

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

THE ERGO BABY CARRIER, INC,

Plaintiff,

v.

BABYBJÖRN AB,

Defendant.

Case No. 6:24-cv-0083-DAE

**PLAINTIFF THE ERGO BABY CARRIER, INC.'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST INTERROGATORIES TO PLAINTIFF**

Plaintiff The Ergo Baby Carrier, Inc. (Ergobaby) hereby objects and responds pursuant to Rule 26 and 33 of the Federal Rules of Civil Procedure to Defendant's First Interrogatories to Plaintiff (the "Interrogatories") as follows:

PRELIMINARY STATEMENT

By responding to the Interrogatories, Ergobaby does not concede the relevance or materiality of any of the information requested. Ergobaby expressly reserves the right to object on any ground—including, without limitation, on the grounds of relevance, materiality, and/or admissibility—to the use of any of its objections or responses to the Interrogatories, or the subject matter thereof, at trial in this case or in any subsequent proceeding.

Ergobaby's objections and responses to the Interrogatories are based on information and documents reasonably available to Ergobaby as of the time of its objections and responses. Ergobaby expressly reserves the right to supplement and/or modify any and all of its responses based on any new or additional information or documents it might later discover.

OBJECTIONS TO DEFINITIONS & INSTRUCTIONS

Ergobaby objects to Defendant's "Definitions" and "Instructions" as either improperly seeking to impose obligations beyond what is required under the Federal Rules of Civil Procedure and this Court's Local Rules and Orders, or improperly seeking to impose obligations beyond what the Parties have already agreed to or are still in the process of negotiating. Ergobaby will respond to the Interrogatories in accordance with its obligations under the Federal Rules of Civil Procedure and this Court's Local Rules and Orders, and the agreed-upon Order on Joint Stipulation Regarding Production of Electronically Stored Information.

Ergobaby specifically objects to Defendant's definitions of "Ergobaby," "Plaintiff," "You," and "Your," because they include Ergobaby "and all present and former officers, directors, investors, employees, independent contractors, agents, representatives, attorneys, consultants or other personnel." This definition is overly broad, unduly burdensome, not proportional to the needs of this case, and improperly seeks to impose upon Ergobaby an obligation to provide information in the possession of third parties over whom Ergobaby has no control. As written, this definition also implicates information protected by the attorney-client privilege and work-product doctrine because it includes Ergobaby's "attorneys." As such, Ergobaby understands and interprets "Ergobaby," "Plaintiff," "You," or "Your," to mean only Plaintiff The Ergo Baby Carrier, Inc.

Ergobaby objects to Defendant's various definitions and iterations of the word "Identify" depending on how it is being used in a particular Interrogatory. As written, these various definitions are overly broad, unduly burdensome, not proportional to the needs of this case, and requests information that is not relevant to the claims or defenses asserted in this case. For purposes of responding to these Interrogatories, Ergobaby interprets "identify" to mean describe with reasonable particularity.

Ergobaby objects to Defendant's Instructions as contrary to its obligations under the Federal Rules of Civil Procedure. Ergobaby understands the production of documents and things in this case will be governed by the Order on Joint Stipulation Regarding Production of Electronically Stored Information, as well as the format and timing of the production of the Parties' respective privilege logs. Ergobaby will produce documents and any privilege logs in the format and pursuant to the timing that is agreed upon by the Parties.

Ergobaby incorporates these objections to Defendant's "Definitions" and "Instructions" throughout its objections and responses to the Interrogatories.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify all Ergo personnel who had knowledge of one or more of Defendant's Active, Synergy, Original, and Miracle baby carrier products before April 2023, and for each individual identify the date of their first knowledge of each carrier, and explain the extent of their knowledge of these products and how they became aware of these products.

RESPONSE:

Ergobaby objects to this interrogatory as duplicative of its obligations under Fed. R. Civ. P. 26. Ergobaby further objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. Ergobaby further objects to this interrogatory as compound. Ergobaby further objects to this interrogatory as overbroad because it seeks the identity of "all Ergo personnel" who "had knowledge" of numerous BabyBjorn products without limiting the inquiry to any specific date range or to those individuals with relevant or material knowledge. Ergobaby further objects to this interrogatory as vague and ambiguous with respect to the phrases "had knowledge" and "became aware."

Subject to the foregoing objections, Ergobaby responds as follows: Rodney Telford, Gabby Meyerson, and Sara Capoccia were generally aware of the existence of the BabyBjorn baby carrier products identified in this interrogatory before April 2023, along with other baby carrier products on the market before and after that time.

Ergobaby's investigation is ongoing, and Ergobaby reserves the right to supplement and/or amend this response upon discovery of additional information or documents.

INTERROGATORY NO. 2: Describe in detail the circumstances surrounding the conception, diligence, and reduction to practice of the inventions claimed in the Patent-in-Suit.

RESPONSE:

Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. Ergobaby further objects to this interrogatory as seeking information duplicative and cumulative of information in its Rule 26 disclosures and/or infringement contentions. Ergobaby further objects to this interrogatory as compound.

