[ABSTRACT]
Whole Foods’ attempt to acquire Wild Oats and the controversy that followed provides an opportunity to discuss the ethical and communication challenges involved in dealing with a legal issue, as well as the corporate use of social media and the importance of remaining transparent in times of crisis. This case study serves as a relevant example of the changes in business practices as a result of the growing number of new communications methods via the Internet.
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1. Overview

2007 was a year of ups and downs for Whole Foods Market (NYSE: WFMI), the world’s leader in natural and organic foods. Positive publicity for an international expansion into London was replaced by negative media attention from a Federal Trade Commission (FTC) lawsuit.

In February 2007, Whole Foods made an offer to acquire Wild Oats Markets. Its attempts to merge the two companies raised suspicions among government regulators who filed a formal complaint in June 2007. The complaint questioned the motives of Whole Foods’ interest in Wild Oats, citing a statement made by the CEO in a letter to the Board of Directors regarding the proposed merger. The FTC claimed that the merger would result in a monopoly of the natural foods industry that would ultimately hurt consumers. A restraining order was issued to put a hold on the merger.

In response, Whole Foods filed a legal rebuttal addressing the allegations made against it. Additionally, the CEO of Whole Foods used his blog on the company’s Web site to communicate directly with its publics about the circumstances.

In the midst of the FTC investigation, a scandal emerged when it was revealed that Whole Foods’ CEO, John Mackey, was posting under a pseudonym on the Yahoo! Finance forum boards. The Whole Foods’ Board of Directors put a temporary hold on Mackey’s corporate blog pending further investigation by the Securities and Exchange Commission (SEC).

In the months following the FTC’s complaint, Whole Foods communicated directly with its stakeholders using traditional and social media tactics. The challenge was to prove that its intentions were in the best interests of its consumers while remaining transparent and honest with its key publics.


Natural foods are foods that are “minimally processed, largely or completely free of artificial ingredients, preservatives and other non-naturally occurring chemicals as near to their whole, natural state as possible.” Organic products are “grown through methods intended to support and enhance the earth’s natural balance.” A growing trend in health concerns and natural living has led to a dramatic increase in purchases of natural and organic foods over the last few years. According to a 2007 Organic Trade Association Survey, U.S. sales of organic food and beverages have grown from $1 billion in 1990 to an estimated $20 billion in 2007 and are estimated to reach $23 billion by the end of 2008. Sales of organic food are projected to increase an average of 18 percent each year from 2007 to 2010. Similarly, organic non-food sales grew 26 percent in 2006. Currently, mass-market grocery stores represent the largest single distribution channel for these products, making up 38 percent of organic food sales in 2006, up from 35 percent in 2005. Combined with smaller natural foods stores and chains, these markets make up 44 percent of total organic food and beverage sales. Global demand for organic products continues to grow,
with sales increasing by more than $5 billion a year, with the biggest import markets being the European Union, the United States and Japan.\textsuperscript{3}

In response to this growing trend of products, leaders in the natural grocery industry, especially Whole Foods Market, are facing increasing competition. “Big supermarket chains like Safeway and Food Lion have gotten into the game, with 3 out of 4 conventional grocery stores in the country now selling organic food.”\textsuperscript{4} At the same time, other conventional supermarkets, such as Ahold’s Giant Food and Stop & Shop, are trying to build their organic sales by creating its own organic line of products and re-modeling stores to include an organic food section. According to industry experts, there is enough room for everyone to compete equally, though with lower prices, in five to 10 years, conventional grocers may catch up to Whole Foods in the market.\textsuperscript{5}

3. Company History

3.1. Beginnings

In 1978, a small natural foods store called Safer Way opened its doors in Austin, Texas under the direction of 25-year-old John Mackey and his partner Rene Lawson Hardy. After two years of entrepreneurial struggle and a $45,000 investment, John and Rene worked with fellow grocers Craig Weller and Mark Skiles to merge Safer Way with Weller and Skiles’ Clarksville Natural Grocery. Whole Foods Market officially opened its doors on September 20, 1980. At the time, the shop’s 10,500-square feet store and 19-person staff was considered quite large in comparison to other health food stores. Nearly 29 years later, Whole Foods Market has truly built itself ground-up into the world’s leading organic and natural foods retailer, with more than 270 stores in North America and the United Kingdom.\textsuperscript{6}

Whole Foods Market’s climb to the top is a direct result of years of expansion and acquisitions of other natural foods companies. In 1984, Whole Foods began its expansion out of Austin and into Houston and Dallas, followed by New Orleans in 1988, after purchasing Whole Food Company. Whole Foods spread to the west coast one year later, opening a store in Palo Alto, California. Throughout the 90’s, the retailer continued its pursuit of success, acquiring more natural foods chains: Wellspring Grocery of North Carolina; Bread & Circus of Massachusetts and Rhode Island; Mrs. Gooch’s Natural Foods Markets of Los Angeles; Bread of Life in Northern California; Fresh Fields Markets on the east coast and in the Midwest; Bread of Life of Florida; Merchant of Vino from Detroit; and Nature’s Heartland of Boston. The new millennium brought even more mergers: Food for Thought in Northern California and Harry’s Farmers Market stores in Atlanta. Manhattan saw its first Whole Foods Market open in 2001, followed by an expansion into Canada in 2002 and into the United Kingdom in 2004, with the acquisition of Fresh & Wild natural foods stores. Whole Foods Market’s most recent acquisition of Wild Oats Markets was approved in 2007 after several months of heated controversy.\textsuperscript{7}

Whole Foods Market’s company headquarters in Austin, Texas is still led by CEO, Founder, and Chairman of the Board, John P. Mackey and the chain currently employs
approximately 52,600 people. In fiscal year ending September 30, 2007, Whole Foods boasted $6.9 billion in sales.\(^8\) Stores average 28,500-square feet in size and feature “natural” foods – free of artificial preservatives, colors, flavors and sweeteners – as well as organically-grown products. The market itself features products in the following categories: produce, grocery, meat and poultry, seafood, bakery, prepared foods, specialty (beer/wine/cheese), nutritional supplements, body care, pet products, floral, household products and an alternative pharmacy.\(^9\) Many stores also feature in-store cafes and juice bars. In 2007, Whole Foods Market was ranked number five on Fortune Magazine’s “100 Best Companies to Work For.”\(^10\) As stated on Fortune’s Web site, Whole Foods was chosen as the number five company because “Whole Foods has long had a salary cap limiting pay of top execs, currently at 19 times average full-time pay. But founder and CEO John Mackey went further, reducing his salary to $1 and forgoing all future stock options.”\(^11\) According to Paula Labian, Vice President of Whole Foods’ Team Member Services, Whole Foods was ranked high on the list because of its “empowering work environment,” where “team members trust the people they work for, take pride in their work and enjoy who they work with.”\(^12\)

### 3.2. Company Values

Whole Foods Market prides itself on being “a company with a mission” and credits its success to the following core values:

- Selling the highest quality natural and organic products available
- Satisfying and delighting our customers
- Supporting team member happiness and excellence
- Creating wealth through profits and growth
- Caring about our communities and our environment
- Creating ongoing win-win partnerships with our suppliers

The company’s “Declaration of Interdependence” further stresses the market’s dedication to quality to “instill a clear sense of interdependence among our various stakeholders”:

“Whole Foods Market is a dynamic leader in the quality food business. We are a mission-driven company that aims to set the standards of excellence for food retailers. We are building a business in which high standards permeate all aspects of our company. Quality is a state of mind at Whole Foods Market.

Our motto — Whole Foods, Whole People, Whole Planet — emphasizes that our vision reaches far beyond just being a food retailer. Our success in fulfilling our vision is measured by customer satisfaction, Team Member excellence and happiness, return on capital investment, improvement in the state of the environment, and local and larger community support.

Our ability to instill a clear sense of interdependence among our various stakeholders (the people who are interested and benefit from the success of our company) is
contingent upon our efforts to communicate more often, more openly, and more compassionately. Better communication equals better understanding and more trust.

3.3. Whole Foods’ Philanthropy & Community Giving

The Whole Planet Foundation was established in October 2005 and exists to “create economic partnerships with the poor in those developing-world communities that supply our stores with product” such as tropical fruit, vegetables, tea and coffee. The Whole Planet Foundation exists in developing countries from which Whole Foods Market sources its products. Its mission is “to unleash the energy and creativity of every human being we work with in order to create wealth and prosperity in emerging economies.” The Foundation provides grants to microfinance institutions in Latin America, Africa and Asia, who then offer microenterprise loan programs, training and other financial services to the self-employed poor. A microloan is a small loan of $200 or less which requires no collateral or contract. They are granted to the poorest of individuals – mostly women – in these nations who want to finance a self-employed project to generate income. The goal of these efforts is to give the poor a chance to escape the “vicious cycle of poverty” by allowing them to use their own work ethic and creativity to help themselves. Whole Foods offers in-store promotions and also gives team members the option to donate a portion of their paychecks to support the Foundation. Individuals may also make a contribution through the Whole Planet Foundation Web site.

