

FILED

10 OCT -6 PM 3:00

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *NAB* DEPUTY

1 Gregory S. Markow (SBN 216748)
Joshua Sonné (SBN 229673)
2 HECHT SOLBERG ROBINSON GOLDBERG BAGLEY LLP
600 West Broadway, 8th Floor
3 San Diego, California 92101
Telephone: (619) 239-3444
4 Facsimile: (619) 232-6828

5 Belinda J. Scrimenti (not admitted in California)
Scott T. Lonardo (not admitted in California)
6 PATTISHALL, MCAULIFFE,
NEWBURY, HILLIARD & GERALDSON LLP
7 311 South Wacker Drive
Suite 5000
8 Chicago, IL 60606
(312) 554-8000

9 Attorneys for Plaintiff

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 DARDEN CONCEPTS, INC. and
14 GMRI, INC.,
15 Plaintiffs,
16 vs.
17 BRIAD RESTAURANT GROUP, L.L.C. and
18 BRIAD RESTAURANT GROUP, INC.,
19 Defendants.

Case No.: **10 CV 2077 IEG** **POR**
COMPLAINT FOR TRADEMARK
INFRINGEMENT; FEDERAL UNFAIR
COMPETITION; FEDERAL TRADEMARK
DILUTION; CALIFORNIA UNFAIR
COMPETITION AND TRADEMARK
DILUTION
JURY DEMANDED

20 COMPLAINT

21 Plaintiffs Darden Concepts, Inc. and GMRI, Inc. for their Complaint state as follows:

22 PARTIES

23 1. Plaintiff Darden Concepts, Inc. ("Darden Concepts") is a Florida corporation
24 with its principal place of business located at 1000 Darden Center Drive, Orlando, FL 32837.
25 Darden Concepts is the owner of all right, title and interest in and to trademarks, service marks,

ORIGINAL

1 and subsidiary rights used by restaurant chains operated by its affiliated companies, including
2 the Olive Garden and Red Lobster. Darden Concepts is an indirect wholly owned subsidiary of
3 Darden Restaurants, Inc., a Florida corporation with its principal place of business located at
4 1000 Darden Center Drive, Orlando, FL 32837.

5 2. Plaintiff GMRI, Inc. ("GMRI") is a Florida corporation with its principal place
6 of business located at 1000 Darden Center Drive, Orlando, FL 32837. GMRI operates Olive
7 Garden and Red Lobster Restaurants in various locales, including in San Diego, California,
8 under the house marks "OLIVE GARDEN" and "RED LOBSTER," as well as under numerous
9 other trademarks, service marks, and subsidiary rights pursuant to license from Darden
10 Concepts. GMRI is a wholly owned subsidiary of Darden Restaurants, Inc. and is a sister,
11 affiliated company to Plaintiff Darden Concepts. (Darden Concepts and its licensee GMRI are
12 hereinafter individually and/or collectively referred to as "Darden.")
13

14 3. Defendant Briad Restaurant Group, L.L.C. is a New Jersey limited liability
15 company with a principal place of business located at 78 Okner Parkway, Livingston, NJ
16 07039. Defendant Briad Restaurant Group, Inc. is a New Jersey corporation with a principal
17 place of business located at 78 Okner Parkway, Livingston, NJ 07039. Upon information and
18 belief, Defendant Briad Restaurant Group, LLC is the franchisee of TGI Friday's Inc., and
19 Defendant Briad Restaurant Group, Inc. is an affiliated company, one or both of which are
20 authorized to operate TGI Friday's restaurants. (Defendants are individually and/or collectively
21 referred to herein as "Briad" or "Defendants"). Briad operates the franchised TGI Friday's
22 restaurants in California, Nevada, Arizona and New Mexico, and in New York, New Jersey and
23 Connecticut. Briad conducts advertising on behalf of all Briad-owned restaurants that operate
24 under the TGI Friday's marks as a TGI Friday's franchisee.
25

JURISDICTION AND VENUE

1
2 4. These claims arise under the Federal Trademark Act of 1946 as amended, Title
3 15, U.S.C. § 1051 *et seq.*; Calif. Business and Professions Code, §§14247 and 17200, *et seq*
4 and the common law of the State of California. This Court has jurisdiction of this matter
5 pursuant to Title 15 U.S.C. § 1121; Title 28 U.S.C. §§ 1331, 1332, and 1338(a) and (b), and
6 principles of pendent jurisdiction. The amount in controversy exceeds the sum or amount of
7 \$75,000 exclusive of interest or costs.

8
9 5. Defendants operate their restaurants throughout the western United States,
10 including in California and in this District. Defendants are accordingly transacting business in
11 the State of California and in this District.

12 6. Venue is proper in this District under Title 28 U.S.C. § 1391(b) and (c).

13
14 **PLAINTIFFS AND THEIR MARKS**

15 (Applicable to and Incorporated in all Counts)

16 7. In connection with a regular, periodic promotion to advertise menu items at the
17 Olive Garden Restaurants, Darden has extensively used, since at least as early as February 27,
18 1995, and continues to use on a regular, periodic basis, the mark "NEVER ENDING PASTA
19 BOWL" (the "NEVER ENDING PASTA BOWL Mark" or "Mark") for an all-you-can-eat
20 selection of pasta menu items and a restaurant meal promotion. Darden Concepts is the owner
21 of all right, title and interest in and to the NEVER ENDING PASTA BOWL Mark.
22

23 8. Darden Concepts is the owner of Federal Trademark Registration Nos.
24 2,272,416 and 3,302,655 for "NEVER ENDING PASTA BOWL" for various restaurant menu
25 items and restaurant services, which issued on August 24, 1999 and October 2, 2007

1 respectively, based on first use of the mark on February 27, 1995. Copies of the registration
2 certificates are attached hereto as Exhibits 1(a) and 1(b).

3 9. Darden has extensively and widely marketed its NEVER ENDING PASTA
4 BOWL menu promotion throughout the United States, including in this District, under the
5 NEVER ENDING PASTA BOWL Mark. The promotion has proven to be very popular and is
6 one of the most successful menu promotions offered at Olive Garden restaurants. A storyboard
7 for a sample recent television advertisement is attached hereto as Exhibit 2. A copy of a
8 website printout for the promotion is attached hereto as Exhibit 3. A copy of a menu/table tent
9 for the promotion is attached hereto as Exhibit 4.
10

11 10. Darden is well known as a leader in the casual dining industry and as the
12 source of a variety of casual dining restaurants. It is the largest full-service restaurant company
13 in the United States, in that nearly all of its restaurants are company-owned, rather than being
14 franchised. Darden currently owns and operates over 1800 restaurants in the United States and
15 Canada, including 723 Olive Garden and 666 Red Lobster restaurants in the United States.
16 Darden's Olive Garden is the largest full service Italian food restaurant chain in the world and
17 its Red Lobster restaurant chain is the world's leading seafood restaurant company. In addition
18 to Olive Garden and Red Lobster, Darden owns and operates the LongHorn Steakhouse,
19 Bahama Breeze, The Capital Grille, and Seasons 52 restaurant chains.
20

21 11. Darden is one of the largest advertisers in the United States, and one of the
22 largest advertisers in the casual dining industry. During periodic menu promotions, such as the
23 NEVER ENDING PASTA BOWL promotion for Olive Garden, Darden typically runs a
24 national television advertising campaign for seven weeks in the more than 200 top television
25

1 markets, supplemented by radio and print advertising. For example, since the first use of the
2 NEVER ENDING PASTA BOWL Mark in February 27, 1995, advertisements were broadcast
3 nationally for a collective total of 130 weeks, and the spots aired more than 36,000 times.
4 Media analysis reflects that over 95% of the United States adult population (ages 18-49) has
5 viewed the advertisements, for a total of over 123 million persons in this age group alone.

