

# Exhibit A2

Jonas Jacobson (OSB No. 231106)  
jonas@dovel.com  
Simon Franzini (Cal. Bar No. 287631)\*  
simon@dovel.com  
Grace Bennett (Cal Bar No. 345948)\*  
grace@dovel.com  
Dovel & Luner, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401  
Tel: (310) 656-7066

*Attorneys for Plaintiffs*

\* Admitted *Pro Hac Vice*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JAMIE ZUCCARO, CATHERINE MOODY, Case No. 3:23-cv-01242-MO  
and ANDREW COHN, each individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

CONSOLIDATED CLASS ACTION  
ALLEGATION COMPLAINT

HOT TOPIC, INC.,

DEMAND FOR JURY TRIAL

Defendant.

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**I. Introduction.**

1. Advertised “sale” prices are important to consumers. Consumers are more likely to purchase an item if they know that they are getting a good deal. Further, if consumers think that a sale will end soon, they are likely to buy now, rather than wait, comparison shop, and buy something else.

2. While there is nothing wrong with a legitimate sale, a fake one—that is, one with made-up regular prices, made-up discounts, and made-up expirations—is deceptive and illegal.

3. As the Federal Trade Commission advises in its *Guides Against Deceptive Pricing*, it is deceptive to make up “an artificial, inflated price ... for the purpose of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1.

4. Likewise, California’s Consumer Legal Remedies Act prohibits “advertising goods or services with the intent not to sell them as advertised” and specifically prohibits “false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

5. In addition, the Federal Trade Commission’s regulations prohibit false or misleading “former price comparisons,” for example, making up “an artificial, inflated price ... for the purpose of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price comparisons” and “comparable value comparisons,” for example, ones that falsely suggest that the seller is “offer[ing] goods at prices lower than those being charged by others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

6. In addition, Oregon’s Unlawful Trade Practices Act (UTPA) expressly prohibits businesses from making “false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions,” O.R.S. § 646.608(j); “false or misleading representations of fact concerning the offering price of, or the person’s cost for real estate, goods or

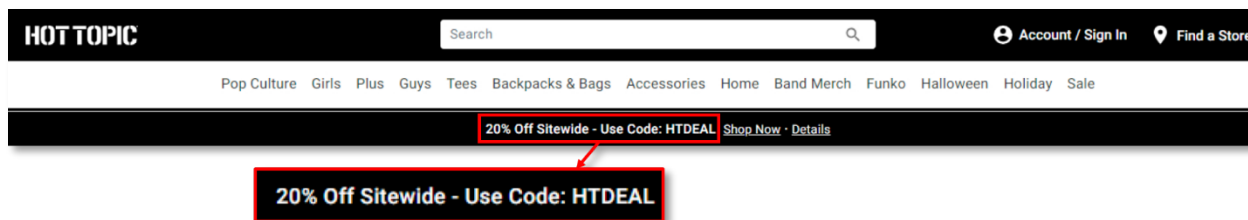
services,” O.R.S. § 646.608(s); representing that goods have “characteristics” that they do not have, O.R.S. § 646.608(e); advertising “goods ... with intent not to provide the real estate, goods or services as advertised,” O.R.S. § 646.608(i); and making “false or misleading statements about a ... promotion,” O.R.S. § 646.608(p).

7. The UTPA also prohibits sellers from using misleading price comparisons to advertise their products. O.R.S. § 646.608(ee).

8. So, as numerous courts have found, fake sales violate these laws. They also violate California’s general prohibition on unlawful, unfair, and deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

9. Defendant Hot Topic, Inc. (“Hot Topic” or “Defendant”) makes, sells, and markets clothing and accessories (the “Hot Topic Products” or “Products”). The Products are sold online through Defendant’s website, HotTopic.com.

10. On its website, Defendant lists prices and advertises purported time-limited discounts from those listed prices. These include “LIMITED TIME ONLY” sitewide discounts offering “up to X% off sitewide” or “X% off sitewide.” These discounts are made available by using a discount code, such as “20% Off Sitewide - Use Code: HTDEAL,” or are automatically applied to the Products sitewide. Defendant also advertises that its Products have a lower discount price as compared to a higher, list price shown in grey and/or strikethrough font. Examples are shown below:



Limited Time - Up To 50% Off Sitewide [Shop Now](#) · [Details](#)



**20% Off Sitewide**

Discount valid only on purchases made online at HotTopic.com for a LIMITED TIME ONLY.

**Kuromi Fortune Teller Tiered Suspender Skirt**

Part of the [Kuromi Collection](#)

★★★★★ 11 Reviews

**\$44.90**

Or 4 interest-free payments of \$12 with [Learn more](#)

20% Off - Use Code: **HTDEAL**  
Not Combinable With Hot Cash

**Kuromi Fortune Teller Tiered Suspender Skirt**

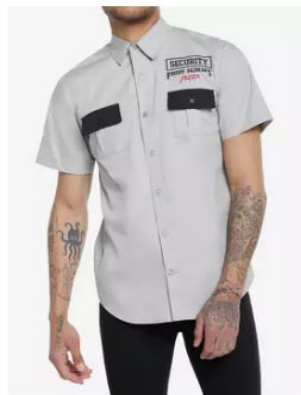
Part of the [Kuromi Collection](#)

★★★★★ 11 Reviews

**\$35.92** ~~\$44.90~~

Or 4 interest-free payments of \$12 with [Learn more](#)

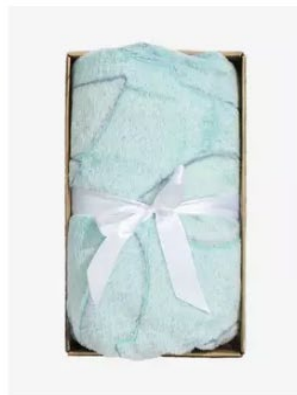
20% Off



Five Nights At Freddy's Security Guard Woven Button-Up  
**\$44.90 - \$48.90** ~~\$44.90 - \$48.90~~  
20% Off - Use Code: **HT20**



Funko Five Nights At Freddy's: Security Breach Sun & Moon Plush  
**\$20.90**  
★★★★★  
20% Off - Use Code: **HT20**



Disney Lilo & Stitch Tonal Icons Throw Blanket Gift Box  
**\$39.90**  
20% Off - Use Code: **HT20**



Pokemon Kanto Starters Girls Hoodie  
**\$49.90 - \$53.90** ~~\$49.90 - \$53.90~~  
20% Off - Use Code: **HT20**

11. Far from being time-limited, however, Defendant's discounts are *always* available. As a result, everything about Defendant's price and purported discount advertising is false. The list prices Defendant advertises are not actually Defendant's regular prices (the prices it usually charges), because Defendant's Products are *always* available for less than that. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often not a discount at all, because customers can *always* buy Defendant's Products at the discount price. Nor are the purported discounts "LIMITED TIME ONLY"—quite the opposite, they are always available.

12. As described in greater detail below, Plaintiffs bought items from Defendant from its website, HotTopic.com. When Plaintiffs made their purchases, Defendant advertised that a limited-time sale was going on, and so Defendant represented that the Products Plaintiffs purchased were being offered at a steep discount from their purported regular prices. And based on Defendant's representations, Plaintiffs believed that they were purchasing Products whose regular price and market value were the purported list price that Defendant advertised, that they were receiving a substantial discount, and that the opportunity to get that discount was time-limited. These reasonable beliefs were what caused Plaintiffs to buy from Defendant.

13. In truth, however, the representations Plaintiffs relied on were not true. The purported list prices were not the true regular prices, the purported discounts were not the true discounts, and the discounts were not time-limited. Had Defendant been truthful, Plaintiffs and other consumers like them would not have purchased the Products, or would have paid less for them.

14. Plaintiffs bring this case for themselves and the other customers who purchased Defendant's Products.

**II. Parties.**

15. Plaintiff Jamie Zuccaro is domiciled in Sandy, Oregon.

16. Plaintiff Catherine Moody is domiciled in Menifee, California.

17. Plaintiff Andrew Cohn is domiciled in Anaheim, California.

18. The proposed class includes citizens of every state.

19. Defendant Hot Topic, Inc. is a California corporation with its principal place of business at 18305 E. San Jose Ave, City of Industry, California 91748.

**III. Jurisdiction and Venue.**

20. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the matter is a class action in which one or more members of the proposed class are citizens of a state different from Defendant.

21. The Court has personal jurisdiction over Defendant because Defendant sold Hot Topic Products to consumers in Oregon, including to Plaintiff Zuccaro. Defendant does business in Oregon. It advertises and sells its Products in Oregon, and serves a market for its Products in Oregon. Due to Defendant's actions, its Products have been marketed and sold to consumers in Oregon, and harmed consumers in Oregon. Plaintiff Zuccaro's claims arise out of Defendant's contacts with this forum. Due to Defendant's actions, Plaintiff Zuccaro purchased Defendant's Product in Oregon, and was harmed in Oregon.

22. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d) because Defendant would be subject to personal jurisdiction in this District if this District were a separate state, given that Defendant sold Hot Topic Products to consumers in this District, including Plaintiff Zuccaro. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of Defendant's conduct giving rise to the claims occurred in this District, including Defendant's sale to Plaintiff Zuccaro.



23. Divisional Assignment. This case should be assigned to the Portland division. *See* L.R. 3-2(a)(1). A substantial part of the events giving rise to the claims occurred in Sandy, Oregon (Clackamas County).

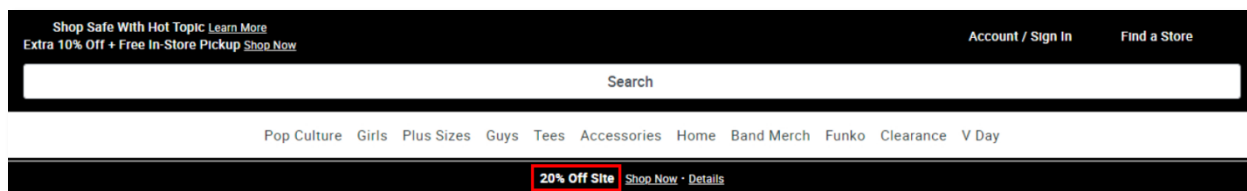
#### IV. Facts.

##### A. Defendant's fake prices and fake discounts.

24. Defendant makes, sells, and markets clothing and accessories. Hot Topic sells its Products directly to consumers online, through its website, HotTopic.com.

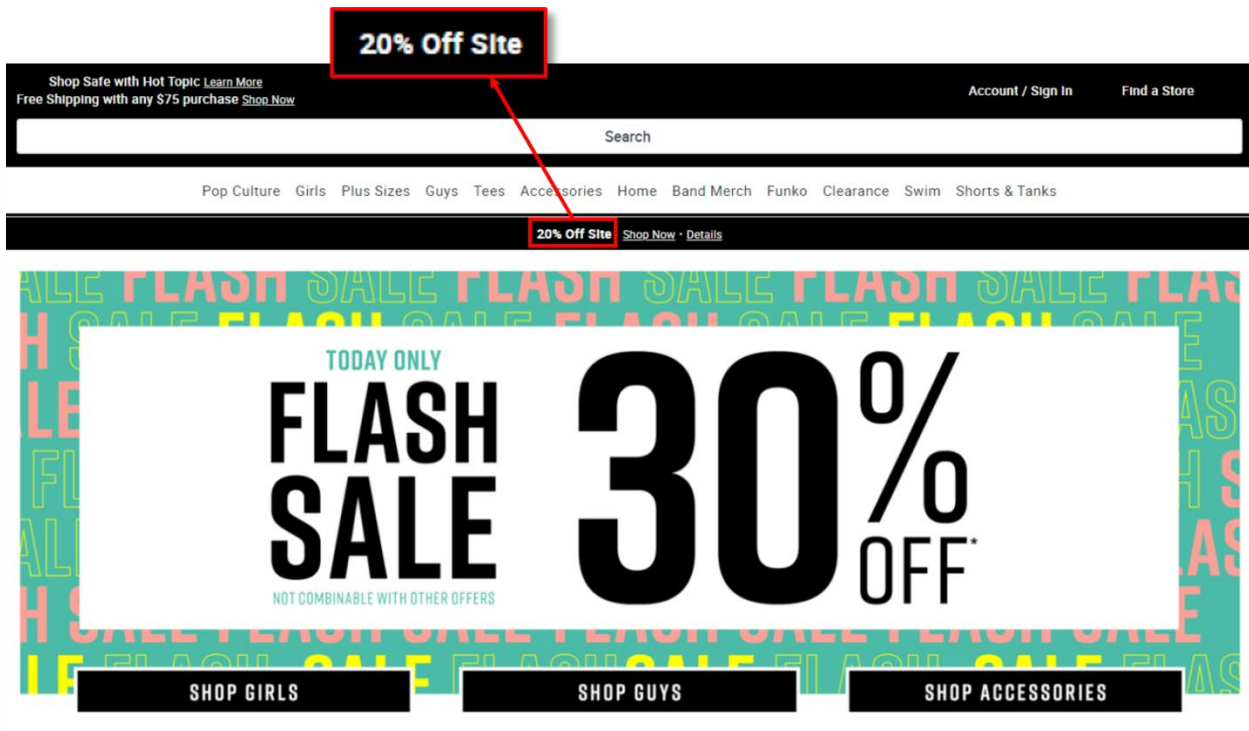
25. On its website, Defendant creates the false impression that its Products' regular prices are higher than they truly are.

