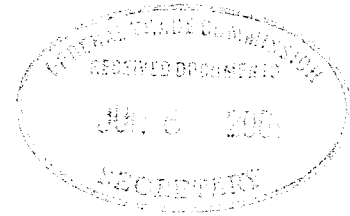


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)
H.J. HEINZ COMPANY)
a corporation;)
)
MILNOT HOLDING CORPORATION,)
a corporation;)
)
and)
)
MADISON DEARBORN CAPITAL)
PARTNERS, L.P.,)
a limited partnership.)

Docket No. 9295


CERTIFICATION TO THE COMMISSION

On May 25, 2001, Complaint Counsel filed with the Office of the Secretary a Motion to Dismiss the above captioned matter. In that motion, Complaint Counsel represents that Respondents H.J. Heinz Company and Milnot Holding Corporation abandoned the challenged transaction immediately after the decision by the U.S. Court of Appeals for the District of Columbia Circuit in *F.T.C. v. Heinz Co., et al.*, 2001 U.S. App. LEXIS 7735 (April 27, 2001). Complaint Counsel further represents that those respondents have consented to the filing of the motion to dismiss, but makes no representation as to the position of Respondent Madison Dearborn Capital Partners, L.P. The motion was not filed as a joint motion, but no opposition has been filed. To the extent that any of the respondents intended to respond, the deadline for filing an opposition was June 4, 2001.

Section 3.22(a) of the Commission's Rules of Practice sets forth that the Administrative Law Judge shall certify to the Commission any motion upon which he has no authority to rule, accompanied by any recommendation that he may deem appropriate. 16 C.F.R. § 3.22(a). Where a motion to dismiss requires a determination as to whether continued litigation would be in the public interest, the Administrative Law Judge is without authority to rule. *Columbia Hospital Corp.*, 1993 FTC LEXIS 180 (July 28, 1993); *Midcon Corp.*, 1987 FTC LEXIS 5 (Nov. 16, 1987). Further, where a motion to dismiss is addressed to the Commission in its administrative capacity, the ALJ shall certify the motion to the Commission. *Drug Research Corp.*, 63 F.T.C. 998 (Oct. 3, 1963).

Accordingly, Complaint Counsel's Motion to Dismiss is hereby certified to the Commission. Because no factual or legal findings have been made, the certification is without recommendation.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Dated: June 6, 2001