

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

CONSENT AGREEMENT
IN CAMERA

This Consent Agreement is made by and between the staff of the U.S. Consumer Product Safety Commission and Respondent, Baby Matters, LLC, to settle the above-captioned administrative action. The parties agree as follows:

Parties

1. The "Commission staff" is the staff of the United States Consumer Product Safety Commission (CPSC or the Commission), an independent regulatory agency of the United States, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

2. Respondent Baby Matters LLC is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 531 Winston Way, Berwyn, PA 19312. Respondent, as that term is used herein, shall mean Baby Matters LLC, its successors, assigns or receivers, including Baby Matters Holdings, LLC.

Subject Matter

3. The Subject Products are sold under the brand names Nap Nanny and Nap Nanny Chill (“Chill”). From January 2009 to November 2012, Respondent was a manufacturer, importer, distributor, and retailer, as those terms are defined in Sections 3(a)(5), (7), (11) and (13) of the CPSA, of 160,000 Nap Nanny Generation One, Generation Two, and Chill infant recliners and fabric covers (collectively, the “Subject Products”). Respondent offered them for sale to consumers for their personal use in or around a permanent or temporary household or residence, in recreation or otherwise.

4. On December 4, 2012, the Commission staff filed an Administrative Complaint (as amended and supplemented thereafter, the “Complaint”) against Respondent, seeking, *inter alia*, a recall of the Subject Products pursuant to Section 15 of the 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. The Complaint alleges that each of the Subject Products presents a “substantial product hazard” within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a). The Complaint alleges that the Subject Products contain a design defect; that the Subject Products are defective because the risk of injury occurs as a result of their operation or use; and that the Subject Products are defective because their instructions and warnings are inadequate. The Complaint further alleges that each of the Subject Products is “an article intended for use by children,” that “contains a defect which creates a substantial risk of injury to children,” within the meaning of Section 15(c) of the FHSA, 15 U.S.C. § 1274(c).

5. From 2009 to the present, the Commission staff has received at least 92 incident reports involving the Subject Products, including five infant deaths.

6. Respondent filed an Answer to the Complaint in which it denied that the Subject Products present a substantial product hazard or contain a defect within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a) or Section 15(c) of the FHSA, 15 U.S.C. § 1274(c) (hereinafter collectively referred to as “substantial product hazard”). Respondent further denied that any alleged defect in the Subject Products, or any alleged inadequacy of the warnings and instructions accompanying the Subject Products, caused or contributed to the 92 incident reports (including five infant deaths) allegedly received by Commission staff.

Agreement of the Parties

7. It is the express purpose of the parties in entering into this Consent Agreement to protect the public safety by implementing a voluntary corrective action involving the Subject Products.

8. The parties intend for this Consent Agreement and the attached Order (the “Order”), which is hereby incorporated by reference, to resolve staff’s charges and requests for relief set forth in the Administrative Complaint in this proceeding.

9. For purposes of this settlement only, Respondent admits that the Commission has jurisdiction over the Subject Products as “consumer products” under Section 3 of the CPSA, 15 U.S.C. § 2064(a), and over Respondent.

10. For purposes of this settlement only, Respondent admits that each of the Subject Products is “an article intended for use by children,” within the meaning of Section 15(c) of the FHSA, 15 U.S.C. § 1274(c).

11. The signing of this Consent Agreement does not constitute an admission by Respondent of the existence of either a substantial product hazard or reportable information pursuant to Section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

12. Respondent agrees to implement a voluntary corrective action plan regarding the Subject Products (the "CAP"), the terms of which include the following:

a. No later than the next business day following the date that the Presiding Officer transmits this Consent Agreement to the Commission pursuant to 16 C.F.R. § 1025.26, Respondent shall deposit, without any adjudication or admission of fact or law, \$13,000 into an escrow account to be used solely for purposes of implementing paragraph 12(c) and (e) as described herein. Leslie Gudel-Kemm in her individual capacity shall have no obligation to escrow any funds or to personally fund any aspect of this corrective action. No such funds shall be returned to Respondent, its owners or officers.

b. The Commission and Respondent shall issue a press release announcing a voluntary recall of the Subject Products that comports with the terms of this Agreement and prior recall press releases regarding the Subject Products.

c. Respondent shall expend the funds set aside in paragraph 12(a) to publicize the recall to consumers. All such expenditures and notices to consumers shall be approved in advance by Commission staff. Notification to consumers shall begin within four weeks of the effective date of this agreement.

d. Within two weeks of the effective date of the Order, Respondent shall send the recall press release described herein to all retailers of which Respondent is aware that have sold the Subject Products.

e. Respondent shall maintain a Commission-accepted website at <http://www.napnanny.com> for five years following the date of this Consent Agreement. All content of the website shall be subject to approval by Commission staff and the website shall contain only the recall press release described herein.

f. Respondent shall announce the corrective action plan described herein through all social media accounts that it maintains, including, but not limited to, Respondent's Facebook page, and such announcements shall include a link to the press release referenced in paragraph 12(a) above.

