UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

ANSWER

Pursuant to 16 C.F.R. 1025.12, Baby Matters LLC ("Respondent," or "Baby Matters") hereby Answers the 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. Paragraph 2 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

3. Paragraph 3 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations within this paragraph.

4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and on this basis denies the allegations of this paragraph.

5. Admitted.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 6.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 7.

The Consumer Product

8. 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.

9. 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™".

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. 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.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. 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.

24. Admitted.

25. 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.

26. Admitted.

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

28. Admitted.

29. Admitted.

30. Respondent admits that approximately 110,000 units of the Chill have been sold to consumers in the United States.

31. Admitted.

32. Respondent admits the allegations in paragraph 32 with the clarification that the correct date is November 23, 2012.

COUNT 1

33. Respondent incorporates by reference its responses to Paragraphs 1 through 32 as though fully set forth herein.

34. Paragraph 34 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 34.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. 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.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Paragraph 52 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 52.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Respondent states that Paragraph 57 contains hypothetical facts to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 57.

58. Denied.

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

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 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.

63. 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.

64. 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.

65. Admitted.

66. 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.

67. 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.

68. 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.

69. Admitted.

70. Admitted.

71. 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.

72. Admitted.

73. 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.

74. 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.

75. Admitted.

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

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Admitted.

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

89. 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.

90. 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.

91. Admitted.

92. Respondent states that the language alleged in Paragraph 91 speaks for itself. Respondent denies any allegation inconsistent therewith.

93. 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.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Respondent states that Paragraph 98 calls for speculation and on this basis, the allegations contained therein are denied.

99. Respondent states that Paragraph 99 calls for speculation and on this basis, the allegations contained therein are denied.

100. Denied.

101. Paragraph 101 contains a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 101.

102. Respondent states that Paragraph 102 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.

103. Respondent states that Paragraph 103 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.

104. Denied.

105. 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.

106. 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.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Paragraph 112 contains legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations contained in Paragraph 112.

COUNT 2

113. Respondent incorporates by reference its answers to Paragraphs 1 through 112 as though fully set forth herein.

114. 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.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Admitted.

120. Denied.

121. 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;

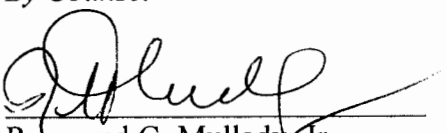
C. Award Baby Matters its attorneys' fees and other expenses in defending this action, including the reasonable expenses of its expert witnesses, and the reasonable costs of any study, analysis, engineering report, test, or project which are found by the Commission to be necessary for the preparation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

December 26, 2012

Respectfully submitted,

Baby Matters LLC
By Counsel



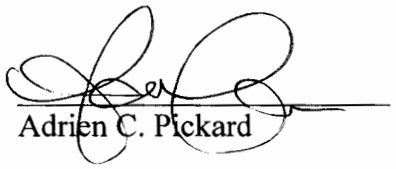
Raymond G. Mullady, Jr.
Mullady@BlankRome.com
Adrien C. Pickard
APickard@BlankRome.com
BLANK ROME LLP
Watergate
600 New Hampshire Ave, N.W.
Washington, D.C. 20037
Tel: (202) 772-5828
Fax: (202) 572-8414
Counsel for Respondent Baby Matters LLC

CERTIFICATE OF SERVICE

I hereby certify that on I served the foregoing Answer upon the following *parties and* participants of record in these proceedings by mailing, postage prepaid a copy to each on this 26th day of December, 2012.

Mary B. Murphy, Esquire
Assistant General Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814

Kelly Moore, Trial Attorney
Complaint Counsel for
U.S. Consumer Product Safety Commission
Bethesda, MD 20814



Adrien C. Pickard