

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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**Amby USA, LLC**

**Case Type: Patent**  
**Court File No. \_\_\_\_\_**

**Plaintiff,**

**v.**

**TheSaveWave, Inc.  
and Eric Jacobs**

**COMPLAINT/JURY TRIAL DEMAND**

**Defendants.**

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Plaintiff, through its attorneys, Muller & Muller, PLLC, 3109 West 50<sup>th</sup> Street, No. 362, Minneapolis, Minnesota 55410-2102, states and alleges for its Complaint as follows:

**THE PARTIES**

1. Plaintiff, AMBY USA, LLC (hereafter “Amby”) is a limited liability company organized under the laws of the State of Delaware, having its principal place of business at 6600 City West Parkway, Eden Prairie, Minnesota 55344.

2. Defendant, TheSaveWave.Com, Inc. (hereafter “SaveWave”) is a corporation formed under the laws of the State of California, having its principal place of business at 9685 Distribution Avenue, San Diego, California 92121.

3. Defendant, Eric Jacobs (hereafter “Jacobs”) is an individual resident of the state of California and the principal owner and officer of SaveWave.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. §§ 1, et. seq. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over SaveWave and Jacobs because SaveWave, under the control and direction of Jacobs, transacts business within Minnesota and because SaveWave and Jacobs have committed acts of patent infringement and/or contributed to or induced acts of patent infringement by others within Minnesota.

6. Venue is proper within this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because the Defendants are subject to personal jurisdiction in this judicial district, the Defendants have regularly conducted business within this judicial district, and certain acts of patent infringement complained of herein occurred within this judicial district.

#### **AMBY'S PATENT IN SUIT**

7. Amby is the exclusive licensee of all right, title and interest in United States Patent No. 5,097,545, entitled "Spring Supported, Hammock Type Infant Cradle" and United States Patent No. D33158, entitled "Suspension Frame For A Hammock" (hereafter "Patent(s) in Suit").

8. Amby's interest in the Patent(s) in Suit includes the right to bring this lawsuit to enforce the patented claims related thereto and to recover for infringement.

9. A true and correct copy of each of the Patent(s) in Suit is attached hereto as Exhibit A and B.

10. At all times pertinent hereto, the Patent(s) in Suit have been valid, subsisting and enforceable.

### GENERAL ALLEGATIONS

11. Amby re-alleges and incorporates by reference the allegations set forth in Paragraphs 1-10 of this Complaint.

12. Since 2002, Amby has expended considerable time, expenses, and other resources to acquire and preserve its rights in the Patent(s) in Suit and to market and sell and promote its unique product, the Amby Baby Motion Bed, which unique product embodies the Patent(s) in Suit.

13. Prior and subsequent to July 12, 2006, SaveWave, under the direction, control and knowing participation of Jacobs, made, offered to sell, and sold within the United States and/or imported into the United States products that infringed upon the Patent(s) in Suit.

14. Prior and subsequent to July 12, 2006, SaveWave, under the direction, control and knowing participation of Jacobs, has in an ongoing and systematic manner reached out to consumers within this Court's jurisdiction to offer and sell product(s) that directly infringes upon Amby's rights and the Patent(s) in Suit (hereafter "Infringing Product(s)").

15. Specifically, on July 12, 2006, SaveWave, under the direction, control and knowing participation of Jacobs, did offer to sell an Infringing Product(s) through the website [www.ebay.com](http://www.ebay.com) to consumers within this Court's Jurisdiction. In offering the Infringing Product(s), SaveWave, under the direction, control and knowing participation of Jacobs, used large portions of advertising copy and images taken directly from the website created, maintained and controlled by Amby, which language appears alongside Amby's patent notification language.

16. Specifically, on July 13, 2006, SaveWave, under the direction, control and knowing participation of Jacobs, sold, pursuant to an order placed through interstate commerce and banking channels, to a resident of Hennepin County, Minnesota an Infringing Product, and shipped said Infringing Product into this Court's Jurisdiction.

17. On or about July 20, 2006, the particular Infringing Product referenced in Paragraph 15 arrived via interstate commerce from SaveWave's place of business to a consumer within this Court's jurisdiction. Images taken of the particular Infringing Product are attached hereto as Exhibit C.

### **CLAIM OF PATENT INFRINGEMENT**

18. Amby re-alleges and incorporates by reference the allegations set forth in Paragraphs 1-17 of this Complaint.

19. By virtue of its exclusive license to the Patent(s) in Suit, Amby acquired and owns the right to maintain this action and all other similar actions seeking recovery for infringement thereof.

20. Amby has placed the required statutory notice on all products that it has manufactured and sold under the Patent(s) in Suit and said notice appears upon Amby's Website and other marketing materials.

21. The conduct of SaveWave and Jacobs set forth in Paragraphs 12-17 constitutes violation of 35 U.S.C. § 271 and infringement of the Patent(s) in Suit.

21. Upon information and belief, SaveWave and Jacobs, in violation of 35 U.S.C. § 271, have also contributed to and/or induced infringement of the Patent(s) in Suit.

22. Upon information and belief, the conduct of SaveWave and Jacobs that infringes upon the Patent(s) in Suit has been widespread and continuing to the present day.

24. The conduct of SaveWave and Jacobs that infringes upon the Patent(s) in Suit has been undertaken knowingly, willfully, and deliberately.

25. As a direct consequence of the infringement of the Patent(s) in Suit by SaveWave and Jacobs, Amby has suffered damages and continues to suffer damages.

#### **DEMAND FOR JURY TRIAL**

26. Amby demands a trial by jury with respect to all issues so triable in this matter.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Amby prays for judgment against SaveWave and Jacobs and for an order of recovery and relief providing as follows:

A. That SaveWave and Jacobs be declared to have infringed upon the Patent(s) in Suit; and

B. That this case be declared to be an exceptional case; and

C. That SaveWave and Jacobs be declared to be jointly and severally liable to pay and ordered to pay an amount adequate to compensate Amby for damages arising from infringement of the Patent(s) in Suit, including an accounting; and

D. That SaveWave and Jacobs be declared to be jointly and severally liable to pay and ordered to pay Amby's attorney fees and costs pursuant to 35 U.S.C. § 285; and

E. That SaveWave and Jacobs be declared to be jointly and severally liable to pay and ordered to pay treble damages pursuant to 35 U.S.C. § 284; and

F. That SaveWave and Jacobs be declared to be jointly and severally liable to pay pre-judgment interest; and

G. That SaveWave and Jacobs be enjoined from further infringement of the Patent(s) in Suit; and

H. That SaveWave and Jacobs deliver to Amby, for purposes of destruction, all Infringing Products; and

I. That this Court grants Amby such other relief as it deems just and equitable under the circumstances.

MULLER AND MULLER, PLLC

Date: March 26, 2007

/s/ Andrew Muller /s/  
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