

UNED
ER
COMMISSIONER
LAW
R
ATTORNEY

IN RE
ALTRIA
v.
JUUL LABS, INC.

D

PR

This matter is before the Commission on Complaint Counsel’s appeal of the Chief Administrative Law Judge’s Initial Decision that recommended dismissing the Complaint in this proceeding. While that appeal has been pending, a series of developments that have affected the underlying facts have prompted the filing of two motions by Respondents, one to dismiss this proceeding as moot and the other to withdraw the proceeding from adjudication in order to discuss settlement. As explained below, the Commission has determined to withdraw this matter from adjudication for 45 days.

On March 6, 2023, Respondents filed a Motion to Take Official Notice and to Dismiss this Litigation as Moot, or in the Alternative, to Stay the Litigation (“March 6 Motion”). The March 6 Motion asserts that Respondent Altria Group, Inc. (“Altria”) has fully unwound its 2018 investment in Respondent Juul Labs, Inc. (“JLI”) and has terminated certain agreements it entered into with JLI in 2018. March 6 Motion at 1. Thus, Respondents say, the Commission should dismiss the proceeding as moot and no longer in the public interest.¹ Complaint Counsel have opposed the request to dismiss, arguing that a respondent’s voluntary cessation of unlawful conduct does not moot an enforcement proceeding and that meaningful relief remains to be ordered. Complaint Counsel’s Opposition to Respondents’ Motion to Dismiss this Litigation as Moot, or in the Alternative, to Stay the Litigation, and Response to Respondents’ Motion to Take Official Notice at 2-7 (Mar. 16, 2023) (“Opposition”). In the

determination by resort to sources whose accuracy cannot reasonably be questioned, as required by Rule 3.43(f). Under our precedent, official notice may be taken of references “generally accepted as reliable.” ~~Id.~~ 2006 WL 271518, at *1 (F.T.C. Jan. 23, 2006) (citing ~~Id.~~ 104 F.T.C. 648, 790 (1984)). “Matters of official notice include those contained in public records, such as . . . records and reports of administrative bodies.” ~~Id.~~ 38 F.T.C. 229, 240 (2004) (internal citation omitted). We have previously taken official notice of facts within SEC Form 8-K filings in this very proceeding, ~~Order Granting Respondent Altria Group Inc.’s Motion for Official Notice of Termination of the Non-Compete~~ (Nov. 10, 2022), and Counsel raise no reason to question the accuracy of the statements quoted from the March 6, 2023 Form 8-K Report. Termination of Altria’s economic stake in JLI and of agreements related to Altria’s holding of an interest in JLI may bear on our assessment of future competitive effects from Respondents’ conduct, and, if a violation is found, our evaluation of appropriate remedies. Finding that the facts stated in the March 6, 2023 Form 8-K Report, as quoted above, are not subject to reasonable dispute and that they are material, we conclude that they are properly subject to official notice.

Turning to Respondents’ other requests, we have determined to withdraw this proceeding from adjudication for 45 days, pursuant to provisions of Commission Rule 3.25(d), 16 C.F.R. § 3.25(d). Respondents have terminated certain agreements and the investment at issue and have offered a potential settlement.⁴ Consideration of these actions by Respondents, in conjunction with discussion and possible further negotiation of Respondents’ settlement proposals, can most effectively be accomplished outside the adjudicative process.

Accordingly,

IT IS HER he Commission takes official notice of the facts stated in Altria Group, Inc.’s March 6, 2023 Form 8-K Report to the Securities and Exchange Commission, as quoted in footnote 2 of this Order; and

IT IS FUR this matter in its entirety is hereby withdrawn from adjudication until June 19, 2023.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: May 4, 2023

⁴ A further development of note is a June 23, 2022 Food and Drug Administration (“FDA”) decision denying marketing authorization for all JLI products sold in the United States. The Commission has previously taken official notice of this decision as well as a July 5, 2022 FDA order staying the effect of the FDA’s June 23 decision pending further FDA review. ~~Order Granting in Part Counsel’s Third Motion for Official Notice~~ (Aug. 24, 2022).