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General Docket
United States Court of Appeals for DC Circuit

Court of Appeals Docket #: 07-5276	Docketed: 08/17/2007
Nature of Suit: 2890 Other Statutory Actions	Termed: 07/29/2008
FTC v. Whole Foods Market, Inc.	
Appeal From: United States District Court for the District of Columbia	

Case Type Information:

- 1) Civil US
- 2) United States
- 3) -

Originating Court Information:

District: 0090-1 : 07cv01021 Court Reporter: Lisa Griffith Court Reporter: Linda Russo Court Reporter: Bryan Wayne Trial Judge: Paul L. Friedman, U.S. District Judge Date Filed: 06/06/2007 Date Order/Judgment: 08/16/2007	Lead: 07cv01021
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Prior Cases:

None

Current Cases:

None

Panel Assignment:

Panel: DST JRB BMK Date of Hearing: 04/23/2008	Date of Decision: 07/29/2008	Date Completed: 07/29/2008
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Federal Trade Commission
 Plaintiff - Appellant

Imad Dean Abyad
 Direct: 202-326-2375
 Email: iabyad@ftc.gov
 Fax: 202-326-2477
 [COR LD NTC Gvt Atty US Agency]
 Federal Trade Commission
 (FTC) General Counsel
 600 Pennsylvania Avenue, NW
 Washington, DC 20580

Thomas H. Brock
 Direct: 202-326-2813
 Email: tbrock@ftc.gov
 [COR LD NTC Gvt Atty US Agency]

Federal Trade Commission
(FTC)
601 New Jersey Avenue, NW
Washington, DC 20580

Marilyn Elizabeth Kerst
Direct: 202-326-2158
Email: MKerst@ftc.gov
Fax: 202-326-2477
[COR LD NTC Gvt Atty US Agency]
Federal Trade Commission
(FTC) General Counsel
Rm. 582
600 Pennsylvania Avenue, NW
Washington, DC 20580

Richard Brian Dagen
[COR Gvt Atty US Agency]
Federal Trade Commission
(FTC) General Counsel
600 Pennsylvania Avenue, NW
Washington, DC 20580

John F. Daly
Direct: 202-326-2244
Fax: 202-326-2477
[COR Gvt Atty US Agency]
Federal Trade Commission
(FTC) General Counsel
Room H 582
600 Pennsylvania Avenue, NW
Washington, DC 20580

John David Graubert
Direct: 202-326-2186
[COR Gvt Atty US Agency]
Federal Trade Commission
(FTC) General Counsel
600 Pennsylvania Avenue, NW
Washington, DC 20580

v.

Whole Foods Market, Inc.
Defendant - Appellee

Alden Lewis Atkins
Direct: 202-639-6613
[COR LD NTC Retained Atty]
Vinson & Elkins LLP
Firm: 202-639-6500
1455 Pennsylvania Avenue, NW
Willard Office Building, Suite 600

Washington, DC 20004-1008

Paul Thomas Denis
Direct: 202-261-3430
Email: paul.denis@dechert.com
Fax: 202-261-3333
[COR LD NTC Retained Atty]
Dechert LLP
Firm: 202-261-3300
1775 Eye Street, NW
Suite 900
Washington, DC 20006-0000

Theodore B. Olson
Direct: 202-955-8668
Email: toolson@gibsondunn.com
Fax: 202-530-9575
[COR LD NTC Retained Atty]
Gibson, Dunn & Crutcher LLP
Firm: 202-955-8500
1050 Connecticut Avenue, NW
Washington, DC 20036-5306

Rebecca Powers Dick
Email: rebecca.dick@dechert.com
[COR Retained Atty]
Dechert LLP
Firm: 202-261-3300
1775 Eye Street, NW
Suite 900
Washington, DC 20006-0000

Paul H. Friedman, Esquire
Email: paul.friedman@dechert.com
[COR Retained Atty]
Dechert LLP
Firm: 202-261-3300
1775 Eye Street, NW
Suite 900
Washington, DC 20006-0000

Nory Miller
[COR Retained Atty]
Nory Miller
225 South Bonsall Street
Philadelphia, PA 19103-0000

Wild Oats Markets, Inc.
Defendant - Appellee

Alden Lewis Atkins
Direct: 202-639-6613
[COR LD NTC Retained Atty]

(see above)

Paul Thomas Denis
Direct: 202-261-3430
[COR LD NTC Retained Atty]
(see above)

Wegmans Food Markets, Inc.
Movant - Appellee

Christopher James MacAvoy
Direct: 202-383-6546
Email: macavoyc@howrey.com
Fax: 202-383-6610
[COR LD NTC Retained Atty]
Howrey LLP
Firm: 202-783-0800
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402

Target Corporation
Movant - Appellee

John E. Schmidlein
Direct: 202-434-5901
[COR LD NTC Retained Atty]
Williams & Connolly LLP
Firm: 202-434-5000
725 12th Street, NW
Washington, DC 20005

Trader Joe's Company
Intervenor for Defendant - Appellee

Richard G. Parker
Direct: 202-383-5380
Email: rparker@omm.com
Fax: 202-383-5414
[COR LD NTC Retained Atty]
O'Melveny & Myers
Firm: 202-383-5300
1625 Eye Street, NW
Washington, DC 20006-4001

Wal-Mart Stores, Inc.
Intervenor for Defendant - Appellee

Darren Scott Tucker
Direct: 202-383-5189
Email: dtucker@omm.com
Fax: 202-383-5414
[COR LD NTC Retained Atty]
O'Melveny & Myers
Firm: 202-383-5300
1625 Eye Street, NW
Washington, DC 20006-4001

Publix Supermarkets, Incorporated
Intervenor for Defendant - Appellee

Christopher James MacAvoy
Direct: 202-383-6546
[COR LD NTC Retained Atty]
(see above)

SuperValu Inc.
Intervenor for Defendant - Appellee

Kroger Company
Intervenor for Defendant - Appellee

Safeway, Inc.
Intervenor for Defendant - Appellee

Apollo Management Holding LP
Intervenor for Defendant - Appellee

H.E. Butt Grocery Company
Intervenor for Defendant - Appellee

Winn-Dixie Stores, Inc.
Intervenor for Defendant - Appellee

Christopher James MacAvoy
Direct: 202-383-6546
[COR LD NTC Retained Atty]
(see above)

Justin S. Antonipillai
Direct: 202-942-5066
Email: Justin_Antonipillai@aporter.com
Fax: 202-942-5999
[COR LD NTC Retained Atty]
Arnold & Porter LLP
Firm: 202-942-5000
555 12th Street, NW
Washington, DC 20004-1206

Edward Marcellus Williamson
Email: marc.williamson@lw.com
Fax: 202-637-2201
[COR LD NTC Retained Atty]
Latham & Watkins LLP
Firm: 202-637-2200
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304

Jonathan Matthew Rich
Direct: 202-739-5433
Email: jrich@morganlewis.com
Fax: 202-739-3001
[COR LD NTC Retained Atty]
Morgan, Lewis & Bockius LLP
Firm: 202-739-3000
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

Joseph J. Simons
Direct: 202-223-7300
Email: jsimons@paulweiss.com
Fax: 202-223-7420
[COR LD NTC Retained Atty]
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
Firm: 202-223-7300
2001 K Street, NW
Washington, DC 20006

American Antitrust Institute
Amicus Curiae for Appellant

David A. Balto
[COR LD NTC Retained Atty]
Law Office of David A. Balto
Firm: 202-577-5424
2600 Virginia Avenue, NW
Suite 1111
Washington, DC 20037-0000

Albert Allen Foer
[COR Retained Atty]
American Antitrust Institute
Firm: 202-276-6002
2919 Ellicott Street, NW
Washington, DC 20008-0000

Consumer Federation of America
Amicus Curiae for Appellant

David A. Balto
[COR LD NTC Retained Atty]
(see above)

Organization for Competitive Markets
Amicus Curiae for Appellant

David A. Balto
[COR LD NTC Retained Atty]
(see above)

Organic Trade Association
Terminated: 04/11/2008
Movant-Amicus Curiae for Appellee

Federal Trade Commission,

Plaintiff - Appellant

v.

Whole Foods Market, Inc.; Wild Oats Markets, Inc.,

Defendants - Appellees

Wegmans Food Markets, Inc.; Target Corporation,



Movants - Appellees


Trader Joe's Company; Wal-Mart Stores, Inc.; Publix Supermarkets, Incorporated; SuperValu Inc.; Kroger Company; Safeway, Inc.; Apollo Management Holding LP; H.E. Butt Grocery Company; Winn-Dixie Stores, Inc.,

Intervenors for Defendant - Appellees


American Antitrust Institute; Consumer Federation of America; Organization for Competitive Markets,