Subject to the foregoing objections, Ergobaby responds as follows: Pursuant to Federal Rule of Civil Procedure 33(d), Ergobaby will produce non-privileged documents to the extent they exist from which the information requested by this interrogatory may be derived. Ergobaby will produce such documents in the form in which they are maintained in the ordinary course of Ergobaby's business.

Ergobaby's investigation is ongoing, and Ergobaby reserves the right to supplement and/or amend this response upon discovery of additional information or documents.

INTERROGATORY NO. 3: Describe in detail all patentable points of novelty claimed in the asserted claims of the Patent-In-Suit over prior art known to Ergo.

RESPONSE:

Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. As worded, the interrogatory calls for information contained in documents authored by counsel, seeks the advice of counsel, or otherwise implicates privileged information. Ergobaby further objects to this interrogatory as seeking a legal conclusion. Ergobaby further objects to this interrogatory as seeking information that is not relevant to the claims or defenses asserted in this case. Ergobaby further objects to this interrogatory as overly broad, unduly burdensome, and not proportional to the needs of this case given that the Patent-In-Suit and all applicable prior art are publicly available and speak for themselves. The burden of obtaining the information requested implicates publicly available information that is equally accessible and obtainable to BabyBjorn. Ergobaby further objects to this interrogatory as premature to the extent it seeks information that is appropriately the subject of expert opinion and testimony before Ergobaby is required to identify its expert(s) and provide such information.

Based on the foregoing, Ergobaby will not provide a response to this interrogatory.

INTERROGATORY NO. 4: Identify all corresponding disclosures and written description support for the “at least one thigh support adjuster” limitation found in every claim of the Patent-in-Suit.

RESPONSE:

Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. Ergobaby further objects to this interrogatory as seeking information duplicative and cumulative of information in its infringement contentions. Ergobaby further objects to this interrogatory as compound, vague, and ambiguous given that, as written, the interrogatory contains multiple, separate inquiries and is unlimited in scope. Ergobaby further objects to this interrogatory as seeking a legal conclusion. Ergobaby further objects to this interrogatory as premature to the extent that BabyBjorn still has not provided its non-infringement contentions despite being requested to do so no later than July 23, 2024. Ergobaby further objects to this interrogatory as premature to the extent it seeks information that is appropriately the subject of expert opinion and testimony before Ergobaby is required to identify its expert(s) and provide such information, in contravention of both the Local Rules and the Court's Scheduling Order (Dkt. 25).

Based on the foregoing, Ergobaby will not provide a response to this interrogatory. Ergobaby is willing to meet and confer with BabyBjorn regarding the scope of information requested by this interrogatory.

INTERROGATORY NO. 5: From 2022 until present, identify in detail sales data for any product practicing any asserted claim of the Patent-in-Suit, on a product-by-product basis, including current and anticipated gross margin, profits, income, fixed costs, variable costs, overhead costs, gross sales price per unit, standard manufacturing cost per unit, sales volume, and sales channels.

RESPONSE:

Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. Ergobaby further objects to this interrogatory as compound because, as written, it constitutes numerous separate interrogatories. Ergobaby further objects to this interrogatory as overly broad, unduly burdensome, and not proportional to the needs of this case to the extent the specific categories of information requested may not be tracked in the normal course of Ergobaby's business and/or tracked on a product-by-product basis.

Subject to the foregoing objections, Ergobaby responds as follows: Pursuant to Federal Rule of Civil Procedure 33(d), Ergobaby will produce non-privileged documents from which the information requested by this interrogatory may be derived to the extent the requested information exists and/or is tracked on a product-by-product basis in the ordinary course of Ergobaby's business. Ergobaby will produce such documents in the form in which they are maintained in the ordinary course of Ergobaby's business.

Ergobaby's investigation is ongoing, and Ergobaby reserves the right to supplement and/or amend this response upon discovery of additional information or documents.

INTERROGATORY NO. 6: Identify any acceptable non-infringing alternatives to the claimed invention(s) relevant to the *Panduit* lost profits analysis known to you or, if You are aware of no acceptable non-infringing alternatives, why other baby carrier products known to you fail to qualify as an acceptable non-infringing alternative to the claimed invention(s).

RESPONSE:

Ergobaby further objects to this interrogatory as compound because, as written, it qualifies as multiple, separate inquiries. Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. As worded, the interrogatory calls for information contained in documents authored by counsel, seeks the advice of counsel, or otherwise implicates privileged information. Ergobaby further objects to this interrogatory as seeking a legal conclusion. Ergobaby further objects to this interrogatory as premature to the extent it seeks information that is appropriately the subject of expert opinion and testimony before Ergobaby is required to identify its expert(s) and provide such information. Ergobaby also objects to this interrogatory as premature given that BabyBjorn has yet to produce any documents related to damages despite being requested by Ergobaby.

