

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
KRAFT FOODS GLOBAL, INC., :

Plaintiff, :

-against- :

STARBUCKS CORPORATION, :

Defendant. :

----- X

INDEX NO. 10 CIV 09085 (Seibel)

DECLARATION OF LORI ACKER

I, Lori Acker, declare based upon personal knowledge and investigation and under penalty of perjury that the following is true and correct:

1. I am currently the Sr. Director of Marketing, U.S. Premium Coffee & Tea for Kraft Foods Global, Inc. (“Kraft”) and have held this position since October 2008. I have been employed by Kraft since 1998. Prior to being Sr. Director of Marketing, U.S. Premium Coffee & Tea, I was the Director of Marketing, U.S. Premium Coffee & Tea. Prior to that role, I was Director of Marketing for U.S. Tassimo.

2. As Sr. Director of Marketing, U.S. Premium Coffee & Tea, my responsibilities include developing the strategies and marketing plans to deliver short term and long term volume, revenue, share and profit targets. I leverage marketplace consumer insights and competitive trends to provide direction for product, price, placement and promotion. Further, I lead a cross functional team that includes marketing, sales, finance, consumer promotions, market research, and supply chain that works jointly with Starbucks to develop and execute the Starbucks, Seattle’s Best Coffee and Tazo Tea brand strategies.

3. The U.S. CPG (consumer packaged goods) Premium Coffee segment, which is the segment in which the Starbucks brands compete, is highly competitive, and in 2009 it generated total U.S. sales of over \$1.6 billion ¹

4. The U.S. CPG Premium Coffee segment is comprised of those coffee products that are generally in a bag and made with high quality coffee beans such as the Arabica beans. The Super Premium Coffee offerings are comprised of those coffee products that are at the highest end of the Premium segment.

5. Since June 2008, I have been responsible for managing Kraft's U.S. relationship with Starbucks.

6. As part of my responsibility for managing Kraft's U.S. relationship with Starbucks I am familiar with the Supply and License Agreement between Kraft and Starbucks dated March 29, 2004 ("R&G Agreement") pursuant to which Kraft owns the exclusive right to sell, market, and distribute packaged Starbucks roasted whole bean and ground coffee to Kraft's customer base of grocery stores and other retail food outlets, which is referred to as the consumer packaged goods or "CPG" market ("CPG business").

7. The CPG market includes grocery and supermarket chains, wholesalers, club stores, mass merchandisers, distributors, drug stores and other retail food outlets.

8. Kraft is world renowned for its strength in the CPG sector. Kantar, a prominent global retail insights and consulting firm, recently ranked Kraft's sales force No. 1 among all CPG companies, including Procter & Gamble, PepsiCo, Unilever, Nestlé, Kellogg, and General

¹ See, Nielsen 4-outlet, 2009, a copy of which is attached hereto as Exhibit 1.

Mills. To the best of my knowledge, information and belief, Kraft has devoted significant resources to leverage its considerable leadership and expertise in world-class CPG Marketing, Sales, Logistics, Market Research and Innovation Strategy to Starbucks' benefit throughout the course of the companies' twelve (12) year partnership.

9. I oversee the day-to-day aspects of the CPG business with Starbucks, including, among other things, business performance, marketing (inclusive of advertising and promotions), sales, supply chain, innovation strategy and market research. I communicate on a daily basis with one or more Starbucks' employees related to the partnership.

Kraft's Cross-Functional Team Dedicated to its Starbucks Contract

10. To support the contract with Starbucks, Kraft has assembled a cross-functional team of professionals, drawn from marketing, sales, finance, market research, consumer promotion, and supply chain. At least one-half of these professionals are dedicated exclusively to the Starbucks CPG business relationship.

11. At the beginning of each fiscal year, Kraft shares its staffing levels with Starbucks, and specifically identifies for Starbucks each member of the Kraft team that is being charged to the business.

12. The members of Kraft's team are in daily contact with their Starbucks' counterparts to address, among other things, marketing (inclusive of advertising and promotions), sales, finance, innovation, and other factors related to driving the business and its performance. In addition, on average, Kraft's team addresses consumer analytics/ market research and supply chain with their Starbucks' counterparts often on a weekly basis.