Amici Curiae for Appellant



- 08/17/2007 CIVIL-US CASE docketed. Notice of Appeal filed by Appellant FTC. [1061166-1]
- 08/17/2007 Letter sent Attorney Non-Member letter. Application for admission - due 10/16/07 for Paul T. Denis. Documents sent: letter aty appl for adm [1061172-1].
- 08/17/2007 ENTRY OF APPEARANCE filed by Attorney John David Graubert for Appellant FTC, Marilyn Elizabeth Kerst for Appellant FTC [1061226-1].
- 08/17/2007 EMERGENCY MOTION filed (5 copies) by Appellant FTC (certificate of service dated 8/17/07, by hand-delivery) for injunction pending appeal [1061233-1]. [UNDER SEAL IN VAULT]
- 08/17/2007 OPPOSITION filed [1061237-1] (5 copies) by Appellee Wh Food Mkt Inc, Appellee Wld Oats Mkts Inc (certificate of service dated 8/17/07, by hand-delivery) to a motion for injunction [1061233-1]. [UNDER SEAL IN VAULT]
- 08/17/2007  PER CURIAM ORDER filed [1061261] directing appellant to hand-deliver and hand-file a reply to the emergency motion for an injunction pending appeal by 9:00 a.m. on Monday, August 20, 2007. [1061237-1] Before Judges Sentelle, Tatel, Kavanaugh . [Entry Date: 8/20/07]
1 pg, 13.5 KB
- 08/20/2007 REPLY w/Exhibits filed [1061276-1] (5 copies) by Appellant FTC (certificate of service dated 8/20/07) to a response motion for injunction [1061233-1] (UNDER SEAL IN VAULT) .
- 08/20/2007  PER CURIAM ORDER filed [1061358] of the emergency motion of the Federal Trade Commission for an injunction pending appeal, the opposition thereto, and the reply, it is ORDERED that Whole Foods Market, Inc. be enjoined from taking any further steps to acquire the stock, assets, or any other interest in Wild Oats Markets, Inc., directly or indirectly, pending further order of the court [1061358-1]. The purpose of this administrative injunction is to give the court sufficient opportunity to consider the merits of the motion for an injunction and should not be construed in any way as a ruling on the merits. [SEE ORDER FOR FURTHER DETAILS]. It is FURTHER ORDERED, on the court's own motion, that appellees file a supplemental response to the emergency motion by 4:00 p.m. on Wednesday, August 22, 2007, specifically addressing each of the eight reversible errors appellant alleges were committed by the district court. See Emergency Motion for Injunction Pending Appeal at 13-14. Any reply is due by 12:00 noon on Thursday, August 23, 2007. The parties are directed to file and serve their pleadings by hand. Before Judges Sentelle, Tatel, Kavanaugh. [Entry Date: 8/20/07] -- Administrative Injunction dissolved per order filed 8/23/07.
1 pg, 14.04 KB
- 08/20/2007 PUBLIC VERSION - EMERGENCY MOTION filed (5 copies) by Appellant FTC for injunction pending appeal [1061427-1].
- 08/20/2007 PUBLIC VERSION - OPPOSITION filed [1061552-1] (5 copies) by Appellees Wh Food Mkt Inc and Wild Oats Markets, Inc. (certificate of service dated 8/20/07, by hand) to FTC's emergency motion for an injunction pending appeal [1061233-1].


- 08/20/2007 STATEMENT filed by Appellee Wh Food Mkt Inc, Appellee Wld Oats Mkts Inc pursuant to FRAP 26.1 providing corporate disclosure listing [1061558-1] Certificate of Service date 8/20/07.
- 08/21/2007 INITIAL SUBMISSIONS filed by Appellant FTC [1062035-1] : docketing statement and certificate of counsel.
- 08/22/2007 Letter sent Attorney Non-Member letter. Application for admission - due 10/22/07 for Jonathan M. Rich. Documents sent: letter aty appl for adm [1061875-1].
- 08/22/2007 Letter sent Attorney Non-Member letter. Application for admission - due 10/22/07 for Christopher James MacAvoy. Documents sent: letter aty appl for adm [1061877-1].
- 08/22/2007 Letter sent Attorney Non-Member letter. Application for admission - due 10/22/07 for Darren Scott Tucker. Documents sent: letter aty appl for adm [1061878-1].
- 08/22/2007 Letter sent Attorney Non-Member letter. Application for admission - due 10/22/07 for Kristen Ceara Limarzi. Documents sent: letter aty appl for adm [1061879-1].
- 08/22/2007 SUPPLEMENTAL RESPONSE [w/EXHIBITS VOLUME 1 & 2] filed [1062148-1] (5 copies) by Appellees Wh Food Mkt Inc, Wld Oats Mkts Inc (certificate service dated 8/22/07, by hand-delivery) to FTC's emergency motion for an injunction pending appeal [1061233-1]. [UNDER SEAL IN VAULT]
- 08/23/2007 SUPPLEMENTAL REPLY [w/EXHIBITS - VOLUME 1] filed [1062325-1] (5 copies) by Appellant FTC (certificate of service dated 8/23/07, by hand-delivery and e-mail) in support of emergency motion for an injunction pending appeal. [UNDER SEAL IN VAULT]
- 08/23/2007 [PUBLIC VERSION] SUPPLEMENTAL OPPOSITION filed [1062408-1] (5 copies) by Appellees Wh Food Mkt Inc, Wld Oats Mkts Inc (certificate of service dated 8/23/07, by hand-delivery) to the FTC's emergency motion for an injunction pending appeal [1061233-1].
- 08/23/2007 BRIEF lodged by Amicus Curiae for Appellant Amer Antitrust Inst, Consum Fed Amer, and Orgn Compet Mkt [1062437-1]. Copies: 15 . Certificate of service date 8/23/07.
- 08/23/2007 STATEMENT (contained within the brief) filed by Amicus Curiae for Appellant Amer Antitrust Inst, Consum Fed, and Orgn Compet Mkt pursuant to FRAP 26.1 providing corporate disclosure listing [1062440-1]. Certificate of Service date 8/23/07.
- 08/23/2007 MOTION filed (5 copies) by Amicus Curiae for Appellant Amer Antitrust Inst, Consum Fed Amer, and Orgn Compet Mkt (certificate of service dated 8/23/07) for leave to file [1062456-1] a brief [1062437-1].
- 08/23/2007  PER CURIAM ORDER filed [1062518] granting motion leave to file amicus curiae brief filed by Amer Antitrust Inst, Consum Fed Amer, Orgn Compet Mkt [1062456-1] Directing to file the lodged document [1062437-1]; Further Ordered that the administrative injunction issued 8/20/07 be dissolved and the motion for an injunction pending appeal be denied. (See Order for details). [1061233-1]
2 pg., 33.53 KB