Subject to the foregoing objections, Ergobaby responds as follows: Ergobaby contends that there are no acceptable non-infringing alternatives to the claimed invention. Other baby carrier products either (i) copy Ergobaby's patented design (as BabyBjorn has done); (ii) fail to achieve the superior ergonomic support for the child like Ergobaby did with the claimed invention via the addition of thigh supports, and length and depth adjustability allowing a child to be positioned in a more ergonomic spread squat, frog-leg position, or M-position; (iii) fail to achieve the superior all-in-one adjustability such that a single carrier is appropriate for the ergonomic positioning of a child at a wide range of ages and stages of development (7lbs to 45lbs), without limitations or the need for additional inserts or attachments; or (iv) some combination of the above factors.

Ergobaby's investigation is ongoing, and Ergobaby reserves the right to supplement and/or amend this response upon discovery of additional information or documents.

INTERROGATORY NO. 7: To the extent Plaintiff contends that there are any secondary considerations of non-obviousness for any asserted claim of the Patent-in-Suit, identify all secondary considerations upon which Plaintiff intends to rely, including stating in detail all factual and legal bases that establish or tend to establish such secondary considerations.

RESPONSE:

Ergobaby objects to this interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or work-product doctrine. Ergobaby further objects to this interrogatory as vague and compound as written. Ergobaby further objects to this interrogatory as prematurely because it seeks information properly the subject of expert opinion well before the time when such opinions are to be disclosed under the Court's Scheduling Order (Dkt. 25). Ergobaby further objects to this interrogatory as seeking a legal conclusion.

Subject to the foregoing objections, Ergobaby responds as follows: There are numerous secondary considerations establishing that the '055 Patent is non-obvious, including commercial success, long-felt but unresolved needs, failure of others, and copying. Ergobaby's commercial embodiments of the '055 Patent, including the Omni Breeze and Omni Dream carrier products, have enjoyed significant commercial success due to their combination of comfort, adjustability, proper support for the child at multiple carrying positions, and adaptability to the size of a child.

The industry praise and significant number of awards for the Omni Breeze and Omni Dream products are also evidence of non-obviousness. By way of example, the Omni Breeze product has been named by Forbes as the best baby carrier overall and "the most comfortable baby carrier at every age." (<https://www.forbes.com/sites/forbes-personal-shopper/article/ergobaby-omni-breeze-baby-carrier-review/>) Additionally, both carriers have received numerous awards for best and/or most highly rated in category by such outlets as Good

Housekeeping, Made for Mums, The Bump, and Parents, to name just a few.

(<https://www.goodhousekeeping.com/childrens-products/a40899451/best-parenting-awards-2022/>; <https://www.madeformums.com/awards/mfm-awards-2023-winners-baby-carriers-slings-and-wraps/>; <https://www.parents.com/best-for-baby-2023-on-the-go-7372258>; https://www.parents.com/baby/gear/registries-buying-guides/baby-shopping-guide/#slide_1163f251-b845-4656-a57c-2afab1208dc7; <https://www.thebump.com/a/best-baby-carriers>; <https://ergobaby.com/ergobaby-awards>).

In addition, and despite voluminous prior art products, no other carrier design was able to combine superior all-in-one adjustability with superior ergonomic support for the child. As the patent explains, prior soft-structured carriers held a child “in an upright position with the child’s legs hanging down and the base of the child’s spine supporting the child’s bodyweight.” (1:47-50.) “Positioning a young child, particularly an infant, in an upright position may unduly limit curvature of the spine and puts stress on the infant’s sacrum. This can cause the infant’s pelvis to tilt backward limiting leg and hip movement, which may impede the healthy development of the infant’s pelvis.” (1:54-59.) The addition of thigh supports and length and depth adjustability in the invention of the ‘055 Patent allows a child to be positioned in a more ergonomic spread squat or M-position. Indeed, Ergobaby’s commercial embodiments have been awarded a Seal of Approval by AGR of Germany based upon claimed features of the ‘055 Patent, such as “adjusting the actual carrier system” including thigh supports to “allow the baby to sit in what is known as the frog-leg position.” (See <https://www.agr-ev.de/en/certified-products/baby-carrier>).

Not only did Ergobaby solve this problem, but it did so in the context of a carrier with all-in-one adjustability, such that a single carrier is appropriate for the ergonomic positioning of children at a wide range of ages, without the need for additional inserts or attachments. Prior art

carriers, including BabyBjorn's prior carriers, were "usually designed for a very limited age, weight and size" of a child, and/or made "compromises regarding the shape of the carrier to accommodate a range of ages." (1:60-63.) Once again, Ergobaby solved this problem, while also providing for superior ergonomic support for a range of ages and sizes of the child. Others only purported to solve the problem after the invention of the '055 Patent, and again did so by copying Ergobaby's invention.

In recognition of Ergobaby's unique advancements in the field of baby carrier designs, Ergobaby was awarded U.S. Patent No. 11,786,055 for the inventions embodied therein, including the Omni Breeze and Omni Dream carrier products, along with numerous other domestic and international patent rights granted in China, Europe, and the UK.

Ergobaby's investigation is ongoing, and Ergobaby reserves the right to supplement and/or amend this response upon discovery of additional information or documents.

Dated: September 27, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of September, 2024, a true and accurate copy of the foregoing document was served upon the Defendant by forwarding a copy via electronic mail to the following counsel of record:

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