13. The level of staffing that Kraft dedicates to Starbucks is consistent with Kraft's general business practices and policies. For instance, the staffing is commensurate with how Kraft has staffed its iconic brand Maxwell House, which generates significantly more revenue than the contract with Starbucks does in the U.S.

14. To the best of my knowledge, information and belief, during my tenure with the business and up until October 5, 2010, Starbucks had never accused Kraft of failing to devote sufficient personnel and resources to the CPG business.

15. Kraft highly values its contractual CPG business relationship with Starbucks. To this end, Kraft has endeavored to involve Starbucks in all aspects of the CPG business.

Kraft's Involvement of Starbucks Personnel in Marketing and Promotion of Products

16. Starbucks' personnel have been fully engaged on all aspects of Kraft's marketing and promotion of the Licensed Products, including creative development, execution and analysis of results.

17. In addition, Kraft has closely collaborated with Starbucks on all national advertising and consumer promotion efforts beginning with the formulation of strategy and continuing through final execution.

18. Kraft conducts weekly joint team meetings with Starbucks' personnel to discuss all aspects of the business requiring attention including marketing, innovation, business performance, sales opportunities and research needs.² In addition, both Kraft and Starbucks marketing personnel participate in weekly advertising meetings that include the advertising

² See, for example, representative meeting notices and status reports, attached collectively hereto as Exhibit 2.

agency, often the media agency, Starbucks' and Kraft advertising personnel, and Kraft Consumer Insights personnel. These weekly meetings ensure Starbucks is involved from the development process through to final creative development and testing.

19. In January of 2010, Starbucks' requested and Kraft agreed to switch to Starbucks' advertising agency to ensure "one voice" for the Starbucks brand.

20. Kraft does not implement advertising plans or executions (how the advertising message is presented) without Starbucks' review, input, and approval.

Customer Controlled Advertising

21. Starbucks' has identified four examples of advertising executions that it asserts show that Kraft did not involve them in advertising approvals and, therefore, materially breached the R&G Agreement.

22. Each of the examples Starbucks cites are customer programs, which are carried out and controlled by individual CPG retail customers, not Kraft, as opposed to national advertising, which is led by Kraft. Kraft strives to provide Starbucks with as much lead time as possible to approve such customer programs, however, given that these efforts are led by customers, the approval process is sometimes accelerated.

23. First, the Safeway Breast Cancer Awareness Program ("BCA") took place in September 2009. The Safeway/Kraft BCA program did not initially include Starbucks but Safeway requested Starbucks brand inclusion so Kraft notified Starbucks as soon as Safeway

requested. Starbucks ultimately approved its participation in the in-store BCA display on August 12th, 2009.³

24. Second, as to the Publix television advertisement featuring Starbucks Licensed Products, Starbucks approved participation in the Publix TV promotion along with other 2010 Publix programs in late 2009. When Greg Price, then Starbucks VP of CPG, approved the Publix 2010 programs including this Publix TV initiative in November of 2009, he did not inform Kraft that he expected executional approval of the Publix TV promotion until after the Publix TV ad went live. Kraft also had no expectation that the Publix TV creative would be reviewed by Kraft or Starbucks prior to it going live because:

1) Publix developed their own TV creative promoting their store which featured multiple breakfast themed brands; and 2) Starbucks brand inclusion was to be similar to an in-flyer feature, the type of which manufacturers typically do not review.

25. Third, with respect to the Kroger “Look What’s New Program,” Starbucks approved the original plans to participate in the March 2010 program, and was an integral part of the final execution. Despite Starbucks’ assertion that Kraft requested approval in 24 hours, Starbucks engaged on the creative development beginning on 1/15/10⁴ through final approval in late February.

26. Fourth, regarding Starbucks’ allegations about the Publix.com website as part of a broader 2010 Publix strategy, Starbucks is, again, mistaken. Kraft gained initial approval for all

³ See, August 12, 2009 email string re: Safeway BCA program (Starbucks), attached hereto as Exhibit 3.

⁴ See, email dated January 15, 2010 re: Kroger 3.7.10 LWN- creative approval requested, attached hereto as Exhibit 4.

Publix program elements from Greg Price in November 2009. In April, Kraft provided the first draft of the Publix.com creative for review, with a second review planned for the following week.⁵ Kraft cancelled this initiative in May 2010⁶ because Starbucks advised it was not comfortable going forward with it.