26. At any given time, on its website, Defendant advertises steep discounts on its Products. These discounts always offer purportedly 20% or more off the regular prices Defendant advertises. Even though in truth these discounts run in perpetuity, Defendant prominently claims that they are "LIMITED TIME." And it advertises these discounts extensively: on an attention-grabbing banner near the top of its website; in a large banner image on its homepage; on the products listing pages; on the individual product pages for each Product, and on the checkout pages. It advertises them by touting "X% off"; by advertising list prices in strikethrough font next to lower, purported discount prices; with slogans such as "20% Off" in attention-grabbing, red font next to product descriptions; and by identifying the supposed savings that customers are supposedly receiving by expressing the savings as a negative number off the supposed full purchase price, in red font, during checkout. Example screenshots are provided on the following pages:

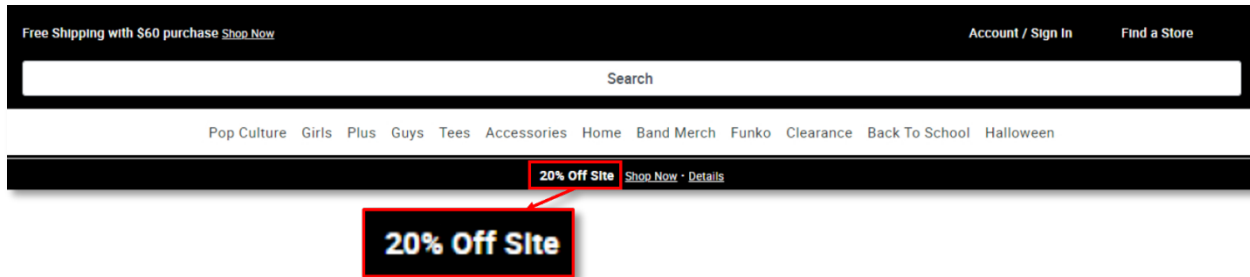


**20% Off Site**

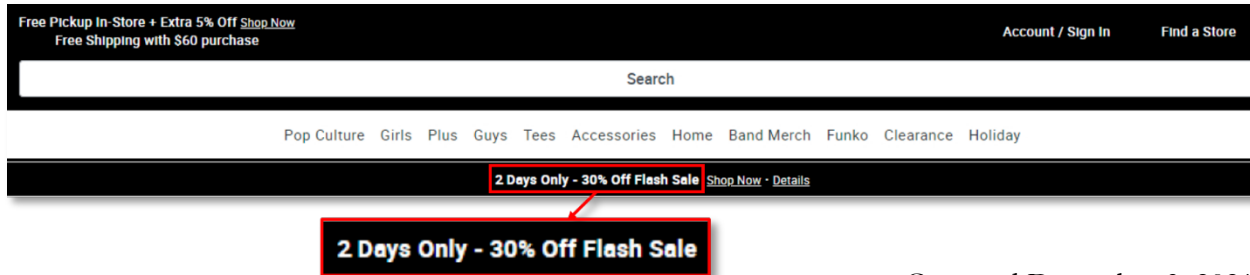
Captured January 30, 2021



Captured April 15, 2021



Captured August 18, 2021



Captured December 3, 2021

**30% Off Flash Sale Use Code: HTDEAL**

**HOT TOPIC** Search Account / Sign In Find a Store

Pop Culture Girls Plus Guys Tees Accessories Home Band Merch Funko Shorts & Tanks Swim Clearance

**30% Off Flash Sale Use Code: HTDEAL** Shop Now • Details 24 : 54 : 12  
Hours Mins Secs

**TIME TO CASH IN! SPEND YOUR HOT CASH NOW\*** **SHOP NOW**

**TODAY ONLY FLASH SALE 30% OFF\* SITEWIDE**  
USE CODE: HTDEAL

**SHOP GIRLS SHOP GUYS SHOP ACCESSORIES**

Captured April 22, 2022

**30% Off Flash Sale**

**HOT TOPIC** Search Account / Sign In Find a Store

Pop Culture Girls Plus Guys Tees Backpacks & Bags Accessories Home Band Merch Funko Back To School Halloween Sale

**30% Off Flash Sale** Shop Now • Details 12 : 33 : 26  
Hours Mins Secs

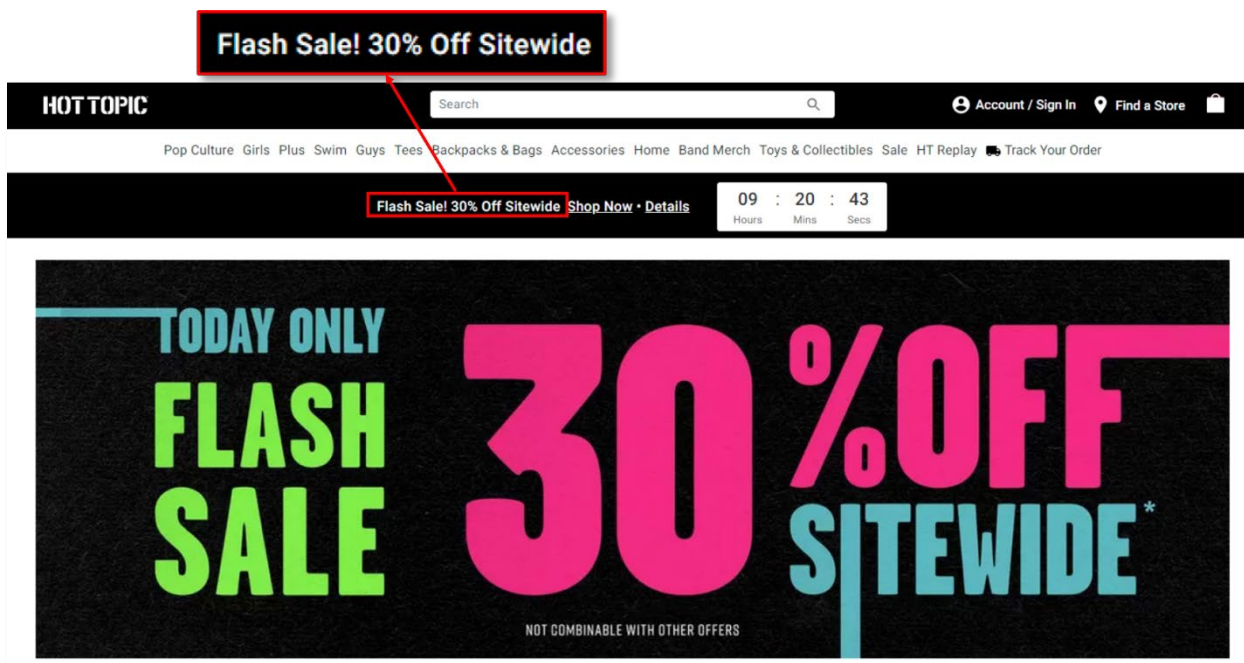
**TODAY ONLY FLASH SALE 30% OFF\* SITEWIDE**  
NOT COMBINABLE WITH OTHER OFFERS

**SHOP GIRLS SHOP GUYS SHOP ACCESSORIES**

Captured August 2, 2022



Captured December 8, 2022



Captured April 5, 2023

20% Off Sitewide Use Code: HTDEAL [Shop Now](#) · [Details](#)

Pajamas

608 results

Sort by: Best Seller ▾



The Powerpuff Girls Lavender Velour Girls Lounge Shorts  
\$29.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



The Powerpuff Lavender Velour Girls Cami  
\$28.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



The Powerpuff Girls Lavender Velour Girls Lounge Shorts Plus Size  
\$34.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



The Powerpuff Lavender Velour Girls Cami Plus Size  
\$33.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



Pastel Mushroom Ruffle Girls Lounge Shorts Plus Size  
\$29.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



Lightning Split Girls Sweatpants Plus Size  
\$49.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



Lightning Split Girls Sweatpants  
\$44.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash



Pastel Mushroom Girls Crop Lounge Cami Plus Size  
\$27.90

20% Off - Use Code: HTDEAL  
Code Not Combinable With Hot Cash

Captured April 30, 2022

Graphic Tees

103,390 results

Sort by: Best Seller ▾



Breaking Bad Duo T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 20% Off



Family Guy Chicken Fight Rematch T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 ★★★★★  
 20% Off



Gudetama Fried Rice Tie-Dye T-Shirt  
**\$23.12 - \$24.72** ~~\$28.90 - \$30.90~~  
 ★★★★★  
 20% Off



Avenged Sevenfold Skeleton King T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 ★★★★★  
 20% Off



Elton John Live In Los Angeles 1975 T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 ★★★★★  
 20% Off



Bleach Ichigo Record Cover T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 20% Off



Hello Kitty And Friends Pastel Tie-Dye Boyfriend Fit Girls T-Shirt  
**\$21.52 - \$24.72** ~~\$26.90 - \$30.90~~  
 ★★★★★  
 20% Off



Don't Hug Me I'm Scared Red Guy T-Shirt  
**\$19.12 - \$22.32** ~~\$23.90 - \$27.90~~  
 ★★★★★  
 20% Off

Captured February 7, 2023

The screenshot shows the Hot Topic website interface. At the top, there is a search bar and navigation links for 'Account / Sign In' and 'Find a Store'. Below the navigation, a black banner displays '20% Off Sitewide' in white text, with a red box highlighting this text. The main content area features a product page for the 'Kuromi Fortune Teller Tiered Suspender Skirt'. The product image shows a model wearing a white long-sleeved shirt with a black collar and a black floral suspender skirt. To the right of the image, the product name and price are displayed: '\$35.92 \$44.90'. A red box highlights the price and the text 'Or 4 interest-free payments of \$12 with 20% Off'. Below the price, there are options for size (XS, S, MD, LG, XL, 2XL, 3XL) and quantity (1). There are also buttons for 'ADD TO BAG' and 'ADD TO WISHLIST'. At the bottom, there are sections for 'Details' and 'Shipping & Returns'.

Captured March 20, 2023

The screenshot shows the Hot Topic website interface with a different promotion. At the top, there is a search bar and navigation links for 'Account / Sign In' and 'Find a Store'. Below the navigation, a black banner displays 'Spend Your Hot Cash (Must Be Logged In) 20% Off Site - Use Code: HTDEAL' in white text, with a red box highlighting this text. The main content area features the same product page for the 'Kuromi Fortune Teller Tiered Suspender Skirt'. The product image shows a model wearing a white long-sleeved shirt with a black collar and a black floral suspender skirt. To the right of the image, the product name and price are displayed: '\$44.90'. A red box highlights the price and the text 'Or 4 interest-free payments of \$12 with 20% Off - Use Code: HTDEAL Not Combinable With Hot Cash'. Below the price, there are options for size (XS, S, MD, LG, XL, 2XL, 3XL) and quantity (1). There are also buttons for 'ADD TO BAG' and 'ADD TO WISHLIST'. At the bottom, there are sections for 'Details' and 'Shipping & Returns'.

Captured April 19, 2023


**HOT TOPIC** Search

Pop Culture Girls Plus Guys Tees Backpacks & Bags Accessories Home Band Merch Toys & Collectibles Valentine's Day Sale

**20% Off Sitewide** Buy Online Free Pick Up In-Store Shop Now Details

**20% Off Sitewide**

Shopping Bag (1 item)

Product	Qty	Price	Total Price
 Breaking Bad Duo T-Shirt Item: 20248292 Color: CHARCOAL Size: MD <b>20% Off</b>	1	\$23.90	<del>\$23.90</del> \$19.12

Remove  
Move to Wishlist  
Edit

**20% Off**

Ship It In Stock

Free Ship To Store to Hollywood & Highland Ready for pick up in 3-8 business days

~~\$23.90~~  
**\$19.12**

Captured February 7, 2023

**HOT TOPIC**

**20% Off Sitewide** 20% Off Sitewide Buy Online Free Pick Up In-Store Shop Now Details

Checkout

Have an account? Sign in for easier checkout. **SIGN IN**

**Contact Details** \*Required

Email\* Phone Number\*

**Shipping Address** \*Required

First Name\* Last Name\*

Address 1\*


Address 2 (apt.,unit, etc.)

**Order Summary**

Subtotal	\$19.12
Shipping	\$6.99
Tax	\$0.00
<b>Total</b>	<b>\$26.11</b>

Final shipping costs & tax will be calculated at checkout.

