

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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CAROL COWHEY, and other  
Pennsylvanians similarly situated,

Plaintiffs,

v.

ASCENA RETAIL GROUP, INC. d/b/a  
Justice Stores

and

TWEEN BRANDS, INC., d/b/a Justice  
Stores

Defendants.

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:  
: CASE NO.: \_\_\_\_\_  
:  
:  
: REMOVED FROM THE  
: COURT OF COMMON PLEAS OF  
: PHILADELPHIA  
: CASE NO.: 150201156  
:  
:  
:

**NOTICE OF REMOVAL**

TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFFS AND  
THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, Defendant Tween Brands, Inc. ("Tween") removes the above-captioned action from the Court of Common Pleas of Philadelphia, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania. In support of its Notice of Removal, Tween states:

1. Defendant Ascena Retail Group, Inc. ("Ascena") has consented to this Notice of Removal.
2. On February 6, 2015, Plaintiff Carol Cowhey ("Plaintiff") filed a Class Action Complaint (the "Complaint") against Defendants Tween and Ascena (collectively, "Defendants") in the Court of Common Pleas of Philadelphia, Pennsylvania, Docket No. 150201156, captioned *Carol Cowhey, and other Pennsylvanians similarly situated v. Ascena Retail Group, Inc. and*

*Tween Brands, Inc.*

3. The Complaint is a “class action” within the meaning of 28 U.S.C. § 1332(d).

4. Pursuant to Local Rule of Civil Procedure 40.1(b)(3)(A), this case is related to *Melinda Mehigan, et al. v. Ascena Retail Group, Inc., d/b/a Justice Stores and Tween Brands, Inc. d/b/a Justice Stores*, No. 2:15-cv-00724-MAK, which is pending in this Court before the Honorable Mark A. Kearney

5. According to the Affidavit of Service, Plaintiff served the Summons and Complaint on Tween’s agent for process on February 17, 2015. This Notice of Removal is thus timely filed within 30 days of February 17, 2015. 28 U.S.C. §§ 1446(b)(1), (b)(2)(C).

6. True and correct copies of the Affidavits of Service, Summons and Complaint, which constitutes “all process, pleadings and orders served upon” Tween are attached as Exhibit A (“Compl.”). *Id.* § 1446(a).

7. A copy of this Notice of Removal is being filed with the Clerk of the Court of Common Pleas of Philadelphia, Pennsylvania, and is being served on counsel of record pursuant to 28 U.S.C. § 1446(d).

8. Plaintiff alleges that she is a resident of Wyndmoor, Pennsylvania and that she routinely shopped at Defendants’ Justice stores located in Pennsylvania. Compl. ¶ 4. She alleges that Defendants own and operate “approximately 55 Justice stores located in Pennsylvania.” *Id.* ¶ 7.

9. Plaintiff alleges that Defendants’ Justice stores advertised prices as “40% off entire store” when those prices were actually the regular prices at which Defendants sold their merchandise. Compl. ¶¶ 12-15.

10. Plaintiff alleges five counts for relief against Defendants. Count I asserts a claim

for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, *et seq.* (“PUTPCPL”). Compl. at ¶¶ 37-49. Count II asserts a claim for breach of contract. *Id.* at ¶¶ 50-57. Count III asserts a claim for “Breach of Contract Under the Implied Covenant of Good Faith and Fair Dealing.” *Id.* at ¶¶ 58-60. Count IV asserts a claim for Breach of Express Warranty. *Id.* at ¶¶ 61-68. Finally, Count V asserts a claim for “Unjust Enrichment.” *Id.* at ¶¶ 69-78.

11. Plaintiff purports to bring this action as a class action on behalf of herself and a class defined as:

All Pennsylvania residents who purchased any product(s) from Defendants, in one of Defendants’ Pennsylvania stores, during any day that Defendants advertised a discount of “40% off entire store,” or other similar discount language.

*Id.* at ¶ 28 (the “Putative Class”).

12. Plaintiff alleges that “there are at least thousands of individuals in the Class.” *Id.* at ¶ 29.

13. As demonstrative below, this Court has jurisdiction over Plaintiff’s action, and it is properly removed to this Court.

**FEDERAL JURISDICTION UNDER THE  
CLASS ACTION FAIRNESS ACT**

14. This action is removable to this Court because federal diversity jurisdiction under 28 U.S.C. § 1332 exists over Plaintiff’s claims under the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (2005) (“CAFA”), codified in various sections of Title 28 of the United States Code including 28 U.S.C. §§ 1332(d), 1453.

15. Congress enacted CAFA to enlarge federal jurisdiction over proposed class actions. CAFA provides that a class action against a nongovernmental entity may be removed to federal court if the aggregate amount in controversy exceeds \$5 million, exclusive of interest and

costs, and any member of the proposed plaintiff class is a citizen of a state different from any defendant. *See* 28 U.S.C. §§ 1332(d)(2), (d)(2)(A). As set forth below, the requirements for removal are met here.

**I. The Aggregate Amount-in-Controversy Requirement Is Satisfied**

16. CAFA’s first requirement, that the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs, 28 U.S.C. § 1332(d)(2), is met here.

