

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KRAFT FOODS GLOBAL, INC.,

Plaintiff,

v.

STARBUCKS CORPORATION,

Defendant.

Civil No. 10-9085 (CS)
ECF Case

DECLARATION OF AARON M. PANNER

I, Aaron M. Panner, declare as follows:

1. I am an attorney with the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., and counsel of record herein for Defendant Starbucks Corporation (“Starbucks”).

2. I am familiar with the facts of this case and submit this Declaration in support of Starbucks’ Opposition to the Motion for Preliminary Injunction filed by Kraft Foods Global, Inc. (“Kraft”).

3. A true and correct copy of an email chain between Starbucks CEO Howard Schultz, Kraft CEO Irene Rosenfeld, and President of Kraft North America Tony Vernon, dated January 17, 2010, is attached hereto as Exhibit 1.

4. A true and correct copy of an email from Kraft Senior Vice President of U.S. Coffee & Tea, Lorraine Hansen, to Mr. Schultz, Starbucks CFO Troy Alstead, and others, dated January 18, 2010, is attached as Exhibit 2.

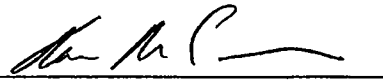
5. A true and correct copy of an email chain between Mr. Schultz and Ms. Rosenfeld, dated April 22, 2010, is attached hereto as Exhibit 3.

6. A true and correct copy of an email chain between Kraft's Senior Director of Marketing of U.S. Coffee & Tea, Lori Acker, to Starbucks then-Director of Marketing of the Consumer Packaged Goods Group, Michele Waits, dated December 17, 2010, and December 21, 2010, is attached hereto as Exhibit 4.

7. A true and correct copy of a letter from the President of Sales & Customer Logistics of Kraft Foods North America, Mike Hsu, to retail customers, dated November 29, 2010, is attached hereto as Exhibit 5.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2011.

By: 

Aaron M. Panner

EXHIBIT 1

From: "Vernon, Tony" <Tony.Vernon@kraft.com>
Date: January 17, 2010 5:23:35 PM EST
To: Howard Schultz <HSchultz@starbucks.com>
Subject: Fwd: Starbucks and Kraft

Howard, see below. This is in the spirit of full transparency. You have lots of leverage. I am on a mission to fix the sins of the past for all the reasons I outlined and because it's the right thing to do.

Thanks for giving us a chance.

Tony

Tony Vernon
President, Kraft North America
3 Lakes Drive
Northfield, IL 60093
P (847) 646-0202
F (847) 646-8007

Begin forwarded message:

From: "Rosenfeld, Irene B" <Irene.Rosenfeld@kraft.com>
Date: January 17, 2010 4:43:09 PM EST
To: "Vernon, Tony" <Tony.Vernon@kraft.com>
Subject: Re: Starbucks and Kraft

Great. I agree Needs to be quick though. I'm just worried he will sign with

keurig. Good luck. Let me know if I can help.

Sent from my iPhone

On Jan 17, 2010, at 9:22 PM, "Vernon, Tony" <Tony.Vernon@kraft.com> wrote:

IBR, I believe this very broken relationship can be salvaged and is worth the effort. There are 4 high potential coffee brands at stake: base Starbucks, Seattle's Best, Tassimo and Via. We have neglected this relationship badly in North America. I believe Mike and I, working in concert and with the assistance of Dave Owens, can build a lucrative, longstanding win-win partnership on all 4 Brands. After 8 hours of meetings with Howard and his team, I came to believe we can accomplish this without affecting our current 50/50 on base Starbucks, but we must be much more flexible on SBC, Tassimo and Via. This is very consistent with Mike's recco of last June. At the time, KNA/beverages did not support, but I have a very different take. Starbucks and Howard are back on their feet and to not give our best effort to rebuild this partnership would be financial, competitive and reputational mistakes for Kraft.

Mike, Deani, Bob and I will be talking tomorrow Monday and will provide you with more specific action plans. Tony

From: Rosenfeld, Irene B
Sent: Sunday, January 17, 2010 1:18 PM
To: Howard Schultz
Cc: Vernon, Tony; Clarke, Michael (KFEU, Zurich)
Subject: Re:

My team fully understands the urgency and will get back to you promptly as you have agreed. We are no happier about the state of our joint business than you are, but, as I know you realize, there are opportunities on both sides to make it better. I look forward to the discussions shortly.

Regards,

Irene

Sent from my iPhone

On Jan 17, 2010, at 5:48 PM, "Howard Schultz" <HSchultz@starbucks.com> wrote:

Dear Irene,

As a follow up to the meetings with your team last

week I wanted to reach out and thank you for your prompt attention to our concerns. I enjoyed the opportunity to meet Tony and very much appreciate his transparency, sense of urgency and clear commitment to our relationship.