**1 items in your order** \$19.12

 Breaking Bad Duo T-Shirt Item: 20248292 Color: CHARCOAL size: MD <b>20% Off</b>	Price: \$23.90
	Qty: 1
	Total Price: <del>\$23.90</del> \$19.12

Standard Shipping Estimated delivery: 2/10/23 - 2/16/23

~~\$23.90~~  
**\$19.12**

Captured February 7, 2023




**20% Off Sitewide - Use Code: HT20**

**HOT TOPIC** Search Account / Sign In Find a Store

Pop Culture New Back To School Girls Plus Guys Tees Backpacks & Bags Accessories Home Band Merch Toys & Collectibles Halloween Sale HT Replay

**20% Off Sitewide - Use Code: HT20** Shop Now Details

Shopping Bag (1 item)

Product	Qty	Price	Total Price
 My Melody & My Sweet Piano Roses Faux Nail Set Item: 18753465 20% Off - Use Code: HT20 Remove Move to Wishlist	1	\$10.90	\$10.90

Ship It In Stock  
 Free Ship To Store to Hollywood & Highland Ready for pick up in 3-8 business days

You're only \$64.10 away from receiving **FREE SHIPPING**  
SHOP NEW ARRIVALS

**Order Summary**

Subtotal	\$10.90
Shipping cost	\$6.99
Tax	\$0.00
Estimated Total	\$17.89

Final shipping costs & tax will be calculated at checkout.  
4 interest-free payments available on orders over \$35 with [Learn more](#)

Enter Promo Code **APPLY**

Make a Donation

**PROCEED TO CHECKOUT**

Captured August 16, 2023


**20% Off Sitewide - Use Code: HT20**

**HOT TOPIC** Search Account / Sign In Find a Store

Pop Culture New Back To School Girls Plus Guys Tees Backpacks & Bags Accessories Home Band Merch Toys & Collectibles Halloween Sale HT Replay

**20% Off Sitewide - Use Code: HT20** Shop Now Details

Shopping Bag (1 item)

Product	Qty	Price	Total Price
 My Melody & My Sweet Piano Roses Faux Nail Set Item: 18753465 20% Off - Use Code: HT20 Remove Move to Wishlist	1	\$10.90	\$8.72

Ship It In Stock  
 Free Ship To Store to Hollywood & Highland Ready for pick up in 3-8 business days

**Order Summary**

Subtotal	\$8.72
Shipping cost	\$6.99
Tax	\$0.00
Estimated Total	\$15.71

Final shipping costs & tax will be calculated at checkout.  
4 interest-free payments available on orders over \$35 with [Learn more](#)

Enter Promo Code **APPLY**

20% Off with Code: HT20  
-\$2.18 APPLIED

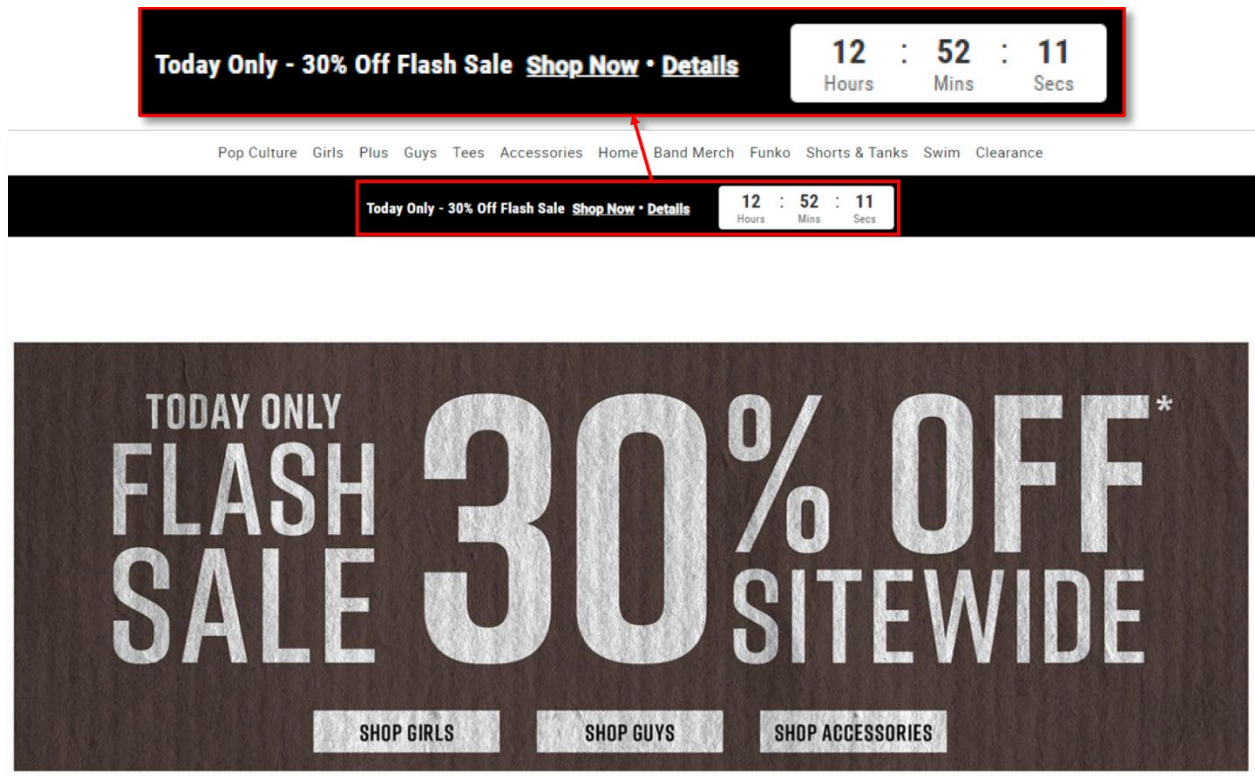
Make a Donation

**PROCEED TO CHECKOUT**

Captured August 16, 2023

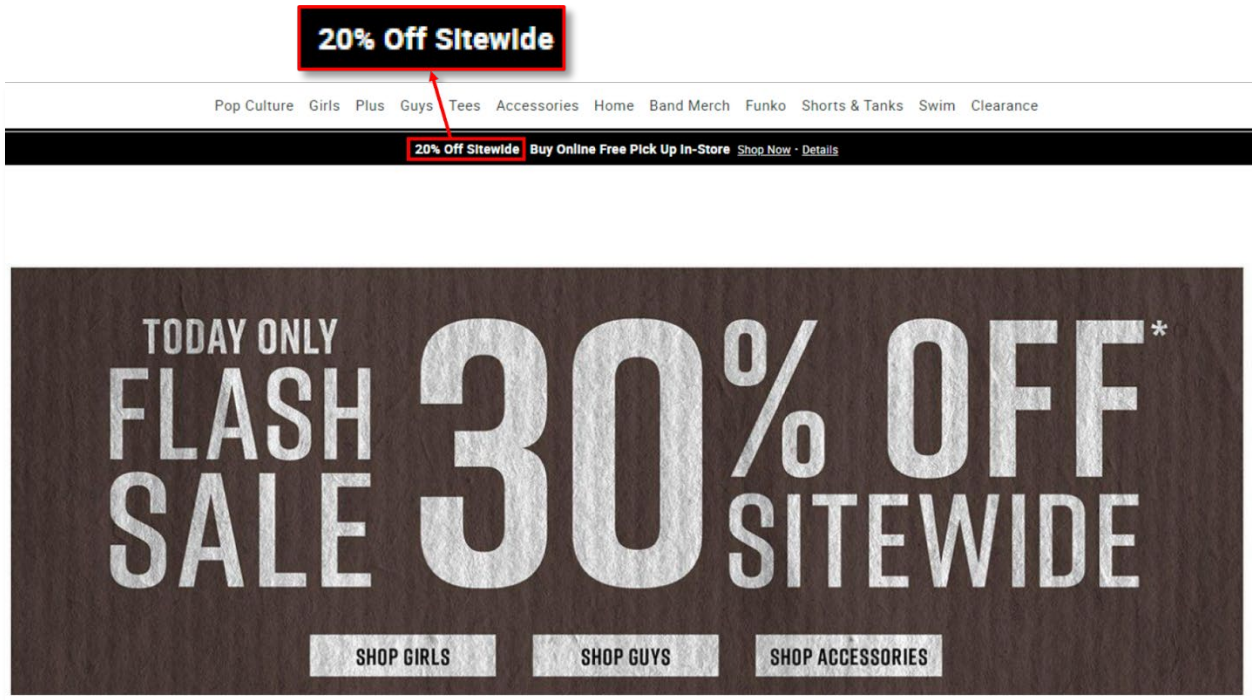
27. Defendant represents that these discounts will only be available for a limited time, but in reality, they continue indefinitely. For example, as depicted below, Defendant represents that its sales expire on a particular date (“Today Only”) or when the countdown clock expires, for example: “12 Hours: 52 Mins: 11 Secs.” To reasonable consumers, this means that after the countdown clock runs out, Defendant’s Products will no longer be on sale and will retail at their purported list prices. But immediately after each purportedly time-limited sale ends, Defendant generates another similar discount, with a new expiration date.

28. For example, on April 7, 2022, Defendant advertised a purportedly time-limited sale that was supposed to be a “TODAY ONLY FLASH SALE” and was set to expire shortly (after “12 Hours: 52 Mins: 11 Secs” when the screenshot in question was taken).



Captured April 7, 2022

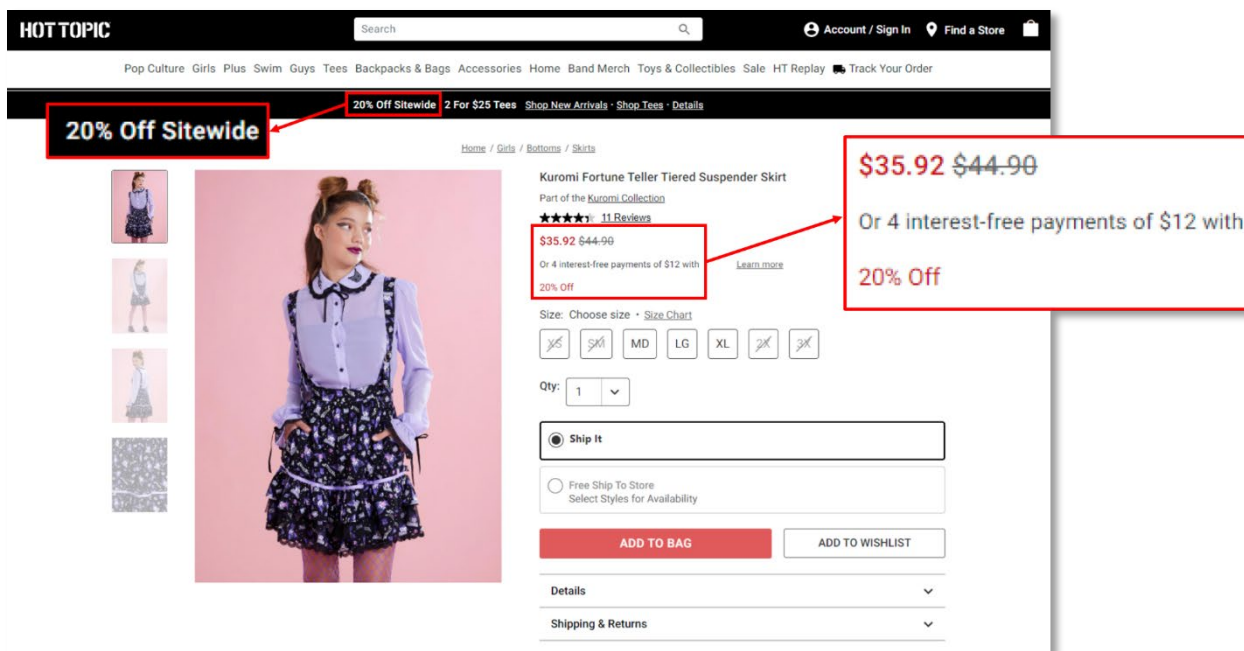
29. However, on April 8, 2022, the day that the time-limited sale was supposed to have ended, after the countdown expired, Defendant advertised the same sale with a new expiration date of “TODAY,” April 8, 2022.



Captured April 8, 2022

30. Defendant’s website lists fake regular prices (that is, prices reflecting the list price or value of an item) and fake discounts.

31. For example, on March 20, 2023, Defendant advertised a purported sitewide sale on HotTopic.com. As part of this discount, Defendant listed purported regular prices in strikethrough font and represented that consumers would get “20% Off” by purchasing during the promotion. For example, Defendant represented that the “Kuromi Fortune Teller Tiered Suspender Skirt” had a regular list price of \$44.90, that consumers would get “20%” off of that regular list price by shopping now, and that the discount price was \$35.92:



Captured March 20, 2023

32. But the truth is, the Kuromi Fortune Teller Tiered Suspender Skirt's listed regular price of \$44.90 is not its regular price. Instead, it is always at a discount from the purported regular price of \$35.92 (e.g., on March 20, 2023, it was priced at \$35.92, and on May 3, 2023, it again was priced at \$35.92), and the customer is not receiving the advertised discount by buying during the purported sale.

33. Occasionally, to obtain the advertised discount, consumers must enter the promo code. The promo code is located in a prominently displayed banner at the top of the shopping cart. It is located on a banner on every page of Defendant's website, including on product pages, search pages, and the checkout pages. And, as described above, the sale is extensively advertised throughout Defendant's websites. So, the overwhelming majority (if not all) of Defendant's sales are made using the promo code, at the advertised discount price (and not the supposedly regular list price).

34. Using these tactics, Defendant leads reasonable consumers to believe that they will

get a discount on the Products they are purchasing if they purchase during the limited-time promotion. In other words, it leads reasonable consumers to believe that if they buy now, they will get a Product worth X at a discounted, lower price Y; and they will get a discount. This creates a sense of urgency: buy now, and you will receive something worth more than you pay for it; wait, and you will pay more for the same thing later.

35. Based on Defendant's advertisements, reasonable consumers reasonably believe that the list prices are Defendant's regular prices (that is, the prices at which the Products ordinarily or typically retail for), and its former prices (that is, the price at which the goods were actually offered for sale before the limited-time offer went into effect). In other words, reasonable consumers believe that the list prices Defendant advertises represent the amount that consumers usually have to pay for Defendant's goods, formerly had to pay for Defendant's goods, before the limited-time sale began, and will again have to pay for Defendant's goods when the sale ends. Said differently, reasonable consumers reasonably believe that, prior to the supposedly time-limited sale, consumers had to pay the list price to get the item and did not have the opportunity to get a discount from that list price.

36. Reasonable consumers also reasonably believe that the list prices that Defendant advertises represent Defendant's regular prices, and the true market value of the Products, and that they are the prevailing prices for those Products. Reasonable consumers also believe that they are receiving reductions from Defendant's regular prices, former prices, and the market value of the Products in the amounts advertised. Said differently, reasonable consumers reasonably interpret Defendant's advertisements to mean that, if they buy now, they will receive a price reduction from the price at which Defendant ordinarily and typically sells its Products; a price reduction from Defendant's former prices; and a price reduction from the Product's market value. In truth, however, Defendant *always* offers purported reductions off the list prices it advertises. As a result,

everything about Defendant’s price and purported discount advertising is false. The list prices Defendant advertises are not actually Defendant’s regular or former prices, or the prevailing prices for the Products Defendant sells, and do not represent the true market value for the Products, because Defendant’s Products are *always* available for less than that, and customers did not have to formerly pay that amount to get those items. The purported discounts Defendant advertises are not the true discount the customer is receiving. Nor are the purported discounts “LIMITED TIME ONLY”—quite the opposite, they are always available.

**B. Defendant’s advertisements are unfair, deceptive, and unlawful.**

37. Oregon’s Unlawful Trade Practices Act (UTPA) expressly prohibits businesses from making “false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions,” O.R.S. § 646.608(j); “false or misleading representations of fact concerning the offering price of, or the person’s cost for real estate, goods or services,” O.R.S. § 646.608(s); representing that goods have “characteristics” that they do not have, O.R.S. § 646.608(e); advertising “goods ... with intent not to provide the real estate, goods or services as advertised,” O.R.S. § 646.608(i); and making “false or misleading statements about a ... promotion,” O.R.S. § 646.608(p).

38. Furthermore, California’s False Advertising Law prohibits businesses from making statements they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a product is on sale, when it actually is not. Moreover, California’s False Advertising Law specifically provides that “[n]o price shall be advertised as a former price ... unless the alleged former price was the prevailing market price ... within three months next immediately preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

39. In addition, California’s Consumer Legal Remedies Act prohibits “advertising goods or services with the intent not to sell them as advertised” and specifically prohibits “false or

misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

40. The Federal Trade Commission’s regulations prohibit false or misleading “former price comparisons,” for example, making up “an artificial, inflated price ... for the purpose of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price comparisons” and “comparable value comparisons,” for example, ones that falsely suggest that the seller is “offer[ing] goods at prices lower than those being charged by others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

41. And finally, California’s Unfair Competition Law bans unlawful, unfair, and deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

42. Here, as described in detail above, Defendant makes false and misleading representations of fact about its prices. Defendant makes false or misleading representations of fact concerning the existence of and amounts of price reductions, including the existence of steep discounts, and the amounts of price reductions resulting from those discounts. Defendant also advertises regular prices that are not its true regular prices, or its former prices.

43. Defendant also represents that the goods have characteristics that they do not have—namely, that the values of the Products are greater than they actually are. Defendant does this by advertising fake discounts for the Products, as alleged in greater detail above. Defendant advertised goods or services with the intent not to sell them as advertised, for example, by advertising goods having certain former prices and/or market values without the intent to sell goods having those former prices and/or market values. Finally, Defendant makes false or misleading statements about its promotions. As detailed above, for example, Defendant makes “limited time” offers that are not, in fact, time-limited.

44. The UTPA also prohibits sellers from using misleading price comparisons to

advertise their products. O.R.S. § 646.608(ee) (citing O.R.S. §§ 646.884 and 646.885). Specifically, it is illegal for a seller to include a price comparison in an advertisement unless “[t]he seller clearly and conspicuously identifies in the advertisement the origin of the price that the seller is comparing to the seller’s current price.” O.R.S. § 646.883. Use of the term “sale” is deemed to identify “the origin of the price that the seller is comparing to the seller’s current price as the seller’s own former price, or in the case of introductory advertisements, the seller’s future price.” O.R.S. § 646.884. And, unless otherwise stated, use of the terms “discount,” “\_\_\_\_\_ percent discount,” “\$\_\_\_\_\_ discount,” “\_\_\_\_\_ percent off,” and “\$\_\_\_\_\_ off” are “considered to identify the origin of the price that the seller is comparing to the seller’s current price as the seller’s former price, or in the case of introductory advertisements, the seller’s future price.” O.R.S. § 646.995.

45. As alleged in greater detail above, Defendant uses misleading price comparisons.

46. For example, Defendant uses strikethrough pricing without clearly and conspicuously identifying in the advertisement the origin of the price that the seller is comparing to the current price. As shown in the images above, Defendant uses strikethrough sale pricing without any disclosures about where the strikethrough price comes from.

47. In addition, as alleged in greater detail above, Defendant uses the word “sale,” “discount,” and “\_\_\_% Off,” in its promotions, even when the Products are not offered at a discount as compared to the seller’s former price (or in the case of introductory products, a future price). Defendant also makes no disclosure indicating that the price comparisons are to something other than the former or future price.

**C. Defendant’s advertisements harm consumers.**

48. Based on Defendant’s advertisements, reasonable consumers expect that Defendant’s regular prices (the prices without the advertised discounts) are former prices at which Defendant actually sold its Products before the discounts were introduced for a limited time; that



they are the prevailing prices for the Products; and that they represent the true market value of the Products.

49. Reasonable consumers also expect that, if they purchase during the sale, they will receive (at a discount) Products whose market value is the regular, non-discounted price. For example, for items that are purportedly 20% off, reasonable consumers would expect that they are receiving a 20% discount as compared to the regular price and former price, and that the items have a market value of 20% more than what they are spending.

50. As explained above, however, Plaintiffs and class members' reasonable expectations were not met. Instead of receiving Products with a market value equal to the alleged regular prices, they received items worth less. In addition, instead of receiving a significant discount, Plaintiffs and the class received little or no discount. Thus, Defendant's false advertisements harm consumers by depriving them of the reasonable expectations to which they are entitled.

51. In addition, consumers are more likely to buy a product, and buy more of it, if they believe that the product is on sale and that they are getting a product with a higher regular price and/or market value at a substantial discount.

52. Consumers that are presented with discounts are substantially more likely to make the purchase. "Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering or are undecided on making a purchase."<sup>1</sup> And, "two-thirds of consumers have made a purchase they weren't originally planning to make solely based on finding a coupon or discount," while "80% [of consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if they found an offer or discount."<sup>2</sup>

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<sup>1</sup> <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

<sup>2</sup> RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

53. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency makes them more likely to buy a product.<sup>3</sup>

54. Thus, Defendant's advertisements harm consumers by inducing them to make purchases they otherwise would not have made, based on false information. In addition, Defendant's advertisements artificially increase consumer demand for Defendant's Products. This puts upward pressure on the prices that Defendant can charge for its Products. As a result, Defendant can charge a price premium for its Products, that it would not be able to charge absent the misrepresentations described above. So, due to Defendant's misrepresentations, Plaintiffs and the class paid more for the Products they bought than they otherwise would have.

**D. Plaintiffs were misled by Defendant's misrepresentations.**

55. Plaintiffs were misled by Defendant Hot Topic, Inc.'s representations.

56. Defendant's website prominently advertises sales. In particular, as described in further detail above, Defendant advertises purportedly time-limited "sitewide" sales where everything is purportedly 20% or more off for a limited time.<sup>4</sup> Defendant also advertises purported regular prices and associated discounts for its Products. And Defendant advertises that the discounts are available "for a LIMITED TIME ONLY." Defendant's representations are made prominently at the top of each of the pages on its website, on its Product descriptions, and on its checkout pages.

57. Defendant's fake sales have persisted since at least August 18, 2021 (and likely for longer than that). These fake sales persisted when Plaintiffs made their purchases.

58. By advertising regular list prices and supposedly time-limited discounts, Defendant's

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<sup>3</sup> <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

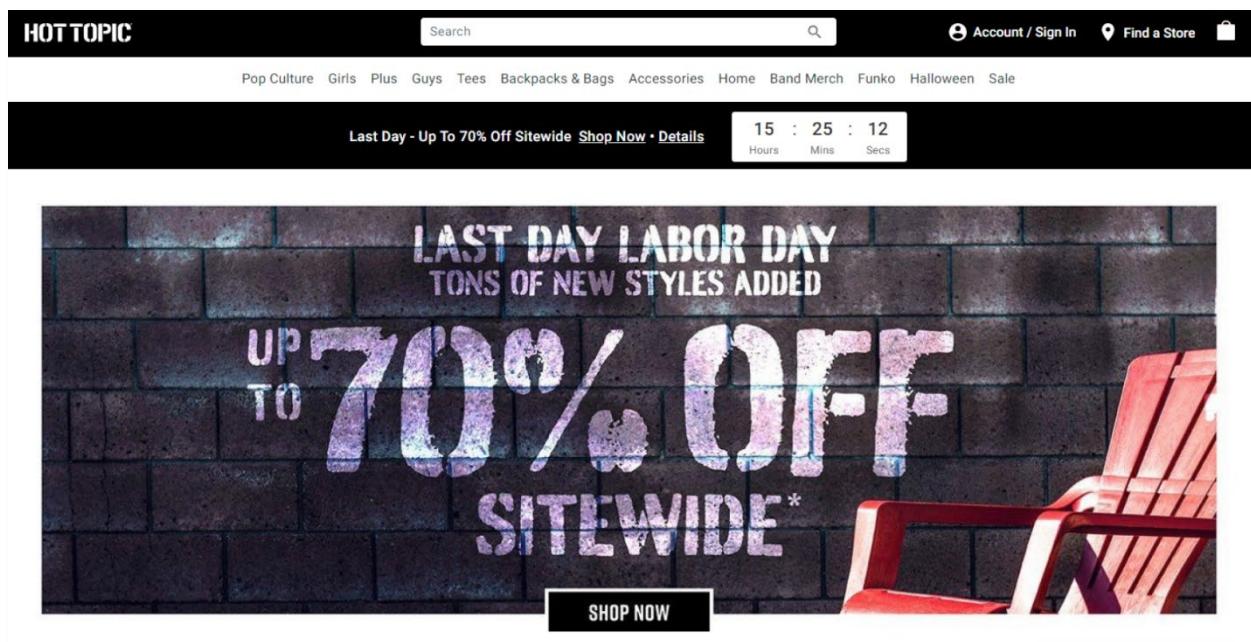
<sup>4</sup> Subject to certain exclusions not relevant here.

website creates an illusion that consumers are receiving a limited-time discount if they buy now. These discounts make consumers substantially more likely to make the purchase, and induces them to make purchases they otherwise would not have made.

59. What is false or misleading about Defendant's representations is that, based on Defendant's advertisements, reasonable consumers would expect that the listed regular prices are the prevailing prices at which Defendant actually sells its Products, former prices at which Defendant sold the Products, and the market value of the Products in question. In truth, however, Defendant's Products are always on sale, and these sales persist indefinitely. As a result, Defendant's listed prices are not Defendant's true prices, or former prices, or the prevailing market prices for Defendant's Products. Nor are its purported price reductions true price reductions. Because Defendant always offers sitewide discounts, as well as discounts on certain items, it does not ordinarily or typically sell its Products at the purported regular prices.




***Plaintiff Jamie Zuccaro***

60. On September 5, 2022, Ms. Zuccaro purchased a pair of "The Powerpuff Girls Lavender Velour Girls Lounge Shorts," "The Powerpuff Lavender Velour Girls Cami," and a "Loungefly Disney Kittens Mini Backpack" from Defendant's website, HotTopic.com. She made this purchase while living in Sandy, Oregon. On its website and during checkout, Defendant represented that a time-limited ("Last Day Labor Day"), "UP TO 70% OFF" sitewide sale was running and applied to the Products that Ms. Zuccaro purchased:



Captured September 5, 2022

61. Defendant also represented that the list price of The Powerpuff Girls Lavender Velour Girls Lounge Shorts was \$29.90, the list price of The Powerpuff Lavender Velour Girls Cami was \$28.90, and the list price of the Loungefly Disney Kittens Mini Backpack was \$54.90. Defendant represented that the Products had a certain regular price, and Defendant confirmed this in Ms. Zuccaro's online Order Details:

Product	Status	Qty	Price
 <p>Order Date: 9/5/2022 Order #: DH2094212383 Status: Shipped Type: Web</p>	<p>null 9/13/22 13:40 PDT Tracking 9200190307040809361376 null</p>	1	\$29.90
 <p>Order Date: 9/5/2022 Order #: DH2094212383 Status: Shipped Type: Web</p>	<p>null 9/13/22 13:40 PDT Tracking 9200190307040809361376 null</p>	1	\$28.90
 <p>Order Date: 9/5/2022 Order #: DH2094212383 Status: Shipped Type: Web Shipping Surcharge: \$2.99 ⓘ</p>	<p>null 12/15/22 10:14 PST Tracking D10013548357258 null</p>	1	\$54.90

Presale

62. Defendant represented that the regular prices of these items totaled \$113.70 (not including tax and shipping), but that Ms. Zuccaro would receive a \$48.76 discount on her order.

