

Complaint

IN THE MATTER OF

**DARDEN RESTAURANTS, INC., GMRI, INC. AND
DARDEN GC CORPORATION**CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4189; File No. 062 3112
Complaint, May 7, 2007 — Decision, May 7, 2007*

This consent order addresses the respondents' failure to disclose adequately the material terms and conditions of Darden Gift Cards, which can be used at several restaurant chains. The order prohibits respondents from advertising or selling Darden Gift Cards without disclosing, clearly and prominently, the existence and all terms and conditions of any expiration date or automatic fees. The disclosure must also appear on the front of the card. The order also prohibits respondents from making any misrepresentation about any material term or condition associated with the Darden Gift Card, and it prohibits them from collecting or attempting to collect any dormancy fee on any card activated prior to the date of the order. Respondents are required to restore to a card the amount of any fees assessed prior to the date of the order and to provide notice to consumers on respondents' websites of the automatic restoration of fees. The order also requires respondents to maintain certain records relating to Darden Gift Cards and to distribute copies of the order to various respondent personnel as well as to others who engage in conduct related to the order. The respondents must also notify the Commission of any changes in corporate structure that might affect compliance with the order and must file reports with the Commission detailing compliance with the order.

Participants

For the *Commission*: Jonathan M. Kraden, Lucy Morris, and Bevin T. Murphy.

For the *Respondents*: Christine Varney and Sharis Pozen, Hogan & Hartson LLP; and Richard Leighton, Keller & Heckman LLP.

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The Federal Trade Commission, having reason to believe that Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp. (collectively, “respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Darden Restaurants, Inc. (“Darden”), is a Florida corporation that, through its subsidiaries, owns and operates several restaurant chains, including Olive Garden Restaurant, Red Lobster Restaurant, Smokey Bones Restaurant, and Bahama Breeze Restaurant. Darden’s principal office or place of business is located at 5900 Lake Ellenor Drive, Orlando, Florida 32809.

2. Respondent GMRI, Inc., is a Florida corporation with its principal office or place of business located at 5900 Lake Ellenor Drive, Orlando, Florida 32809.

3. Respondent Darden GC Corp. is a Colorado corporation with its principal office or place of business located at 5900 Lake Ellenor Drive, Orlando, Florida 32809.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Since at least 2001, respondents have advertised, offered for sale, sold, and distributed gift cards through Darden’s restaurants and Web sites, and third parties. Respondents have also advertised their gift cards in television and radio advertisements.

6. Respondents’ 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. Respondents’ gift

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cards typically can be used to purchase goods or services at any of Darden's restaurant locations.

7. Respondents have represented that consumers can redeem respondents' gift cards for goods or services of an equal value to the monetary amount placed on the cards. Respondents have promoted their gift cards as Aperfect for any budget — in amounts from \$5 to \$250." Respondents have sold their gift cards in specific denominations for exact amounts (*e.g.*, a \$25 Olive Garden Gift Card costs \$25, etc.), and respondents' gift cards are often branded with monetary amounts on the front of the cards. Additionally, respondents have claimed that their gift cards can be used like gift certificates, which typically are redeemable for the monetary amount specified on the certificates.

8. In numerous instances, respondents have applied a fee that depletes the value of their gift cards over time and, in some instances, renders the cards worthless. For gift cards sold prior to February 2004, after 15 consecutive months of non-use, respondents deducted a monthly fee of \$1.50 (hereinafter, "dormancy fee" or "fee") until the consumer used the card again. For gift cards sold after February 2004, respondents deducted the fee after 24 consecutive months of non-use.

9. In numerous instances, respondents have failed to disclose or failed to disclose adequately the dormancy fee by, among other practices:

- a. Disclosing the dormancy fee in small print (approximately five point font) on the back of the gift card, obscured by miscellaneous other information (*see Attachment A*);
- b. Marketing a transparent (or clear-colored) Red Lobster Gift Card with a red lobster design on the front of the card that further obscures the dormancy fee disclosure on the back (*see Attachment B*);

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- c. Marketing their gift cards in Darden's restaurants and failing to direct consumers' attention to the dormancy fee disclosure on the back of their gift cards or otherwise notifying consumers of the dormancy fee. For example, respondents provide restaurant patrons with drink coasters and table tents that operate as gift card order forms. Consumers fill in the forms with the quantity and dollar amount of the gift cards they wish to purchase, and the server then adds the charge to the consumer's restaurant bill. In numerous instances, these materials do not contain any disclosure about the card's dormancy fees (*see Attachment C*); and
- d. Marketing their gift cards on Darden's Web sites, i.e., Darden.com, Olivegarden.com, Redlobster.com, Smokeybones.com, and Bahamabreeze.com, without disclosing to consumers before purchase that a dormancy fee may apply to the card.

10. In numerous instances, consumers have not learned of the fee until they attempted to use respondents' gift cards and discovered that the cards held little or no remaining value. Some consumers have contacted respondents to request reimbursement of the amounts lost as a result of the fee, and respondents have provided some amount or form of reimbursement.

