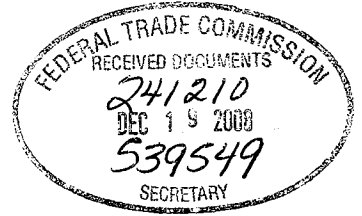


ORIGINAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
)

WHOLE FOODS MARKET INC)
)
)

Docket No. 9324
PUBLIC

a corporation.)
)
)

To: The Honorable D. Michael Chappell
Chief Administrative Law Judge

II. STATUS OF COMPLAINT COUNSEL'S AND RESPONDENT'S DISCOVERY

Since filing the first status report on November 21, 2008, Respondent, assisted by contract attorneys, has continued to review collected material for responsiveness and privilege. As of December 19, 2008, Respondent has made a total of 19 rolling productions of documents, data, and other materials in response to Complaint Counsel's First Requests for Production of Documents and First Set of Interrogatories, nine of which have been produced since our last

status report. On December 18, 2008, Respondent produced information responsive to Complaint Counsel's Second Requests for Production of Documents. To date, Respondent has produced in total more than 130,000 documents, equating to more than 4 million pages, and

Fifth Notice of Rule 3.34(a)(1) Subpoena Ad Testificandum. The parties continue to meet and confer regarding these notices.

~~Defendant and Complainant Covered have some minimal amount of fact discovery~~

yet to be produced that is responsive to outstanding Requests for Production. The parties continue to engage cooperatively in an effort to complete this remaining discovery expeditiously.

III. STATUS OF NON-PARTY DISCOVERY


Respondent Whole Foods has not served any additional subpoenas duces tecum since

61 non-parties and 25 firms have not complied in response to this time. Defendant's counsel

continues to devote substantial time and resources to secure compliance by the subpoenaed non-
parties. Two of the non-parties who had partially responded to their subpoenas filed motions to

Dated December 19, 2008

Respectfully submitted,

By: 

Paul T. Denis, Esq.
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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2008, I filed via hand an original and eleven copies of the foregoing Second Status Report with:

Donald S. Clark, Secretary
~~Office of the Secretary~~

600 Pennsylvania Avenue, N.W., Rm. H-159
Washington, D.C. 20580

I also certify that on December 19, 2008, I delivered via electronic mail one copy and via hand two copies of the foregoing to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

I also certify that on December 19, 2008, I delivered via electronic mail one copy of the foregoing to:

~~I Robert Robertson, Esq.~~

Matthew J. Reilly, Esq.
Catharine M. Moscatelli, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
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