That said, please understand that the concerns I shared with you on the phone two weeks ago remain. In fact, my deep immersion into the current dynamics of the Kraft/Starbucks relationship and the single-serve segment over the past weeks has actually elevated those concerns. We cannot accept the continued share erosion and lack of progress we are experiencing down the grocery aisle. Our store business around the world is showing dramatic improvement, yet our packaged coffee CPG business with Kraft is either in retreat (in the UK/Europe) or continuing to deteriorate (in North America). And, candidly, we have heard nothing so far to suggest that we have any reason to expect a reversal of these trends anytime soon. Further, I hadn't fully appreciated the speed at which the single serve market is moving away from Kraft, and the fact that it is has caused me to question the opportunity for Tassimo to be successful. Coffee is all we do, and we must know that we are on the right path to winning down the aisle and with any single serve partner we choose.

Knowing that we are up against some tight time constraints our teams have committed to work together over the next days to determine what can be done to address these concerns. I know that you recognize how urgent this situation is and look forward to speaking with you again soon.

Best,

Howard

EXHIBIT 2

From: Lorraine.Hansen@kraft.com [<mailto:Lorraine.Hansen@kraft.com>]
Sent: Monday, January 18, 2010 3:46 PM
To: Howard Schultz; Troy Alstead; Michelle Gass; John Culver; Robert Dilworth; Greg Price
Cc: Tony.Vernon@kraft.com
Subject: Starbucks/Kraft - Highlights, Key Follow Ups and Asks
Importance: High

Dear Howard, Troy, Michelle, John, Greg and Rob,

Thank you for last week's meetings. I appreciated the inspiration of the SBC Summit, the candor around the state of our partnership, the sincere desire to accelerate growth on our businesses (most notably SBUX R&G and Tassimo) and the hope surrounding future opportunities.

Some highlights:

- Our Starbucks R&G business results remain unacceptable however is showing signs of improvement. In CY09, we drove +3% shipment growth despite negative baselines of (7)%. Through our joint efforts with 1st ever One Voice marketing, 5/20 oz innovation and key customer programming, we delivered sequential quarterly consumption improvement of (Q1 -12%, Q2 -9%, Q3 -6%, Q4 -2%) and share delivery of 8.9% in Q1, 9% in Q2 to 9.3% in 2H. Sustainable improvement and growth demand more... we need further CPG Transformation efforts like true One Voice marketing, a pipeline of breakthrough innovation and reinvention in store, all initiatives that require your mutual support. I'm also highly encouraged by recent Retail results since our CPG baseline trends typically lag that of Retail by 1-2 quarters and then mirror these same trends.

- As you know from our discussions last year, we're greatly energized by the approachable premium opportunity that Seattle's Best Coffee can lead and remain committed to helping Michelle transform this business to \$1 billion+.

- Green Mountain is emerging as a key competitive threat as they are using their On Demand success to fuel their R&G and away from home expansion. We had candid discussions on the need to transform our go to market, marketing and possibly deal structure on Tassimo and that "Together is Better".

- I know you have heard from many Kraft voices on Via, but, as I have shared before, I and many others, including our favorite new partner Tony, remain true believers in the opportunity for Via to transform how consumers enjoy great coffee. From global supply chain to go to market to innovation, we believe Kraft can help Starbucks maximize this opportunity and we look forward to re-engaging with you re Via.

- Our Tazo business is up +28% in CY09. Last, but certainly not least, we'd love to discuss how we accelerate this momentum. I love the approach you're taking on SBC and this should be pursued on Tazo.

Key follow ups - I've italicized and bolded asks:

TASSIMO IMMERSION/TRANSFORMATION : Last week, we agreed for key leaders across our organizations to meet on a Tassimo Transformation session (currently scheduled for 1/26) which would obviously include a Tassimo Immersion. Rob shared today that you'd now like to solely focus on Tassimo Immersion and forego the Transformation session until/if we definitely have a new deal. Per our discussion last week, here's my concern: we will never realize how we could transform On Demand together if we don't collaborate.

- Hold the 1/26 Tassimo Immersion and schedule a Transformation/ Disruption meeting for the first week of February so that we truly identify what's possible if we come together as one

ONE VOICE: To accelerate our one voice scale and synergy, we're aligned on immediately initiating the process of shifting our CPG Agency of Record to BBDO, a new agency for Kraft . Since we own/lead the CPG agency relationship, we need to quickly on board them in terms of agency/client relationship, compensation, etc. We envision leading a single enterprise team comprised of SBUX Advertising, Kraft CPG and SBUX CPG to unlock full scale and synergy.

- Please provide the appropriate point people at SBUX (eg Annie, Terry and/or Chris) to partner for this transition. We're ready to reach out with immediate next steps.

- Please allow Kraft to take the lead on communicating this shift to draftFCB/BBDO. We must be respectful of our multi year partnership with draftFCB.