Kraft's Development of the Confidential Marketing and Merchandising Programs

27. In the highly competitive Premium Coffee segment, Kraft devotes substantial resources to the development of Kraft's comprehensive marketing and merchandising plans for the Starbucks licensed products.

28. The marketing and merchandising strategy, plans and programs that Kraft develops in collaboration with Starbucks for the Starbucks CPG business are confidential and proprietary.

29. Kraft has contracts ("Advertising Contracts") with the advertising agencies handling the creative development of advertising programs for its CPG Business for both Starbucks and Seattle's Best Coffee Products.

30. Kraft also has a contract with News America, the company that owns the rights for about half of the national in-store advertising and promotional vehicles.

31. In the late summer of each year, Kraft begins its planning and development of the Marketing and Merchandising strategy for the upcoming calendar year beginning January 1.

⁵ See, email dated April 21, 2010 regarding Publix Cooking with Kraft.com, attached hereto as Exhibit 5.

⁶ See, email dated May 20, 2010 attaching May 18, 2010 email re: Kraft.com Publix Digital Coupon 05.20, attached hereto as Exhibit 6

Once the joint marketing teams have finalized those plans, they are submitted to the Oversight Committee (also known as the Management Committee) for approval.

32. The annual marketing strategy development requires Kraft to identify the marketing objectives (penetration or buy rate), strategic consumer target, product positioning and messaging.

33. Once Kraft develops potential product messaging with the input of Starbucks and the advertising agency, it engages in consumer testing to identify and employ the messaging that will best optimize the Starbucks brand strategy.

34. Kraft began engaging Starbucks on the 2011 calendar year marketing plans during the summer of 2010 and conducted in-person marketing plan kick-off meetings which were attended by Starbucks, Kraft and agency personnel on 8/17/10 for Seattle's Best Coffee brand and 9/17/10 for Starbucks brand. The joint teams worked together for several months resulting in the formulation of the 2011 marketing strategies and flow charts that show all marketing elements and the associated spending through December 31, 2011.

35. In addition to developing a confidential and proprietary marketing plan, Kraft also developed and provided Starbucks with a confidential and proprietary merchandising plan for the first half of the 2011 calendar year.

36. Kraft developed the confidential and proprietary 2011 marketing and merchandising strategy and provided them to Starbucks with the understanding and expectation that Kraft would continue to be the exclusive seller in the United States of the Starbucks brand products under the terms of the R&G Agreement.

37. Both the marketing and merchandising plans require Kraft to make certain non-refundable spending commitments for the placement of advertising and promotional programs.

38. On average, there is a lead time of three to six months required to place advertising and consumer promotions and one to five months for customer (retailer) merchandising commitments

39. Like the lead time required for the advertising and merchandising programs, total Kraft Coffee has already made commitments for in-store advertising and promotional vehicles with News America for multiple cycles through December 2011.

40. Although Kraft has already contractually secured in-store advertising and promotional vehicles with News America, I have been informed that representatives of Starbucks contacted News America without Kraft's consent to: (1) obtain the calendar of events previously secured by Kraft; and (2) direct in-store advertising and promotional vehicles after February 28, 2011.⁷

41. On December 14, 2010, representatives of Seattle's Best Coffee approved certain in-store creative for the period March-April 2011.⁸

42. Two days later, however, during the December 16, 2010 Management Committee Meeting, Starbucks advised Kraft that it will not discuss or approve any marketing, advertising or promotional plans for Kraft's CPG Business that post-date February 28, 2011.

⁷ See, email chain dated December 20, 2010 Re: Seattle's Best – News America Follow Up, a copy of which is attached hereto as Exhibit 7.

⁸ See, email chain dated December 14, 2010 from Heather Caterson (Seattle's Best Coffee) to Diane Nicoletti (Kraft) and Eric Long (News America), a copy of which is attached hereto as Exhibit 8.

43. Despite having Kraft's detailed marketing plans for its Starbucks CPG Business for calendar year 2011, Starbucks refuses to discuss the implementation of Kraft's marketing plans beyond 2/28/11.

44. I have been informed that Starbucks has directed Kraft's advertising agency for Seattle's Best Coffee to exclude Kraft from future meetings and creative development associated with the implementation of Kraft's 2011 marketing plans for Seattle's Best Coffee.