Before Judges Sentelle, Tatel, Kavanaugh. [Entry Date: 8/23/07]




- 08/23/2007 PER ABOVE ORDER lodged amicus curiae for appellant Amer Anti-Trust Inst, Consumer Fed Amer and Orgn Compet Mkt Brief [1062437-1] is filed.
- 08/24/2007  2 pg, 36.05 KB
CLERK'S ORDER filed [1062556] directing Appellant to file [1062556-1] : statement of issues due 9/24/07 for FTC ; lower court decision due 9/24/07 for FTC ; any procedural motions due 9/24/07 for FTC ; transcript status notice due 9/24/07 for FTC ; deferred appendix notice due 9/24/07 for FTC ; any dispositive motions due 10/9/07 for FTC. Directing Appellee to file [1062556-2] : certificate of counsel; any procedural motions due 9/24/07 for Winn Dixie Stores, HE Butt Grocery Co, Apollo Mgmt Hold, Safeway Inc, Kroger Co, SuperValu Inc, Publix Supermarkets, Wal-Mart Stores Inc, Trdr Joe Co, Target Corp, Wegman Food Mkt, Wh Food Mkt Inc ; entry of appearance form due 9/24/07 for Kristen Ceara Limarzi, Joseph J. Simons, Jonathan Rich, Edward Marcellus Williamson, Justin S. Antonipillai, Christopher James MacAvoy, Darren Scott Tucker, Richard G. Parker, John E. Schmittlein, Clifford Hank Aronson, Paul T. Denis, Alden Lewis Atkins ; any dispositive motions due for Winn Dixie Stores, HE Butt Grocery Co, Apollo Mgmt Hold, Safeway Inc, Kroger Co, SuperValu Inc, Publix Supermarkets, Wal-Mart Stores Inc, Trdr Joe Co, Target Wegman Food Mkt, Wh Food Mkt Inc. [Entry Date: 8/24/07]
- 09/17/2007 ENTRY OF APPEARANCE filed by Attorney Clifford Hank Aronson for Appellee Wld Oats Mkts Inc. [1067223-1] .
- 09/21/2007 NOTICE filed by Appellant FTC FINAL transcript status notice filed [1068808-1] . Transcripts completed. Certificate of service date 9/21/07.
- 09/21/2007 INITIAL SUBMISSIONS filed by Appellant FTC [1068810-1] : statement of issues; lower court decision; deferred appendix notice (Deferred Appendix needed = Y).
- 09/24/2007 ENTRY OF APPEARANCE filed by Attorney Rebecca Powers Dick for Appellee Wh Food Mkt Inc, Nory Miller for Appellee Wh Food Mkt Inc, Paul H. Friedman for Appellee Wh Food Mkt Inc [1069098-1] .
- 09/24/2007 INITIAL SUBMISSIONS filed by Appellee Wh Food Mkt Inc [1069111-1] : updated certificate of counsel.
- 10/02/2007 ENTRY OF APPEARANCE filed by Attorneys Paul Thomas Denis, Nory Miller, and Paul H. Friedman for Appellee Wh Food Mkt Inc [1072034-1].
- 10/09/2007 MOTION filed (5 copies) by Appellee Wh Food Mkt Inc (certificate of mail service dated 10/9/07) to dismiss case as moot [1072458-1] Response due on 10/22/07 .
- 10/22/2007 OPPOSITION filed [1076578-1] (5 copies) by Appellant FTC (certificate of service by hand dated 10/22/07) to a motion dismiss case as moot [1072458-1].
- 10/22/2007 MOTION filed (5 copies) by Appellant FTC (certificate of service by hand dated 10/22/07) to establish the initial briefing schedule [1076580-1].
- 10/29/2007 REPLY filed [1077244-1] (5 copies) by Appellee Wh Food Mkt Inc (certificate of service dated 10/29/07, by mail) to a response to the motion to dismiss case as moot [1072458-1].




