

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)	
In the Matter of)	
)	
LEACHCO, INC.)	CPSC DOCKET NO. 22-1
)	
)	
Respondent.)	
_____)	

COMPLAINT

Nature of the Proceedings

1. This is an administrative enforcement proceeding pursuant to Section 15 of the Consumer Product Safety Act (“CPSA”), as amended, 15 U.S.C. § 2064, for public notification and remedial action to protect the public from the substantial risks of injury presented by various models of infant lounging pillows (“Podsters”) which were manufactured and distributed by Leachco, Inc. (“Respondent”).

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (the “Commission”), 16 C.F.R. Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d), and (f) of the CPSA, 15 U.S.C. § 2064(c), (d), and (f).

Parties

4. Complaint Counsel consists of attorneys in the Division of Enforcement and Litigation within the Office of Compliance and Field Operations representing the staff of the

Commission. 16 C.F.R. § 1025.3(d). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA. 15 U.S.C. § 2053.

5. Respondent is an Oklahoma corporation with its principal place of business located at 130 E. 10th Street, Ada, Oklahoma.

6. Upon information and belief, Respondent is a “manufacturer” and/or “distributor” of a “consumer product” that is “distribute[d] in commerce,” as those terms are defined in Sections 3(a)(5), (7), (8), and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (7), (8), and (11).

The Podsters

7. The Podsters consist of various models of infant lounging pillows that were manufactured and/or distributed in U.S. commerce and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, school, in recreation, or otherwise.

8. The Podsters are manufactured at Respondent’s facilities in Ada, Oklahoma.

9. Upon information and belief, the Podsters include, but are not limited to, the following models: Podster, Podster Plush, Bummzie, and Podster Playtime.

10. Upon information and belief, approximately 180,000 Podsters have been manufactured and distributed in U.S. commerce since 2009. The Podster and Podster Plush models have been sold from 2009 to present; the Bummzie was sold exclusively at Walmart from 2010 to 2018; and the Podster Playtime was sold from 2014 to 2017.

11. Upon information and belief, the retail price for the Podsters ranges from approximately \$49 and \$89.

12. The Podsters are sold at various retail chains including, but not limited to, Amazon.com, Bed Bath and Beyond, Buy Buy Baby, Kohls, Macy’s, Toys R Us/Babies R Us,

and Walmart.

13. The Podster is a product marketed for caregivers to use for infant lounging and to “provide[] a warm and cozy caress for infants.” It was designed to permit a caregiver to keep an infant in a safe environment, allowing for hands-free supervision.

14. The Podster is not and has never been advertised by Respondent as a sleep product.

15. The Podster contains warnings that the product should not be used for sleep and that adult supervision is always required.

16. The Podster contains warnings that the product should only be used on the floor, and not in another product, such as a crib, on a bed, table, playpen, counter, or any elevated surface.

17. The Podster contains warnings that infants should not be placed prone or on their side in the product.

18. The Podster contains instructions that it should be used for infants not to exceed 16 pounds, and should not be used if an infant can roll over.

19. The Podster contains warnings and instructions that use of the product in contravention to these warnings could result in serious injury or death.

The Podsters’ Defects Create a Suffocation Hazard

20. Despite the warnings and instructions, it is foreseeable that caregivers will use the Podster without supervision. It is also foreseeable that caregivers will use the Podster for infant sleep.

- a. The Podsters are marketed for use with infants, and caregivers may trust that the products are safe places to leave infants. Because the Podsters appear simple to use, are likely to be used frequently, and do not appear dangerous, it

is foreseeable that some caregivers may disregard or not fully read the Podsters' warnings.

- b. If an infant falls asleep in the Podster, a caregiver may choose not to disturb the infant and may leave the infant asleep in the product.
- c. Caregivers facing difficulties in getting their infant to sleep may choose to use the Podster for that purpose if the Podster appears to help with sleep or if the infant appears to be comfortable in the Podster, even if the caregiver is aware of the contrary product warnings.
- d. Caregivers with an infant who are traveling or who are dealing with significant financial hardship may be more likely to allow an infant to sleep in the Podster, as they may not have a crib or safe infant sleep product readily available.
- e. If an infant falls asleep in the Podster, it is foreseeable that the caregiver may intentionally sleep while the infant is asleep, may accidentally fall asleep while the infant is asleep, may use the time that the infant is asleep to catch up on work or chores, or otherwise may leave the infant unsupervised.

21. Unsupervised infants can roll or move on the Podster into a position where their nose and mouth are obstructed by the Podster.

22. Unsupervised infants can roll or move off the Podster into a position where their nose and mouth are obstructed by another object, such as soft bedding.

23. Despite warnings and instructions, some caregivers may not place infants on their backs in the Podster and may place infants in positions where their nose and mouth may be obstructed by the Podster.

24. The Podster is defective because it can cause airflow obstruction if an unsupervised infant rolls, moves, or is placed in a position where the infant's nose and mouth

are obstructed by the Podster.

25. The Podster is defective because it is constructed of thick, soft padding that has a concave shape which can envelop an infant's face and cause airflow obstruction if an unsupervised infant rolls, moves, or is placed in a position where the infant's nose and mouth are obstructed by the Podster.

26. The Podster is defective because it lacks rigid underlying components, which can impede the ability of an infant to self-rescue in the event that the infant rolls, moves, or is placed in a position where the infant's nose and mouth are obstructed by the Podster.

27. The Podster is defective because it facilitates an infant's movement on the Podster, enhancing the risk that the infant's nose and mouth will be obstructed by the Podster.

28. The Podster is defective because it facilitates an infant's movement off the Podster, enhancing the risk that the infant's nose and mouth will be obstructed by another object in the infant's environment, such as soft bedding.

29. The design of the Podster allows infants to bend their knees and push off the raised edges of the Podster with their feet, allowing an infant to roll or move on or off the Podster.

30. The Podster may allow an infant to roll, even if the infant is not able to roll on a flat surface, such as in a crib or bassinet.

31. The Podster's design also can lead to unsafe bedsharing where the infant sleeps in an adult bed with one or more adult caregivers.

32. The Podster may be attractive to caregivers who wish to bedshare with an infant because it is soft and portable, and caregivers may believe that the product's high sides will act as a sufficient barrier between the adult and the infant to keep the infant secure in the

Podster.

33. Bedsharing with an infant in a Podster can result in an infant moving into a compromised position within the Podster and suffocating, or moving outside the Podster and suffocating on another person or object, such as soft bedding or the adult bed.

34. If an infant rolls, moves, or is placed in a position where the infant's nose and mouth are obstructed by the Podster or another object, such as soft bedding, the infant can suffocate and die in three to 10 minutes.

Fatal Incidents Caused by the Podsters

35. The Podster's defects have led to the deaths of at least two infants.

36. Upon information and belief, on or about December 16, 2015, a 4-month-old infant suffocated after being placed face-up or on their side in the Podster in a crib. The infant was found face-down on the Podster and later died of complications from asphyxia.

37. Upon information and belief, on or about January 27, 2018, a 17-day-old infant suffocated after being placed face up in the Podster on an adult bed between two caregivers. Upon information and belief, the infant had moved off the Podster onto the adult bed after one of the caregivers rolled onto the Podster and infant.

The Substantial Risk of Injury Posed by the Podsters

38. It is foreseeable that caregivers will use the Podster for infant sleep, despite the instructions and warnings. It is also foreseeable that caregivers will use the Podster without supervision.

39. It is foreseeable that some caregivers will not place infants on their backs in the Podster.

40. It is foreseeable that caregivers will place infants in Podsters and use the Podster for bedsharing in an adult bed.

41. If an infant rolls, moves, or is placed in a position where the infant's nose and

mouth are obstructed by the Podster itself or by another object or person with whom the infant is bedsharing, the infant may not be able to self-rescue and can suffocate within minutes.

42. Upon information and belief, at least two infants, members of a vulnerable population, have suffocated and died after being placed in the Podster for unsupervised sleep.

Legal Authority Under the CPSA

43. Under the CPSA, the Commission may order a firm to provide notice to the public and take remedial action if the Commission determines that a product “presents a substantial product hazard.” 15 U.S.C. § 2064(c) and (d).

44. Under CPSA Section 15(a)(2), a “substantial product hazard” is “a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.” 15 U.S.C. § 2064(a)(2).

45. A product may contain a design defect even if it is manufactured exactly in accordance with its design and specifications if the design presents a risk of injury to the public. *See* 16 C.F.R. § 1115.4.

46. A defect can also occur in a product’s contents, construction, finish, packaging, warnings, or instructions.

47. In assessing whether a product contains a defect, the Commission may consider a consumer’s foreseeable use or misuse of the product. *See* 16 C.F.R. § 1115.4.

Count I

The Podsters Are a Substantial Product Hazard Because They Contain Defects That Create a Substantial Risk of Injury to the Public

48. Paragraphs 1 through 47 are hereby realleged and incorporated by reference as if fully set forth herein.

49. The Podsters are consumer products.

50. The Podsters contain defects because it is foreseeable that caregivers will use the product for infant sleep and it is foreseeable that caregivers will leave infants unattended in the product, and:
- a. The Podster can cause airflow obstruction leading to suffocation if an infant rolls, moves, or is placed in a position where their nose and mouth are obstructed by the Podster;
 - b. The design of the Podster prevents infants from self-rescuing once their nose and mouth are obstructed by the Podster;
 - c. The design of the Podster facilitates infant movement on the Podster, which can result in an infant's nose and mouth becoming obstructed by the Podster;
 - d. The design of the Podster facilitates movement off the Podster, which can result in an infant's nose and mouth being obstructed by another object in the infant's environment, such as soft bedding; and
 - e. The design of the Podster may lead to it being used for bedsharing, which can facilitate an infant's rolling off the product onto an adult bed, leading to the infant's nose and mouth being obstructed by another object or an individual sleeping in the bed.

51. These defects separately, and in combination, create a substantial risk of injury to infants because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise.

52. Therefore, the Podsters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

RELIEF SOUGHT

WHEREFORE, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Podsters present a “substantial product hazard” within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to adequately protect the public from the substantial product hazard presented by the Podsters, and order Respondent under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), to:

- (1) Notify all persons who sell or distribute the Podsters, or to whom such Podsters have been sold or distributed, to immediately cease distribution of the Podsters;
 - (2) Notify appropriate state and local public health officials;
 - (3) Give prompt public notice of the defect in the Podsters, including the incidents and injuries associated with the use of the Podsters, including posting clear and conspicuous notice on Respondent’s website, and providing notice to any third-party website on which Respondent has a presence, and provide further announcements in languages other than English and on radio, television, and social media;
 - (4) Mail and email notice to each distributor and retailer, of the Podsters;
- and
- (5) Mail and email notice to every person to whom the Podsters were delivered or sold.

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest and additionally order Respondent to:

- (1) Refund the purchase price of the Podster;
- (2) Reimburse distributors, retailers, and any other third parties

for expenses in connection with carrying out any Commission Order issued in this matter, as provided by Section 15(e)(2) of the CPSA, 15 U.S.C. § 2064(e)(2);

(3) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (5), above and C(1) through (2) be taken in a timely manner;

(4) Submit monthly reports, to the Commission, documenting the progress of the corrective action program ordered pursuant to this matter;

(5) For a period of five (5) years after issuance of the Final Order in this matter, keep records of its actions taken to comply with Paragraphs B(1) through (5), C(1) through (4), above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order; and

(6) For a period of five (5) years after issuance of the Final Order in this matter, notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter.

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D. Order that Respondent take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 9th day of February 2022

By: Robert Kaye
Assistant Executive Director
Office of Compliance and Field Operations
(301) 504-6960

Mary B. Murphy, Director, Division of Enforcement and Litigation
Leah Ippolito, Supervisory Attorney
Brett Ruff, Trial Attorney
Rosalee Thomas, Trial Attorney

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LIST AND SUMMARY OF DOCUMENTARY EVIDENCE

Pursuant to 16 C.F.R. § 1025.11(b)(3) of the Commission’s Rules of Practice for Adjudicative Proceedings, the following is a list and summary of documentary evidence supporting the charges in this matter. Complaint Counsel reserves the right to offer additional or different evidence during the course of the proceedings, or to withhold evidence on the basis of any applicable legal privileges.

1. Claims, complaints, records, reports, CPSC’s In-Depth Investigations, and lawsuits concerning incidents or injuries involving infant lounging pillows manufactured and distributed by Respondent Leachco, Inc. (“Podsters”).
2. CPSC Product Safety Assessments.
3. Correspondence between Respondent and CPSC staff related to the Podsters.
4. Documents and information related to the Podsters, including notices issued regarding the Podsters and similar products.

Dated this 9th day of February 2022

Mary B. Murphy, Director, Division of Enforcement
and Litigation

Leah Ippolito, Supervisory Attorney

Brett Ruff, Trial Attorney

Rosalee Thomas, Trial Attorney

Complaint Counsel

Office of Compliance and Field Operations

U.S. Consumer Product Safety Commission

Bethesda, MD 20814

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2022, I served the foregoing Complaint and List and Summary of Documentary Evidence upon all parties of record in these proceedings by emailing a copy to counsel, as follows:

Cheryl Falvey
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Washington DC 20004

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Complaint Counsel for
U.S. Consumer Product Safety Commission