45. Because Kraft disputes Starbucks' assertion that the R&G Agreement has been terminated effective March 1, 2011, Kraft has continued to honor its obligations under that agreement, including the requirement that Kraft refrain from marketing and distributing a super premium coffee other than Starbucks products in the CPG channels.

46. Starbucks has shared Kraft's confidential and proprietary marketing and business plans with Acosta (Starbucks newly appointed agent), and unless enjoined, Starbucks and Acosta will use and exploit Kraft's confidential and proprietary marketing and merchandising plans resulting in a direct, immediate and substantial injury to Kraft that is not compensable in money damages.

47. In a December 9, 2010 email from Acosta's Business Manager Ted Miller, to Kraft's customer Drugstore.com, Acosta advises Kraft's customer that it is "looking at all Kraft future and past promotions to get a better feel of what has been done for your business. We will be reaching out to you for appts to discuss opportunities for 2011."⁹

⁹ A copy of Acosta's December 9, 2010 email to Kraft's customer Drugstore.com is attached hereto as Exhibit 9.

48. Acosta's improper contact with Kraft's customers is causing confusion in the marketplace as evidenced by multiple emails and phone calls from customers to Kraft.¹⁰

Market Research, Product Performance Assessment and Financial Information

49. Kraft includes Starbucks in all market research efforts designed for the Starbucks and Seattle's Best Coffee brands including focus groups, new product research, advertising testing, and much more to understand the consumer and marketplace trends.

50. At Kraft's invitation, Starbucks also has participated in annual Situation Assessments, where the Kraft Market Research team performed an in-depth analysis of the Coffee Category, with a focus on the Premium Coffee segment. Included in the Situation Assessment is a review of Coffee Category, Premium Segment and Brand level (including Starbucks and Seattle's Best) consumption trends, consumer purchase dynamics, drivers of business performance, and often times a summary of research conducted throughout the previous year (including, among other things Marketing Mix and Consumer Tracking). Situation Assessments are performed for all major Kraft brands, and provide guidance to the Cross Functional business teams for building their annual strategy and/or marketing plans.

51. This Situation Assessment also identifies the brands that compete with Starbucks in the premium coffee segment as well as how the Starbucks products perform in relation to the competition.

¹⁰ See, representative emails from Kraft customers, collectively marked hereto as Exhibit 10.

52. Kraft also provides Starbucks with periodic marketing mix analyses that explore key performance drivers as well as the efficiency and effectiveness of specific marketing elements, such as trade, print and radio to enable Kraft and Starbucks to make adjustments to maximize the impact of the spend on product growth. Kraft's Marketing Mix Analysis demonstrates that Kraft continues to deliver strong Starbucks advertising programming. From 2004 to 2010, Starbucks paybacks (a measure of return on investment that shows performance of efforts) have been in-line with other coffee brands and have improved since 2004. Furthermore, Kraft tested recent Starbucks Packaged Coffee advertising campaigns (from 2008-2010) amongst targeted consumer audiences, which validated the effectiveness of those campaigns with scores including "breakthrough" and "brand affinity" significantly above norm.

53. Kraft provides Starbucks with daily reports of shipments by brand and channel. These reports provide Starbucks with information on how much product was shipped as well as the associated revenue.

54. Kraft also provides Starbucks with access to Kraft's Nielsen database, which measures retailer sales in relation to the competition. Through this access, Starbucks can chart and monitor the performance of the business in Grocery, Drug, Mass (ex. Walmart) customers.

55. Kraft and Starbucks conduct monthly close meetings during which Kraft reviews with Starbucks the financial performance of the business in the preceding month. In these meetings, Starbucks has the opportunity to ask as many questions as they would like to and Kraft responds to all their questions during the meetings or shortly thereafter. In advance of those meetings, Kraft provides financials, consumption and shipment data and a forecast for the following month.

