

Docket No. 9393

In the Matter of Altria Group, Inc. and JUUL Labs, Inc.

Respondents' Oral Argument
September 12, 2022

ALJ: Contemporaneous Documents Rebut CC's Inferences

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

DOCKET NO. 9393

In the Matter of

ALTRIA GROUP, INC.
a corporation, and
JUUL LABS, INC.
a corporation,

Respondent.

INITIAL DECISION

D. Michael Chappell
Chief Administrative Law Judge

Date: February 23, 2022
(Original issue date of *in camera* version:
February 15, 2022)

[T]he evidence upon which Complaint Counsel relies is highly circumstantial. As an example, while Complaint Counsel contends that the alleged agreement is demonstrated through the parties' documents, what Complaint Counsel relies on are pieces of writings, sometimes snippets – often ambiguous, lacking in context, and unexplained – and asks that the inference of an agreement be drawn. In contrast, **Altria has offered evidence that rebuts Complaint Counsel's requested inferences and has laid out alternative explanations for removing its products that are logical and supported by substantial, credible evidence, including contemporaneous documents.**

ALJ: CC Ignores “Important Context”

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

DOCKET NO. 9393

In the Matter of

ALTRIA GROUP, INC.
a corporation, and
JUUL LABS, INC.
a corporation,

Respondent.

INITIAL DECISION

D. Michael Chappell
Chief Administrative Law Judge

Date: February 23, 2022
(Original issue date of *in camera* version:
February 15, 2022)

[T]he chronology Complaint Counsel lays out fails to take into account important context for Altria’s actions and instead merely juxtaposes negotiation events and business events, and then urges linkages that are not supported by evidence. In this regard, **Complaint Counsel’s chronology appears to be impermissibly “first assuming a conspiracy and then explaining the evidence accordingly.”**

Altria Scientists: Salts “Required”

MAY 29, 2018

Nicot
Tech

Nicotine Salt Technology - Summary

Sensomics

Gerd Koba



Altria
Altria C

Use of nicotine salts or addition of acids to achieve a certain pH is **required** for a satisfying and relaxing E-vapor experience.

All newly developed e-vapor products, regardless of nicotine content, should utilize nicotine salt technology.

RX0796-053

Unlike JUUL, Altria's Products Not Ready

JUL 6, 2018

From: Schuh, Christian (ALCS)
Sent: Friday, July 06, 2018 7:29 PM
To: Magness, Paige C. (ALCS); Gardner, William P. "Bill" (ALCS); Sarkar, Mohamadi A. (ALCS); Schuh, Christian (ALCS)
Cc: Gogova, Maria (ALCS)
Subject: RE: Vapor_HNB _Summary Knowledge Capture Template pcm

Highly Confidential #Secure

Thanks Paige for getting the slides together. They will work very well in the meeting on Monday.

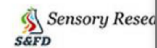
I also attended a meeting with the engineers and platform leaders organized by Rebecca. Altho mainly looking from a design and engineering point nicotine and flavor satisfaction were discussed in very good agreement to your slides.

From an e-liquid/flavor regulatory risk we identified exposure (ingredients, carrier, degradation products and potential characterizing flavor regulations (impacting more flavor forward platform

Products commercialized before 8/8/16 were characterized/ranked as options until market order for other products can be obtained.

Christian

Christian Schuh, Ph.D.
 Altria Client Services
 Phone: 804-335-2502
 Fax: 804-274-6074



From: Magness, Paige C.
Sent: Friday, July 06, 2018
To: Gardner, William P. "Bill"
Cc: Gogova, Maria (ALCS)
Subject: RE: Vapor_HNB

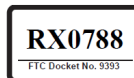
Highly Confidential

I'll weigh in...

1. The key considerations are conversion, satisfaction and ability to get through FDA.
2. A key factor in my assessment has been that none of our products are anywhere near ready (still concepts, formulations not decided, no data to know if we can make a successful PMTA). So, I couldn't find that any of our pipeline products could meet high likelihood.
3. Today, it appears that JUUL is delivering on conversion and satisfaction. It may well achieve the third goal, but will have some hurdles. IQOS, today therefore, is the single product that meets the high likelihood based on conversion, satisfaction and FDA readiness.

1

CONFIDENTIAL



ALGFTC0005186296
 RX0788-001

From: Magness, Paige C. (ALCS)
Sent: Friday, July 06, 2018 3:19 PM
To: Gardner, William P. "Bill" (ALCS); Sarkar, Mohamadi A. (ALCS); Schuh, Christian (ALCS)
Cc: Gogova, Maria (ALCS)
Subject: RE: Vapor_HNB _Summary Knowledge Capture Template pcm edits_CScomments.pptx

I'll weigh in...

1. The key considerations are conversion, satisfaction and ability to get through FDA.
2. A key factor in my assessment has been that none of our products are anywhere near ready (still concepts, formulations not decided, no data to know if we can make a successful PMTA). So, I couldn't find that any of our pipeline products could meet high likelihood.
3. Today, it appears that JUUL is delivering on conversion and satisfaction. It may well achieve the third goal, but will have some hurdles. IQOS, today therefore, is the single product that meets the high likelihood based on conversion, satisfaction and FDA readiness.

RX0788-001

Nu Mark “Lack[ed] Quality Pod Products”

AUG 3, 2018

NU MARK CURRENT SITUATION AND NEAR TERM STRATEGIC OPTIONS

NuMark
An Altria Innovation Company

President and G

NU MARK NEAR TERM SITUATION ANALYSIS SUMMARY

- Rapid growth of Vapor driven by new platforms designed to deliver a differentiated satisfying, enjoyable nicotine experience
- Strong ATC interest and increased offerings likely to fuel growth
- Nu Mark is limited to competing today in the cig-a-like segment in MOC
- MarkTen is the best performing cig-a-like YTD
- Oral is still an emerging category where significant opportunity exists
- Lack quality pod products and oral TDN platforms that are proven to deliver broadly against ATC desires for a satisfying, enjoyable nicotine experience

