



ALERT

For Clients and Friends of DREHER LANGER & TOMKIES L.L.P.
April 4, 2007

DARDEN RESTAURANTS SETTLES WITH FTC OVER DECEPTIVE GIFT CARD PRACTICES

On April 3, 2007, Darden Restaurants, the owner of Red Lobster, Olive Garden, Smokey Bones and Bahama Breeze restaurants, reached a settlement with the Federal Trade Commission that required Darden to restore dormancy fees that it deducted from consumer's gift cards and to disclose dormancy fees and expiration dates for future gift card sales. The FTC charged that Darden committed deceptive practices in failing to adequately disclose the dormancy fees and expiration dates that may affect the value of the gift cards.

Although Darden stopped charging dormancy fees as of October 2006, it previously advertised its gift cards to consumers as redeemable at restaurants for the full monetary value of the cards. According to the FTC, Darden did not adequately inform consumers of the dormancy fees because disclosures allegedly were either absent or obscured by other information on the cards. The FTC alleged that many consumers were not aware of the dormancy fees until they attempted to use the gift cards and then realized that these fees depleted the value of the gift cards.

In the future, Darden will be required to disclose prominently all dormancy fees or expiration dates in advertising, at the point of sale and on the gift cards themselves. Furthermore, the settlement prohibits the company from collecting any fees on gift cards that were activated before FTC approval of the settlement order. The Darden settlement is subject to public comment for 30 days before the FTC decides whether to make it final.

This settlement emphasizes the need to consider the "adequacy" of disclosures in terms of location, prominence, relation to other material, etc., especially where fees and terms may deplete the value of a consumer's gift card. The FTC entered into a similar settlement with Kmart in March of 2007. Federal regulators continue to scrutinize fee and expiration date disclosures. □

✧ Michael Tomkies and Kathleen Manley

Darrell L. Dreher
ddreher@dtlaw.com

Michael C. Tomkies
mtomkies@dtlaw.com

Margaret M. Stolar
mstolar@dtlaw.com

Robin R. De Leo
robin@dreher-la.com

Charles V. Gall
cgall@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

Kathleen L. Manley
kmanley@dtlaw.com

Robert J. Kapitan
r.kapitan@worldnet.att.net

Vanessa A. Nelson
vnelson@dtlaw.com

DREHER LANGER & TOMKIES L.L.P.

Attorneys at Law

2250 Huntington Center, 41 S. High Street
Columbus, Ohio 43215

Telephone: (614) 628-8000 / Facsimile: (614) 628-1600
www.dtlaw.com

Jeffrey I. Langer
jlanger@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

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