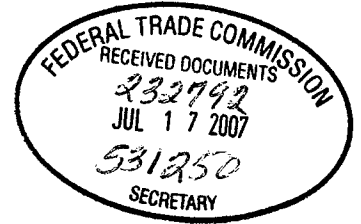


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of )

WHOLE FOODS MARKET, INC., )

a corporation, )

and )

WILD OATS MARKETS, INC. )

a corporation. )

Docket No. 9324

PUBLIC

ANSWER OF RESPONDENT WHOLE FOODS MARKET, INC.

Pursuant to 16 C.F.R. § 3.12, Respondent Whole Foods Market, Inc. (“Whole Foods”) hereby answers the Federal Trade Commission’s June 27, 2007, 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 denies the allegations in Paragraph 7.

8. Whole Foods admits the allegations in the first sentence of Paragraph 8, but lacks knowledge or information sufficient to admit or deny the allegations in the remainder of that Paragraph.

9. Whole Foods admits the allegations in Paragraph 9, except to the extent that Paragraph 9 contains legal conclusions to which no response is required.

10. Whole Foods admits the allegations in Paragraph 10.

11. Whole Foods admits that it intends to merge Wild Oats into Whole Foods, operate some Wild Oats stores as Whole Foods stores, and sell some Wild Oats stores, and that it may decide to close some Wild Oats stores once it has access to Wild Oats' financial information.

12. Whole Foods admits the allegations in Paragraph 12.

13. Whole Foods lacks knowledge or information sufficient to admit or deny any allegations in Paragraph 13, except to the extent this Paragraph contains legal conclusions to which no response is required.

14. Whole Foods admits the allegations in the first sentence of Paragraph 14 of the Complaint and denies the allegations of the second sentence of this Paragraph to the extent it alleges that the Court's temporary restraining order may be the "only" prohibition on the closing of the Acquisition, except to the extent this Paragraph contains legal conclusions to which no response is required.

15. Whole Foods denies the allegations in Paragraph 15 to the extent that Paragraph 15 purports to define an industry standard term for “natural foods.”

16. Whole Foods denies the allegations in Paragraph 16 to the extent that Paragraph 16 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.

17. Paragraph 17 contains legal conclusions to which no response is required.

18. Whole Foods denies the allegations in Paragraph 18.

19. Whole Foods admits that the statements quoted in Paragraph 19 were made, but denies the remainder of the allegations in that Paragraph.

20. Whole Foods admits that the statements quoted in Paragraph 20 were made, but denies the remainder of the allegations in that Paragraph.

21. Whole Foods admits that the statement was made by one of the respondents, but denies the remaining allegations in Paragraph 21.

22. Whole Foods denies the allegations in Paragraph 22.

23. Whole Foods denies the allegations in Paragraph 23.

24. Whole Foods denies the allegations in Paragraph 24.

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 admits that the statements quoted in Paragraph 26 were made, but denies the remainder of the allegations in that Paragraph.

27. Whole Foods admits the allegations in Paragraph 27.

28. Whole Foods admits that the statements quoted in Paragraph 28 were made, but denies the remainder of the allegations in that Paragraph.

29. Whole Foods admits that the statements quoted in Paragraph 29 were made, but denies any remaining allegations in that Paragraph.

30. Whole Foods denies the allegations in Paragraph 30.

31. Whole Foods denies the allegations in Paragraph 31.

32. Whole Foods denies the allegations in Paragraph 32.

33. Whole Foods admits the allegations in the first sentence of Paragraph 33. Whole Foods admits that approximately 70% of its sales are of perishable products, but lacks information sufficient to admit or deny whether that is true of Wild Oats' sales or of the respondents' combined sales.

34. Whole Foods denies the allegations in Paragraph 34.

35. Whole Foods denies the allegations in Paragraph 35.

36. Whole Foods admits the allegations in the first sentence in Paragraph 40. Whole Foods denies the remainder of the allegations in Paragraph 36.

37. Whole Foods admits that Mr. Mackey made the statements quoted in Paragraph 37, but denies all remaining allegations in Paragraph 37.

38. Whole Foods denies the allegations in Paragraph 38.

39. Whole Foods denies the allegations in Paragraph 39, except to the extent this Paragraph contains legal conclusions to which no response is required.

40. Whole Foods denies the allegations in Paragraph 40, except to the extent this Paragraph contains legal conclusions to which no response is required.

41. Whole Foods denies the allegations in Paragraph 41.
42. Whole Foods denies the allegations in Paragraph 42.
43. Whole Foods denies the allegations in Paragraph 43, including each of its subparts, except to the extent that Paragraph 43, including any subparts, contains legal conclusions to which no response is required.
44. Whole Foods denies, admits, and responds to Paragraph 44 of the Complaint, as set forth in the preceding paragraphs of this Answer.
45. Paragraph 45 of the Complaint contains legal conclusions to which no response is required.
46. Whole Foods denies, admits, and responds to Paragraph 46 of the Complaint, as set forth in the preceding paragraphs of this Answer.
47. Paragraph 47 of the Complaint 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 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 procompetitive 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 ALJ (i) deny the FTC's contemplated relief, (ii) dismiss the 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 ALJ may deem proper.

Dated: July 17, 2007

Respectfully submitted,

By: 

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*Attorneys for Whole Foods Market, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER OF RESPONDENT WHOLE FOODS MARKET, INC. was served on July 17, 2007, upon the following persons:

**By Hand Delivery and Email:**

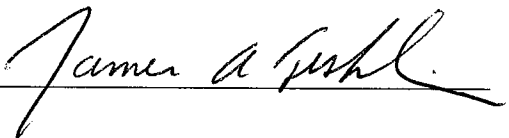
Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Room H-172  
Washington, D.C. 20580

**By First Class Mail and Email:**

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Acting Assistant Director, Mergers IV  
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**By Email:**

Clifford H. Aronson  
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