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& SHAH, LLP

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Counsel for Plaintiffs and the Class

(Additional Counsel to appear on the signature page)

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

WILLIAM PROBERT, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

TOYS “R” US, INC.

Defendant.

) **No:**

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)

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CLASS ACTION COMPLAINT

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DEMAND FOR JURY TRIAL

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Plaintiff, William Probert (“Plaintiff”), alleges, upon personal knowledge as to himself and his own acts, and upon information and belief (based on the investigation of counsel) as to all other matters, as follows:

NATURE OF ACTION

1. This action seeks to remedy an unfair, deceptive, and unlawful business practice of Toys “R” Us, Inc. (“Defendant” or “Toys R Us”). As set forth herein, Defendant routinely offers to provide a “free gift” to consumers who purchase items through its Internet website. Defendant, however, as a matter of business practice, has no intention of providing consumers the free gift that is offered (or a comparable replacement gift). Rather, after an item is purchased, Defendant regularly notifies customers that it is only providing a free gift of substantially lesser value than that which was advertised or, in the alternative, no free gift at all. This business practice, thus, constitutes a modern “bait and switch” scheme. Toys R Us does not honor its promises to provide the promised free gift, and indeed never intended to honor its promises.

2. Plaintiff, and members of the class, relied on Defendant’s false and misleading representations when purchasing items online and were damaged as a result of Defendant’s conduct. Simply put, they did not receive the benefit of the bargain (the promised “free gifts”) in connection with their transactions with Defendant.

3. Each person who has purchased a product from Defendant online, with the promise of the “free gift” has been exposed to Defendant’s misleading false and misleading advertising scheme and has purchased a product as a direct result of that false and misleading advertising.

4. This nationwide class action seeks to provide redress to a class of similarly situated consumers who have been harmed by the false and misleading marketing practices in which Defendant has engaged. Defendant’s conduct has included the systematic and continuing practice of disseminating false and misleading information from New Jersey and throughout the United States via uniform internet advertising, all of which were and are intended to induce

unsuspecting consumers, including Plaintiff, into purchasing a product with the promise of a specified accompanying “free gift,” which serves as the basis for consumers’ decision to purchase the product in the first place.

5. Plaintiff asserts claims on behalf of himself and the Classes (defined below) for violations of the New Jersey Consumer Fraud Act, N.J.S. § 56:8-1, *et seq.* (“CFA”), the Connecticut Unfair Trade Practices Act, 42 C.G.S. § 42-110a, *et seq.* (“CUTPA”), and for breaches of contract by its express terms and the implied covenant of good faith and fair dealing.

6. Though this action, Plaintiff seeks injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys’ fees, costs, and all other relief available to the Class as a result of Defendant’s unlawful conduct.

PARTIES

7. Plaintiff is, and at all times relevant to this action has been, a resident and citizen of Fairfield, Connecticut.

8. Defendant is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business located at One Geoffrey Way, Wayne, NJ 07470. Accordingly to its website, Toys R Us is “an \$11 billion dollar company with approximately 1,500 stores worldwide. The company is a market share leader in both the U.S. and Japan. In the U.S., its largest market, it operates the largest free-standing destination toy and baby specialty stores.”

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of

interest and costs, and this is a class action in which certain of the Class members and Defendant are citizens of different states.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Defendant is a resident of this judicial district, conducts business throughout this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims took place within and emanated from this judicial district.

SUBSTANTIVE ALLEGATIONS

11. The toy market is fiercely competitive. This is true, in large part, because there are numerous online retailers offering the same toys at various prices, thereby fostering the intense pricing competition. Further contributing to this dynamic is the fact that many traditional "big box" retailers have implemented policies whereby they agree to match the prices of other retailers. For example, in early October 2012, Toys R Us announced that it would offer a price match guarantee on all of its in-store products for this holiday season. The guarantee does not extend to internet sales. Thereafter, in or about late October, 2012, Target announced that it would match online prices offered by Defendant at Toys R Us.com, as well as prices offered on Amazon.com, Walmart.com, and BestBuy.com. <http://money.cnn.com/2012/10/19/pf/holiday-shopping-deals/>. Best Buy announced a similar price matching program.

12. This fierce competition has resulted in the profit margins for toys being sold and purchased online to become increasingly tighter.