In addition to its own Foundation, Whole Foods gives back to the communities in which it operates in several ways. Every store donates food to its local food banks and shelters. Several times a year, Whole Foods stores nationwide hold “community giving days” – also known as “5% Days” – when five percent of that day’s net sales are donated to a local non-profit or educational organization. Team members are also encouraged to volunteer their time to non-profit causes in their area.

In addition to its philanthropic and community giving efforts, Whole Foods Market promotes an eco-friendly atmosphere, and not only by offering organic and natural foods. The company was the “first major retailer to offset 100 percent of [its] energy use with wind energy credits,” earning the company the Environmental Protection Agency’s “Green Power Partner of the Year” award in 2006 and 2007, as well as the Green Power Leadership Award in 2004, 2005 and 2006. All of Whole Foods’ newer stores are utilizing green building techniques by using medium-density fiberboard (MDF) wood, made from 100 percent recovered and recycled wood fiber, in addition to natural linoleum products and Forest Stewardship Council-certified wood. Its store in Sarasota, Florida was the first-ever environmentally-friendly supermarket, having recently received LEED (Leadership in Energy and Environmental Design) certification by the United States Green Building Council (USGBC). Furthermore, Whole Foods’ Berkley store was the nation’s first major food retailer to introduce solar energy as its primary lighting power source; since then, several more Whole Foods stores have followed suit.
3.4. Current Competition & Consumers

While Whole Foods Market’s success is apparent, tough economic times are increasing competition among its rivals. Because of Whole Foods’ size, locations and wide range of product offerings, its competitors are many, including other natural foods supermarkets such as Trader Joe’s, conventional and specialty supermarkets such as Kroger and Safeway and other natural foods stores and restaurants. The recent economic downturn has increased competition from super center grocery stores such as Wal-Mart and Target.19

Because of Whole Foods Market’s commitment to quality, its products are often higher priced, earning the store the nickname “Whole Paycheck” [See Appendix A]. As such, its main demographic stretches across upper-income individuals, with 6-out-of-10 Whole Foods shoppers with incomes of more than $50,000, according to an AC Neilsen chart [See Appendix B].

4. History of Mergers & Acquisitions in the United States

4.1. “The Magna Carta of Free Enterprise”

A merger takes place when two or more businesses combine to form one enterprise. Since 1890, Congress has attempted to regulate mergers and acquisitions through antitrust laws in order to protect the rights of American citizens. Antitrust laws presume that when one company obtains a monopoly over an industry, the lack of competition within the market reduces innovation and forces consumers to become susceptible to increased prices and substandard goods and services. In 1972, U.S. Supreme Court Justice Thurgood Marshall wrote, “Antitrust laws...are the Magna Carta of free enterprise. They are as important to the perseverance of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”20 This concept has been the framework of government’s views on mergers and acquisitions for more than a century.

4.2. Early Trusts & Monopolization

The late 1800s are considered to be the era of the first wave of mergers in U.S. history. Although this period reflects significant growth for the manufacturing, mining and steel industries, it brought about serious consequences at the expense of small businesses and consumers alike.21

During this time, a common business practice was to create trusts among companies within the same market in order to stifle any outside competition; that is, stockholders within powerful corporations strived to dominate the industry by pooling shares of its respective companies into one set of trustees. This practice allowed for companies to profit from the joint agreement while suppressing the competition of any organizations excluded from the trust. Essentially, trusts were a way for big business leaders to maintain a monopoly over their particular market.22
For example, the Standard Oil Company was one organization that took advantage of trusts in order to limit competition. Standard Oil was run by John D. Rockefeller, who created one trust and bought out multiple competitors to become a dominant entity in the production, transportation, refining and marketing of oil. It was Samuel Dodd, an attorney for Rockefeller, who recognized that by merging multiple companies and distributing all the profits to nine trustees in exchange for trust certificates, the trustees would essentially control all components of the industry. If a competitor tried to go up against Standard Oil, the company could simply reduce prices temporarily to satisfy customers and eliminate the opposition.²³

Congressional leaders feared that trusts diminished competition, damaged free trade and ultimately weakened the nation’s economy. At the same time, they felt that trusts created an unfair playing field, providing consumers little choice in the market for alternative goods and services. As a result, there was little incentive for Standard Oil and similar companies to offer low prices or even provide high-quality products. In response to these types of practices, some legislators vowed to protect free enterprise by taking a stand against big business. Senator John Sherman, a Republican from Ohio, wrote, “If we will not endure a king as a political power, we should not endure a king over the production, transportation and sale of any of the necessaries of life.”²⁴ A former chairman of the Senate finance committee and Secretary of the Treasury, Sherman set out to regulate market power by authoring the Sherman Antitrust Act.²⁵

4.3. The Sherman Antitrust Act (1890)

The Sherman Antitrust Act was the first law that was intended to protect consumers from the threat of monopolization. Section 1 of the law prohibited “every contract, combination or conspiracy in restraint of trade,”²⁶ while Section 2 stated that “any monopolization, attempted monopolization or conspiracy or combination to monopolize”²⁷ would be considered illegal and punishable under federal law. Congress, through the constitutional authority of regulating interstate commerce, passed the bill, and it was signed into law on July 2, 1890. Since its ratification, strict punishments have been enforced on infringing the act; today violators could face a fine of $100 million and up to 10 years in prison.²⁸

Despite its implementation, corporations continued to utilize unethical business practices in order to take advantage of the market. One technique was to impose long-term contracts on consumers with no way of terminating the agreement. Likewise, some companies initiated tying contracts, forcing customers to purchase unsolicited products before they could buy the ones they wanted; other businesses used fear and intimidation to exploit clients.²⁹ This occurred because the broadness of its language made the Sherman Act difficult to enforce. It did not define key words such as “trust” or “monopoly.” Also, under its language, it could be argued that any agreement between companies would restrain trade, regardless of whether or not any public was negatively affected by the outcome. The law was vague, which caused problems with interpretation. In one monumental case, the Supreme Court ruled that the American Sugar Refining Company,
which owned nearly 98 percent of the market, did not violate the law because control of manufacturing did not necessarily indicate control of trade. This ruling raised questions as to the validity of the Sherman Act.\textsuperscript{30}

As a result, Congress passed the Clayton Antitrust Act, an amendment to clarify what constitutes an ‘unreasonable’ trade agreement and to seal loopholes in the preceding law.

4.4. The Clayton Antitrust Act & The Federal Trade Commission (1914)

The Clayton Act was enacted during President Theodore Roosevelt’s “trust-busting” campaign in 1914. Besides prescribing a clearer interpretation of the Sherman Act, the law prohibited specific business practices that Congress deemed to be unfair. This included discriminating prices, tying contracts, allowing board members to acquire stock in competing firms and interlocking directorates (when an individual sits on the boards of companies in opposition).\textsuperscript{31}

In addition to these provisions, Section 7 of the Clayton Act directly addressed the issue of mergers and acquisitions. It stated:

\textit{That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.}\textsuperscript{32}

That same year, Congress also passed the Federal Trade Commission Act, which established the Federal Trade Commission (FTC) as the definitive body to enforce antitrust laws. In conjunction with the Department of Justice, which was previously ill-equipped to pursue antitrust violations, the FTC was given the responsibility of investigating “unfair methods of competition,” as well as the authority to issue cease and desist orders to companies engaging in “unfair or deceptive acts or practices.”\textsuperscript{33} This meant that the Department of Justice and the FTC could dismantle an organization if an investigation shows that the company broke the law.

4.5. Additional Antitrust Laws

Subsequent laws were passed in order to strengthen regulations on shady business practices. The Robinson-Patman Act of 1936 strengthened restrictions on price discrimination, or offering different prices to select customers.\textsuperscript{34} In 1950, the Cellar-Kefauver Act supplemented the Clayton Act to include acquisitions of assets when the intent is to decrease competition.\textsuperscript{35}

Moreover, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) established the Premerger Notification Program, which requires all large mergers and acquisitions to be reviewed by the FTC before a deal can be settled. Essentially, the HSR Act
gave federal government the authority to dissolve mergers prior to an agreement. This allows time for the FTC to examine the proposal without having to later go through the trouble of dismantling an organization after it has already merged.

4.6. Steps to File a Merger\textsuperscript{36}

As a result of the HSR Act, corporations today must meet must meet a series of conditions in order to file a merger or acquisition. First, these companies must pass three qualification tests:

1. The Commerce Test: Any party involved in the merger or acquisition must be involved in commerce. Due to the broad nature of this condition, nearly all proposals pass this test.\textsuperscript{37}

2. The Size-of-the-Person Test: This test concludes the size of the acquiring and the acquired parties based on financial information from the most recent annual statement of income, expenses and assets. The acquiring party must file if its total value of voting securities, NCI and assets exceeds $50 million.