6
7 12. Restaurant services and related menu items offered under Darden's various
8 trademarks and service marks, including the NEVER ENDING PASTA BOWL Mark, have
9 come to be known to consumers and the public throughout the United States, including this
10 District, as representing casual dining restaurant services of uncommon quality and service, at
11 affordable prices. As a result, Darden's marks, including the NEVER ENDING PASTA BOWL
12 Mark, and the goodwill associated therewith, are of inestimable value to Darden.

13
14 13. The NEVER ENDING PASTA BOWL Mark is a strong mark, as evidenced by
15 its exclusive position as the only "NEVER ENDING" mark existing on the Federal trademark
16 registers for restaurant services, restaurant menu items, or similar restaurant food products, and
17 due to the otherwise limited number of marks incorporating the term "NEVER ENDING." By
18 virtue of this strength, the wide renown of the NEVER ENDING PASTA BOWL Mark and
19 menu promotion, and the wide geographic and extensive sales of restaurant services in
20 conjunction with it, the NEVER ENDING PASTA BOWL Mark is distinctive, and has
21 developed significance in the minds of consumers and the public as designating a restaurant
22 menu promotion originating with Darden and/or one or more of its family of affiliated
23 restaurants, including Olive Garden.

24
25 ///

DEFENDANTS' INFRINGING ACTS

(Applicable to and Incorporated in all Counts)

1
2
3 14. Nearly 15 years after Darden's adoption and continuous use of the NEVER
4 ENDING PASTA BOWL Mark for restaurant menu items and signature menu promotions, and
5 long after issuance of Darden Concept's NEVER ENDING PASTA BOWL federal registrations,
6 Defendants adopted, and beginning on or about August 30, 2010, began to promote, sell and
7 offer for sale an all-you-can-eat restaurant menu promotion under the mark "NEVER ENDING
8 SHRIMP." A script reflecting screen shots and audio text from Defendants' television
9 commercial featuring the NEVER ENDING SHRIMP mark is attached hereto as Exhibit 5.
10

11 15. Immediately upon learning of the promotion, on or about September 21, 2010,
12 Darden first notified Briad's franchisor, TGI Friday's Inc., of its objection to the use of the
13 NEVER ENDING SHRIMP mark and demanded that all use of the mark be halted. Darden was
14 advised by TGI Friday's Inc. that the promotion was not a national one run by it, but rather a test
15 promotion run by its franchisee, Briad, in the San Diego market. Upon information and belief,
16 TGI Friday's relayed Darden's objections to use of the mark to Briad. In response, through
17 counsel for TGI Friday's, Briad advised that it would not halt use of the mark.
18

19 16. On or about September 22, 2010, by both voicemail to Briad's in-house counsel,
20 and in writing, Darden advised Defendants directly of its objection to use of the NEVER
21 ENDING SHRIMP mark and demanded that Briad halt all use of the mark. A copy of the cease
22 and desist letter is attached hereto as Exhibit 6. Briad failed to respond by the September 29,
23 2010, deadline indicated in the letter. In subsequent communications, on or about October 1,
24 2010, Briad advised that it would "not proceed with the television advertising campaign
25 scheduled to begin on Monday, October 4 or thereafter based on the 'never ending' theme."

1 Briad, however, failed to advise Darden as to the specifics of the purportedly halted promotion,
2 failed to respond fully to the demands of the cease and desist letter, and has provided no
3 commitment to halt other non-television uses of the NEVER ENDING SHRIMP mark and/or to
4 agree never to use the term NEVER ENDING in connection with a future mark or promotion.

5
6 17. On Tuesday, October 5, 2010, Darden learned that Defendants were still actively
7 promoting their NEVER ENDING SHRIMP promotion inside the Briad-owned TGI Friday's
8 restaurants in the San Diego area. Two photographs of signage taken on October 5, 2010
9 featuring the mark are attached hereto as Exhibits 7-8. A photograph of a menu insert featuring
10 the mark and promotion provided at the Briad TGI Friday's restaurants is attached hereto as
11 Exhibit 9. Moreover, servers in the restaurants actively promoted to customers the NEVER
12 ENDING SHRIMP menu promotion. Accordingly, Defendants have continued sales under the
13 NEVER ENDING SHRIMP mark, notwithstanding, not only receipt of the cease and desist
14 letter, but also assurances to Darden that advertising had been halted.

15
16 18. During an approximate 23 days running to October 1, 2010, Defendants spent
17 over \$125,000 for television spots for their NEVER ENDING SHRIMP promotion, which ran in
18 the San Diego television market over 630 times.

19
20 19. Defendants' actions were taken, notwithstanding Defendants' full knowledge of
21 Darden's ownership of the well known Olive Garden restaurant chain and its NEVER ENDING
22 PASTA BOWL promotion, and their full knowledge of Darden's ownership of the RED
23 LOBSTER restaurant chain, which regularly serves shrimp and periodically runs all-you-can-eat
24 shrimp promotions.

25 ///

1 20. Defendants have willfully attempted to confuse and mislead consumers and the
2 public as to the affiliation and association of their franchised TGI Friday's restaurants with
3 Darden's family of restaurants by combining the dominant elements of the registered trademark
4 of one Darden restaurant concept (Olive Garden's NEVER ENDING PASTA BOWL Mark) with
5 a principal menu promotion item of a second Darden restaurant concept (Red Lobster's
6 promotion for all-you-can-eat shrimp).

7
8 21. Such uses of the Defendants' NEVER ENDING SHRIMP mark are made
9 without Darden's consent. Defendants have caused Briad's goods and services to be offered and
10 provided in interstate commerce and have caused their advertising and promotional materials
11 featuring the Defendants' NEVER ENDING SHRIMP mark to enter into interstate commerce
12 and/or be transported or used in commerce.

13
14 22. The activities of Defendants complained of herein were and are done willfully,
15 with full knowledge that such conduct was and is in direct contravention of Darden's rights in its
16 NEVER ENDING PASTA BOWL Mark and other proprietary rights, and is likely to confuse,
17 mislead and deceive consumers and the public to believe that the Defendants' TGI Friday's
18 restaurants, and TGI Friday's restaurants nationwide, are affiliated, associated, or connected with
19 Darden or its Olive Garden and Red Lobster restaurants.

20
21 23. By using the Defendants' NEVER ENDING SHRIMP mark, Defendants have
22 falsely attempted to associate their TGI Friday's franchised restaurants with the Darden family of
23 restaurants. The potential for confusion between Darden's family of casual dining restaurants and
24 TGI Friday's casual dining restaurants is further exacerbated because Defendants' actions have
25 the effect of confusing Darden's Olive Garden restaurants with, not only Defendants' franchised

1 TGI Friday's locations, but also with all of the nationwide TGI Friday's restaurants. The
2 promotion has the further effect of diluting the value of Darden's NEVER ENDING PASTA
3 BOWL mark by using it for a different food item offered in a promotion by Darden's Red Lobster
4 restaurants.

