

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of)	
)	
WHOLE FOODS MARKET, INC.)	Docket No. 9324
)	
a corporation.)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging Whole FoodsMarket, Inc. (“Whole Foods” or “Respondent”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Respondent having been served with a copy of that complaint, together with a notice of contemplated relief, and Respondent having answered the complaint denying said charges but admitting the jurisdictional allegations set forth therein; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”

1. Whole Foods is a corporation organized, existing and doing business under

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested and to assure that Respondent has completed all of its obligations under Paragraph II.H. of this Order for any Asset To Be Divested.
2. The Divestiture Trustee shall have six (6) months from the date the Commission approves the trustee agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six (6) month period, the Divestiture Trustee has re

Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission.

5. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at a price from each Commission-approved Acquirer not less than zero dollars. Each divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for a particular location listed on Appendix A or Appendix B of this Order, and if the Commission determines to approve more than one such acquiring entity for such location, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the relevant assets that are required to be divested by this Order.
7. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

scheduled raises, bonuses and vesting of pension benefits (as permitted by law and for those Store Employees

business information, including all information technology and operating systems, all human resources, payroll and benefits records, all accounting and finan

APPENDIX A
OPERATING LOCATIONS

Wild Oats Market
2584 Baseline Rd.
Boulder, CO 80305

Alfalfa's
1651 Broadway St.
Boulder, CO 80302

Whole Foods Market
3180 New Center Point
Colorado Springs, CO 80922

Wild Oats Market
4301 Main St.
Kansas City, MO 64111

Whole Foods Market
7250 W. Lake Mead Blvd.
Las Vegas, NV 89128

Wild Oats Market
5910 S. University Blvd.
Littleton, CO 80121

Whole Foods Market
6930 S. Highland Dr.
Cotton Wood Heights, UT 84121

Wild Oats Market
1090 St. Francis Dr.
Santa Fe, NM 87505

Whole Foods Market
8688 East Raintree Drive
Scottsdale, AZ 85260

Whole Foods Market
19440 NW Cornell Rd.
Hillsboro, OR 97124

Whole Foods Market
7133 N Oracle Rd.
Tucson, AZ 85704

Whole Foods Market
340 N. Main St.

APPENDIX B
CLOSED LOCATIONS

200 W. Foothills Pkwy.
Fort Collins, CO 80525

13823 N Tatum Blvd.
Phoenix, AZ 85032

1422 N. Cooper Road
Gilbert, AZ 85233

87 Marginal Way
Portland, ME 04101

874 E. Warner Road
Gilbert, AZ 85296

2077 NE Burnside St.
Gresham, OR 97030

5350 W. Bell Road
Glendale, AZ 85308

5695 S. Virginia Street
Reno, NV 89502

517 N. Stephanie St.
Henderson, NV 89014

4979 S. Virginia Street
Reno, NV 89502

17711 Jean Way
Lake Oswego, OR 97035

4600 Shelbyville Road
St. Matthews, KY 40207

8194 S. Kipling Parkway
Littleton, CO 80127

15569 W. Bell Road
Surprise, AZ 85374

6424 Naples Blvd.
Naples, FL 34109

3736 W. Center Park Drive
West Jordan, UT 84084

7831 Dodge St.
Omaha, NE 68114

8819-8833 Ladue Rd.
St. Louis, MO 63124

9028 W. Union Hills
Peoria, AZ 85382

APPENDIX C

INFORMATION TO BE PROVIDED TO THE DIVESTITURE TRUSTEE

For each store listed in Appendix A and Appendix B:

Store number, banner, name, address, city, state, zip code and county

Total square footage and selling space square footage

Date store opened and closed (if applicable)

Indication whether store is free-standing or in a shopping center

Indication whether store has equipment (yes or no answer within ten (10) days of approval of trustee agreement, full list of fixtures and equipment to be provided later upon the request of the Divestiture Trustee

Total gross sales for the (1) 2008 fiscal year, (2) first quarter 2009 fiscal year, and (3) first quarter 2008 fiscal year

Occupancy expenses (segmented by minimum annual rent, percentage rent, common area maintenance expenses, insurance, taxes and utilities) during the last full fiscal year

Lease and lease abstract indicating lease commencement date, base lease expiration, remaining renewal options, minimum annual rent, percentage rent and threshold, rent adjustments, recapture rights/operating covenants, and use restrictions

Any required contractual obligations to be assumed related to occupancy

Fixture (basic floor plan layout) and site plans (eg., ingress and egress into shopping center, etc.) to the extent they exist

Aerial, exterior and interior photographs to the extent they exist

Maps of the customer draw area and customer spotting surveys and supporting data, to the extent they exist, to be provided on the Closing Date for the particular store

For the Wild Oats Associated Intellectual Property:

A detailed list of all assets that constitute the Wild Oats Associated Intellectual Property

All registrations for all trademarks, trade dress, service marks and trade names

CONFIDENTIAL APPENDIX D

[Redacted From the Public Record Version, But Incorporated By Reference]