



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)

WHOLE FOODS MARKET, INC.,)
a corporation.)

Docket No. 9324

PUBLIC

**RESPONDENT WHOLE FOODS MARKET, INC.'S
ANSWER TO THE AMENDED COMPLAINT**

Pursuant to 16 C.F.R. § 3.12, Respondent Whole Foods Market, Inc. (“Whole Foods”) hereby answers the Federal Trade Commission’s September 8, 2008, Amended Complaint as follows:

RESPONSES TO THE FTC’S ALLEGATIONS

Introduction: Whole Foods admits that the language quoted in the Introduction appeared in an e-mail sent to the Board of Directors, but denies all remaining allegations in the Introduction, except to the extent the Introduction contains legal conclusions to which no response is required.

1. Whole Foods admits the allegations in Paragraph 1.
2. Whole Foods admits the allegations in Paragraph 2.
3. Whole Foods denies the allegations in Paragraph 3.
4. Whole Foods admits that Mr. Mackey made the statements quoted in Paragraph 4.
5. Whole Foods admits the allegations in Paragraph 5, except to the extent that Paragraph 5 contains legal conclusions to which no response is required.

6. Whole Foods admits the allegations in Paragraph 6.
7. Whole Foods admits that it is in the process of operating certain former Wild Oats Markets, Inc. (“Wild Oats”) stores as Whole Foods stores but denies the remainder of the allegations in Paragraph 7.
8. Whole Foods admits the allegations in Paragraph 8.
9. Whole Foods lacks knowledge or information sufficient to admit or deny any allegations in Paragraph 9, except to the extent this Paragraph contains legal conclusions to which no response is required.
10. Whole Foods admits that on June 7, 2007, United States District Court Judge Paul L. Friedman of the United States District Court for the District of Columbia issued a consent Order granting the Commission’s motion for a temporary restraining Order. Whole Foods admits that on August 16, 2007, Judge Friedman issued an order that denied the Commission’s request for a preliminary injunction and, on August 23, 2007, the United States Court of Appeals for the District of Columbia Circuit issued an order that denied the Commission’s emergency motion for an injunction pending appeal. Whole Foods admits that it consummated the acquisition of Wild Oats on August 28, 2007. Whole Foods admits that on July 29, 2008, the United States Court of Appeals for the District of Columbia Circuit issued three opinions and its judgment, which speak for themselves. Whole Foods denies the remainder of the allegations in Paragraph 10, except to the extent this Paragraph contains legal conclusions to which no response is required.

11. Whole Foods denies the allegations in Paragraph 11 to the extent that Paragraph 11 purports to define an industry standard term for “natural foods.”
12. Whole Foods denies the allegations in Paragraph 12 to the extent that Paragraph 12 purports to define the term “organic foods” in any way other than foods that meet the requirements of the United States Department of Agriculture’s Organic Food Production Act of 1990.
13. Paragraph 13 contains legal conclusions to which no response is required.
14. Whole Foods denies the allegations in Paragraph 14.
15. Whole Foods admits that the statements quoted in Paragraph 15 were made, but denies the remainder of the allegations in that Paragraph.
16. Whole Foods admits that the statements quoted in Paragraph 16 were made, but denies the remainder of the allegations in that Paragraph.
17. Whole Foods admits that the statement quoted in Paragraph 17 was made, but denies the remaining allegations in that Paragraph.
18. Whole Foods denies the allegations in Paragraph 18.
19. Whole Foods denies the allegations in Paragraph 19.
20. Whole Foods denies the allegations in Paragraph 20.
21. Whole Foods admits that the statements quoted in Paragraph 21 were made, but denies the remainder of the allegations in that Paragraph.
22. Whole Foods admits that the statements quoted in Paragraph 22 were made, but denies the remainder of the allegations in that Paragraph.

23. Whole Foods admits that the statement quoted in Paragraph 23 was made, but denies the remaining allegations in that Paragraph.
24. Whole Foods admits that the statements quoted in Paragraph 24 were made, but denies the remainder of the allegations in that Paragraph.
25. Whole Foods admits that the statements quoted in Paragraph 25 were made, but denies the remainder of the allegations in that Paragraph.
26. Whole Foods denies the allegations in Paragraph 26.
27. Whole Foods denies the allegations in Paragraph 27.
28. Whole Foods denies the allegations in Paragraph 28.
29. Whole Foods admits the allegations in the first sentence of Paragraph 29. Whole Foods admits that approximately 70% of its sales in fiscal 2006 were from perishable products, but denies this allegation with respect to Wild Oats.
30. Whole Foods denies the allegations in Paragraph 30.
31. Whole Foods denies the allegations in Paragraph 31.
32. Whole Foods admits the allegations in the first sentence of Paragraph 32. Whole Foods denies the remainder of the allegations in Paragraph 32.
33. Whole Foods admits that Mr. Mackey made the statements quoted in Paragraph 33, but denies all remaining allegations in Paragraph 33.
34. Whole Foods denies the allegations in Paragraph 34.
35. Whole Foods denies the allegations in Paragraph 35, except to the extent this Paragraph contains legal conclusions to which no response is required.

36. Whole Foods denies the allegations in Paragraph 36, except to the extent this Paragraph contains legal conclusions to which no response is required.
37. Whole Foods denies the allegations in Paragraph 37.
38. Whole Foods denies the allegations in Paragraph 38.
39. Whole Foods denies the allegations in Paragraph 39, including each of its subparts, except to the extent that Paragraph 39, including any subparts, contains legal conclusions to which no response is required.
40. Whole Foods denies, admits, and responds to Paragraph 40 of the Amended Complaint, as set forth in the preceding paragraphs of this Answer.
41. Paragraph 41 contains legal conclusions to which no response is required.
42. Whole Foods denies, admits, and responds to Paragraph 42 of the Amended Complaint, as set forth in the preceding paragraphs of this Answer.
43. Paragraph 43 contains legal conclusions to which no response is required.

DEFENSES

The inclusion of any ground within this section does not constitute an admission that Whole Foods bears the burden of proof on each or any of the matters, nor does it excuse Complaint Counsel from establishing each element of its purported claim for relief.

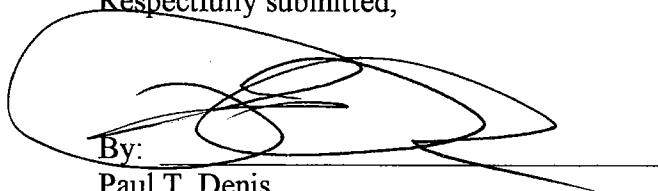
1. The Amended Complaint fails to state a claim upon which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. Efficiencies and other pro-competitive benefits resulting from the merger outweigh any and all proffered anticompetitive effects.

4. Whole Foods reserves the right to assert any other defenses as they become known to Whole Foods.

WHEREFORE, Respondent Whole Foods respectfully requests that the Commission (i) deny the contemplated relief, (ii) dismiss the Amended Complaint in its entirety with prejudice, (iii) award Whole Foods their costs of the suit, including attorneys' fees, and (iv) award such other and further relief as the Commission may deem proper.

Dated: September 26, 2008

Respectfully submitted,



By:

Of Counsel:

Roberta Lang
Vice-President of Legal Affairs
and General Counsel
Whole Foods Market, Inc.
550 Bowie Street
Austin, TX 78703

Paul T. Denis
Paul H. Friedman
Jeffrey W. Brennan
James A. Fishkin
Michael D. Farber
DECHERT LLP
1775 I Street, N.W.
Washington, DC 20006-2401
Telephone: (202) 261-3300
Facsimile: (202) 261-3333

Attorneys for Whole Foods Market, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Respondent Whole Foods Market, Inc.'s Answer to the Amended Complaint was served on September 26, 2008, upon the following persons:

By Hand Delivery and Email:

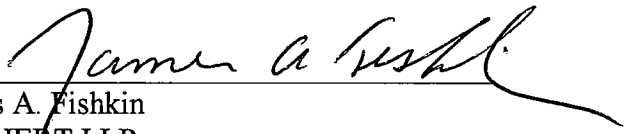
Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-172
Washington, D.C. 20580

By Hand Delivery and E-Mail:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Matthew J. Reilly, Esq.
Catharine M. Moscatelli, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20001

Complaint Counsel

By: 
James A. Fishkin
DECHERT LLP
1775 I Street, N.W.
Washington, D.C. 20006-2401
Telephone: (202) 261-3300
Facsimile: (202) 261-3333

Attorneys for Whole Foods Market, Inc.