11. In the advertising and sale of Darden's gift cards, respondents have represented, expressly or by implication, that consumers have the right to redeem their gift cards for goods or services of an equal value to the monetary amount placed on the cards. Respondents have failed to disclose, or have failed to disclose adequately, that, after a specified number of consecutive months of non-use (*i.e.*, 15 or 24 consecutive months), respondents deduct a \$1.50 fee per month from the value of their gift cards until they are used again. This fact would be material to consumers in their purchase or use of respondents' gift cards. The

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failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

12. The acts and practices of respondents as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventh day of May, 2007, has issued this complaint against respondents.

By the Commission.

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Complaint Exhibits

Attachment A



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This gift card is issued by and represents an obligation of Darden GC Corp. (DGC). Each time you use it, we'll deduct that amount from the balance until you've used the full balance of the card. (1) Except where required by law, the card is not redeemable for cash in our restaurants. (2) We can't replace it if it's lost or stolen. (3) Except in California and where prohibited by law, if you don't use your card for a 24-month period, a \$1.50 monthly maintenance fee will be deducted from the balance until you use it again. (4) It may be used at any Red Lobster, Bahama Breeze or Siusley House restaurant (U.S. only). (5) DGC approval required to advertise this card.

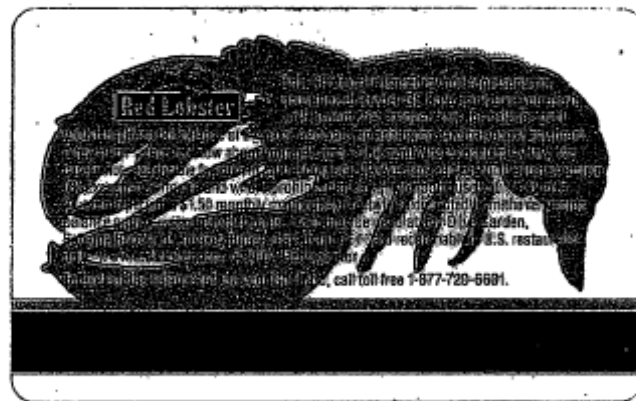
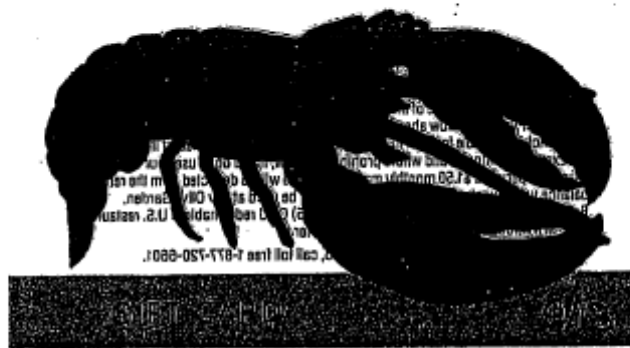
To find out the balance of your Gift Card, call toll free 1-877-230-4120.

www.olivegarden.com

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Attachment B



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Attachment C

**The Perfect Gift for
Moms, Dads & Grads****Red Lobster Gift Cards**
For the special people in your life.

See reverse to order today

**Give the gift
of great seafood!**

Please complete the details below and hand this
to your server or bartender. We're happy to add
the charge to your check... It's that easy.

Gift Cards:

Available in amounts from \$5 to \$250

Quantity	\$ Amount

Red LobsterVisit us at www.redlobster.com

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent DARDEN RESTAURANTS, INC. is a Florida corporation with its principal office or place of business at 5900 Lake Ellenor Drive, Orlando, FL 32809.

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1.b. Respondent GMRI, INC. is a Florida corporation with its principal office or place of business at 5900 Lake Ellenor Drive, Orlando, FL 32809.

1.c. Respondent DARDEN GC CORP is a Colorado corporation with its principal office or place of business at 5900 Lake Ellenor Drive, Orlando, FL 32809.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Clearly and prominently” shall mean as follows:
 - (a) In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be

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presented prior to the consumer incurring any financial obligation.

- (B) In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on each page where a gift card is advertised, promoted, mentioned, or depicted.
- (C) On a product label or gift card, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- (D) The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

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4. Unless otherwise specified, “respondents” shall mean Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp., corporations, their successors and assigns, and their officers, agents, representatives, and employees.

5. “Darden Gift Card” shall mean any payment device: (a) issued by, or on behalf of, respondents or their successors and assigns; (b) that can be used to purchase goods or services at a Darden restaurant location or any other restaurant, store, or Web site operated by respondents or their successors and assigns; (c) issued in a specified monetary amount; (d) that may, or may not, be increased in value or reloaded; and (e) for which cash or other value or consideration was given to respondents.

6. “Covered Fee” shall mean any fee or surcharge that is assessed automatically by respondents or their successors and assigns, following activation of any Darden Gift Card, and that decreases the value of the gift card, including but not limited to any dormancy, maintenance, inactivity, monthly, balance inquiry, or other fees assessed automatically by respondents, their successors or assigns. *Provided, however*, that this definition shall not apply to any replacement fee for any lost or stolen Darden Gift Card.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution, in or affecting commerce, of any Darden Gift Card, shall not fail to disclose clearly and prominently:

- A. the existence of any expiration date or Covered Fee associated with the Darden Gift Card; *provided, however*, that, at the point of sale, prior to purchase, respondents shall not fail to disclose clearly and prominently all of the material terms and conditions of any expiration date or Covered Fee associated with the Darden Gift Card; and

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- B. on the front of each Darden Gift Card, the existence of any expiration date or Covered Fee associated with the Darden Gift Card.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution, in or affecting commerce, of any Darden Gift Card, shall not misrepresent, in any manner, expressly or by implication, any material term or condition of the Darden Gift Card.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, shall:

- A. Not collect or attempt to collect any Covered Fee on any Darden Gift Card activated prior to the date of issuance of this order;
- B. Upon issuance of this order, cause the amount of any Covered Fee that was assessed on a Darden Gift Card prior to the date of issuance of this order to be restored to such Darden Gift Card; and
- C. For a period of two (2) years after the date of issuance of this order, provide notice to consumers of the restoration of fees required by Section III.B. of this order. Such notice shall be clearly and prominently disclosed on respondents' websites, including www.darden.com, www.darden-restaurants.com, www.redlobster.com, www.olivegarden.com, www.smokeybones.com, and www.bahamabreeze.com.

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IV.

IT IS FURTHER ORDERED that respondents Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp., and their successors and assigns, shall, for five (5) years after the date of issuance of this order, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution, in or affecting commerce, of any Darden Gift Card, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. Accounting records that reflect the cost of Darden Gift Cards sold, revenues generated, and the disbursement of such revenues;
- B. Records documenting the sales figures and unit sales figures for the Darden Gift Card; the total amount of any and all Covered Fees that have been deducted from Darden Gift Cards; and the total number of Darden Gift Cards from which a fee was deducted;
- C. Records maintained in the ordinary course of business reflecting during their employment: the name, physical address, and telephone number of each person employed by respondents, and their successors and assigns, including as an independent contractor, with responsibilities relating to compliance with this order; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination; if applicable;
- D. Complaints and refund requests relating to the Darden Gift Card (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

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- E. Copies of all advertisements or other marketing materials relating to the Darden Gift Card;
- F. Representative copies of all versions of the Darden Gift Card; and
- G. All other records and documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated or which in any way relate to the requirements, provisions or terms of this order, and all reports submitted to the FTC pursuant to this order.

V.

IT IS FURTHER ORDERED that respondents Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp., and their successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers who engage in conduct related to the subject matter of the order, and to the officers, directors, and managers of any third-party vendor who engages in conduct related to the subject matter of the order, and shall secure from each such person, within thirty (30) days of delivery, a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within five (5) days after the date of service of this order, and to future personnel within ten (10) days after their assuming their responsibilities.

VI.

IT IS FURTHER ORDERED that respondents Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in any of the corporations that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other

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action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondents Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp., and their successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on May 7, 2027, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and

Analysis to Aid Public Comment

- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF PROPOSED CONSENT ORDER TO AID
PUBLIC COMMENT**

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

Analysis to Aid Public Comment

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.

Analysis to Aid Public Comment

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, www.dardenrestaurants.com, www.redlobster.com, www.olivegarden.com, www.smokeybones.com, and 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.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**ACTAVIS GROUP, HF. AND ABRIKA
PHARMACEUTICALS, INC.**

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4190; File No. 071 0063
Complaint, May 18, 2007 — Decision, May 18, 2007

This consent order seeks to remedy the anticompetitive effects of the acquisition of Abrika Pharmaceuticals, Inc., by Actavis Group, hf. Both respondents are engaged in the research, development, manufacture, and sale of generic pharmaceutical products, and they are the only two companies selling generic isradipine capsules in the United States. The order requires the respondents to assign and divest the Abrika rights and assets necessary to manufacture and market generic isradipine capsules to Cobalt Laboratories, Inc., the U.S. subsidiary of Arrow Group, or to another Commission-approved acquirer. As part of the divestiture, Abrika will transfer its supply arrangement to Cobalt. Actavis and Abrika will transfer all confidential business information related to Abrika's isradipine product to Cobalt. Finally, Actavis and Abrika will provide technical assistance to Cobalt to allow it to manufacture isradipine in substantially the same manner and quality employed or achieved by Abrika. The order also requires Actavis and Abrika to file reports with the Commission periodically until the divestitures and transfers are accomplished.

Participants

For the *Commission*: Amy S. Posner and Kari A. Wallace.

For the *Respondents*: John F. Collins, Dewey Ballantine LLP;
and Cecil S. Chung and Shirley Z. Johnson, Greenberg Traurig
LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade