

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**DAVID LEGENDRE, Individually,  
and on behalf of all others similarly  
situated,**

Plaintiff,

vs.

**TWEEN BRANDS, INC.**  
The Corporation Trust Company  
820 Bear Tavern Road  
West Trenton, NJ 08628

Defendant.

CASE NO.:

**COMPLAINT  
FOR CLASS ACTION**

Plaintiff, David Legendre, a New Jersey resident, residing 10 Jefferson Avenue, Township of Edison, County of Middlesex, brings this class action complaint against Defendant Tween Brands, Inc. individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, who purchased consumer products from Defendant within the last six years to the present (the "Class Period"). Plaintiff's allegations against Defendant are based upon information and belief and upon investigation of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this class action under 28 U.S.C. §1332(d), which, under the provisions of the Class Action Fairness Act (“CAFA”), provides federal courts original jurisdiction over any class action in which any member of a class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5 million, exclusive of interest and costs.

2. Defendant is a corporate citizen of Delaware and does regular business in New Jersey. Because of Defendant’s ongoing commercial presence, this Court has jurisdiction over Defendant.

3. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because the District of New Jersey is a judicial district in which a substantial part of the events/omissions giving rise to these claims occurred.

## **II. NATURE OF THE ACTION**

4. Defendant operates 34 Justice-brand retail stores across New Jersey and over 850 stores across the U.S. Tween sells consumer products, including children’s apparel and accessories.

5. The law prohibits a company from representing that discounts are available to consumers when, in fact, they are not. When products are offered for sale continuously, the alleged discount price is actually the everyday price and the consumer is not, in fact, receiving a discount.

6. This is the exact practice in which Defendant is engaging. Defendant advertises that its entire store is 40%, but it is doing so continuously. The result is that, because of the ongoing nature of this “sale”, Defendant is telling consumers they are getting a discount when in fact Defendant is charging the regular price for these products.

7. By advertising discounts without actually providing a discount to its customers, Defendant is violating the law. By filing this class action, Plaintiff is seeking to get actual discounts for himself and for the putative class.

### **III. PARTIES**

8. Plaintiff, David Legendre, is an individual and resident of the State of New Jersey, County of Middlesex, City of Edison.

9. During the Class Period, Plaintiff purchased consumer products from Defendant. Prior to making his purchases, Plaintiff viewed and specifically relied upon the representations made by Defendant through its signage at its stores.

10. Defendant Tween Brands, Inc. is organized and existing under the laws of Delaware with its corporate headquarters in New Albany, Ohio.

11. Defendant was and is doing business within this Judicial District.

### **IV. ALLEGATIONS OF FACTS**

12. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

13. Defendant posts 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 every day without end.

14. Defendant likewise advertises on its website that in-store shoppers will 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 states “in stores: no coupon necessary.” In the same matter as all its other marketing, the alleged price advantage is *continuous*.

15. Defendant utilizes these in-store signs and in-and out-of-store advertisements for the purpose of attracting customers to Defendant’s stores to make purchases of the ‘discounted’ products, with the promise of a discount which never exists.

16. Plaintiff and the putative class members were all subject to the same deceptive practices and all similarly purchased goods based on Defendant’s representations.

17. On its purchase receipts, Defendant lists a “Ticket Price,” which is 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 Summary,” which is the alleged savings the Defendant purports to be giving the customer. Defendant’s purchase receipts also state a purported “Total Savings.”

18. Defendant’s purported “discounts” as described above do not exist. Defendant *always* sells its products at the “discounted” price. As such, Defendant’s allegedly regular prices are fictional.

19. Occasionally, Defendant 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 40% off and, upon information and belief, at all times relevant, Defendant advertises all of the products in all of its stores to be ‘discounted’ at least 40% off.

20. Throughout the entire class period, Defendant's representations of the fictional, false, and completely made-up regular price has remained the same and constant, uniformly throughout its stores nationally.

**Plaintiff's Purchase**

21. On numerous occasions over the last six years, plaintiff and his family went to Defendant's store located at the Menlo Park Mall (Store #925) and the Woodbridge Mall (Store #0602). All told, over approximately a year and a half period, Plaintiff and his family shopped at these stores at least a total of six times spending at least \$371.60. Attached as Exhibit A and incorporated herein as if fully written is a series of checkcard statements evidencing these purchases.