- 10/31/2007 SECOND Letter sent Attorney Non-Member letter. Application for admission - due 11/9/07 for Kristen Ceara Limarzi. Documents sent: letter aty appl for adm [1077269-1].
- 10/31/2007 SECOND Letter sent Attorney Non-Member letter. Application for admission - due 11/9/07 for Christopher James MacAvoy. Documents sent: letter aty appl for adm [1077276-1].
- 11/01/2007 OPPOSITION filed [1077930-1] (5 copies) by Appellee Wh Food Mkt Inc (certificate of hand service dated 11/1/07) to a motion to set briefing schedule [1076580-1] .
- 11/08/2007 REPLY filed [1079671-1] (5 copies) by Appellant FTC (certificate of service dated 11/8/07, by hand/e-mail) to a response to the motion establishing the initial briefing schedule [1076580-1]. [STYLED AS FTC REPLY IN SUPPORT OF MOTION TO SET BRIEFING SCHEDULE].
- 12/11/2007  PER CURIAM ORDER filed [1085563] referring motion dismiss case as moot [1072458-1] to the merits panel to which this case is assigned. It is FURTHER ORDERED that the following briefing schedule and format will apply in this case: Appellant's brief due on 1/14/08 (nte 14,000 words); Appellee's brief due on 2/13/08 (nte 14,000 words); Appellant's reply brief due on 2/27/08 (nte 7,000 words); Deferred appendix due on 3/5/08 ; Final Briefs due on 3/12/08. Before Judges Rogers, Kavanaugh. [Entry Date: 12/11/07]
2 pg, 15.19 KB
- 01/11/2008 MOTION filed (5 copies) by Amicus Curiae for Appellant Amer Antitrust Inst (certificate of mail service dated 1/9/08) for leave to file [1093716-1] an amicus brief.
- 01/14/2008 (Public Copy) BRIEF filed by Appellant FTC [1092442-1] . Copies: 8 . Certificate of service date 1/14/08 .
- 01/14/2008 BRIEF (UNDER SEAL) filed by Appellant FTC [1092637-1] . Copies: 7 . Certificate of service date 1/14/08 .
- 01/16/2008 Errata (Certificate of Compliance/Word Count) to [1093088-1] brief [1092637-1] filed by Appellant FTC . (Placed in brief)
- 01/22/2008 BRIEF lodged by Amicus Curiae for Appellant Amer Antitrust Inst [1095903-1] . Copies: 15 . Certificate of service date 1/22/08 .
- 02/11/2008 CONSENT MOTION filed (5 copies) by Appellant FTC (certificate of service dated 2/11/08, by mail) to extend time to file deferred appendix and final briefs [1098890-1].
- 02/13/2008 BRIEF (PUBLIC VERSION) filed by Appellee Wh Food Mkt Inc [1099224-1] . Copies: 7 . Certificate of service date 2/13/08 .
- 02/13/2008 BRIEF (UNDER SEAL) filed by Appellee Wh Food Mkt Inc [1099241-1] . Copies: 7 . Certificate of service date 2/13/08 . UNDER SEAL IN VAULT
- 02/15/2008  CLERK'S ORDER filed [1099190] granting motion for leave to file an amicus curiae brief filed by Amer Antitrust Inst [1093716-1] Directing Clerk to file the lodged brief [1095903-1] [Entry Date: 2/15/08]
1 pg, 13.97 KB
- 02/15/2008 PER ABOVE ORDER lodged brief [1095903-1] is filed.

