UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOANNA PACITTI, a minor, by JOSEPH PACITTI and STELLA PACITTI, her parents and guardians	:	CIVIL ACTION NO. 97 CV 2557
vs	:	
MACY'S	:	
and	:	
MACY'S EAST, INC.	:	

C O M P L A I N T

Plaintiff, Joanna Pacitti, a minor, by her parents and guardians, Joseph Pacitti and Stella Pacitti, and through her attorney, Albert C. Oehrle, Esquire, restates and amends this action against Macy's and Macy's East, Inc. originally brought in the Court of Common Pleas of Montgomery County at No. 97-5676 upon a cause of action whereof the following is a statement:

PARTIES

1. The plaintiff Joanna Pacitti, (hereinafter referred to as "Joanna"), is a minor, a twelve year old girl, born October 6, 1984, who resides at 2948 Unruh Street, Philadelphia, Pennsylvania, and who brings this action by her parents and guardians Joseph Pacitti and Stella Pacitti, husband and wife, with whom Joanna resides at 2948 Unruh Street. The defendant Macy's is a business entity, the fictitious or trade name of a corporation which plaintiff believes and therefore avers to be an Ohio corporation, the defendant Macy's East, Inc., the principal place of business of which is in New York. The entity so described conducts business

as "Macy's" at 680 W. DeKalb Pike, King of Prussia, Montgomery County, Pennsylvania and is hereinafter referred to as "Macy's".

JURISDICTION AND VENUE

2. This action is civil in nature involving, exclusive of interest and costs, a sum in excess of One Hundred Thousand ($100,000) Dollars. Every issue of law and fact herein is wholly between the citizens of different states and diversity jurisdiction lies pursuant to 28 U.S.C. 1332. Defendants, Macy's and Macy's East, Inc., are residents of and subject to personal jurisdiction in the Eastern District of Pennsylvania and therefore pursuant to 28 U.S.C. §1391 venue for the within action lies properly in the Eastern District of Pennsylvania.

3. Prior to and during June of 1996, Macy's advertised by an **Official Application** and **Official Rules** a talent search which it was conducting, as follows:

MACY'S SEARCH FOR
BROADWAY'S NEW "ANNIE"

OFFICIAL APPLICATION

> Annie America's most beloved musical and Macy's, the world's largest store, are conducting a talent search for a new "Annie" to star in the 20th Anniversary Broadway production and national tour of the 20th Anniversary Annie.

4. The **Official Application** invited girls between the ages of 7 and 12 to compete at one-day auditions in June at Macy's stores located at Herald Square, New York; Boston, Massachusetts;

Lenox Square, Georgia; Aventura, Florida; and King of Prussia, Pennsylvania, for the right to become the regional "finalist" for the "Annie-Off Final Callback" on August 8, 1996. At the regional auditions, the girls competing for the role were advised by the **Official Application** that they were expected "to sing 'Happy Birthday' and/or 'Tomorrow' from Annie, (belters, please - this is not a soprano role) and to learn a dance routine that will be taught to you". A true and correct copy of the **Official Application** is attached hereto, made part hereof, and marked as Exhibit "A".

5. The **Official Rules** on the reverse side of the **Official Application** provided **inter alia**, that:

> **MACY'S SEARCH FOR**
>
> **BROADWAY'S NEW "ANNIE"**
>
> **OFFICIAL RULES**
>
> * * * *
>
> 2. The "Annie" selected at the "Annie-Off Final Callback" will be required to work with a trained dog. The tour commences Fall 1996, with a Broadway opening tentatively scheduled for Spring 1997, with a post-Broadway tour to follow....
>
> 3. By participating, you agree to follow these Official Rules.... You also agree that Macy's (and/or a Macy's designee) may use your name, likeness, biographical data and/or voice for advertising, promotional activities and/or publicity, whether or not related to the audition and also acknowledge that such use requires neither any further permission nor any compensation....
>
> 4. In order to participate in the audition, you must complete and return the reverse application form, be a U.S. resident between

> the ages of 7 and 12 as of June 2, 1996 and you must be available for the final audition on Thursday, August 8, 1996 in New York City.
>
> * * * *
>
> 6. Participants' parents or legal guardians are responsible for any tax obligations and expenses you may incur (such as the cost of travel or hotel accommodations) for the initial audition....
>
> 7. The audition is subject to all applicable laws and regulations.
>
> 8. All determinations made by the Producers or their designated judges are being made at their sole discretion and each such determination is final.

