

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

CPSC  
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In the Matter of ) )  
 ) )  
BABY MATTERS, LLC ) )  
 ) )  
Respondent. ) )  
\_\_\_\_\_) )

CPSC DOCKET NO. 13-1

HON. WALTER J. BRUDZINSKI  
Administrative Law Judge

**COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT  
BABY MATTERS, LLC**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Baby Matters, LLC serve upon Complaint Counsel, within thirty days, written answers, under oath, to each of the interrogatories set forth 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 interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part shall be specified. An

answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

2. The answers 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 answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer 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. Identify each person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

4. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

5. 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.

6. 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.

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

8. These interrogatories 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 interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

9. 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.

10. 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.

11. 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 by including, without limitation, the following information:

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

12. 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.

13. 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.

#### INTERROGATORIES

1. Identify all persons who assisted in the preparation of, or who provided information or documents used in the preparation of, the responses to these Interrogatories, and all persons who participated in producing the documents in response to the Requests for Production.

2. Identify each person who you believe possesses any knowledge relating to any injury or the possibility of injury as a result of use of the Subject Product and describe with specificity the knowledge of each person identified.

3. Identify each person whom you expect to call as a witness at trial or any hearing in this matter, and for each witness, state or provide the following information:

- a) The subject matter on which the witness is expected to testify; and
- b) The substance of the facts to which the witness is expected to testify.



4. Identify each person whom you expect to call as an expert witness at trial or any hearing in this matter, and for each such expert witness, state or provide the following information:

- a) The subject matter on which the expert is expected to testify;
- b) The substance of the facts and opinions to which the expert is expected to testify; and
- c) A summary of the grounds for each opinion.

5. Identify each person who participated in the design, development, manufacturing or modification of the Subject Product and its component parts, including any person who participated in determining the intended purpose, intended use, and intended user of the Subject Product. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

6. Identify each person who participated in any determination of the appropriate or recommended age and weight of any user of the Subject Product, including any person with knowledge of changes made to the age and weight grading, labeling and determination. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

7. Identify each person involved in creating, designing, and manufacturing any and all versions of the packaging, labels, warnings, and instructions that accompanied the Subject Product, including any person with knowledge of changes made at any time to the packaging, labels, warnings and instructions that accompanied the Subject Product. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

8. Describe all identifying marks on the Subject Products that reveal when or where the product was manufactured, imported, distributed, or sold, including any dates stamped on the Subject Products, when such markings were placed on the Subject Products, and any changes in the location or content of such markings.

9. Identify each label, warning or instruction that appeared at any time on any website you have created or maintained that provided information about the recommended age and weight of the user of the Subject Product and/or the possible risks associated with use of the Subject Product. For each label, warning, or instruction provide the dates during which it was visible on any such website.

10. State and describe every basis for your warning that the Subject Product should not be used in:

- a) A crib, play yard or other confined area, or
- b) On a table, countertop or other elevated surface.

11. Identify and describe the location of each label, warning or instruction that accompanied the Subject Product that provided information about the recommended age and weight of the user of the Subject Product, the recommendations for safe use of the Subject Product, and/or the possible risks associated with use of the Subject Product. Identify and provide the number of the Subject Products manufactured or sold with each such label, warning or instruction and the dates during which the products were accompanied by the label, warning or instruction.

12. Identify how many of each model of the Subject Products contained no visible warnings on the outside of the Subject Product's cover and describe which Subject Products contained no such visible warnings and the dates when these Subject Products were sold.

13. Identify how many of each model of the Subject Products only contained warning labels sewn into the inside of the Subject Product's cover such that when the cover is fully zippered – or in the case of covers without zippers, when such covers are pulled around the product by elastic – such warnings are not visible, and describe which Subject Products contained such warnings and when these Subject Products were sold.

14. State the dates during which the Nap Nanny Chill contained on its packaging the statement, "REMEMBER: Always use our Nap Nanny on the floor," how many of the Subject Products contained this statement, and when this statement was changed to say, "REMEMBER: Always use our Nap Nanny on the floor."

15. Describe all quality control measures you and any of your contractors and/or suppliers have taken to ensure that the Subject Products contained the correct warnings and labels in the correct positions on the Subject Products, and describe how, if at all, these measures changed following the July 2010 recall.

16. Describe every effort you made to ensure that retailers possessing the Subject Products at the time of the July 2010 recall placed a sticker on the outside of the product as described in the voluntary corrective action plan.

17. State approximately how many of the Subject Products were in the possession of retailers at the time of the July 2010 recall, and how many of such products were sold after the date of the recall without stickers that had been required to be placed on such products as described in the voluntary corrective action plan.

18. State what remedial actions you took when you were made aware that some of the Subject Products sold after the July 2010 recall did not contain the stickers and labels required by

the corrective action plan, and identify all individuals or entities which notified you of such information.

19. Describe when you created any content at napnanny.com/recall, when that content was removed, when that page was redirected to the napnanny.com home page, and identify all persons responsible for redirecting that page to the napnanny.com home page.