17. Based on Plaintiffs’ allegations, “there are at least thousands of individuals in the class.” Compl. at ¶ 29. Additionally, plaintiffs allege that Defendants’ allegedly deceptive conduct occurred in all of Defendants’ 55 Pennsylvania stores, as well as on its website, and through “postcards and/or catalogues.” *Id.* at ¶¶ 1, 12-14.

18. Plaintiffs’ claim under the PUTPCPL includes a request for “restitution, disgorgement, injunctive relief, and all other relief allowable under 73 P.S. § 201-1 *et seq.*” *Id.* at ¶ 49. This includes statutory damages of \$100 per transaction available under 73 P.S. § 201-9.2.

19. Defendants’ business records demonstrate that more than 100,000 customers made purchases in Pennsylvania stores during the year before the Complaint was filed. *See* Declaration of Ezra Church, attached hereto as Ex. B.

20. Given Plaintiff’s allegations, the relief sought in the Complaint and the number of members in the Putative Class revealed by Defendants’ business records, the amount in controversy significantly exceeds \$5 million, exclusive of interest and costs.<sup>1</sup>

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<sup>1</sup> This Notice of Removal discusses the nature and amount of damages placed at issue by Plaintiffs’ Complaint and is not an admission by Defendants as to the merit of Plaintiff’s claims or the truth of the allegations contained in their Complaint. *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 505 (3d Cir. 2014) (“Because Judon explicitly asserted in her complaint that there are ‘hundreds of members,’ Travelers was entitled to rely on this fact as an admission in favor of jurisdiction.”); *Frederico v. Home Depot*, 507 F.3d 188, 198-99 (3d Cir. 2007) (relying

## **II. The Minimum Diversity-of-Citizenship Requirement Is Met**

21. CAFA's second requirement, that any one member of the proposed class be a citizen of a state different from any defendant, 28 U.S.C. § 1332(d)(2), is also met here.

22. Plaintiff alleges that she is an "individual and resident of Wyndmoor, Pennsylvania." Compl. at ¶ 4. Plaintiff also purports to represent a class of "at least thousands of individuals" who are also "Pennsylvania residents." *Id.* at ¶¶ 28 & 29. Upon information and belief, therefore, Plaintiff and the members of the Putative Class are citizens of the Commonwealth of Pennsylvania.

23. Plaintiff alleges that Defendants are "corporation[s] organized under the laws of Delaware, headquartered in New Albany, OH, and registered to do business with the Secretary of State of Ohio." *Id.* at ¶ 5-6.

24. For purposes of 28 U.S.C. § 1332, Defendants are citizens of the State of Ohio.

25. The complete diversity between the named Plaintiff and Defendants not only satisfies the minimal diversity-of-citizenship requirement under CAFA, but also precludes the "local controversy" or "home state" exceptions in 28 U.S.C. § 1332(d)(3) and § 1332(d)(4).

26. If, and to the extent that, CAFA requires a removing defendant to state that the proposed class contains at least 100 members, see 28 U.S.C. § 1332(d)(5), any such requirement is met here as well. Compl. at ¶ 29.

27. Plaintiff's Complaint alleges that "there are at least thousands of individuals in the Class." Compl. ¶ 29.

28. In addition, venue is proper in the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1441(a) because this is the district embracing

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on plaintiff's allegations in determining that the sum of potential compensatory damages, punitive damages, and attorneys' fees totaled more than \$5,000,000).

the Court of Common Pleas of Philadelphia where Plaintiff's action is pending.

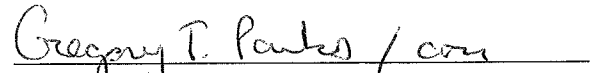
29. No exception to CAFA jurisdiction applies but if an exception is alleged, the party alleging the exception bears the burden of establishing such a contention.

30. If any questions arise as to the propriety of removal of this action, Defendants request a hearing and the opportunity to present a brief and/or supplemental declarations or other evidence in support of its position that this case is removable.

31. For all the foregoing reasons, this action is properly removed to this Court under CAFA.

DATED: March 19, 2015

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gregory T. Parks / com", is written over a horizontal line.

Gregory T. Parks (PA 80620)

Ezra D. Church (PA 206072)

Christopher J. Mannion (PA 307179)

**MORGAN, LEWIS & BOCKIUS, LLP**

1701 Market Street

Philadelphia, PA 19103

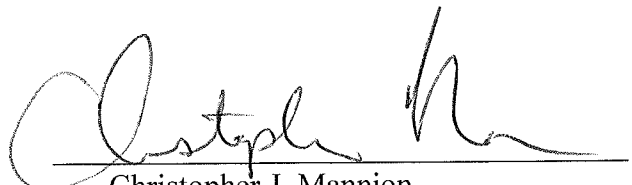
Tel: (215) 963-5170

[gparks@morganlewis.com](mailto:gparks@morganlewis.com)

*Counsel for Ascena Retail Group, Inc. and  
Tween Brands, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2015 a true and correct copy of the foregoing Notice of Removal and all accompanying exhibits was sent via ECF, e-mail and U.S. mail to all counsel of record for Plaintiffs.



