

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

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

In the Matter of

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

and

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

Docket No. 9393

**ORDER GRANTING RESPONDENT ALTRIA GROUP INC.'S MOTION FOR
OFFICIAL NOTICE OF TERMINATION OF THE NON-COMPETE**

On October 12, 2022, Respondent Altria Group, Inc. (“Altria”) moved for the Commission to take official notice of its September 30, 2022 Form 8-K Report to the Securities and Exchange Commission (“Form 8-K Report”), which discloses that Altria has exercised its option to be released from its non-compete obligations to Respondent JUUL Labs, Inc. (“JLI”). Respondent Altria Group Inc.’s Motion for Official Notice of Termination of the Non-Compete (“Motion”). Complaint Counsel have filed a response to rebut certain assertions in Altria’s motion but do not oppose taking official notice of the Form 8-K Report. Complaint Counsel’s Response to Respondent Altria Group, Inc.’s Motion for Official Notice of Termination of the Non-Compete at 2 (Oct. 24, 2022) (“Response”). Respondent JLI does not object to having the Commission take official notice of the termination of the non-compete. Motion at 1 n.1.

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 September 30, 2022 Form 8-K Report is not subject to reasonable dispute in that it is capable of accurate and ready 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 taken official notice of facts contained in SEC filings in the past, *see Chicago Bridge & Iron Co. N.V.*, 139 F.T.C. 553, 578 n.82 (F.T.C. 2005) (taking official notice of facts within an SEC 10-K Report), and Complaint Counsel raise no reason to question the accuracy of the Form 8-K Report.

Commission Rule 3.43(f) also requires that a fact be material for us to take official notice of it. The written non-compete addressed by the Form 8-K Report was a part of the transaction between Altria and JLI that Complaint Counsel have challenged in this proceeding. The Complaint alleges that Altria and JLI entered an agreement whereby Altria agreed not to compete and that this agreement unreasonably restrained trade in the U.S. market for e-cigarettes in violation of Section 1 of the Sherman Act. Compl. ¶¶ 22, 78-79. Complaint Counsel explain that the written agreement not to compete addressed by the Form 8-K Report, while not the *sole* basis for the Sherman Act Section 1 claims, was *a* basis for them. Response at 2; Trans. Oral Arg. at 7 (Sept. 12, 2022) (“we believe that that [written] agreement, sort of standing alone, that noncompete violates Section 1”). Consequently, termination of the written non-compete agreement may bear on our assessment of potential future competitive effects from Respondents’ conduct, and, if a violation is found, our evaluation of appropriate remedies.

We therefore find the Form 8-K Report to be material within the meaning of Rule 3.43(f). Given that we also have found that the Form 8-K Report is not subject to reasonable dispute, it is properly subject to official notice.

Accordingly,

IT IS HEREBY ORDERED THAT Respondent Altria Group, Inc.’s Motion for Official Notice of Termination of the Non-Compete is **GRANTED**; and

IT IS FURTHER ORDERED THAT the Commission hereby takes official notice of Altria Group, Inc.’s September 30, 2022 Form 8-K Report to the Securities and Exchange Commission, which discloses that Altria has exercised its option to be released from its non-compete obligations to Respondent JUUL Labs, Inc.

By the Commission.



A handwritten signature in blue ink, appearing to read "April Tabor".

April Tabor
Secretary

SEAL:

ISSUED: November 10, 2022