

“Sellers”), on February 14, 2005. The bracelet was neither plated in Platinum nor made in the U.S.A., material deceptions that are not readily apparent to the average consumer because of the highly visible and prominent false representations made by JC Penney in advertising the bracelet.

2. This class action alleges that JC Penney and the other Defendants engage in a pattern and practice of deceiving consumers through false advertising about the true characteristics of the jewelry it sells via catalogs, in stores, and via the internet. The action seeks remedies for every type and kind of false advertising which JC Penney and the other Defendants engage in regarding the sale of jewelry, whether it involves metal fineness; the use of undisclosed or less-desirable metals as plating over precious metals; the existence, thickness or quality of metal plating; the use of alternative, cheaper, less-desirable, or non-precious metals or metal alloys; the number, size or quality of diamonds or other stones; the geographic origin of the item or its contents; failure to comply with the FTC Guides for the Jewelry, Precious Metals, and Pewter Industries; or any other characteristic of jewelry about which Defendants might lie or have lied to make a sale.²
3. Ms. White seeks damages and equitable relief for herself and all similarly deceived JC Penney jewelry customers who purchased jewelry which was falsely advertised, marketed, or promoted in any medium with regard to the characteristics of the jewelry

²The exemplary list of jewelry characteristics contained in this paragraph and elsewhere in the Complaint is meant to summarize, but not limit, the range of deceptive advertising which is encompassed in this class action. The deceptive techniques used by Defendants are inherently elusive, and therefore specific allegations which cover every potential deception are not possible at this stage of the litigation. The specific instances of deceptive advertising referenced in this Complaint were revealed through investigations conducted during and prior to the filing of this litigation. The breadth of the deceptive conduct will be revealed once discovery is completed.

as set forth herein.

PARTIES

4. Plaintiff April White is an adult resident of Birmingham, Jefferson County, Alabama.
5. J.C. Penney Corporation, Inc. is a foreign corporation with its principal executive offices at 6501 Legacy Drive, Plano, Texas. It is a subsidiary of J.C. Penney Company, Inc.
6. J.C. Penney Company, Inc., is a foreign corporation with its principal executive offices in Plano, Texas. J.C. Penney Company, Inc. is publicly traded under the symbol JCP.³
7. J.C. Penney Corporation, Inc. and J.C. Penney Company, Inc., will be collectively referred to in this Complaint as either “JC Penney” or the “Sellers”.
8. PAJ, Inc., is a foreign corporation with its principal executive offices at 18325 Waterview Parkway, Dallas, Texas 75252. PAJ is an importer/manufacturer of some of the jewelry sold to JC Penney which was falsely advertised.
9. Aspen Designs, Inc., is a foreign corporation with its principal offices at 242 West 36th Street, 4th Floor, New York, New York 10018. Aspen Designs is a manufacturer of some of the jewelry sold to JC Penney which was falsely advertised.
10. Hannah Rose, Co., is a foreign corporation with principal offices at 390 5th Avenue #904, New York, New York 10018. Hannah Rose Co. is a manufacturer/importer of some of the jewelry sold to JC Penney which was falsely advertised.
11. Hannah Rose Co., LP is a foreign company with principal offices at 1900 Crown Drive, Dallas, Texas 75234. Hannah Rose Co. LP is a manufacturer/importer of some of the

³JC Penney is one of America's largest jewelry stores, with sales believed to be more than \$19.9 billion in 2006.

jewelry sold to JC Penney which was falsely advertised.

12. PAJ, Inc., Aspen Designs Inc., Hannah Rose, Co., and Hannah Rose Co., LP will be collectively referred to hereinafter as the “Makers”.
13. The term “Defendants” as used in this Complaint means and includes all persons and entities listed and named as Defendants in the caption of this Complaint and any amendment thereto or in the text paragraphs thereof, whether identified by name or fictitious, and includes any Defendants hereafter added by amendment or otherwise (unless otherwise specified in the amendment). The singular includes the plural unless specifically stated otherwise.