Christopher J. Mannion

**EXHIBIT A**





**Service of Process  
Transmittal**

02/17/2015

CT Log Number 526581373

**TO:** Peg Hamilton  
TWEEN BRANDS, INC.  
8323 Walton Pkwy  
New Albany, OH 43054-9522

**RE: Process Served in Ohio**

**FOR:** TWEEN BRANDS, INC. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Carol Cowhey, and other Pennsylvanians similarly situated, Pltf. vs. Ascena Retail Group, Inc., etc. and Tween Brands, Inc., etc., Dfts.

**DOCUMENT(S) SERVED:** Cover Sheet, Notice, Class Action Complaint, Verification, Certificate

**COURT/AGENCY:** Philadelphia County Court of Common Pleas, PA  
Case # 150201156

**NATURE OF ACTION:** Plaintiff and the putative class members alleges that defendant advertised products were discounted when they were not as a result of these actions, defendants received benefits under circumstances where it would be unjust to retain these benefits

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Cleveland, OH

**DATE AND HOUR OF SERVICE:** By Certified Mail on 02/17/2015 postmarked on 02/10/2015

**JURISDICTION SERVED :** Ohio

**APPEARANCE OR ANSWER DUE:** With 20 days after this complaint and notice are served

**ATTORNEY(S) / SENDER(S):** William Pietragallo II  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
1818 Market St.  
Ste. 3402  
Philadelphia, PA 19103  
215-320-6200

**ACTION ITEMS:** CT has retained the current log, Retain Date: 02/17/2015, Expected Purge Date: 02/27/2015  
Image SOP  
Email Notification, Rosanne Yang ryang@tweenbrands.com  
Email Notification, Gene Wexler Gene.Wexler@ascenaretail.com  
Email Notification, Peg Hamilton mhamilton@tweenbrands.com  
Email Notification, Dorrie Prigot dorrie.prigot@dressbarn.com  
Email Notification, Gary Holland gary.holland@ascenaretail.com  
Email Notification, Brandt Gebhardt Brandt.Gebhardt@ascenaretail.com  
Email Notification, Brandi Dorgan Brandi.Dorgan@ascenaretail.com  
Email Notification, Becky Melchiorre becky.melchiorre@ascenaretail.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 1300 East 9th Street  
Suite 1010  
Cleveland, OH 44114

Page 1 of 2 / DR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



**Service of Process  
Transmittal**

02/17/2015

CT Log Number 526581373

**TO:** Peg Hamilton  
TWEEN BRANDS, INC.  
8323 Walton Pkwy  
New Albany, OH 43054-9522

**RE: Process Served in Ohio**

**FOR:** TWEEN BRANDS, INC. (Domestic State: DE)

**TELEPHONE:** 216-802-2121

Page 2 of 2 / DR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**CERTIFIED MAIL**



7414 7266 9904 2007 1691 05  
RETURN RECEIPT REQUESTED



**CONFIDENTIAL**

NB-90002

 **PIETRAGALLO**  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP  
ATTORNEYS AT LAW  
1818 MARKET STREET, SUITE 3402  
PHILADELPHIA, PA 19103

TO:

CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114



Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)	
<b>FEBRUARY 2015</b> E-Filed Number: 1502014717 <b>001156</b>	
PLAINTIFF'S NAME CAROL COWHEY	DEFENDANT'S NAME ASCENA RETAIL GROUP, INC., ALIAS: JUSTICE STORES
PLAINTIFF'S ADDRESS 1818 MARKET STREET SUITE 3402 PHILADELPHIA PA 19103	DEFENDANT'S ADDRESS C/O CSC LAWYERS INCORPORATING 50 W. BROAD STREET SUITE 1800 COLUMBUS OH 43215
PLAINTIFF'S NAME	DEFENDANT'S NAME TWEEN BRANDS INC., ALIAS: JUSTICE STORES
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS CT CORPORATION 1300 E. NINTH STREET CLEVELAND OH 44114
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 2
COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS: <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: CLASS ACTION
CASE TYPE AND CODE CLASS ACTION	
STATUTORY BASIS FOR CAUSE OF ACTION	
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER) <div style="text-align: center;"> <b>FILED</b>  <b>PRO PROTHY</b>  <b>FEB 06 2015</b>  <b>D SAVAGE</b> </div>	
IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: CAROL COWHEY Papers may be served at the address set forth below:	
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY KEVIN RAPHAEL	ADDRESS 1818 MARKET STREET SUITE 3402 PHILADELPHIA PA 19103
PHONE NUMBER (215) 320-6200	FAX NUMBER (215) 981-0082
SUPREME COURT IDENTIFICATION NO. 72673	E-MAIL ADDRESS ker@pietragallo.com
SIGNATURE OF FILING ATTORNEY OR PARTY KEVIN RAPHAEL	DATE SUBMITTED Friday, February 06, 2015, 04:55 pm

FINAL COPY (Approved by the Prothonotary Clerk)

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
COURT OF COMMON PLEAS OF PHILADELPHIA**

PIETRAGALLO GORDON ALFANO  
ROSICK & RASPANTI, LLP  
By: WILLIAM PIETRAGALLO-II, ESQ.  
KEVIN F. RAPIAGEL, ESQ.  
WVK@Pietragallo.com  
KFR@Pietragallo.com  
10 N. 16th St. 12th Floor  
Philadelphia, PA 19103  
(215) 326-6200

MANISOUR GAVIN LPA  
ANTHONY GOYNE, ESQ.  
BRENDON H. PRIESEN, ESQ.  
agoyne@mcgandpa.com  
bprie@mcgandpa.com  
1001 Lakeside Avenue, Suite 1400  
Cleveland, OH 44114  
(216) 529-5500

Seal of the First Judicial District of Pennsylvania



Attorneys for Plaintiff

Cecil Conway, and other Permittees  
similarly situated,

Plaintiff,

v.