56. Kraft marketing personnel have supplied Starbucks with detailed advertising and consumer promotion budgets on at least a quarterly basis, as well as Kraft finance personnel providing standardized P&Ls that reflect advertising and promotions (including consumer promotions, consumer incentives and trade).¹¹

57. Kraft marketing personnel also often conduct quarterly advertising and consumer promotions budget reviews with Starbucks marketing personnel, making its finance staff available as needed to answer Starbucks' budget-related questions, and promptly providing Starbucks with any additional requested budget detail.¹²

58. Starbucks has praised Kraft's performance in the area of finance and budgets. For example, in a July 2, 2010 email to Kraft, Adam Hewitt [Business Analysis Manager] of Starbucks commended members of Kraft Foods finance team regarding the extensive information contained in certain P&Ls:

The information that Lynn [Ruzicka] and Felix [Zhang] sent to Martha and I was amazingly detailed and extremely helpful!! This was more than I could have ever hoped for, and I wanted you to know how much I appreciate this. Thanks to Lynn and Felix, I am able to give Michele and Greg very detailed assumptions around our AOP, which in turn helps them to make informed decisions to set us up for success in FY11.

Of course, thanks to Lynn and Felix for setting the bar so high, I have to really bring my "A" game to the meeting on Wednesday. ☺ But in all sincerity, I wanted you to know how much I appreciate the Kraft Foods team that I work with.¹³

¹¹ See, document summarizing budget meetings for 2008 to 2010, a copy of which is attached hereto as Exhibit 11.

¹² See, Exhibit 11 hereto.

¹³ A copy of Mr. Hewitt's email is attached hereto as Exhibit 12.

59. The quarterly P&L statements that Kraft provides to Starbucks can be used to calculate the total Advertising & Promotion (“A&P”) spend.

60. As the quarterly P&Ls provided to Starbucks demonstrate, Kraft has spent an amount “at least equal to the Minimum A&P Amount” required by the Agreement in Starbucks fiscal year 2004, 2005, 2006, 2009, and 2010.

61. Although Kraft Foods did spend below the Minimum A&P in both 2007 and 2008, Starbucks agreed – explicitly and in writing – to a reduction in the required “minimum” spend. In a signed letter from Wendy Pinero DePencier, then VP, Global Consumer Products, US, dated May 22, 2007 it states “Starbucks agrees that for the 2007 fiscal year, A&P spending will be below the contractual minimum....” Further, another letter from Wendy Pinero DePencier dated June 11, 2008 includes the same statement for the 2008 fiscal year. Contrary to Starbucks’ assertion, Kraft Foods’ actual reduction in A&P spending in 2008 was less than—not more than—the reduction to which Starbucks had agreed.

YUBAN BRAND COFFEE

62. Kraft has been selling Yuban brand coffee prior to the execution of the R&G Agreement.

63. Kraft’s Yuban brand coffee is not a “super premium coffee.”

64. The Yuban brand coffee has never been identified in the annual situational assessments provided to Starbucks as a super premium (or even premium) brand coffee.

65. To the best of my knowledge, prior to October 2010, Starbucks had never suggested to Kraft that it considers Yuban brand coffee to be a “Super Premium Coffee” or that Kraft was violating its exclusivity rights under the Agreement for selling Yuban brand coffee.

66. Further, Yuban does not meet the definition of Super Premium as outlined in the R&G Agreement. Yuban is not “generally priced” above \$6.50 per pound. In addition, Yuban is not sold at the “highest end of the consumer coffee market.” On average, Yuban’s non promoted price per pound of \$5.04 is aligned with the Mainstream segment (\$4.66), and is well below the overall Premium segment (\$9.24) and Super Premium brands (Starbucks \$11.50 and Peet’s \$13.30).¹⁴ Furthermore, the types of “romance” words—e.g., “premium coffee” and “rich, lively flavor to satisfy even the most sophisticated coffee connoisseurs”—to which Starbucks points to suggest that Yuban is “super premium” are ubiquitous and not unique to super premium coffees. For example, the term “premium” is used to describe mainstream coffees such as: Walmart’s Great Value canned “Premium Coffee” and Hills Bros canned coffee, which is promoted as “...finest coffee in the world. Discriminating coffee drinkers have savored...”.

Starbucks Has Often Stymied Kraft’s Efforts to Grow Its Starbucks CPG Business

67. Kraft has periodically presented various new product and growth opportunities to expand Kraft’s Starbucks CPG business but Starbucks has either refused or delayed approval of many of those opportunities.