NuMark
An Altria Innovation Company

PX1644-006

2018: Cig-A-Likes Were Dying

MAY 16, 2018

Board of Directors Presentation

Billy Gifford & Jody Begley
May 2018

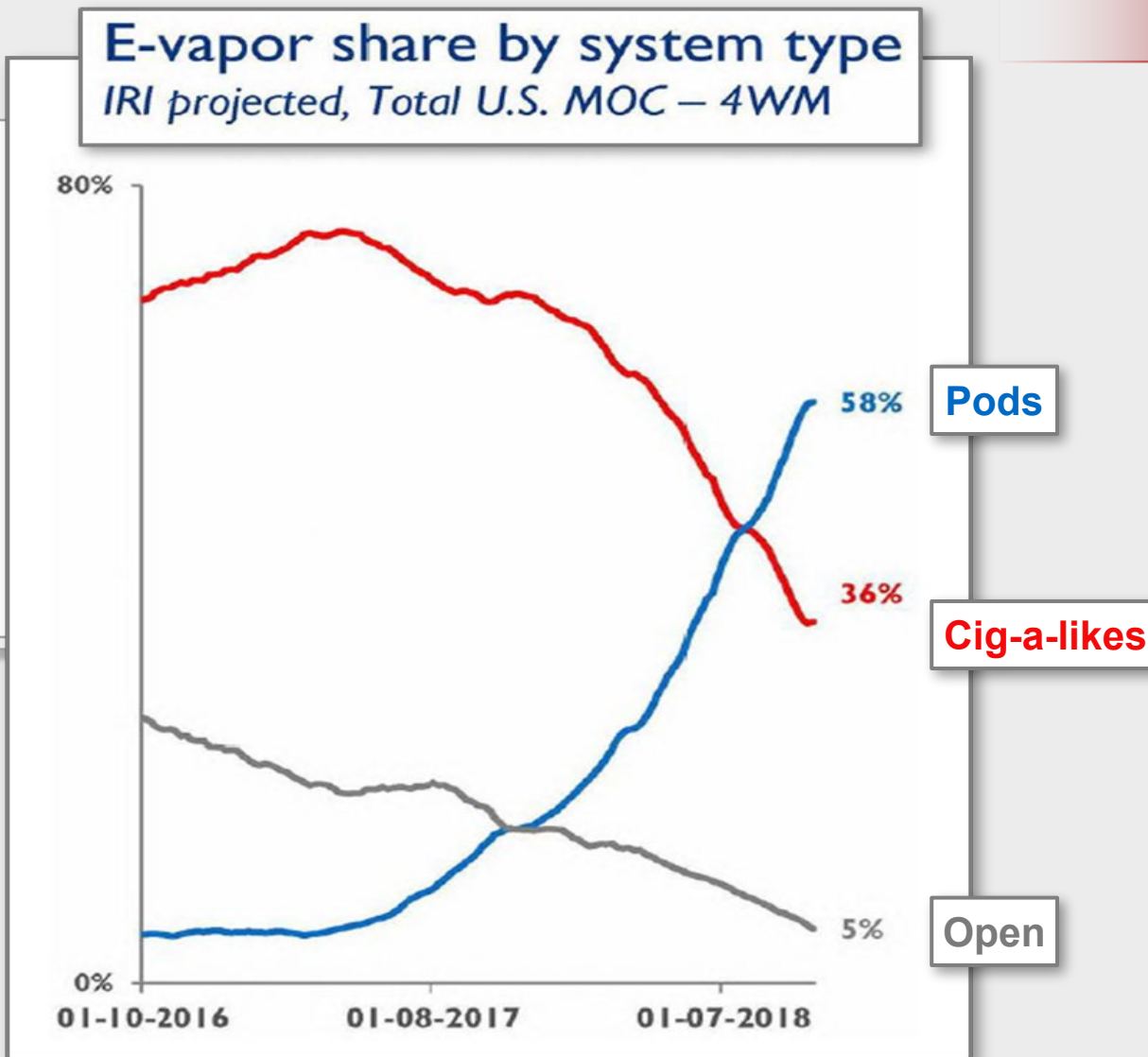


Altria Client Services

Altria Client Services | SABO | May 2018 | Final | Highly Confidential | 1

CONFIDENTIAL

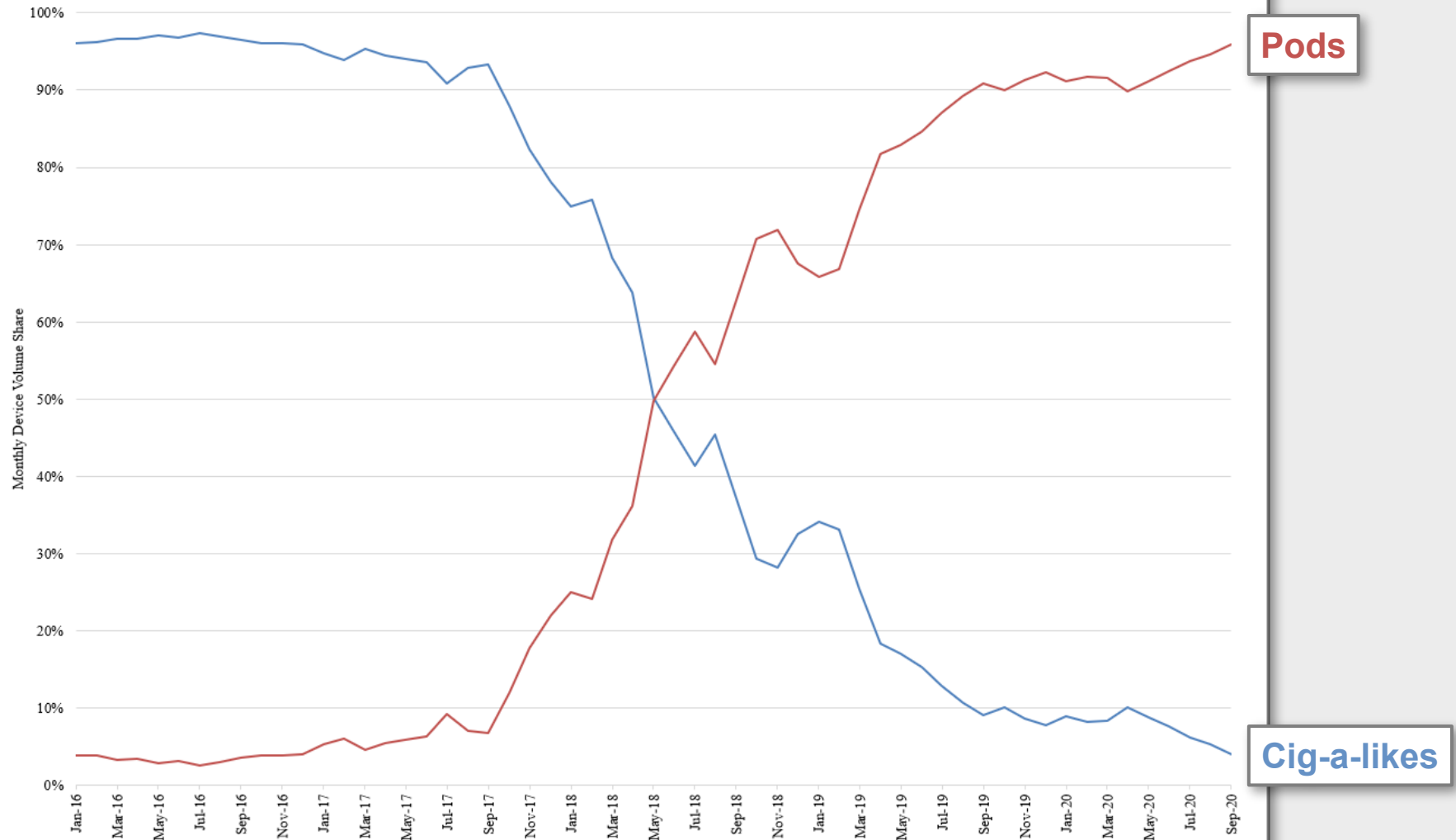
ALMTC0000704142
RX0272-002



RX0272-013

2020: Cig-A-Likes Are Dying



Fig. IV.2: Cig-a-like versus Pod-based Vaporizer Device Volume Share, Altria IRI Projected Data



Elite PMTA Assessment

AUG 23, 2018

MarkTen Elite key concerns

-  ~30% of devices leak
-  Generates high levels of formaldehyde (i.e. known carcinogen) through end of cartridge; no temperature control implemented
- Needs complete product integrity assessment, including consumption data
- Product stability not evaluated, could result in future issues
- Low nicotine concentration and no acids

In-Market Pod Product




Manufacturing	X
Meaningful Risk Reduction	X
Adult Smoker Conversion Potential	X
No Unintended Consequences	?

