IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MAM BABYARTIKEL GMBH, and BAMED AG,	)	
Plaintiffs,	)	
v.	)	C.A. No. 07-608 - ***
LUV N' CARE, LTD. and MUNCHKIN INC.,	)	JURY TRIAL DEMANDED
Defendants.	)	

MUNCHKIN'S OPPOSITION TO DEFENDANT LUV N'CARE, LTD.'S MOTION TO TRANSFER TO THE EASTERN DISTRICT OF TEXAS

Defendant Munchkin, Inc. ("Munchkin") submits the following Opposition to Defendant Luv N'Care, Ltd.'s ("LNC") Motion to Transfer to Eastern District of Texas (the "Motion"). In support of its Opposition, Munchkin states as follows:

1. On December 31, 2007, LNC filed its Motion seeking to have the case against it transferred to the Eastern District of Texas or, in the alternative, dismissed for lack of personal jurisdiction. (D.I. 16).

2. As a co-defendant, Munchkin takes no position on whether the case against LNC should be dismissed for lack of personal jurisdiction. Munchkin similarly takes no position on whether the case between Plaintiffs and LNC should be transferred to the Eastern District of Texas. Munchkin does, however, oppose the case between Plaintiffs and Munchkin being transferred to the Eastern District of Texas.

3. LNC states in its Motion that it is only seeking to "transfer that portion of the case involving plaintiffs and LNC to the Eastern District of Texas." (Motion at pp.4-

5). Munchkin agrees that, if this Court grants LNC the relief it seeks, the case between Plaintiffs and Munchkin should proceed in the District of Delaware.

4. Indeed, transferring the case pursuant to 28 U.S.C. § 1404(a) would be inappropriate in the present circumstances. It is the movant's burden to establish the need to transfer, and "the plaintiff's choice of venue [will] not be lightly disturbed." *Truth Hardware Corp. v. Ashland Prods, Inc.*, 2003 WL 118005, at *1 (D.Del. Jan. 13, 2003) (quoting *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995)). In determining whether to transfer a case, the Court should engage in a multi-factor balancing test which includes both public and private factors. *Jumara*, 55 F.3d 873.

5. The private factors to be considered include the plaintiff's choice of forum and the defendant's preference. *Jumara*, 55 F.3d 873 at 879. Where, as here, Plaintiffs and Munchkin agree that venue is proper in the District of Delaware, LNC's Motion should not disturb Plaintiff's choice of forum as between Plaintiffs and Munchkin.

WHEREFORE, for the foregoing reasons, Munchkin respectfully requests that the Court, in deciding LNC's Motion, decline to transfer the portion of the case between Plaintiffs and Munchkin.

Frederick L. Cottrell, III (#2555)
cottrell@rlf.com
Jeffrey L. Moyer (#3309)
moyer@rlf.com
Richards, Layton & Finger, P.A.
920 North King Street, P.O. Box 551
Wilmington, DE 19899
(302) 651-7700
Attorneys for Defendant Munchkin, Inc.

OF COUNSEL:

John L. Knoble
Knoble Yoshida & Dunleavy LLC
Eight Penn Center, Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia PA, 19103 USA

Dated: January 18, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 18, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and caused the same to be served on the plaintiff at the address and in the manner indicated below:

BY HAND DELIVERY:

Adam Wyatt Poff
Young, Conaway, Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19899-0391

David L. Finger, Esquire
Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801

I further certify that on January 18, 2008, the foregoing document was sent to the following non-registered participants in the manner indicated:

BY FEDERAL EXPRESS:

P. Branko Pejic
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

Morris E. Cohen
Law Office of Morris E. Cohen, P.C.
1122 Coney Island Avenue
Suites 216-217
Brooklyn, NY 11230

Jeffrey L. Moyer (#3309)