68. For example, when Starbucks introduced Pike Place Roast (“PPR”) in its Cafes in 2008 Kraft simultaneously sought permission to launch PPR in the CPG business. At the time,

¹⁴ See, AC Nielsen Scantrack YTD w/e 09/25/10, attached hereto as Exhibit 13.

Kraft made almost monthly requests to Starbucks to be permitted to launch PPR in the CPG business but Starbucks delayed such approval for almost a year. After receiving Starbucks approval to introduce PPR, Kraft launched the same in the CPG business in May 2009. Year to date net revenue of PPR for Kraft's CPG Starbucks business is over \$9 million dollars.

69. Another example of Starbucks stifling Kraft's efforts to grow the CPG business through innovation is Starbucks' Christmas Blend. For over fifteen (15) years, Starbucks has offered its Christmas Blend packaged coffee during the holiday season in its cafes. I am informed that compared to annual sales of other Starbucks coffee blends, Starbucks' Christmas Blend has historically been the No. 1 selling bagged coffee in cafes despite only being sold during the holiday season. The Christmas Blend product has been described by Starbucks as its "crown jewel." Kraft has been requesting permission to sell Christmas Blend in the CPG business for years. In 2008 and 2009, Starbucks permitted Kraft to sell Christmas Blend to Target. In December 2009, Christmas Blend was the No. 1 Starbucks coffee item at Target. In the late spring of 2010, Kraft requested Starbucks' permission to expand distribution of Christmas Blend to grocery and Walmart. Starbucks was willing to authorize the sale of its Christmas Blend to Target and grocery but refused to permit Kraft to sell to Walmart. Kraft advised Starbucks that it would only expand the distribution beyond Target if Walmart was included. Starbucks responded and refused to allow Kraft to sell anywhere but Target.¹⁵

70. Another product that Kraft requested Starbucks to develop is Starbucks brand flavored coffee. Premium flavored coffee represents approximately \$320 million or 20% of

¹⁵ See, May 12, 2010 email between L. Acker and G. Price, attached hereto as Exhibit 14.

premium coffee sales in 4-outlet (grocery, drug, mass merchandisers and Walmart). After many years, Starbucks finally developed Natural Fusions, its premium flavored coffee. Kraft launched Natural Fusions in the CPG segment in May, 2010 and all three of Kraft's Natural Fusions SKUs now rank in the Top 10 of Premium Flavored SKUs.

71. Another example of Starbucks stifling Kraft's efforts to grow the CPG business is the delay associated with adopting a joint advertising campaign with Cafes. In September of 2008, Kraft recommended that Kraft and Starbucks work together to maximize the scale of the CPG and Café's marketing efforts and spending by creating one consumer message across all channels. While there have been some marketing efforts starting in September 2009 that leveraged a similar creative look across CPG and Cafes, there have been few marketing efforts that deliver on the "one voice" advertising strategy both companies aligned to in January 2010.

Kraft's Performance in Promoting Starbucks Products in the CPG Segment

72. I am informed that in 1998, Starbucks CPG business had revenues of approximately \$50 million with a product portfolio limited to 16 unique products ("SKUs") in 4,000 stores spread over 12 states, two of which were test market states. In the 12 years since Kraft acquired its exclusive right with respect to the Starbucks CPG business, and in reliance on its exclusive right to sell, market and distribute packaged Starbucks products in the CPG market, Kraft devoted substantial resources and leveraged its relationships with its customers in the CPG market to grow the business to approximately \$500 million in revenue annually, with a product portfolio of over 65 SKUs sold in 40,000 stores across all 50 U.S. states. This represents a compounded average growth rate in excess of 20%, well above the industry norm.

73. Sales in both the Retail Café and CPG Starbucks businesses were impacted by the latest recession. As Starbucks itself acknowledged, the Starbucks-owned business became a “poster child” for what to cut back on.¹⁶ This hit to Starbucks’ brand equity increased pressure on the Starbucks’ CPG business as well.

74. In its 2008 and 2009 fiscal years, Starbucks Café business experienced eight consecutive quarters of declines in U.S. comparable store café sales.

75. The effects of the economic downturn were exacerbated by unprecedented competitive pressure in the away-from-home and at home coffee market, especially from Dunkin’ Donuts, which, beginning in 2007, launched a heavily funded campaign to capture market share from Starbucks and launched a premium packaged coffee product in the CPG channels.