Manufacturing	X
Meaningful Risk Reduction	X
Adult Smoker Conversion Potential	X
No Unintended Consequences	?

Cig-A-Like PMTA Assessment

AUG 23, 2018

MarkTen key concerns

 High exposure to formaldehyde (known carcinogen) when cartridge is consumed completely. Data first available in Q4 '17. Temperature control needed to prevent formaldehyde formation.

 Chemicals and metals of concern

- Low nicotine concentration and no or insufficient levels of acids
- Cig-a-like platform declining

In Market Cig-a-like Product



Manufacturing	✓
Meaningful Risk Reduction	X
Adult Smoker Conversion Potential	X
No Unintended Consequences	✓

Manufacturing	✓
Meaningful Risk Reduction	X
Adult Smoker Conversion Potential	X
No Unintended Consequences	✓

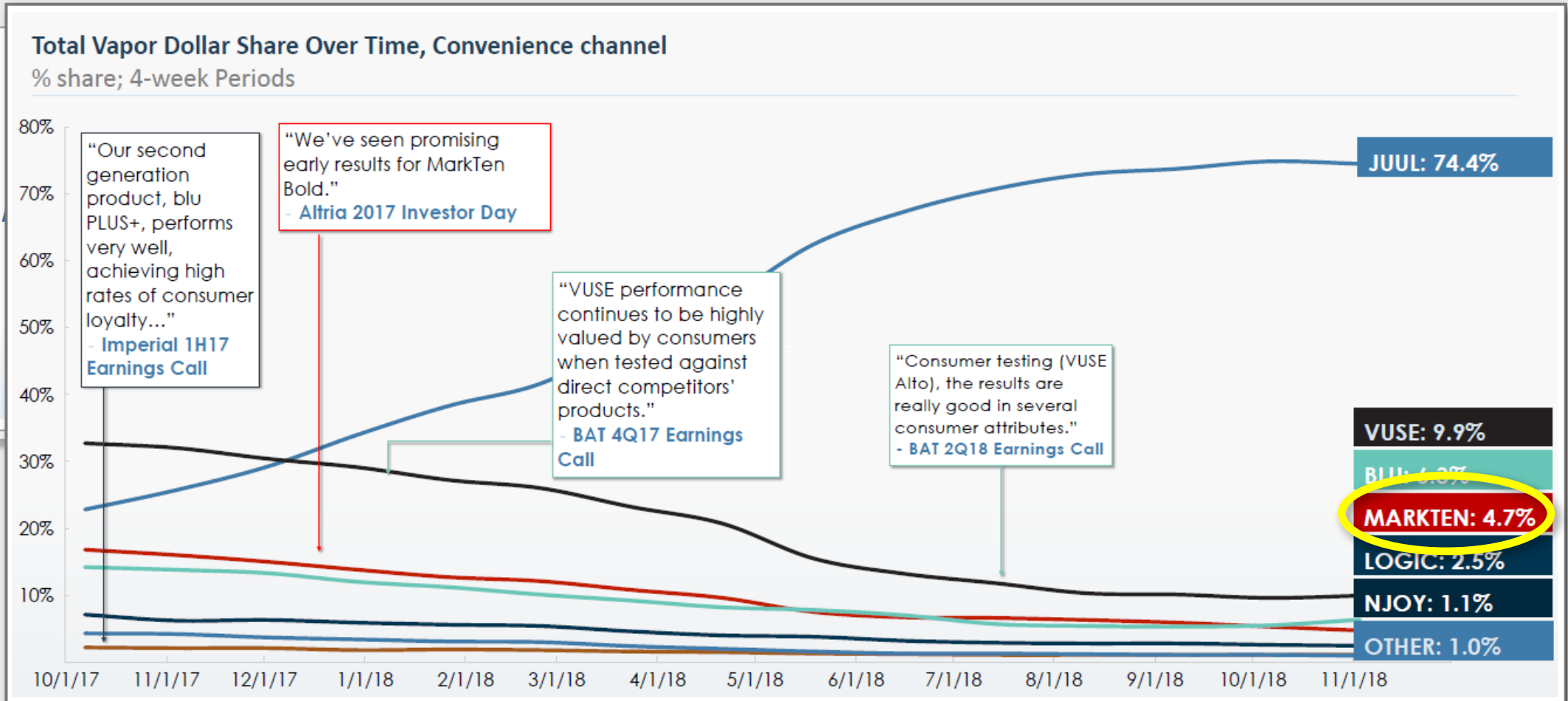
MarkTen's Declining Share

NOV 15, 2018

JUUL

Sales & Marketing

November 15, 2018



PX2062-007

Elite's Share Never Topped 1%

CONFIDENTIAL – FTC Docket No. 9393

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

EXPERT REPORT OF KEVIN M. MURPHY, PH.D.

In the Matter of:

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

MarkTen's cig-a-like product and assumed growth would come from its pod-based product, MarkTen Elite.²³⁴ MarkTen Elite never achieved more than a 1 percent share of closed system e-cigarette cartridge unit sales.²³⁵ Therefore, Dr. Rothman's assumption of

EXPERT

MARCH 15, 2021

²³⁵ Altria Projected IRI data, based on MarkTen Elite's share of all closed-system cartridge unit sales.

RX1217
FTC Docket No. 9393

RX1217-001

JUUL: Elite “Not A Threat”

MAR 4, 2018



From: Dan Myers on behalf of Dan Myers <dan@juul.com>
To: Adam Bowen; Brad Ingebretsen
Sent: 3/4/2018 4:27:28 PM
Subject: RE: myBlu, MarkTen Elite

Yes, Tom will be managing this, but Dylan will be handling the TPM measurements. Yes, measuring pH is a good thing also, I agree, and if we can do formaldehyde testing in our lab, that could be nice also. And potentially particle sizing just for fun...

Definitely some consumer studies would be worthwhile – also to decide which flavors we may want to incorporate. PK study might be good – this is the kind of thing Mitch Nides & his clinic in Burbank are very good at – crossover study of ~10 subjects across all the different devices. But we should run the chemistry tests first – much cheaper – and figure out which if any are really necessary to test further.

When you evaluate them as not a real threat, on what elements do you find them lacking? Are there things that do jump out to you as potentially interesting though (volume of liquid, certain flavors, mouthpiece shape, etc)?

