

Exhibit 28 to Plaintiff's
Memorandum of Points and Authorities
in Support of Its Motion for Temporary
Restraining Order and Preliminary Injunction
(PX01323)

Cited Portions of the Exhibit are Excerpted

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FEDERAL TRADE COMMISSION

In the Matter of:)
WHOLE FOODS MARKET, INC.,)
a corporation,) File No. 071-0114
and)
WILD OATS MARKETS, INC.,)
a corporation.)
-----)

Thursday, April 26, 2007

Room 5100
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

The above-entitled matter came on for
investigational hearing, pursuant to notice, at
9:41 a.m.

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1 APPEARANCES:

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3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4

JEANNE LIU, ESQ.

5

MICHAEL A. FRANCHAK, ESQ.

6

ABIGAIL A. SLATER, ESQ. (p.m. session)

7

Federal Trade Commission

8

601 New Jersey Avenue, N.W.

9

Washington, D.C. 20001

10

(202) 326-3406

11

jliu@ftc.gov.gov

12

13 ON BEHALF OF WILD OATS MARKETS:

14

THOMAS PAK, ESQ.

15

Skadden, Arps, Slate, Meagher & Flom LLP

16

Four Times Square

17

New York, New York 10036-6522

18

(212) 735-2747

19

tpak@skadden.com

20

-and-

21

TERRENCE J. WALLOCK, ESQ.

22

2224 Pacific Drive

23

Corona Del Mar, California 92625

24

(949) 675-0889

25

terry@wallock.com

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P R O C E E D I N G S

- - - - -

1
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3 Whereupon --

4 LAURA COBLENTZ

5 a witness, called for examination, having been first
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MS. LIU:

9 Q. Good morning. My name is Jeanne Liu. I'm an
10 attorney at the Federal Trade Commission. I'm going to
11 ask you some questions today about your job and about
12 Wild Oats.

13 Thank you so much for coming.

14 Before we go any further, I wanted to go over
15 some -- I guess some ground rules about how this hearing
16 will be conducted.

17 As you're aware, you were just sworn in a few
18 minutes ago.

19 All of my questions and your answers will be
20 recorded by the court reporter. For the
21 court reporter's benefit, I'd ask that you answer
22 verbally. Gestures, nods of the head aren't
23 recordable.

24 And also so that the record is clear, let's try
25 not to talk over each other. I'll let you finish

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1 responding to a question, and if you could do the same
2 when I'm asking questions, that would be great.

3 If you don't understand a question, just let me
4 know, and I'll try to rephrase it or clarify it. If you
5 answer a question, I'll assume that you understood what
6 the question was and that you understood it.

7 In response to some of my questions, your
8 attorney may object, either the question calls for a
9 privileged response or exceeds the scope of the
10 investigation, those being the only two objections
11 recognized by the commission rules. If your counsel
12 objects at any point, I'd ask that you pause for a
13 moment to think about the question. In most instances
14 you'll answer the question.

15 Do you understand these instructions?

16 A. Yes.

17 Q. We'll take some breaks during the day. If you
18 need a break, just let me know, and I'll try to come to
19 a convenient stopping point.

20 How did you prepare for this hearing today?

21 MR. PAK: Well, let me -- you can answer
22 without -- to the extent you can answer that without
23 revealing any privilege. You can answer who you met
24 with, for example, and when you met with them.

25 THE WITNESS: Well, I flew in yesterday and met
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1 with Thomas and Terry and Cliff at their offices
2 yesterday.

3 BY MS. LIU:

4 Q. Did you review any documents?

5 A. Yes, I did.

6 Q. Have those documents been turned over to the
7 FTC?

8 MR. PAK: I will represent that the documents
9 that she may have reviewed to refresh her recollection
10 were all produced to the FTC.

11 MS. LIU: Great. Thank you.

12 BY MS. LIU:

13 Q. Can you please state and spell your full name
14 for the record, please.

15 A. Laura Coblentz, L-A-U-R-A, C-O-B-L-E-N-T-Z.

16 Q. And you're currently employed at Wild Oats; is
17 that correct?

18 A. That's right.

19 Q. And what is your current position?

20 A. Vice president of marketing.

21 Q. And when did you obtain this position?

22 A. July 2005.

23 Q. And when did you begin your employment at
24 Wild Oats?

25 A. January 2003.

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1 store density because it's much more cost-effective.
2 Like Portland, Oregon. Denver, Colorado. Boston,
3 Massachusetts. Markets where we have more than one
4 store and ideally, you know, more than two.