A true and correct copy of the **Official Rules** is attached hereto, made part hereof, and marked as Exhibit "B".

6. Joanna and her mother, Stella Pacitti, each signed one **Official Application** and submitted it to Macy's intending for Joanna to be a participant in the contest.

7. On June 23, 1996, Joanna entered the competition and participated by singing and dancing in the audition held at Macy's King of Prussia store. She was selected a regional finalist out of hundreds of girls who participated. Subsequently, Joanna was advised by a letter directed to "Parents" that there would be a "semi-finals" to take place between 2:30 - 4:30 p.m. on August 7, 1997 at Nola Studios, 250 W. 54th Street, New York City. The letter enclosed a script for each contestant to prepare for the semi-finals.

8. On August 7, 1996 Joanna participated in the semi-finals and was told that she had made the "finals", to be held between

10:30 a.m. and 12:30 p.m. on August 8, 1996 on the Eighth Floor at Macy's Herald Square store, 34th and Broadway, New York City.

9. On August 8, 1996, at its Herald Square store, the Producers and Macy's announced that Joanna had won out against all the other girls who had participated and that she was to be "Broadway's New 'Annie'".

10. By competing in the contest, Joanna accepted Macy's offer that the winner would be the star of the 20th Anniversary Broadway production and the national tour of the 20th Anniversary "Annie". The resultant announcement of her selection as "Broadway's New 'Annie'" formed an enforceable contract to this effect between Macy's and Joanna.

11. The anticipation of the announcement to be made by Macy's on August 8, 1996 attracted considerable press coverage from all media which Macy's both encouraged and facilitated. The announcement of Joanna's selection as Broadway's New Annie was featured in media coverage throughout the world which prominently identified Macy's involvement in conducting the contest.

12. In due course, from early November, 1996 through February 23, 1997, Joanna played the role of Annie in the national tour of "Annie" as produced by the Producers identified in Macy's **Official Rules** "The Classic Annie Production Limited Partnership."

13. Prior to going on national tour, at the specific behest of Macy's, Joanna appeared at a fashion show at a Macy's store in New York and sang the song "Tomorrow" from the show "Annie". Macy's tendered no compensation to Joanna for her appearance and

performance.

14. During the national tour of several cities:

Houston - 3 weeks

St. Paul - 2 weeks

Chicago - 1 week

Baltimore - 3 weeks

Boston - 2 weeks

Hershey - 1 week

Joanna tendered her best efforts in performing the starring role of "Annie" in over 100 performances, receiving favorable reviews wherever she appeared, and she was acclaimed by many in the production company to be one of the best Annies ever.

15. On February 24, 1997, just before the production reached Broadway for previews at the Martin Beck Theater beginning on March 14 and opening night on March 26, and although the determination on August 8, 1996 at the finals that Joanna was to be "Broadway's New Annie" was stated by Macy's to be a final determination, Joanna received a letter from the Producers' General Manager, Marvin A. Krauss, informing her of his regret "that your services will no longer be needed...and that your last performance is [sic] February 23, 1997."

16. On March 7, 1997, Joanna made a written demand through counsel that Macy's honor its contract for her to star as "Annie" in the Broadway production and to cause her to be reinstated "immediately...in her role as the star of "Annie" in its 20th Anniversary Broadway Production."

17. Despite its receipt of notice of its breach of contract, Macy's has made no written or other response to the letter of March 7, 1997 seeking Joanna's reinstatement.

18. At all times material hereto, by its reference to itself in the **Official Application** as "the world's largest store", and through its enormous public reputation and presence, Macy's represented to Joanna and the other competitors, that notwithstanding that there were Producers of "Annie" making decisions concerning the production, Macy's itself was an entity of such power and influence and one which was in such control of its part of the bargain having to do with the selection of the star of "Annie", that it had the power and control to have the winner of the competition star as Annie on Broadway.

19. Joanna relied on Macy's substantial reputation and on its representations to her and all other girls similarly situated that it was able to bring about the result it advertised in its **Official Application** and **Official Rules**, which was that the winner of the competition would be the star of "Annie" in the 20th Anniversary Production of the play.

