

ORAL ARGUMENT HELD ON APRIL 23, 2008

No. 07-5276

THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FEDERAL TRADE COMMISSION,
Appellant,

v.

WHOLE FOODS MARKET, INC.,
Appellee.

On Appeal from the United States District Court
for the District of Columbia
(Civ. No. 07-1021 (PLF), Judge Paul L. Friedman)

**APPELLEE'S MOTION FOR LEAVE TO FILE A REPLY
IN SUPPORT OF ITS PETITION FOR REHEARING *EN BANC***

Of Counsel

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October 6, 2008

Attorneys for Whole Foods Market, Inc.

Whole Foods Market, Inc. (“Whole Foods”) respectfully requests leave to file a Reply in support of its Petition for Rehearing *En Banc*. The Panel opinion represents a regrettable and dramatic departure from modern antitrust analysis and the standards for granting preliminary relief, which opens the door for questionable and speculative intervention by the FTC to halt free-market activity without a sound economic foundation. In its Response to the Petition for Rehearing *En Banc*, the FTC abandons economic principles and inaccurately characterizes this Court’s prior decisions and the Panel opinion, all in an apparent attempt to minimize the significance of the legal changes wrought by the Panel opinion. A reply brief is necessary to correct the record and reduce potential confusion about the foundations for and implications of the Panel opinion. Whole Foods’ Reply concisely addresses the issues, and is only ten pages long.

Whole Foods respectfully requests that the attached reply be considered with its Petition for Rehearing *En Banc*.

Respectfully submitted,



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October 6, 2008

Attorneys for Whole Foods Market, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellee's Motion for Leave to File a Reply in Support of Its Petition for Rehearing En Banc was served this October 6, 2008, on the following persons by U.S. Mail and e-mail.

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