5 24. Defendants are not licensed by Darden and at all relevant times were not
6 authorized by Darden or any authorized agent of Darden to promote, sell, or offer for sale its
7 services under the Defendants' NEVER ENDING SHRIMP mark. Unless enjoined by this Court
8 Defendants may continue such use of its infringing NEVER ENDING SHRIMP mark.
9

10 **FIRST CAUSE OF ACTION**

11 (Federal Service Mark Infringement)

12 [15 U.S.C. § 1114(1)]

13 25. Darden Concepts repeats and realleges all of the allegations contained in
14 Paragraphs 1 - 24 of this Complaint as though the same were fully written herein.

15 26. Darden Concepts' Registration Nos. 2,272,416 and 3,302,655 for "NEVER
16 ENDING PASTA BOWL" are valid, subsisting, and in full force and effect, and the NEVER
17 ENDING PASTA BOWL Mark is widely used by Darden. Registration No. 2,272,416 is
18 incontestable in accordance with 15 U.S.C. §1065, and is "conclusive evidence of the validity
19 of the registered mark and of the registration of the mark, of the registrant's ownership of the
20 mark, and of the registrant's exclusive right to use the registered mark in commerce" in
21 accordance with 15 U.S.C. §1115(b).
22

23 27. By virtue of the wide renown of the NEVER ENDING PASTA BOWL Mark
24 and wide geographic promotion and use of Darden's services under it, the NEVER ENDING
25

1 PASTA BOWL Mark has developed significance in the minds of consumers and the public, and
2 casual dining restaurant services offered under the Mark are immediately identified with Darden
3 and its family of restaurants, including Olive Garden.

4 28. The unauthorized use by Defendants of their NEVER ENDING SHRIMP mark
5 in the sale and promotion of casual dining restaurant services and menu items, reproduces,
6 counterfeits, copies, colorably imitates, and constitutes infringement of the federally registered
7 NEVER ENDING PASTA BOWL Mark and is likely to cause confusion and mistake in the
8 minds of consumers and the public as to the source or origin of the goods and services in
9 violation of Title 15 U.S.C. § 1114(1).
10

11 29. The activities of Defendants complained of herein constitute willful and
12 intentional infringement of the NEVER ENDING PASTA BOWL Mark in total disregard of
13 Darden's proprietary rights, and were commenced in spite of Defendants' knowledge that the use
14 of the NEVER ENDING PASTA BOWL Mark, or any reproduction, counterfeit, copy or a
15 colorable imitation thereof, including Defendants' NEVER ENDING SHRIMP mark, was and is
16 in direct contravention of Darden Concepts' rights.
17

18 30. Darden has no adequate remedy at law. The said conduct of Defendants has
19 caused and, if not enjoined, will continue to cause, irreparable damage to the rights of Darden
20 Concepts in the registered NEVER ENDING PASTA BOWL Mark and to the business,
21 reputation, and goodwill of Darden. Darden's damages are not yet determined.
22

23 ///

24 ///

SECOND CAUSE OF ACTION

(Federal False Designation of Origin and False Description)
[15 U.S.C. § 1125(a)]

1
2
3 31. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
4 of this Complaint as though the same were fully written herein.
5

6 32. The NEVER ENDING PASTA BOWL Mark, as set forth in the preceding
7 paragraphs hereof, is inherently distinctive and/or has developed secondary meaning. The Mark
8 has been promoted throughout the United States for restaurant all-you-can-eat menu promotions,
9 and is well known to consumers and the public, which associate and identify the NEVER
10 ENDING PASTA BOWL Mark with Darden and/or its family of restaurants, including Olive
11 Garden.
12

13 33. Defendants' aforementioned conduct in the promotion, sale, and offering for sale
14 of casual dining restaurant services and restaurant menu items in conjunction with Defendants'
15 NEVER ENDING SHRIMP mark is likely to confuse, mislead and deceive casual dining
16 consumers and the public. Such action constitutes false designation of origin or sponsorship and
17 tends falsely to represent that Defendants and their goods and services, as well as that of their
18 franchisor, TGI Friday's, Inc., originate from Darden and/or its family of restaurants. Defendants'
19 conduct is likely to cause said persons to believe that Defendants themselves, the Briad-owned
20 TGI Friday's restaurants, and the other TGI Friday's restaurants nationwide owned or franchised
21 by TGI Friday's Inc., have been sponsored, approved, authorized, or licensed by Darden or are in
22 some way affiliated, associated or connected with Darden and/or its family of restaurants, all in
23 violation of Title 15 U.S.C. § 1125(a).
24

25 ///

1 34. Defendants' actions were done willfully with full knowledge of the falsity of
2 such designation of origin or sponsorship and false representation, and with the express intent to
3 cause confusion and to mislead and deceive consumers and the public, and thus trade on the
4 valuable goodwill in Darden's NEVER ENDING PASTA BOWL Mark.

5 35. Darden has no adequate remedy at law. The conduct of Defendants described
6 above has caused and, if not enjoined, will continue to cause, irreparable damage to the rights of
7 Darden in its NEVER ENDING PASTA BOWL Mark, and to the business, reputation and
8 goodwill of Darden and its family of restaurants. Darden's damages are not yet determined.
9

10 **THIRD CAUSE OF ACTION**

11 (Federal False Designation of Origin and False Description)
12 [15 U.S.C. § 1125(a)]

13 36. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
14 of this Complaint as though the same were fully written herein.

15 37. The NEVER ENDING PASTA BOWL Mark, as set forth in the preceding
16 paragraphs hereof, is inherently distinctive and/or has developed secondary meaning. The Mark
17 has been promoted throughout the United States, and is well known to consumers and the public,
18 which associate and identify the NEVER ENDING PASTA BOWL all-you-can-eat promotion
19 with Darden and/or its family of restaurants, including Olive Garden.
20

21 38. As set forth in preceding paragraphs hereof, Darden periodically promotes all-
22 you-can-eat shrimp menu items at its Red Lobster restaurants. Defendants commenced their
23 NEVER ENDING SHRIMP promotion near the same time as Red Lobster's commencement of
24
25

1 its all-you-can-eat shrimp menu promotion. Like all its menu promotions, Red Lobster's most
2 recent promotion has been extensively marketed throughout the United States.

3 39. Together, Darden's NEVER ENDING PASTA BOWL and all-you-can-eat
4 shrimp promotion strongly serve to identify the Olive Garden and Red Lobster restaurants with
5 Darden's core values, namely that of an operator of a family of casual dining restaurants that
6 offers restaurant services of uncommon quality and service, at affordable prices.
7

8 40. Defendants' conduct in the promotion, sale, and offering for sale of casual dining
9 restaurant services and restaurant menu items in conjunction with the mark NEVER ENDING
10 SHRIMP, is likely to confuse and mislead consumers and the public, by inextricably linking
11 Defendants with both of Darden's largest restaurant concepts, first by using the prominent
12 element of Olive Garden's highly popular NEVER ENDING PASTA BOWL Mark, and then by
13 combining it with shrimp, the highly popular menu item for Red Lobster's periodic all-you-can-
14 eat promotion. Such action constitutes false designation of origin or sponsorship and tends
15 falsely to represent that Defendants and their licensees, and their goods and services, originate
16 from Darden and/or its family of restaurants. Defendants' conduct is likely to cause the
17 consuming public believe that Defendants and their TGI Friday's restaurants, and/or the other
18 TGI Friday's restaurants nationwide, have been sponsored, approved, authorized, or licensed by
19 Darden or are in some way affiliated or connected with Darden and/or its family of restaurants,
20 all in violation of Title 15 U.S.C. § 1125(a).
21

22
23 41. Defendants' actions were done willfully with full knowledge of the falsity of
24 such designation of origin of sponsorship and false representation, and with the express intent to
25 cause confusion and to mislead and deceive consumers and the public, and thus trade on the

1 valuable goodwill in Darden's NEVER ENDING PASTA BOWL Mark, and its Olive Garden
2 and Red Lobster all-you-can-eat menu promotions.