22. Plaintiff and his family encountered these represented but fictional discounts and relied on them when making purchases.

23. Plaintiff and his family have contracted with Defendant to purchase products from Defendant which Defendant had represented to Plaintiff and his family, through its signs and other advertising, to be 40% off.

24. Because Defendant represented to Plaintiff David Legendre and his family the existence and amount of a completely fake and made up 'regular price' from which Plaintiff and his family would receive a purported discount, Defendant's representations that Plaintiff and his family would receive a discount price advantage were false and misleading.

25. The products Plaintiff and his family purchased were not discounted by 40% and Plaintiff and his family did not receive this advertised price advantage.

## V. CLASS ALLEGATIONS

26. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

27. Plaintiff brings this action on behalf of himself and all other similarly situated persons, to wit:

a. For the putative National Class:

All individuals who, while they were residents of any state other than Ohio, purchased any product(s) from Defendant, in one of Defendant's stores other than Defendant's Ohio stores, during any day that Defendant advertised a discount of "40% off entire store", or other similar discount language, and where the product(s) was not sold at the former, non-discount price for at least 28 of the last 90 days prior to the purchase.

b. For the putative New Jersey Class:

All individuals who, while they were residents of New Jersey, purchased any product(s) from Defendant, in one of Defendant's New Jersey stores, during any day that Defendant advertised a discount of "40% off entire store", or other similar discount language, and 1.) where there were no substantial number of sales of the advertised merchandise or comparable merchandise of like grade or quality within the most recent 60 days during which the advertised merchandise was available for sale prior to or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement, nor 2.) where the advertised merchandise, or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within Defendant's trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement.

28. Each class numbers over forty (40) persons and is so numerous that joinder of all members is impracticable, and it is further impracticable to bring all such persons before this Court.

29. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the classes as a whole, including, but not limited to:

a. Whether Defendant's practice of continuous representation of discount off of a fictional regular price violates the consumer protection laws of New Jersey;

b. Whether Defendant's failure to comply with a material term of the contract by failing to provide Plaintiff and the putative class the agreed percentage off discount is a breach of contract;

c. Whether Defendant has been unjustly enriched by its practice of continuously representing a discount off of a fictional regular price.

30. Defendant has engaged in the same conduct regarding all of the other members of the classes or subclasses, as pertinent, which are asserted in this suit.

31. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses, and injuries of all those in the class or subclass they represent, and the claims, defenses, and injuries of each class or subclass member are typical of those of all other members in the class or subclass.

32. The representative Plaintiff will fully and adequately protect and represent the entire class or subclass, and all of its putative members.

33. The identity of all members of the classes cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendant and others.

34. The prosecution of separate actions by each member of these classes would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the classes that would establish incompatible standards of conduct for Defendant.

35. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the classes which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

**VI. FIRST CLAIM FOR RELIEF**  
**New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.**

36. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

37. This count is brought by Plaintiff, David Legendre, individually and on behalf of the putative New Jersey class members.

38. This count is brought pursuant to § 56:8-2 of the CFA, which states:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

39. The CFA is construed liberally in favor of consumers and is broad remedial legislation intended to afford strong protection to consumers.

40. All products Defendant sells are “merchandise” within the meaning of the Consumer Fraud Act (“CFA”). Likewise, Defendant is a “person” making “advertisements” and “sales” within the definitions of the CFA.



41. Moreover, Section 13:45A-9.2 et seq. of the New Jersey Administrative Code (NJAC) specifically governs pricing advertisements.

42. NJAC § 13:45-A-9.2(a)(9) states that “[t]he making of false or misleading representations of facts concerning the... existence or amounts of price reductions, [or] the nature of an offering... of advertised merchandise available for sale” shall be unlawful with respect to all advertisements.”

43. By representing a continuous discount of 40% off of all of its products, Defendant is making false and/or misleading representations of facts concerning the existence and amount of price reductions and the nature of its offering of advertised merchandise in violation of NJAC § 13:45A-9.2(a)(9) and the CFA.

44. NJAC § 13:45A-9.6 state, in relevant part:

(a) An advertiser shall not use a fictitious former price. Use of a fictitious former price will be deemed to be a violation of the Consumer Fraud Act.

(b) A former price or price range or the amount of reduction shall be deemed fictitious if it cannot be substantiated, based upon proof:

1. Of a substantial number of sales of the advertised merchandise, or comparable merchandise of like grade or quality made within the advertiser’s trade area in the regular course of business at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement; [or]

2. That the advertised merchandise, or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within the advertiser’s trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement...

45. By representing a continuous discount of 40% off of all of its products, Defendant uses and has used a fictitious former price in violation of NJAC § 13:45A-9.6 and the CFA.

46. Defendant’s deceptive representations of a sale price discounted from a fictional regular comparative price were materially misleading to Plaintiff, David Legendre, and the putative New Jersey class members and Defendant.

47. Similarly, Plaintiff and the putative New Jersey class members relied on these misleading advertisements.

48. By always representing that everything in its stores is 40% off, and by never selling anything in its stores at the purported regular comparative price, Defendant's stated regular price is a fictitious prior price in violation of the CFR.

49. Upon information and belief, Defendant cannot establish compliance with NJAC § 13:45A-9.6 and the CFA, to wit:

- a. Defendant cannot establish that a substantial number of sales of the advertised merchandise, or comparable merchandise of like grade or quality were made within Defendant's trade area in the regular course of business at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement; and
- b. Defendant cannot establish that it advertised merchandise or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within Defendant's trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement.

50. Defendant has never sold these products at these former prices nor even offered these products for sale to the public at the former prices.

51. As a result of the conduct described herein, Defendant has engaged in unfair and deceptive sales practices in violation of the CFA.

52. As described herein, Defendant's policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the CFA which prohibits, in connection with the sale or advertisement of merchandise, the act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation.

53. Defendant intended that Plaintiff and the putative class members rely on Defendant's acts of omissions so that Plaintiff and the putative class members would purchase consumer products from Defendant.

54. Plaintiff and the putative class members would not have purchased the products they did or would have paid less for them if Defendant had not conducted this perpetual sale scheme.

55. The acts, omissions, and practices of Defendant detailed herein proximately caused Plaintiff and the putative class members to suffer an ascertainable loss in the form of, inter alia, monies spent to purchase products from Defendant they otherwise would not have, and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

56. As a result, Plaintiff has suffered an ascertainable and quantifiable loss of moneys and, pursuant to N.J.S.A. § 56:8-19 is entitled to treble damages.

57. Plaintiff, David Legendre, on behalf of himself and on behalf of the putative New Jersey class members, seeks restitution, disgorgement, injunctive relief, and all other relief allowable under the CFA and New Jersey law.

**VII. SECOND CLAIM FOR RELIEF**  
**Breach of Contract**

58. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

59. This count is brought by Plaintiff, David Legendre, individually and on behalf of the putative national class members.

60. Defendant offered to sell consumer products to Plaintiff and the putative class members and, based on this offer, Plaintiff and the putative class members paid Defendant for those products, thereby entering into a contract with Defendant.

61. The contract was based on an offer by Defendant to sell consumer products, under which Plaintiff would buy consumer products from Defendant, and Defendant would sell consumer products to Plaintiff. The putative class members similarly accepted Defendant's offer to sell consumer goods by purchasing same.

62. A specific and material term of that offer, and the contract entered into based on that offer and acceptance, was that Defendant would provide Plaintiff and the putative class members a 40% discount off of the former price of the products. The discount term is reflected in each customer's receipt.

63. Additionally, all other requirements and/or conditions of this contract, if any, were either satisfied or these conditions were waived.

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

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

**VIII. THIRD CLAIM FOR RELIEF**  
**Breach of Express Warranty**

66. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

67. This count is brought by Plaintiff, David Legendre, individually and on behalf of the putative national class members.

68. Defendant has made representations to the public, including Plaintiff and the putative class members, through its advertising, packaging and other means, that its products were discounted as 40% off.

69. That promise of a discount became part of the basis of the bargain between the parties and constituted an express warranty.

70. Defendant sold the consumer goods to Plaintiff and the putative class members, who bought the consumer goods from Defendant.

71. Defendant breached the express warranty in that the goods were in fact not discounted.

72. Through Defendant's breach, Plaintiff and the putative class of consumers in fact did not receive these consumer goods as Defendant warranted.

73. As a proximate result of Defendant's breach of warranty, Plaintiff and other consumers have been damaged in an amount to be determined at trial.

**IX. FOURTH CLAIM FOR RELIEF**  
**Unjust Enrichment**

74. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

75. This count is brought by Plaintiff, David Legendre, individually and on behalf of the putative national class members.

76. This claim asserts that it is unjust to allow Defendant to retain profits from their deceptive, misleading, and unlawful conduct alleged herein.

77. Defendant charged Plaintiff and the putative class members for its products.

78. Defendant represented that these products were 40% discounted.

79. As detailed above, the products were not discounted as promised.

80. Because the products were advertised as being discounted, but were not, Defendant collected more than if the promise of the 40% discount had been performed.

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

82. Defendant has knowledge or an appreciation of the benefit conferred upon it by Plaintiff and the putative class members.

83. Defendant has been unjustly enriched.

84. 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 Defendant from their wrongful conduct.

**X. FIFTH CLAIM FOR RELIEF**  
**Breach of Good Faith and Fair Dealing**

84. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

85. Each party to a contract must deal fairly and in good faith with the other in their performance under the contract.

86. In addition to the expressed terms of the contract, there is implied in every contract an additional term which obligates both parties to deal with each other in good faith. The obligation of good faith and fair dealing operates exactly as if it had been explicitly written into the parties' agreement or contract and requires that in all of their obligations to one another, under their agreement, they will observe reasonable commercial practices of fair dealing.

87. As detailed above, Defendant has failed to deal with the Plaintiff, David Legendre, and the putative class members in good faith and fair dealing.

88. As a proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff and the putative class members have been damaged in an amount to be determined at trial.

**XI. SIXTH CLAIM FOR RELIEF**  
**Negligent Misrepresentation**

89. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

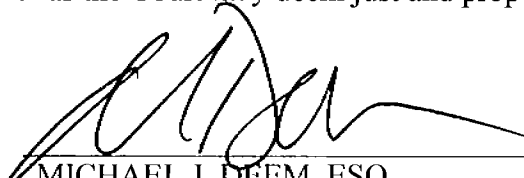
90. As set forth ¶¶ 1-34 herein, Defendant has negligently and/or carelessly concealed, suppressed, and/or omitted facts material to the transaction(s) at issue which caused Plaintiff, David Legendre, and the putative class members to detrimentally rely upon said misrepresentation when he/they purchased products from Defendant.

91. As a direct proximate result of the misrepresentations of Defendant, Plaintiff and the putative class members suffered damages.

**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for judgment against Defendant as follows:

1. For an order determining that this matter is a proper class action under Federal Rule 23 and certifying it as such;
2. For compensatory damages in excess of \$5 million dollars;
3. For treble damages under the New Jersey Consumer Fraud Act;
4. For reasonable costs and attorney fees necessarily incurred herein as allowable under the law;
5. For all such other and further relief as the Court may deem just and proper.



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MICHAEL J. DEEM, ESQ.  
Atty. Id. 02039-1998

**R.C. Shea & Associates**  
Counsellors at Law  
244 Main Street, P.O. Box 2627  
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Attorney for Plaintiff





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DAVID LEGENDRE  
JENNIFER LEGENDRE

Combined Statement  
Page 3 of 8  
Statement Period 06-21-12 through 07-20-12  
B 13 E I E P I 13 0002757

**MyAccess Checking Additions and Subtractions**

Date Posted	Amount(\$)	Resulting Balances(\$)	Transactions
06-26	33.27-	[REDACTED]	CheckCard 0624 Justice #0925 Woodbridge NJ 24445002177200070321866

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Combined Statement  
Page 4 of 8  
Statement Period  
06-21-12 through 07-20-12  
B 13 E 1 E FI 13

DAVID LEGENDRE  
JENNIFER LEGENDRE

**MyAccess Checking Additions and Subtractions**

Date Posted	Amount(\$)	Resulting Balances(\$)	Transactions
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07-06	23.40-	[REDACTED]	CheckCard 0704 Justice #0602 Edison NJ 24445002187200063845549
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DAVID LEGENDRE  
JENNIFER LEGENDRE

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Combined Statement  
Page 3 of 8  
Statement Period  
11-21-12 through 12-19-12  
B 13 E I E PI 13 0002738

**MyAccess Checking Additions and Subtractions**

Date Posted	Amount(\$)	Resulting Balances(\$)	Transactions
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12-04

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(CheckCard 1202 Justice #0925)  
Woodbridge NJ 24445002338200073790584



DAVID LEGENDRE  
JENNIFER LEGENDRE

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Combined Statement  
Page 5 of 8  
Statement Period  
11-21-12 through 12-19-12  
B 13 E I E P I 13 0002735

**MyAccess Checking Additions and Subtractions**

Date Posted	Amount(\$)	Resulting Balances(\$)	Transactions
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12-17

86.28-

[REDACTED]

CheckCard 1214 Justice #0602  
Edison NJ 24445002350%00106707905

06/09/2015 TUE 12:48 FAX 732 603 9065 EMOG

006/007

DAVID LEGENDRE | [REDACTED] | July 23, 2013 to August 21, 2013

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### Withdrawals and other subtractions

Date	Description	Amount
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08/12/13	CHECKCARD 0810 JUSTICE #0602 EDISON NJ 24445003223300326766674	-27.06
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06/09/2015 TUE 12:48 FAX 732 603 9065 EMOG

007/007

DAVID LEGENDRE | [REDACTED] November 20, 2013 to December 19, 2013

### Withdrawals and other subtractions

Date Description Amount

11/25/13 CHECKCARD 1122 JUSTICE #0602 EDISON NJ 24445003327200091700590 -41.00

continued on the next page

**R. C. SHEA & ASSOCIATES**  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEW JERSEY

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- \* Member NJ & PA Bars
- † Member Nat'l Academy of Elder Law Attorneys
- Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
- Certified By The National Board of Trial Advocacy As A Civil Trial Advocate
- Rule 1.40 Qualified Mediator

PERSONAL INJURY FAX: (732) 505-0423

June 10, 2015

Clerk, US District Court  
402 E. State Street – Room 2020  
Trenton, New Jersey 08608

RE: David Legrendre v. Tween Brands, Inc.  
Our File No.: 10100

Dear Sir/Madam:

Enclosed for filing please find original and four (4) copies of Civil Cover Sheet, Complaint with exhibits together with this firm's check in the required amount of \$400.00.

Also enclosed please find original and four (4) copies of Summons, which the Court Rules indicated should be provided with the filing of the Complaint.

Please cause the enclosed to be filed and provide my office with a fully conformed copy of same in the enclosed courtesy envelope.

Finally, also enclosed is copy of all documents in PDF format on CD.

Thanking you for your anticipated prompt attention to the above.

Naturally, should you have any questions or wish to discuss the above, please feel free to contact me. If I am not available, please ask to speak with my paralegal, Kathy Salvaggio.

Very truly yours,

  
MICHAEL J. DEEM

MJD/kfs  
Encl.



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.)

<p><b>I. (a) PLAINTIFFS</b> David Legendre, Individually, and on behalf of all others similarly situated</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <b>Middlesex</b> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, Email and Telephone Number)</i> R. C. Shea &amp; Associates, P.C., 244 Main St., PO Box 2627, Toms River, NJ 08754; phone 732-505-1212; e-mail:mdeem@rcshea.com</p>	<p><b>DEFENDANTS</b> Tween Brands, Inc.</p> <p>County of Residence of First Listed Defendant <b>New Albany, Ohio</b> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;"><b>PTF</b></td> <td style="width:33%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;"><b>PTF</b></td> <td style="width:33%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	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
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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																				
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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)*

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<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 checked="" 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 IIIA (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 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>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</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	<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>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. subsection 1332(d)**

Brief description of cause:  
**False advertising; class action**

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

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

DATE: 06/10/2015    SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

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

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.