

CHARMING SHOPPES INC
Form SC TO-T/A
May 24, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE TO/A
Amendment No. 2

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

CHARMING SHOPPES, INC.

(Name of Subject Company (Issuer))

COLOMBIA ACQUISITION CORP.

(Offeror)

A Wholly Owned Subsidiary of

ASCENA RETAIL GROUP, INC.

(Parent of Offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

COMMON STOCK, \$0.10 PAR VALUE

(Title of Class of Securities)

161133103

(CUSIP Number of Class of Securities)

David R. Jaffe

President and Chief Executive Officer

Ascena Retail Group, Inc.

Colombia Acquisition Corp.

30 Dunnigan Drive

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Suffern, New York 10901

(845) 369-4500

(Name, address, and telephone numbers of person authorized
to receive notices and communications on behalf of filing persons)

Copies to:

Julie M. Allen, Esq.

Steven L. Kirshenbaum, Esq.

Proskauer Rose LLP

Eleven Times Square

New York, New York 10036

(212) 969-3000

CALCULATION OF FILING FEE

Transaction Valuation
\$896,688,836 (1)

Amount of Filing Fee
\$102,761 (2)

- (1) Estimated for purposes of calculating the filing fee only. This amount was determined by multiplying 121,998,481 shares of Charming Shoppes, Inc. common stock (representing the shares of common stock outstanding, in-the-money options and shares of common stock subject to restricted stock units or other awards, in each case, as of May 10, 2012) by \$7.35 per share, which is the offer price.
- (2) The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 3 for fiscal year 2012, issued September 29, 2011, equals \$114.60 for each \$1,000,000 of the value of the transaction.

- x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:	\$102,761	Filing Party:	Colombia Acquisition Corp. and Ascena Retail Group, Inc.
Form of Registration No.:	Schedule TO-T	Date Filed:	May 15, 2012

- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.
Check the appropriate boxes below to designate any transactions to which the statement relates:

- x Third-party tender offer subject to Rule 14d-1.

- .. Issuer tender offer subject to Rule 13e-4.

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Going-private transaction subject to Rule 13e-3.

Amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer.

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 2 (Amendment No. 2) further amends and supplements the Tender Offer Statement on Schedule TO originally filed on May 15, 2012, as amended and supplemented by Amendment No. 1 filed on May 23, 2012 (together with any amendments and supplements thereto, the Schedule TO), by Ascena Retail Group, Inc., a Delaware corporation (Parent), and Colombia Acquisition Corp., a Pennsylvania corporation and a direct wholly owned subsidiary of Parent (Purchaser), relating to the offer by Purchaser to purchase all of the outstanding shares of common stock, par value \$0.10 per share (the Shares), of Charming Shoppes, Inc., a Pennsylvania corporation (the Company), at a purchase price of \$7.35 per Share, net to the seller in cash, without interest, subject to any required withholding tax, upon the terms and subject to the conditions set forth in the Offer to Purchase dated May 15, 2012 (as amended and supplemented, the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached to the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

Except as otherwise set forth below, the information set forth in the Offer to Purchase remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment No. 2. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Offer to Purchase.

Item 11 of the Schedule TO is hereby amended and supplemented as follows:

Item 11. Additional Information.

The section of the Offer to Purchase entitled Certain Legal Matters; Regulatory Approvals Litigation Related to the Merger is hereby amended and supplemented by adding a new penultimate paragraph to such section as follows:

On May 23, 2012, an Individual and Class Action Complaint captioned *Judith Nadler v. Charming Shoppes, Inc., et al.*, No. 2:12-cv-02838-HB, was filed in the United States District Court for the Eastern District of Pennsylvania (the Nadler Complaint). The Nadler Complaint names as defendants the Company and the members of the Company Board. The Nadler Complaint alleges, among other things, that defendants disseminated a Schedule 14d-9 in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, or engaged in deceptive or manipulative acts or practices. The Nadler Complaint also alleges that the Offer and the Merger are on terms that are fundamentally unfair. The Nadler Complaint seeks injunctive relief, including an order that prohibits defendants from consummating the Offer and Merger, and an award of attorneys' fees and other fees and costs, in addition to other relief. The Company believes the Nadler Complaint lacks merit and intends to contest it vigorously.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: May 24, 2012

COLOMBIA ACQUISITION CORP.

By /s/ David R. Jaffe

Name: David R. Jaffe

Title: President and Chief Executive Officer

ASCENA RETAIL GROUP, INC.

By /s/ David R. Jaffe

Name: David R. Jaffe

Title: President and Chief Executive Officer