3. The Size-of-the-Transaction Test: A ‘large’ merger or acquisition transaction is defined as one valued at more than $200 million. All mergers and acquisitions valued below this amount may not require approval from the FTC.\textsuperscript{38}

If these conditions are applicable, acquiring corporations are ordered to submit a 16-page analysis of the effects of the merger – including financial information of all parties involved – and pay a filing fee. Fees are based on the size of the transaction [See Table 1].

Table 1: Premerger Notification Filing Fees\textsuperscript{39}

<table>
<thead>
<tr>
<th>Value of Voting Securities, NCI or Assets to Be Held (in millions)</th>
<th>Fee Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50 - $100</td>
<td>$45,000</td>
</tr>
<tr>
<td>$100 - $500</td>
<td>$125,000</td>
</tr>
<tr>
<td>$500+</td>
<td>$280,000</td>
</tr>
</tbody>
</table>

Once these materials are submitted, companies are required to wait 30 days before the transaction can be completed. After 30 days, the merger may be finalized. Nevertheless, the government can request an extension of this waiting period should the proposal appear to violate antitrust laws. In this case, a further investigation may ensue, and the FTC can block a proposal. Although corporations have the right to an appeal, the prospect of years of litigation hearings and a conflict with the federal government may not prove worthwhile.\textsuperscript{40}
4.7. The FTC & Government Enforcement Today

Today, the FTC and the Department of Justice continue to oversee violations of antitrust laws. Both agencies confer with one another prior to an investigation so that they do not overlap. Over the years, however, the FTC has adopted a specialty in the types of cases it investigates, primarily those within the industries of health care, pharmaceuticals, professional services, food, energy and technology.41 There are three core factions of the FTC: the Bureau of Competition, the Bureau of Consumer Protection and the Bureau of Economics.

The Bureau of Competition (BC) serves as the “antitrust arm” of the FTC. It can be considered the enforcement division, concerned primarily with sustaining a fair competitive market and “championing the rights of American consumers.” The BC is responsible for reviewing mergers and acquisitions, exploring abuses of market power and pursuing violators in federal court or before the FTC’s administrative law judges.42

The Bureau of Consumer Protection (BCP) “works for The Consumer to prevent fraud, deception and unfair business practices in the marketplace.” It functions as the agency’s earpiece, promoting integrity in the market and providing free information on how to file a complaint against dishonest corporations.43

The Bureau of Economics (BE) is essentially the research division of the FTC. It conducts studies on the impact of government regulation and offers economic analyses to support ongoing FTC investigations. The BE also produces and distributes financial policy recommendations to legislators, the president and the general public, urging them to protect the rights of consumers.44

During an FTC investigation, the agency may try to work with a corporation accused of breaching antitrust laws by issuing a voluntary compliance agreement. While this arrangement does not necessarily force the corporation to admit guilt, the company must agree to discontinue questionable practices or seek to assuage the FTC’s concerns. Otherwise, companies could face years of injunctions and serious legal consequences.45

4.8. Failed Mergers & Acquisitions

The implementation of government regulations on mergers and acquisitions has had various effects on American businesses. While the intent of the legislation was to allow markets to flourish through competition, the effects did not always satisfy every public. Many corporations took the brunt of the enforcement, finding it difficult to cope under strict sanctions. For instance, in 1984, AT&T’s Bell System was forced to dismantle as a result of an investigation by the Department of Justice. The agency found that the company had grown too large, restricting consumer’s choice in the market and fundamentally limiting competition within the telephone industry. On January 1, 1984, AT&T was divided into seven companies spread regionally throughout the country, and thousands of jobs were lost.46
Similarly, computer giant Microsoft faced difficulties in 1994 when it attempted to acquire Intuit in a deal that could have potentially created a monopoly of the computer software industry. At the time, Microsoft’s financial computer software was no match to Intuit’s extremely popular Quicken application, which allowed customers to keep track of finances, organize data and pay bills electronically. Quicken made up 70 percent of the financial software market, and, accompanied with Intuit’s ownership of the also-prevalent TurboTax program, the company posted a threat to Microsoft’s dominance. In an attempt to reclaim its position in the industry, Microsoft offered to acquire Intuit and its properties for $1.5 billion.\textsuperscript{47} Intuit eventually agreed to the buyout; however, due to government intervention, the FTC blocked the deal, and although Microsoft was legally authorized to appeal, it ultimately did not survive the 30-day waiting period. Instead, fears of being caught in a lengthy court dispute forced the company to forgo the petition and drop its bid.\textsuperscript{48}

4.9. Whole Foods’ Acquisitions

Over the past two decades, a significant business strategy of Whole Foods has been the expansion of stores throughout the country. Despite the company’s local appeal, Whole Foods has found great success in acquiring multiple small, unique stores within the natural and organic foods industry. The strategy has proven fruitful, earning recognition in 1993 and 1994 as one of the “500 Fastest-Growing Private Companies in America.”\textsuperscript{49}

Throughout the 1990’s, Whole Foods continued to grow with each acquisition of a new brand in an unchallenged market. In addition to staying true to the natural and organic foods trade, the company tended to buy out local specialty shops with strong ties to the community. The range of these specialty stores varied drastically, from organic coffee and tea shops to juice bars, supermarkets, bakeries and candy stores. By 2000, Whole Foods owned stores all across the nation [See Table 2].

Table 2: Acquisitions by Whole Foods Market, 1991-2007\textsuperscript{50}

<table>
<thead>
<tr>
<th>Year</th>
<th>Acquisition</th>
<th>Specialties</th>
<th>Regional Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Wellspring Grocery</td>
<td>home-grown; vegetarian; fish; meat; poultry</td>
<td>North Carolina</td>
</tr>
<tr>
<td>1992</td>
<td>Bread &amp; Circus</td>
<td>natural foods; wooden toys</td>
<td>Massachusetts, Rhode Island</td>
</tr>
<tr>
<td>1993</td>
<td>Mrs. Gooch’s</td>
<td>lack of preservatives, harmful chemicals, refined sugar, artificial coloring/flavorings white flour, alcohol, caffeine</td>
<td>California: Los Angeles, Hermosa Beach, Northridge, Sherman Oaks, Glendale, Beverly Hills, Thousand Oaks</td>
</tr>
<tr>
<td>1996</td>
<td>Fresh Fields</td>
<td>natural food supermarket</td>
<td>Washington, Baltimore; Philadelphia; New York, New Jersey, Connecticut; Chicago</td>
</tr>
<tr>
<td>1997</td>
<td>Bread of Life</td>
<td>juice bar; full-service restaurant</td>
<td>Northern California; Florida</td>
</tr>
<tr>
<td>1997</td>
<td>Amrion</td>
<td>vitamins; pharmaceuticals</td>
<td>Colorado</td>
</tr>
<tr>
<td>1997</td>
<td>Merchant of Vino</td>
<td>wine; gourmet; produce; meat; seafood; nutrition; body care</td>
<td>Greater Detroit</td>
</tr>
<tr>
<td>1997</td>
<td>Allegro Coffee</td>
<td>organic coffees and teas</td>
<td>Colorado</td>
</tr>
</tbody>
</table>
Yet Whole Foods did not stop there. In January 2004, Whole Foods expanded its brand across the Atlantic by acquiring Fresh & Wild, a U.K.-based natural foods retail store. Today, the company operates 11 international stores; five in London and six in Canada.51

Despite all of the company’s success in the U.S. and abroad, perhaps the most prominent acquisition by Whole Foods was in 2007, when the company bought out Wild Oats Markets.

4.10. Wild Oats Background

Based in Boulder, Colorado, Wild Oats Markets was founded by Michael Gilliland and his wife, Elizabeth Cook, in 1984. Prior to the acquisition with Whole Foods, Wild Oats Markets was the second largest natural foods grocery chain in the United States. Since its opening, Wild Oats quickly expanded its presence with the same growth strategy as Whole Foods, by acquiring smaller grocery chains and health food stores52. Like Whole Foods, Wild Oats prides itself on its dedication to community involvement and was recently named as one of the “100 Best Corporate Citizens” by Business Ethics magazine53. Wild Oats stores features all natural and organic products in the departments of bakery, bulk foods, cheese and olives, deli, floral, grocery, meat and poultry, produce, seafood, wine and pet products.54

5. Whole Foods/Wild Oats Merger

5.1. Reasons for Merging

In February 2007, Whole Foods Market announced its plans to acquire Wild Oats Marketplace for $565 million. Whole Foods also agreed to take on Wild Oats’ debt, resulting in a total merger value of $677 million.55 In an e-mail to the Board of Directors prior to the first Board meeting discussing the merger, CEO John Mackey cited eight specific reasons56 for wanting to buy out Wild Oats: †

1. **Elimination of an acquisition opportunity for a conventional supermarket** — our targeted company is the only existing company that has the brand and number of stores to be a meaningful springboard for another player to get into this space. Eliminating them means eliminating this threat forever, or almost forever.

