

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRAFT FOODS GLOBAL, INC., :

Plaintiff, :

-against- :

INDEX NO. 10 CV 09085 (CS)

STARBUCKS CORPORATION, :

Defendant. :

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DECLARATION OF MICHAEL D. WAKS

I, Michael D. Waks, hereby depose and state as follows:

1. I have been the Vice President of External Development for Kraft Foods, Inc. (“Kraft”) since 2005. As Vice President of External Development, my duties and responsibilities generally include negotiation, valuation, and due diligence relating to acquisitions and divestitures as well other transactions. Prior to becoming Vice President of External Development, I held positions in Corporate Development and Strategy with Altria, Worknet Communications, AT&T and Unilever.

2. Kraft and Starbucks Corporation (“Starbucks”) entered into a contract (the “R&G Agreement”) pursuant to which Kraft owns the exclusive right to sell packaged Starbucks roast and ground coffee to Kraft Foods’ traditional customer base, grocery stores and other retail food outlets.

3. The R&G Agreement, which requires Starbucks to manufacture and supply certain Starbucks products that Kraft sells in those channels (sometimes referred to as the consumer packaged goods or “CPG” market), has an initial term of 10 years and renews

automatically for successive ten-year terms.

4. Paragraph 5(B)(ii) of the R&G Agreement gives Starbucks the right to terminate the Agreement on 180 days notice, provided that it pays Kraft up to 135% of the Fair Market Value of the R&G Agreement.

5. On August 9, 2010, senior executives from Kraft and Starbucks met in Chicago to discuss Starbucks' interest in buying out Kraft Foods' rights under the R&G Agreement. Deanie Elsner, President of the U.S. Beverages Unit, and I attended the meeting on behalf of Kraft. Attending for Starbucks were Troy Alstead, Starbucks' Chief Financial Officer, Mark Fordham, its then Corporate Counsel and Head of Corporate Development, and Jeff Hansberry, Starbucks' President of CPG.

6. Alstead explained that taking control of all Starbucks branded products, including those being sold in the CPG market, had become a strategic imperative for Starbucks and that, with full support of its Board of Directors, Starbucks was committed to acquiring the CPG business from Kraft either through negotiation or by invoking the valuation process pursuant to Paragraph 5(B)(ii) of the R&G Agreement. To that end, Alstead presented a draft proposal to pay \$750 million in exchange for a consensual termination of the R&G Agreement (as well as three ancillary agreements) following a 6 to 9 month transition period.

7. Kraft rejected Starbucks' offer because the business' fair market value is far greater than \$750 million. Therefore, accepting that offer would amount to renegotiating the bargain the parties struck when they entered into the R&G Agreement, thereby allowing Starbucks to avoid the commitment it freely made to pay the full fair market value of the Starbucks CPG business plus the contractually specified premium (if applicable).

8. Consistent with Alstead's statements that Starbucks' objective of terminating the

R&G Agreement was merely the result of Starbucks new strategic direction, he reassured Kraft in a teleconference two days later that there was no dissatisfaction with Kraft's performance under the R&G Agreement.

9. During that teleconference, Kraft recommended that both parties hire advisors who would independently value the business and that the advisors should meet to compare and discuss their analyses which would help to determine if a negotiated settlement or a structured transaction was possible. In a subsequent conference call on August 16 with Mark Fordham and Gerd Pleuhs, Senior Vice President & Deputy General Counsel for Kraft Foods, Starbucks confirmed that they had hired Houlihan Lokey. The parties discussed the expected timing for the advisors to meet would be in approximately 4-6 weeks. Between August 16th and September 27th there were several communications with Mark Fordham to provide status updates, including Kraft's hiring of Merrill Lynch in early September.

10. On September 27th, I left a voicemail and sent an email to Fordham with our advisors' contact information so that Starbucks advisors could contact them directly in order to set a meeting for later that week. Fordham responded the next day with a request for a preview of our materials and also said he did not see a value in our advisors meeting, which was a reversal of what we had discussed over the past month. I left him a voicemail on September 29th to discuss. When I did not hear back, I sent him an email on September 30th reiterating my belief in the value of the advisors meeting as a way to enhance transparency, speed up this process, and increase the chances of reaching a negotiated settlement. (A copy of these emails are attached Exhibit 1.)

11. Fordham never responded. Instead, on October 5, 2010, Starbucks sent a letter that Kraft had materially breached the R&G Agreement in numerous respects. The letter further

stated that Starbucks was terminating the R&G Agreement effective March 1, 2011, unless Kraft "cured" the alleged breaches within 30 days. In a letter dated November 4, 2010, Kraft disputed all of Starbucks claims of material breach.

12. Following Starbucks' October 5 letter, it has made various public announcements regarding its purported unilateral termination of the R&G Agreement. Starbucks' comments to the media regarding its relationship with Kraft, or the termination thereof, have created uncertainty in the minds of many of Kraft's customers. As a result of Starbucks' actions, Kraft has been forced to devote significant resources to responding to Starbucks' unsubstantiated accusations. Resources, such as money and employee time, have been diverted from the normal operation of Kraft's business in order to combat the impact of Starbucks' conduct.

13. 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.

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

Dated: December 13, 2010

A handwritten signature in black ink, appearing to read "Michael D. Waks", written over a horizontal line.

Michael D. Waks