20. Nothing in the **Official Application** or **Official Rules** nor any disclosure made by Macy's suggested that:

A. Macy's would recognize no obligation to the girl chosen in its competition to be the star of "Annie" on Broadway;

B. Macy's would have no involvement in seeing to it that the girl so chosen would actually star as Annie on Broadway;

C. Macy's sole involvement had simply been to host the

competition, or

D. Macy's had taken absolutely no steps and would take none whatsoever to assure that the prize of its competition and the announcement made to the winner that she had been selected as Broadway's New Annie would be realized.

21. In fact, Macy's had no such relationship as described in paragraph 18 hereof. Further, the matters set forth in paragraphs 20(a) through (d) were facts which were not disclosed. Although Macy's knew that Joanna and the other girls competing to be Annie might and probably would be justifiably induced in either acting or refraining from acting in the competition had they known the true facts, Macy's did not disclose the true facts to Joanna.

22. These undisclosed facts were misrepresentations by non-disclosure, material and basic to the transaction promoted by Macy's unilateral offer, which all participants including Joanna would reasonably have expected to have been disclosed. Non-disclosure of the true facts amounted to a failure of Macy's to act in good faith and in accordance with reasonable standards of fair dealing.

23. Macy's knew or had reason to know that disclosure of the true state of the facts would correct a basic assumption which Macy's encouraged and expected Joanna to make as to the contents or effect of the **Official Application** and **Official Rules**, the mistake consisting in the assumption that Macy's was able to and would stand behind the contest results and the title it had created and was to bestow on the winner.

24. As a direct and proximate result of Macy's fraudulent conduct, plaintiff has sustained substantial injury and loss including loss of her good name and reputation; loss of goodwill; loss of professional prestige and renown; loss of future earnings.

25. As a direct and proximate result of Macy's fraudulent conduct, plaintiff as sustained negligent, careless, reckless and intentional infliction of emotional distress; mental anguish, humiliation and embarrassment; depression; and various physical injuries resulting therefrom including, but not limited to headaches, sleeplessness, and other like disorders, all of which is to her great emotional and financial damage and loss.

26. As a direct and proximate result of the aforesaid injuries, plaintiff has been and in the future will be required to incur significant expenditures in seeking and paying for medical treatment in an effort to be cured of her said injuries.

27. As a direct and proximate result of the aforesaid injuries, plaintiff has been and in the future may be prevented from attending to her usual and customary occupations and duties, to her financial detriment and loss.

COUNT I FRAUDULENT MISREPRESENTATION

28. The allegations of paragraphs 1 through 27 are hereby incorporated by reference.

29. At all times material to its conduct of the competition, Macy's intended to induce Joanna and the other competitors to agree to participate, and Macy's knew it would be likely that Joanna and other competitors would be induced to agree to compete and rely

upon the strength of the participation of Macy's and its reputation in realizing for the winner of the competition the prize promised to the winner: the starring role of Annie in the Broadway production of the musical.

30. Plaintiff did reasonably rely on the fraudulent misrepresentations of defendant to her considerable detriment.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

COUNT II - EQUITABLE ESTOPPEL

31. The allegations of paragraphs 1 through 30 are hereby incorporated by reference.

32. Because Macy's has and had no authority to perform its bargain and never had such authority, by its fraudulent misrepresentations of the material facts which were that it would have no control no over the role of Annie in the production of "Annie" after the star of the show was chosen on August 8, 1996, and that other forces might intervene to exercise control over the starring role of Annie prior to the show's opening on Broadway, which Macy's represented in the competition to be under its own control, Macy's is estopped from asserting that it should be relieved from liability because of the decision of the Producers to fire Joanna on February 24, and is estopped from denying to Joanna the benefits of what she expected to received when she competed in the contest to be Annie on Broadway.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

COUNT III - FRAUDULENT MISREPRESENTATION

33. The allegations in paragraphs 1 through 32 are hereby incorporated by reference.

34. By its misleading **Official Application** and **Official Rules** which failed to disclose the true state of the facts, and by failing otherwise to disclose the true facts, Macy's intended to persuade hundreds of girls to audition for the part as **BROADWAY'S NEW ANNIE**, so as to achieve favorable publicity and business trade, as well as other valuable consideration for itself.

