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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DIANA DACORTA, individually
and on behalf of others similarly situated,

Civil Action No.: 7:16-cv-1748

Plaintiffs,

-against-

AM RETAIL GROUP, INC., d/b/a
G.H. BASS & CO.

Defendant.

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AMENDED CLASS ACTION COMPLAINT

Plaintiff, Diana DaCorta (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge as to her own actions, and upon information and belief and the investigation of her counsel as to the actions of others:

INTRODUCTION

1. This action seeks to redress the unfair and deceptive sales practices by which the retailer AM Retail Group, Inc., d/b/a G.H. Bass & Co. (“Bass” or “Defendant”) is misleading consumers into believing they are receiving steep discounts on certain merchandise sold through its factory outlet stores when, in fact, the merchandise is specifically manufactured for the outlet stores and the purported “discount” is a phantom one.

2. Specifically, Bass manufactures two distinct lines of goods: (1) those manufactured for retail sale through its website and at department stores such as Macy's and Nordstrom; and (2) lesser quality merchandise manufactured specifically for sale at Bass's "factory outlet stores" and through the "factory outlet" page of its website. These lesser quality goods are generally not offered for sale through any other retailer.

3. In its factory outlet stores and on its website, Bass deceptively utilizes fabricated former or "original" prices (the "Comparison Price"), displayed alongside its actual, significantly lower, sale prices to create the impression of a steep discount. In reality, however, the majority of the merchandise sold at its factory outlet stores is manufactured specifically for sale at the outlet, and is never offered at the Comparison Price. Accordingly, there is, in fact, no discount whatsoever.

4. In reliance upon this false and deceptive pricing scheme, on or about October 13, 2015, Plaintiff purchased a pair of Bass's "Quincy" style boots from its factory outlet store located at Hudson Valley Town Center, 40 Westage Business Center Drive, Fishkill, New York 12524. Plaintiff would not have made this purchase, or would not have paid the amount she did, if not for Bass's false pricing scheme and the perceived – although entirely fictitious – discount she received.

5. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, brings this action seeking damages and an injunction pursuant to New York General Business Law §§ 349 and 350.

THE PARTIES

6. Plaintiff, Diana DaCorta, is an individual who is a citizen of the State of New York, residing in Westchester County, New York. As a result of Bass's false

pricing scheme, Plaintiff purchased a pair of Bass Quincy Riding Boots, Black, and, as detailed herein, was damaged as a result.

7. Defendant AM Retail Group, Inc., d/b/a G.H. Bass & Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 7401 Boone Avenue, North, Brooklyn Park, Minnesota 55428. AM Retail Group, Inc. was formed in 2008 as a wholly-owned subsidiary of G III Apparel Group, Ltd. to operate G III's retail store locations, including G.H. Bass & Co. AM Retail Group, Inc. operates under the assumed name G.H. Bass & Co.

JURISDICTION AND VENUE

8. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and at least one of the members of the proposed Class is a citizen of a different state than Bass.

9. This Court has personal jurisdiction over Defendant because Defendant is authorized to do business in New York and does, in fact, operate factory outlet store locations in New York, and/or otherwise intentionally avails itself of the New York market through retail sales and advertising to render the exercise of jurisdiction by the New York courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

11. Outlet malls have exploded in popularity and prevalence in recent years,

making them the fastest growing segment in retail as recently as 2014.¹ Indeed, historically relegated to less desirable, distant locations, outlet malls are moving closer to major cities and thus closer to traditional malls and department stores.

12. In addition to their geography, the merchandise offered for sale at outlet malls has likewise changed in recent years. Unlike traditional warehouse outlet stores that offered factory seconds and damaged merchandise at discount prices, modern-day outlet malls offer new, undamaged merchandise, purportedly at discount prices. However, because much of the merchandise is manufactured specifically for sale at the outlet store -- and nowhere else -- it is often of lesser quality than merchandise sold at a traditional retail store.

13. Notwithstanding the fact that the merchandise is of lesser quality, manufacturers such as Bass seek to trade on their brand names and the quality of their normal retail lines to create the impression that the factory store merchandise is similar quality merchandise, offered at a discount. Accordingly, Bass is able to charge a premium for this lesser-quality merchandise.

14. In doing so, Bass, and other stores like it, deceptively advertise their products at outlet stores by displaying the sale price alongside a purportedly former or original Comparison Price, creating the impression of a bargain. In fact, this illusion of a discount is wholly false and deceptive, as the merchandise is never offered for sale at the Comparison Price, but is only sold at the purported "discount" price.

15. Similarly, on the "factory outlet" page of its website, Bass displays the sale price of its merchandise alongside a significantly higher Comparison Prices, struck

¹ See Five Retail Trends To Watch In 2014, THE WASHINGTON POST (Feb. 23, 2014), available at https://www.washingtonpost.com/business/capitalbusiness/five-retail-trends-to-watch-in-2014/2014/02/21/fca8180e-99ab-11e3-b931-0204122c514b_story.html.

through with a horizontal line, creating the impression of a discount, as depicted below:



ALESSANDRA RIDING BOOT
FACTORY OUTLET
~~\$150.00~~ **\$34.99**

16. These types of “phantom discounts” have resulted in a spate of litigation against household names such as Michael Kors, Burberry and J.C. Penny.

Nonetheless, Bass continues to engage in this false and misleading conduct.

17. This is precisely the type of conduct that the Federal Trade Commission (“FTC”) has defined as deceptive:

(a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

* * *

(d) But this does not mean that all list prices are fictitious and all offers of reductions from list, therefore, deceptive. Typically, a list price is a price at

which articles are sold, if not everywhere, then at least in the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.

* * *

(i) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. 233.3.

18. Similarly, New York General Business Law §§ 349 and 350, prohibit deceptive practices and false and misleading advertising.

19. Upon information and belief, thousands of New York consumers have been victims of Bass's deceptive, misleading and unlawful false pricing scheme, and thousands more will be deceived if the practice continues.

20. Plaintiff was misled by Bass's false pricing scheme when purchasing Quincy Riding Boots from its factory outlet store Fishkill, New York. Plaintiff would not have made such purchase, or would not have paid the amount she did, but for Bass's false representation of the former/original price of the item she purchased, as compared with the purported "sale" price she paid.

Plaintiff's Purchase

21. On or about October 13, 2015, Plaintiff purchased Bass's "Quincy" style boot, style number 3101-001, from Bass's factory outlet store. In the

store, the Quincy boots were displayed with a placard identifying a price of \$180.00, with a “sale” price of \$44.99, creating the impression of an approximately 75% discount.

22. No reasonable consumer viewing this display could have drawn any conclusion other than that the original price of the boots was \$180.00, and that they were being offered at a reduced “sale” price. Indeed, use of the term “sale” indicates “an event or occasion during which a business sells goods or services at prices that are lower than usual.” See <http://www.merriam-webster.com/dictionary/sale>. Accordingly, Plaintiff was misled into believing that she was purchasing the Quincy boots at a discount.

23. In reality, however, Bass’s Quincy style boots, upon information and belief, are manufactured for, and sold exclusively at, Bass’s factory outlet store and the “factory outlet” page of its website; they are never offered for sale, or sold, at the \$180.00 price. Accordingly, there is no actual discount, only the false and deceptive appearance of a discount, in violation of New York law.

24. At the same time, Plaintiff also purchased Bass’s “Zee” style boot, style number 2040-3088-231 (brown, size 8 ½). Plaintiff redeemed a coupon for \$15.00 off of her entire purchase, resulting in a combined purchase price of \$80.97 (which Plaintiff paid on her debit card) for both pairs of boots.

25. Plaintiff would not have purchased the Quincy boots, or would not have paid the amount she did, if not for Bass’s false and deceptive pricing scheme.

26. Not surprisingly, the perceived value attributed to false price comparisons, such as Bass’s, is borne out by empirical marketing studies:

[c]omparative price advertising offers consumers a basis for comparing the relative value of a product offering by suggesting a monetary worth of

the product and a potential savings...[A] comparative price advertisement can be construed as deceptive if it makes any representation, ... or involves any practice that may materially mislead a reasonable consumer.

* * *

[b]y creating an impression of savings, the presence of a higher reference price enhances the subjects' perceived value and willingness to buy the product...Thus, if the reference price is not truthful, a consumer may be encouraged to purchase as a result of a false sense of value.

Comparative Price Advertising: Informative or Deceptive? Dhruv Grewal and Larry D. Compeau, *Journal of Public Policy & Marketing*, Vol. 11, No. 1, at 52, 55-56 (Spring 1992).

CLASS ALLEGATIONS

27. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 26, as if fully set forth herein.

28. Plaintiff brings this action on behalf of herself and the members of the proposed class under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

The proposed Class consists of:

All individuals within the State of New York who, within three years prior to the filing date of this action, purchased merchandise from Bass's factory outlet stores manufactured specifically for Bass's factory outlet stores and/or the "factory outlet" page of Bass's website, and which merchandise was advertised with a Comparison Price.