JURISDICTION AND VENUE

14. The Plaintiff has damages in excess of the jurisdictional minimum. However, no individual Plaintiff has damages in excess of Seventy-five Thousand Dollars (\$75,000.00), excluding interest and costs.
15. The Jefferson County Circuit Court has jurisdiction over the Defendants, who at all relevant times were doing business in this Judicial District by placing their products into the stream of commerce. Defendants continue to do business in Jefferson County.
16. Moreover, the express misrepresentations, omissions, and failures to disclose material facts to the Plaintiff and putative class occurred in this jurisdiction via retail stores, catalogs, country of origin stamps and the world wide web; the torts and wrongs alleged were committed in the jurisdiction of this Court, significant damages and losses alleged herein were suffered in this jurisdiction, and the property rights of the Jefferson County, Alabama plaintiff were damaged or impaired in this jurisdiction, and the Defendants’ wrongful activities were directed by or on their behalf into this jurisdiction,

all as more particularly hereinafter appears.

17. Defendants have:

- a. transacted business and/or allowed goods to enter this State and this circuit;
- b. contracted to supply or obtain services or goods in this state and this circuit;
- c. caused tortuous damage by act or omission in this state and this circuit;
- d. caused damage in this state to the Alabama-resident Plaintiff when defendants reasonably expected such Plaintiff to be affected thereby in this state, while such defendants regularly do or solicit business in this state or engage in other persistent courses of conduct or derive substantial revenue from goods sold in this state and this circuit; and
- e. otherwise had the requisite minimum contacts with this state and this circuit, and, under the circumstances, it is fair and reasonable to require the Defendants to come to this state and district to defend this action.

18. This lawsuit is a class action pursuant to Rule 23 of the Alabama Rules of C i v i l Procedure and Alabama Code § 6-5-641. Plaintiff brings this action on behalf of herself and all members of a class composed of persons in the United States who purchased falsely advertised jewelry from JC Penney during the six (6) years preceding the filing of the original Complaint and up through the date of certification of this case as a class action.

19. Plaintiff avers that the class is so numerous that joinder of all members is impracticable and upon that information and belief, further avers that the total membership of the class is in excess of 10,000 consumers.

20. The questions of law and fact are common to each member of the class, such as the

breach of contract and breach of warranty of the Defendants in manufacturing, producing, distributing, marketing and/or selling jewelry which is falsely marketed, advertised and warranted.

21. Plaintiff's claims as representative of the class are typical of the claims of the class. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has no conflicts that would otherwise make her an unfit class representative.
22. Plaintiff avers that the prerequisites for class action treatment apply to this action and that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy which is the subject of this action. Plaintiff further states that the interests of judicial economy will be served by concentrating litigation concerning these claims in Jefferson County, and that the management of this class will not be difficult.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

23. Defendants (both Sellers and Makers)⁴ collectively manufactured, distributed, marketed and sold into the United States and the State of Alabama jewelry that was not as advertised, warranted and promised.
24. Defendants are aware that jewelry consumers have highly developed preferences for the specific characteristics of jewelry, and therefore they rely heavily on the representations made in catalog, store, and internet advertising to determine whether an individual item of jewelry fits their personal preferences.

⁴The term Defendants shall refer to both Sellers and Makers throughout this complaint, unless otherwise indicated.