20. Identify any studies, or any other materials of any kind, that evaluate the effectiveness of any warnings that have been placed on the Subject Product and in product manuals, as that evaluation relates to:

- a) Use of the Subject Product when used as intended;
- b) Use of the Subject Product in a crib, bassinet, play yard, or other enclosed area;
- c) Use of the Subject Product without the harness or restraint system; and
- d) Communication of the hazards of the Subject Product when used as intended; or when used in a crib, bassinet, play yard, or other enclosed area; or when used without the harness or restraint system.

21. Identify any studies, or any other materials of any kind, that evaluate the risks and safety of the design of:

- a) The Subject Product when used as intended;
- b) The Subject Product when used in a crib, bassinet, play yard, or other enclosed area;
- c) The Subject Product when used without the harness or restraint system; and

- d) The Subject Product's harness or restraint system and any possible alternative designs of the harness or restraint system.
- e) Use of a 5-point-harness instead of a 3-point-harness on the Subject Products.

22. Identify any studies, or any other materials of any kind, that evaluate the likelihood of use of the Subject Product:

- a) In a crib, bassinet, play yard, or other enclosed area; or
- b) Without using the harness or restraint system.

23. Identify each person involved in creating, maintaining, and developing the contents of your website or any iteration of that site. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

24. Identify each person who participated in the marketing, advertising, and/or promotion of the Subject Product in any form or through any media. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

25. State whether you have ever shown, demonstrated, or promoted the Subject Products in a crib, enclosed area, or on any surface other than the floor, and describe in detail each such instance.

26. Identify all distributors, retailers and resellers of the Subject Product and describe your relationship with each distributor, retailer and reseller. For each distributor, retailer or reseller, provide the following information:

- a) How many Subject Products, and which models or generations of the Subject Product, you sold to each distributor, retailer and reseller;

- b) The dates during which you sold the Subject Product to each distributor, retailer and reseller;
- c) All distributors, retailers or resellers who were still selling the Subject Product after of the date of this action and the number of Subject Products available for sale at that time at each distributor, retailer or reseller.
- d) All distributors, retailers or resellers who were still selling the Subject Product on or after December 28, 2012, and the number of Subject Products available for sale at that time at each such distributor, retailer or reseller.

27. Identify any agreements or communications you have had with each distributor, retailer and reseller, including agreements or communications related to warnings that must accompany the Subject Product and language or graphics that may be used to market and sell the product.

28. Identify and describe in detail all communications you have had with any distributor, retailer or reseller on or after December 4, 2012.

29. Identify all tests, analyses, and evaluations of the Subject Product. As part of your response, for each test, analysis or evaluation:

- a) Identify the specific product or products tested;
- b) Describe each test, analysis, or evaluation, including the date of the test and the standard or protocols used;
- c) Identify all persons who participated in setting up and conducting the test, analysis or evaluation;

- d) Describe all information, directions, and requests that you provided to the person conducting the test, analysis, or evaluation;
- e) Describe and explain the results of the test, including all observations and conclusions;
- f) Identify all persons who participated in evaluating the test results; and
- g) Describe any changes to the Subject Product as a result of the test, analysis, or evaluation.

30. Identify each claim, complaint, injury or fatality that occurred in the Subject Product, relating to use of the Subject Product, relating to warnings for the Subject Product, or relating to any user of the product failing to be restrained by the restraint system or having any part of its body maneuver over the side of the Subject Product. For each claim, complaint, injury or fatality:

- a) Provide the name, address, telephone number, email address, and any other identifying information of the person making the claim, complaint, or report of injuries or fatalities;
- b) Identify the date you first received information relating to each claim, complaint, or report of injuries or fatalities;
- c) State the information you received in each claim, complaint, or report of injuries or fatalities and how you received it;
- d) Describe in detail all communications with any person concerning the claim, complaint, injury or fatality;

- e) State whether you investigated or took other responsive steps after the initial claim, complaint, or report of injuries or fatalities, and if so, the date and description of each investigation or other step;
- f) State whether medical attention was received by any person related to the claim, complaint, or report of injuries or fatalities;
- g) State the age of any child or infant related to each claim, complaint, or report of injuries or fatalities;
- h) State the date the product involved was manufactured and purchased;
- i) State where the product involved was purchased and who purchased it; and
- j) State the model name of the product including cover type, type of packaging, and warnings on the involved product.

31. Identify your insurance carrier, and state whether claims have been made against such policy by any consumer who alleges that his or her child was injured or killed using your product.

32. Identify all communications, incidents, or occurrences you are or have been aware of concerning use of the Subject Product in a crib, bassinet, play yard, or other enclosed area.

