

ORIGINAL



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of :

WHOLE FOODS MARKET, INC., : (Public Version)

a corporation :

- and - : **Docket No. 9324**

WILD OATS MARKETS, INC. :

a corporation :

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ANSWER OF RESPONDENT WILD OATS MARKETS, INC.

Respondent Wild Oats Market, Inc. (“Wild Oats”), by its attorneys, Skadden, Arps, Slate, Meagher & Flom LLP, answers the Complaint (“Complaint”) filed by Petitioner, the Federal Trade Commission, and respond as follows:

Introduction. Wild Oats denies the allegations of the Introduction to the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of any of the quotes in the Introduction, and except to the extent that the Introduction contains legal conclusions to which no response is required.

1. Wild Oats admits the allegations of Paragraph 1 of the Complaint.
2. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 2 of the Complaint.
3. Wild Oats denies the allegations of Paragraph 3 of the Complaint.
4. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 4 of the Complaint.

5. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 5 of the Complaint, except to the extent that this Paragraph contains legal conclusions to which no response is required.

6. Wild Oats admits the allegations of Paragraph 6 of the Complaint.

7. Wild Oats denies the allegations of Paragraph 7 of the Complaint.

8. Wild Oats admits that it was founded in 1987; admits that it provides a selection of natural, organic, and gourmet foods, environmentally friendly products, and natural vitamins, remedies and body care products, along with a broad selection of conventional products; admits that the last sentence of Paragraph 8 of the Complaint accurately quotes an article entitled "Organics Are No Longer a Niche" from the April 7, 2006 edition of Business Week; and otherwise denies this Paragraph.

9. Wild Oats admits the allegations of Paragraph 9 of the Complaint, except to the extent that this Paragraph contains legal conclusions to which no response is required.

10. Wild Oats admits the allegations of Paragraph 10 of the Complaint.

11. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 11 of the Complaint.

12. Wild Oats admits the allegations of Paragraph 12 of the Complaint, except to the extent this Paragraph contains legal conclusions to which no response is required.

13. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 13 of the Complaint, except to the extent this Paragraph contains legal conclusions to which no response is required.

14. Wild Oats admits the allegations of 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. Wild Oats denies Paragraph 15 of the Complaint to the extent it purports to define an industry standard term for "natural foods."

16. Wild Oats denies Paragraph 16 of the Complaint to the extent that it 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 rules and regulations pursuant to Organic Food Production Act of 1990.

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

18. Wild Oats denies the allegations of Paragraph 18 of the Complaint.

19. Wild Oats denies Paragraph 19 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of any of the quotes in this Paragraph.

20. Wild Oats denies the allegations of the first sentence of Paragraph 20 of the Complaint and otherwise denies knowledge and information sufficient to answer the rest of this Paragraph.

21. Wild Oats denies the allegations of Paragraph 21 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of the quote in this Paragraph.

22. Wild Oats denies the allegations of Paragraph 22 of the Complaint.
23. Wild Oats denies the allegations of Paragraph 23 of the Complaint.
24. Wild Oats denies the allegations of Paragraph 24 of the Complaint.
25. Wild Oats denies the allegations of Paragraph 25 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of any of the quotes in this Paragraph.
26. Wild Oats denies the allegations of Paragraph 26 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of the quote in this Paragraph.
27. Wild Oats admits the allegations of Paragraph 27 of the Complaint.
28. Wild Oats denies the allegations of Paragraph 28 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of the quote in this Paragraph.
29. Wild Oats denies the allegations of Paragraph 29 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of the quote in this Paragraph.
30. Wild Oats denies the allegations of Paragraph 30 of the Complaint.
31. Wild Oats denies the allegations of Paragraph 31 of the Complaint.
32. Wild Oats denies the allegations of Paragraph 32 of the Complaint.
33. Wild Oats admits the allegations of the first sentence of Paragraph 33 of the Complaint, but denies the allegations of the second sentence of this Paragraph.
34. Wild Oats denies the allegations of Paragraph 34 of the Complaint.

35. Wild Oats denies knowledge and information sufficient to answer the allegations of Paragraph 35 of the Complaint, except denies that Wild Oats has ever enjoyed a “monopoly” in any market.

36. Wild Oats admits the allegations of the first sentence Paragraph 36 of the Complaint and otherwise denies the allegations of this Paragraph.

37. Wild Oats denies the allegations of Paragraph 37 of the Complaint, except denies knowledge and information sufficient to admit or deny the accuracy of either quotes in this Paragraph.

38. Wild Oats denies the allegations of Paragraph 38 of the Complaint.

39. Wild Oats denies the allegations of Paragraph 39 of the Complaint, except to the extent this Paragraph contains legal conclusions to which no response is required.

40. Wild Oats denies the allegations of Paragraph 40 of the Complaint, except to the extent this Paragraph contains legal conclusions to which no response is required.

41. Wild Oats denies the allegations of Paragraph 41 of the Complaint, except to the to the extent this Paragraph contains legal conclusions to which no response is required.

42. Wild Oats denies the allegations of Paragraph 42 of the Complaint.

43. Wild Oats denies the allegations of Paragraph 43 of the Complaint, including each of its subparts, except to the to the extent this Paragraph, including any subpart, contains legal conclusions to which no response is required. Specifically:

- (a) Wild Oats denies the allegations of Paragraph 43.a of the Complaint;
- (b) Wild Oats denies the allegations of Paragraph 43.b of the Complaint;

- (c) Wild Oats denies the allegations of Paragraph 43.c of the Complaint;
- (d) Wild Oats denies the allegations of Paragraph 43.d of the Complaint;
- (e) Wild Oats denies the allegations of Paragraph 43.e of the Complaint;
- (f) Wild Oats denies the allegations of Paragraph 43.f of the Complaint;
- (g) Wild Oats denies the allegations of Paragraph 43.g of the Complaint;
- (h) Wild Oats denies the allegations of Paragraph 43.h of the Complaint.

44. Wild Oats 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. Wild Oats 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

48. The Complaint fails to state the basis for the relief sought by Plaintiff.

49. Efficiencies and other procompetitive benefits of the pending transaction outweigh any purported anticompetitive effects.

50. Wild Oats reserves the right to assert any other defenses as they become known to Wild Oats.

WHEREFORE, respondent Wild Oats respectfully requests that the Administrative Law Judge:

- A. Deny each contemplated relief proposed by Petitioner;
- B. Dismiss the Complaint with prejudice as against all respondents;
- C. Award Wild Oats the reasonable costs of this litigation, including reasonable attorneys' fees; and
- D. Grant Wild Oats such other and further relief as the Administrative Law Judge deems just and proper.

Dated: July 17, 2007

By: Clifford Aronson
Clifford A. Aronson
Thomas Pak
Matthew P. Hendrickson
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
212-735-3000

Gary A. MacDonald (DC Bar No. 418378)
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
202-371-7000

Terrence J. Wallock
2224 Pacific Dr.
Corona Del Mar, CA 92625
949-375-0683

*Attorneys for Defendant Wild Oats Markets,
Inc.*

CERTIFICATE OF SERVICE

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

By Hand Delivery:

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


By First Class Mail and Email:

Catherine M. Moscatelli (Complaint Counsel)
Acting Assistant Director, Mergers IV
601 New Jersey Avenue, NW
Washington, DC 20001

By Email:

Alden L. Atkins, Esq.
John D. Taurman, Esq.
VINSON & ELKINS LLP
The Willard Office Building
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
atkins@velaw.com

Paul T. Denis, Esq.
Dechert LLP
1775 I Street, NW
Washington, D.C. 20006-2401
Paul.denis@dechert.com



Attorney for Wild Oats Markets, Inc.