2. **Elimination of a competitor** — they compete with us for sites, customers and Team Members.

3. **Synergistic geography** — their stores are spread around the whole country with each region gaining from 1 to 10 stores — three regions especially (Rocky Mountain, Florida and Pacific Northwest) gain critical mass and can now afford a full slate of coordinators and other regional support. Additionally, we get entries into 10 to 15 new markets where we have no stores currently.

4. **Immediate financial accretion** — we get an immediate boost in sales growth and comps. EPS accretion will occur as we cut their g&a costs and install EVA incentives.

5. **Continuing boost to comps** — as we close some of their stores and transfer volume to our existing stores, as we relocate their stores to new and better locations and as we improve their stores with investments in people and capital, this will provide an added boost to our comps.

6. **Low risk** — stock price is likely to rise enough to pay for the cost of the deal; even if financial gain is less than expected, number one and two are worth a significant amount of money to us; we are not putting the company or our growth at risk — existing cash flow can support growth and debt service.

7. **Gain of TM talent** — we can leverage their talent to help us support our new store growth ahead.

8. **Opportunity to learn** — we have learned something from almost every acquisition we have done in our history and it is likely that we will be able to learn from them as well.

If successful, the merger with Wild Oats would be Whole Foods’ largest acquisition to date in regard to number of stores gained. At the time of the proposed merger, Wild Oats had stores in 15 markets uninhabited by Whole Foods. These included Tampa, Memphis, Tulsa, Westport, Indianapolis, Eugene, Salt Lake City, Naples, Bend and Cincinnati. Mackey stated that by combining the strengths of Whole Foods Market and Wild Oats Marketplace, Whole Foods would have an opportunity to deliver a wider selection and a richer, more authentic experience to shoppers of both companies.

**5.2. The Federal Trade Commission Steps In**

In March 2007, the Federal Trade Commission requested additional information from both Whole Foods Markets and Wild Oats Marketplace about the proposed merger, by authority of the HSR Act. The FTC then filed a complaint to block the merger in response to the following statement listed by John Mackey as a reason for the merger in his e-mail to the Board of Directors:

> OATS remains a relevant competitor. By buying them we will greatly enhance our comps over the next few years and will avoid nasty price wars in Portland (both Oregon and Maine), Boulder, Nashville, and several other cities which will harm our gross margins and profitability. OATS may not be able to defeat us but they can still hurt us. Furthermore we eliminate forever the possibility of Kroger, SuperValu, or Safeway using their brand equity to launch a competing national natural/organic food chain to rival us.
The FTC argued that the merger would lead to higher prices for natural and organic products in markets where the two chains compete. It viewed the proposed merger as an unhealthy elimination of competition that would hurt consumers.  

5.3. FTC’s Case Against Whole Foods

The FTC filed and approved a formal complaint against Whole Foods Market in June 2007. The complaint stated that Whole Foods’ acquisition of Wild Oats, as proposed, would violate Section 5 of the FTC Act and Section 7 of the Clayton Act, as amended. According to the complaint, the merger would violate these sections by eliminating substantial competition between two close competitors in a number of markets throughout the nation in the operation of premium natural and organic supermarkets. The concern of the FTC was that the elimination of competition within the markets would lead to Whole Foods’ likeliness to raise prices and reduce its quality and services unilaterally. This would hurt consumers in the natural and organic supermarket industry.

To define the affected markets, the FTC differentiated Whole Foods Market and Wild Oats Markets from conventional supermarkets in several key areas:

- The breadth and quality of perishables, produce, meats, fish, bakery items and prepared foods
- The range of natural and organic products and services offered
- The targeted customer – premium natural and organic supermarkets target customers seeking a shopping experience, where consumers are concerned about more than just price.

Based on the key points of differentiation, the FTC found that Whole Foods and Wild Oats fall into the premium natural and organic market and not into the same markets as conventional supermarkets. Accordingly, the FTC authorized a temporary restraining order and preliminary injunction blocking the merger pending a trial.

5.4. Whole Foods’ Response to FTC Complaint

During the summer of 2007, Whole Foods took several measures to respond to the FTC resistance against its proposed acquisition of Wild Oats. Whole Foods filed a formal, legal response to the FTC’s complaint. In addition, the company utilized a weblog and released media statements to communicate with key publics that would be affected by the merger. With the help of the Internet, the company provided updated information to customers, employees and shareholders about the ongoing situation.

5.4.1 Legal Filing

In July 2007, Whole Foods issued a response in the form of a legal document to the Federal Trade Commission. In the document, Whole Foods admitted to the language quoted by the FTC in regard to the e-mail that had been sent to the Board of Directors. However,
Whole Foods denied all remaining allegations, including violation of the Clayton Antitrust Act.

Whole Foods provided three arguments for defense against the FTC’s complaint that the merger would lead to Whole Foods’ likeliness to hurt consumers by raising prices and reducing its quality and services unilaterally:

1. The complaint fails to state a claim upon which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. Efficiencies and other procompetitive benefits resulting from the merger outweigh any and all proffered anti competitive effects.61

Whole Foods requested that the Administrative Law Judge deny the FTC’s contemplated relief, dismiss the complaint in its entirety with prejudice, award Whole Foods its costs of the suit – including attorney’s fees – and award further relief as the Administrative Law Judge may deem proper.62

5.4.2 Weblog

Prior to the resistance of the FTC, the Whole Foods Web site contained a blog facilitated by CEO John Mackey that was created in September of 2005. The blog was used as a platform to discuss thoughts on the business, issues facing the natural and organic food industry and exploration of the nature of human development.63 The blog encouraged feedback and posts from its key publics: consumers, investors and employees.

Beginning June 14, 2007, Mackey used the blog, entitled “The CEO’s Blog,” to discuss the complaint filed by the FTC regarding the proposed merger between Whole Foods and Wild Oats. He created a post labeled “Whole Foods Responds to FTC” and five days later created a more extensive post called “Whole Foods Market, Wild Oats, and the Federal Trade Commission.” The latter post contained 20 sections that laid out several key points surrounding the situation and responded to commonly-posed questions from Whole Foods’ publics [See Appendix C].

5.4.3 News Releases

On June 5, 2007, Whole Foods issued a news release announcing its decision to challenge the FTC’s complaint against the proposed merger with Wild Oats [See Appendix D]. In the release, CEO John Mackey was quoted saying:

“We are very disappointed by this decision and we intend to vigorously challenge the FTC in court. The FTC has failed to recognize the robust competition in the supermarket industry, which has grown more intense as competitors increase their offerings of natural, organic and fresh products, renovate their stores and open stores with new banners and formats resembling Whole Foods Market. Evidently the FTC does not appreciate the many benefits for consumers of the proposed merger,
including our plan to invest capital in and improve many of the stores currently owned by Wild Oats.”

In the months following, Whole Foods released several statements informing its publics of the newest developments in the case against the FTC [See Appendices E and F]. Key topics discussed in releases include:

- Whole Foods Market Adds New Section on Web Site for Posting Information Regarding FTC’s Attempt to Block Proposed Merger with Wild Oats Markets
- Statement of Whole Foods Market, Inc. Concerning FTC Motion to Stay and Appeal
- Court Denies FTC’s Request for Stay Pending Appeal; Whole Foods Market and Wild Oats Markets Legally Cleared to Proceed with Merger

During the months of June and July, Whole Foods issued seven news releases regarding the merger with Wild Oats and/or the resistance of the FTC.

5.5. Whole Foods Market, Wild Oats & The FTC

In his blog, Mackey consistently stated that his intentions were to obtain complete transparency regarding the merger with its publics. He wanted to leverage the blog as a platform to share his personal perspective about why the Whole Foods’ acquisition of Wild Oats is a good thing and about why the FTC is wrong in filing a complaint against it.

Under the section “Why does Whole Foods Market want to buy Wild Oats?” Mackey included a formerly confidential e-mail proposal sent to the Board of Directors about the merger. He informed his readers that the e-mail very accurately states all of the reasons why Whole Foods wants to buy Wild Oats and then goes on to explain each reason in more detail.

The blog also included a copy of the news release that the FTC created about blocking the merger between Whole Foods and Wild Oats. Following the release, Mackey reviewed the content, paragraph by paragraph, to provide specific responses against the FTC’s claims. For example, in response to the FTC’s statement that “the transaction would violate federal antitrust laws by eliminating the substantial competition between these two uniquely close competitors in numerous markets nationwide in the operation of premium natural and organic supermarkets,” Mackey offered this perspective:

“Do Whole Foods and Wild Oats compete against each other as the FTC claims? The answer is obvious: Of course we do. We compete in numerous markets and it is a simple truism to say that if we merge together that we will no longer compete against each other ... If the FTC is opposed to eliminating competition between companies then it should never approve any mergers.”

