

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(EASTERN DIVISION)**

ROBERT GALLAGHER,
Individually and on behalf of all
others similarly situated,
7410 Dale Ave.
Richmond Heights, MO 63117

Plaintiff,

vs.

TWEEN BRANDS, INC.
c/o CT Corporation System
120 South Central Ave.
Clayton, MO 63105

Defendant.

Case No.: 15-CV-833

Jury Trial Demanded

CLASS ACTION COMPLAINT

Now comes Plaintiff Robert Gallagher, individually and as representative of all others similarly situated, and for his Class Action Complaint states:

INTRODUCTION

1. This is a class action brought by Robert Gallagher (“Plaintiff”), individually and as putative class representative, against Tween Brands, Inc., which operates the Justice-brand stores (“Defendant” and/or “Justice”). Defendant sells children’s apparel, fashion accessories, and other items (the “products”), which are available to purchase at any of Defendant’s brick and mortar stores across the United States, including Missouri (20).

2. The statutory law of Missouri, and the common law, prohibit advertising discounts and price advantages which do not exist. ‘Continuous sales’ by which products are

persistently 'on sale' are prohibited, because then the alleged 'sale' price is actually the everyday price.

3. Defendant advertises 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.

4. By advertising discounts without actually providing a discount to its customers, Defendant is violating the statutory law of Missouri and the common law. This lawsuit is to stop this unlawful practice and recover for customers the overcharges which they paid, and to provide them the actual discounts they were entitled to receive but did not.

PARTIES

5. Plaintiff Robert Gallagher is an individual and resident of the State of Missouri, County of St. Louis, and City of Richmond Heights.

6. Defendant Tween Brands, Inc. is a corporation organized under the laws of Delaware, with its national headquarters in New Albany, OH.

JURISDICTION AND VENUE

7. Tween Brands, Inc. is registered to do business with the Secretary of State of Missouri, and regularly and persistently does business in Missouri. Jurisdiction over this suit lies under 28 U.S.C. 1132 since there is complete diversity between Defendant, a corporate citizen of Delaware with its national headquarters in Ohio, and Plaintiff, who is a citizen of Missouri.

8. Jurisdiction further lies under the Class Action Fairness Act, 28 U.S.C. 1332(d), since there are over 100 putative class members and the amount in controversy of this matter exceeds \$5 million dollars.

9. Venue exists in this district under 28 U.S.C. 1391 et seq. since the Eastern District of Missouri is a judicial district in which a substantial part of the events or omissions giving rise to these claims occurred.

10. Defendant owns and operates hundreds of stores located across the United States at which Defendant sells consumer products, including children's clothing, fashion apparel, and more. Defendant has a regular commercial presence in Missouri and derives substantial revenue from its conduct in this state, including from the conduct challenged in this suit.

FACTS

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

12. Defendant posts signs and notices, both in store and out of store, advertising "40% off entire store." Examples of these signs are incorporated into this Complaint as Exhibit A. This alleged "discount" is not for a limited period but continues persistently.

13. 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, specifically states "in stores: no coupon necessary." In the same matter as all its other marketing, the alleged price advantage is *continuous*. Examples of Defendant's website advertisements are incorporated into this Complaint as Exhibit B.

14. 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.

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

16. 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."

17. 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.

18. 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.

19. 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 GALLAGHER'S PURCHASE

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

21. On August 4, 2014, Plaintiff Gallagher went to Defendant's store located at 63 West County Center, Des Peres, MO 63131.

22. Plaintiff Gallagher contracted with Defendant to purchase products from Defendant for \$40.18, which Defendant had represented, through its signs and other advertising, both in store and out, to be 40% off.

23. On the receipt for Plaintiff Gallagher's purchase, Defendant states 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 purported savings on the item. Plaintiff Gallagher's purchase receipt also states a purported "Total Savings".

24. Because Defendant represented to Plaintiff Gallagher the existence and amount of a completely fake and made up 'regular price' from which Plaintiff Gallagher would receive a purported discount, Defendant's representations that Plaintiff Gallagher would receive a discount price advantage were false and misleading. The products Plaintiff Gallagher purchased were not discounted by 40% and Plaintiff Gallagher did not receive this advertised price advantage.

CLASS ALLEGATIONS

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

26. Plaintiff brings this action on behalf of himself and all other similarly situated persons (hereinafter referred to as "putative class members"), 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 non-discount price for at least 28 of the last 90 days prior to the purchase.

b. For the putative Missouri Class:

All individuals who, while they were residents of Missouri, purchased any product(s) from Defendant, in one of Defendant's Missouri 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 reasonably substantial sales of the product(s) at the former, comparative, non-discount price made to the public by the seller in the regular course of the seller's business, nor on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement; nor 2) where the product(s) were not openly and actively offered for sale to the public by the seller in the regular course of the seller's business at the former, comparative, non-discount price on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement.

27. 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.

28. 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 Missouri;

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.

29. 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.

30. 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.

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

32. 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.

33. 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.

34. 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.

FIRST CLAIM FOR RELIEF
Missouri Merchandising Practices Act¹
Chapter 407, Revised Statutes of Missouri
(Missouri Class)

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

36. This count is brought by Plaintiff Gallagher individually and on behalf of the putative Missouri class members.

¹ At all times relevant, Defendant, Plaintiff Gallagher, and the conduct challenged in this suit all meet the definitions governing the MMPA.

37. This count is brought pursuant to Missouri's Merchandising Practices Act, Revised Statutes of Missouri, Chapter 407 et seq. ("MMPA"), which states:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce..., in or from the state of Missouri, is declared to be an unlawful practice... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

38. Defendant's deceptive representations of a sale price discounted from a fictional regular comparative price were material to the consumer transaction between Plaintiff Gallagher and Defendant, and the putative Missouri class members and Defendant.

39. Chapter 7 of Division 60, of Title 15 of the Missouri Code of State Regulations (15 CSR 60-7.010 et seq.) established the rules for certain merchandise advertising in the State of Missouri. The stated purpose of this chapter is to "specif[y] acts and practices that are deemed to be violative of [Missouri's Merchandising Practices Act] section 407.020, RSMo (1986)."

40. 15 CSR 60-7.050, entitled Use of Sale Terminology, states, in relevant part:

(1) A seller shall not use terminology implying a reduction from a price in effect immediately prior to the advertisement (examples: sale, sale prices, now only \$____) *unless* – (A) *The reduction is, in fact, from a bona fide regular price in effect immediately prior to the advertisement...* (emphasis added).

41. By *always* representing that everything in their stores is 40% off, and by NEVER selling anything in their stores at the purported regular comparative price, Defendant's stated regular price is a fiction and not a bona fide regular price, in violation of 15 CSR 60-7.050 and the MMPA.

42. 15 CSR 60-7.060, entitled Price Comparisons and Savings Claims, states, in relevant part:

...

(2) Price Comparison to Seller's Former Prices.

(A) Examples: Regularly \$99, Now \$69; \$99, Now \$69 – Save \$30; Originally \$99, Now \$69; Last Year's Price \$99, Now \$69.

(B) A seller shall not make a price comparison to a former price, unless the comparative price is actual, bona fide and not illusory or fictitious, and is –

1. A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)1. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

2. A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)2. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

3. A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses, with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)3. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during the disclosed date, time or seasonal period; or

4. A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)4. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes or is included within the disclosed date, time or seasonal period.

(C) A seller shall not make any price comparison to a former price that is not based on the price in effect immediately preceding the reduction unless the seller clearly discloses that intermediate price reductions have been made.

...

(8) Savings Claim Without Disclosing the Basis of the Comparative Price.

(A) Examples: 20% off; Clearance \$59, Save \$30.

(B) A seller shall not advertise a product as reduced in price without specifically disclosing the basis of the comparison unless the price comparison is a comparison to a seller's former price in compliance with 15 CSR 60-7.060(2).

43. By *always* advertising a store-wide sale of 40% off regular prices, Defendant's 'regular prices' are illusory and fictional. Through Defendant's constant sale, Defendant has violated the requirements of Missouri law that compel sellers to have reasonably substantial sales of products on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement. These practices specifically violate of 15 CSR 60-7.060 and the MMPA.

44. Upon information and belief, Defendant cannot show that the percentage of unit sales of its products at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement, all in violation of 15 CSR 60-7.060 and the MMPA.

45. Moreover, by always representing a 40% off sale, Defendant has failed to openly and actively offer for sale its products to the public on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement, in violation of 15 CSR 60-7.060 and the MMPA.

46. Upon information and belief, Defendant cannot show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement, all in violation of 15 CSR 60-7.060 and the MMPA.

47. In connection with the Missouri consumer transactions alleged herein, including the consumer transaction between Plaintiff Gallagher and Defendant, and the consumer transactions between the putative Missouri class members and Defendant, Defendant's representations, acts, and/or practices regarding purported sale pricing were deceptive, false, fraudulent, misrepresentative, and/or unfair, in violation of the MMPA, to wit:

a. As alleged herein, Defendant advertised, both in store and out, a sales price and compared such price to an alleged regular comparative price; however that regular comparative price was never the price at which Defendant either sold to the public or offered for sale to the public and, therefore, is false, deceptive, fraudulent, misrepresentative and unfair;

b. On its purchaser receipts, Defendant quotes to the purchaser "TOTAL SAVINGS: \$X.XX," being the difference between Defendant's fake alleged regular comparative price and its stated sale price. However, since that prior comparative price was never the price at which Defendant either sold to the public or offered for sale to the public, Defendant's representation of a savings is false.

c. Because Defendant misrepresented to Plaintiff Gallagher and the putative Missouri class members the existence and amount of a completely false and misstated 'regular price' off of which Plaintiff Gallagher would receive a discount, Defendant's representations that Plaintiff Gallagher and the putative Missouri class members would receive a discount price advantage were false. The products Plaintiff Gallagher and the putative Missouri class members purchased were not discounted and they did not receive this advertised price advantage.

48. Defendant has NEVER sold these products at the prior comparative price nor even offered these products for sale to the public at the prior comparative prices.

49. 15 CSR 60-7.070, entitled Records of Fact for Price Comparison or Savings Claims, states in relevant part:

(1) A seller shall not use any price comparison or savings claims in its advertisement of products in this state unless it maintains adequate records which disclose the factual basis for the price comparison or savings claims and from which the validity of any claim can be established. These records shall be maintained for at least twelve (12) months from the date of the advertisement.

50. Upon information and belief, Defendant cannot produce such adequate records that disclose the factual basis for the price comparison/savings claim as required by, and in violation of, 15 CSR 60-7.070 and the MMPA.

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

52. As a direct and proximate result of Defendant's violations, Plaintiff Gallagher and the putative Missouri class members have suffered an ascertainable loss in an amount to be established at trial.

53. Plaintiff Gallagher, on behalf of himself and on behalf of the putative Missouri class members, seeks restitution, disgorgement, injunctive relief, and all other relief allowable under the MMPA.

SECOND CLAIM FOR RELIEF
Breach of Contract
(National Class)

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

55. Plaintiff and the putative class members entered into a contract with Defendant.

56. The contract was based on an offer by Defendant to sell consumer products, under which Plaintiff and the putative class members would buy from Defendant, and Defendant would sell to Plaintiff and the class Defendant's consumer products.

57. A material term of that offer, and the contract entered thereon, was that Defendant would provide Plaintiff and the putative class members a 40% discount on their listed price of the product.

58. A specific term of the offer and the resulting contract is that Defendant is providing the customer a 40% discount. The discount term is reflected in each customer's receipt.

59. Plaintiff and the putative class members paid Defendant for these products, and satisfied all other conditions, or same were waived.

60. Defendant 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.

61. 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. Plaintiff were damaged in the amount of 40% of the price collected from Plaintiff and the class for the products. For example, in a sale where the product was marked by Defendant as 'regular' price \$10, and the customer was charged \$6 based on the 40% discount, the damage is 40% of \$6, or \$2.40.

THIRD CLAIM FOR RELIEF
Breach of Express Warranty
(National Class)

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

63. Prior to the filing of this suit, Defendant had actual notice of the alleged defect in the products it sold, to wit: the products were represented as being discounted from a purported regular price when they were not.

64. Plaintiff, and each member of the putative class, formed a contract with Defendant 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 Defendant through its marketing

campaign advertising, as alleged above, including, but not limited to, representing that the product was being discounted 40%.

65. 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 Defendant on the other.

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

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

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

69. Defendant breached the terms of the express warranty because the products did not conform to the description provided by Defendant, to wit: it was expressly described that the products were being sold at a 40% discounted price, when they were not.

70. 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.

FOURTH CLAIM FOR RELIEF

Unjust Enrichment

(National Class)

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

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

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

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

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

76. 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.

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

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

79. Defendant has been unjustly enriched.

80. 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.

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 Federal Rule 23 and certifying this case as such;

2. For compensatory damages in excess of \$5 million dollars, exclusive of costs and fees;

3. For reasonable costs and attorney fees necessarily incurred herein pursuant to common law and/or statutory law;

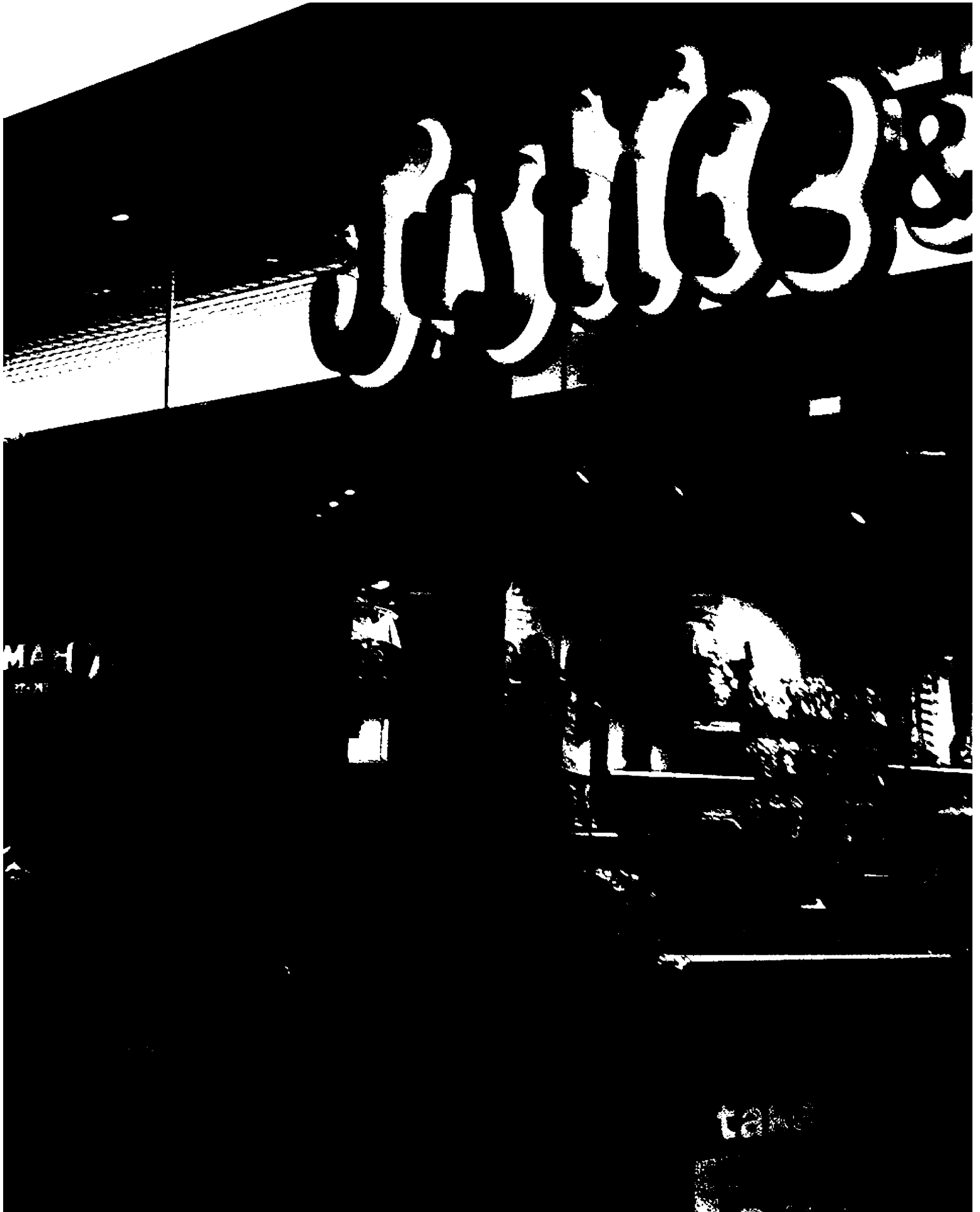
4. For such other or further relief as this Honorable Court deems Plaintiff and the class entitled.