- 02/19/2008 SUPPLEMENT (public version) (errata - 28(a)(1) certificate, corporate disclosure statement, revised table of authorities) to [1102274-1] appellee's brief (public version) [1099224-1] filed by Appellee Wh Food Mkt Inc .
- 02/19/2008 SUPPLEMENT (under seal) (errata - 28(a)(1) certificate, disclosure statement and revised table of authorities) to [1102275-1] appellee's brief (under seal) [1099241-1] filed by Appellee Wh Food Mkt Inc. UNDER SEAL IN VAULT
- 02/20/2008  CLERK'S ORDER filed [1099818] to schedule oral argument [1099818-1] before Judge Initials: DST JRB BMK on 4/23/08 at 9:30 AM . [Entry Date: 2/20/08]
1 pg, 13.47 KB
- 02/20/2008  CLERK'S ORDER filed [1099849] granting motion extend time filed by FTC [1098890-1]; [1099849-1] Deferred appendix due on 3/10/08 and final briefs due on 3/17/08. [Entry Date: 2/20/08]
1 pg, 13.42 KB
- 02/27/2008 (Public Version) REPLY BRIEF filed by Appellant FTC [1101635-1] . Copies: 7 . Certificate of service date 2/27/08 .
- 02/27/2008 (Sealed Version) REPLY BRIEF filed by Appellant FTC [1101656-1] . Copies: 7 . Certificate of service date 2/27/08 .
- 02/29/2008 BRIEF lodged by Amicus Curiae for Appellee Orgn Trade Assc [1102712-1] . Copies: 15 . Certificate of service date 2/29/08 .
- 02/29/2008 MOTION filed (5 copies) by Movant-Amicus Curiae-Appellee Orgn Trade Assc (certificate of mail service dated 2/29/08) to allow amicus curiae [1102747-1] .
- 03/03/2008 ENTRY OF APPEARANCE filed by Attorney William J. Friedman for Movant-Amicus Curiae-Appellee Orgn Trade Assc [1104047-1] .
- 03/04/2008 CORRECTED BRIEF lodged by Movant-Amicus Curiae-Appellee Orgn Trade Assc [1103957-1] . Copies: 15 . Certificate of service 3/4/08 .
- 03/10/2008 (UNDER SEAL) JOINT APPENDIX filed by Appellant FTC [1104456-1] . Copies: 7 . Certificate of service date 3/10/08 . (5 Volumes of Exhibits - 4 Copies included)
- 03/10/2008 PUBLIC APPENDIX (Vol 1) filed by Appellant FTC [1104848-1] Copies: 10 . Certificate of service date 3/10/08 .
- 03/10/2008 PUBLIC Exhibits (Vos. II-VI) filed by Appellant FTC [1104855-1] . Copies: 4 . Certificate of service date 3/10/08 .
- 03/12/2008 OPPOSITION filed [1105420-1] (5 copies) by Appellant FTC (certificate of service dated 3/12/08, by hand-delivery) to a motion for leave to file amicus brief out of time [1102747-1].
- 03/17/2008 (Public Version) APPELLANT FINAL BRIEF [1106491] filed by FTC [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,789; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Attached [07-5276]
- 03/17/2008 (Public Version) APPELLANT FINAL REPLY BRIEF [1106492] filed by FTC [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 6,294; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Attached [07-5276]--[Edited 03/18/2008 by JT]

- 03/17/2008 (Public Version) APPELLEE FINAL BRIEF [1106501] filed by Whole Foods Market, Inc. [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,580; Disclosure Statement: Attached; Certificate of Parties: Attached [07-5276]
- 03/17/2008 (Sealed Version) APPELLEE FINAL BRIEF [1106601] filed by Whole Foods Market, Inc. [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,580; Disclosure Statement: Attached; Certificate of Parties: Attached [07-5276]
- 03/17/2008 (Sealed Version) APPELLANT FINAL REPLY BRIEF [1106604] filed by FTC [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 6,294; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Attached [07-5276]
- 03/17/2008 (Sealed Version) APPELLANT FINAL BRIEF [1106600] filed by FTC [Service Date:03/17/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,789; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Attached [07-5276]
- 03/17/2008 (Sealed Version) SUPPLEMENTAL APPENDIX [1106633] LODGED [Volumes:1] (attached to motion) [Service Date:03/17/2008] [07-5276]--[Edited 03/19/2008 by JT]
- 03/17/2008 (Sealed Version) MOTION filed [1106642] by Whole Foods Market, Inc. to supplement the joint appendix (Response to Motion served by hand due on 03/27/2008) [Service Date:03/17/2008] Copies: 5 (Motion/Petition); Pages: 1-10; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Not Applicable to this Filing [07-5276]
- 03/17/2008 (Public Version) MOTION filed [1106651] by Whole Foods Market, Inc. to supplement the joint appendix [Service Date:03/17/2008] [07-5276]
- 03/18/2008 (Corrected - Public Version) APPELLEE FINAL BRIEF [1106607] filed by Whole Foods Market, Inc. [Service Date:03/18/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,580; Disclosure Statement: Attached; Certificate of Parties: Attached [07-5276]
- 03/18/2008 (Corrected - Sealed Version) APPELLEE FINAL BRIEF [1106611] filed by Whole Foods Market, Inc. [Service Date:03/18/2008] Copies: 15 (Final Brief); Pages: 1-10; Word Count for Brief: 13,580; Disclosure Statement: Attached; Certificate of Parties: Attached [07-5276]
- 03/19/2008 REPLY FILED [1106819] by Organic Trade Association to Appellant's opposition to motion to accept amicus brief on behalf of OTA [1105420-2] [Service Date:03/19/2008] [07-5276]
- 03/26/2008 UNDER SEAL - CORRECTED VERSION - JOINT APPENDIX, Volume III Exhibits [1107830] filed [Volumes:1] [Number of Paper Copies:4 (Exhibits)] [Service Date:03/10/2008] [07-5276]
- 04/11/2008  PER CURIAM ORDER filed [1110408] allocating oral argument time as follows: Appellant -- 15 Minutes, Appellee -- 15 Minutes. One counsel per side to argue; directing party to file Form 72 notice of arguing attorney - due 04/18/2008 [07-5276]
1 pg., 29.35 KB