76. Based upon investigation and upon information and belief, Kraft presented various new product and promotional opportunities for Starbucks to combat the Dunkin’ Donuts launch in CPG but Starbucks refused to approve many of those opportunities. Despite the negative effect of these factors on Starbucks’ brand equity, Kraft was able to prevent a significant decline in Starbucks’ market position through, among other things, increased Advertising & Promotions spending, new products, and expanded distribution. By way of

¹⁶ See “CEO Schultz Fights Starbucks’ ‘Poster Child for Excess’ Image,” Ad Age, March 19, 2009 (quoting Howard Schultz as saying, “For whatever reason, Starbucks Coffee Co. has become the poster child for excess, and if you want to be really smart, you should cut out that \$4 cup of coffee.”), attached hereto as Exhibit 15.

comparison, Starbucks' CPG coffee revenue growth has exceeded Starbucks' comparable same-store café sales growth in 11 of the last 16 quarters.¹⁷

77. Despite the 2008-2009 economic downturn, today Starbucks remains the leader in the CPG Premium coffee segment, with more than 1.5x the market share any other player.

78. Kraft continuously reassesses ways to improve the growth of CPG business and the relationship in general, often seeking Starbucks input in this process. For example, at the May 2010 MCM meeting, the parties jointly prepared and discussed "what is working and what is not working." During this meeting, Starbucks did not suggest that Kraft was failing to comply with the R&G Agreement.

79. Kraft's efforts to grow the Starbucks' CPG business continue in 2010. Revenues of Starbucks coffee products managed by Kraft are at an all time high, with a year-to-date growth rate of 8%. During the same period, total U.S. coffee sales have grown by only 2%.¹⁸ Kraft discussed this year to date growth with Starbucks as recently as the December 16, 2010 MCM meeting.

Starbucks Praised Kraft for its Management of CPG Business

80. Starbucks has praised Kraft for its performance and effectiveness in managing the Starbucks CPG business. For example, in an August 2008 press release, Starbucks recognized Kraft's positive contribution to the Starbucks brand when it stated: "Kraft Foods, which previously distributed the Tazo RTD product line as part of its 10-year relationship with

¹⁷ See, Chart comparing Starbucks' CPG coffee revenue (includes Tassimo) with same-store café sales, attached hereto as Exhibit 16.

¹⁸ See, Nielsen 4 outlet; November 2010, attached hereto as Exhibit 1.

Starbucks, will continue the significant momentum it has built marketing and distributing Tazo filterbag teas and tea latte concentrates, as well as Starbucks® and Seattle's Best Coffee® packaged coffees in non-cafe channels.”¹⁹ Similarly, in December 2008, Starbucks' CEO Howard Schultz lauded Kraft as an “outstanding” company whose “capabilities and accounts” Starbucks had succeeded in leveraging to establish Starbucks as a “leader in product innovation.” (Starbucks Biennial Analyst Conference, December 4, 2008). More recently, in April 2010, Troy Alstead, Starbucks' Chief Financial Officer, said that the Starbucks CPG business had become “highly profitable” over the years, specifically citing Starbucks' success in “leverag[ing] the world-class capabilities that [Pepsi has] in manufacturing, [Kraft has in] in research and development and marketing distribution.” (Barclays Conference, April 28, 2010).

81. Starbucks also has praised Kraft privately. For example, in late 2009, John Culver, then President of Starbucks Global Consumer Products and Foodservice, complimented the Kraft team for driving positive results, stating, “I also wanted to thank the entire team from both Kraft Foods and Starbucks for a great meeting and more importantly for all of your efforts to get our packaged coffee business back on a positive growth track. It is great to see that your efforts and focus on the business are having a positive effect on our base business, and for the first time in two years we have seen share growth for the month of October.”²⁰

¹⁹ See, August 19, 2008 press release, attached hereto as Exhibit 17.

²⁰ A copy of the John Culver November 8, 2009 email is attached hereto as Exhibit 18.

