

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the Matter of

**Altria Group, Inc.,
a corporation;**

and

**JUUL Labs, Inc.,
a corporation.**

Docket No. 9393

**ORDER TAKING OFFICIAL NOTICE AND WITHDRAWING
PROCEEDING FROM ADJUDICATION**

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. *See* 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 March 6 Motion Altria also requests that the Commission take official notice of Altria’s March 6, 2023 Form 8-K Report to the Securities and Exchange Commission, which the March 6 Motion characterizes as disclosing

¹ Respondents asked in the alternative for an order staying this proceeding. The Commission denied the request for stay on March 30, 2023. Order Denying Stay and Extending Deadline for Commission Ruling (Mar. 30, 2023).

that “Altria no longer has any economic stake in JLI and that the Relationship Agreement and Services Agreement between the companies have been terminated.” March 6 Motion at 1.² Complaint Counsel take no position with regard to the request for official notice. Opposition at 2 n.2.

On March 21, 2023, Respondents filed a Motion to Withdraw Matter from Adjudication to Discuss Settlement (“March 21 Motion”). Respondents argue that the transaction and relationship that gave rise to the Commission’s Complaint no longer exist and assert that they are prepared to enter a consent order giving the Commission the remaining relief it sought in this proceeding. *Id.* at 5. Consequently, Respondents request that the Commission remove this proceeding from adjudication, “so that Respondents and Complaint Counsel can promptly negotiate and enter into a consent agreement consistent with [Respondents’] Proposed Order.” *Id.* Respondents further state that they are “prepared to negotiate the content of the consent order should the Commission have any concerns regarding” Respondents’ proposal. *Id.* Complaint Counsel oppose withdrawal from adjudication. They argue that Respondents’ proposed settlement falls short of the relief sought in this proceeding and fails to remedy the alleged harm to competition from Respondents’ conduct. Complaint Counsel’s Opposition to Respondents’ Motion to Withdraw Matter from Adjudication to Discuss Settlement at 1-5 (Mar. 24, 2023). They maintain that withdrawal from adjudication at this stage of the proceeding would needlessly prolong the litigation. *Id.* at 5-6.³

We first address Altria’s request for official notice. Commission Rule 3.43(f), 16 C.F.R. § 3.43(f), authorizes the Commission to take “official notice” of any material fact that is not subject to reasonable dispute in that it is either generally known within the Commission’s expertise, or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A material fact is one “that might affect the outcome of the suit under the governing law[.]” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

We find that the facts stated in the March 6, 2023 Form 8-K Report, as quoted in note 2 above, are not subject to reasonable dispute in that they are capable of accurate and ready

² Altria’s Form 8-K Report states that “On March 3, 2023 (the “Effective Date”), Altria entered into a stock transfer agreement with JUUL . . . pursuant to which . . . we and our subsidiaries transferred to JUUL all of our beneficially owned JUUL equity securities. Concurrently with and in connection with the execution of the Stock Transfer Agreement, JUUL entered into an agreement with an Altria subsidiary providing [Altria] with a non-exclusive, irrevocable global license to certain of JUUL’s heated tobacco intellectual property. In addition, all other agreements between Altria or any of [its] subsidiaries, on the one hand, and JUUL, on the other hand, were terminated or Altria and [its] subsidiaries were removed as parties thereto, other than certain litigation-related agreements and a license agreement relating to Altria’s non-trademark licensable intellectual property rights in the e-vapor field, which will remain in force solely with respect to e-vapor intellectual property of Altria as of or prior to the Effective Date.” March 6 Motion at Exh. A. In a press release incorporated by reference into its Form 8-K Report, Altria states that “we have exchanged our entire minority economic investment in JUUL Labs, Inc. (JUUL) for a non-exclusive, irrevocable global license to certain of JUUL’s heated tobacco intellectual property” *Id.*

³ Respondents have moved for leave to file a reply in further support of their March 21 Motion. Pursuant to Commission Rule 3.22(d), 16 C.F.R. § 3.22(b), leave to file the reply conditionally submitted by Respondents is granted.

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.” *In re Basic Research, LLC*, 2006 WL 271518, at *1 (F.T.C. Jan. 23, 2006) (citing *In re Thompson Medical Co.*, 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.” *In re S.C. State Bd. of Dentistry*, 138 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, *see* Order Granting Respondent Altria Group Inc.’s Motion for Official Notice of Termination of the Non-Compete (Nov. 10, 2022), and Complaint 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 HEREBY ORDERED THAT the 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 FURTHER ORDERED THAT 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 Complaint Counsel’s Third Motion for Official Notice (Aug. 24, 2022).