- 04/11/2008  1 pg, 31.77 KB PER CURIAM ORDER filed [1110444] denying motion of The Organic Trade Association to participate as amicus curiae [1102747-2]; granting motion to supplement the joint appendix [1106651-2][1106642-2]; The Clerk is directed to file the lodged supplemental appendix [1106633-2] Judge Tatel, Brown and Kavanaugh [07-5276]
- 04/11/2008 PER ABOVE ORDER lodged supplemental appendix [1106633-2] is filed (attached to motion) [07-5276]
- 04/14/2008 FORM from Arguing Attorney - - 1. Arguing Person Information Updated for: Marilyn Elizabeth Kerst arguing for Appellant Federal Trade Commission [07-5276]
- 04/14/2008 FORM from Arguing Attorney - - Arguing Person Information Updated for: Paul Thomas Denis arguing for Appellees Inc. Whole Foods Market and Inc. Wild Oats Markets [07-5276]
- 04/23/2008 ORAL ARGUMENT HELD before Judge Tatel, Brown and Kavanaugh [07-5276]
- 05/01/2008 TRANSCRIPT [1114108] of oral argument [07-5276]
- 07/24/2008 SUPPLEMENTAL JOINT APPENDIX TO VOLUME VI - EXHIBITS [PUBLIC APPENDIX] [1129650] filed [Volumes:1] [COPIES: 7] [Service Date:07/24/2008] [07-5276]
- 07/29/2008  2 pg, 66.67 KB [THIS JUDGMENT AMENDED BY ORDER OF 11/21/08] PER CURIAM JUDGMENT filed [1130152] that the judgment of the district court is reversed for the reasons in the accompanying opinion. Judge Tatel, Brown and Kavanaugh [07-5276]
- 07/29/2008  58 pg, 149.72 KB OPINION (REDACTED VERSION) filed [1130154] (Pages: 21) for the Court by Judge Brown; CONCURRING OPINION (Pages: 19) by Judge Tatel; DISSENTING OPINION (Pages: 18) by Judge Kavanaugh [07-5276]
- 07/29/2008  67 pg, 226 KB [THIS OPINION AMENDED BY ORDER OF 11/21/08] OPINION filed [1130155] (Pages: 21) for the Court by Judge Brown; CONCURRING OPINION (Pages: 19) by Judge Tatel; DISSENTING OPINION (Pages: 18) by Judge Kavanaugh [07-5276] [THIS OPINION UNSEALED BY ORDER OF AUGUST 20, 2008]
- 07/29/2008  1 pg, 27.48 KB CLERK'S ORDER filed [1130157] withholding issuance of the mandate. [07-5276]
- 07/29/2008  1 pg, 27.84 KB PER CURIAM ORDER filed [1130162], on the court's own motion, that, by 4:00pm on August 5, 2008, the parties show cause why the sealed portions of the concurrence in the opinion issued this date should not be unsealed. The response may not exceed 10 pages. All submissions must be filed and served by hand. Judge Tatel, Brown and Kavanaugh [07-5276]
- 08/05/2008 RESPONSE FILED [1132091] by FTC to order [[1130162-2](#)] [Service Date:08/05/2008] [07-5276]
- 08/05/2008 RESPONSE FILED [1132095] by Whole Foods Market, Inc. to order [[1130162-2](#)] to show cause. [Service Date:08/05/2008] [07-5276]