3 42. Darden has no adequate remedy at law. The conduct of Defendants described
4 above has caused and, if not enjoined, will continue to cause, irreparable damage to the rights
5 of Darden in its NEVER ENDING PASTA BOWL Mark and its Red Lobster shrimp menu all-
6 you-can-eat promotions, and to the business, reputation and goodwill of Darden and its family
7 of restaurants. Darden's damages are not yet determined.
8

9 **FOURTH CAUSE OF ACTION**

10 (Federal Trademark Dilution)

11 [15 U.S.C. § 1125(c)]

12 43. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
13 of this Complaint as though the same were fully written herein.

14 44. Prior to Defendants' adoption and use of their infringing NEVER ENDING
15 SHRIMP mark, Darden's NEVER ENDING PASTA BOWL Mark had become famous within
16 the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(c)(1) and (2), by virtue of
17 its strength; its inherent and acquired distinctiveness; the duration, extent, and geographic reach
18 of advertising and publicity by Darden and third parties; the amount, volume and geographical
19 extent of the sales of services and goods offered to consumers; the extent of recognition of the
20 NEVER ENDING PASTA BOWL Mark in a nationwide geographic area; and the federal
21 registrations for the NEVER ENDING PASTA BOWL Mark on the Principal Register.
22

23 45. Defendants' unauthorized use of their "NEVER ENDING" mark has caused and
24 is likely to continue to cause dilution by blurring of the distinctive quality of Darden's famous
25 NEVER ENDING PASTA BOWL Mark in violation of 15 U.S.C. § 1125(c)(1).

1 46. Defendants' aforesaid acts were done willfully and intentionally, with full
2 knowledge of the fame and popularity of Darden's NEVER ENDING PASTA BOWL Mark,
3 and done in a deliberate attempt to capitalize on the goodwill and reputation of Darden and its
4 Olive Garden restaurants.

5 47. Defendants' unauthorized use of their NEVER ENDING SHRIMP Mark in
6 connection with their television advertising and other materials for Briad's franchised TGI
7 Friday's restaurants has been willful, intentional, and/or in reckless disregard of Darden's
8 aforesaid rights.

9 48. Darden has no adequate remedy at law. The conduct of Defendants described
10 above has caused and, if not enjoined, will continue to cause irreparable damage to the rights of
11 Darden in its NEVER ENDING PASTA BOWL Mark, and to the business, reputation and
12 goodwill of Darden. Darden's damages are not yet determined.

13
14 **FIFTH CAUSE OF ACTION**

15 (California Statutory Unfair Competition)
16 [Violation of Calif. Bus. & Prof. Code §§ 17200, *et seq.*]

17 49. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
18 of this Complaint as though the same were fully written herein.

19 50. Defendants' wrongful acts constitute unfair methods of competition and unfair,
20 deceptive acts, or misleading advertising and practices in violation of California Business &
21 Professions Code §§ 17200 *et seq.*

22
23 51. Defendants have intentionally traded upon and unfairly benefited from
24 Darden's valuable goodwill, reputation and substantial advertising and have been unjustly
25 enriched thereby. Darden has suffered injury in fact and has lost money in the form of lost

1 sales and/or loss of the value of its intangible property as a result of the Defendants' unfair
2 competition.

3 52. Defendants' actions were done willfully with full knowledge that such actions
4 constitute unfair methods of competition and unfair or deceptive acts or practices, and with the
5 express intent to cause confusion and to mislead and deceive consumers and the public, and thus
6 trade on the valuable goodwill in Darden's proprietary rights.
7

8 53. Darden and the consuming public is being substantially damaged as a result of
9 the aforementioned unfair methods of competition and unfair or deceptive acts or practices
10 engaged in by Defendants. The conduct of Defendants described above has caused and, if not
11 enjoined, will continue to cause, irreparable damage to the rights of Darden in the NEVER
12 ENDING PASTA BOWL Mark, and to the business, reputation and goodwill of Darden and its
13 family of restaurants.
14

15 54. Darden is entitled to injunctive relief and restitution for the wrongful acts of
16 Defendants.
17

18 **SIXTH CAUSE OF ACTION**

19 (California Statutory Dilution)

20 [[Violation of Calif. Bus. & Prof. Code § 14247]

21 55. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
22 of this Complaint as though the same were fully written herein.

23 56. Long prior to Defendants' adoption and use of Defendants' NEVER ENDING
24 SHRIMP mark, the NEVER ENDING PASTA BOWL Mark was distinctive.
25

1 57. Defendants' actions described herein are likely to cause injury to Darden's
2 business reputation and dilution of the distinctive quality of the NEVER ENDING PASTA
3 BOWL Mark as an indicator of Darden's reputation for casual dining restaurant services of
4 uncommon quality and service, at affordable prices, all in violation of California Business &
5 Professions Code §14247.

6
7 58. Defendants' actions constitute a willful intent to trade upon Darden's reputation
8 and to cause dilution of the NEVER ENDING PASTA BOWL Mark.

9
10 59. Darden has no adequate remedy at law. The conduct of Defendants described
11 above has caused and, if not enjoined, will continue to cause, irreparable damage to the rights
12 of Darden in the NEVER ENDING PASTA BOWL Mark, and to the business, reputation and
13 goodwill of Darden and its family of restaurants.

14 **SEVENTH CAUSE OF ACTION**

15 (California Common Law Trademark
16 Infringement and Unfair Competition)

17 60. Darden repeats and realleges all of the allegations contained in Paragraphs 1-24
18 of this Complaint as though the same were fully written herein. This is a substantial and related
19 pendent claim for trademark infringement and unfair competition under the common law of
20 this State.

21
22 61. Darden is the owner of all right, title and interest in and to the distinctive
23 NEVER ENDING PASTA BOWL Mark. The Mark is inherently distinctive and/or has
24 developed secondary meaning.

