

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRAFT FOODS GLOBAL, INC.,	:	
Plaintiff,	:	
-against-	:	INDEX NO. 10 CIV 09085 (CS)
STARBUCKS CORPORATION,	:	
Defendant.	:	
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DECLARATION OF STEPHEN J. SCHWARZ

I, Stephen J. Schwarz, hereby depose and state as follows:

1. I am the Director of Trade Strategy for the Beverages Unit of Kraft Foods Global, Inc. (“Kraft”). In my capacity as Director of Trade Strategy, my duties and responsibilities generally include planning leadership to increase overall volume and profits for Kraft’s Beverage business unit focusing on Tassimo as a top priority. Prior to becoming Director of Trade Strategy, I had also worked on other Kraft grocery and coffee business during a 20 year career with Kraft selling and planning grocery products.

2. Tassimo is Kraft’s proprietary single cup brewing system that utilizes individual discs of coffee, tea, hot chocolate or milk based beverages, referred to as “T Discs”, to brew a variety of beverages on demand.

3. The market for single cup beverage machines and their associated beverage discs, also known as “on demand” beverage systems, represents the best opportunity for growth in the coffee market.

4. Under agreements with Starbucks Corporation (“Starbucks”), Kraft has the

exclusive right to manufacture, market, distribute and sell T Discs containing coffee and tea supplied by Starbucks and bearing the Starbucks, Seattle's Best Coffee and Tazo brands in authorized venues that include grocery stores, drug stores, mass merchandisers, and club stores.

5. Tassimo is a closed brewing system, which means that only Tassimo T Discs can be used in the Tassimo brewers (and, conversely, T Discs can only be used in Tassimo brewers). Kraft is the exclusive manufacturer and seller of the Tassimo T Discs.

6. An important feature that distinguishes Tassimo from competing on demand brewers is the fact that, by reason of Kraft's Starbucks exclusivity rights, it is the only one for which Starbucks products are available. This competitive advantage has been highlighted extensively in marketing and sales strategies for the Tassimo line since the time Kraft obtained exclusivity.

7. Kraft developed a comprehensive plan to significantly grow Tassimo distribution and sales volumes with the focus of "winning" in the critical fourth quarter of 2010. An essential element of the plan is to greatly expand retail distribution of the Tassimo system.

8. The market for proprietary "on demand" brewers is rapidly developing, with industry-wide sales of such systems in 2010 through September up by 87% versus the same period in 2009 (previously the highest year ever).

9. Because of the closed nature of nearly all such systems, success in this market requires early and substantial market penetration in the sale of brewers.

10. Sales of brewers are the only way to create a market for the sale of beverage discs, because, as closed systems, the only consumers of particular beverage discs are the owners of the associated brewers or those who have access to them.

11. Fourth quarter sales are critical to Kraft's strategy regarding Tassimo. In 2008

and 2009 approximately 60% of all Tassimo brewers sold were sold in the fourth quarter, during the holiday shopping period.

12. Beginning in late 2009 Kraft met with potential retail customers to secure additional distribution points for Tassimo brewers and T Discs for the fourth quarter of 2010. Kraft's ability to offer Starbucks beverages for the Tassimo system was a key point of difference between its Tassimo system and other on demand systems that helped secure new and expanded distribution.

13. Starbucks was aware of these efforts, was aware of Starbucks being a focus of the presentations, and even attended a meeting with SuperValu, Inc. – one of the largest grocery retailers in the United States. At no point did Starbucks ever suggest that they might attempt to terminate the Tassimo agreement early, such that Kraft should not rely on Starbucks continued involvement in the Tassimo system as a differentiating factor during sales presentations to prospective customers.

14. In September of 2010, Tassimo T Discs were only available in approximately 7% of United States grocery food stores.

15. During the third and fourth quarters of 2010, Kraft sales personnel secured agreements with leading US grocery food retailers, including Safeway, Publix, Hannaford, Wegmans, Shaws, Raley's, and Lowe's, to distribute Tassimo brewers and/or T Discs. Each of the sales presentations emphasized Kraft's ability to supply Starbucks' brands for the Tassimo system.

16. By December 1, 2010 distribution for Tassimo T Discs was approved in grocery food retailers US grocery food retailers that account for approximately 28% of United States grocery food sales.

17. Starbucks T Discs represent 37% of the total range of T Discs offered by Kraft for Tassimo for distribution in grocery food retailers.

18. I personally attended a sales presentation to Safeway. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Safeway agreed to carry the Tassimo brewers and T-Disc varieties. Of the latter, 100% were Starbucks brands.

19. I personally attended a sales presentation to Publix. The presentation made at that meeting emphasized that the Tassimo system is the only on demand system for which Starbucks coffee is available and that this distinguished Tassimo favorably from its competitors. As a result of these efforts, Publix agreed to carry Tassimo T Disc varieties – 66% of the varieties selected were Starbucks brands.

20. Kraft personnel made a sales presentation to Hannaford. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Hannaford agreed to carry Tassimo brewers and T-Disc varieties. Of the latter, 33% were Starbucks brands. Later, after the Tassimo authorization, Hannaford Category Manager Brian Bloom expressed his concern over Starbucks announcement to pull out of Tassimo, suggesting that consumers would be less likely to buy Tassimo. Attached as Exhibit 1 is a true and complete copy of an email from Brian Bloom expressing his concerns.