DOWD & DOWD, P.C.

By: /s/ William T. Dowd
WILLIAM T. DOWD (#39648MO)
ALEX R. LUMAGHI (#56569MO)
Attorneys for Plaintiff
211 North Broadway, Suite 4050
St. Louis, Missouri 63102
314/621-2500
Fax, 314/621-2503
bill@dowdlaw.net



EXHIBIT
A



order status store locator join email shop catalog sign in / register

search keyword or item #

(0) items \$0.00

IN STORES & ONLINE 40% OFF EVERYTHING

online use coupon code **40OFF**
in stores no coupon needed

SEE DETAILS

sizes 6-20, including slim & half sizes. sizes vary by style.

don't know her size? no worries, free returns!



EXHIBIT

B

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>I. (a) PLAINTIFFS Robert Gallagher</p> <p>(b) County of Residence of First Listed Plaintiff <u>St. Louis County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) William T. Dowd, Alex R. Lumaghi, 211 N. Broadway, Ste 4050, St Louis, MO 63102 (314) 621-2500</p>	<p>DEFENDANTS TWEEN BRANDS, INC.</p> <p>County of Residence of First Listed Defendant <u>Franklin County, Ohio</u> <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 (If Known)</p>
--	--

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</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 checked="" 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 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>		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 checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input 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
	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 checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input 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	<p>PERSONAL INJURY</p> <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	<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 <p>PERSONAL PROPERTY</p> <input checked="" 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			LABOR	PROPERTY RIGHTS
			<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	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		SOCIAL SECURITY
<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	<p>Habeas Corpus:</p> <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 <p>Other:</p> <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	<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	<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))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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

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: Consumer Fraud 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: 5/26/15 SIGNATURE OF ATTORNEY OF RECORD: William T. Dowd

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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

ROBERT GALLAGHER)	
)	
)	
Plaintiff,)	
)	
v)	Case No 15-CV-833
TWEEN BRANDS, INC.)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____ THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING

The undersigned affirms that the information provided above is true and correct.

Date: 5/26/15

William T. Rowd
Signature of Filing Party

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: