny® Chill™ between January 2009 until November 2012. The First Generation Nap Nanny® ("Gen1") was manufactured and distributed in commerce by Respondent from January 2009 until August 2009, at which time it was discontinued. The Second Generation Nap Nanny® ("Gen2") was manufactured and distributed in commerce by Respondent from August 2009 until December 2010, at which time it was discontinued. The Nap Nanny® Chill™ (the "Chill") has been manufactured and distributed in commerce from January 2011 until present. Respondent admits that each of the Gen1, the Gen2 and the Chill were offered for sale to consumers for their

personal use in or around a permanent or temporary household or residence, which products were designed to increase comfort and improve infant sleep. Respondent denies the remaining allegations in this paragraph.

12. Respondent denies that the Gen1 is currently sold by it or any authorized retailer. Respondent admits that the Gen1 and Gen2, at the times when those products were sold to the public, were sold under the brand name "Nap Nanny®" and that the Chill is sold under the brand name "Nap Nanny® Chill™".

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Respondent admits that the Gen2 was manufactured between August 2009 and December 2010. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and on this basis denies the remaining allegations of this paragraph.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Respondent admits that the harness in the Chill is not permanently attached to the foam base. Respondent states that the Chill User Guide is a written document that speaks for itself, and denies any allegation inconsistent therewith.

26. Respondent admits that the buckles on the Chill harness strap are sewn into the crotch pad. Respondent denies the remaining allegations of this paragraph.

27. Respondent admits that the foam core components of the Subject Products were manufactured by G&T Industries of Reading, Pennsylvania until on or about November 7, 2012.

28. Admitted.

29. Respondent admits that the fabric covers for a portion of the Gen2 were manufactured by Jiaxing Jiayi Garment Co. Ltd., of Jiazing, Zhejiang, in China until the Fall of 2010.

30. Admitted.

31. Respondent admits that it imported fabric covers for the Chill into the United States until early December 2012.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

COUNT 1

37. Respondent incorporates by reference its responses to Paragraphs 1 through 36 as though fully set forth herein.

38. Paragraph 38 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 38.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Respondent denies the allegations of Paragraph 45 as written. Respondent admits that, from August 2009 through early October 2009, the Gen2 covers fit over the foam in manner similar to the way that a fitted sheet fits on a mattress. In October 2009, in an effort to ensure that the foam base remained clean and covered on all sides, Nap Nanny moved to an alternative design, covering the entire bottom of the Nap Nanny by using a zipper to secure the cover to the foam.

46. Denied.

47. Respondent admits that all users of the Gen2, including, but not limited to, parents and caregivers who remove the fabric cover, are directed in Respondent's instructions that failure to secure the harness around the "D" shaped rings can allow the infant to turn and contact the floor.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Respondent denies that the Chill harness straps and buckles are not securely attached to the base. Respondent states that Paragraph 54 contains hypothetical facts (*i.e.*, that the Chill harness straps can be removed or can be lost) to which no response is required. Respondent denies the remaining allegations contained in Paragraph 54.

55. Respondent states that the instructions in the Chill User Guide are a written document that speaks for itself, and denies any allegation inconsistent therewith. Respondent further states that the Chill is not designed to be used when the crotch pad and attached buckles have been removed from the Chill for washing. The remaining allegations of Paragraph 55 are denied.

56. Respondent states that Paragraph 56 calls for speculation and on this basis, the allegations contained therein are denied.

57. Respondent states that Paragraph 57 calls for speculation and on this basis, the allegations contained therein are denied.

58. Denied.

59. Denied.

60. Paragraph 60 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 60.

61. Denied.

62. Respondent denies that allegations contained in Paragraph 62 as written. Respondent further states that the marketed materials for the Gen2 are contained in written documents which speak for themselves, and deny any allegation inconsistent therewith.

63. Denied.

64. Denied.

65. Denied.

66. Respondent states that Paragraph 66 contains hypothetical facts to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 66.