21. Kraft personnel made a sales presentation to Wegmans. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Wegmans agreed to carry Tassimo T Disc varieties – 50% of them Starbucks brands. Subsequently, on November 3,

2010, I personally attended a sales presentation to the Category Manager for coffee brewers. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system and we brewed Starbucks Cappuccino to demonstrate Tassimo's differentiation from its competitors. The brewer presentation went very well and, based upon my experience and the buyer's signals, I would have expected Wegmans to have authorized the brewer by now. They have not yet done so.

22. Kraft personnel made a sales presentation to Shaws. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of those efforts, Shaws agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 40% were Starbucks brands.

23. Kraft personnel made a sales presentation to Raley's. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Raley's agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 100% were Starbucks brands.

24. Kraft personnel made a sales presentation to Lowe's. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of that meeting, Lowe's agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 42% are estimated to be Starbucks brands.

25. Another essential component of the plan was to increase the volume of shelf space retailers allotted to the Tassimo T Disc line in order to maximize the amount of shelf space for existing accounts.

26. Target agreed to offer the Tassimo brewer by April of 2010, and agreed to

increase the number of T Disc offerings by June of 2010.

27. Based upon a combined sales effort by the Tassimo team, Wal-Mart agreed to increase the number of stores that carry the Tassimo brewer from approximately 300 to approximately 3,000 stores by October of 2010, and significantly increased the number of T Disc varieties offered.

28. After a presentation that emphasized the availability of Starbucks brands for the Tassimo system as a differentiating feature that distinguished Tassimo from its competitors, Kohl's, one of the leading national retailers of on demand beverage systems, agreed to begin offering the Tassimo brewer and eight T Disc varieties (50% of them Starbucks brands) in approximately 1,100 stores by September of 2010.

29. On October 26, 2010, along with a team of Kraft employees, I made a presentation to Ahold, an international food retailer whose U.S. stores include the Stop 'n Shop, and Giant Foods chains, to present the Tassimo system. During the presentation, we demonstrated the use the Tassimo brewer with Starbucks Cappuccino T Discs. The presentation was so well received by Ahold that Ahold inquired as to the possibility of quickly implementing a program for the November/December 2010 holiday period.

30. On November 30, 2010, a Kraft/Tassimo team, including myself, had a second meeting at Ahold with the intent to discuss sales of Tassimo brewer. We met with Mike Taverna, Brewer Category Manager, and Monica Simmons-Dolce, Coffee Category Manager at Ahold.

31. Mr. Taverna and Ms. Simmons-Dolce asked specifically about Kraft's relationship with Starbucks. Although we explained that Kraft was continuing to fulfill its contractual obligations to Starbucks, both Mr. Taverna and Ms. Simmons-Dolce expressed

concern over the “uncertainty” surrounding the Kraft-Starbucks relationship. They mentioned that Starbucks was a key point of difference for Tassimo that distinguished it from its competitors.

32. Based on my experience in this industry and in working with Kraft’s customers, I believe that, as a direct result of Starbucks’ attempt to terminate, Ahold is unlikely make a firm decision about whether to take on the Tassimo product line so long as the uncertainty about future availability of Starbucks T Discs persists. I also believe that, but for Starbucks’ announcement that it would terminate its relationship with Kraft, Ahold would more likely have been in a position to move forward with the sale of the Tassimo brewers and T Discs.

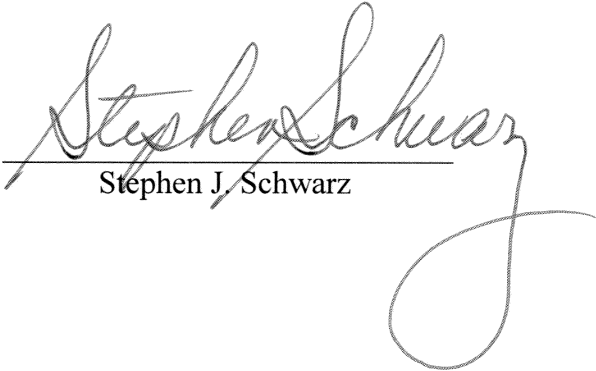
33. Attached as Exhibit 1 is a true and correct copy of an email from Brian Bloom, Customer Category Manager of Hannaford, a retailer that agreed to carry the Tassimo system beginning January 2011, who also expressed concerns about Tassimo resulting from the Starbucks announcements.

34. Attached as Exhibit 2 is a true and correct copy of an email from David Shields, Director Strategy and Specialty Development for Kraft, relaying concerns expressed by Bed Bath & Beyond. These concerns about the Tassimo are caused by the uncertainty created by the Starbucks’ announcements. Bed Bath & Beyond is the largest retailer of on demand beverage systems in North America.

35. This declaration is based upon my personal knowledge and/or upon my review of true and correct copies of documents created and/or kept in the normal course of business by Kraft, and I could competently testify to these facts if called as a witness.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing information is true and correct.

Dated: December ____, 2010



Stephen J. Schwarz