

Interlocutory Orders, Etc.

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.**

Docket No. 9324 Order, May 21, 2009

Order addressing Gelson's Markets' claims that Whole Foods Markets, Inc. violated the protective order by using Gelson's confidential documents for purposes that are outside the scope of the administrative proceeding.

**ORDER DENYING GELSON'S MARKETS' MOTION TO ENFORCE
PROTECTIVE ORDER**

Gelson's Markets has filed a motion requesting that the Commission enforce the Protective Order Governing Confidential Information ("Protective Order") – which the Commission issued in this administrative proceeding on October 10, 2008 – and "direct Whole Foods' counsel to return all of Gelson's documents immediately without retaining copies or summaries thereof." The Commission has considered the arguments made by Gelson's Markets and by Whole Foods in response. In particular, the Commission notes that paragraph 12 of the Protective Order provides that "the parties shall return documents obtained in this action to their submitters . . ." at "the conclusion of [the administrative] proceeding . . ." This administrative proceeding has not yet ended; it will end when the Commission determines to accord final approval to the Decision and Order accepted for public comment, and the Decision and Order becomes final. Accordingly,

IT IS ORDERED THAT Gelson's Markets' request that the Commission order Whole Foods and its counsel to immediately return Gelson's confidential documents is **DENIED**; and

IT IS FURTHER ORDERED THAT when the Decision and Order in this matter becomes final, Whole Foods need not return any

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third-party documents that are subject to any outstanding discovery requests (including, but not limited to outstanding requests in *Kottaras v. Whole Foods Market, Inc.*, no. 1:08-cv-01832 (D.D.C.)), provided that Whole Foods complies with its obligations set forth in paragraph 11 of the Protective Order. At that time, pursuant to paragraph 12 of the Protective Order, Whole Foods must return all other documents obtained in this action to their submitters.

By the Commission.

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IN THE MATTER OF

**HEXION LLC,
AND
HUNTSMAN CORPORATION**

Docket No. C-4235 Order, June 4, 2009

Order granting in part the respondents' petition to reopen and set aside the order.

**ORDER GRANTING IN PART PETITION TO REOPEN AND SET
ASIDE ORDERS**

On February 5, 2009, Respondent Hexion LLC ("Hexion") and Respondent Huntsman Corporation ("Huntsman") jointly filed a "Petition of Hexion LLC and Huntsman Corporation to Reopen and Set Aside Orders" ("Petition") seeking to reopen and set aside the Commission's Decision and Order and Order to Maintain Assets contained in Docket No. C-4235 (collectively, the "Orders"), issued on November 13, 2008, and October 2, 2008, respectively. The Respondents' request was made pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.51. Respondents based their Petition on change of fact in that the Orders were premised upon Hexion's acquisition of Huntsman, but the Respondents have terminated their proposed merger, withdrawn their Premerger Notification Filings, and represent that they no longer intend to close the transaction.¹

For the reasons stated herein, the Commission has determined to grant the Petition to reopen the matter and to set aside the Orders as to Respondent Huntsman. The Commission has further determined to set aside the Order to Maintain Assets and to modify the Decision and Order as to Respondent Hexion. The modification of the

¹ Petition at 5. Petition Exhibit 5 at ¶ 8; Petition Exhibit 6 at ¶ 13.