25. Defendants take advantage of this reliance on advertising by hiding the truth about the characteristics of its jewelry – both explicitly by making false statements and implicitly by manipulating the images and appearance of specific items – to entice consumers into buying jewelry that appears to have the characteristics they are seeking even when it does not.
26. Advertising on the JC Penney website and in catalogs disseminated uniformly across the country represents jewelry items as having certain characteristics relating to metal content, geographic origin, or diamonds, e.g., when the jewelry does not in fact have those characteristics. These false representations and deceptive practices are in violation of The Federal Trade Commission Act (“FTCA”), violate the standards set forth in the FTC Guides for the Jewelry, Precious Metals, and Pewter Industries, and constitute breach of contract, breach of warranty, negligence, and unjust enrichment.
27. Among the characteristics of its jewelry that Defendants have misrepresented and continue to misrepresent in its advertising are those involving metal fineness; the use of undisclosed or less-desirable metals as plating over precious metals; the existence, thickness or quality of metal plating; the use of alternative, cheaper, less-desirable, or non-precious metals or metal alloys; the number, size or quality of diamonds or other stones; and the geographic origin of the item or its contents. Defendants have also failed to comply with the FTC Guides for the Jewelry, Precious Metals, and Pewter Industries, the Gold Stamp Act (15 U.S.C. §§ 291-300), and the FTC Act with regard to deceptive and misleading advertising.
28. Defendants are aware that jewelry made in the U.S.A. is highly valued by many consumers, who believe the quality of the workmanship in the U.S.A. is superior, or

who prefer items made in the U.S.A. for patriotic reasons. Such consumers are willing to pay more for jewelry made in the U.S.A. than jewelry made in China or other foreign countries, and some may not be willing to purchase items made in China or other foreign countries at all.

29. According to the Federal Trade Commission (“FTC”), the claim “Made in USA” means that “all or virtually all” of the product was, indeed, made in America. If the product is falsely designated, it violates Section 5 of the FTCA (15 U.S.C. §45(a)), in addition to providing a cause of action for breach of warranty, negligence, breach of contract, and unjust enrichment.
30. Some of Defendants’ jewelry is marketed and sold through JC Penney’s website as made in the U.S.A, including the bracelet purchased by Ms. White (Item #FK 290-6203 FA). In fact, despite this explicit representation, Ms. White’s bracelet is made in China. This fact was not disclosed to Plaintiff prior to purchase.
31. Similarly, Defendants’ “Platinum over Sterling Silver Ring” (Item # 64AIPQ19AC), purchased directly from the JC Penney website, was advertised as made in the USA. However, the ring was actually made in China. This fact was not disclosed in JC Penney’s advertising for this ring.
32. Plaintiff alleges that all or some of the jewelry advertised by Defendants as made in the USA is actually made in China and other foreign countries.
33. Platinum is a highly valued metal, and consumers are willing to pay more for Platinum or Platinum-plated jewelry than jewelry plated with other less desirable metals, such as Rhodium.
34. Defendants are aware that the distinctive bright white shine of Platinum can be

- simulated using Rhodium or other less desirable metals, and used this knowledge to deceive customers looking for the bright white shine and other qualities of Platinum into buying jewelry made with or plated with Rhodium or other less desirable metals.
35. Ms. White's bracelet (Item #FK 290-6203 FA) was advertised as "Platinum over sterling silver," yet the bracelet actually contains no Platinum, and is plated with the less desirable metal, Rhodium.
 36. Plaintiff alleges that all or some of the jewelry advertised by Defendants as Platinum or Platinum-plated is either (1) not Platinum at all, (2) is plated in another less desirable metal, such as Rhodium, or (3) is not plated with a sufficient thickness and extent of surface coverage as to assure reasonable durability.
 37. Among consumers who prefer white or silver-colored jewelry, a bright white shine is much sought after. Neither Sterling Silver nor White Gold provides as bright a shine as other less desirable metals, such as Rhodium. Defendants use this knowledge to deceive customers looking for this bright white shine into buying jewelry advertised as Sterling Silver or White Gold but actually made with or plated with Rhodium or other less desirable metals.
 38. Gold is among the most sought after and highly-valued metals for jewelry-making. The various grades of Yellow Gold and White Gold are prized by consumers. Many items advertised by Defendants as Gold (both Yellow Gold and White Gold) contain undisclosed plating using less desirable metals such as Rhodium. In fact, the use of Rhodium plating is not disclosed in any of Defendants' advertising.
 39. Defendants withheld from Plaintiff and other similarly situated persons the fact that the jewelry it sells does not have the characteristics claimed in the advertisements. Such

information was withheld from consumers in order for Defendants to increase sales, and unjustly profit from the sale of such jewelry. Defendants induced Plaintiff and other similarly situated individuals to purchase jewelry by falsely advertising the characteristics of its jewelry.