67. Denied.

68. Paragraph 68 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 59.

69. Paragraph 69 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 69.

70. Denied.

71. Respondent admits that the warning referenced in Paragraph 61 of the Complaint was printed on the underside of the Gen1 and the Gen2 models from January 2009 through July 2010. Respondent denies that the warning was printed in an "extremely small" font and that it was not visible to consumers.

72. Denied.

73. Respondent admits that, on or around April 17, 2010, a six-month-old girl allegedly died while using a Gen2 model Nap Nanny. Respondent states that the medical examiner's report associated with the death of this child is a written document which speaks for itself, and denies any allegation inconsistent therewith. Respondent lacks knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

74. Respondent admits that, on or around July 9, 2010, a four-month-old girl allegedly died while using a Gen2 model Nap Nanny. Respondent states that the medical examiner's report associated with the death of this child is a written document which speaks for itself, and denies any allegation inconsistent therewith. Respondent lacks knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

75. Admitted.

76. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 and on this basis denies the allegations of this paragraph.

77. Respondent admits that it executed a corrective action plan in cooperation with the U.S. Consumer Product Safety Commission and that it complied fully with the corrective action plan. Respondent further states that the corrective action plan is a written document that speaks for itself and denies any allegation inconsistent therewith. To the extent a further response is required, Respondent denies the remaining allegations in this paragraph.

78. Respondent admits that it fully complied with its obligations under the corrective action plan. Respondent further states that the corrective action plan is a written document that speaks for itself and denies any allegation inconsistent therewith. To the extent a further response is required, Respondent denies the remaining allegations in this paragraph.

79. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph in that "change in warning" is undefined, vague and ambiguous, and on this basis denies the same.

80. Admitted.

81. Admitted.

82. Admitted.

83. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 and on this basis denies the allegations of this paragraph.

84. Respondent admits that, at the time of the recall, it knew that there had been a single fatality, a single injury that did not require medical treatment, and a number of non-injury incidents, allegedly involving the Gen1 and Gen2 products. Respondent denies the remaining allegations in this paragraph.

85. Admitted.

86. Respondent admits that all Chill units contain visible warning labels in a position near the head or foot of the infant or, in some instances, near the bottom edge of the unit. Respondent denies that the position of any of these warning labels impedes the visibility of the label and on this basis, denies the remaining allegations in this paragraph.

87. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and on this basis denies same.

88. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and on this basis denies same.

89. Admitted.

90. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 and on this basis denies the allegations of this paragraph. Respondent states that the report of the medical examiner is a written document that speaks for itself, and denies any allegation inconsistent therewith.

91. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 and on this basis denies the allegations of this paragraph.

92. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 and on this basis denies the allegations of this paragraph. Respondent states that the report of the medical examiner is a written document that speaks for itself, and denies any allegation inconsistent therewith.

93. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 and on this basis denies the allegations of this paragraph. Respondent states that the report of the medical examiner is a written document that speaks for itself, and denies any allegation inconsistent therewith.

94. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94.

95. Respondent is without knowledge of information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 95(a) – 95(o). To the extent that the "reported incidents" described in Paragraphs 95(a) – 95(o) are memorialized in writing, these written documents speak for themselves, and Respondent denies any allegation inconsistent therewith.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Admitted.

106. Respondent admits that it promoted its products using the words "Everybody Sleeps," which speak for themselves. Respondent denies the remaining allegations in this paragraph.

107. Respondent admits that it promoted its products using the words "Better than a bassinet, more effective than a wedge," which speak for themselves. Respondent denies the remaining allegations in this paragraph.

108. Respondent admits that it promoted its products using the words "The only portable infant recliner designed for sleep, play – and peace of mind," which speak for themselves. Respondent denies the remaining allegations in this paragraph.

109. Admitted.

110. Respondent states that the language alleged in Paragraph 109 speaks for itself. Respondent denies any allegation inconsistent therewith.

111. Respondent is without knowledge or information sufficient to form a belief as to the truth as to the allegations in this paragraph, and on this basis denies same.

112. Denied.

113. Respondent states that the on-product packaging of the Generation Two Nap Nanny is a written document that speaks for itself, and denies any allegation inconsistent therewith. Respondent denies the remaining allegations of this paragraph.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Respondent states that Paragraph 118 calls for speculation and on this basis, the allegations contained therein are denied.

119. Respondent states that Paragraph 119 calls for speculation and on this basis, the allegations contained therein are denied.

120. Denied.

121. Paragraph 121 contains a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 121.

122. Respondent states that Paragraph 122 calls for speculation and on this basis, the allegations contained therein are denied. Respondent further denies that there is any risk of injury in the proper use of the Subject Products.

123. Respondent states that Paragraph 123 calls for speculation and on this basis, the allegations contained therein are denied. Respondent further denies that there is any risk of injury in the proper use of the Subject Products.

124. Denied.

125. Respondent denies the association of any risk of injury with the Subject Products. To the extent a risk of injury is present, Respondent denies that such risk of injury is not obvious, not intuitive or is not covered by the clear warnings placed on Respondent's products.

126. Respondent denies the association of any risk of injury with the Subject Products. To the extent a risk of injury is present, Respondent denies that such risk of injury is not obvious, not intuitive or is not covered by the clear warnings placed on Respondent's products.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Paragraph 132 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 132.

COUNT 2

133. Respondent incorporates by reference its answers to Paragraphs 1 through 132 as though fully set forth herein.

134. Respondent admits that it has marketed the Subject Product as appropriate for use by infants weighing eight pounds or more until the infant can sit up or becomes too active. Respondent denies the remaining allegations in this paragraph.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Admitted.

143. Denied.

144. Denied.

AFFIRMATIVE DEFENSES

I.

The Complaint fails to state a claim upon which relief can be granted.

II.

The Commission is estopped to assert some or all of the claims asserted in the Complaint.

III.

Some or all of the claims asserted in the Complaint are barred by the doctrine of laches.

IV.

The Commission has released Baby Matters from some or all of the claims asserted in the Complaint.

V.

The Commission has waived some or all of the claims asserted in the Complaint.

WHEREFORE, for the foregoing reasons, Respondent Baby Matters LLC respectfully requests that the Commission:

A. Dismiss the Complaint with prejudice;

B. Order that the Commission promptly notify the public, in writing, of this ruling, including the determination that (i) the Subject Products do not present a "substantial product hazard" within the meaning of Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1); (ii) the Subject Products do not present a "substantial product hazard" within the meaning of Section

15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2); and (iii) the Subject Products do not create a substantial risk of injury to children within the meaning of Section 15(c)(1) of the FHSA, 15 U.S.C. § 1274(c)(1), in the same fashion as the Agency publicized the filing of this suit;

C. Award Baby Matters its attorneys' fees and other expenses in defending this action, including the reasonable expenses of its expert witnesses, and the reasonable costs of any study, analysis, engineering report, test, or project which are found by the Commission to be necessary for the preparation of Baby Matters' case; and

D. Order that the Commission take such other and further actions as the Commission deems necessary to protect Baby Matters' interests in this matter.

February 19, 2013

Respectfully submitted,

Baby Matters LLC
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on I served the foregoing Answer to Amended Complaint upon the following parties and participants of record in these proceedings by electronic mail and by mailing, postage prepaid a copy to each on this 19th day of February, 2013.

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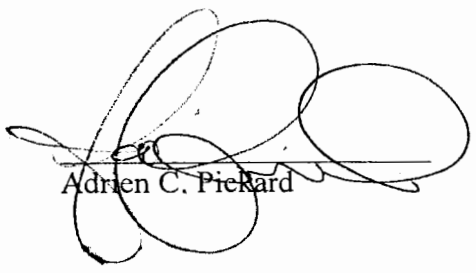

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