



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 26, 2007

VIA FACSIMILE AND EXPRESS MAIL

New Seasons Market
c/o Robert D. Newell, Esquire
Davis Wright Tremaine LLP
1300 S. W. Fifth Ave. – Suite 2300
Portland, OR 97201

Re: *New Seasons Markets's ("NSM") Petition to Quash or Limit Civil Investigative Demand ("NSM's Petition")*, File No. 071-0114

Dear Mr. Newell:

This letter advises you of the disposition of NSM's Petition to quash or limit specifications of the Civil Investigative Demand ("CID") issued to it on April 24, 2007. Because NSM's Petition was filed after the deadline by which it had to be filed, the Commission denies NSM's Petition.¹ Pursuant to 16 C.F.R. § 2.7(e), NSM is ordered to comply with the CID on or before July 3, 2007 at 5:00 p.m. E.D.T.

This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission's delegate. *See* 16 C.F.R. § 2.7(d)(4). Petitioner has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.²

¹ Reaching the merits of NSM's Petition would not change this result. NSM provided no factual basis for its claims of burden. *See Federal Trade Commission v. Rockefeller*, 591 F.2d 182, 190 (2nd Cir. 1979) (Petitioner must show that compliance would "unduly disrupt or seriously hinder" its daily operations). Further, NSM's claim that information regarding the facts of its grocery store operations in one overlap market are beyond the scope of this investigation of a retail grocery store merger is simply frivolous. *Federal Trade Commission v. Whole Foods Market, Inc., et al*, Docket No. 1:07-cv-01021 (D.D.C. June 6, 2007), Complaint at ¶ 35, available at: <http://www.ftc.gov/os/caselist/0710114/070605complaint.pdf> (alleging geographic markets defined by a six mile circle around each store). Finally, NSM offers no authority to support its request that the Commission agree to pay "damages" in the event of an inadvertent public disclosure of confidential business information, and the mere possibility of such disclosure provides no ground for quashing the CID.

² This letter decision is being delivered by facsimile and express mail. The facsimile copy is being provided as a courtesy. Computation of the time for appeal, therefore,

The CID at issue was signed and issued to NSM on April 24, 2007, returnable on April 30, 2007, Petition at 1, and was served on NSM on April 25, 2007. NSM states that “the FTC has granted multiple extensions, ultimately extending the time to respond to June 15, 2007.” *Id.* NSM did not seek, nor was it granted, however, an extension of time within which to file a petition to quash or limit a CID. The time for filing a petition to quash, absent an extension of time granted pursuant to and in conformity with 16 C.F.R. § 2.7(d)(3), is the earlier of the date for compliance with the CID or 20 days after service. In the case of this CID, a petition to quash should have been filed no later than the earlier of April 30th (initial compliance date) or May 15th (twenty days after service). NSM claims to have received extensions of the return date for its CID until June 15th.³ Extending only the return date, however, still would make May 15th the latest permissible date for filing a petition to quash. An extension of the time to comply does not automatically extend the time within which a petition to quash must be filed. *Compare* 16 C.F.R. § 2.7(c) *with* 16 C.F.R. § 2.7(d)(3). Linking the two extensions together might provide both the means and the incentive to delay investigations unnecessarily. NSM has offered no reason for filing its petition out of time, nor did it seek leave to file its petition out of time. Accordingly,

IT IS ORDERED THAT NSM’s Petition be, and it hereby is, DENIED.

IT IS FURTHER ORDERED THAT NSM shall respond to the CID on or before July 3, 2007 at 5:00 p.m. E.D.T.

By Direction of the Commission.

Donald S. Clark
Secretary

should be calculated from the date you received the original by express mail. In accordance with the provisions of 16 C.F.R. § 2.7(f), the timely filing of a request for review of this matter by the full Commission shall not stay the return date established by this decision.

³ The CID expressly provides that all modifications “must be agreed to in writing by the Commission representative.” CID at 3. Further, pursuant to 16 C.F.R. § 2.7(c), all such amendments regarding the manner and timing of compliance for this CID required approval by at least an Assistant Director of the Bureau of Competition. The last written approval of an extension of the time within which to comply that was signed by an Assistant Director only extended the return date to May 29, 2007. The Commission has reason to believe that two additional extensions of the deadline for compliance were approved by an Assistant Director. However, while the next to the last request for an extension, until June 5th, was addressed by an email message, the final request for an extension, until June 15th, was addressed only orally. The CID by its own terms does not permit oral modifications. Accordingly, the last arguably cognizable extension only extended the time for compliance until June 5th, not until June 15th. Thus, even if the Commission assumes, contrary to the evidence, that each extension validly approved included both an extension pursuant to 16 C.F.R. §§ 2.7(c) (extension of compliance date) and an extension pursuant to 16 C.F.R. § 2.7(d)(3) (extension of time within which to file a petition to quash), NSM’s Petition was due on or before June 5, 2007.