- 08/12/2008 BILL OF COSTS FILED [1133096] by FTC [Service Date:08/12/2008] [07-5276]
- 08/12/2008 ENTRY OF APPEARANCE filed [1138060] by Mr. Imad Dean Abyad for FTC [07-5276]
- 08/20/2008  PER CURIAM ORDER filed [1134226] discharging order to unseal [[1130162-2](#)]; It is FURTHER ORDERED the sealed portions of the concurring opinion be unsealed. The Clerk is directed to unseal the sealed portion of the concurring opinion filed July 29, 2008. Judge Tatel, Brown and Kavanaugh [07-5276]
1 pg, 26.44 KB
- 08/26/2008 PETITION filed [1135580] by Appellee Whole Foods Market, Inc. for rehearing en banc. [Service Date: 08/26/2008] Copies: 20 (EnBanc Filing); Pages: 1-10; Disclosure Statement: Attached; Certificate of Parties: Attached [07-5276]
- 08/29/2008  CLERK'S ORDER filed [1135890] directing response to petition for rehearing en banc [1135580-2] The response may not exceed 15 pages. Response to Petition due 09/15/2008 [07-5276]
1 pg, 25.98 KB
- 09/12/2008 RESPONSE FILED [1140119] by FTC to petition for rehearing en banc [1135580-2] [Service Date:09/12/2008] Copies: 5 (Response/Reply); Pages: 11-15; Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Not Applicable to this Filing [07-5276]
- 10/06/2008 ENTRY OF APPEARANCE filed [1142438] by Mr. Theodore B. Olson for Whole Foods Market, Inc. [07-5276]
- 10/06/2008 REPLY TO RESPONSE LODGED [1142628] by Whole Foods Market, Inc. and Wild Oats Markets, Inc. to petition for rehearing en banc [1135580-2] [Mail Service Date:10/06/2008] Copies: 20 (EnBanc Filing); Pages: 11; Word Count for Response: not listed; Disclosure Statement: Previously Filed; Certificate of Parties: Not Applicable to this Filing [07-5276]--[Edited 10/09/2008 by KRM]
- 10/06/2008 MOTION filed [1142632] by Whole Foods Market, Inc. and Wild Oats Markets, Inc. for leave to file response (Response to Motion served by mail due on 10/20/2008) [Mail Service Date:10/06/2008] Copies: 5 (Motion); Pages: 2; Word Count for Motion: not applicable; Disclosure Statement: Previously Filed; Certificate of Parties: Not Applicable to this Filing [07-5276]
- 10/20/2008 RESPONSE IN OPPOSITION FILED [1145942] by FTC to motion for leave to file,[1142632-2] [Service Date:10/20/2008 US mail, email] Copies: 5 (Response/Reply); Pages: 1-10; Disclosure Statement: Not Attached; Certificate of Parties: Not Applicable to this Filing [07-5276] [STYLED AS OPPOSITION OF THE FEDERAL TRADE COMMISSION TO WHOLE FOOD'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS PETITION FOR REHEARING EN BANC].
- 11/21/2008  PER CURIAM ORDER filed [1150482], on the court's own motion, that the opinion and judgment issued July 29, 2008, be replaced with the amended opinion and judgment issued herein this date [[1130155-2](#)] [[1130152-2](#)] Judge Tatel, Brown and Kavanaugh [07-5276]
1 pg, 26.52 KB
- 11/21/2008 Publishing Order [[1150482-2](#)] [07-5276]
- 11/21/2008 Republishing Opinion [[1130155-2](#)] [07-5276]

- 11/21/2008  2 pg, 35.89 KB PER CURIAM ORDER, EnBanc, filed [1150489] granting motion for leave to file [1142632-2]; The Clerk is directed to file the lodged reply [1142628-2]; denying petition for rehearing en banc [1135580-2] Judge Sentelle, Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith and Kavanaugh [07-5276] (Circuit Judge Kavanaugh would grant the petition for rehearing en banc)(A statement by Circuit Judge Ginsburg, with whom Chief Judge Sentelle joins, concurring in the denial of rehearing is attached)
- 11/21/2008  65 pg, 173.03 KB AMENDED AND REISSUED OPINION filed [1150494] (Pages: 21) for the Court by Judge Brown; CONCURRING OPINION (Pages: 19) by Judge Tatel; DISSENTING OPINION (Pages: 25) by Judge Kavanaugh [07-5276]
- 11/21/2008 PER ABOVE ORDER lodged response [1142628-2] is filed [07-5276]
- 12/09/2008 MANDATE ISSUED to Clerk, District Court [07-5276]
- 12/10/2008  1 pg, 26.04 KB PER CURIAM ORDER filed [1153350] denying bill of costs [1133096-3] [07-5276]

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