13. In connection with the ever evolving, competitive market place, Toys R Us strove to develop a marketing model that would provide consumers with a reason to purchase items through its online website, as opposed to the online websites of its competitors. The resulting model, as described herein, centered (and continues to center) on the provision of a "free gift" to

consumers who purchase items through its Internet website. For example, a prospective online purchaser of a \$75 Barbie Doll might be told that, included with the purchase, will be a free Barbie clothing outfit valued at \$15. The free gift offered by Defendant in connection with online purchases often has a retail value of 15% to 25% of the item being purchased. The free gift, thus, is of substantial value. Moreover, since it relates to the underlying purchase, it is independently meaningful and material to the consumer. Accordingly, Toys R Us intended to, and has succeeded in, structuring its marketing and advertising scheme in such a way that the free gift is a material part of the consumers' purchase of the underlying item.

14. Defendant's internet marketing and advertising model has been successful, convincing consumers to purchase toys through its Internet website. While same-store sales were down 1.7% in the U.S. last year for Toys R Us, internet sales grew 50% last holiday season. This is a significant jump when compared to online sales in general, which were up approximately 15% overall. In 2012 alone, online sales accounted for about \$1 billion of Defendant's almost \$14 billion in annual revenue in 2012.

<http://online.wsj.com/article/SB10000872396390444657804578050864206903402.html>

15. The upside, from Defendant's perspective, of offering the free gifts is that it induces consumers to purchase their toys through Defendant's website. The downside, however, is that the provision of the free gift would significantly curtail, if not eliminate entirely, Defendant's profit margin on the underlying item (which is already compromised as a result of the fiercely competitive marketplace).

16. As a result, Defendant, as a matter of business practice, only stocks an exceedingly limited number of "free gifts" advertised and offered (or does not stock any at all), such that it is aware that few, if any, customers will actually receive the promised "free gift."

Under this business model, consumers almost always receive a “free gift” of substantially lesser value than what was advertised and which served as the basis of the bargain, or no “free gift” whatsoever.

Plaintiff’s Experience

17. Plaintiff made two separate on-line purchases of LEGO building sets from Defendant.

18. On November 16, 2011, Plaintiff saw an advertisement on Defendant’s website promising a “free gift” of a LEGO building set worth approximately \$15.00 upon purchase of a LEGO set at retail price. Plaintiff relied upon the advertisement’s representations and was induced to buy two LEGO Ninjago Limited Edition Dragon Battle 2521 sets with the retail price of \$62.49 each. Upon executing the purchase order for the two sets, Plaintiff was later informed that the promised “free” additional LEGO building set was not available, so a LEGO Christmas Tree figurine, with a retail value of less than \$5.00, would be substituted instead.

19. On that same day, Plaintiff, unaware of Defendant’s systematic and pervasive modern day “bait and switch” scheme, viewed yet another advertisement for a “free gift” with the purchase of a different LEGO set. This advertisement was for a “free gift” of a different LEGO building set (also worth approximately \$15.00) upon purchase of a LEGO City Special Edition Red Cargo Train 3677 building set. Plaintiff relied upon the advertisement’s representations and was induced to buy two of the LEGO sets with the retail price of \$112.49 each. After completing the online purchase of those two sets, Plaintiff was again informed by Defendant that the promised “free” LEGO building set was out of stock. In its place, Defendant substituted a LEGO mini-figure “magnet,” with a retail value of approximately \$5.00.

20. Plaintiff was induced to make his LEGO building set purchases by the promise of the specific “free gifts” worth approximately \$15.00 each and would not have made the purchases from Defendant without the offer of the “free gifts.”

21. As part of Defendant’s scheme, it never intended to provide any of the \$15.00 free LEGO sets that Plaintiff understood he would be receiving when he made his purchases on November 16, 2011, or otherwise only stocked very few of the \$15.00 LEGO sets such that almost no consumer who made the underlying purchase understanding they would receive the \$15.00 LEGO set actually received it.

22. The representations regarding “free gift” sets accompanying the underlying purchases made by Defendant were deceptive, false and misleading. As a result of these false representations, Plaintiff did not receive the benefit of the bargain that was the basis for his decisions to purchase the LEGO sets. As a result, Plaintiff has suffered ascertainable loss, injury in fact, and lost money and/or property as a result of the conduct described of herein.

New Jersey’s Substantive Laws Apply To The Proposed Class

23. New Jersey’s substantive laws may be applied to the claims of Plaintiff and the Class under the Due Process Clause, 14th Amend, § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or a significant aggregation of contacts, to the claims asserted by Plaintiff and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair.

24. Defendant’s headquarters and principal place of business are located in New Jersey. Defendant also owns property and conducts substantial business in New Jersey and, therefore, New Jersey has a significant interest in regulating Defendant’s conduct under its laws.