Thanks,
Dan

From: Adam Bowen [mailto:adam@juul.com]
Sent: Sunday, March 4, 2018 4:18 PM
To: Dan Myers <dan@juul.com>; Brad Ingebretsen <brad@juul.com>
Subject: myBlu, MarkTen Elite

I've spent some time evaluating these, and think they're not a real threat. But given they are sold by the majors, we should better understand and be able to articulate how they compare to JUUL.

Dan, since Tom Vo has been designated as doing competitor analysis, is he the right person to take his on?

We might also do some panel testing, to have rated on satisfaction, and possibly a PK study.

Any there suggestions?

Thanks,

Adam

--

1/1

1/1

Adam Bowen
Founder, CTO
JUUL Labs | 150 Alabama Street, Second Floor, San Francisco, CA 94110 | +1 415 915 2538

This message and any files transmitted with it may contain information which is confidential or privileged. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy thereof.



JLIFT00020441
RX1421-001

CONFIDENTIAL TREATMENT REQUESTED

RX1421-001

JLI: Elite “Not A Threat”

MAR 5, 2018

From: Adam Bowen on behalf of Adam Bowen <adam@juul.com>
To: Dan Myers
CC: Brad Ingebretsen
Sent: 3/5/2018 5:28:15 PM
Subject: Re: myBlu, MarkTen Elite

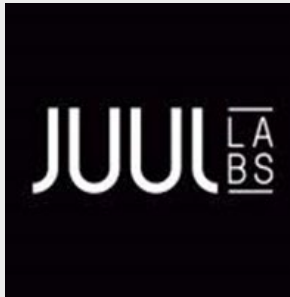
I ran into that problem too. But then when I was in San Diego last week I was able to order. Could be because I was at a hotel that showed up as IP address from another region. I have a pack of each flavor, will bring by tomorrow to at least get started & we can figure out how to get more.

On Mar 5, 2018, at 5:17 PM, Dan Myers <dan@juul.com> wrote:

I asked Tom this morning. He is procuring myBlu that said that he couldn't get MarkTen Elite online – how did you come by it?

Thanks,
Dan

From: Adam Bowen [mailto:adam@juul.com]
Sent: Monday, March 5, 2018 5:07 PM
To: Dan Myers <dan@juul.com>
Cc: Brad Ingebretsen <brad@juul.com>
Subject: Re: myBlu, MarkTen Elite

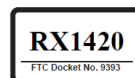


Thanks. I say not a threat because I find they don't provide cig-like nicotine satisfaction. We believe Elite is not using salts, and myBlu might or might not (I've seen conflicting versions of their ingredients listing). Need to confirm in each case.

TPM, and send out for analysis. Global has validated acids methods that we've used in the past — see example attached. Should also do Nic, PG/VG, water. Manoj handled this previously and has the details.

This is a bit urgent in that sales, exec team, others want to know how we compare. Let's aim to have the in-house testing done and samples sent out by next week.

Thanks,
Adam



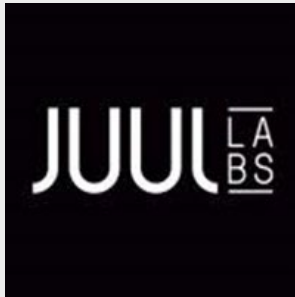
CONFIDENTIAL TREATMENT REQUESTED

JLIFT00020411
RX1420-001

RX1420-001

JLI: Elite Has “No Traction Whatsoever”

JUL 12, 2018



From: Roby DeManche on behalf of Roby DeManche <roby@juul.com>
To: Andrey Reznik; Alex Cantwell; Aman Rangrass
CC: Joseph O'Hara; Marc Batchan; Rudy Lawrence
Sent: 8/2/2018 3:37:56 PM
Subject: Re: JUUL - product teardown

+ Rudy

Hi Aman — Please find attached ex-factory BOM breakdown for Q2'18.

	Q2'18
Device EE+CONN	\$5.387
Device ME	\$1.325
Device PCB/FPC	\$0.967
Device BATTERY	\$0.851
CHARGER	\$0.934
PACKAGING	\$0.966
OTHER	\$0.043
BOM SUBTOT	\$10.473
MVA	
BK TOTAL	

Thanks,
 Roby

Juul Labs | Sourcing Operations | 560 20th Street, S

On 2018, Aug 03, at 04:53, Andrey Reznik
 Alex -

Copying Roby who is the owner of this data
 Andre

On Aug 2, 2018, at 1:34 PM, Alex Cantwell
 Andrey -

Can you provide the detailed device BOM
 They are under NDA & are safe to share w
 Thank you sir,

CONFIDENTIAL TREATMENT REQUESTED

JLIFTC00550803
 RX1165-001

From: Joseph O'Hara [mailto:johara@juul.com]
Sent: Thursday, July 12, 2018 9:36 AM
To: Aman Rangrass <Aman_Rangrass@mckinsey.com>
Cc: Marc Batchan <marc@juul.com>
Subject: [EXT]Re: JUUL - product teardown

- 1) US sales have been absolutely terrible, no traction whatsoever
- 2) Excessive leakage has significantly (perhaps irreparably) damaged the brand
- 3) Revenant Vape (owner of the IP) has no problem with licensing distribution to anyone willing to pay them... has led to brand confusion btwn PHIX/MarkTen Elite and contributed to mediocre consumer interest
- 4) Smoore (Chinese manufacturer) is known for making extremely shoddy, poorly-constructed devices
- 5) No plans for MarkTen Elite to be launched overseas (yet)

RX1165-004

AUG 19 Term Sheet: Antitrust Clearance

AUG 19, 2018

DRAFT 8/9/18/18/18

Summary of Terms for Potential Transaction – Richard¹

Purchase Agreement

- Richard and Jack would enter into a purchase agreement (the "Purchase Agreement").² Richard would purchase shares of Jack for an aggregate of \$__ in cash (the "Investment Amount"). Following such purchase (the "Purchase"), Jack would distribute or otherwise pay to the non-Richard stockholders an aggregate amount equal to the Investment Amount and the Company's

Richard agrees that it will contribute, upon receipt of Antitrust Clearance and at no cost to Jack, all Richard assets relating to the Field in the U.S., including all electronic nicotine delivery systems and products it acquired, developed or has under development (in each case to the extent it has the legal right to make such contribution).

In the event Antitrust Clearance for the foregoing contribution is not obtained within nine months after the Purchase, then subject to the license referenced above, Richard will divest all such Richard assets relating to the Field in the U.S. within six months thereafter.

¹ Note to Draft:

² Note to Richard: the optimal str Richard stockh 55% of Jack, v to reflect the b

restrictions below would apply with respect to Topco as well. [Richard willing to discuss but wants to understand details and implications for Richard]

³ Note to Draft: Minimum working capital to operate Jack's business to be discussed.