Ascenta Retail Group, Inc., d/b/a Justice  
Stores  
c/o CSC-Lawyers Incorporating Service  
(Corporation Service Company)  
50 W. Broad St. Suite 1800  
Columbus, OH 43215

and

Tween Brands, Inc., d/b/a Justice Stores  
c/o C.F. Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FEBRUARY TERM, 2015

No. \_\_\_\_\_

**COMPLAINT CLASS ACTION**

**NOTICE TO DEFEND**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

*You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.*

Philadelphia Bar Association  
Lawyer Referral  
and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta presentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

*Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.*

Asociacion De Licenciados  
De Filadelfia  
Servicio De Referencia E  
Informacion Legal  
One Reading Center  
Filadelfia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP  
By: WILLIAM PIETRAGALLO II, ESQ.  
KEVIN E. RAPHAEL, ESQ.  
WP@Pietragallo.com  
KER@Pietragallo.com  
I.D. Nos. 16413 and 72673  
1818 Market Street, Suite 3402  
Philadelphia, PA 19103  
(215) 320-6200

*Attorneys for Plaintiff*

MANSOUR GAVIN LPA  
ANTHONY COYNE, ESQ.  
BRENDON P. FRIESEN, ESQ.  
acoyne@mggmlpa.com  
bfriesen@mggmlpa.com  
1001 Lakeside Avenue, Suite 1400  
Cleveland, OH 44114  
(216) 523-1500

*Seeking Pro Hac Admission*

Carol Cowhey, and other Pennsylvanians  
similarly situated,

Plaintiff,

v.

Ascena Retail Group, Inc., d/b/a Justice  
Stores  
c/o CSC-Lawyers Incorporating Service  
(Corporation Service Company)  
50 W. Broad St. Suite 1800  
Columbus, OH 43215

and

Tween Brands, Inc., d/b/a Justice Stores  
c/o CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FEBRUARY TERM, 2015

No. \_\_\_\_\_

**COMPLAINT – CLASS ACTION**

Plaintiff Carol Cowhey, ("Plaintiff") by and through her attorneys, Pietragallo Gordon  
Alfano Bosick & Raspanti, LLP and Mansour Gavin, LPA, for her Class Action Complaint

against Defendants: Ascena Retail Group, Inc., d/b/a Justice Stores and Tween Brands, Inc., ("Defendants"), alleges as follows:

### NATURE OF ACTION

1. Plaintiff brings this action against Defendants for engaging in a systematic scheme of advertising product discounts which are actually the everyday price of the item, in violation of Pennsylvania law. Defendants sells children's apparel, fashion accessories, and other items (the "products"), which are available to purchase at any of Defendants' 55 brick and mortar stores across Pennsylvania.

2. Defendants advertise significant "discounts" on products which never end and continue, week in and week out. The result is that the prices for these products are always the same and are never actually discounted.

3. By advertising discounts without actually providing a discount to its customers, Defendants are violating Pennsylvania statutory and common law. Plaintiff has brought claims for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("PUTPCPL"), breach of contract, breach of the contract under the implied covenant of good faith and fair dealing, breach of express warranty, and unjust enrichment to stop Defendants' unlawful practices and recover for customers the overcharges which they paid — thereby providing the customers with the actual discounts the customers were entitled to receive but did not.

### PARTIES

4. Plaintiff Carol Cowhey is an individual and resident of Wyndmoor, Pennsylvania. As the mother of a young girl, Plaintiff routinely shopped at Defendants' stores in Pennsylvania.



5. Defendant Ascena Retail Group, Inc. is a corporation organized under the laws of Delaware, headquartered in New Albany, OH, and registered to do business with the Secretary of State of Ohio.

6. Defendant Tween Brands, Inc. is a corporation organized under the laws of Delaware, headquartered in New Albany, OH, and registered to do business with the Secretary of State of Ohio.

7. Defendants own and operate approximately 55 Justices stores located in Pennsylvania, including one located at 1543 Franklin Mills Circle, Philadelphia, PA 19154, at which Defendants sell consumer products, including children's clothing, fashion apparel, and more. Defendants have a regular commercial presence in Pennsylvania and derive substantial revenue from their conduct in Pennsylvania, including from the conduct challenged in this suit.

8. The acts charged in this Complaint as having been done by Defendants took place in Pennsylvania and were authorized, ordered or done by its officers, agents, employees, or representatives, while actively engaged in the management of Defendants' businesses or affairs in Pennsylvania.

#### JURISDICTION AND VENUE

9. Venue is proper in this county under Rule 2179 of the Pennsylvania Rules of Civil Procedure. Defendants transact business throughout the Commonwealth of Pennsylvania in general and within Philadelphia County specifically. Many of the acts, as well as the course of conduct charged herein, occurred in Philadelphia County.

10. The total amount in controversy of the named plaintiff and each member of the Class (as defined below) is less than Seventy-Five Thousand Dollars (\$75,000) per individual. In addition, as master of her complaint, Plaintiff asserts no claims arising from federal law.



Rather, Plaintiff brings causes of action based solely on, and arising from, Pennsylvania law. The claims of Plaintiff and the Class are individual claims for violations of Pennsylvania law described herein.

#### FACTUAL ALLEGATIONS

11. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

12. Defendants post signs and notices, both in store and out of store, advertising "40% off entire store." This alleged discount is not for a limited period but continues persistently.

13. Defendants likewise send postcards and/or catalogues to customers advertising "40% off entire store." Again, the alleged price advantage is persistent.

14. Defendants likewise advertised on their website that in-store shoppers would receive discounts of "40% off entire store." This advertisement, prominently placed as a top-billed banner on the front page of [www.shopjustice.com](http://www.shopjustice.com), specifically stated "in stores: no coupon necessary." In the same matter as all its other marketing, the alleged price advantage is *continuous*.

15. The prices Defendants represent as "40% off" are actually the regular prices.

16. Defendants utilize these in-store signs and in-and-out-of-store advertisements for the purpose of attracting customers to Defendants' stores with the promise of a discount which never exists.

17. On its purchase receipts, Defendants listed the regular price, which is the purported regular full price of the product; a discount or savings amount, and then the sales price after the purported discount. The receipt listed the alleged savings the Defendants purported to give the

customer. Purchase receipts clearly represented that the customer was receiving the benefit of a 40% sale.

18. Defendants' purported "discounts" as described above do not exist. Defendants *always* sells its products at the "discounted" price. As such, Defendants' allegedly reduced price is, in fact, Defendants' *regular* price.

19. Occasionally, Defendants will advertise and offer discounts above and beyond the alleged 40% off (e.g. 40% + 20% off). But the baseline sale price has continuously been the 40% off and, upon information and belief, at all times relevant, Defendants advertises all of the products in all of its stores to be "discounted" at least 40% off.

#### **PLAINTIFF'S PURCHASE**

20. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

21. In 2012 and 2013, Plaintiff purchased merchandise from Defendants' stores located in Plymouth Meeting, Pennsylvania, King of Prussia, Pennsylvania, and Montgomeryville, Pennsylvania.

22. Plaintiff contracted with Defendants to purchase products from Defendants, which Defendants had represented, through its signs and other advertising, both in store and out, to be 40% off.

23. On the receipt for Plaintiffs' purchase, Defendants listed the purported regular full price of the product; a Purchase Price, which is the price after the application of the purported discount; and a Discount or savings amount. Plaintiff's purchase receipt also stated the purported savings the Defendants provided to the Plaintiff, and clearly represented that Plaintiff had received the benefit of a 40% sale.

24. Defendants' representations that Plaintiff would receive a discount price advantage were false. The products Plaintiff purchased were not discounted by 40% and Plaintiff did not receive this advertised price advantage.

25. Plaintiff has made other purchases from Defendants during the statute of limitations period that were similarly advertised as being discount prices when in fact they were not.

#### CLASS ACTION ALLEGATIONS

26. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

27. The Named Plaintiff is an individual who, within the applicable period of limitations prior to the commencement of this action, purchased products from Defendants' Pennsylvania stores.

28. Plaintiff brings this case as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701, *et seq.*, on behalf of a Class ("the Class") consisting of all similarly situated individuals, to wit:

All Pennsylvania residents who purchased any product(s) from Defendants, in one of Defendants' Pennsylvania stores, during any day that Defendants advertised a discount of "40% off entire store," or other similar discount language.

29. Plaintiff believes that there are at least thousands of individuals in the Class. Given Defendants' size and the systematic nature of its failure to comply with Pennsylvania statutory law and common law, the members of the Class are so numerous that joinder of all members is impractical.

30. Plaintiff's claims are typical of the claims of the Class members because she shopped at Defendants' Pennsylvania stores and, like the Class members, sustained damages arising out of Defendants' deceptive advertising practices.

31. Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in complex, class action litigation.

32. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to plaintiff and the Class are:

- a. Whether Defendants deceptively advertise as "discount" prices what are in fact everyday prices.
- b. Whether Defendants deceptively advertise as "discount" prices what are in fact everyday prices in its stores throughout Pennsylvania.
- c. Whether Defendants' advertising practices violated the PUTPCPL.
- d. Whether the relevant sales constituted a breach of contract.
- e. Whether the relevant sales constituted a breach of the implied covenant of good faith and fair dealing.
- f. Whether the relevant sales constituted a breach of an express warranty.
- g. Whether Defendants were unjustly enriched.
- h. The nature and extent of class-wide injury and the measure of damages for the injury.

33. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action

that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class is readily identifiable from the Defendants' records.

34. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, the amounts at stake for many of the Class members are not great enough to enable them to maintain separate suits against Defendants.

36. Without a class action, Defendants will likely retain the benefit of their wrongdoing and will continue a course of action, which will result in further damages to plaintiff and the Class. Plaintiff envisions no difficulty in the management of this action as a class action.

#### **FIRST CLAIM FOR RELIEF**

##### **Pennsylvania Unfair Trade Practices and Consumer Protection Law ("PUTPCPL") 73 P.S. § 201-1 et seq.**

37. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

38. This count is brought pursuant to the PUTPCPL, 73 P.S. § 201-1 *et seq.* At all relevant times hereto, including at all times during the transactions between Plaintiff and Defendants, and the consumer transactions between the putative class members and Defendants, Defendants' advertising practices were subject to 73 P.S. § 201-1 *et seq.*

39. The PUTPCPL permits a consumer to bring a private action if the consumer has suffered any ascertainable loss of money as the result of conduct declared unlawful as unfair

and/or deceptive acts or practices in the conduct of trade or commerce. 73 P.S. § 201-3; 73 P.S. § 201-9.2.

40. Defendants engaged in the following unlawful acts and practices in the conduct of trade and commerce:

- a. advertising goods or services with intent not to sell them as advertised;
- b. making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- c. engaging in fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(ix),(xi), (xxi).

41. Specifically, by advertising all its products as discounted when they are in fact being sold at the everyday price, Defendants advertise goods they did not intend to sell as advertised.

42. By claiming its everyday prices are discount prices, Defendants are making misleading statements of fact concerning the existence and amount of the price reductions on its goods.

43. Further, Defendants' deceptive conduct in regard to the pricing of its goods creates a likelihood of confusion or of misunderstanding, among consumers, because *all* their purchases were represented to be at a rate at least 40% less than the regular price when they were not.

44. Plaintiff and the putative class members relied on Defendants' advertisements, to their detriment, that every purchase made would be 40% off the regular price.

45. In connection with the consumer transactions alleged herein, including the consumer transaction between Plaintiff and Defendants, and the consumer transactions between

the putative class members and Defendants, Defendants' representations, acts, and/or practices regarding purported sale pricing were unfair and deceptive, to wit:

- a. Through language stated *supra*, and similar language, Defendants advertised, both in store and out, a sales price and compared such price to an alleged regular price, however that prior price was never the price of the product and, therefore, was never the "regular" price of the product.
- b. On its purchaser receipts, Defendants quotes to the purchaser a savings amount being the difference between Defendants' alleged regular price and its stated sale price. However, since the alleged regular price is not and was never the price at which the good is or was regularly sold, Defendants' representation of a savings is false.
- c. Defendants charged what amounts to the full price of these products rather than the purported discount that Defendants advertised.

46. Here, Defendants' pricing practices were *inherently* deceptive and injured every class member who made a purchase. Thus, every member of the class who purchased any product at Defendant stores was *necessarily* subjected to these deceptive practices, and suffered an ascertainable loss, i.e., the amount of the alleged savings.

47. As a result, the class will only be comprised of individuals who were actually harmed by Defendants' conduct and who sustained ascertainable losses as a result of Defendants' deceptive pricing practices, to wit: the amount of the alleged savings on all purchases.

48. Defendants have knowingly engaged in unfair and deceptive sales practices in violation of the PUTPCPL, 73 P.S. § 201-1 *et seq.* As a direct and proximate result of Defendants' violations, Plaintiff and the putative class members have been injured in an amount to be established at trial. For instance, in Plaintiff's transaction, the promised 40% off savings was false. Instead, Plaintiff was damaged in this amount (i.e. 40% of the price she was charged and paid),

which represents the deceptive savings that the Defendants purported to, but did not actually, provide to Plaintiff.

49. Plaintiff, on behalf of herself and on behalf of the putative class members, seeks restitution, disgorgement, injunctive relief, and all other relief allowable under 73 P.S. § 201-1 *et seq.*

## SECOND CLAIM FOR RELIEF

### Breach of Contract

50. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

51. Plaintiff and the putative class members entered into a contract with Defendants.

52. The contract provided that Plaintiff and the putative class members would pay Defendants for its products.

53. The contract further provided that Defendants would provide Plaintiff and the putative class members a discount on the price of their purchases. A specific term of the contract is that the customer is receiving a discount. That term was material and it was breached. Plaintiff and the putative class members paid Defendants for these products, and satisfied all other conditions, or same were waived.

54. Defendants breached the contract by failing to comply with the material term of providing a discount, and instead charging Plaintiff and the putative class members what was actually the full price of these products purchased by the Plaintiff and the putative class members.

55. As a direct and proximate result of Defendants' breach, Plaintiff and the putative class members have been injured in an amount to be established at trial. For instance, in Plaintiff's



transaction, a material term of her contract was a 40% discount on her purchase, which Defendants breached by not providing. Plaintiff was damaged in this amount (i.e., 40% of the price she was charged and paid), which is the savings Defendants were obligated by contract to provide to Plaintiff.

### **THIRD CLAIM FOR RELIEF**

#### **Breach of Contract Under the Implied Covenant of Good Faith and Fair Dealing**

58. Plaintiff realleges and incorporates herein all previous paragraphs of this Claim.

59. In breaching its contract with customers by failing to comply with the material term of providing a discount, Defendants also breached the implied covenant of good faith and fair dealing.

60. As a direct result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiff and the putative class members have been injured in an amount to be established at trial.

### **FOURTH CLAIM FOR RELIEF**

#### **Breach of Express Warranty**

61. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

62. Plaintiff, and each member of the putative class, formed a contract with Defendants at the time they purchased a product for the sale of goods. The terms of that contract include the promises and affirmations of fact made by Defendants through their marketing campaign, as alleged above, including, but not limited to, representing that the product was being discounted.

63. This product advertising constitutes express warranties, became part of the basis of the bargain, and is part of the contract between Plaintiff and the putative members of the class on the one hand, and Defendants on the other.

64. The affirmations of fact made by Defendants were made to induce Plaintiff and members of the purported class to purchase the products.

65. Defendants intended Plaintiff and the putative class members to rely on those representations in making their purchase, and they did so.

66. All conditions precedent to Defendants' liability under the warranty have been performed by Plaintiff and the putative class members or have been waived.

67. Defendants breached the terms of the express warranty because the products did not conform to the description provided by Defendants, to wit: that the products were being sold at a discounted price, when they were not.

68. As a direct and proximate result of Defendants' breach, Plaintiff and the putative class members have been injured in an amount to be established at trial.

#### **FIFTH CLAIM FOR RELIEF**

##### **Unjust Enrichment**

69. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

70. This claim is asserted in the alternative to a finding of breach contract. This claim asserts that it is unjust to allow Defendants to retain profits from their deceptive, misleading, and unlawful conduct alleged herein.

71. Defendants charged Plaintiff and the putative class members for its products.

72. Defendants represented that these products were discounted.

73. As detailed above, the products were not discounted.

74. Because the products were advertised as being discounted when they were not, Defendants collected more than if the products had been discounted as promised.

75. As a result of these actions, Defendants received benefits under circumstances where it would be unjust to retain these benefits.

76. Defendants have knowledge or an appreciation of the benefit conferred upon it by Plaintiff and the putative class members.

77. Defendants have been unjustly enriched.

78. Plaintiff and the putative class members are entitled to restitution and/or disgorgement of all profits, benefits, and other compensation obtained and retained by the Defendants from their deceptive, misleading, and unlawful conduct.

#### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff demands judgment as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Pennsylvania Rule of Civil Procedure 1701 *et seq.*, and certifying this case as such;

2. For an Order enjoining Defendants from engaging in their unfair and deceptive marketing practices;

3. For treble damages;


4. For reasonable costs and attorney fees necessarily incurred herein pursuant to 73 P.S. § 201-9.2;

5. For such other or further relief as this Honorable Court deems Plaintiff and the class entitled.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:



WILLIAM PIETRAGALLO II, ESQ.  
KEVIN E. RAPHAEL, ESQ.  
I.D. Nos. 16413 and 72673  
1818 Market Street, Suite 3402  
Philadelphia, PA 19103  
(215) 320-6200

MANSOUR GAVIN LPA  
ANTHONY COYNE, ESQ.  
BRENDON P. FRIESEN, ESQ.  
acoynem@ggmlpa.com  
bfriesen@ggmlpa.com  
1001 Lakeside Avenue, Suite 1400  
Cleveland, OH 44114  
(216) 523-1500

*Seeking Pro Hac Admission*

*Attorneys for Plaintiff*

Date: February 6, 2015

2886192v2

VERIFICATION

I, Kevin E. Raphael, Esquire, do hereby verify that the averments of fact made in the within Class Action Complaint are true and correct based on my knowledge, information and belief.

I understand that any false statements herein are made subject to penalty of 18 Pa. Consol. Stat. Ann. § 4094, relating to unsworn falsification to authorities.

Date: February 6, 2105



Kevin E. Raphael, Esquire

**CERTIFICATE OF SERVICE**

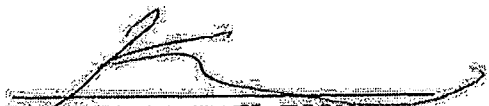
I hereby certify that, on February 6, 2015 a true and correct copy of this Class Action Complaint was served on Defendants' registered agents via certified mail:

CSC-Lawyers Incorporating Service  
(Corporation Service Company)  
50 W. Broad St. Suite 1800  
Columbus, OH 43215

CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:

  
KEVIN E. RAPHAEL, ESQUIRE  
1818 Market Street, Suite 3402  
Philadelphia, PA 19103  
(215) 320-6200

**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

\_\_\_\_\_  
CAROL COWHEY, and other  
Pennsylvanians similarly situated,

Plaintiffs,

v.