25 ///

1 (a) directly or indirectly infringing the NEVER ENDING PASTA BOWL Mark in
2 any manner, including generally, but not limited to:

3 i) using the NEVER ENDING PASTA BOWL Mark, or any marks
4 confusingly similar thereto, or any reproduction, counterfeit, copy, or
5 colorable imitation of the NEVER ENDING PASTA BOWL Mark,
6 including but not limited to, NEVER ENDING SHRIMP, or any slogan,
7 trade name or mark incorporating the term "NEVER ENDING," in
8 connection with the promotion, sale, and/or offering for sale of their
9 goods or services;

10
11 ii) applying the NEVER ENDING SHRIMP marks, or any such
12 reproduction, counterfeit, copy, or colorable imitation of the NEVER
13 ENDING PASTA BOWL Mark, including but not limited to, any slogan,
14 trade name or mark incorporating the term "NEVER ENDING," to any
15 advertisement, web site, point of purchase materials, menu, brochure,
16 sign, print, press release, or other material used in connection with the
17 promotion, sale, and/or offering for sale of their goods or services;

18
19 (b) using any other service mark, trade name, logo or design, or combination of
20 marks or terms, including but not limited to a combination that incorporates
21 multiple elements of Darden's various marks and menu items (i.e., ones
22 incorporating marks such as "Never Ending" with shrimp) that tends falsely to
23 represent that, or is likely to confuse, mislead, or deceive consumers or the
24 public to believe that services promoted, sold, and/or offered for sale by
25 Defendants or their licensees originate from Darden, or that said goods or

1 services have been sponsored, approved, or licensed by or associated with
2 Darden, or that Defendants are in some way connected or affiliated with Darden
3 or its family of restaurants;

4 (c) engaging in any conduct that tends falsely to represent that, or is likely to
5 confuse, mislead, or deceive consumers or the public, to believe that the actions
6 of Defendants or their licensees are sponsored, approved, or licensed by Darden,
7 or are in some way connected or affiliated with Darden or its family of
8 restaurants;

9
10 (d) affixing, applying, annexing or using in connection with the promotion, sale,
11 and/or offering for sale of restaurant services or related goods or services, a false
12 description or representation, including words, logos, or other symbols, tending
13 to falsely describe or represent such services as being those of Darden or its
14 family of restaurants;

15
16 (e) diluting the aforementioned NEVER ENDING PASTA BOWL Mark and
17 damaging Darden's goodwill, reputation and business;

18
19 (f) destroying or otherwise disposing of pending final determination of this action:
20 i) any promotional and advertising material, web site versions, restaurant
21 signage, menus, table tents, and any other unauthorized items which
22 reproduce, copy, counterfeit, imitate or bear the NEVER ENDING
23 PASTA BOWL Mark, including but not limited to Defendants' NEVER
24 ENDING SHRIMP mark;

25

1 ii) any sales records, ledgers, invoices, purchase orders, advertising agency
2 contracts or placement orders, inventory control documents, recordings
3 of any type whatsoever, and all other business records and documents
4 believed to concern the promotion, sale or offering for sale of services
5 under the Defendants' NEVER ENDING SHRIMP mark.

6
7 2. That Defendants be required to account for and pay to Darden all profits and
8 damages resulting from Defendants' infringing and unfair activities, and that the award to Darden
9 be trebled as provided for under 15 U.S.C. § 1117(a).

10 3. That Defendants be required to account for and pay to Darden all profits and
11 damages resulting from Defendants' acts of dilution, and that the award to Darden be trebled as
12 provided for under 15 U.S.C. § 1117(a) and California Business & Professions Code §14250;

13 4. That Defendants be required to pay Darden restitution in accordance with
14 California Business & Professions Code, § 17203, for all loss, damage, and injury caused by
15 Defendants' acts;

16 5. That Darden recover from Defendants their costs of this action and reasonable
17 attorneys' fees and disbursements pursuant to 15 U.S.C. § 1117 and the law of California; and

18 6. That Darden have all other and further relief as the Court may deem just and
19 proper under the circumstances.

20
21 ///

22 ///

23 ///

24 ///

25 ///

JURY DEMAND

A trial by jury is hereby demanded.

Respectfully submitted,

Dated: October 6, 2010

By: 

HECHT SOLBERG ROBINSON
GOLDBERG BAGLEY LLP
600 West Broadway, 8th Floor
San Diego, California 92101
Telephone: (619) 239-3444
Facsimile: (619) 232-6828
Gregory S. Markow (SBN 216748)
Joshua Sonn  (SBN 229673)

By: s/ Belinda J. Scrimenti

PATTISHALL, MCAULIFFE,
NEWBURY, HILLIARD &
GERALDSON LLP
311 South Wacker Drive
Suite 5000
Chicago, IL 60606
(312) 554-8000
Belinda J. Scrimenti (not admitted in California)
Scott T. Lonardo (not admitted in California)

Attorneys for Plaintiffs Darden Concepts, Inc.
and GMRI, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 1(a)

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,272,416

United States Patent and Trademark Office

Registered Aug. 24, 1999

**TRADEMARK
PRINCIPAL REGISTER**

NEVER ENDING PASTA BOWL

DARDEN CORPORATION (FLORIDA CORPORATION)
5900 LAKE ELLENOR DRIVE
P.O. BOX 593330
ORLANDO, FL 328593330

FOR: FOOD PRODUCTS, NAMELY,
COOKED MENU ITEMS AND ENTREE
DISHES CONSISTING PRIMARILY OF PASTA
FOR CONSUMPTION ON OR OFF PREMISES,
IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-27-1995; IN COMMERCE
2-27-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE PASTA, APART FROM THE
MARK AS SHOWN.

SER. NO. 75-570,057, FILED 10-7-1998.

KAREN M. STRYZ, EXAMINING ATTORNEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 1(b)

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 3,302,655

United States Patent and Trademark Office

Registered Oct. 2, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

Never Ending Pasta Bowl

DARDEN CONCEPTS, INC. (FLORIDA CORPORATION)
5900 LAKE ELLENOR DRIVE
ORLANDO, FL 32809

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 2-27-1995; IN COMMERCE 2-27-1995.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,272,416.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PASTA", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 78-974,567, FILED 9-14-2006.

TARAH HARDY, EXAMINING ATTORNEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 2

Competitrack

Advertiser: Olive Garden
Product: Never-Ending Pasta Bowl
Title: Never Ending
Ad Code: OLIVRT-0464

First Date: 08/15/10
Source: TNT
Length: 30
New/Recut: Recut



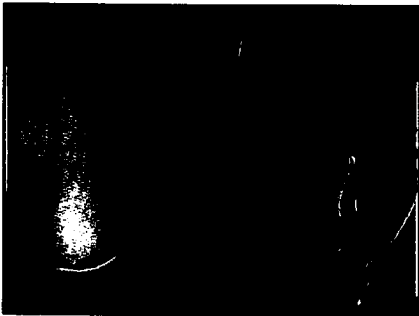
(Music)
1st MAN VOICE OVER: We go to Olive Garden all the time...



so sure, I already knew the salad and breadsticks were endless.



But the other night even the pasta was endless.



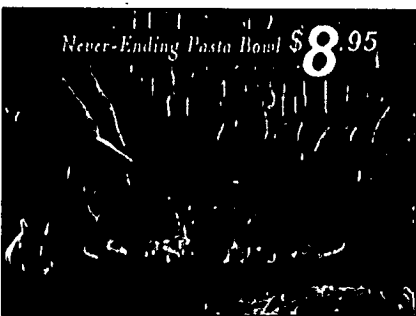
1st MAN: Whoa whoa wait. So I get to choose any sauce and pasta...



then just keep trying them in different combinations?



2nd MAN: Yeah, nice huh?
1st MAN: Yeah real nice.



V.O.: The Never-Ending Pasta Bowl is back with delicious new sauces...



like hearty Chianti three meat and creamy Parmesan portobello.



Combine any sauce and pasta then try other combinations.

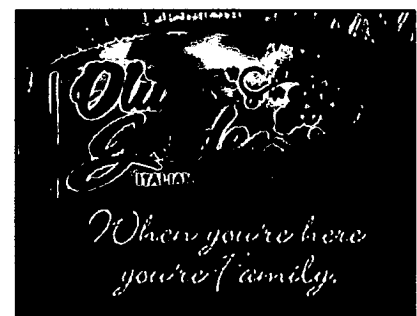
Text: For a Short Time



Just \$8.95 plus unlimited salad and breadsticks.



WAITRESS: And how's your pasta sir?
1st MAN: Never-ending.



V.O.: Olive Garden. When you're here you're family.
(Fade out)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 3



Never Ending Pasta Bowl

Only \$9.95

9 DAYS LEFT

Submit your photo and Enter to win a \$25 GIFT CARD!

Top 9 Combinations

Explore all 42 pasta combinations!

Choose your Pasta...

Spaghetti

Whole Wheat Linguine

Linguine

Fettuccine

Penne

Angel Hair

Orecchiette

New!

New!

Choose your Sauce...

Chianti Three Meat

Creamy Parmesan Portobello

Alfredo

Meat Sauce

Five Cheese Marinara

Marinara

Add unlimited Meatballs, Italian Sausage or New! Roasted Chicken for just \$2.95! Plus, enjoy unlimited salad and breadsticks with every combination.

View our TV commercial

Sign up for our email newsletter

Find an Olive Garden near you

Find us on Facebook!

© 2010 Olive Garden Restaurants, Inc.



New!

Creamy Parmesan Portobello with Spaghetti

Vote for this dish

Tweet this dish

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 4

Fettuccine with Chianti
Three Meat Sauce

Never Ending Pasta Bowl

All the delicious varieties of sauces and pastas you want. Choose from six homemade sauces and seven different pastas, then enjoy another serving or try a different combination. \$8.95
Available for a limited time.

Choose Your Pasta

- Spaghetti
- Linguine
- Whole Wheat Linguine
- Pestuccine
- Penne
- Angel Hair
- Orecchiette

Choose Your Sauce

- New! Chianti Three Meat
- Alfredo
- Five Cheese Marinara
- New! Creamy Parmesan Portobello
- Marinara
- Meat Sauce**

**Our meat sauce is made with pan-seared beef and Italian sausage. Our Chianti Meat sauce is made with pan-seared beef, pepperoni and Italian sausage.

Choose to Add Unlimited

- Meatballs, Italian Sausage or New! Roasted Chicken for just \$2.95

Create a Sampler Italiano

Choose from: calamari, stuffed mushrooms, fried zucchini, chicken fingers, fried mozzarella or toasted beef and pork ravioli. Three Choices 9.50 Two Choices 8.25

Stuffed mushrooms prepared with clams.





Lasagna Fritta

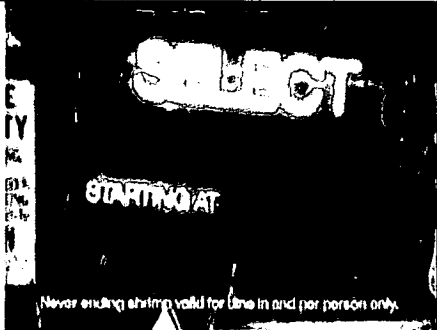




Parmesan-breaded lasagna pieces, fried and served over alfredo sauce, topped with parmesan cheese and marinara sauce. 7.65

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 5

TGI Friday's – Never Ending Shrimp Television Spot
Broadcast in San Diego, CA

1		Shrimp, Shrimp and more Shrimp!
2		Now for a limited time at TGI Friday's,
3		Get "Never Ending Shrimp"
4		when you choose one of our select

5		<p>entrée combinations.</p> <p>Choose our</p>
6		<p>Friday's Shrimp entrée, It's never ending!</p> <p>Choose entrée combinations</p>
7		<p>like Jack Daniels Ribs and Shrimp</p>
8		<p>or make it Surf and Turf</p>
9		<p>with Jack Daniels Sirloin and Shrimp.</p> <p>and your shrimp is never ending... you get the picture!</p>

10		<p>We've got "Never Ending Shrimp!"</p>
11		<p>Who says you can't have your shrimp and eat it too?</p>
12		<p>Only at TGI Friday's</p>
13		<p>And only for a limited time!</p>
14		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 6



Red Lobster • Olive Garden • LongHorn Steakhouse • The Capital Grille • Bahama Breeze • Seasons 52

HORACE G. DAWSON, III
VICE PRESIDENT, DIVISION GENERAL COUNSEL

September 22, 2010

VIA ELECTRONIC MAIL mlaveman@briad.com
AND UPS NEXT DAY AIR TRACKING # 1Z3468060197218419

The Briad Group
78 Okner Parkway
Livingston, NC 07039
Attn: Marlene Laveman, Esq.

Re: The Briad Group's Infringement of Darden Restaurants
NEVER ENDING PASTA BOWL Mark

Dear Ms. Laveman:

This will confirm the information I left on your voicemail earlier regarding The Briad Group's use of the mark NEVER ENDING SHRIMP.

Darden is the owner of the mark "NEVER ENDING PASTA BOWL," Registration Nos. 2,272,416 and 3,302,655, based on first use of the mark on February 27, 1995. As you almost certainly know, the mark is used in connection with an annual promotion in the early fall by the Olive Garden restaurants for an all-you-can-eat entrée. (The mark and registrations are collectively referred to herein as the "NEVER ENDING" Mark). Given Darden's lengthy use of the NEVER ENDING Mark and extensive advertising of its promotion, the NEVER ENDING Mark has become widely known by casual dining consumers as associated with the Olive Garden Restaurants.

Notwithstanding this, we have recently become aware that certain TGI Friday's restaurants owned and operated by The Briad Group ("TBG") have instituted a new test promotion named "NEVER ENDING SHRIMP" which commenced on or about August 30, 2010.

The Briad Group's use of this term as a trademark and service mark for its restaurant and menu items constitutes trademark infringement of Darden's NEVER ENDING Mark and unfair competition in violation of the Federal Trademark Act, 17 U.S.C. §§ 1114(1) and 1125(a), as well as state statutory and common law of trademark infringement and unfair competition. Prospective and existing patrons of



The Briad Group
Marlene Laveman
September 22, 2010
Page 2

TBG restaurants and members of the public will erroneously believe that TBG restaurants are licensed, sponsored, or authorized by Darden's Olive Garden restaurants, or are in some manner affiliated with Darden and/or the Olive Garden restaurants. In addition, the infringing use of the "NEVER ENDING" term will dilute the distinctiveness of the NEVER ENDING Mark by trading upon the goodwill and reputation which the public associates with Darden's NEVER ENDING Mark, in violation of the Federal and state dilution law, 15 U.S.C. §1125 (c).

The likelihood of confusion between TBG restaurants and Darden's restaurants caused by TBG's use of the NEVER ENDING Mark is further exacerbated by the fact that the promotion is running contemporaneously with, not only Darden's Olive Garden NEVER ENDING PASTA BOWL promotion, but also Darden's Red Lobster restaurants' all-you-can eat promotion for shrimp. Consumers familiar with Darden's ownership of both Olive Garden and Red Lobster restaurants may further come to believe that the TBG restaurants are also owned by Darden, thus further confusing customers and unfairly competing with Darden.