W/3193890
4829-3174-0272.v4-4829-3174-0272.v2

CONFIDENTIAL

ALGFTC0006933658

PX1432-021, 022

AUG 19 Term Sheet: Non-Compete

AUG 19, 2018

DRAFT 8/9/18/18/18

Summary of Terms for Potential Transaction – Richard¹

Purchase Agreement

- Richard and Jack would enter into a purchase agreement (the "Purchase Agreement").² Richard would purchase shares of Jack for an aggregate of \$__ in cash (the "Investment Amount"). Following such purchase (the "Purchase"), Jack would distribute or otherwise pay to the non-Richard stockholders an aggregate amount equal to the Investment Amount and the Company's net cash as of July 31, 2018 (the "Cash Payment").³ If the Cash Payment is effected as other than a redemption, outstanding equity awards (unexercised options, RSAs and RSUs) would be equitably adjusted.
- The shares of Jack purchased by Richard would be Class C-1 non-voting convertible common

Richard agrees to refrain, and to cause its current and future affiliates to refrain, from competing (or preparing to compete including through research and development activities) anywhere in the U.S. world in the e-vapor business (other than with respect to existing and under development products MarkTen and MarkTen Elite prior to the non-trademark IP license their contribution or divestiture as described above). Richard will, and will cause its current and future affiliates to,

¹ Note to Draft: This t

² Note to Richard: The

the optimal structure is still being assessed from a tax perspective, including how best to accommodate the spinoff of the international business to non-Richard stockholders. Under consideration is a structure in which Jack would create a Topco (possibly an LLC) that would hold 100% of international and 55% of Jack, with Richard holding the remainder of Jack directly. Nevertheless, the business terms presented in connection with this structure are intended to reflect the business terms of the proposed transaction, including the rights of the securities being issued. In the event a Topco is created, the standstill restrictions below would apply with respect to Topco as well. [Richard willing to discuss but wants to understand details and implications for Richard]

³ Note to Draft: Minimum working capital to operate Jack's business to be discussed.

W/3190890
4829-3174-0272.v1-4829-3174-0272.v2

CONFIDENTIAL

ALGFTC0006933658

AUG 22: No “Material Substantive Difference”

AUG 22, 2018

No.	Topic	Jack Position in August 18 Draft	Richard Position	Jack Position
		<ul style="list-style-type: none"> fails to exercise any preemptive rights. Richard must participate in Jack self-tender if its ownership would exceed Applicable Percentage Jack may redeem Richard shares down to its Applicable Percentage on a quarterly basis. Preemptive rights terminate at IPO. 	<ul style="list-style-type: none"> Valuation for equity award true-up should be based on most recent 409A. Acceptable for preemptive right threshold to ratchet down to Applicable Percentage where reduction is due to Richard’s failure to exercise right. Richard’s forced participation in a self-tender or forced redemption should only be applicable if Richard has exceeded 45%. The price shall not be less than Richard’s initial investment price (or the price offered to other investors). Preemptive rights should survive an IPO. <ul style="list-style-type: none"> Explore potential mechanisms for top-up. 	<ul style="list-style-type: none"> Valuation for equity award true-up should be based on most recent 409A or, if later, most recent financing. Resolved. Do not agree. If Applicable Percentage lowers, it should constitute the ceiling going forward. The price would be the same price paid in the applicable tender offer. Preemptive rights do not apply to and will terminate upon an IPO. Richard should adopt a 10b5-1 purchase plan.
3.	Antitrust Clearance Matters	<ul style="list-style-type: none"> Richard to grant worldwide IP license concurrently with closing. Upon receipt of antitrust clearance, Richard to contribute to Jack all Richard e-vapor assets at no cost to Jack. 	<ul style="list-style-type: none"> In general, we do not see any material substantive difference on these antitrust points. As has been discussed with antitrust counsel, we have a few suggestions for how the process might be improved, as noted in the succeeding bullets. 	<ul style="list-style-type: none"> Parties to discuss relative advantage of divestiture v. contribution.

Topic

Antitrust Clearance Matters

Richard Position

- In general, we do not see any material substantive difference on these antitrust points. As has been discussed with antitrust counsel, we have a few suggestions for how the process might be improved, as noted in the succeeding bullets.

AUG 22: Carve-Out For Existing Products

AUG 22, 2018

No.	Topic	Jack Position in August 18 Draft	Richard Position	Jack Position
5.	Non-Compete	<ul style="list-style-type: none"> Non-compete is worldwide and binds Richard's upstream affiliates / acquirors. 	<ul style="list-style-type: none"> Non-compete to be in United States, and will bind Richard and its current and future subsidiaries, but does not extend to upstream affiliates and acquirors. 	<ul style="list-style-type: none"> Non-compete applies to Richard and its "controlled" affiliates (i.e., downstream) and Jack accepts that it will be limited to US. In addition, if a controlling or commonly controlled affiliate competes (i.e., upstream or sister), then, subject to the delivery by the controlling affiliate of an agreement to hold the business of Richard and Richard's controlled affiliates separate, Richard shall be provided a period of time to cause such controlling or commonly controlled affiliate to cease. If such competition does not timely cease, then Richard shall undergo a loss of rights similar to those in the exit right mechanism, but will still be obligated to provide support services and Richard (and its subs) and remain subject to the non-compete. Please confirm that except as to MarkTen and MarkTen Elite, non-compete commences on signing.
			<ul style="list-style-type: none"> Scope of Richard's R&D activities to be clarified. 	<ul style="list-style-type: none"> Agreed, with the understanding that Richard can't prepare to compete in advance of termination of non-compete.
6.	Board of Directors	<ul style="list-style-type: none"> Richard's 3 board seats ratchet down at 30%, 20% and 10% 	<ul style="list-style-type: none"> Richard can accept Jack's proposal. 	<ul style="list-style-type: none"> Resolved.

Topic

Non-Compete

Jack Position

- Please confirm that except as to MarkTen and MarkTen Elite, non-compete commences on signing.

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 9/6/2022 | Document No. 605522 | PAGE Page 20 of 36 * PUBLIC *

FDA Requests “Prompt Action”

SEP 12, 2018



September 12, 2018

Altria Client Services
2325 Bells Road

FDA requests that you **take prompt action** to address the rate of youth use of MarkTen products.

Smoking Prevention and Tobacco Control Act of 2009 (TCA), and associated regulations. This includes the requirement that a “new tobacco product” undergo premarket review and receive authorization from FDA.

FDA also requests that, **within 60 days of receipt of this letter**, you provide a written response to this letter that includes a detailed plan, including specific timeframes, to address and mitigate widespread use by minors. **For instance, this plan may include:**

products, including the authority to take action against products that are adulterated within the meaning of section 902(a)(6) of the FD&C Act in that they are required by section 910(a) to have premarket review.

- **Removing flavored products from the market** until those products can be reviewed by FDA as part of a PMTA.