29. Excluded from the Class are Bass, its parents, subsidiaries, affiliates, officers and directors, any entity in which Bass has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

30. The members of the Class are so numerous that joinder is impractical.

The Class consists of thousands of members, the precise number of which is within the knowledge of and can be ascertained only by resort to Bass's records.

31. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class, including:

- a. Whether, during the Class Period, Bass falsely advertised price discounts on its merchandise sold in its factory outlet stores;
- b. Whether, during the Class Period, the Comparison Prices advertised in connection with its factory outlet store prices were, in fact, prices at which the merchandise was ever sold or offered for sale;
- c. Whether Bass's use of false and deceptive price advertising constitutes a deceptive trade practice under N.Y. GBL § 349;
- d. Whether Bass's use of false and deceptive price advertising constitutes false advertising under N.Y. GBL § 350;
- e. Whether Bass is likely to continue using false, misleading and/or illegal price comparisons such that an injunction is necessary; and
- f. Whether Plaintiff and Class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of suit.

32. Plaintiff's claims are typical of the claims of the Class because they all arise from the purchase of Bass merchandise from its factory outlet stores. The claims of Plaintiff and the other Class Members are based on the same legal theories and arise from the same false, deceptive and unlawful conduct.

33. Plaintiff is an adequate representative of the Class because her interests do not conflict with the other Class Members. Each Class Member is entitled to damages reflecting a similar and discrete purchase or purchases that each Class Member made. Plaintiff has retained competent and experienced class action counsel, who intend to prosecute this action vigorously. The Class Members' interests will be fairly and adequately protected by Plaintiff and her counsel.

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all Class Members is impracticable. The amount at stake for each consumer, while significant, is such that individual litigation would be inefficient and cost-prohibitive. Additionally, adjudication of this action as a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims asserted therein. Plaintiff anticipates no difficulty in managing this action as a class action.

FIRST CAUSE OF ACTION
(Violation of New York General Business Law § 349)

35. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 34, as if fully set forth herein.

36. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.”

37. Bass's pricing scheme for its factory outlet store merchandise, as set forth herein, constitutes “deceptive” acts and practices, as such conduct misleads Plaintiff and other members of the Class, as to the “discount” they received on such merchandise.

38. Pursuant to subsection (h) of § 349, Plaintiff seeks an injunction prohibiting Bass from continuing these unlawful and deceptive acts and practices. Absent such injunction, Bass will continue to falsely and deceptively advertise fabricated former or retail prices for its factory outlet store merchandise and, in doing so, irreparably harm each of the Class Members.

39. As a result of Bass's deceptive acts, Plaintiff and other members of the Class have suffered an ascertainable loss. Accordingly, pursuant to subsection (h) of § 349, Plaintiff seeks actual and/or statutory damages, trebled damages (up to \$1,000.00 per violation) and attorneys' fees.

SECOND CAUSE OF ACTION
(Violation of New York General Business Law § 350)

40. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 39, as if fully set forth herein.

41. New York General Business Law § 350 prohibits "[f]alse advertising in the conduct of any business, trade or commerce, or in the furnishing of any service."

42. New York General Business Law § 350-a defines "false advertising" as "advertising, including labeling, of a commodity...if such advertising is misleading in a material respect."

43. Bass's comparison pricing of its factory outlet store merchandise, as alleged herein, is "misleading in a material respect," and thus constitutes "false advertising," as it falsely represents that the merchandise is being offered at a discount from its original or former price.

44. Plaintiff seeks an order enjoining Bass from continuing this false advertising. Absent an injunction, Bass will continue to mislead Plaintiff and other

members of the Class as to the former or original price of its factory outlet store merchandise and, in doing so, irreparably harm each of the Class Members.

45. As a result of Bass's false advertising, Plaintiff and other members of the Class have also suffered an ascertainable loss. Plaintiff therefore seeks actual and/or statutory damages, trebled damages (up to \$10,000.00 per violation), and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and members of the proposed Class, prays for judgment and relief as follows:

- A. An order certifying that the action may be maintained as a class action and requiring Bass to bear the cost of class notice;
- B. An order enjoining Bass from continuing the deceptive comparative pricing scheme complained of herein;
- C. An order requiring Bass to pay actual and/or statutory damages to Plaintiff and all members of the Class;
- D. Punitive damages;
- E. Pre-judgment interest from the date of filing suit;
- F. Costs, expenses and reasonable attorneys' fees; and
- G. Such other and further relief as the Court deems just and proper.

A JURY TRIAL IS DEMANDED.

Dated: White Plains, NY
September 7, 2016

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