

## ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

### *In the Matter of Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp. File No. 062 3112*

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp. (collectively, “respondents” or “Darden”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents, through subsidiaries, own and operate several restaurant chains, including Olive Garden Restaurant, Red Lobster Restaurant, Smokey Bones Restaurant, and Bahama Breeze Restaurant. Respondents advertise, sell, and distribute Darden Gift Cards through their restaurants and Web sites, and third parties. Darden Gift Cards are plastic, stored-value cards, similar in size and shape to credit or debit cards, often branded with one or more of Darden’s restaurant logos. Darden Gift Cards typically can be used to purchase goods or services at any of Darden’s restaurant locations. This matter concerns the respondents’ alleged failure to disclose, or failure to disclose adequately, material terms and conditions of Darden Gift Cards.

The Commission’s complaint alleges that, in the advertising and sale of Darden Gift Cards, respondents have represented, expressly or by implication, that a consumer can redeem a Darden Gift Card for goods or services of an equal value to the monetary amount placed on the card. Respondents have failed to disclose, or failed to disclose adequately, that, after a specified number of consecutive months of non-use (*i.e.*, 15 or 24 months), respondents deduct a \$1.50 fee per month from the value of the Darden Gift Card until it is used again. The proposed complaint alleges that the failure to disclose adequately this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits respondents from advertising or selling Darden Gift Cards without disclosing, clearly and prominently: (a) the *existence* of any expiration date or automatic fees, *in all advertising*, and (b) *all material terms and conditions* of any expiration date or automatic fee, *at the point of sale and prior to purchase*. The effect of this provision is to require respondents to alert consumers to potential fees and expiration dates during advertising, and to fully disclose all relevant details at the point of sale, before consumers purchase the gift cards.

Part I.B. of the proposed order prohibits respondents from advertising or selling Darden Gift Cards without disclosing, clearly and prominently the *existence* of any automatic fee or expiration date *on the front* of the gift card.

Part II of the proposed order prohibits respondents from making any misrepresentation about any material term or condition associated with the Darden Gift Card.

Part III.A. of the proposed order prohibits respondents from collecting or attempting to collect any dormancy fee on any Darden Gift Card activated prior to the date of issuance of the proposed order.

Part III.B. of the proposed order requires respondents, upon issuance of the order, to cause the amount of any fees assessed on a Darden Gift Card prior to the date of issuance of the order to be restored to the card.

Part III.C. of the proposed order requires respondents to provide notice to consumers of the automatic restoration of fees required by Section III.B. This notice must be clearly and prominently disclosed on respondents' websites, including [www.darden.com](http://www.darden.com), [www.dardenrestaurants.com](http://www.dardenrestaurants.com), [www.redlobster.com](http://www.redlobster.com), [www.olivegarden.com](http://www.olivegarden.com), [www.smokeybones.com](http://www.smokeybones.com), and [www.bahamabreeze.com](http://www.bahamabreeze.com).

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondents maintain accounting and sales records for Darden Gift Cards, copies of ads and promotional material that contain representations covered by the proposed order, complaints and refund requests relating to the Darden Gift Cards, and other materials that were relied upon by respondents in complying with the proposed order.

Part V of the proposed order requires respondents to distribute copies of the order to various principals, officers, directors, and managers of respondents as well as to the officers, directors, and managers of any third-party vendor who engages in conduct related to the proposed order.

Part VI of the proposed order requires respondents to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondents to file with the Commission one or more reports detailing compliance with the order.

Part VIII of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.