Defendant's decisions to reside in New Jersey and avail itself of New Jersey's laws renders the application of New Jersey law to the claims herein constitutionally permissible.

25. A substantial number of Class members reside in New Jersey.

26. New Jersey also is the state from which Defendant's misconduct emanated. This conduct similarly injured and affected Plaintiff and Class members. For instance, Defendant's marketing and advertising efforts, which includes the "free gift" online promotion, were created in and orchestrated from the location of its present headquarters in New Jersey.

27. The application of New Jersey's laws to the Class is also appropriate under New Jersey's choice of law rules because New Jersey has significant contacts to the claims of the Plaintiff and the Class, and New Jersey has a greater interest in applying its laws here than any other interested state.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on behalf of himself and all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

29. The Class that Plaintiff seeks to represent is defined as follows:

Nationwide Class:

All individuals in the United States who purchased, not for resale, a product from the Toys R Us website and did not receive the "free gift" that was represented at the time of sale would accompany the purchase.

Excluded from the Class are (a) Defendant, including any entity in which Defendant has a controlling interest, and its representatives, officers, directors, employees, assigns and successors; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of using the Product; and (c) the Judge to whom this case is assigned.

In the alternative to a nationwide class, Plaintiff seeks to represent the following sub-class defined as:

Connecticut Class: All individuals in Connecticut who purchased, not for resale, a product from the Toys R Us website and did not receive the “free gift” that was represented at the time of sale would accompany the purchase (“Sub-Class”) (collectively with the Nationwide Class (“Class” or “Classes”).

30. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes include, at a minimum, thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant’s possession, custody and control or otherwise obtained through reasonable means.

31. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, include, but are not limited to the following:

- a. whether Defendant engaged in a pattern of fraudulent, deceptive and misleading conduct targeting the public through the online marketing, advertising, promotion and/or sale of its products;
- b. whether Defendant’s acts and omissions violated the CFA;
- c. whether Defendant’s acts and omissions violated the CUPTA;
- d. whether Defendant made material misrepresentations of fact or omitted to state material facts to Plaintiff and the Classes regarding the marketing, promotion, advertising and sale of its “free” additional products, which material misrepresentations or omissions operated as fraud and deceit upon Plaintiff and the Classes;

e. whether Defendant's false and misleading statements of fact and concealment of material facts regarding the marketing promotion, advertising and sale of its "free" additional product were intended to deceive the public;

f. whether, as a result of Defendant's misconduct, Plaintiff and the Classes are entitled to equitable relief and other relief, and, if so, the nature of such relief; and

g. whether the members of the Classes have sustained ascertainable loss and damages as a result of Defendant's acts and omissions, and the proper measure thereof.

32. **Typicality:** The representative Plaintiff's claims are typical of the claims of the members of the Classes he seeks to represent. Plaintiff and members of the Classes have been injured by the same wrongful practices in which Defendant has engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the members of the Classes and are based on the same legal theories.

33. **Adequacy:** Plaintiff is a representative who will fully and adequately assert and protect the interests of the Classes, and has retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor his attorneys have any interests which are contrary to or conflicting with the Classes.

34. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are likely in the millions of dollars, the individual damages incurred by each Class member resulting from Defendant's wrongful conduct are too small to

warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Defendant has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Classes as a whole is appropriate.

35. Plaintiff will not have any difficulty in managing this litigation as a class action.

FIRST COUNT

Asserted on Behalf of the Nationwide Class (Violations of N.J.S.A. § 56:8-1, *et seq.*)

36. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

37. Plaintiff, other members of the Class and Defendant are “persons” within the meaning of the CFA.

38. Plaintiff and other members of the Class are “consumers” within the meaning of the CFA.

39. The products offered on Defendant’s website are “merchandise” within the meaning of the CFA.

40. At all relevant times material hereto, Defendant conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

41. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

42. Defendant has engaged in deceptive practices in its online advertising because Defendant offered to provide additional “free gifts” upon purchase of its products, which Defendant had no intention of honoring.

43. Similarly, Defendant also failed to disclose material facts regarding the “free gift” promotion -- namely, that the specifically promised “free gift” is not available.

44. Defendant intended that Plaintiff and the other members of the Class rely on these acts of concealment and omissions, so that Plaintiff and other Class members would purchase its products.

45. The false and misleading representations were intended to, and likely to, deceive a reasonable consumer.

46. The facts not disclosed would be material to the reasonable consumer, and are facts that a reasonable consumer would consider important in deciding whether to purchase Defendant’s products and how much to pay.