5 Q. In terms of store density, does it matter that
6 there's -- what other competitors are in the area, or is
7 it just based on there's a one or two Wild Oats store in
8 the area?

9 A. It's really based on that criterion of store
10 density because of the sheer cost of advertising.

11 So it doesn't -- you know, we want to spread the
12 cost of the ad over as many stores as possible.

13 Q. With respect to radio ads, you mentioned that
14 you don't do a lot of those.

15 Where do you have the radio ads?

16 A. We have run radio in the past when we've had
17 grand openings. We've run radio in the past based on
18 the same criterion, so where we have store density.
19 It's the same factor that really drives the decision to
20 run mass media, so again it would be Denver or Portland,
21 Oregon.

22 Q. What stations do you run the radio ads on?

23 A. We tend to run advertising or sponsorship on
24 NPR, and you know, we'll select certain stations in
25 markets that, you know, meet the demographic and

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1 psychographic profiles of our customers.

2 Q. And why is NPR a preferred station?

3 A. Because it meets the demographic and
4 psychographic profile of the -- of the shopper, the
5 educated and affluent and interested in certain
6 lifestyle issues.

7 Q. In terms of level of education, does Wild Oats
8 have a particular profile that it tries to meet in terms
9 of level of education?

10 A. It's fairly mixed.

11 I mean, we try to target customers who have some
12 college education.

13 Q. Is that a baseline, at least some college?

14 A. Yes.

15 Q. Do you prefer anything higher than that?

16 A. I think the numbers are -- I mean, we don't
17 go -- we don't go -- we don't look at anything
18 post-college simply because the universe -- we just
19 don't look past -- I mean, college is the -- some
20 college is our criterion.

21 Q. In terms of affluence, are you referring to
22 income levels?

23 A. I am.

24 Q. How else are you talking about affluence?

25 A. That's how I'm referring to it.

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1 Q. And is there a particular level of income that
2 Wild Oats likes to seek?

3 A. We have a benchmark.

4 Q. And what is that benchmark?

5 A. 55 to 60 thousand.

6 Q. When you seek this benchmark of 55 to
7 60 thousand, is that same income benchmark the
8 benchmark that you try to seek in all of the markets
9 that Wild Oats is in or looking to go into?

10 A. We use that as a benchmark, but the two
11 criteria, income and education, we use interchangeably
12 because income is not always the best indicator of
13 interest in specialty food.

14 Q. What do you mean by that?

15 A. People -- consumers make choices, and it's not
16 an absolute -- income is not an absolute, so there's a
17 wide range of consumers who are interested in specialty
18 food and there are multiple criteria that could
19 indicate, you know, levels of interest, not exclusively
20 income or -- not exclusively income.

21 Q. You said that income is not absolute. What do
22 you mean by that?

23 A. Meaning people who make, I mean, \$30,000 a
24 year -- or students actually are interested in natural
25 and organic foods as well as, you know, senior

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1 That's a retention bonus.

2 Q. Have you been approached by anyone at
3 Whole Foods about the possibility of a job?

4 A. I have not.

5 Q. Have you ever been approached by anyone at
6 Whole Foods for the possibility of a job?

7 A. I have not.

8 MS. LIU: I think that's it.

9 Thank you.

10 THE WITNESS: Thank you.

11 (Whereupon, the foregoing investigational
12 hearing was concluded at 3:38 p.m.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

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3 DOCKET/FILE NUMBER: 071-0114

4 CASE TITLE: Whole Foods Market/Wild Oats Markets

5 HEARING DATE: April 26, 2007

6

7 I HEREBY CERTIFY that the transcript contained
8 herein is a full and accurate transcript of the notes
9 taken by me at the hearing on the above cause before the
10 FEDERAL TRADE COMMISSION to the best of my knowledge and
11 belief.

12

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DATED: APRIL 26, 2007

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JOSETT F. WHALEN, RMR

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C E R T I F I C A T I O N O F P R O O F R E A D E R

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I HEREBY CERTIFY that I proofread the transcript
for accuracy in spelling, hyphenation, punctuation and
format.

DIANE QUADE

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