### Order Summary

Subtotal	\$113.70
Shipping	\$0
Shipping Surcharge	\$2.99
Discount	-\$48.76
Tax	\$0.00
<b>Total</b>	<b>\$67.93</b>

63. Ms. Zuccaro read and relied on Defendant's representations on Defendant's website, specifically that the Products were being offered at a discount for a limited time and had higher regular and usual prices, and that she would be receiving a price reduction by buying now. Based on Defendant's representations described and shown above, Ms. Zuccaro reasonably understood that the Products she was purchasing regularly (and before the promotion Defendant was advertising) retailed at the published list prices, that these published list prices were the market value of the Products that she was buying, that she was receiving the advertised discount and a price reduction as compared to the regular price, and that advertised discount was only available for a limited time (during the limited time promotion). She would not have made the purchase if she had known that the Products were not discounted as advertised, and that she was not receiving the advertised discount.

***Plaintiff Catherine Moody***

64. Ms. Moody made multiple purchases from Hot Topic, both in-store and online.

65. For example, on December 3, 2021, Ms. Moody purchased a "Funko Disney Winnie The Pooh Pop! Winnie The Pooh Vinyl Figure Hot Topic Exclusive" and a "Funko Danganronpa 3: The End Of Hope's Peak Pop! Animation Monokuma Vinyl Figure Hot Topic Exclusive" from Defendant. She purchased the Products from Defendant's website, HotTopic.com, while living in Menifee, California. Ms. Moody's invoice represented that she was receiving a substantial discount off of the regular prices for the items that she ordered. The invoice represented that the regular price of all items purchased was \$29.80 plus tax, and that Ms. Moody was receiving a discount of \$10.00.

66. On December 19, 2021, Ms. Moody purchased two "Funko The Nightmare Before Christmas Pop! Trains Zero (In Duck Cart) Glow-In-The-Dark Vinyl Figure Hot Topic Exclusive" from Defendant through Defendant's website. The invoice represented that the regular price of all

items purchased was \$25.00 plus tax, and that Ms. Moody was receiving a discount of \$5.00.

67. On February 25, 2022, Ms. Moody purchased a “Funko The Nightmare Before Christmas Pop! Trains Oogie Boogie (In Dice Cart) Vinyl Figure” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$12.50 plus tax, and that Ms. Moody was receiving a discount of \$0.51.

68. On March 6, 2022, Ms. Moody purchased a “Funko Disney Diamond Collection Pop! Belle Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount of \$8.73.

69. On March 13, 2022, Ms. Moody purchased a “Pink & White Plaid Heart Skirtall” and a “My Melody & Kuromi Lace-Up Chiffon Dress” from Defendant through Defendant’s website. The invoice represented that the regular price of all items purchased was \$96.80 plus tax, and that Ms. Moody was receiving a discount of \$45.00.

70. On March 19, 2022, Ms. Moody purchased a “Funko Sanrio Pop! Kuromi Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount of \$5.00.

71. On May 19, 2022, Ms. Moody purchased a “Funko Pop! Animation Gloomy Bear Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$15.90 plus tax, and that Ms. Moody was receiving a discount of \$2.00.

72. On September 20, 2022, Ms. Moody purchased a “Funko Sanrio Pop! Kuromi (With Baku) Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$14.90 plus tax, and that Ms.

Moody was receiving a discount of \$7.00.

73. On September 23, 2022, Ms. Moody purchased a “Kuromi Lavender Sheer Girls Woven Long-Sleeve Top,” a “Kuromi Fortune Teller Tiered Suspender Skirt,” a “Kuromi Fortune Teller Skimmer Girls Cardigan,” and a “Kuromi Baku Lolita Enamel Pin” from Defendant through Defendant’s website. The invoice represented that the regular price of all items purchased was \$151.60 plus tax, and that Ms. Moody was receiving a discount of \$75.00.

74. On November 23, 2022, Ms. Moody purchased a “My Melody & My Sweet Piano Roses Faux Nail Set” and a “Pompompurin Honey Throw Blanket” from Defendant through Defendant’s website. The invoice represented that the regular price of all items purchased was \$39.80 plus tax, and that Ms. Moody was receiving a discount of \$21.94.

75. On December 2, 2022, Ms. Moody purchased a “Funko Wednesday Metallic Pop! Television Wednesday Addams Vinyl Figure Hot Topic Exclusive” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$14.90 plus tax, and that Ms. Moody was receiving a discount of \$5.00.

76. On December 4, 2022, Ms. Moody purchased a “Pink Rose Ribbon Choker,” a “Pink Rhinestone Heart Lace Bracelet Cuff Set,” and a “Pink Lace Heart Gem Hair Bow Set” from Defendant through Defendant’s website. The invoice represented that the combined regular price of the 3 items purchased was \$34.70 plus tax, and that Ms. Moody was receiving a total discount of \$24.90.

***Plaintiff Andrew Cohn***

77. Mr. Cohn also made multiple purchases from Hot Topic online.

78. On July 20, 2021, Mr. Cohn purchased a “Disney Mickey Mouse Cowboy T-Shirt” from Defendant. He purchased the Product from Defendant’s website, HotTopic.com, while living in Anaheim, California. Mr. Cohn’s invoice represented that he was receiving a substantial discount



off of the regular price for the item that he ordered. The invoice represented that the regular price of the item purchased was \$22.90 plus tax, and that Mr. Cohn was receiving a discount of \$9.16.

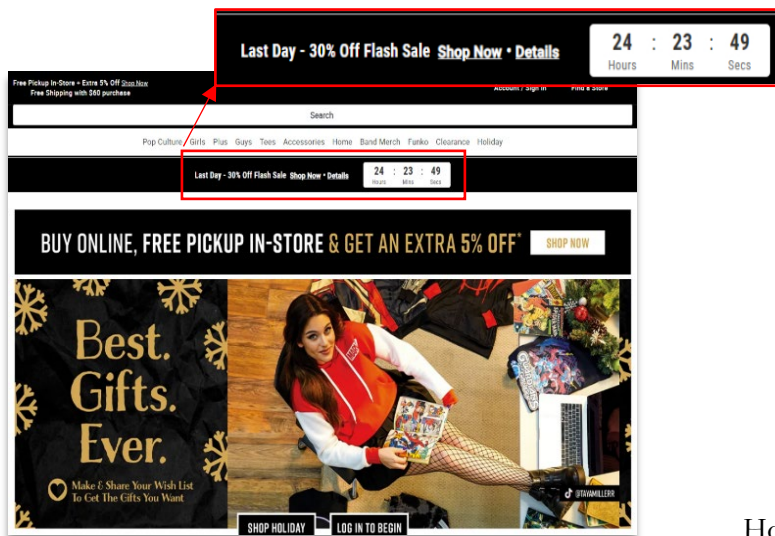
79. On July 26, 2021, Mr. Cohn purchased a “Disney Mickey Mouse Cowboy T-Shirt” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$22.90 plus tax, and that Mr. Cohn was receiving a discount of \$11.45.

80. On August 10, 2021, Mr. Cohn purchased a “Disney Mickey Mouse Cowboy T-Shirt” from Defendant through Defendant’s website. The invoice represented that the regular price of the item purchased was \$22.90 plus tax, and that Mr. Cohn was receiving a discount of \$11.45.

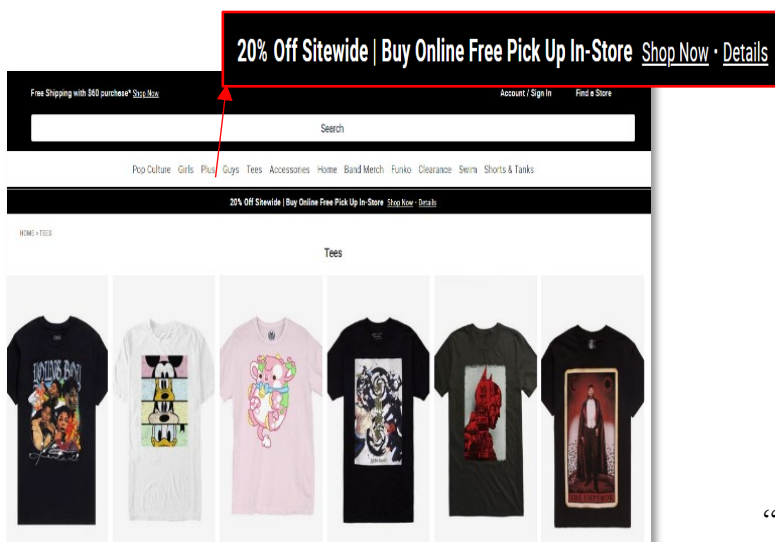
81. On May 9, 2022, Mr. Cohn purchased two “Disney Mickey Mouse Cowboy T-Shirts” from Defendant through Defendant’s website. The invoice represented that the combined regular price of the 2 items purchased was \$45.80 plus tax, and that Mr. Cohn was receiving a total discount of \$18.32.

82. As highlighted above, Defendant’s constant sales are always prominently advertised on its website, HotTopic.com. Plaintiffs saw and relied on this advertising in deciding to make their purchases.

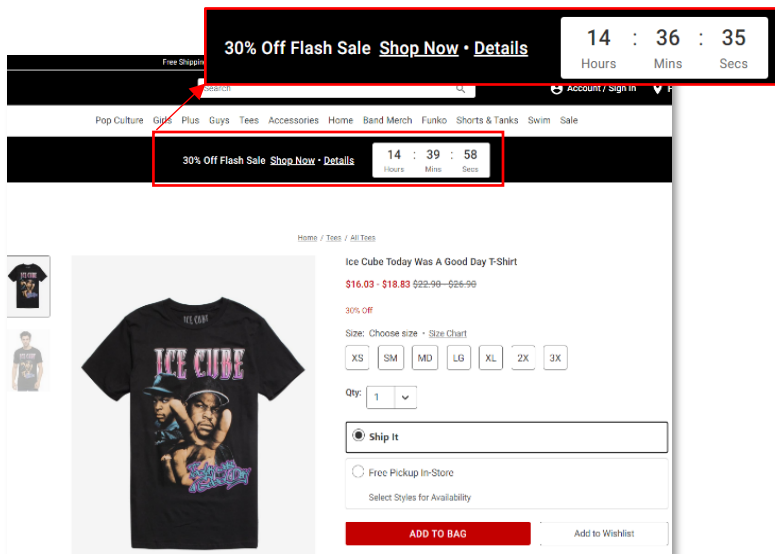
83. The website homepage, and other webpages on the site—including, but not limited to, product pages, category pages (*e.g.*, “Tees” or “Accessories”), and checkout pages—routinely advertise the sales with a banner at the top of the page. For example, Defendant has advertised sales with the following website banners:



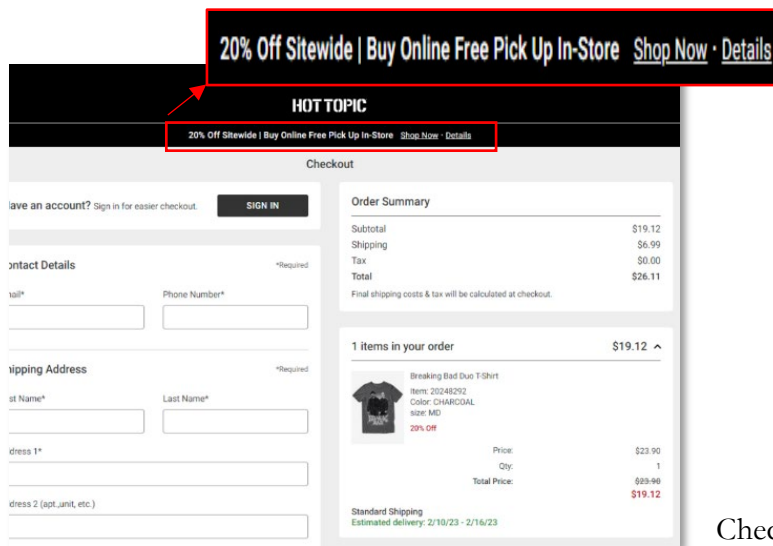
Homepage, Captured December 3, 2021



"Tees" Page, Captured March 17, 2022



Product Page, Captured May 9, 2022



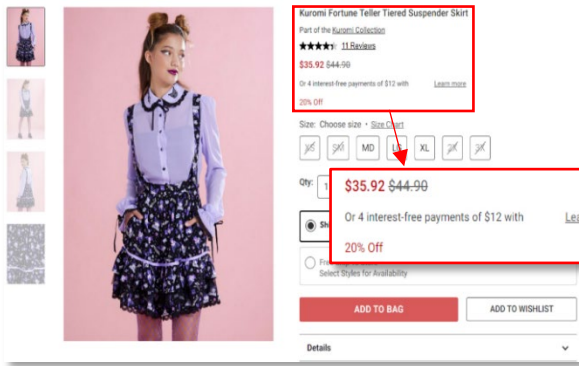
Checkout Page, Captured February 7, 2023

84. Ms. Moody saw and relied on substantially similar banners when she made purchases on Defendant’s website. For example, when she made her November 23, 2022, purchase, she saw and relied on the following banner, on Defendant’s homepage, on the product page, and on the checkout page. She viewed the banner on November 23, 2022, shortly before she made her purchase, and reasonably believed that by purchasing during the sale, she would get at least “30%” off any Product’s regular price:<sup>5</sup>

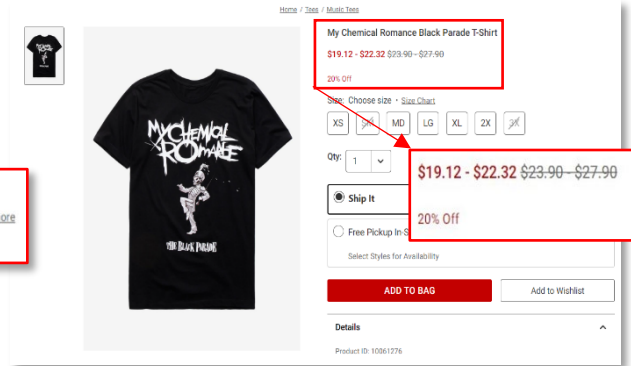
**30% to 50% Off Sitewide | Black Friday Starts Now [Shop Now](#) · [Details](#)**

85. Before they made each of their purchases, Plaintiffs relied on the “X% Off” language and crossed out regular prices displayed on Defendant’s product, shopping bag, and checkout pages. For example, Defendant’s individual product pages show the currently applicable percentage discount for each specific Product in red:

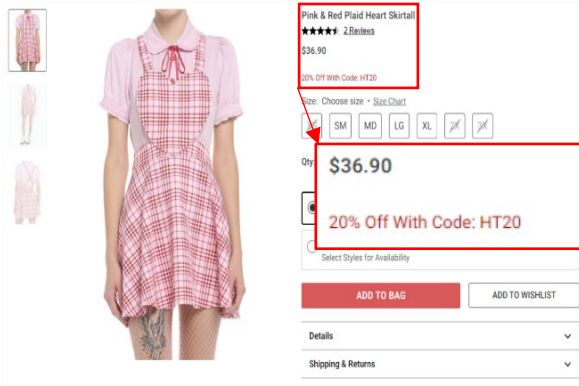
<sup>5</sup> Ms. Moody received 30% off her purchased items and then used Hot Topic Rewards cash to get an additional \$10 off.



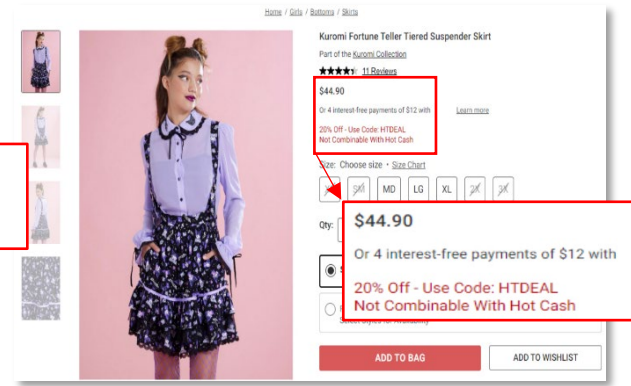
Captured May 22, 2022



Captured March 27, 2023

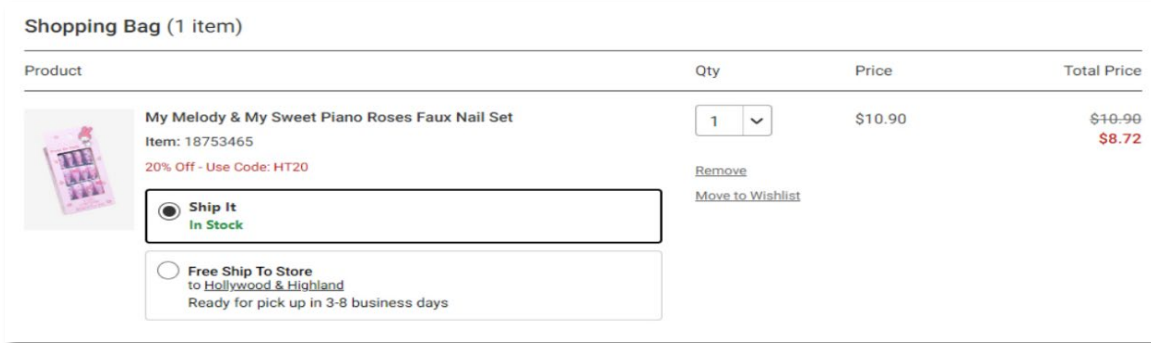


Captured July 28, 2023




Captured April 19, 2023

86. And Defendant’s “Shopping Bag” and “Checkout” pages also show both the advertised discount in red font (e.g., “20% Off”), and the purported regular prices of the items in strikethrough font next to the lower discounted prices in red (e.g., “\$23.90 \$19.12”). For example:



Shopping Bag, Captured August 16, 2023

**Shopping Bag (1 item)**

Product	Qty	Price	Total Price
 <p><b>Breaking Bad Duo T-Shirt</b> Item: 20248292 Color: CHARCOAL Size: MD 20% Off</p>	1	\$23.90	<del>\$23.90</del> <b>\$19.12</b>

**Ship It**  
In Stock

**Free Ship To Store**  
to [Hollywood & Highland](#)  
Ready for pick up in 3-8 business days

[Remove](#)  
[Move to Wishlist](#)  
[Edit](#)

Shopping Bag, Captured February 7, 2023

**Checkout**

Have an account? Sign in for easier checkout. [SIGN IN](#)

**Contact Details** \*Required

Email\*  Phone Number\*

**Shipping Address** \*Required

First Name\*  Last Name\*

Address 1\*


Address 2 (apt., unit, etc.)

**Order Summary**

Subtotal	\$19.12
Shipping	\$6.99
Tax	\$0.00
<b>Total</b>	<b>\$26.11</b>

Final shipping costs & tax will be calculated at checkout.

**1 items in your order** \$19.12 ^

 <p>Breaking Bad Duo T-Shirt Item: 20248292 Color: CHARCOAL size: MD 20% Off</p>	Price: \$23.90 Qty: 1 <b>Total Price: \$23.90</b> <b>\$19.12</b>
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Standard Shipping  
Estimated delivery: 2/10/23 - 2/16/23

Checkout Page, Captured February 7, 2023

87. Shortly before they made their purchases, Plaintiffs saw and relied on the percentage discount language (e.g., **20% Off**) on the product, shopping cart, and checkout pages. For example, shortly before Ms. Zuccaro made her September 5 purchase, she saw and relied on language claiming that she would receive “up to 70% off” on the Products she purchased. Shortly before Ms. Moody made her November 23 purchase, she saw and relied on language claiming that the Products she purchased were 30% off. And, shortly before Mr. Cohn made his May 9 purchase, he saw and relied on language claiming that the t-shirt he purchased was 40% off (reflecting the advertised 40%

off discount on t-shirts). They reasonably understood this language to mean that they were receiving the advertised discounts as compared to the regular prices of the Products.

88. Shortly before they made their purchases, Plaintiffs also saw and relied on the list prices displayed in strikethrough font alongside the purported discount prices in red font. They reasonably understood these representations to mean that the Products regularly and formerly sold at the struck-through prices, and had a market value equal to those prices, but were available at the red discount prices for a limited time (if they purchased during the sale).

89. Plaintiffs would not have made the purchases if they had known that the Products were not discounted as advertised, and that they were not receiving the advertised discounts.

90. Plaintiffs face an imminent threat of future harm. Plaintiffs would purchase Hot Topic Products from Defendant again in the future if they could feel sure that Defendant's list prices accurately reflected Defendant's regular prices and former prices, and the market value of the Products, and that its discounts were truthful. But without an injunction, Plaintiffs have no realistic way to know which—if any—of Defendant's list prices, discounts, and sales are not false or deceptive. For example, while they could watch a sale until the countdown ends to see if the sale is permanent, doing so could result in them missing out on the sale (*e.g.*, if the sale is actually limited in time, and not permanent). Accordingly, Plaintiffs are unable to rely on Defendant's advertising in the future, and so cannot purchase the Products they would like to purchase.

**E. Defendant breached its contract with and warranties to Plaintiffs and the putative class.**

91. As explained above, when Plaintiffs purchased the Hot Topic Products, they relied on specific language claiming that the Products were for sale at “X% Off” of listed regular prices shown in strikethrough font. In purchasing and paying for the Products, Plaintiffs, and other putative class members, accepted offers that Defendant made, and thus, contracts were formed each time that they made the purchases. The offers were to provide Products having a particular listed

regular price and market value, and to provide those Products at the discounted price advertised on the website.

92. Each time that Ms. Zuccaro made a purchase at Hot Topic, Ms. Zuccaro and Hot Topic entered a contract.

93. For example, for Ms. Zuccaro's September 5, 2022, purchase, the offer was to provide Products having a total regular price and market value of \$113.70, for a discounted total price of \$67.93 plus shipping, and to provide a discount of \$48.76 off of the total regular price.

94. Each time that Ms. Moody made a purchase at Hot Topic, Ms. Moody and Hot Topic entered a contract.

95. For example, for Ms. Moody's December 4, 2022, purchase, the offer was to provide Products having a total regular price and market value of \$34.70, for a discounted total price of \$9.80 plus tax, and to provide a discount of \$24.90 off of the total regular price.

96. Each time that Mr. Cohn made a purchase at Hot Topic, Mr. Cohn and Hot Topic entered a contract.

97. For example, for Mr. Cohn's May 9, 2022, purchase, the offer was to provide Products having a total regular price and market value of \$45.80, for a discounted total price of \$27.48 plus tax, and to provide a discount of \$18.32 off of the total regular price.

98. When Plaintiffs and other members of the putative class purchased and paid for the Products they bought as described above, they accepted offers that Defendant made, and thus, a contract was formed at the time that they made the purchase. The offer was to provide Products having a particular listed regular price and market value, and to provide those Products at the discounted price advertised on the website.

99. Defendant's website and order details list the market value of the items that Defendant promised to provide. Defendant agreed to provide a discount equal to the difference

between the regular prices listed by Defendant and the prices paid by Plaintiffs and putative class members. For example, Defendant offered to provide Ms. Zuccaro The Powerpuff Girls Lavender Velour Girls Lounge Shorts, which have a regular price and market value of \$29.90, The Powerpuff Lavender Velour Girls Cami, which has a regular price and market value of \$28.90, and the Loungefly Disney Kittens Mini Backpack, which has a regular price and market value of \$54.90, and to provide a significant discount from the regular prices of those items. Defendant also warranted that the regular price and market value of the Products Ms. Zuccaro purchased was the amount it identified as the list price (totaling \$113.70 for the three items that Ms. Zuccaro purchased) and warranted that Ms. Zuccaro was receiving a discount of \$48.76 on those Products.

100. The regular price and market value of the items Plaintiffs and the putative class members would receive, and the amount of the discount they would be provided off the regular price of those items, were specific and material terms of the contract. They were also affirmations of fact about the Products and a promise relating to the goods.

101. Plaintiffs and other members of the putative class performed their obligations under the contract by paying for the items they purchased.

102. Defendant breached its contract by failing to provide Plaintiffs and other members of the putative class with Products that have a regular price and former price and market value equal to the regular list price displayed, and by failing to provide the discounts and price reductions it promised, in the amounts promised. Defendant also breached warranties for the same reasons.

**F. No adequate remedy at law.**

103. Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs also seek an injunction. Plaintiffs are permitted to seek equitable remedies in the alternative because they have no adequate remedy at law. Legal remedies here are not adequate because they would not stop Defendant from continuing to engage in the deceptive practices described above. In addition, a



legal remedy is not adequate if it is not as certain as an equitable remedy. The elements of Plaintiffs' equitable claims are different and do not require the same showings as Plaintiffs' legal claims. For example, to prevail under the UTPA, Plaintiffs must show that Defendant engages in the conduct of "trade" and "commerce" under the UTPA. Furthermore, Plaintiffs' FAL claim under section 17501 (an equitable claim) is predicated on a specific statutory provision, which prohibits advertising merchandise using a former price if that price was not the prevailing market price within the past three months. Cal. Bus. & Prof. Code § 17501. Plaintiffs may be able to prove these more straightforward factual elements, and thus prevail under the FAL, while not being able to prove one or more elements of their legal claims. Plaintiffs' remedies at law are also not equally prompt or efficient as their equitable ones. For example, the need to schedule a jury trial may result in delay. And a jury trial will take longer, and be more expensive, than a bench trial.

**V. Class Action Allegations.**

104. Plaintiffs bring the asserted claims on behalf of the proposed class of:

- The Class: all persons who, while residents of the states of Oregon or California, within the applicable statute of limitations period, purchased one or more Products on Defendant's website.
- Oregon Subclass: all persons who, like Ms. Zuccaro, while residents of the state of Oregon and within the applicable statute of limitations period, purchased one or more Products on Defendant's website.
- California Subclass: all persons who, like Ms. Moody and Mr. Cohn, while residents of the state of California and within the applicable statute of limitations period, purchased one or more Products on Defendant's website.

105. The following people are excluded from the proposed class: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendant,

Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel, and their experts and consultants; and (6) the legal representatives, successors, and assigns of any such excluded persons.

***Numerosity & Ascertainability***

106. The proposed class contains members so numerous that separate joinder of each member of the class is impractical. There are tens or hundreds of thousands of class members.

107. Class members can be identified through Defendant's sales records and public notice.

***Predominance of Common Questions***

108. There are questions of law and fact common to the proposed class. Common questions of law and fact include, without limitation:

- (1) whether Defendant made false or misleading statements of fact in its advertisements;
- (2) whether Defendant violated Oregon and California's consumer protection statutes;
- (3) whether Defendant committed a breach of contract;
- (4) whether Defendant committed a breach of an express warranty;
- (5) damages needed to reasonably compensate Plaintiffs and the proposed class.

***Typicality & Adequacy***

109. Plaintiffs' claims are typical of the proposed class. Like the proposed class, Plaintiffs purchased the Products advertised at a discount on Defendant's website. There are no conflicts of interest between Plaintiffs and the class.

*Superiority*

110. A class action is superior to all other available methods for the fair and efficient adjudication of this litigation because individual litigation of each claim is impractical. It would be unduly burdensome to have individual litigation of millions of individual claims in separate lawsuits, every one of which would present the issues presented in this lawsuit.

**VI. Claims.**

**Count I: Violation of the Oregon Unlawful Trade Practices Act:**  
**O.R.S. §§ 646.605, et seq.**  
**(By Plaintiff Zuccaro and the Oregon Subclass)**

111. Plaintiff Zuccaro incorporates each and every factual allegation set forth above.

112. Plaintiff Zuccaro brings this cause of action on behalf of herself and members of the Oregon Subclass.

113. Defendant has violated the Oregon Unlawful Trade Practices Act (UTPA). O.R.S. §§ 646.605, et seq.

114. The UTPA prohibits unlawful business and trade practices. O.R.S. § 646.608. Under the UTPA, “[a] person engages in an unlawful practice if in the course of the person’s business, vocation or occupation the person does any of the following:”

- “Represents that ... goods ... have ... characteristics ... that the ... goods ... do not have,” O.R.S. § 646.608(e);
- “Advertises ... goods ... with intent not to provide the real estate, goods or services as advertised,” O.R.S. § 646.608(i);
- “Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions,” O.R.S. § 646.608(j);
- “Makes any false or misleading statement about a ... promotion used to publicize a product,” O.R.S. § 646.608(p);

- “Makes false or misleading representations of fact concerning the offering price of, or the person’s cost for real estate, goods or services,” O.R.S. § 646.608(s);

115. Defendant is a “person,” under the UTPA, as defined by O.R.S. § 646.605(4). The definition of “person” includes “corporations,” and as alleged above, Defendant is a corporation.

116. Defendant engages in the conduct of “trade” and “commerce” under the UTPA. Defendant does this by advertising, offering, and distributing, by sale, goods in a manner that directly and indirectly affects people of the state of Oregon. O.R.S. § 646.605(8). Defendant advertises and sells clothing and accessories in Oregon, and serves a market for its Products in Oregon. Due to Defendant’s actions, its Products have been marketed and sold to consumers in Oregon, and harmed consumers in Oregon, including Plaintiff Zuccaro. Defendant’s unlawful methods, acts and practices described above were committed in the course of Defendant’s business. O.R.S. § 646.608(1).

117. The clothing and accessories advertised, offered, and sold Defendant are “goods” that are or may be obtained primarily for personal, family or household as defined by O.R.S. § 646.605(6). Plaintiff Zuccaro and the Oregon Subclass purchased the Products advertised by Defendant for personal, family, or household purposes.

118. As alleged in greater detail above, Defendant makes “false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.” O.R.S. § 646.608(j). Defendant does this by advertising fake sales, fake list prices, and fake limited time sales. By advertising regular list prices and supposedly time-limited discounts, Defendant’s website creates an illusion that consumers are receiving a limited-time discount if they buy now. In truth, however, Defendant’s Products are always on sale, and these sales persist indefinitely. As a result, Defendant’s listed prices are not Defendant’s true prices, or former prices, or the prevailing market prices for Defendant’s Products. Nor are its purported price reductions true price

reductions. Because Defendant always offers sitewide discounts, as well as discounts on certain items, it does not ordinarily or typically sell its Products at the purported regular prices.

119. As alleged in greater detail above, Defendant also makes “false or misleading representations of fact concerning the offering price of, or the person’s cost for real estate, goods or services.” O.R.S. § 646.608(s). As described above, Defendant’s website purports to advertise its Products with regular list prices and discounted “sale” prices. But Defendant’s listed prices are not Defendant’s true prices, former prices, or prevailing market prices for those Products. In addition, the purported price reductions are not true price reductions.

120. As alleged in greater detail above, Defendant also “advertises ... goods ... with intent not to provide the ... goods ... as advertised,” O.R.S. § 646.608(i). Defendant advertises Products at a sale price, or discount, as compared to a regular list price. But the purported discounts that Defendant advertises are not the true discounts that the customer receives. In many cases, the customer receives no discount at all.

121. As alleged in greater detail above, Defendant also represents that its goods have characteristics that they do not have. O.R.S. § 646.608(e). Defendant represents that the value of its Products is greater than it actually is by advertising fake discounts for the Products.

122. As alleged in greater detail above, Defendant used false and misleading statements about the promotions to publicize its Products. O.R.S. § 646.608(p). As described above, Defendant advertises Products at a sale price, or discount, as compared to the regular prices. But the purported discounts that Defendant advertises are not the true discounts that the customer receives. In many cases, the customer receives no discount at all. In addition, as described above, Defendant advertises limited-time discounts that are not in fact limited in time.

123. The UTPA also prohibits sellers from using misleading price comparisons to advertise their products. O.R.S. § 646.608(ee) (citing O.R.S. §§ 646.884 and 646.885). The UTPA

expressly prohibits sellers from including “a price comparison in an advertisement unless” “[t]he seller clearly and conspicuously identifies in the advertisement the origin of the price that the seller is comparing to the seller’s current price.” O.R.S. § 646.883. Use of term “sale” is deemed to identify “the origin of the price that the seller is comparing to the seller’s current price as the seller’s own former price, or in the case of introductory advertisements, the seller’s future price.” O.R.S. § 646.884. And, unless otherwise stated, use of the terms “discount,” “\_\_\_\_\_ percent discount,” “\$\_\_\_\_\_ discount,” “\_\_\_\_\_ percent off,” and “\$\_\_\_\_\_ off” are “considered to identify the origin of the price that the seller is comparing to the seller’s current price as the seller’s former price, or in the case of introductory advertisements, the seller’s future price.” O.R.S. § 646.995.

124. As alleged in greater detail above, Defendant uses misleading price comparisons. For example, Defendant uses strikethrough pricing without clearly and conspicuously identifying in the advertisement the origin of the price that the seller is comparing to the current price. Defendant’s strikethrough pricing does not contain any disclosures at all about the origin of the strikethrough price.

39. In addition, as alleged in greater detail above, Defendant uses the word “sale,” “discount,” and “\_\_\_% Off,” in its promotions, even when the Products are not offered at a discount as compared to the seller’s former price (or in the case of introductory products, a future price). Defendant also makes no disclosure indicating that the price comparisons are to something other than the former or future price.

125. Defendant’s representations of regular prices, sales, and discounts on its website are “advertisements” as defined by O.R.S. § 646.881(1). These representations about the prices, sales, and discounts were made in connection with the sales of Defendant’s clothing and accessories.

126. Defendant’s use of list prices, sitewide sales, and advertised discounts are “price comparisons” as defined by O.R.S. § 646.881(2). These statements make a claim that the current

price is reduced as compared to a Product's typical or former price.

127. Defendant's unlawful methods, acts and practices described above were "willful violations" of O.R.S. § 646.608 because Defendant knew or should have known that its conduct was a violation, as defined by O.R.S. § 646.605(10). For example, Defendant knows that its actions are misleading and deceptive, because it was already sued for the same behavior under California's consumer protection laws.

128. Defendant, at all relevant times, had a duty to disclose that the discounts were not real, that the sales persisted and were not limited in time, and that the regular prices were not the true regular prices of the Products. Defendant had a duty because (1) Defendant had exclusive knowledge of material information that was not known to Plaintiff Zuccaro and the Oregon Subclass; (2) Defendant concealed material information from Plaintiff Zuccaro and the Oregon Subclass; and (3) Defendant made partial representations which were false and misleading absent the omitted information.

129. Defendant's misrepresentations and nondisclosures deceive and have a tendency to deceive a reasonable consumer and the general public.

130. Defendant's misrepresentations and nondisclosures are material. A reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

131. Defendant engaged in the reckless or knowing use or employment of the unlawful methods, acts or practices alleged here, which are unlawful under O.R.S. § 646.608.

132. As a direct, substantial and/or proximate result of Defendant's conduct, Plaintiff Zuccaro and Oregon Subclass members suffered ascertainable losses and injury to business or property.

133. Plaintiff Zuccaro and Oregon Subclass members would not have purchased the

Products at the prices they paid, if they had known that the advertised prices and discounts were false.

134. Plaintiff Zuccaro and Oregon Subclass members paid more than they otherwise would have paid for the Products they purchased from Defendant. Defendant's false pricing scheme fraudulently increased demand from consumers.

135. The Products that Plaintiff Zuccaro and Oregon Subclass members purchased were not, in fact, worth as much as Defendant represented them to be worth.

136. Plaintiff Zuccaro seeks, on behalf of herself and the Oregon Subclass: (1) the greater of statutory damages of \$200 or actual damages; (2) punitive damages; (3) appropriate equitable relief and/or restitution; and (4) attorneys' fees and costs. O.R.S. § 646.638(3); O.R.S. § 646.638(8).

137. The unlawful acts and omissions described here are, and continue to be, part of a pattern or generalized course of conduct. Defendant's conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiff Zuccaro seeks an order enjoining Defendant from committing such unlawful practices. O.R.S. § 646.638(1); O.R.S. § 646.638(8)(c); O.R.S. § 646.636.

138. The balance of the equities favors the entry of permanent injunctive relief against Defendant. Plaintiff Zuccaro, the Oregon Subclass members, and the general public will be irreparably harmed absent the entry of permanent injunctive relief against Defendant. Plaintiff Zuccaro, the Oregon Subclass members, and the general public lack an adequate remedy at law. A permanent injunction against Defendant is in the public's interest. Defendant's unlawful behavior is ongoing as of the date of the filing of this Complaint. If not enjoined by order of this Court, Defendant will or may continue to injure Plaintiff Zuccaro and Oregon consumers through the misconduct alleged. Absent the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the unlikely event that it voluntarily ceases, it is capable of repetition and is likely to



reoccur.

139. This action was brought “within one year after the discovery of the unlawful method, act or practice.” O.R.S. § 646.638.

140. The applicable limitations period is expansive and extends back decades based on the “discovery” rule in the UTPA at O.R.S. § 646.638(6).

141. Plaintiff Zuccaro and the Oregon Subclass members did not know, and could not have known, that these reference prices and discount representations were false.

142. Absent class members of the subclass are still not aware, at the time of the filing of this Complaint, of Defendant’s false discount advertising scheme. By Defendant’s design, the false advertising scheme by its very nature is hidden and difficult for the typical consumer to discover. Consumers who shop on Defendant’s website do not know the true historical prices or sales histories of the Products that they have viewed and purchased. They do not know that the discounts offered are false, or that the false discounting practices extend to all of Defendant’s Products. Subclass members have not discovered, and could not have reasonably discovered, Defendant’s fake discounting scheme.

143. Absent class members will learn of the scheme for the very first time upon court-ordered class notice in this case.

**Count II: Violation of California’s False Advertising Law:**  
**Bus. & Prof. Code §§ 17500 et. seq.**  
**(By Plaintiff Moody, Plaintiff Cohn, and the California Subclass)**

144. Plaintiffs incorporate each and every factual allegation set forth above.

145. Plaintiffs bring this cause of action on behalf of themselves and members of the California Subclass.

146. Defendant has violated sections 17500 and 17501 of the Business and Professions Code.

147. As alleged more fully above, Defendant advertises former prices on its website along with discounts. Defendant does this, for example, by crossing out a higher price (*e.g.*, ~~\$23.90~~) or displaying a regular price next to the discount price. Defendant also does this by publishing a purported regular price (*e.g.*, \$23.90), and stating that a discount will be provided during the sale (*e.g.*, “20%,” or publishing a “Discount” with a specific discount amount).

148. The prices advertised as former prices by Defendant were not the true former prices of the Products. Accordingly, Defendant’s statements about the former prices of its Products were untrue and misleading.

149. In addition, Defendant’s former price advertisements did not state clearly, exactly, and conspicuously when, if ever, the former prices prevailed. Defendant’s advertisements did not indicate whether or when the purported former prices were offered at all.