47. Defendant’s representations and omissions were, and are, material to reasonable consumers, including Plaintiff, in connection with their respective decisions to purchase the Defendant’s products.

48. Had Defendant not engaged in false and misleading advertising regarding the additional “free gift” promotion, Plaintiff and other members of the Class would not have made purchases from Defendant.

49. Had Defendant disclosed all material information regarding the additional “free gift” promotion to Plaintiff and other members of the Class, they would not have made purchases from Defendant or would have paid less for them.

50. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the Defendant’s products which were promised to include an additional “free gift”, and they are entitled to recover such damages, together with appropriate penalties, including, but not limited to, treble damages, attorneys’ fees and costs of suit.

51. Application of the CFA to all Class members, regardless of their state of residence, is appropriate as described herein and because, *inter alia*:

- a. Defendant controlled and directed its nationwide sales operations and support operations from New Jersey;
- b. Defendant’s marketing operations and decisions, including the decisions as to how to advertise, promote and sell its products, were made in New Jersey, and Defendant’s sales and marketing personnel are all based in New Jersey;
- c. Defendant’s principal places of business are located in New Jersey;
- d. The significant employees of Defendant are based in New Jersey;
- e. The majority of relevant documents maintained by Defendant are located in New Jersey; and
- f. The facts and circumstances of this case bestow numerous contacts with the State of New Jersey so as to create a state interest in applying the CFA to Defendant, thereby making application of New Jersey law to the entire Class appropriate.

SECOND COUNT

Asserted on Behalf of the Nationwide Class (Breach of Express Terms of Contract)

52. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

53. By its online sales promotion, Defendant expressly promised to provide specific “free gifts” to Plaintiff and other Class members upon purchase of its products.

54. By virtue of Plaintiff and other Class members purchasing the products, a contract arose between the parties binding Defendant to perform according to its express promises.

55. Defendant breached the express terms of its contracts with Plaintiff and other Class members because Defendant did not provide the specifically promised “free gifts,” instead substituting a lesser-value replacement or providing nothing at all.

56. As a result of the breach by Defendant, Plaintiff and other Class members have suffered damages because Plaintiff and other Class members would have paid less than the amount they actually paid or would not have purchased advertised products had the specific “free gifts” not been promised.

THIRD COUNT

Asserted on Behalf of the Nationwide Class (Breach of The Implied Covenant of Good Faith and Fair Dealing)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. By its online sales promotion, Defendant promised to provide specific “free gifts” to Plaintiff and other Class members upon purchase of its advertised products.

59. By virtue of Plaintiff and other Class members purchasing the products, a contract arose between the parties binding Defendant to perform according to its promises.

60. Every contract in New Jersey contains an implied covenant of good faith and fair dealing, which requires that neither party do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

61. Defendant breached the implied covenant of good faith and fair dealing of its contracts with Plaintiff and other Class members because Defendant never intended to provide the fruits of the contract, the specifically promised “free gift.” Furthermore, Defendant affirmatively denied the reasonable expectations of Plaintiff and other Class members to receive the specifically promised “free gifts” by substituting lesser-value replacements or providing nothing at all.

62. As a result of the breach by Defendant, Plaintiff and other Class members have suffered damages because Plaintiff and other Class members would have paid less than the amount they actually paid or would not have purchased the products they did buy, had the specific “free gifts” not been specifically promised to accompany the purchase.

FOURTH COUNT

**Asserted in the Alternative, on Behalf of
the Connecticut Class
(Violation of the 42 C.G.S. § 42-110a, *et seq.*)**

63. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

64. At all times relevant hereto, Plaintiff and Sub-Class members were “persons” within the meaning of the CUPTA.

65. Defendant has engaged in unfair or deceptive practices within the meaning of C.G.S. § 42-110(b) in its online advertising because Defendant offered to provide additional “free gifts” upon purchase of its products that Defendant had no intention of honoring.

66. Similarly, Defendant also failed to disclose material facts regarding the “free gift” promotion -- namely, that the specifically promised “free gift” will be substituted for a product of a lesser value or not provided at all.

67. Defendant intended that Plaintiff and the other members of the Sub-Class rely on these acts of concealment and omissions, so that Plaintiff and other Sub-Class members would purchase its products.

68. The false and misleading representations were intended to, and likely to, deceive a reasonable consumer.

69. The facts not disclosed would be material to the reasonable consumer, and are facts that a reasonable consumer would consider important in deciding whether to purchase Defendant’s products and how much to pay.

