

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5276

September Term, 2006

07cv01021

Filed On: August 23, 2007

[1062518]

Federal Trade Commission,
Appellant

v.

Whole Foods Market, Inc., et al.,
Appellees

BEFORE: Sentelle, Tatel, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the emergency motion of the Federal Trade Commission for an injunction pending appeal, the opposition thereto, the reply, the supplemental opposition, and the supplemental reply; and the motion for leave to file amicus brief, and the lodged amicus brief, it is

ORDERED that the motion for leave to file amicus brief be granted. The Clerk is directed to file the lodged document. It is

FURTHER ORDERED that the administrative injunction issued August 20, 2007 be dissolved and the motion for an injunction pending appeal be denied. Although the FTC has raised some questions about the district court's decision, it has failed to make a "strong showing that it is likely to prevail on the merits of its appeal." Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); see also FTC v. Weyerhaeuser Co., 648 F.2d 739, 741 (D.C. Cir. 1981). The FTC must show that the district court, in denying the preliminary injunction, abused its discretion by making clearly erroneous factual findings or errors of law. FTC v. Beatrice Foods Co., 587 F.2d 1225, 1230 (D.C. Cir. 1978); Weyerhaeuser, 648 F.2d at 741. At this stage, the FTC has failed to meet that burden.

Per Curiam