

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
BABY MATTERS, LLC)	CPSC DOCKET NO. 13-1
)	
Respondent.)	HON. WALTER J. BRUDZINSKI
)	Administrative Law Judge
)	
)	

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT**

On December 4, 2012, Complaint Counsel issued a Complaint authorized by the U.S. Consumer Product Safety Commission (Commission). The Complaint seeks a determination that Respondent's infant recliners (the Subject Products) constitute a "substantial product hazard" within the meaning of Section 15 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. § 2064, and Section 15 of the Federal Hazardous Substances Act (FHSA), as amended, 15 U.S.C. § 1274. On December 26, 2012, Respondent filed an Answer.

Complaint Counsel requests that the Court grant leave to file the Amended Complaint, which, in keeping with Commission regulations, does not "unduly broaden the issues in the proceedings or cause undue delay." 16 C.F.R § 1025.13. The Commission's rules are "guided by principles stated and developed in case law interpreting the Federal Rules of Civil Procedure." 45 Fed. Reg. 29206, 29209 (May 1, 1980). Federal case law provides that, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, "leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The proposed amendments would not unduly broaden the issues in this proceeding. The amendments do not add any additional counts, but instead supplement the allegations alleged in the Complaint. For example, the proposed amendments add details about incidents in which the Subject Products were used as directed on the floor with harnesses secured around the infants, but nonetheless resulted in infants being placed at risk with their heads or bodies hanging over the side of the Subject Product. *See* Exh. A at ¶¶ 3, 95. The proposed amendments also supplement and clarify allegations concerning the alleged substantial product hazards posed by the Subject Products, in particular the risks associated with Respondent’s Nap Nanny Chill products. *See id.* at ¶¶ 25-26, 54-55, 86, 93, 139-142. As such, the amendments do not unduly broaden the issues in this proceeding.

The proposed amendments also would not cause undue delay. Complaint Counsel has filed this motion seeking the proposed amendments less than two months after the filing of the Complaint and before any discovery has been served on Respondent. In light of this short timeframe, the proposed amendments are timely. *See, e.g., Williams v. Citigroup Inc.*, 659 F.3d 208, 214 (2nd Cir. 2011) (holding that motion seeking leave to amend even after judgment did not constitute “undue delay” in light of “the liberal spirit of Rule 15”), citing *Foman*, 317 U.S. at 182.

Conclusion

For the foregoing reasons, Complaint Counsel respectfully requests that the Court grant leave to file the Amended Complaint.

Kelly Moore

Daniel Vice, Trial Attorney
Kelly Moore, Trial Attorney
Mary B. Murphy, Assistant General Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission
Bethesda, MD 20814