

Interlocutory Orders, Etc.

IN THE MATTER OF

INTUIT, INC.

Docket No. 9408. Order, May 6, 2022

Order granting respondent's unopposed Motion to Withdraw the Matter from Adjudication.

ORDER WITHDRAWING MATTER FROM ADJUDICATION PURSUANT TO RULE 3.26(C) OF THE
COMMISSION RULES OF PRACTICE

On May 4, 2022, counsel for Respondent in this proceeding filed a Motion to Withdraw the Matter from Adjudication. Complaint Counsel has not registered any objection to Respondent's Motion. Accordingly,

IT IS ORDERED, pursuant to Rule 3.26(c) of the Commission Rules of Practice, 16 C.F.R. § 3.26(c) (2022), that this matter in its entirety be and it hereby is withdrawn from adjudication, and that all proceedings before the Administrative Law Judge be and they hereby are stayed.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

ALTRIA GROUP, INC.,
AND
JUUL LABS, INC.

Docket No. 9393. Order, May 13, 2022

Order extending the time to rule on Complaint Counsel's motion to take official notice of a decision by the Food and Drug Administration.

ORDER EXTENDING TIME FOR RULING ON MOTION FOR OFFICIAL NOTICE OF FDA DECISION

On March 31, 2022, Complaint Counsel moved for the Commission to take official notice of a March 24, 2022 decision by the Food and Drug Administration (FDA) to grant marketing authorization to certain e-cigarette devices ("FDA Decision"). Complaint Counsel's Motion Requesting Official Notice of FDA Decision ("Motion"). On April 7, 2022, Respondents opposed the Motion ("Opposition"). Commission Rule 3.22(a) provides that the Commission shall rule on a motion within 45 days of the last-filed answer or reply to the motion, if any, unless there is good cause to extend the deadline. As explained herein, we find that there is good cause to extend the time for ruling on the Motion until issuance of a final opinion and order in this matter.

Commission Rule 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).

Complaint Counsel explain that the FDA Decision granted marketing authorization to Logic Technology Development LLC ("Logic") for certain e-cigarettes and associated e-liquids under the Logic Pro and Logic Power brands. Motion at 3 and Ex. A pp. 1, 5. Complaint Counsel argue that the FDA Decision is material to this proceeding because, "[m]uch like Altria's discontinued MarkTen cigalike product, the newly approved Logic products do not contain nicotine salts nor are they pod-based products." Motion at 5. Thus, according to

Complaint Counsel, the FDA's approval of the Logic products tends to refute the ALJ's conclusions that Altria's products, several of which lacked nicotine salts and were not pod-based, lacked conversion potential¹ and therefore would have been unlikely to receive FDA marketing authority (known as "PMTA approval"). *Id.* According to Complaint Counsel, the ALJ credited testimony that the cigalike format of Altria's MarkTen products would not appeal to a sufficient pool of smokers to generate sufficient conversion potential, that the lack of nicotine salts was a problem for conversion, and that these issues raised serious concerns for receiving FDA approval. Motion at 5-6. Complaint Counsel assert that the FDA's decision to authorize two Logic products

¹ In this context, "conversion potential" refers to the ability of a product to convert adult smokers away from combustible cigarettes.