ASCENA RETAIL GROUP, INC. and  
TWEEN BRANDS, INC.,

Defendants.  
\_\_\_\_\_

:  
:  
: CASE NO.: \_\_\_\_\_  
:  
:  
: REMOVED FROM THE  
: COURT OF COMMON PLEAS OF  
: PHILADELPHIA  
: CASE NO.: 150201156  
:  
:  
:

**DECLARATION OF EZRA D. CHURCH**

Pursuant to 28 U.S.C. § 1746, I, Ezra D. Church, declare the following statements to be true under the penalties of perjury:

1. I am an attorney at Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103, counsel for Defendants Ascena Retail Group, Inc. and Tween Brands, Inc.

2. I have personal knowledge of the facts set forth herein based on my participation and involvement in this litigation and, if called to do so, would and could testify to the matters stated herein.

3. On March 18, 2015, I caused a search to be performed of records that Defendants maintain in the ordinary course of business. The results of that search were conveyed to me and showed that Defendants' business records indicate that 340,476 Pennsylvania residents made purchases at Defendants' Pennsylvania Justice store locations between January 1, 2014 and December 31, 2014.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Philadelphia, PA  
March 19, 2015

\_\_\_\_\_  
/s/ Ezra D. Church  
Ezra D. Church



JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet 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**

Carol Cowhey, and other Pennsylvanians similarly situated

**(b) County of Residence of First Listed Plaintiff**

(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
See Attachment A**DEFENDANTS**Ascena Retail Group, Inc., d/b/a Justice Stores  
and  
Tween Brands, Inc. d/b/a Justice Stores**County of Residence of First Listed Defendant** Franklin County, OH

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
See Attachment A**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)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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. 1332

Brief description of cause:

Class Action for Alleged False Advertising


**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

Treble Damages; Attorneys' fees

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

<b>IF ANY</b>		<i>(See instructions):</i>		JUDGE	Hon. Mark A. Kearney	DOCKET NUMBER	2:15-cv-00724-MAK
DATE		SIGNATURE OF ATTORNEY OF RECORD					
03/19/2015							
<b>FOR OFFICE USE ONLY</b>							
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE			

JS 44 Reverse (Rev. 12/12)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

**ATTACHMENT A**

Attorneys for Plaintiff

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

William Pietragallo II, Esq. (PA 16413)  
Kevin E. Raphael, Esq. (PA 72673)  
1818 Market Street, Suite 72673  
Philadelphia, PA 19103  
[JWK@pietragallos.com](mailto:JWK@pietragallos.com)  
[KER@pietragallos.com](mailto:KER@pietragallos.com)  
(215) 320-6200

MANSOUR GAVIN LPA

Anthony Coyne, Esq.  
Brendon P. Friesen, Esq.  
1001 Lakeside Ave., Suite 1400  
Cleveland, OH 44114  
[acoyne@mggmlpa.com](mailto:acoyne@mggmlpa.com)  
[bfriesen@mggmlpa.com](mailto:bfriesen@mggmlpa.com)  
(216) 523-1500

Attorneys for Defendants

MORGAN LEWIS & BOCKIUS, LLP

Gregory T. Parks, Esq. (PA 80620)  
Ezra D. Church, Esq. (PA 206072)  
Christopher J. Mannion, Esq. (PA 307179)  
1701 Market Street  
Philadelphia, PA 19103  
[gparks@morganlewis.com](mailto:gparks@morganlewis.com)  
[echurch@morganlewis.com](mailto:echurch@morganlewis.com)  
[cmannion@morganlewis.com](mailto:cmannion@morganlewis.com)  
(215) 963-5000

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Wyndmoor, PA  
Ascena Retail Group, Inc., 200 Heritage Dr., Pataskala, OH 43062;  
Address of Defendant: Tween Brands, Inc., 8323 Walton Pkwy, New Albany, OH 43054  
Place of Accident, Incident or Transaction: Pennsylvania Justice Stores  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☒ No ☐

Does this case involve multidistrict litigation possibilities? Yes ☒ No ☐

RELATED CASE, IF ANY:

Case Number: 2:15-cv-00724-MAK Judge Hon. Mark A. Kearney Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases  
(Please specify) Unfair Trade Practices Class Action

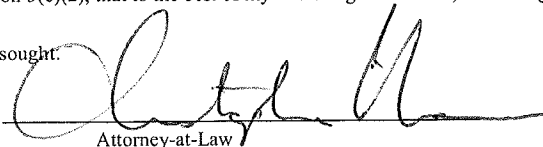
ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Christopher J. Mannion, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
☒ Relief other than monetary damages is sought.

DATE: 3/19/2015

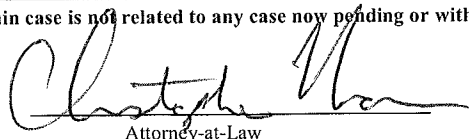
  
Attorney-at-Law

307179  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/19/2015

  
Attorney-at-Law

307179  
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Carol Cowhey, and other Pennsylvanians  
similarly situated,

**CIVIL ACTION**

v.  
Ascena Retail Group, Inc., d/b/a Justice Stores  
AND  
Tween Brands, Inc., d/b/a Justice Stores

**NO.**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

3/19/15

Christopher J. Mannion, Esq.

Defendants

**Date**

**Attorney-at-law**

**Attorney for**

215-963-5489

215-963-5001

cmannion@morganlewis.com

**Telephone**

**FAX Number**

**E-Mail Address**