70. Defendant’s representations and omissions were, and are, material to reasonable consumers, including Plaintiff, in connection with their respective decisions to purchase the Defendant’s products.

71. Had Defendant not engaged in false and misleading advertising regarding the additional “free gift” promotion, Plaintiff and other members of the Sub-Class would not have made purchases from Defendant.

72. Had Defendant disclosed all material information regarding the additional “free gift” promotion to Plaintiff and other members of the Sub-Class, they would not have made purchases from Defendant or would have paid less for the purchases.

73. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiff and other members of the Sub-Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the Defendant's products which were promised to include an additional "free gift", and they are entitled to recover such damages, together with appropriate penalties, including, but not limited to, treble damages, attorneys' fees and costs of suit.

FIFTH COUNT

Asserted in the Alternative, on Behalf of the Connecticut Sub-Class (Breach of Express Terms of Contract)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. By its online sales promotion, Defendant expressly promised to provide specific "free gifts" to Plaintiff and other Sub-Class members upon purchase of its products.

76. By virtue of Plaintiff and other Sub-Class members purchasing the advertised products, a contract arose between the parties binding Defendant to perform according to its express promises.

77. Defendant breached the express terms of its contracts with Plaintiff and other Sub-Class members because Defendant did not provide the specifically promised "free gifts," instead providing lesser-value replacements or nothing at all.

78. As a result of the breach by Defendant, Plaintiff and other Sub-Class members have suffered damages because Plaintiff and other Sub-Class members would have paid less than the amount they actually paid or would not have purchased the advertised products had the specific "free gifts" not been promised.

SIXTH COUNT

Asserted in the Alternative, on Behalf of the Connecticut Sub-Class (Breach of The Implied Covenant of Good Faith and Fair Dealing)

79. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

80. By its online sales promotion, Defendant promised to provide specific “free gifts” to Plaintiff and other Sub-Class members upon purchase of its products.

81. By virtue of Plaintiff and other Sub-Class members purchasing the advertised products, a contract arose between the parties binding Defendant to perform according to its promises.

82. Every contract in Connecticut contains an implied covenant of good faith and fair dealing, which requires that neither party will act in bad faith to impede the other party’s right to receive benefits that he or she reasonably expected to receive under the contract.

83. Defendant breached the implied covenant of good faith and fair dealing of its contracts with Plaintiff and other Class members because Defendant acted in bad faith by never intending to provide the fruits of the contract, the specifically promised “free gifts.” Furthermore, Defendant affirmatively impeded the reasonable expectations of Plaintiff and other Sub-Class members to receive the specifically promised “free gifts” by substituting a lesser-value replacements or providing nothing at all.

84. As a result of the breach by Defendant, Plaintiff and other Sub-Class members have suffered damages because Plaintiff and other Sub-Class members would have paid less than the amount they actually paid or would not have purchased the advertised products had the specific “free gifts” not been promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Classes, prays for judgment against Defendant granting the following relief:

A. An order certifying this case as a class action and appointing Plaintiff as Class representative and Plaintiff's counsel to represent the Classes;

B. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

C. All recoverable compensatory and other damages sustained by Plaintiff and the Classes;

D. Actual and/or statutory damages for injuries suffered by Plaintiff and the Classes and in the maximum amount permitted by applicable law;

E. An order (1) requiring Defendant to immediately cease its wrongful conduct as set forth above; (2) enjoining Defendant from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Defendant to engage in a corrective notice campaign; and (4) requiring Defendant to pay to Plaintiff and all members of the Classes the amounts paid for the Product;

F. Statutory pre-judgment and post-judgment interest on any amounts;

G. Payment of reasonable attorneys' fees and costs; and

H. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: November 21, 2012

SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP

/s/ James C. Shah

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Attorneys for Plaintiffs and the Proposed
Class

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
William Probert
(b) County of Residence of First Listed Plaintiff Fairfield County, CT
(c) Attorneys (Firm Name, Address, Telephone Number, and Email Address)
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DEFENDANTS
Toys "R" Us, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Med. Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
IMMIGRATION: 462 Naturalization Application, 463 Habeas Corpus - Alien Detainee (Prisoner Petition), 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C.
Brief description of cause:
False and misleading on-line advertising regarding additional "free gift" promotion

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 5,000,000.00 +
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

DATE 11/21/2012
SIGNATURE OF ATTORNEY OF RECORD s/James C. Shah

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE