

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of
LEACHCO, INC.

CPSC DOCKET NO. 22-1

Respondent.

RESPONDENT LEACHCO INC.'S ANSWER TO COMPLAINT

Pursuant to 16 C.F.R. § 1025.12, Respondent, Leachco, Inc. (“Leachco”), by and through its undersigned counsel, hereby files this Answer and responds to the specific allegations in the numbered paragraphs in the CPSC’s Complaint, and states:

When Leachco says that something “speaks for itself,” it does not admit that the referenced material exists, is accurate, or is placed in the proper context.

Leachco is not obligated to respond to the headings of the Complaint. The headings are re-produced here for ease of reference. Inclusion of the headings does not constitute an admission of the Complaint’s allegations or characterizations. Leachco denies all titles and subheadings in the Complaint.

“Nature of Proceedings”

1. The allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 1 of the Complaint.

2. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Leachco states that 16 C.F.R. § 1025 speaks for itself, states that other sources of substantive and procedural law may apply to this proceeding, and otherwise denies the allegations in this Paragraph.

“Jurisdiction”

3. The allegations contained in Paragraph 3 of the Complaint are legal conclusions and a characterization of the complaint to which no response is required. To the extent a response is required, Leachco states that 15 U.S.C. §§ 2064(c) and (d) speak for themselves. Leachco otherwise denies the allegations contained in Paragraph 3 of the Complaint.

“Parties”

4. The allegations contained in Paragraph 4 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco states that 15 U.S.C. § 2053 speaks for itself and otherwise denies the allegations in Paragraph 4 of the Complaint.

5. Leachco admits the allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco states that Sections 3(a)(5), (7), (8), and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (7), (8), and (11) speak for themselves and otherwise denies the allegations in Paragraph 6 of the Complaint.

“The Podsters”

7. Leachco admits that it manufactures and distributes Podsters[®], which are infant loungers that were offered for sale to consumers for personal use. Leachco denies all remaining allegations contained in Paragraph 7 of the Complaint not specifically admitted herein.

8. Leachco admits the allegations contained in Paragraph 8 of the Complaint.

9. Leachco admits the allegations contained in Paragraph 9 of the Complaint.

10. Leachco admits the allegations contained in Paragraph 10 of the Complaint.

Leachco admits the allegations contained in Paragraph 11 of the Complaint.

11. Leachco admits that at various times Podsters[®] were sold at the named retail chains, not all of which are currently distributing Podsters[®]. Leachco denies all remaining allegations contained in Paragraph 12 of the Complaint not specifically admitted herein.

12. Leachco admits the allegations contained in Paragraph 13 of the Complaint.

13. Leachco admits the allegations contained in Paragraph 14 of the Complaint.

14. Leachco admits the allegations contained in Paragraph 15 of the Complaint.

15. Leachco admits the allegations contained in Paragraph 16 of the Complaint.

16. Leachco admits the allegations contained in Paragraph 17 of the Complaint.

17. Leachco admits the allegations contained in Paragraph 18 of the Complaint.

18. Leachco admits the allegations contained in Paragraph 19 of the Complaint.

“The Podsters’ Defects Create a Suffocation Hazard”

19. The allegations contained in Paragraph 20 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations in Paragraph 20 of the Complaint.

20. Leachco is without information sufficient to form a belief about the broad allegations contained in Paragraph 21 of the Complaint and on that basis denies the same.

21. Leachco is without information sufficient to form a belief about the broad allegations contained in Paragraph 22 of the Complaint and on that basis denies the same.

22. Leachco admits that some caregivers may ignore the warnings on the Podster[®]. Leachco denies all remaining allegations contained in Paragraph 23 of the Complaint not specifically admitted herein.

23. Leachco denies the allegations contained in Paragraph 24 of the Complaint.

24. Leachco denies the allegations contained in Paragraph 25 of the Complaint.

25. Leachco denies the allegations contained in Paragraph 26 of the Complaint.
26. Leachco denies the allegations contained in Paragraph 27 of the Complaint.
27. Leachco denies the allegations contained in Paragraph 28 of the Complaint.
28. Leachco denies the allegations contained in Paragraph 29 of the Complaint.
29. Leachco denies the allegations contained in Paragraph 30 of the Complaint.
30. Leachco denies the allegations contained in Paragraph 31 of the Complaint.
31. Leachco denies the allegations contained in Paragraph 32 of the Complaint.
32. Leachco is without information sufficient to form a belief about the allegations contained in Paragraph 33 of the Complaint and on that basis denies the same.
33. Leachco is without information sufficient to admit or deny the allegations contained in Paragraph 34 of the Complaint and on that basis denies the same.

“Fatal Incidents Caused by the Podsters”

34. Leachco denies the allegations contained in Paragraph 35 of the Complaint.
35. Leachco denies the allegations contained in Paragraph 36 of the Complaint.
36. Leachco is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 37 of the Complaint, and therefore denies these allegations.

“The Substantial Risk of Injury Posed by the Podsters”

37. Leachco denies the allegations contained in Paragraph 38 of the Complaint.
38. Leachco denies the allegations contained in Paragraph 39 of the Complaint.
39. Leachco denies the allegations contained in Paragraph 40 of the Complaint.
40. Leachco denies the allegations contained in Paragraph 41 of the Complaint.
41. Leachco denies the allegations contained in Paragraph 42 of the Complaint.

“Legal Authority Under the CPSA”

42. The allegations contained in Paragraph 43 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 43 of the Complaint.

43. The allegations contained in Paragraph 44 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 44 of the Complaint.

44. The allegations contained in Paragraph 45 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 45 of the Complaint.

45. The allegations contained in Paragraph 46 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 46 of the Complaint.

46. The allegations contained in Paragraph 47 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Leachco denies the allegations contained in Paragraph 47 of the Complaint.

“Count I”

47. Leachco repeats and restates its answers, denials, and defenses to Paragraphs 1 through 47 and incorporates each by reference as if fully set forth herein.

48. Leachco admits the allegations contained in Paragraph 49 of the Complaint.

49. Leachco denies the allegations contained in Paragraph 50 of the Complaint.

50. Leachco denies the allegations contained in Paragraph 51 of the Complaint.

51. Leachco denies the allegations contained in Paragraph 52 of the Complaint.

“Relief Sought”

Leachco denies that CPSC is entitled to the “Relief Sought” including the relief set forth in paragraphs A through D, inclusive of subparts. Leachco further denies all allegations contained in the Complaint not specifically admitted herein.

ADDITIONAL DEFENSES

By asserting the matters set forth below, Leachco does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted, or upon which relief can be granted against Leachco.

SECOND ADDITIONAL DEFENSE

The Complaint fails to identify a “defect” in the Podster[®] products within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

THIRD ADDITIONAL DEFENSE

The Complaint fails to identify a “substantial product hazard” within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

FOURTH ADDITIONAL DEFENSE

The Complaint fails to identify a “substantial risk of injury to the public” within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3) if used properly or under reasonably foreseeable misuse.

FIFTH ADDITIONAL DEFENSE

The Complaint fails to identify a risk of injury that outweighs the utility to a consumer of the product for parents to use while the infant is awake and supervised by an adult.

SIXTH ADDITIONAL DEFENSE

The alleged injuries were caused by the acts or omissions of third-persons or entities over which Leachco had no control.

SEVENTH ADDITIONAL DEFENSE

The alleged injuries were caused or contributed to, directly and proximately, in whole or in part, by misuse, unauthorized use, unintended use, unforeseeable use and/or improper use of the product at issue.

EIGHTH ADDITIONAL DEFENSE

The Complaint may be barred by the doctrine of estoppel, waiver and/or laches.

NINTH ADDITIONAL DEFENSE

Leachco reserves the right to amend this Answer to add additional defenses if they become apparent from further discovery.

WHEREFORE, Respondent, Leachco, requests the entry of an Order:

- A. Dismissing this case;
- B. Awarding to it its costs and expenses, including attorneys' fees; and
- C. Granting it such other and further relief as may be justified.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2022, a true and correct copy of the foregoing Answer to Complaint was served by U.S. Mail, first-class and postage prepaid, on the Secretary of the U.S. Consumer Product Safety Commission, and all parties and participants of record in these proceeding in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills:

Alberta Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
301-504-7479
amills@cpsc.gov

As no Presiding Officer has been appointed as of this date, one copy by U.S. Mail, first-class and postage prepaid to the Presiding Officer in the care of Secretary Mills at the above address. One copy by electronic mail to:

Robert Kaye
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
rkaye@cpsc.gov

One copy by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail to

Complaint Counsel:

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

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Respectfully submitted,



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