

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)

WHOLE FOODS MARKET, INC.)

a corporation.)

Docket No. 9324

AGREEMENT CONTAINING CONSENT ORDERS

This Agreement Containing Consent Order (“Consent Agreement”), by and between Whole Foods Market, Inc. (“Respondent”), by its duly authorized officer and attorney, and counsel for the Federal Trade Commission (“Commission”), is entered into in accordance with the Commission’s Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Whole Foods Market, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 550 Bowie Street, Austin, Texas 78703.
2. Respondent has been served with a copy of the Complaint issued by the Commission charging it with violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and has filed its Answer to the Complaint denying said charges.
3. Respondent admits all the jurisdictional facts set forth in the Complaint.
4. Respondent waives:
 - a. any further procedural steps;
 - b. the requirement that the Commission’s Decision and Order and Order To Maintain Assets (collectively, “Orders”) attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise challenge or contest the validity of the Orders entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.

5. Because the Commission believes there may be interim competitive harm, the Commission may issue and serve the Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
6. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Decision and Order in disposition of the proceeding.
7. This Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true.
8. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 3.25(f), 16 C.F.R. § 3.25(f), the Commission may, without further notice to Respondent: (1) issue the Orders, and (2) make information public with respect thereto. When final the Orders shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for Commission orders. The Orders shall become final upon service. Delivery of the Orders to Respondent by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Orders, and no agreement, understanding, representation, or interpretation not contained in the Orders or the Consent Agreement may be used to vary or contradict the terms of the Order.
9. By signing this Consent Agreement, Respondent represents and warrants that it can accomplish the full relief contemplated by the Consent Agreement and the attached Orders, and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and Orders are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Orders.
10. Respondent shall submit an initial compliance report at the time it signs this Consent Agreement, and a second compliance report no later than twenty-five (25) days after the Commission places the Consent Agreement on the public record, in each case pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, signed by the Respondent, setting forth in detail the manner in which the Respondent has to date complied or has prepared to comply, and will comply with this Agreement and with the Orders.

11. Respondent has read the Orders contemplated hereby. Respondent understands that once the Orders have been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Orders. Respondent agrees to comply with the Orders from the date it signs this Consent Agreement. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Orders after they become final.

12. At the time the Decision and Order, which is attached to this Agreement, becomes final pursuant to Commission Rules 2.34(e)(1), 16 C.F.R. § 2.34(e)(1), and 3.25, 16 C.F.R. § 3.25, the Commission will file a stipulated motion to withdraw with prejudice its complaint in Federal Trade Commission v. Whole Foods Market, Inc., Case No. 1:07-CV-0121-PLF (D.D.C.). The Commission and Respondent hereby waive, effective upon the filing of the stipulated motion to withdraw with prejudice, any further procedural steps in such action, and Respondent further waives any claim under the Equal Access to Justice Act in such action. Each party, (Commission/Plaintiff and Respondent/Defendant) shall bear its own costs in such action.

Agreed this date:
February 27, 2009

Whole Foods Market, Inc.

Federal Trade Commission:

By: _____
Jim Sud

By: _____

Executive Vice President Growth and
Business Development
Whole Foods Market, Inc.

Counsel Supporting the Complaint

By: _____
Paul T. Denis

APPROVED:

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