Please also be aware that Darden has actively and aggressively enforced its rights in its NEVER ENDING Mark against other infringing uses of NEVER ENDING marks in the restaurant and foods fields. Most notably, Darden filed litigation against IHOP, Inc. in connection with its promotion under the mark NEVER ENDING PANCAKES and the identical mark to that which TBG has begun using, NEVER ENDING SHRIMP. *See Darden Corporation et al. v. IHOP Corp., et al*, Case No. 6:04 CV-149-ORL-18 (M.D. Fla. 2005). In light of TBG's position as a direct competitor in the casual dining sector, Darden is prepared to take similar action immediately against TBG to protect its highly valuable NEVER ENDING Mark.

We demand that TBG contact me by Wednesday, September 29, 2010 at 5:00 p.m. EDT and confirm in writing that TBG has ceased all use by it and its franchisees of the NEVER ENDING SHRIMP mark, and provide confirmations as follows:

1. That TBG has immediately taken all necessary actions to withdraw the NEVER ENDING SHRIMP promotion from use by TGI Friday's restaurants;
2. That it has removed from all TBG restaurants, all promotional items such as menu inserts and table tents that feature the infringing mark;
3. That it has halted all advertising activities and has instructed your advertising agency to cancel all remaining broadcast and print media advertisements featuring the "NEVER ENDING SHRIMP" mark;
4. That you have instructed all companies that directly or indirectly promote TBG'S restaurants, including but not limited to their advertising agency(ies), and others, to cease all use of the mark NEVER ENDING SHRIMP; and

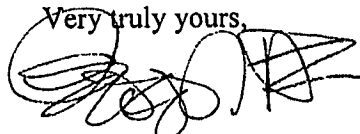
The Briad Group
Marlene Laveman
September 22, 2010
Page 3

5. That TBG will make no future use of the mark NEVER ENDING SHRIMP, or any other mark incorporating the term NEVER ENDING.

Should TBG fail to respond or otherwise not agree to cease use of the infringing NEVER ENDING SHRIMP mark, we will take immediate legal action.

As TBG has its own valuable trademark rights that you undoubtedly regularly enforce, we trust that you will understand and appreciate Darden's concerns. We accordingly look forward to TBG's prompt cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Horace G. Dawson, III". The signature is stylized and somewhat cursive, with a large initial "H" and "D".

Horace G. Dawson, III

cc: Belinda J. Scrimenti, Esq.,
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP

Olive Garden Italian Restaurant - Our Menu - Windows Internet Explorer

http://www.olivegarden.com/menu/

File Edit View Favorites Tools Help

Olive Garden Italian... PMHHC Corporate Intra... United States Patent an... United Airlines - Airline...

Olive Garden When you're home, you're family.

LINDA RESTAURANT City & State or ZIP
My Olive Garden! 865.211.2222
ESPAÑOL | EMAIL THE MENU

Menu Specials Locations Outlets Recipes Italian Inspiration SIGN UP

Our Menu

- SPECIALS
- LUNCH
- DINNER
- BEVERAGES
- WINES
- TO GO
- DESSERT
- NUTRITION
- KIDS
- GLUTEN FREE

Never Ending Pasta Bowl

It's back! Experience over 40 combinations

Only \$8.95

Find your favorites today >



ENJOY A VARIETY OF DELICIOUS ITALIAN SPECIALTIES, FRESHLY-MADE FOR YOU



Lunch Menu



Dinner Menu



Beverage Menu



Dessert Menu

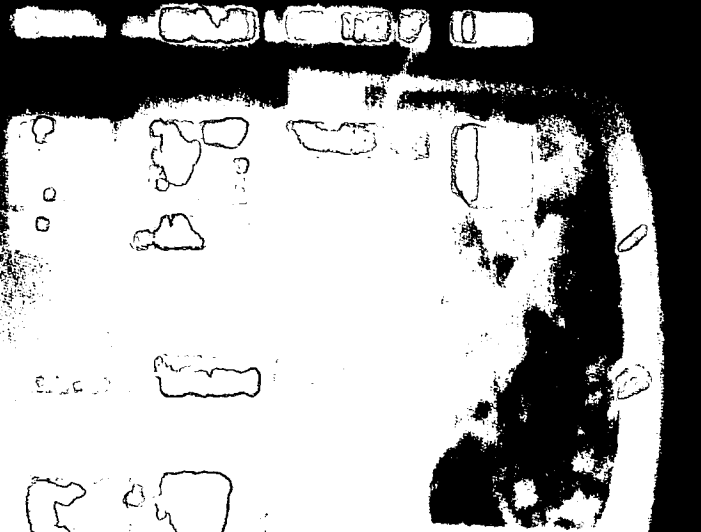
Done Internet 100%

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 7

NEVER ENDING

SHRIMP



Friday's Shrimp
Jack Daniel's Ribs & Shrimp
Jack Daniel's Chicken & Shrimp
Jack Daniel's Sirloin & Shrimp
Half Rack Baby Back Ribs & Shrimp

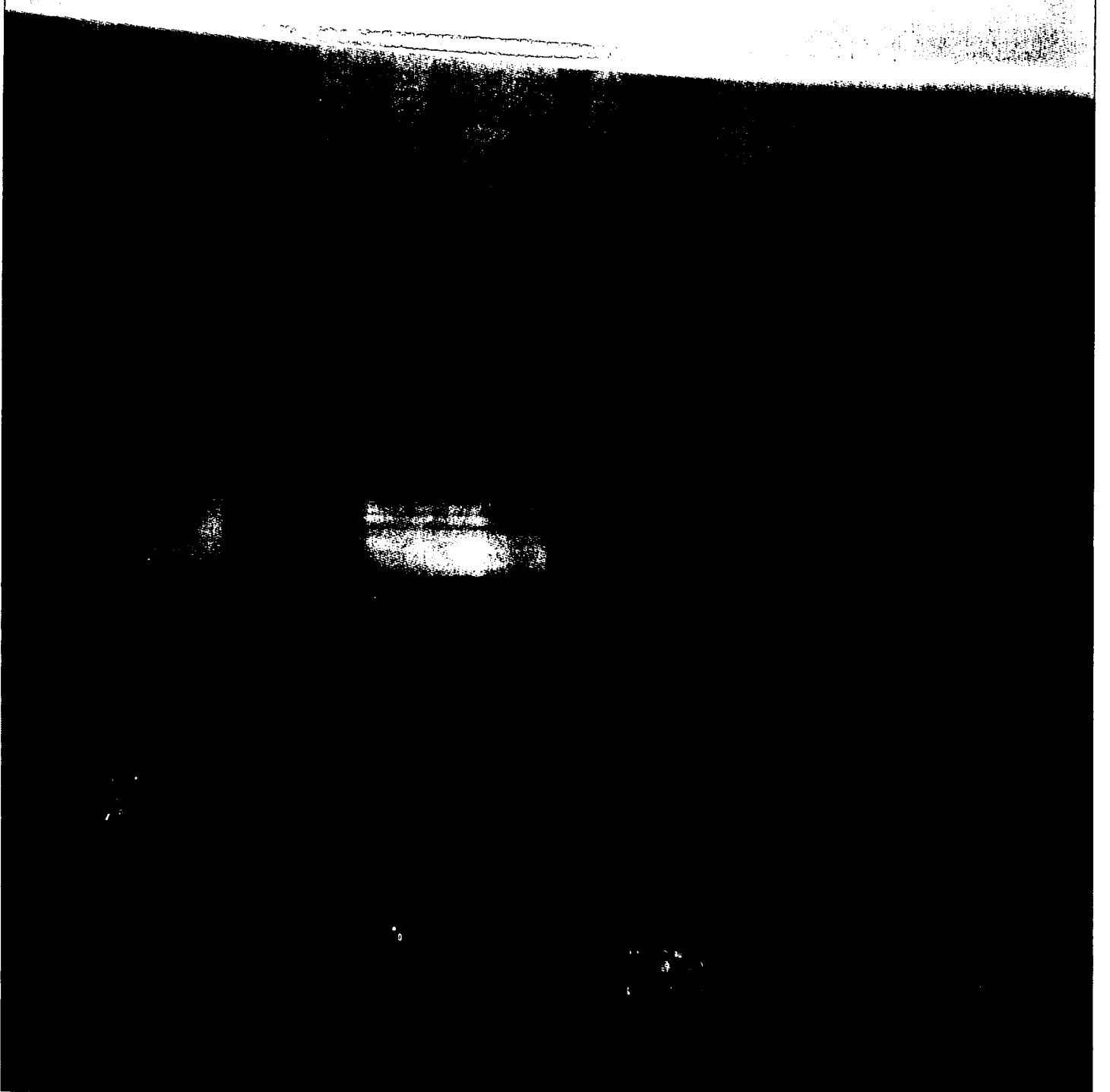
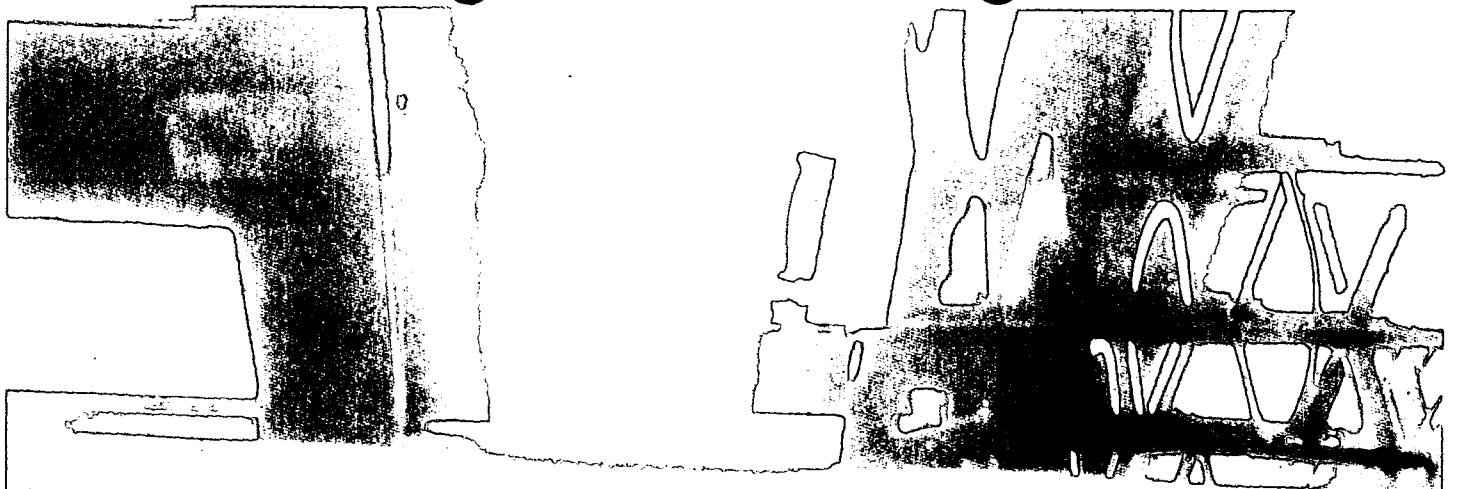
Who says you can't have
your shrimp and eat it too



Not valid with any other offers. Tax and tip extra. Price in effect at time of purchase.

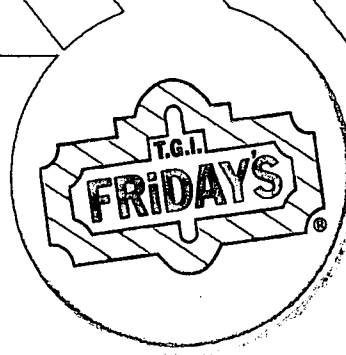
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 8



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 9



NEVER ENDING SHRIMP

Try one of our
delicious shrimp
entrée combinations
and your shrimp is
never ending.



*For a limited time. Not valid with any other offer, coupon or discount. Dine in only. One entrée per person - No Sharing.

If sold separately, priced the same as entrée. Price subject to \$6.99 craft charge.

Who says you can't have your shrimp and eat it too?

Never ending shrimp is available with these entrees

Friday's® Shrimp

A dozen, tail-on, battered and butterflied shrimp, deep-fried until they're golden brown and crispy. Then we serve them on top of fries with our tangy cocktail sauce. 12.99

Jack Daniel's® Chicken & Shrimp

Juicy fire-grilled chicken breast drizzled with our Jack Daniel's® glaze and some crispy Cajun-spiced fried shrimp with more sauce for dipping. Served with your choice of two sides. 17.49

Jack Daniel's® Sirloin & Shrimp

A generous 10-oz. Black Angus strip-style sirloin and crispy Cajun-spiced shrimp. Served with your choice of two sides. 20.99



Jack Daniel's® Ribs & Shrimp

Our full rack of Cajun-spiced baby back pork ribs is fire-grilled and basted with our Jack Daniel's® glaze. Then we add a handful of our butterflied shrimp, battered and fried until crisp and served with fries and coleslaw. 20.99

Half-Rack Baby Back Ribs & Shrimp

Half a rack of fire-grilled baby back pork ribs glazed with our Jack® Championship BBQ sauce and topped with onion rings. Served with fries and a side of crispy Cajun-spiced shrimp. 14.59

*For a limited time. Not valid with any other offer, coupon or discount.
Dine in only. One entree per person. No Sharing.

If you can't resist the urge to share, there will be a \$9.99 plate charge.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DARDEN CONCEPTS, INC. and GMRI, INC.

(b) County of Residence of First Listed Plaintiff Orange County, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

HECHT SOLBERG ROBINSON GOLDBERG BAGLEY LLP, 600 West Broadway, 8th Floor, San Diego, CA 92101 (619) 239-344

DEFENDANTS

BRIAD RESTAURANT GROUP, L.L.C. and BRIAD RESTAURANT GROUP, INC. **FILED 10 OCT -6 PM 3:00**

County of Residence of First Listed Defendant Essex County, NJ
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'10 CV 2077 IEG POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
				<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1051 et seq. and 15 U.S.C. § 1121

Brief description of cause:
Trademark Infringement, unfair competition, and trademark dilution, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10-6-2010 SIGNATURE OF ATTORNEY OF RECORD Gregory Markov

FOR OFFICE USE ONLY

RECEIPT # 18793 AMOUNT \$300 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

MB 10-06-10

CP

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS018793
Cashier ID: mbain
Transaction Date: 10/06/2010
Payer Name: CALEXPRESS

CIVIL FILING FEE -
For: DARDEN CONCEPTS V BRIAD REST
Case/Party: D-CAS-3-10-CV-002077-001
Amount: \$350.00

CHECK
Check/Money Order Num: 58408
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.