13. Respondent and Leslie Gudel-Kemm shall not manufacture, sell, distribute, or import any Subject Product or any of its component parts at any time subsequent to the execution of this Agreement.

14. It is unlawful to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States the Subject Products.

15. This order is issued under section 15 of the CPSA (15 U.S.C. § 2064) and Section 15 of the FHSA (15 U.S.C. § 1274). A violation of this Consent Agreement is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. § 2068(a)(5) and Section 4(j) of the FHSA, 15 U.S.C. § 1263(j), and may subject a violator to civil and/or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. §§ 2069 and 2070) and Section 5 of the FHSA (15 U.S.C. § 1264).

16. In addition, a violation of the provisions set forth in paragraph 14 is a separate prohibited act within the meaning of section 19(a)(2) of the CPSA (15 U.S.C. §2068(a)(2)) and may subject a violator to civil and/or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. §§ 2069 and 2070).

17. In consideration of the actions set forth in this Consent Agreement, including setting aside in escrow the funds specified in paragraph 12(a), the Commission fully releases, acquits, and forever discharges Leslie Gudel-Kemm, in her individual capacity, from all claims, demands, liabilities, actions, or causes of action in connection with any violations of

the CPSA or FHSA arising out of or in any way concerning the manufacturing, importation, distribution, and sale of the Subject Products occurring prior to the date of this Consent Agreement. The Commission further agrees not to initiate proceedings to hold Leslie Gudel-Kemm, in her individual capacity, responsible for: (1) violations by Respondent of Paragraph 12(a) through 12(f) of this Consent Agreement, and (2) violations by others of paragraphs 14-16 of this Consent Agreement.

18. Respondent agrees to fulfill all requirements of the Order.

19. Pursuant to 16 C.F.R. § 1115.20(b)(1)(v), Respondent acknowledges that the Commission reserves the right to seek sanctions for any violations of the reporting obligations of Section 15(b) of the CPSA and its right to take other appropriate legal action. Respondent further acknowledges that pursuant to 16 C.F.R. § 1115.20(b)(1)(x), any interested person may bring an action pursuant to section 24 of the CPSA in any U.S. District Court in the district for which the Consenting Party is found or transacts business to enforce the order and to obtain appropriate injunctive relief.

20. Respondent shall notify the Commission staff in writing within ten (10) days following any transfer of property rights held by Respondent or any person or entity over which Respondent has control concerning all patents held by Respondent regarding the Subject Products, including but not limited to the following U.S. Patents and Patent applications: (a) 7,418,752, (b) D608,102, (c) 7,698,764, (d) 2009/0056,025, and (e) 16266-000004/US/PS1.

21. Respondent shall not sell or assign any property rights held by Respondent to the name "Nap Nanny" or "Chill" including but not limited to (i) Respondent's U.S. Trademark for Nap Nanny, Registration Number 3605305; and (ii) Respondent's U.S. Trademark for Nap

Nanny Chill, Registration Number 4080935. Respondent shall not use the name "Nap Nanny" for the sale of infant recliners or similar products. Respondent hereby affirms that it owns all of the rights to the patents and trademarks for the Subject Products as of the date of the issuance of the Commission's Order accepting this agreement.

22. The Commission or Respondent may disclose the terms of this Consent Agreement and Order to the public.

23. This Consent Agreement shall take effect upon its final acceptance by the Commission, the issuance of a final order, and its service upon the Consenting Party.

24. Upon acceptance by the Commission of this Consent Agreement, and entry of the Order, Respondent knowingly, voluntarily, and completely waives and relinquishes any past, present, and future right or rights in this matter: (1) to an administrative or judicial hearing and to all further procedural steps, including findings of fact, conclusions of law, or further determination of whether the Subject Products contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (2) to an administrative or judicial hearing and to all further procedural steps, including findings of fact, conclusions of law, or further determination of whether the Subject Products contain a defect which creates a substantial risk of injury to children within the meaning of Section 15 of the FHSA; (3) to seek judicial review or otherwise contest the validity of this Consent Agreement or Order as issued and entered; and (4) to seek judicial review of this or any past order, finding or determination of the Commission or the Presiding Officer in this matter.

25. This Consent Agreement and Order shall be binding upon the parties hereto and their successors, assigns, and receivers. In the event of any merger or sale, transfer, or assignment of all or substantially all of Respondent's assets, notice shall be provided to

Commission staff no later than ten (10) days after any such merger or asset sale, transfer, or assignment. If Respondent merges with any corporation or other entity or sells, assigns, or otherwise transfers all or substantially all of its assets, including any asset described in paragraph 20, Respondent or Leslie Gudel-Kemm shall provide reasonable prior notice of this Consent Agreement and Order and of its binding effect upon said surviving corporation or other entity, purchaser, assignee or transferee, to the surviving corporation or other entity, or in the case of an asset sale, assignment, or transfer, to the purchaser, transferee, or assignee of all or substantially all of Respondent's assets. The existence of this Consent Agreement and Order and their binding effect shall be noted in any agreement between Respondent or Leslie Gudel-Kemm and such surviving corporation or other entity, purchaser, assignee or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or other entity or, in the case of an asset sale, the purchaser, assignee, or transferee, execute a document agreeing to be bound by the provisions of this Consent Agreement and Order, and to submit to the jurisdiction of the Commission for purposes of enforcement of this Consent Agreement and Order. The Commission shall take no administrative or legal action of any kind to prevent or interfere with any such merger or asset sale, transfer, or assignment that complies with the terms of this paragraph with regard to assets other than those stated in paragraph 21.

26. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power. Respondent acknowledges and agrees that this Consent Agreement and Order are pursuant to the Commission's police power or regulatory power to remedy the risk created by and protect the public from a substantial product hazard and risk of injury to children,

and that this Consent Agreement and Order are not subject to an automatic stay if Respondent becomes the subject of a bankruptcy proceeding.

27. Respondent affirms that it is no longer in business and is no longer manufacturing, importing or selling any consumer products and declares that the funds set aside in paragraph 12(a) constitute the sole remaining funds available to Respondent to fund the corrective action described herein. Respondent acknowledges that the Commission has relied upon Respondent's representations regarding its current financial condition in entering into this Consent Agreement. The Commission, upon reasonable notice to Respondent, may take appropriate legal action, including but not limited to the procedures set forth in 16 C.F.R. § 1025.58, to void, suspend, or rescind all or any part of this Consent Agreement and Order if Respondent has made material misrepresentations regarding its current financial condition and business operations, and the Commission staff has relied upon those misrepresentations in entering into this Consent Agreement.

28. If, after the effective date hereof, any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of this Consent Agreement and Order, such provision shall be fully severable. The rest of this Consent Agreement and Order shall remain in full effect, unless the Commission determines that severing the provision materially impacts the voluntary corrective action plan set forth in this Consent Agreement and Order.

29. Respondent acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or

any of its attorneys or representatives drafted or participated in drafting this Consent Agreement. No representations other than those contained in this agreement have been made or relied upon by either party in negotiating or executing this agreement.

30. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the hazard that the Amended Complaint charges that the Subject Products pose. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the issue for initial determination by the Commission, without waiver of the jurisdiction of the United States District Courts to preside over the dispute thereafter.

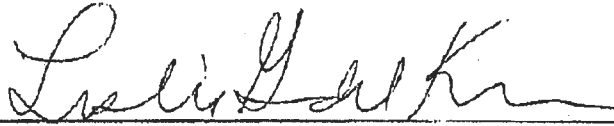
31. The existence of a dispute shall not excuse, toll, or suspend any obligation or deadline imposed upon Respondent under this Consent Agreement or Order.

32. Each party shall bear its own costs and expenses, including, without limitation, attorneys' fees, incurred in connection with this Consent Agreement and the transactions contemplated hereby.

33. This Consent Agreement and Order shall not be waived, changed, amended, modified or otherwise altered, except in writing executed by the party or parties against which such amendment, modification, alteration or waiver is sought to be enforced, and approved by the Commission.

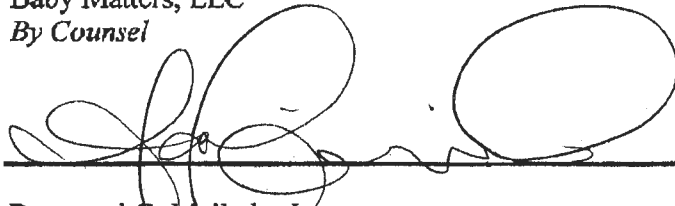
34. This proceeding, In the Matter of Baby Matters, LLC, CPSC Docket Number 13-1, is dismissed with prejudice.

DATED: May 20, 2013.

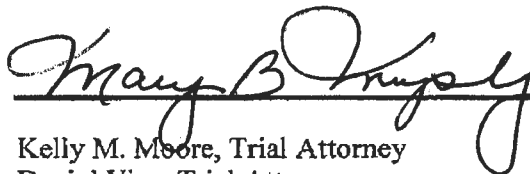


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By: *Leslie Gudel-Kemm*

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By *Counsel*



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