150. As a result, Defendant violated, and continues to violate, sections 17500 and 17501 to induce Plaintiffs and the subclass to make purchases on its website based on the advertised former prices.

151. Defendant’s misrepresentations were intended to induce reliance, and, as specifically identified above, Plaintiffs saw, read, and reasonably relied on the statements when purchasing Defendant’s Products. Defendant’s misrepresentations were a substantial factor in Plaintiffs’ purchase decisions.

152. In addition, subclass-wide reliance can be inferred because Defendant’s misrepresentations were material, *i.e.*, a reasonable consumer would consider them important in deciding whether to buy the Hot Topic Products.

153. Defendant’s misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and the subclass.

154. Plaintiffs and the subclass were injured as a direct and proximate result of

Defendant's conduct because (a) they would not have purchased Hot Topic Products if they had known the truth, and/or (b) they overpaid for the Products because the Hot Topic Products were sold at a price premium due to the misrepresentation.

**Count III: Violation of California's Consumer Legal Remedies Act:**  
**(By Plaintiff Moody, Plaintiff Cohn, and the California Subclass)**

155. Plaintiffs incorporate each and every factual allegation set forth above.

156. Plaintiffs bring this cause of action on behalf of themselves and members of the California Subclass.

157. Plaintiffs and the subclass are "consumers," as the term is defined by California Civil Code § 1761(d).

158. Plaintiffs and the subclass have engaged in "transactions" with Defendant as that term is defined by California Civil Code § 1761(e).

159. The conduct alleged in this Amended Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

160. As alleged more fully above, Defendant made and disseminated untrue and misleading statements of facts in its advertisements to subclass members. Defendant did this by using fake regular prices, i.e., regular prices that are not the prevailing prices, and advertising fake discounts.

161. Defendant violated, and continues to violate, section 1770(a) of the California Civil Code.

162. Defendant violated, and continues to violate, section 1770(a)(5) of the California Civil Code by representing that Products offered for sale on its website have characteristics or benefits that they do not have. Defendant represents that the value of its Products is greater than it

actually is by advertising inflated regular prices and fake discounts for the Products.

163. Defendant violated, and continues to violate, section 1770(a)(9) of the California Civil Code. Defendant violates this by advertising its Products as being offered at a discount, when in fact Defendant does not intend to sell the Products at a discount.

164. And Defendant violated, and continues to violate, section 1770(a)(13) by making false or misleading statements of facts concerning existence of, or amounts of, price reductions on its website, including by (1) misrepresenting the regular price of Products on its website, (2) advertising discounts and savings that are exaggerated or nonexistent, and (3) misrepresenting that the discounts and savings are unusually large, when in fact they are regularly available.

165. Defendant's representations were likely to deceive, and did deceive, Plaintiffs and reasonable consumers. Defendant knew, or should have known through the exercise of reasonable care, that these statements were inaccurate and misleading.

166. Defendant's misrepresentations were intended to induce reliance, and Plaintiffs saw, read, and reasonably relied on them when purchasing the Hot Topic Products. Defendant's misrepresentations were a substantial factor in Plaintiffs' purchase decisions.

167. In addition, subclass-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Hot Topic Products.

168. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and the subclass.

169. Plaintiffs and the subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Hot Topic Products if they had known the discounts and/or regular prices were not real, (b) they overpaid for the Products because the Products were sold at a price premium due to the misrepresentation, and/or (c) they received

Products with market values lower than the promised market values.

170. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of themselves and all other members of the subclass, seek injunctive relief.

171. CLRA § 1782 NOTICE. On March 7, 2023, Ms. Moody sent a CLRA demand letter to Defendant's California headquarters via certified mail (return receipt requested), that provided notice of Defendant's violations of the CLRA on behalf of Ms. Moody and the class and demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here. On March 29, 2023, Mr. Cohn sent a second CLRA demand letter to Defendant's California headquarters via certified mail (return receipt requested), that again provided notice of Defendant's violations of the CLRA on behalf of Mr. Cohn and the class and demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here. It has been more than 30 days since Defendant received notice of its CLRA violations. In that time, it has not corrected the problem for Plaintiffs or for members of the subclass. Accordingly, Plaintiffs seek all monetary relief available under the CLRA.

172. Plaintiffs' CLRA venue declarations are attached.

**Count IV: Violation of California's Unfair Competition Law:**  
**(By Plaintiff Moody, Plaintiff Cohn, and the California Subclass)**

173. Plaintiffs incorporate each and every factual allegation set forth above.

174. Plaintiffs bring this cause of action on behalf of themselves and members of the California Subclass.

175. Defendant has violated California's Unfair Competition Law (UCL) by engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three prongs of the UCL).

***The Unlawful Prong***

176. Defendant engaged in unlawful conduct by violating the CLRA and FAL, as alleged above and incorporated here. In addition, Defendant engaged in unlawful conduct by violating the

FTCA. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce” and prohibits the dissemination of false advertisements. 15 U.S.C. § 45(a)(1). As the FTC’s regulations make clear, Defendant’s false pricing schemes violate the FTCA. 16 CFR § 233.1, § 233.2.

***The Deceptive Prong***

177. As alleged in detail above, Defendant’s representations that its Products were on sale, that the sale was limited in time, that the Products had a specific regular price, and that the customers were receiving discounts were false and misleading.

178. Defendant’s representations were misleading to Plaintiffs and other reasonable consumers.

179. Plaintiffs relied upon Defendant’s misleading representations and omissions, as detailed above.

***The Unfair Prong***

180. As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that its Products were on sale, that the sale was limited in time, that the Products had a specific regular price, and that customers were receiving discounts.

181. Defendant violated established public policy by violating the CLRA, the FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this practice is tethered to a legislatively declared policy (that of the CLRA and FAL).

182. The harm to Plaintiffs and the subclass greatly outweighs the public utility of Defendant’s conduct. There is no public utility to misrepresenting the price of a consumer product. This injury was not outweighed by any countervailing benefits to consumers or competition. Misleading consumer products only injures healthy competition and harms consumers.

183. Plaintiffs and the subclass could not have reasonably avoided this injury. As alleged above, Defendant’s representations were deceptive to reasonable consumers like Plaintiffs.

184. Defendant's conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

\* \* \*

185. For all prongs, Defendant's representations were intended to induce reliance, and Plaintiffs saw, read, and reasonably relied on them when purchasing the Hot Topic Products. Defendant's representations were a substantial factor in Plaintiffs' purchase decisions.

186. In addition, subclass-wide reliance can be inferred because Defendant's representations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy Hot Topic Products.

187. Defendant's representations were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and subclass members.

188. Plaintiffs and the subclass were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased the Hot Topic Products if they had known that they were not discounted, and/or (b) they overpaid for the Products because the Products were sold at the regular price and not at a discount.

**Count V: Breach of Contract**  
**(By Plaintiffs and the Class)**

189. Plaintiffs incorporate each and every factual allegation set forth above.

190. Plaintiffs bring this cause of action on behalf of themselves and the Class. In the alternative, Plaintiff Zuccaro brings this cause of action on behalf of herself and the Oregon Subclass, and Plaintiff Moody and Plaintiff Cohn bring this cause of action on behalf of themselves and the California Subclass.

191. Plaintiffs and class members entered into contracts with Defendant when they placed orders to purchase Products on Defendant's website.

192. The contracts provided that Plaintiffs and class members would pay Defendant for

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the Products ordered.

193. The contracts further required that Defendant provides Plaintiffs and class members with Products that have a former price, and a market value, equal to the regular prices displayed on the websites. They also required that Defendant provides Plaintiffs and class members with the specific discount advertised on the website. These were specific and material terms of the contracts.

194. Plaintiffs and class members paid Defendant for the Products they ordered and satisfied all other conditions of their contracts.

195. Defendant breached the contracts with Plaintiffs and class members by failing to provide Products that had a regular price and market value equal to the list price displayed on its website, and by failing to provide the promised discounts.

196. As a direct and proximate result of Defendant's breaches, Plaintiffs and class members were deprived of the benefit of their bargained-for exchange and have suffered damages in an amount to be established at trial.

197. Plaintiff Zuccaro provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on August 10, 2023.

198. Plaintiff Moody provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on March 7, 2023.

199. Plaintiff Cohn provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on March 29, 2023.

**Count VI: Breach of Express Warranty**  
**(By Plaintiffs and the Class)**

200. Plaintiffs incorporate each and every factual allegation set forth above.

201. Plaintiffs bring this cause of action on behalf of themselves and the Class. In the alternative, Plaintiff Zuccaro brings this cause of action on behalf of herself and the Oregon Subclass, and Plaintiff Moody and Plaintiff Cohn bring this cause of action on behalf of themselves



and the California Subclass.

202. Defendant, as the manufacturer, marketer, distributor, supplier, and/or seller of the Products, issued material, written warranties by advertising that the Products had a prevailing market value equal to the regular price displayed on Defendant's website. This was an affirmation of fact about the Products (i.e., a representation about the market value) and a promise relating to the goods.

203. Defendant also issued material, written warranties by representing that the Products were being sold at an advertised discounted price. This was an affirmation of fact about the Products and a promise relating to the goods.

204. These warranties were part of the basis of the bargain and Plaintiffs and members of the class relied on this warranty.

205. In fact, the Products did not have a market value equal to the purported regular prices. And the Products were not actually sold at the advertised discounts. Thus, the warranties were breached.

206. Plaintiff Zuccaro provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on August 10, 2023.

207. Plaintiff Moody provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on March 7, 2023.

208. Plaintiff Cohn provided Defendant with notice of this breach, by mailing a notice letter to Defendant's headquarters, on March 29, 2023.

209. Plaintiffs and the class were injured as a direct and proximate result of Defendant's breach, and this breach was a substantial factor in causing harm, because (a) they would not have purchased the Products if they had known that the warranty was false, (b) they overpaid for the Products because the Products were sold at a price premium due to the warranty, and/or (c) they

did not receive the Products as warranted that they were promised.

**Count VII: Unjust Enrichment**  
**(By Plaintiff Zuccaro and the Oregon Subclass)**

210. Plaintiff Zuccaro incorporates each and every factual allegation set forth in paragraphs 1-90 and 103-110 above.

211. Plaintiff Zuccaro brings this cause of action in the alternative to her Breach of Contract claim (Count V), on behalf of herself and the Oregon Subclass.

212. As alleged in detail above, Defendant's false and misleading advertising caused Plaintiff Zuccaro and the class to purchase the Products and to pay a price premium for these Products.

213. In this way, Defendant received a direct and unjust benefit, at Plaintiff Zuccaro's expense.

214. (In the alternative only), due to Defendant's misrepresentations, its contracts with Plaintiff Zuccaro are void or voidable.

215. Plaintiff Zuccaro and the subclass seek restitution, and in the alternative, rescission.

**VII. Prayer for Relief.**

216. Plaintiffs seek the following relief for herself and the proposed class:

- An order certifying the asserted claims, or issues raised, as a class action;
- A judgment in favor of Plaintiffs and the proposed class;
- Damages, statutory damages, treble damages, and punitive damages where applicable;
- Restitution;
- Rescission;
- Disgorgement, and other just equitable relief;

- Pre- and post-judgment interest;
- An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- Reasonable attorneys' fees and costs, as allowed by law;
- Any additional relief that the Court deems reasonable and just.

**VIII. Jury Trial.**

217. Plaintiffs demand the right to a jury trial on all claims so triable.

Dated: July 16, 2024

Respectfully submitted,

By: *s/ Jonas Jacobson*

Jonas Jacobson (OSB No. 231106)

jonas@dovel.com

Simon Franzini (Cal. Bar No. 287631)\*

simon@dovel.com

Grace Bennett (Cal Bar No. 345948)\*

grace@dovel.com

Dovel & Luner, LLP

201 Santa Monica Blvd., Suite 600

Santa Monica, CA 90401

Tel: (310) 656-7066

*Attorneys for Plaintiffs*

\* Admitted *Pro Hac Vice*

Jonas Jacobson (OSB No. 231106)  
jonas@dovel.com  
Simon Franzini (Cal. Bar No. 287631)\*  
simon@dovel.com  
Grace Bennett (Cal Bar No. 345948)\*  
grace@dovel.com  
Dovel & Luner, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401  
Tel: (310) 656-7066

*Attorneys for Plaintiffs*

\* Admitted *Pro Hac Vice*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JAMIE ZUCCARO, CATHERINE  
MOODY, and ANDREW COHN, each  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

HOT TOPIC, INC.,

Defendant.

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Case No. 3:23-cv-01242-MO

**California Civil Code Section 1780(d) CLRA  
Venue Declaration**

I, Jonas Jacobson, declare as follows:

1. I am a partner in Dovel & Luner, LLP and an attorney licensed to practice in the State of Oregon. I am counsel of record for Plaintiffs in this action.
2. This action was commenced in a county described in California Civil Code Section 1780(d) as a proper place for the trial of the action.
3. Plaintiff Jamie Zuccaro resides in Multnomah County and purchased Defendant's products in Multnomah County.
4. Defendant conducts business in Multnomah County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: July 16, 2024

By: /s/ Jonas Jacobson  
Jonas Jacobson