At the end of Mackey’s post, consumers and other publics had the opportunity to post direct responses and feedback. Several readers posted comments in support of Whole
Foods and appreciation for the open communication and transparency that Mackey created with his blog. Others cited examples of similar situations that had occurred in the past and included links that could help other readers understand the context of these kinds of affairs. Many readers embraced the two-way communication method of the blog and used the opportunity to ask questions directly to the CEO regarding the merger.

Examples:

Eugene Y. (June 21, 2007):
“As a shareholder and customer of Whole Foods, I appreciate you giving us the information you did about Whole Foods and the FTC. I have learned things about your company from your blog that I couldn’t have found out on my own.” 67

JG (June 24, 2007):
“I personally have no gain with this merger but I too thought that the FTC was out of line. I worked for GTE when they became Verizon and if that one went unchallenged I can only speculate that Whole Foods forgot to pad the wallets of the fools in Washington. I applaud Mackey’s voice on this matter.” 68

Other readers used the blog as an opportunity to speak out against the CEO, offering criticism and alternate points of view.

Examples:

Bill (June 24, 2007):
“Sorry John I’m with the F.T.C. on this one. I have been a loyal Whole Foods shopper for many years in Austin. But since the new Austin store was built everything has changed. Prices have risen dramatically and excessively... The F.T.C. is a hero in this case. I truly hope they will stop this merger... Thanks for allowing me to express my opinion.” 69

John Willis (June 26, 2007):
“HURRAY FOR THE FTC! If the history of business in America and the world teaches us anything, it is the need for sound regulation. Sadly but truly, the human heart is a thieving one all too much of the time.” 70

On June 27, 2007, Mackey created a new post on his blog entitled, “Questions from my blog on Wild Oats Merger.” He used this post to respond to some issues and questions raised by his public after his previous posting, “Whole Foods Market, Wild Oats, and the Federal Trade Commission.” He voiced not only factual responses, but included personal beliefs and opinions as well:

Example:
“...I long ago learned that most of the media isn’t particularly interested in “truth” or “fairness” or “accuracy”. They are only interested in the “story”. Sensationalism sells. I knew the media would take the FTC complaint and sensationalize it (no doubt the FTC knew this too, which is why they wrote it like they did)” 71
As with Mackey’s previous post, consumers and publics again posted feedback and responses.

5.6 Media Response to FTC Allegations


While most stories simply discussed facts that had been featured in news releases provided by Whole Foods and the FTC, other pieces shed light on different aspects of the situation. For example, on August 13, 2007, the Wall Street Journal published a story about how consumer groups felt about the FTC’s attempt to block the merger. The article, titled “Whole Foods-Wild Oats Deal Opposed by Consumer Groups,” reported that three consumer groups were siding with the FTC in opposing the proposed Whole Foods Market’s purchase of rival natural- and organic-food retailer Wild Oats Markets Inc., saying it would lead to higher food prices.

After the case was featured in prominent, national publications, the Associated Press picked it up. Stories regarding the merger were featured in smaller, local papers and media outlets, as well as several online venues such as www.thestreet.com and www.just-food.com. The media remained generally unbiased about the case, and presented a straightforward portrayal of the events.

6. The Plot Thickens: Mackey’s Forum Posting Scandal

6.1. Mackey’s Alter-Ego

Amidst the millions of documents given to the FTC for investigation, a separate court issue appeared: eight years of posts by a user called ‘Rahodeb’ from the Yahoo! Finance stock forums. Rahodeb was known on the boards as the Whole Foods cheerleader, often praising the company’s business practices, stock and management while bashing its competitors, especially Wild Oats. A January 2005 posting read, “Would Whole Foods buy OATS? Almost surely not at current prices. What would they gain? OATS locations are too small.”

The individual behind the alias was John Mackey himself. A footnote in a 40-page FTC filing for the case read, “As here, Mr. Mackey often posted to Internet sites pseudonymously, often using the name Rahodeb.”

The Wall Street Journal broke the news in a July 12, 2007 article, shedding light on Rahodeb – Mackey’s “online alter ego” (the user name being an anagram of his wife’s name, Deborah) – and his history of posting comments praising Whole Foods, its business proceedings and its management, as well as a slew of defamatory comments about Wild Oats. Whole Foods confirmed the FTC’s accusations, saying Mackey posted “under an alias
to avoid having his comments associated with the Company and to avoid others placing too much emphasis on his remarks...Many of the opinions expressed in these postings now have far less relevance than when they were written.\textsuperscript{75}

6.2. Sock-Puppeting in the Digital Age

Mackey’s pseudonymous postings are what are known in today’s digital age as “sock-puppeting” – “the act of creating a fake online identity to praise, defend or create the illusion of support for one’s self, allies or company.”\textsuperscript{76} Though often driven by an egotistical need to defend an entity near to one’s heart, “sock-puppeting can be a shortcut to career disaster.”\textsuperscript{77}

For example, in April 2006, Michael A. Hiltzik, a Pulitzer Prize-winning \textit{Los Angeles Times} reporter was caught posting comments on blogs under a pseudonym while arguing with readers; as a result, Hiltzik was suspended from posting on his blog. In another instance, Conrad M. Black, chief executive of Hollinger International, currently faces up to 35 years in prison after being found guilty of mail fraud and obstruction of justice after joining a Yahoo! Finance chat room to “blame short sellers for his company’s stock performance.”\textsuperscript{78} Furthermore, the founder and CEO of online retailer Overstock.com has affirmed that he often posts under the pseudonym ‘Hannibal’ to “convey what he has learned about the hidden agendas of his critics.”\textsuperscript{79}

According to some, sock-puppetry is all too common among business people, chalk it up to human nature, a need to vent and the Internet making it easy to accomplish such. Culture critic Lee Siegel believes that “technology is an amplification of human nature, not a cure for it.” Siegel has also been accused of this habit.\textsuperscript{80}

Following the FTC discovery, a special committee of Whole Foods’ Board of Directors launched its own internal investigation into the postings. On July 17, 2007, Mackey put a hold on his blog, claiming it was “in the best interest of the company.”\textsuperscript{81} Meanwhile, the Securities and Exchange Commission (SEC) launched an informal inquiry to determine if Mackey engaged in any illegal conduct, such as disclosing private company information in his posts. The company defended the CEO. According to a statement released just after the investigation began, “Mr. Mackey only revealed information about Whole Foods that already was public knowledge. His comments ‘weren’t illegal’ and weren’t ‘against company policy.’”\textsuperscript{82}

6.3. Public & Media Response

Meanwhile, journalists and bloggers were engaging in discussion about the ethics and potential outcome of the situation. Blogger opinion appeared to be mostly negative:

Examples:
Zac Bissonnette, bloggingstocks.com:
“Mackey has demonstrated appallingly bad judgment… Do Whole Food shareholders really want someone who is monumentally stupid running a $5.7 billion company?”

Jon Ogg, 247wallst.com:
“Online stock message boards are no place for officers of public companies to make anonymous commentary, particularly when criticizing competitors or trying to pump their own public company… If Mackey would have just used his real name this would only be tallied as a 'strange method of promotion and attacking competitors,' but in a world of full disclosure he stuck with an alias. We probably wouldn’t be calling for Mackey to step down entirely, but it doesn’t take a rocket scientist to realize that an eclectic CEO that has had little to no supervision from the board of directors is the best guy to run the show when your company is under fire from the industry.”

Dana Sevilla, marketingconversation.com:
"In the end I do not think that this will lead to any great ramifications for Mackey or the Whole Foods company. Who can judge what negative banter on an online bulletin can really accomplish or if it had anything to do with the ultimate acquisition of Wild Oats?"

Felix Salmon, portfolio.com:
“John, you’re not ‘many people.’ You’re the CEO of the company. Your job is not to have fun, it’s to be a responsible steward of Whole Foods on behalf of its shareholders. And your message-board antics have now made you a laughingstock who has no place in any executive position in any public company… John Mackey should resign today. If he doesn’t, his board should fire him.”

Despite the majority of negative opinion swirling around the blogging community, mainstream media seemed to downplay the situation. John Harmon, blogger of Force For Good, Aspirational Public Relations, pointed this out in a post on July 13, 2007:

“But something is missing from all the coverage to date. Neither media nor the blogs have jumped into the story with the same fervor they would have if say, the CEO of Exxon or Wal-Mart had done the anonymous attacks. Here’s the story as reported by ABC News [See Appendix G]. Obligatory comments from experts criticizing the lack of transparency to be sure, but it’s all downplayed as “not exactly new news” considering such past ethical violations as the Wal-Mart-Edelman flog.”

Similarly, an article posted on Time.com merely called Mackey’s doings a “venial sin that never would have come to light” if the Wild Oats merger wasn’t underway [See Appendix H].
6.4. One Year Later: Back to Blogging

Then, in May 2008 – almost one year later – John Mackey was cleared of any allegations by both the SEC and Whole Foods’ Board of Directors. Following the decision, Mackey took to his blog again, posting a 2,000+ word entry defending his actions:

Examples:

“WHY POST ONLINE?

