

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

WHOLE FOODS MARKET, INC.  
a corporation.

Docket No. 9324

**PETITION OF DIVESTITURE TRUSTEE FOR APPROVAL  
OF PROPOSED DIVESTITURE TO LUBERSKI, INC.**

Pursuant to Section 2.41(f) of the Federal Trade Commission (the "Commission") Rules of Practice and Procedure, 16 C.F.R.2.41(f), and Paragraph II.C of the Decision and Order in the above-captioned matter (the "Decision and Order"), The Food Partners, LLC ("TFP"), divestiture trustee, hereby petitions the Commission to approve the divestiture of select Assets To Be Divested (as defined in the Decision and Order) to Luberski, Inc. ("Luberski").

**I. DECISION AND ORDER AND PROPOSED SALE TO LUBERSKI, INC.**

On March 5, 2009, the Commission accepted for public comment an Agreement Containing Consent Orders ("Consent Agreement") requiring the divestiture of 19 non-operating stores, 12 acquired Wild Oats stores, one Whole Foods Market store and the Wild Oats intellectual property and related assets ("Assets To Be Divested"). The Commission also approved The Food Partners, LLC as the Divestiture Trustee. In addition, the Consent Agreement included an Order to Maintain Assets, which requires Whole Foods to continue to operate the open stores and maintain the viability, marketability and competitiveness of the Assets To Be Divested until a buyer is identified and approved by the Commission and final closing of the purchase occurs or until the Assets To Be Divested are no longer subject to the Decision and Order. After placing the Consent Agreement on the public record for comment, the Commission approved the final Consent Agreement on May 28, 2009.

On September 8, 2009 and September 25, 2009, the Divestiture Trustee submitted letters to the Commission requesting a six-month extension of time to complete negotiations on a total of six open and two closed stores as well as the Wild Oats Intellectual Property pursuant to Paragraph II.C.2. of the Decision and Order based on the receipt of good faith offers from select potential purchasers. On October 26, 2009, the Commission granted the Divestiture Trustee's request and extended the divestiture period until March 8, 2010, to allow the Divestiture Trustee to complete negotiations with those buyers who submitted good faith offers prior to September 8, 2009.

This Petition describes the principal terms of the Agreement (as defined below) by which Whole Foods plans to sell certain Assets To Be Divested to Luberski and explains why the Agreement satisfies the purposes of the Decision and Order.

## II. THE TRANSACTION DOCUMENTS

Whole Foods and Luberski have executed an Agreement for the divestiture of certain Assets To Be Divested, subject to the approval of the Commission. The Agreement is embodied in the Asset Purchase Agreement (the "Agreement"). Copies of the Agreement, attachments, exhibits and schedules (the "Transaction Documents") are attached to this Petition as Confidential Appendix A.

In essence, the Agreement provides that Luberski will acquire the Wild Oats intellectual property (but not the Alfalfa's intellectual property). There will be no on-going entanglements between Luberski and Whole Foods. As described below, requiring Whole Foods to divest of the Wild Oats intellectual property would increase competition in the marketplace.

Whole Foods requests that the Transaction Documents and other information provided in the confidential appendices be treated by the Commission as strictly confidential and not be made available to the public. The terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

## III. THE PROPOSED ACQUIRER

### A. Background and Relevant Experience

With sales in excess of \$200 million in 2008, Luberski (dba Hidden Villa Ranch) is a food company that is comprised of marketing, trading, wholesaling, producing, exporting and distribution. The Fullerton, California corporation, which is one of the largest egg distributors in the United States, arranges for ongoing deliveries of eggs and other products and services to customers around the globe and is known for its premium, natural and organic products. Luberski also owns Hans Olsen, an institutional food distributor, and Nest Fresh, an environmentally friendly brand that caters to consumers that prefer organic produce. Luberski is one of the few organic food companies with an established nationwide distribution of cage-free and organic eggs. The company's distribution network can be expanded to place the Wild Oats brands back in a national program, with distribution through health food stores and markets.

As a second generation egg farmer, Founder, President and CEO, Tim Luberski crossed over from egg production to distribution by founding Hidden Villa Ranch. In 1984, Hidden Villa added supermarket customers to its existing foodservice customers. The company currently distributes and exports food products both domestically and internationally.

Hidden Villa previously produced, packed and distributed all Wild Oats egg labels nationwide. The company also managed a nationwide certified humane cage-free program for Wild Oats. Under the company's management, the Wild Oats egg label became popular and was branded out to other retailers nationwide (including Pathmark, Sun Harvest, Price Chopper and Heinen's). The company plans to develop and supply a Wild Oats labeled brand of natural and organic packaged food products to retailers in order to aid the company's nationwide distribution of its existing private label products. Hidden Villa intends to leverage the Wild Oats intellectual property, a brand recognized nationally with

consumers for quality, loyalty, confidence, nutrition, health and wellness, to create competition for natural and organic products that are competitively priced.

**Key Executives:**

**Michael I. Sencer**

Michael Sencer has been involved in the food industry for nearly 30 years. Sencer began his career in 1971 at the California Ranch Fresh Egg Company in El Monte, California. Sencer also worked for one year at Egg City in Moorpark, California as the company's Executive Vice President. Sencer assumed his present position as Executive Vice President at Hidden Villa Ranch in 1986, after California Ranch Fresh Egg Company was sold.

**Robert J. Kelly**

Robert Kelly has been involved in the food industry for nearly 30 years. He began his career in the food industry in 1979 as a sales manager and partner for Mira Loma, California based Coast Packaging. In 1986, Kelly became a general manager with Sunshine Foods and then a sales manager with Embly Ranch. In 1996, Hidden Villa Ranch bought Embly Ranch. Kelly is currently Hidden Villa's Pinehill Division's Vice President and is responsible for all operations, sales and marketing to the retail, food service and manufacturing industries.

**B. Financial Capability**

Luberski plans to pay cash for the Wild Oats intellectual property and has adequate liquidity to consummate the proposed acquisition. The company's cash and cash equivalents, in addition to a revolving line of credit, enable Luberski to acquire and maintain the assets. (Additional information pertaining to Luberski is attached to this Petition as Confidential Appendix B.)

**IV. CONCLUSION**

The proposed divestiture to Luberski of the Wild Oats intellectual property will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition. Luberski has the financial capability and relevant experience to ensure that the Assets To Be Divested will be used so as to become a viable and effective competitor to Whole Foods. Accordingly, the Divestiture Trustee requests that the Commission approve the proposed divestiture and acquirer.

Dated: March 8, 2010

Respectfully submitted,

Matthew S. Morris  
The Food Partners, LLC  
Divestiture Trustee

**Appendix A  
Redacted**

**Appendix B  
Redacted**