For each incident or occurrence:

- a) Provide the name, address, telephone number, email address, and any other identifying information of the person communicating the incident or occurrence or affected by the incident or occurrence;
- b) Identify the date you first received information relating to the incident or occurrence;



- c) State the information you received concerning the incident or occurrence and how you received it;
- d) Describe your communications with any person regarding the incident or occurrence;
- e) State whether you investigated or took other responsive steps after learning of the incident or occurrence, and if so, describe your investigation or response including the date and contents of each investigation or response;
- f) State whether medical attention was received by any person involved in the incident or occurrence;
- g) State the age of any child or infant involved in the incident or occurrence;
- h) State the date the product involved was manufactured and purchased;
- i) State where the product involved was purchased and who purchased it; and
- j) State the model name of the product including cover type, type of packaging, and warnings on the involved product.

33. Identify all communications, incidents, or occurrences you are or have been aware of concerning use of the Subject Product without using the harness or restraint system, or without using the harness or restraint system tightly enough to adequately secure an infant. For each incident or occurrence:

- a) Provide the name, address, telephone number, email address, and any other identifying information of the person communicating the incident or occurrence or affected by the incident or occurrence;

- b) Identify the date you first received information relating to the incident or occurrence;
- c) State the information you received concerning the incident or occurrence and how you received it;
- d) Describe your communications with any person regarding the incident or occurrence;
- e) State whether you investigated or took other responsive steps after learning of the incident or occurrence, and if so, describe your investigation or response including the date and contents of each investigation or response;
- f) State whether medical attention was received by any person involved in the incident or occurrence;
- g) State the age of any child or infant involved in the incident or occurrence;
- h) State the date the product involved was manufactured and purchased;
- i) State where the product involved was purchased and who purchased it; and
- j) State the model name of the product including cover type, type of packaging, and warnings on the involved product.

34. Identify all returns of the Subject Product or requests to return the Subject Product related to the safety, warnings, design, or use of the Subject Product, and any replacements or full or partial refunds provided for the Subject Product or requests for a replacement or full or partial refund of the Subject Product and for each:

- a) Provide the name, address, telephone number, email address, and any other identifying information of the person seeking the replacement, return or refund;
- b) Identify the date you first received information relating to the replacement, return or refund;
- c) State the information you received relating to the replacement, return or refund and how you received it;
- d) State whether you investigated or took other responsive steps after learning of request for replacement, return or refund, and if so, describe your investigation or response including the date and contents of each investigation or response;
- e) State whether medical attention was received by any person related to the request for a replacement, return or refund;
- f) State the age of any person relating to the request for replacement, return or refund;
- g) State the date the product involved was purchased;
- h) State where the product involved was purchased and who purchased it;
- i) State the type of packaging and warnings on the involved product; and
- j) Describe your communications with any person relating to the replacement, return or refund.

35. Describe in detail any lawsuits, alternative dispute resolution proceedings, settlements, or payments related to any possible risks or injuries relating to use of the Subject Product.

36. Identify each person with knowledge of any lawsuits, alternative dispute resolution proceedings, settlements, payments, or refunds related to any possible risks or injuries associated with use of the Subject Product.

37. Identify every person who has ever been deposed in any matter related to a Subject Product and state the date of such deposition and describe the matter in which the deposition occurred.

38. State whether you are continuing to manufacture, import or sell the Subject Products and identify, by model, the dates when you ceased to manufacture, import or sell the Subject Products.

39. Identify each person who participated in determining the pricing of the Subject Product. For each person, indicate the time period of the work and describe the person's responsibilities, role, and contribution.

40. Identify all of the members, both past and present, of Baby Matters, LLC, and identify all of your past and present employees, the dates during which you employed each employee, and each employee's job description.

41. Identify all of the members, both past and present, of Baby Matters Holdings, LLC, and identify all of Baby Matters Holdings, LLC's past and present employees, the dates during which Baby Matters Holdings, LLC employed each employee, and each employee's job description.

42. State the annual income and profit of Baby Matters, LLC by year for each of the last five years.

43. State the annual income and profit of Baby Matters Holdings, LLC by year for each of the last five years.

44. State your per unit profit for each model or generation of the Subject Products.
45. Identify all trademarks, patents, patents pending, or patent applications relating to the Subject Product, including but not limited to patents 7,418,572; 7,698,764 B2; and D608,102S.
46. Describe any and all differences between the products described in your trademarks, patents, patents pending, or patent applications (including 7,418,572; 7,698,764 B2; and D608,102S), and the Subject Products, and explain why each such change was made.
47. Describe all evidence that supports the claim that the Subject Product “elevates baby, which is often recommended by doctors for babies with reflux, gas, colic, ear infections, colds & stuffiness.”
48. Describe all evidence that supports the statement on your website that, “The CPSC advised us that it had conducted a technical analysis on the Nap Nanny Chill, and deemed it a suitable upgrade to our older models.”
49. Describe all evidence that supports the statement on your website that, with respect to the Nap Nanny Chill warnings, “These are the same warning labels the CPSC helped us write and approved two years ago.”
50. Describe all evidence that supports the statement on your website that, “The changes to the harness on the Nap Nanny Chill were made at the urging of the CPSC two years ago.”

*Daniel Vice*

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Complaint Counsel for  
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Bethesda, MD 20814

CERTIFICATE OF SERVICE

I hereby certify that I have served Complaint Counsel's First Set of Interrogatories on 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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