



UNITED STATES OF AMERICA  
**FEDERAL TRADE COMMISSION**  
WASHINGTON, D.C. 20580

Division of Advertising Practices

Mary K. Engle  
Associate Director

May 13, 2010

**VIA FEDERAL EXPRESS AND EMAIL**

Steve Scheinthal  
Executive Vice President and General Counsel  
The Oceanaire  
1510 West Loop South  
Houston, TX 77027

Re: The Oceanaire, Inc., FTC File No. 092-3177

Dear Mr. Scheinthal:

As you know, the staff of the Division of Advertising Practices of the Federal Trade Commission ("FTC") conducted an investigation of The Oceanaire, Inc., The Oceanaire Restaurant Co., Inc., Oceanaire Texas Restaurant Co., L.P., and Oceanaire Minneapolis Restaurant Co., LLC, (collectively "Oceanaire") for possible violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 ("FTC Act"), in connection with the post-bankruptcy advertising and sale of gift cards. Specifically, we were concerned that Oceanaire may have violated Section 5 by failing to disclose, after its Chapter 11 bankruptcy filing, its bankrupt status to consumers who purchase gift cards. Pursuant to the bankruptcy, Oceanaire closed four of its sixteen restaurants.

Upon careful review of the matter, we have determined not to recommend enforcement action at this time. We considered four main factors in making this determination. First, Oceanaire has emerged from bankruptcy and in its bankruptcy filings Oceanaire agreed to honor all gift cards whether purchased pre- or post-bankruptcy filing. Second, although Oceanaire closed four of its restaurants, when possible, Oceanaire contacted consumers with addresses near closed restaurant locations to inform them of the restaurant closure before consummating the gift card sale. Third, during the majority of the pendency of the bankruptcy, at the Commission's request, Oceanaire provided clear and prominent disclosures of its bankruptcy status prior to a consumer's online or in-restaurant purchase of a gift card. Lastly, Oceanaire made gift cards purchased during its bankruptcy refundable.

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The staff appreciates Oceanaire's significant cooperation in the resolution of this matter. This action is not to be construed as a determination that a violation of law did not occur, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,

A handwritten signature in black ink that reads "Mary K. Engle". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Mary K. Engle  
Associate Director  
Division of Advertising Practices