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
www.fda.gov

CONFIDENTIAL

ALGFTC0004778567
PX1163-008

PX1163-010

Plan Made While Negotiations Were Off

SEP 26, 2018

DECISIONS MADE IN RESPONSE TO FDA VAPOR

Innovati
Game

Altria C

9/

- Remove Elite & Apex from the Marketplace and support removal of Pod Based systems with flavors
- Focus Retail on Brown and Green Cig-a-like Products
 - Retain right to submit PMTA for Flavor Products

NuMark
An Altria Innovation Company

President and GM, Nu Mark | Highly Confidential | Draft | September 26, 2018 |

RX1176-024

Growth Teams Announced

OCT 5, 2018

From: Employee News (ALCS Communications)
Sent: Friday, October 05, 2018 1:11 PM
To: ALCS Internal Communications (ALCS)
Subject: A Message from Howard Willard: Growth Strategy Update: Innovative Products



To: Employees of the Altria Family of Companies
From: Howard Willard
Subject: Growth Strategy Update: Innovative Products
Date: Oct. 5, 2018

In May, we began to evolve our organization in response to rapid and fundamental change among adult tobacco consumers and the retail and period of change as the undisputed leader.

To do that, we know we have to transform our organization to move faster and smarter. We have to become an organization that empowers its people.

We began this transformation by creating the organization to accelerate our innovation doing a deep situation analysis. We've looked at our position honestly and objectively. We've identified what we are really delivering for us. And we've acknowledged what is necessary for us to sustain our leadership for the future.

Today, I want to update you on some of the changes we are making. Innovative, reduced-risk product leadership has been chasing the market, not following the market.

To seize this opportunity, we need greater focus on:
• understanding the adult tobacco consumer
• developing satisfying products that lead to growth
• building novel go-to-market strategies

We're taking action today.

Product Development

First, we'll continue the work we started to do in product development. We're establishing Growth Teams to focus on product development.

To: Employees of the Altria Family of Companies
From: Howard Willard
Subject: Growth Strategy Update: Innovative Products
Date: Oct. 5, 2018

In pursuing this new growth strategy and moving into a team structure, we are narrowing the focus for Nu Mark to the current products in the marketplace. From here on, the Growth Teams will define innovative product development work. This will have downstream effects on the Nu Mark organization, Innovative Product Development and others who support those functions.

Unfortunately, this means some positions will be eliminated, with approximately 60 people affected. Over the next two weeks, we will identify candidates who will remain at Nu Mark or have other opportunities in the brand management and manufacturing organizations. We expect this process will result in some employees being displaced. We're committed to a quick and respectful process to be completed by the end of the month.

ALGFTC0005472734
RX0842-001

RX0842-001, 003

Altria Expected JLI To Be Unhappy

OCT 25, 2018

From: Nussbaum, Andrew J. <AJNussbaum@WLRK.com>
Sent: Thursday, October 25, 2018 11:28 AM
To: Garnick, Murray R. (ALG)
Subject: RE: Tree

Got it. We booked rooms available for sidebars

- Andy

From: Garnick, Murray R.
Sent: Thursday, October 25, 2018 11:27 AM
To: Nussbaum, Andrew J.
Subject: Tree

*** EXTERNAL EMAIL ***

The Tree folks are still planning to meet with us

Murray R. Garnick
General Counsel
Altria Group Inc.
Office: 804-614-9540
Cell: 202.286.2361
Murray.Garnick@altria.com

=====
Please be advised that this communication is privileged or confidential. If you have received this communication in error, please notify the sender immediately by email at helpdesk@wlrk.com or by phone. Do not disseminate, distribute, or copy this communication or its attachments.
=====
Thank you in advance for your attention to this matter.

From: Garnick, Murray R. (ALG) [mailto:Murray.R.Garnick@altria.com]
Sent: Thursday, October 25, 2018 11:27 AM
To: Nussbaum, Andrew J.; Larson, Joseph D.; Cain, Karessa L.
Subject: Tree

*** EXTERNAL EMAIL ***

The Tree folks are still talking to us even in light of the announcement we made today. We are planning to meet with them at 9 am in your offices. Just a heads up.

Altria's Budget Planning: \$235 Million Projected Losses

DEC 3, 2018

Nu Mark 2019 OB 3YP P&L (Scenario)

\$ in Millions

	2019	2020	2021
Unit Volume (in 000's)	48	47	47
Gross Sales	\$136	\$144	\$153
Cash Discounts	2	2	3
Returns	5	6	6
Sales Incentives	55	45	46
Net Revenue	74	91	98
SVC	52	51	49
Standard Shipping	3	3	3
Total Costs	55	54	52
Marginal Contribution	\$19	\$37	\$46
FME - Spending	13	10	10

2019

2020

2021

Nu Mark OCI

(\$122)

(\$60)

(\$53)

Total Marketing & Selling	\$79	\$41	\$43
G&A	19	44	44
RD&E	27	-	-
Nu Mark OCI	(\$122)	(\$60)	(\$53)
Less: Allocable Costs (ALCS & AGDC)	6	6	6
Less: ITP (Second Wave)	57		
Nu Mark OCI (Scenario)	(\$59)	(\$54)	(\$47)



ALJ: CC Changed Its Theory

Complaint Counsel seemingly has abandoned what appeared to be its previous conspiracy theory, that JLI demanded that Altria stop selling its e-vapor products prior to any transaction, as a condition of negotiating or entering into a transaction at all.

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

DOCKET NO. 9393

In the Matter of

ALTRIA GROUP, INC.
a corporation, and
JUUL LABS, INC.
a corporation,

Respondent.

INITIAL DECISION

D. Michael Chappell
Chief Administrative Law Judge

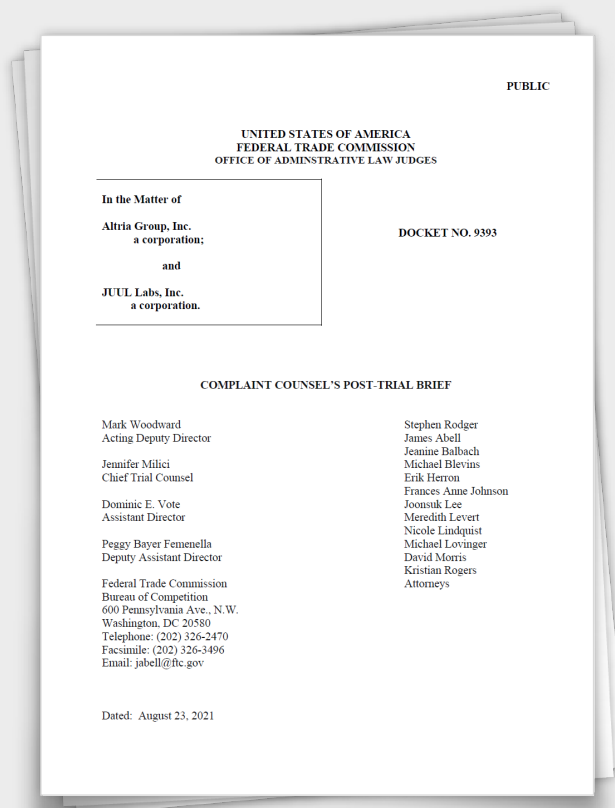
Date: February 23, 2022
(Original issue date of *in camera* version:
February 15, 2022)

CC's Initial Theory

The bottom line is this: **Juul communicated and Altria knew that it had to get out of the e-cigarette business in order to complete its investment in Juul.**

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4
5 In the Matter of:)
6 ALTRIA GROUP,)
7 a corporation,) Docket No.
8 and) 9393
9 JUUL LABS, INC.,)
10 a corporation,)
11 Respondents.)
12 -----)
13
14
15 Monday, August 3, 2020
16
17 Remote Telephonic Prehearing Conference
18
19
20
21
22
23
24
25

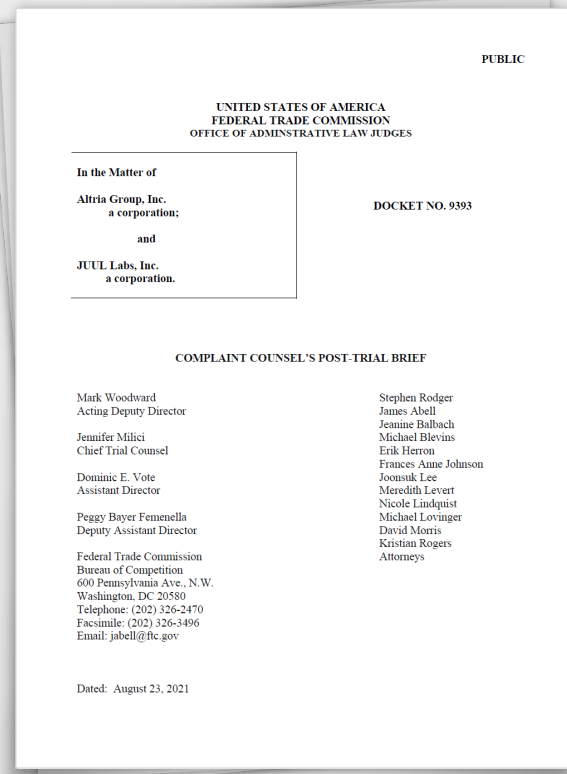
CC's Post-Trial Theory



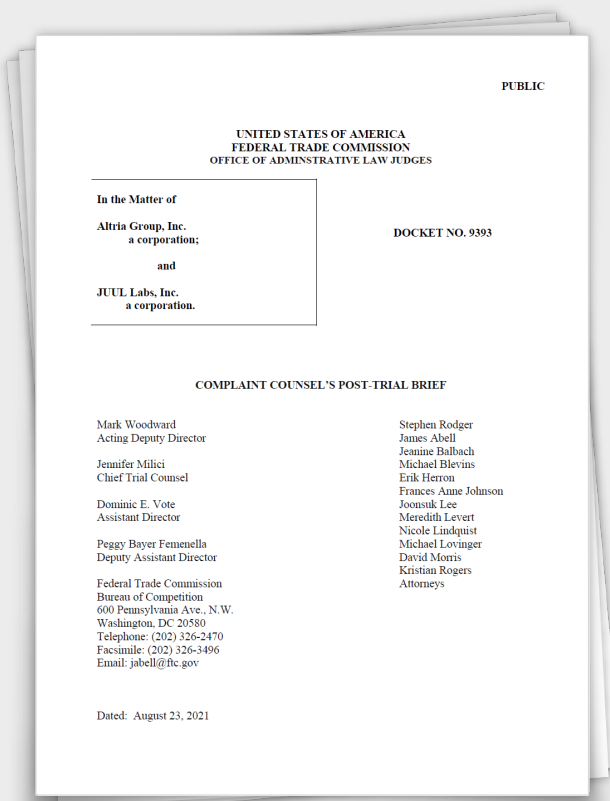
What mattered to JLI was not how Altria exited, but that it ultimately did exit.

CC's Post-Trial Theory

JLI did not care whether Altria divested its existing e-cigarette products, shut them down, or contributed them to JLI. The path that **Altria cho[se]** to comply with JLI's demand that it exit e-cigarettes was, of course, ceasing to operate its e-cigarette business.



CC's Post-Trial Theory



But even if it were true that JLI had just assumed Altria would divest its e-cigarette assets following an antitrust investigation by the FTC, it does not change the antitrust analysis. JLI offered Altria three doors through which to exit the market and **Altria chose** the third door, electing to shut down its e-cigarette business rather than contribute it to JLI or divest it to a third party.

ALJ: New Theory Fails To Prove Unlawful Agreement

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

DOCKET NO. 9393

In the Matter of

ALTRIA GROUP, INC.
a corporation, and
JUUL LABS, INC.
a corporation,

Respondent.

INITIAL DECISION

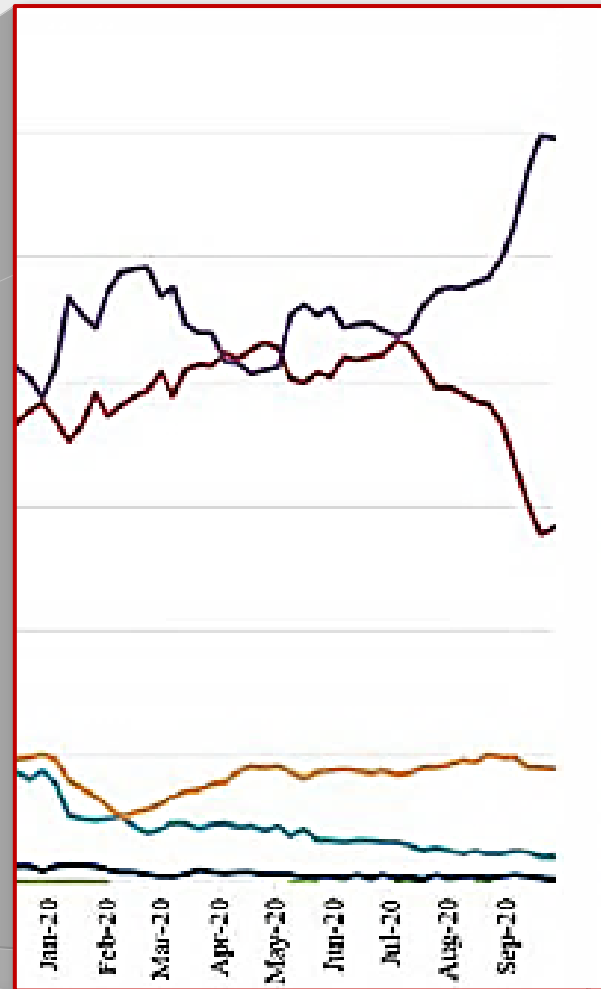
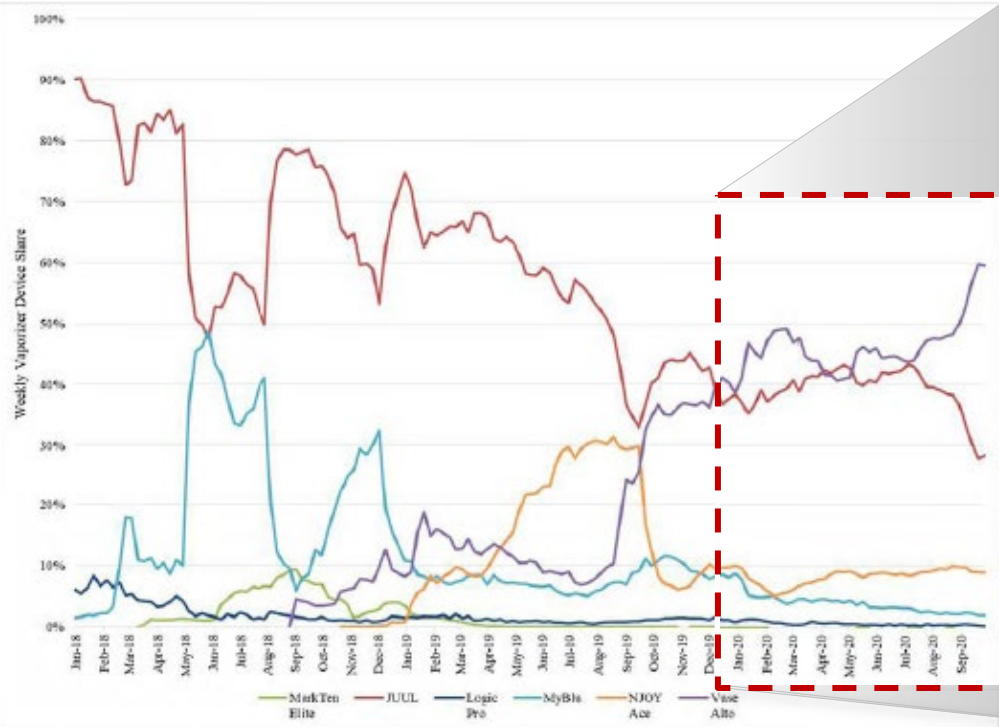
D. Michael Chappell
Chief Administrative Law Judge

Date: February 23, 2022
(Original issue date of *in camera* version:
February 15, 2022)

Complaint Counsel asserts that it is immaterial that JLI did not know or agree to “exactly how and when Altria would comply” with JLI’s alleged demand to “exit the market,” and characterizes the terms for how Altria’s existing products would be handled in connection with the contemplated transaction as mere “detail[s]” that do not need “to be worked out in order to prove that an agreement exists.” CCB at 37. However, **the evidence must still prove an agreement.** In addition, and more importantly, **Complaint Counsel does not directly assert or clearly explain how an agreement to submit a transaction for antitrust review and approval, whereby competitive products of one party would be disposed of, to the extent required or allowed by antitrust authorities, could be deemed an antitrust violation.**

Post-Transaction Market Is More Competitive

Fig. V.7: Pod-Based Vaporizer Device Sales Shares by Brand (by Units)



Vuse

JUUL

NJOY

myBlu

Logic

Quigley's IH: "Did Not Believe" Elite Would Be Approved

There were a lot of warts in the Elite 1.0 product outside of the leaking, and **we did not believe that Elite 1.0 would get FDA approval through the PMTA pathway.**

In the Matter of:

Altria Group and JUUL Labs

December 10, 2019
Brian Quigley

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

PX7003-001

Quigley's IH: Pulling Elite Was "Right Decision"

In the Matter of:

Altria Group and JUUL Labs

December 10, 2019
Brian Quigley

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

PX7003-001

Q. Did you agree that this was the right decision to pull Mark Ten Elite off the market?

A. At that point in time, given the circumstances, yes.

Q. When you say given the circumstances, what do you mean by that?

A. It appeared as though FDA -- something needed to be done to fix the youth usage issue.

FDA Authorization Is “Highly Speculative”

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

DOCKET NO. 9393

In the Matter of

ALTRIA GROUP, INC.
a corporation, and

JUUL LABS, INC.
a corporation,

Respondent.

INITIAL DECISION

D. Michael Chappell
Chief Administrative Law Judge

Date: February 23, 2022
(Original issue date of *in camera* version:
February 15, 2022)

Complaint Counsel failed to proffer evidence or expert opinion as to the likelihood of FDA approval for any hypothetical future e-vapor product. Under these circumstances, to conclude that future products would likely obtain FDA approval and reach the market would require unacceptable and unfair speculation. In fact, **Complaint Counsel acknowledges in its brief that “any predictions about which products will or will not receive PMTA approval [is] highly speculative.”**

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 9/6/2022 | Document No. 605522 | PAGE Page 35 of 36 | PUBLIC *

It Is Undisputed That JLI's Negotiators Were Surprised By Altria's Decision To Pull Pods & Certain Flavored Cig-A-Likes

Nick Pritzker (JLI)

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4
5 In the Matter of:)
6 ALTRIA GROUP, INC.,)
7 a corporation;) Docket No. 9393
8 and)
9 JUUL LABS, INC.,)
10 a corporation.)
11 -----)
12
13
14 Virtual Proceeding Via Zoom
15 Wednesday, June 2, 2021
16 10:00 a.m.
17 Trial Volume 1
18 PUBLIC SESSION
19
20 BEFORE THE HONORABLE D. MICHAEL CHAPPELL
21 Chief Administrative Law Judge
22
23
24
25 Reported by: Sally Jo Quade, Notary Public

Q. Did this come as an unexpected development to you?

A. It did.

Q. Did it come as a welcomed development to you?

A. No.

Q. Why not?

A. Because **I was and JUUL was perfectly happy to have those products stay on the market until an FTC decision.** We were expecting it. We thought it was appropriate for the FTC to -- to determine what should become of them and expected that it would be divestiture. We thought it was an FTC matter and not something for -- for a premature action. **So it was not welcomed. I thought it would complicate things.**

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 9/6/2022 | Document No. 605522 | PAGE Page 36 of 36 * PUBLIC *

It Is Undisputed That JLI's Negotiators Were Surprised By Altria's Decision To Pull Pods & Certain Flavored Cig-A-Likes

Riaz Valani (JLI)

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4
5 In the Matter of:)
6 ALTRIA GROUP, INC.,)
7 a corporation;) Docket No. 9393
8 and)
9 JUUL LABS, INC.,)
10 a corporation.)
11 -----)
12
13
14 Virtual Proceeding Via Zoom
15 Wednesday, June 2, 2021
16 10:00 a.m.
17 Trial Volume 1
18 PUBLIC SESSION
19
20 BEFORE THE HONORABLE D. MICHAEL CHAPPELL
21 Chief Administrative Law Judge
22
23
24
25 Reported by: Sally Jo Quade, Notary Public

JUDGE CHAPPELL: Mr. Valani, the letter from Altria to the FDA you've been discussing, that was -- that was October 2018?

THE WITNESS: That's correct, Your Honor.

JUDGE CHAPPELL: **Do you know when you saw that or heard of it?** Was it right away? Was it a week? Later? Do you know about what the time frame was from the time it was dated to the time you learned of it?

THE WITNESS: Umm, it was -- **the time I learned of it was when it was sent from Howard Willard to Kevin, Nick, and myself,** and then I think subsequent to that, Kevin, Nick, and myself had a short phone call, following a short phone call with -- with Billy and Howard, with the three of us. So all on the same day.