35. As a result of the fraudulent misrepresentations and non-disclosures of Macy's, the contract which Macy's created with Joanna for her to star as Annie on Broadway was a sham which Macy's concealed from the competitors it never had the ability or intention to perform.

36. Plaintiff believes and therefore avers that Macy's has wilfully failed, neglected, and refused to take any steps since February 24, 1997 to cause her to be reinstated in the title role of Annie in the Broadway production of "Annie".

37. Plaintiff believes that Macy's knew, or had reasonable cause to know, at all times material hereto, and never disclosed to Joanna that it would not be able to bring about the result it had promised in its advertisement.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount which exceeds ONE HUNDRED THOUSAND DOLLARS

COUNT IV IN CONTRACT

38. The allegations of paragraphs 1 through 37 are hereby incorporated by reference.

39. The promotion of the contest to find "Broadway's New Annie" and Joanna's acceptance and entry into the competition created a binding contract between the parties.

40. Defendant has refused and continues to refuse to perform its obligation under the contract which was to provide the prize.

41. Defendant's failure to perform has injured Plaintiff as enumerated herein.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

COUNT V - PUBLIC POLICY TORT CLAIM

42. The allegations of paragraphs 1 through 41 are hereby incorporated by reference.

43. There is a public policy which affords particular protection to children in the work place, as exemplified by Pennsylvania's Child Labor Laws, 43 Pa.C.S. Sec.42 et seq, and by comparable laws in other states and by federal laws, and by regulations adopted in the effort to implement such laws.

44. On February 24, 1997, Joanna was terminated as the star of Annie prior to the show's opening on Broadway. The termination of Joanna was in violation of this public policy.

45. This public policy will be jeopardized if, as here, Macy's can induce children such as Joanna to enter a contest it has sponsored without dealing fairly with her.

46. Exceptions to the requirements of the Child Labor Laws and regulations permitting Joanna to participate in the contest and in a theatrical show at the age of twelve impliedly imposed a special obligation on Macy's to deal fairly and in good faith and to make full disclosure of all material facts, be they negative or positive, pertinent to Macy's goal of free publicity.

47. By leading Joanna to believe that as the winner of the contest, she would star as Annie on Broadway, Macy's violated the policy implicit in these exceptions.

48. Macy's failed to make sure that Joanna understood the evidently limited benefits of winning its contest.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

COUNT VI

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

49. The allegations of paragraphs 1 through 48 are hereby incorporated by reference.

50. Contract performance and formation is subject to the

implied covenant of good faith and fair dealing pursuant to Section 205 of the Restatement (Second) of Contracts.

51. The contest contract between Joanna and Macy's was an express contract for a term and therefore is subject to the implied covenant of good faith and fair dealing.

52. Macy's failure of performance, misrepresentation and fraudulent non-disclosure are all breaches of the aforesaid covenant and caused direct and substantial harm to the Plaintiff as set forth above.

WHEREFORE, plaintiff prays that judgment be entered in her favor and against the defendant for damages, in an amount as yet unliquidated, but in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

COUNT VII - PUNITIVE DAMAGES

53. The allegations of paragraphs 1 through 52 are hereby incorporated by reference.

54. Macy's conduct as described in some or all of the Counts enumerated above was outrageous and recklessly indifferent to the rights of Joanna Pacitti.

55. The conduct of Macy's complained of above is especially egregious and involves acts which were malicious, wanton, reckless, willful and/or oppressive.

56. Because of Macy's conduct, damages should be imposed upon Macy's as punishment for its outrageous conduct and to deter it and others like it from similar conduct in the future.

WHEREFORE, Plaintiff requests Punitive Damages be awarded in her favor and against Defendant in an amount in excess of ONE HUNDRED THOUSAND DOLLARS.

Respectfully submitted:

ALBERT C. OEHRLE S/S

Albert C. Oehrle #09272

Attorney for Plaintiff

macys

MACY'S SEARCH FOR BROADWAY'S NEW "ANNIE"

Official Application

America's most beloved musical and Macy's, the world's largest store, are conducting a talent search for a new "Annie" to star in the 20th Anniversary Broadway production and national tour of

Based on LITTLE ORPHAN ANNIE® Used by permission of Tribune Media Services, Inc.

Macy's invites girls between the ages of 7 and 12, and 4'6" and under to the following auditions in the Macy's stores listed below:

Herald Square, NY	Sunday, June 2	8:00am	34th St. & Broadway
Boston, MA	Sunday, June 9	9:00am	Chauncy & Summer St. Entrance
Lenox Square, GA	Monday, June 17	8:30am	Plaza Level Mall Entrance
Aventura, FL	Wednesday, June 19	8:30am	First Level Mall Entrance
King of Prussia, PA	Sunday, June 23	10:00am	Lower Level Mall Entrance

Participants should bring a completed application form with them to one of the Macy's auditions on the scheduled date at the designated place. Only one parent or legal guardian may accompany each participant. Please be prepared to sing "Happy Birthday" and/or "Tomorrow" from Annie (belters, please — this is not a soprano role) and to learn a dance routine that will be taught to you. No costumes or prepared musical materials are permitted. One finalist from each audition will be selected for the "Annie-Off Final Callback" at Macy's Herald Square in New York City on Thursday, August 8, 1996. Transportation and accommodations to New York City will be provided for the finalist and parent or guardian by The Classic Annie Production Limited Partnership.

Please read the event rules and regulations on the reverse side of this application form. **All forms must be signed by a parent or legal guardian.**

NAME _____ AGE _____

ADDRESS _____

CITY _____

STATE _____ ZIP _____

PHONE (DAY) _____ (EVENING) _____

HEIGHT _____ WEIGHT _____

PARENT OR LEGAL GUARDIAN'S SIGNATURE (not valid unless signed) _____

Is the participant a member of Actors' Equity Association? Yes ☐ No ☐

Please list any stage or performing experience:

_____

_____

_____

(Do not write below this line)

DO NOT WRITE BELOW THIS LINE

EXHIBIT

"A"

MACY'S SEARCH FOR BROADWAY'S NEW "ANNIE"

OFFICIAL RULES

1. All participants must be accompanied by a parent or legal guardian and must bring completed application form to one of the Macy's audition locations on the dates and times listed on the reverse of this form and be assigned to audition. Only one parent or legal guardian may accompany each participant.

2. The "Annie" selected at the "Annie-Off-Final Callback" will be required to work with a trained dog. The tour commences Fall 1996, with a Broadway opening tentatively scheduled for Spring 1997, with a permanent Broadway tour to follow. Parent(s) or guardian(s) will accompany tour children. Additional information on arrangements for the final call-back and show rehearsals and performances will be provided to each regional finalist selected to attend the "Annie-Off Final Callback" audition in New York City.

3. By participating, you agree to follow these Official Rules and you consent to the taking of a photograph, for identification purposes only. You also agree that Macy's (and/or a Macy's designee) may use your name, likeness, biographical data and /or voice for advertising, promotional activities and/or publicity, whether or not related to the audition and also acknowledge that such use requires neither any further permission nor any compensation. Participants who are members of Actors' Equity Association must identify themselves to an event representative as such, and will not be audio or video taped during the audition process. All application forms are the sole property of Macy's and Macy's is not responsible for any lost, destroyed, incomplete, illegible or otherwise deficient or unusable application forms.

4. In order to participate in the audition, you must complete and return the reverse application form, be a U.S. resident, between the ages of 7 and 12 as of June 2, 1996 and you must be available for the final audition on Thursday, August 8, 1996 in New York City.

5. Macy's may require that you verify your date of birth and may require that you provide a certified copy of your birth or baptismal certificate, school records or other document that states your date of birth.

6. Participants' parents or legal guardians are responsible for any tax obligations and expenses you may incur (such as the cost of travel or hotel accommodations) for the initial audition. The Classic Annie Production Limited Partnership (the "Producers") will provide travel and hotel accommodations to finalists selected for the "Annie-Off" call-back in Macy's Herald Square on Thursday, August 8, 1996. In addition, you and your parent or legal guardian are responsible for your own conduct, and hereby release Macy's East, Inc., its affiliates and each of their respective officers, directors, employees, agents, successors and assigns (for purposes of this Paragraphs 6, all included within the term "Macy's") and the Producers and their successors and assigns from any liability to or with regard to the participants and/or her parent or legal guardian with respect to the audition(s).

7. The audition is subject to all applicable laws and regulations.

8. All determinations made by the Producers or their designated judges are being made at their sole discretion and each such determination is final.

macy's

EXHIBIT

"B"