40. The Makers have a duty to insure the characteristics of its jewelry are accurately disclosed to potential buyers, by communicating that information accurately to JC Penney, and by insuring that the information is truthfully presented to consumers through JC Penney's advertising.
41. Likewise, the Sellers have an affirmative duty to confirm the characteristics of the jewelry they sell, and to accurately advertise the jewelry to consumers.⁵
42. Defendants knew or should have known that Plaintiff and the class she represents would rely on advertising about the characteristics of their jewelry to make buying decisions.

COUNT ONE - BREACH OF CONTRACT

43. The preceding paragraphs of this Complaint, and any additional factual averments set forth in any subsequent sections of this Complaint, are deemed to be repeated and incorporated by reference in this Count.

⁵Defendants' legal obligations and duties arise from a variety of sources. According to the FTC, for example, "all or virtually all" of a jewelry item that is advertised as "made in USA" must have been made in the United States. Similarly, the FTC Guides for the Jewelry, Precious Metals, and Pewter Industries provides standards for jewelry advertising that is not deceptive or misleading. The Gold Stamp Act also sets forth the standards for required disclosures regarding the gold content of jewelry. See 15 U.S.C. §§ 291-300. The Act has been known at different times as the "National Gold and Silver Stamping Act", the "Gold Labeling Act" and the "Jewelers' Liability Act". For the purposes of this Complaint, it will be referred to as the "Gold Stamp Act".

44. Plaintiff and putative class contracted directly with Defendant JC Penney Corporation, Inc. to purchase jewelry.
45. Plaintiff and the putative class are direct and intended third-party beneficiaries of contracts between the Sellers and Makers. Defendants PAJ, Inc, Aspen Designs, Inc., Hannah Rose Co., and Hannah Rose Co., LP, are some, but not all, of the manufacturers and importers that have been identified as selling falsely advertised jewelry to JC Penney for resale to consumers as of the date of this Amended Complaint.
46. Defendants' contractual and legal obligations require it to accurately stamp and advertise the jewelry at issue.
47. Defendants' contractual obligations include, among other things, insuring that each piece of jewelry is manufactured as advertised and/or stamped accurately, including claims as to metal fineness, metal content, metal plating, diamond size, number and quality, and country of origin.
48. Defendants have breached their contractual obligations to Plaintiff and putative class members by failing to provide the products as promised, or have performed their contractual undertakings with such negligence and wantonness as to constitute a breach of the contract. Accordingly, Plaintiffs and putative class members have been deprived of the benefit of their bargain.
49. As a direct and proximate result of Defendants' breach, Plaintiff and class suffered damage by purchasing or paying more for falsely advertised and designated jewelry.

COUNT TWO - NEGLIGENCE

50. The preceding paragraphs of this Complaint, and any additional factual averments set

forth in any subsequent sections of this Complaint, are deemed to be repeated and incorporated by reference in this Count.

51. Defendants have a duty to comply with the Federal Trade Commission Guides To The Jewelry Industry, or run afoul of 15 U.S.C. § 45(a) where certain practices are deemed unfair or deceptive.
52. Defendants breached their duty in advertising, marketing, selling, distributing or manufacturing jewelry with false designations regarding the jewelry's characteristics.
53. Such breach was the cause in fact and proximate cause of the damages Plaintiff and putative class members suffered in purchasing jewelry which does not have the characteristics it was advertised as having. Defendants suppressed and concealed this information from Plaintiff and putative class for the purpose of increasing sales and profits.
54. Plaintiff and others similarly situated were damaged as a result of Defendants' negligence.

