

The Honorable William E. Kovacic  
Chairman, Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Kovacic:

Due to the proceedings that the FTC has brought against the friendly merger between Whole Foods Market, Inc. and Wild Oats involving 29 regional markets, we have had to file motions to compel discovery from our competitors. Understandably, our competitors fear that proprietary business information could be disclosed inadvertently. Unfortunately, this concern may be founded on the fact that the FTC has already improperly released proprietary information belonging to Whole Foods Market Inc.<sup>1</sup>

To ensure that no proprietary information will be disclosed from the documents produced in response to third party subpoenas, we have drafted and agreed to a protective order that will prohibit any person from Whole Foods, including the General Counsel of Whole Foods Market Inc., from seeing any document that a competitor deems confidential. In addition, the protective order allows any party complying with discovery requests to designate any responsive document or portion of that document as confidential material. That designation will not be challenged unless the documents are already in the public domain and clearly not confidential.

We, and our competitors signed below, request the FTC take the necessary actions and precautions to comply with the protective order and avoid repeating the mistakes the agency has made in the past. To that end, we ask that any Federal Trade Commission attorney who violates the protective order be held accountable, pursuant to FTC Rule of Practice 4.1 (e), up to and including suspension or disbarment from practice before the Commission.

We look forward to discussing the issues set forward above.

Sincerely,

John Mackey  
CEO, Whole Foods Market Inc.

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CEO,

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<sup>1</sup> Rugaber, Christopher, *Error by FTC Reveals Whole Foods' Trade Secrets*, The Washington Post, August 15, 2007, at D03 (see also, Scott, Amy, *Trade Secret Leak in Aisle 7*, Market Place, National Public Radio, August 15, 2007, <http://marketplace.publicradio.org/shows/2007/08/15/AM200708155.html>)