It was a very useful forum for me to explore various ideas and theories, and to have them discussed, criticized and debated. Online criticisms and debates helped me to better understand the strengths and weaknesses of the ideas being discussed, including my own... The main reason I began posting on Yahoo! was because I enjoy and learn from online community interactions. I also like to express my viewpoints and I like to argue and debate.”

“WHY A SCREEN NAME?

An online screen name is a great “equalizer” between people. No one knows who most of the other participants are in everyday life, and so everyone relates to everyone else on equal terms. I do not think that the virtue of transparency is particularly applicable or relevant when it comes to online communities whose custom is to participate through screen names.”

According to Mackey, much of what was covered in the media surrounding the scandal was taken “out of context.” He claimed that he rarely made original posts, and 95 percent of the time he was responding to other participants’ ideas, the majority of which being about Whole Foods, rather than Wild Oats. Furthermore, he issued a public apology, stating:

“I strongly believe in the First Amendment of our Constitution and our right as citizens to express our opinions to each other. I believe I was exercising this right... My mistake here was one of judgment - not ethics. I didn’t realize posting under a screen name in an online community such as Yahoo! would be so controversial and would cause so many people to be upset. That was a mistake in judgment on my part... I wish to apologize to all the stakeholders of Whole Foods Market – customers, Team Members, investors, suppliers, and our communities. I am truly sorry that all this has happened and put a negative spotlight on our company. If I could get a “do over” on this one, I certainly would choose not to have ever participated in the Yahoo! online financial communities.”

7. Aftermath

On August 16, 2007, U.S. District Judge Paul L. Friedman issued a 93-page opinion that turned down the FTC’s movement to block the merger between Whole Foods Market and Wild Oats Markets. Judge Friedman stated that the merger did not violate any anti-
trust laws. Evidence found that:

- Wild Oats prices are actually higher than Whole Foods prices where the two companies compete
- Whole Foods prices are essentially the same at all of its stores in a region, regardless of whether there is a Wild Oats store nearby
- When Whole Foods does enter a new market where Wild Oats operates Whole Foods takes most of its business from other retailers, not from Wild Oats. Furthermore, the market studies and other evidence show that Whole Foods competes vigorously with other supermarkets to retain the business of its many marginal customers.

Whole Foods purchased Wild Oats for $565 million. About 97 percent of investors tendered its shares in favor of the deal. Whole Foods Market bought 84.1 percent of Wild Oats Markets’ outstanding common stock in a cash tender offer of $18.50 per share. The transaction was completed on August 28, 2007.

Three of Whole Foods’ smallest regions experienced a critical gain in mass, while all of its 11 operating regions gained stores. Whole Foods also gained immediate entry into a considerable number of new markets. Following the acquisition, Whole Foods sold 35 Henry’s Farmers Markets and Sun Harvest Markets locations and nine Wild Oats stores that had been acquired as a part of the merger.

Upon completion of the merger, at the end of the fiscal year 2007, Whole Foods operated 276 stores, totaling 9.3 million-square feet, with locations in 37 states, the District of Columbia, Canada and the U.K. According to Whole Foods’ 2007 Annual Report, sales at the acquired and existing stores had already been increasing as a result of an improved shopping experience, expanded product offerings and price cuts on more than 1,000 items.

In the year that followed the merger with Wild Oats, Whole Foods has seen both ups and downs. With the current economic downturn, consumers have been cutting back on costs. This has resulted in decreased sales of a variety of Whole Foods’ higher-priced items. To battle this issue, Whole Foods launched its “Whole Deal” program in July 2008. The intention of the campaign was to highlight discounted items in Whole Foods’ stores and fight the perception of high prices that earned it the nickname, “Whole Paycheck.” Timing for the campaign was strategic and relevant, as Whole Foods reported a net loss income of 30 percent three weeks prior to the launch of the program.

8. Looking Ahead

In response to the economic challenges and net loss, Whole Foods announced in August 2008 that it would be pulling back on its expansion plans for 2009. Initially, expansion plans included the construction of a 40,000 square-foot flagship store in Boulder that Wild Oats had put millions of dollars into. However, the store did not open and the jobs
of the more than 130 people hired for the store were put into question. Whole Foods noted, though, that it would still look long-term to carry out the bulk of its remodeling and expansion plans. These plans called for a $45 million investment. Its growth strategy is to expand through a combination of new store openings and acquisitions of existing stores. It noted in the months following August 2008, however, that it would still look long-term to carry out the bulk of its remodeling and expansion plans.\textsuperscript{102} A spokesman from the Whole Foods Rocky Mountain Region said that the goal of the Whole Foods/Wild Oats merger was always to make the stores better and that the goal is still the same.\textsuperscript{103}
**Comparison Shopping**

Whole Foods has been trying to shed its image as a high-price specialty store and contends that it is priced comparably to other stores for the same items. Here is a sampling of retail prices:

<table>
<thead>
<tr>
<th>Item</th>
<th>Whole Foods</th>
<th>Trader Joe's</th>
<th>ShopRite</th>
</tr>
</thead>
<tbody>
<tr>
<td>A pint of blueberries</td>
<td>$3.99</td>
<td>$2.69</td>
<td>$2.99</td>
</tr>
<tr>
<td>Gallon of organic milk</td>
<td>$5.69</td>
<td>$5.99</td>
<td>$4.99</td>
</tr>
<tr>
<td>1 lb. bag of organic baby carrots</td>
<td>$1.99</td>
<td>$1.69</td>
<td>$2.29</td>
</tr>
<tr>
<td>Dozen large eggs, cage free</td>
<td>$2.69</td>
<td>$2.69</td>
<td>$3.19</td>
</tr>
<tr>
<td>Jar of natural peanut butter</td>
<td>$2.19 (18 oz.)</td>
<td>$1.69 (16 oz.)</td>
<td>$2.79 (16 oz.)</td>
</tr>
<tr>
<td>Kashi GoLean Cereal</td>
<td>$3.39</td>
<td>$3.29</td>
<td>$2.89</td>
</tr>
<tr>
<td>Package of store-brand bacon</td>
<td>$4.99 (12 oz.)</td>
<td>$3.99 (12 oz.)</td>
<td>$3.49 (16 oz.)</td>
</tr>
<tr>
<td>Pound of ground beef (85% lean)</td>
<td>$4.59</td>
<td>$2.99</td>
<td>$3.59</td>
</tr>
</tbody>
</table>

*Sources: the stores*
Appendix B: Whole Foods Has Strong Appeal Among Upper Income Households

Whole Foods Has Strong Appeal Among Upper Income Households

<table>
<thead>
<tr>
<th></th>
<th>Households w/Incomes of $50k+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whole Foods</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td>66</td>
</tr>
<tr>
<td>Grocery</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>40</td>
</tr>
</tbody>
</table>

6 of 10 Whole Foods' shoppers have incomes of $50k plus: they drive trips & $ sales

Source: ACNielsen

Total U.S. - 52 week 12/28/02 - upc-coded products
Appendix C: John Mackey’s Blog Entries Posted on June 19, 2007†

<table>
<thead>
<tr>
<th>1. Executive Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Why Does Whole Foods Market Want to Buy Wild Oats?</td>
</tr>
<tr>
<td>3. Whole Foods Market’s Objections to the FTC’s Investigation</td>
</tr>
<tr>
<td>4. What is the FTC Claiming in its Objections to the Merger?</td>
</tr>
<tr>
<td>5. Frequently Asked Questions</td>
</tr>
<tr>
<td>6. Why does the FTC believe this merger is anti-competitive?</td>
</tr>
<tr>
<td>7. What about the competition in the supermarket industry as a whole is the FTC failing to recognize here?</td>
</tr>
<tr>
<td>8. What about this quote from you that the FTC released in its complaint?</td>
</tr>
<tr>
<td>9. Will customers be harmed by this merger?</td>
</tr>
<tr>
<td>10. Will Wild Oats employees benefit from this merger?</td>
</tr>
<tr>
<td>11. How are Whole Foods Market’s product suppliers reacting to the possible merger?</td>
</tr>
<tr>
<td>12. Will vendors be disadvantaged in negotiating with Whole Foods as a result of this merger?</td>
</tr>
<tr>
<td>13. What is Whole Foods Market’s strategy for fighting the FTC’s attempt to block the merger?</td>
</tr>
<tr>
<td>14. How long are you willing to fight this fight?</td>
</tr>
<tr>
<td>15. In the Company’s history, has Whole Foods Market had more success with acquisitions than with organic growth?</td>
</tr>
<tr>
<td>16. Why has the media compared this deal with the failed Staples-Office Depot merger from a decade ago? Is it similar?</td>
</tr>
<tr>
<td>17. What is Whole Foods Market’s continued growth plan if this merger doesn't go through?</td>
</tr>
<tr>
<td>18. How important is this merger to Whole Foods Market?</td>
</tr>
<tr>
<td>19. What is Whole Foods Market seeking out of this merger?</td>
</tr>
<tr>
<td>20. If Wild Oats is not your primary competitor, which companies are?</td>
</tr>
</tbody>
</table>

Whole Foods Market to Challenge FTC's Opposition to Wild Oats Merger

AUSTIN, Texas (June 5, 2007) Whole Foods Market, Inc. (Nasdaq: WFMI) announced, in connection with its tender offer for all of the outstanding shares of Wild Oats Markets, Inc. (Nasdaq: OATS), that the Federal Trade Commission (FTC) has advised Whole Foods Market that it will file a complaint in the U.S. District Court for the District of Columbia seeking to block the proposed acquisition. The FTC also has advised Whole Foods Market that it will ask the Court to enter a temporary restraining order that would prohibit the Company from completing its acquisition of the shares of Wild Oats until the Court has resolved the FTC's request for a preliminary injunction.

John Mackey, Chairman and Chief Executive Officer of Whole Foods Market, stated, "We are very disappointed by this decision and we intend to vigorously challenge the FTC in court. The FTC has failed to recognize the robust competition in the supermarket industry, which has grown more intense as competitors increase their offerings of natural, organic and fresh products, renovate their stores and open stores with new banners and formats resembling Whole Foods Market. Evidently the FTC does not appreciate the many benefits for consumers of the proposed merger, including our plan to invest capital in and improve many of the stores currently owned by Wild Oats."

The FTC's challenge to the proposed merger is based on its contention that the relevant antitrust product market is limited to natural and organic food stores and excludes other supermarkets. The Company believes that the FTC's position is without basis and contrary to its position in past merger reviews, where its definition of supermarkets has included conventional supermarkets as well as Whole Foods Market and Wild Oats.

About the Transaction: On February 21, 2007, the Company entered into a merger agreement with Wild Oats Markets, Inc., pursuant to which we, through our subsidiary, have commenced a tender offer to purchase all the outstanding shares of Wild Oats at a purchase price of $18.50 per share in cash. Based on the FTC's attempt to block the acquisition and the Company's intent to challenge the FTC, the Company anticipates announcing the extension of the expiration date for the tender offer to purchase outstanding shares of Wild Oats Markets, Inc. in the near future; currently that expiration date is 5:00 p.m., New York City time, on Wednesday June 20, 2007.

About Whole Foods Market: Founded in 1980 in Austin, Texas, Whole Foods Market(R) is a Fortune 500 company and one of the leading retailers of natural and organic foods. The Company had sales of $5.6 billion in fiscal year 2006 and currently has 195 stores in the United States, Canada and the United Kingdom.

† Passage from http://media.wholefoodsmarket.com/pr/wf/national/pr07_06-05.aspx
Appendix E: News Release – June 19, 2007†

Whole Foods Market CEO Posts Blog Entry On FTC's Challenge of Wild Oats Merger, CEO Shares His Perspective on Key Issues with Stakeholders

AUSTIN, Texas (June 19, 2007) Whole Foods Market (NASDAQ: WFMI) announced today that a new posting entitled "Whole Foods, Wild Oats and the FTC" has been added to the blog of Company CEO John Mackey at http://wholefoodsmarket.com/blogs/jm/. The Company announced last week it also created a new section on its web site (www.wholefoodsmarket.com/ftchearingupdates) dedicated to updates and information regarding the Federal Trade Commission's (FTC) attempt to block the proposed merger between Whole Foods Market and Wild Oats Markets.

"My blog posting provides a detailed look into Whole Foods Market's decision-making process regarding the merger, as well as our company's experience interacting with the FTC staff assigned to this merger. I provide explanations of how I think the FTC, to date, has neglected to do its homework appropriately, especially given the statements made regarding prices, quality, and service levels in its complaint. I also provide a glimpse into the bullying tactics used against Whole Foods Market by this taxpayer-funded agency. Finally, I provide answers in my FAQ section to many of the questions that various Team Members have fielded from both the media and company stakeholders," said Mackey. "As previously announced, we set an intention as a company to be as transparent as possible throughout this legal process, and this blog entry is my first detailed effort at transparency."

The new blog posting by Mackey addresses:
* Why Whole Foods Market wants to buy Wild Oats,
* Whole Foods Market's Objections to the FTC's Investigation,
* What the FTC is Claiming in its Objections to the Merger, and
* FAQs

About the Transaction: On February 21, 2007, Whole Foods Market and Wild Oats Markets entered into a merger agreement pursuant to which Whole Foods Market commenced a tender offer to purchase all the outstanding shares of Wild Oats Markets at a purchase price of $18.50 per share in cash, plus assumed debt. On June 12, 2007, the Company and Wild Oats Markets, Inc. announced the U.S. District Court for the District of Columbia had scheduled a preliminary injunction hearing to begin on July 31, 2007 and to conclude on August 1, 2007 to decide whether to approve the U.S. Federal Trade Commission's (FTC) application for an injunction to block the proposed merger between the two companies. Whole Foods Market and Wild Oats Markets consented to a temporary restraining order pending the hearing. As previously announced, the FTC provided notice of its intent to file a complaint in the U.S. District Court for the District of Columbia seeking to block the proposed acquisition of shares pursuant to the tender offer. The FTC did file such complaint with the U.S. District Court for the District of Columbia on June 7, 2007. Whole Foods Market and Wild Oats Markets are cooperating to challenge the FTC’s opposition to the merger.

† Passage from http://media.wholefoodsmarket.com/pr/wf/national/pr07_06-19.aspx
Whole Foods Market’s Board of Directors Begins Independent Internal Investigation Associated with Online Financial Message Board Postings

AUSTIN, Texas (July 17, 2007). Whole Foods Market Board of Directors announced it has formed a Special Committee to conduct an independent internal investigation into online financial message board postings related to Whole Foods Market and Wild Oats Markets.

The Special Committee has retained the firm of Munger, Tolles & Olson LLP to advise it during its investigation.

The Board will refrain from comment until the internal investigation is completed.

† Passage from http://media.wholefoodsmarket.com/pr/wf/national/pr_07-17-07a.aspx
Whole Foods CEO Caught In Blogging Controversy
By Lilian Kim

Jul. 11, 2007 (KGO) (KGO) -- The CEO of Whole Foods market finds himself in an embarrassing situation tonight. According to court documents, John Mackey went online under a pseudonym, and posted comments praising his company and blasting its rivals.

With more than $4 billion dollars in annual sales, Whole Foods is the natural foods leader, and it has a devoted following. One shopper went so far as to praise the grocery store chain on a Yahoo stock forum.

In one posting, Rahodeb wrote, "I love the company and I'm in for the long haul. I shop at whole foods, I own a great deal of its stock. I'm aligned with the mission and values of the company. Is there something wrong with this?"

Turns out, Rahodeb is actually the co-founder and CEO of Whole Foods, John Mackey. His online pseudonym is an anagram of his wife's name, Deborah.

Diane Osgood is vice president of Business for Social Responsibility.

Diane Osgood, Business for Social Responsibility: "People expect transparency and when you blow that expectation, you blow that trust. The people aren't going to trust you in whatever vehicle you choose to communicate. Via corporate publications, be it what you tell folks in the shops, that trust is blown."

Rahodeb's postings went on for nine years. The fact that it was Mackey was revealed only yesterday in court papers filed by the Federal Trade Commission.

The FTC is suing Whole Foods on anti-trust grounds for trying to buy another natural-foods grocer, Wild Oats. That company was the source of many of Rahodeb's postings.

In January of 2005, Rahodeb wrote, "Would whole foods buy oats? Almost surely not at current prices. What would they gain? Oats locations are too small.

All of this online deception isn't exactly new. Last year for instance, Wal-Mart received heavy criticism, when a web site apparently written by independent bloggers was actually designed by the retailer's pr agency.

Misha Cornes is with the interactive marketing agency, organic.

† Passage from http://abclocal.go.com/kgo/story?section=news/business&id=5473683
Misha Cornes, Organic: "I bet this is more common than we think and I think there are probably a lot of people high up in organizations who are engaging in this type of activity."

So far, Mackey has only responded on his whole foods blog. He makes no apologies. In fact Mackey accuses the FTC of trying to embarrass him and whole foods.
The Price of Anonymity
By Lev Grossman

Thursday, Jul. 19, 2007

Over the course of eight or nine years, until last August, someone with the handle "rahodeb" posted regularly about the company Whole Foods on Yahoo!'s finance bulletin boards. Rahodeb liked Whole Foods. He didn't care for its competitor Wild Oats. Rahodeb particularly liked Whole Foods CEO John Mackey. "While I'm not a 'Mackey groupie,'" rahodeb wrote, "I do admire what the man has accomplished." This was true, as far as it went. Rahodeb was not a Mackey groupie. Rahodeb was Mackey.

It was a venial sin that would never have come to light except that in February Whole Foods made a $565 million play to buy Wild Oats--the very company rahodeb so soundly dissed online--and while reviewing the bid, the Federal Trade Commission (FTC) turned up what would, if this were a spy thriller, be known as the Rahodeb Identity. The FTC is seeking to halt the deal on basic antitrust grounds--it claims that a union of the two companies would produce an organic-foods quasi-monopoly. The government may also be examining whether Mackey, in his double life, revealed information a CEO shouldn't. But there are plenty of economists and lawyers around to figure out important stuff like that. The really burning questions are, Why would Mackey bother posting about his own company on Yahoo? And should people be allowed to be anonymous on the Internet at all?

As far back as the 1980s, the Internet has been an electronic masked ball, a place where people can play with new identities and get off on the frisson of being somebody else. MIT sociologist Sherry Turkle has argued that this kind of identity-play even has therapeutic value. You certainly can't ascribe a plausible financial motive to Mackey--rahodeb's postings weren't moving stock prices around. This was about just being naughty: picture Mackey chortling as he played the regular rube, like Marie Antoinette dressing up as a peasant and milking cows on the fake farm she built near Versailles. (Mackey was even in drag, sort of--rahodeb is an anagram of his wife's name, Deborah.)

But it's all fun and games till somebody loses his head. As anybody who has even looked sideways at the Internet knows, anonymity has a disastrously disinhibiting effect on human behavior. Freed of any possibility that their words will be connected to their actual identities, anonymous Internet posters have charted historic new depths of verbal offensiveness. Andrew Keen, author of The Cult of the Amateur: How Today's Internet Is

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Killing Our Culture, has called for posters to own up to their Internet alter egos, arguing that "if we are to save the Internet, we need to confront the curse of anonymity."

Then again, anonymity can protect the innocent as well as the guilty. As privacy advocates will be ecstatically eager to remind you, Common Sense and The Federalist were both first published anonymously. In countries where governments don't respect free speech, anonymity is a priceless resource. Right now the Chinese city of Xiamen is trying to ban anonymous Web postings after citizens used the Internet to organize a protest against a new chemical plant.

There are forums in which the need to exchange information anonymously is compelling. But there aren't many, and in most cases it's just a temptation. Look at Amazon, which since 2004 has urged anonymous reviewers to fess up to their real names, lest authors be tempted to review their own books. Viewed as a social experiment in good faith among anonymous equals, the Internet is not succeeding. The masked ball is in danger of becoming a hooded mob.
Appendix I: News Release – July 17, 2007†

Apology Statement

AUSTIN, Texas (July 17, 2007). Whole Foods Market today released the following statement from Co-founder, Chairman and CEO, John Mackey: "I sincerely apologize to all Whole Foods Market stakeholders for my error in judgment in anonymously participating on online financial message boards. I am very sorry and I ask our stakeholders to please forgive me."

† Passage from http://media.wholefoodsmarket.com/pr/wf/national/pr_07-17-07b.aspx
Whole Foods Market Closes Acquisition of Wild Oats Markets, Secures $700 Million Senior Term Loan to Fund Merger and Signs New Five-Year $250 Million Revolver

AUSTIN, TX and BOULDER, Colo, (August 28, 2007). Whole Foods Market, Inc. (NASDAQ: WFMI) and Wild Oats Markets, Inc. (NASDAQ: OATS) announced today that Whole Foods Market has purchased 84.1% of Wild Oats Markets’ outstanding common stock in a cash tender offer of $18.50 per share, and will purchase as delivered over the next three business days approximately 12.7% of the outstanding shares of Wild Oats Markets common stock, represented by the shares subject to guaranteed delivery. Whole Foods Market will acquire all of the remaining outstanding shares of Wild Oats Markets common stock pursuant to the short-form merger procedure available under Delaware law. Whole Foods Market has also assumed existing debt, net of cash, totaling approximately $137 million. Whole Foods Market has entered into a five-year $700 million senior term loan agreement to fund the transaction, and has signed a new five-year $250 million revolving credit agreement, which will replace its existing $200 million revolver.

"While closing this merger has taken longer than we anticipated, we are very excited to now begin the integration process. We have found it generally takes up to two years to transition to our decentralized operations and implement our incentive programs. We expect this acquisition to be similar and that over time we will recognize significant synergies through G&A cost reductions, greater purchasing power, increased utilization of our facilities and new team member talent," said John Mackey, Chairman, CEO, and co-founder of Whole Foods Market. "We have always benefited from learning from our past acquisitions and believe this merger will result in a company that is much stronger and better positioned for the future."

With annual sales of approximately $1.2 billion, Wild Oats Markets is one of the leading natural and organic foods retailers in North America with 109 stores in 23 states and British Columbia, Canada operating under four banners: Wild Oats Marketplace (nationwide), Henry’s Farmers Market (Southern California), Sun Harvest (Texas), and Capers Community Market (British Columbia).

Whole Foods Market previously announced it will sell all 35 Henry’s and Sun Harvest stores and a Riverside, CA distribution center to a wholly owned subsidiary of Smart & Final Inc., a Los Angeles-based food retailer. The transaction is expected to close by late September.

"Wild Oats Markets and Whole Foods Market have both had a large and positive impact on the natural and organic foods movement throughout the United States, leading the industry to nationwide acceptance and helping it become one of the fastest growing segments in food retailing today," said Mr. Mackey. "Our companies have similar missions and core values, and we believe this merger will create long-term value for our customers, vendors and shareholders as well as exciting opportunities for our new and existing team members."

† Passage from http://media.wholefoodsmarket.com/pr/wf/national/pr07_08-28.aspx
Appendix J (Continued)

All of Whole Foods Market's 11 operating regions will gain stores, with three of its smallest regions gaining critical mass, and Whole Foods Market will gain immediate entry into a significant number of new markets. Whole Foods Market will evaluate each store to see how it fits into its overall brand and real estate strategy. Wild Oats Markets has been rationalizing its store base over the last several years to shed underperforming stores, but some additional store closures are expected as well as the relocation of some stores that overlap with stores Whole Foods Market currently has in development. Whole Foods Market expects to make significant investments in upgrading and improving stores before eventually re-branding them as Whole Foods Market stores.

"We are pleased with the successful outcome of this merger and look forward to working with Whole Foods to make this a smooth transition," said Gregory Mays, Chairman and CEO of Wild Oats Markets.

Approximately $3.8 million in direct acquisition-related costs had been incurred by Whole Foods Market through July 1, 2007. These costs, along with any additional acquisition-related costs incurred since that time, will be capitalized as part of goodwill.

For further information, please contact:

Whole Foods Market
Investor Contact — Cindy McCann, 512.542.0204
Media Contact — Kate Lowery, 512.542.0390

Wild Oats Markets
Investor and Media Contact — Sonja Tuitele, 303.396.6984

About Whole Foods Market:
Founded in 1980 in Austin, Texas, Whole Foods Market(R) is a Fortune 500 company and one of the leading retailers of natural and organic foods. The Company had sales of $5.6 billion in fiscal year 2006 and currently has 307 stores in the United States, Canada and the United Kingdom. The Company has signed an agreement to sell 35 of these stores in a transaction expected to close by late September.
Appendix K: Number of Wild Oats Stores Acquired, Post-Merger, by Region (Nov. 2007)

The following table provides additional information by region about the number of Wild Oats stores acquired, divested, closed and relocated, and the ending Wild Oats store count as of November 20, 2007.

<table>
<thead>
<tr>
<th>Region</th>
<th>Stores Acquired</th>
<th>Stores Divested</th>
<th>Net Stores Acquired</th>
<th>Stores Closed</th>
<th>Stores Relocated</th>
<th>11/20/07 Store Count</th>
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<td>Northern California</td>
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<tr>
<td>Pacific Northwest</td>
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<td>Rocky Mountain</td>
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<td>-</td>
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<td>South</td>
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<td>-</td>
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<td>Southern Pacific</td>
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<td>Southwest</td>
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<td>(8)</td>
<td>2</td>
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<td>-</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>109</strong></td>
<td><strong>(35)</strong></td>
<td><strong>74</strong></td>
<td><strong>(9)</strong></td>
<td><strong>(2)</strong></td>
<td><strong>63</strong></td>
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</tbody>
</table>

|                      | Average size – gross square feet | 24,000 | 24,000 |
|                      | Total gross square footage (in thousands) | 1,804 | 1,535 |
| Average weekly sales – fourth quarter FY 2007 (1) | 214,000 | 224,000 |
| Sales per square foot – fourth quarter FY 2007 (1) | 457 | 478 |

(1) Average weekly sales and sales per square foot calculations assume Wild Oats was owned the entire fourth quarter of fiscal year 2007.
III. References


2 Ibid.


5 Ibid.


7 Ibid.


15 Ibid.

16 Ibid.


50 Ibid.

66 Ibid.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.


74 Ibid.

75 Ibid.


77 Ibid.

78 Ibid.

79 Ibid.

80 Ibid.


90 Ibid.

91 Ibid.


96 Ibid.


99 Ibid.


101 Ibid.

102 Ibid.

103 Ibid.