NATURAL FUSIONS: Natural Fusions will transform the \$250MM flavored coffee segment currently enjoyed by our competitors. It also is a key driver/focus of our joint 2010 plans. Given this, it was greatly disappointing to learn that necessary communication plans were not set to allow customer sell-in to proceed on schedule. As a sign of our partnership and support, we are suspending all further customer discussions per your request. New item reviews at key customers begin in mid February so we're reaching out to Greg and team to offer help in getting us back on track ASAP.

- Please ensure SLT alignment on Natural Fusions communication/launch plan as quickly as possible to maximize Natural Fusions opportunity

In the last 2 years, no one has been more disappointed in the state of our business than me. However, I do believe that good and important things come out of the most trying times. I will continue to lead and push all of us for a continued and sustained turnaround in our business results and as importantly, our partnership. There continues to be so much opportunity for us to transform at home Coffee and Tea together.

Fondly,

Lorraine Hansen

Tel: 914-425-4134

Fax: 914-425-4367

lorraine.hansen@kraft.com

EXHIBIT 3

From: "Rosenfeld, Irene B" <Irene.Rosenfeld@kraft.com>

Date: April 22, 2010 7:47:48 PM PDT

To: Howard Schultz <HSchultz@starbucks.com>

Subject: Re: **Highly Confidential**

I believe the economic proposal Tony came in with 2 months ago was a reasonable one, but it somehow lost its value in the execution. I would like our teams to take one last shot, but the math needs to work for my shareholders. I am very hopeful that we can break the logjam.

Irene

Sent from my iPhone

On Apr 22, 2010, at 9:26 PM, "Howard Schultz" <HSchultz@starbucks.com> wrote:

Dear Irene,

Thank you for your telephone call today. I want to share with you my thoughts and, candidly, my strong concerns that followed our conversation.

I sent my team to meet with yours in your offices in Chicago. Our teams reached clear agreement on the key terms during that meeting TWO MONTHS AGO, and have since documented those terms in the draft agreements which we have exchanged with Kraft. I was told by Tony Vernon himself that he had decision rights and that he was in communication with you all along and you were aware of what was agreed to. Needless to say, it is shocking and disappointing to hear today for the first time that Kraft has reversed its commitment. The new terms which you introduced today are unacceptable and, I am sorry to say, will not result in a common path forward.

I am sharing this with you and please believe me not for any negotiating tactic (we are well beyond that) but to be open and honest about where things lie.

Arbitration is not what I want, but sadly that is where we are headed.

I am again asking my team to meet face-to-face with yours next week, in a last effort to determine if these differences can be resolved. While I am not optimistic, I believe this deserves one remaining effort. I hope you will make this a priority with your team as well.

Respectfully,

Howard

EXHIBIT 4

From: lacker@Kraft.com [mailto:lacker@Kraft.com]

Sent: Tuesday, December 21, 2010 6:22 AM

To: Michele Waits

Subject: RE: Mktg Programs Past 2/28/11

Hi Michele,

As you know, we remain committed and available to discuss with you Kraft's plans relating to marketing programs subsequent to March 1, 2011 should you change your mind.

With respect to your other request, we have been instructed not to engage in any discussion relating to "transition" in light of the pending arbitration. As a result, any request Starbucks has relating to Starbucks alleged transition should be directed to counsel for Kraft.

Thank you for your cooperation in that regard,
Lori

From: Michele Waits [mailto:mwaits@starbucks.com]

Sent: Friday, December 17, 2010 2:18 PM

To: Acker, Lori B

Subject: Mktg Programs Past 2/28/11

Hi Lori,

I am writing to confirm that, due to the transition of our business from Kraft back to Starbucks on March 1st, we will not engage with you and your team on the development of any marketing programs in-market after 2/28/11.

In order to facilitate an orderly transition for our working teams and agencies, we ask for your cooperation in transferring creative assets for any executions that we either plan to re-run or are currently work-in-progress.

Thank you,
Michele

EXHIBIT 5



November 29, 2010

To Our Valued Customers:

Today, Kraft Foods announced that it initiated an arbitration proceeding to challenge Starbucks attempt to independently end the agreement under which Kraft Foods has successfully built Starbucks retail grocery coffee business.

Kraft Foods and Starbucks entered into a contract that remains in effect indefinitely, subject to certain limitations and protections. Kraft Foods reasonably expects Starbucks to honor the contract. Let me assure you that Kraft Foods is continuing to conduct business under the terms of its contractual arrangements with Starbucks.

Kraft Foods enjoyed a strategic partnership with Starbucks for 12 years. Thanks to your assistance, together we built the Starbucks business into the success it is today.

We appreciate the support you have given this business. Until there is resolution to this situation, the Kraft Foods Sales team continues to represent the Starbucks brand at retail. If you have any questions, please contact your Kraft Foods Sales representative.

Regards,

Mike Hsu
President, Sales & Customer Logistics
Kraft Foods North America