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Doh! FTC Gaffe Spills Beans on Whole Foods

Posted by Ashby Jones

Ah, discovery. So important to the litigation process, so fraught with the potential disaster. Let us swing the spotlight away from the [Day Casebeer](#) firm, which got benchslapped last week for alleged discovery mistakes made in its representation of Qualcomm in a patent dispute against Broadcom, and put it squarely today on the Federal Trade Commission.

Earlier this week, during its review of Whole Foods's potential \$565 million purchase of Wild Oats, the FTC inadvertently released to the public dozens of Whole Foods's trade secrets. Here's the [story](#) from the AP, and earlier Law Blog posts on the merger itself — and its possible antitrust implications (click [here](#) and [here](#)).

According to the documents let loose by the FTC, in an attempt to boost revenue, Whole Foods plans to close 30 or more Wild Oats stores in competitive markets. The FTC also reportedly revealed how Whole Foods negotiates with suppliers to drive up costs for Wal-Mart stores.

So how'd this happen? Apparently FTC lawyers filed documents electronically on Tuesday as part of the case. Court officials realized certain redacted portions of a certain document could easily be read and hindered its ability to be downloaded. But the AP pulled the document from the public server before it was replaced by a properly redacted version.

In a statement late Tuesday, Whole Foods said it was investigating the “apparent improper release by the Federal Trade Commission of confidential proprietary business information.” Sonja Tuitele, a spokeswoman for Wild Oats, said the release of confidential information is “obviously unfortunate and unfair” to the companies involved.

FTC spokesman Mitchell Katz declined to comment on the matter.

<http://blogs.wsj.com/law/2007/08/16/doh-ftc-gaffe-spills-beans-on-whole-foods/>