COUNT THREE - BREACH OF WARRANTY

55. The preceding paragraphs of this Complaint, and any additional factual averments set forth in any subsequent sections of this Complaint, are deemed to be repeated and incorporated by reference in this Count.
56. The jewelry manufactured, distributed, marketed, advertised and sold by the Defendants constitutes "goods" as defined by the Uniform Commercial code.
57. In accordance with the Uniform Commercial Code, the Defendants warranted that the product conformed to the claims made in its marketing and advertising. Defendants expressly warranted that the following characteristics of its jewelry, among others,

conformed to its advertising: metal fineness; metal content; metal plating; the number, size or quality of diamonds or other stones; and the geographic origin of the item or its contents.

58. Defendants held themselves out to Plaintiff, and others similarly situated, as having special knowledge and skills with respect to jewelry. Indeed, consumers have no choice but to rely upon Defendants' advertising representations. Defendants expressly warranted that the jewelry it sold had the characteristics claimed in its advertising.
59. The Defendants breached said warranty because the advertising claims made about the jewelry were false. In doing the acts and omissions described above, Defendants breached the implied warranties of fitness for a particular purpose and merchantability.
60. Plaintiff put Defendants on notice of the breach by letters dated February 23, 2005, and April 28, 2011.
61. Plaintiff and the putative class members as specified herein, were damaged through said breach of warranty by buying jewelry which they would not have purchased, or for which they would have paid a lower price, if the jewelry had been advertised and marketed in accordance with its actual characteristics.

COUNT FOUR - EQUITABLE RELIEF

62. The preceding paragraphs of this Complaint, and any additional factual averments set forth in any subsequent sections of this Complaint, are deemed to be repeated and incorporated by reference in this Count.
63. Plaintiff, individually and on behalf of the class she seeks to represent, purchased falsely advertised and falsely designated jewelry from JC Penney.
64. Defendants sold the jewelry or placed it into the stream of commerce with knowledge

- that the jewelry was falsely advertised or designated, or alternatively, under the mistaken belief that the jewelry sold was as represented in the advertising.
65. Defendants have been unjustly enriched by selling Plaintiff and other class members jewelry which did not have the characteristics claimed in its advertisements.
 66. Equity and good conscience requires that the Defendants make restitution and refund the purchase price of the jewelry to Plaintiff and the putative class, or provide such other relief as would be fair under the circumstances.
 67. In addition, Plaintiff seeks full and complete equitable relief, including specific performance of all Defendants' duties, full restitution to Plaintiff and class members for all monies expended as a result of Defendants selling misrepresented jewelry, corrective advertising, a permanent injunction, and all other equitable relief necessary to make Plaintiff and putative class whole

PRAYER FOR RELIEF

WHEREFORE, the foregoing averments considered, Plaintiff demands judgment for herself and others similarly situated as follows:

- a. Compensatory, incidental, consequential and punitive damages against Defendant for all damages according to proof at trial;
- b. Equitable relief in accordance with proof at trial, including an injunction to permanently halt the false advertising alleged above;
- c. Taxing against Defendants, all fees and costs of any expert, and all discovery and deposition costs and expenses, and other costs of this litigation, as costs of this action, and awarding Plaintiff and class the costs, reasonable attorneys' fees and expenses of this action; and

- d. Granting such other and further relief, including, without limitation, injunctive relief, corrective advertising, declaratory relief, specific performance relief and other forms of equitable relief, as may be just, premises considered. Plaintiffs offer to do equity.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by struck jury of all issues in this Complaint triable to a jury.

Respectfully submitted,

s/G. Richard Baker
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CERTIFICATE OF SERVICE

I do hereby certify that I have served a true and correct copy of the above and foregoing pleading upon counsel of record in this action by the following method(s):

- U.S. Mail, first class, postage pre-paid;
- hand delivery;
- facsimile;
- overnight/express mail;
- electronically via AlaCourt;

John E. Goodman, Esq.
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On this the 28th day of June, 2011.

s/ Bert J. Miano
OF COUNSEL