82. In a conversation I had with Greg Price, then Starbucks VP of CPG, in August 2008, Mr. Price advised me that he believed Kraft and Starbucks would be doing business together forever as the terms of the R&G Agreement were perpetual.²¹

83. In addition, as recently as May 2010, Greg Price, then Starbucks Vice President of CPG, expressed his excitement over the partnership with Kraft Foods to Deanie Elsner, President, Kraft Foods North America Beverages:

Thank you for a great meeting today. You had great insights, asked great questions, and helped set a great tone for our partnership moving forward, and I think the team left today's discussion jazzed and excited about []the road ahead. . . . You've got a great team That's it for now. Welcome, thanks, and onward together."²²

Irreparable Harm to Kraft

84. One of Kraft's greatest assets is its strong customer relationships, relationships that Kraft has built over the course of many years.

85. Starbucks is undermining and interfering with Kraft's customer relationships and with the superior reputation that Kraft enjoys among its customers.

86. Starbucks has falsely claimed that Kraft has breached the terms of the R&G Agreement. Indeed, on December 1, 2010 Starbucks President of Global CPG and Food Service, Mr. Hansberry stated: "The issues between us and our dissatisfaction with Kraft's performance and their failure to protect the premium equity that we have built in our brands has been ongoing.

²¹ A copy of my August 28, 2008 email summarizing my conversation with Mr. Price is attached hereto as Exhibit 19.

²² A copy of the May 26, 2010 Price email is attached hereto as Exhibit 20.

We've exercised our right to end the relationship. The matter will be resolved through arbitration. We are moving forward with our transition and we are taking every step necessary to ensure a smooth transition for our customers and our business." (Starbucks Biennial Investor Conference, December 1, 2010)

87. Per the latest Brand Health Tracker Report (measures brand equity attributes for multiple coffee brands) conducted by Millward Brown (a leading global research agency) in the spring of 2010, Starbucks CPG has the highest unaided and total brand awareness of all Premium CPG coffee offerings and ranks highest in "Brand Ever Purchased", "Brand Purchased Regularly", "Brand Purchased Most Often", "Is worth paying more for", and a number of other attributes vs Premium CPG coffee offerings.

88. Starbucks has also recently made public unsubstantiated claims that Kraft has damaged the brands by over-promoting them. Kraft's overall promotion of the Starbucks brand has frequency in line with the industry [49% of Starbucks volume sold on promotion vs 47% for industry], but with less than average discount than industry average [16% vs 22%].²³ Starbucks' indications that they will promote less will likely lead to a loss of sales and potentially damage the brand value equation.

89. On Monday, December 6, 2010, Starbucks sent a letter to Acosta wherein in pertinent part it stated: "Today, we are sending letters to customers to begin the transition process. In addition to the letters, our sales leaders are calling our top 15 customers to share this

²³ See, 11/20/10 Nielsen Chart, attached hereto as Exhibit 21.

important news. As of today, December 6, 2010, we begin our journey together to assume control over the direct distribution of the largest component of our CPG business. . . .”²⁴

90. By improperly claiming that it has terminated the R&G Agreement, Starbucks has called into question Kraft’s ability to continue to supply its customers with Starbucks CPG products, causing confusion among those customers and damaging Kraft’s reputation.²⁵

91. On Thursday December 9, 2010, Starbucks provided Kraft with only a seven week production plan for the Starbucks CPG products, in comparison to a 13 week production plan as was the custom and practice since 2004, claiming “system issues.”²⁶

92. Starbucks has also improperly contacted Kraft’s customers and interfered with Kraft’s relationships with those customers.²⁷

93. On Wednesday December 8, 2010, Kraft learned that Acosta directed Kraft’s customer, Publix, to provide the advertising plans for the second quarter of 2011 to Acosta, not Kraft.²⁸

94. Absent injunctive relief, Starbucks’ actions will continue to cause immediate, substantial and irreparable harm to not only the Starbucks CPG business that Kraft owns under the R&G Agreement but also to Kraft’s reputation and relationship with its customers.

²⁴ A copy of the December 6, 2010 Starbucks letter to Acosta is attached hereto as Exhibit 22.

²⁵ See, representative emails from Kraft customers, attached collectively hereto as Exhibit 10.

²⁶ See, email dated December 9, 2010 regarding production planning, attached hereto as Exhibit 23.

²⁷ A copy of Starbucks’ December 6, 2010 letter to Kraft’s customers is attached hereto as Exhibit 24.

²⁸ See, Exhibit 10, attached hereto.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct based upon my investigation and to the best of my knowledge, information and belief.

Executed on December 21, 2010.



Lori Acker