

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRAFT FOODS GLOBAL, INC., :

Plaintiff, :

-against- :

STARBUCKS CORPORATION, :

Defendant. :

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INDEX NO. 10 CIV 09085 (Seibel)

ECF Case

DECLARATION OF HELENE BATES

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

1. I am currently Director, Innovation, reporting to the Sr. Director for New Product Development for Beverages, with Kraft Foods Global, Inc. (“Kraft”) and have had a new product development role with Kraft since April 1999. I have been employed by Kraft since November 1993.

2. As Director, Innovation, my duties and responsibilities include the development of the strategy related to the positioning, packaging, pricing, advertising and promotion of new coffee products that Kraft sells to its customers, in the consumer packaged goods (“CPG”) market, which includes grocery and supermarket chains, club stores, mass merchandisers, drug stores and other retail food outlets. My responsibilities include overseeing everything from idea generation to market research and analysis.

3. Product positioning is the process by which marketers try to create an image or identity for their product in the minds of consumers in their target market. In connection with the introduction of a new product, product positioning is a multi-faceted process that involves (a)

defining the market in which the new product or brand will compete (who the relevant consumers are); (b) assessing the competition; (c) identifying the attributes of the new product that provide a point of difference when compared to the competition; (d) determining the target market's preferred combination of attributes; and (e) evaluating and assessing how the new product's attributes compare to the target market's preferred combination of attributes.

4. Product packaging includes the graphic and physical design of a product's package in order to convey a specific message(s) to a targeted audience and optimize the product's functionality to a consumer.

5. Once new product positioning and packaging options are identified Kraft engages in consumer market research to evaluate and assess the new product's receptiveness to the consumer market. Market research is the systematic, objective collection and analysis of data about a particular consumer target market and the competition. Market research provides insights into consumer behavior and preferences and allows Kraft to make predictions about how a consumer will respond to a new product.

6. Based on my experience with new product development, it takes at least nine (9) months to launch a new product in an optimal fashion.

7. Before launching a new product Kraft engages in quantitative market research, that entails providing the new product idea only or the idea and new product to a broad cross-section of the consuming public (typically, 200-500 consumer participants) to evaluate the idea based on a description and, if appropriate, also test the product in their home and then to respond to a market research questionnaire that provides feedback that can be analyzed statistically. The objective of this quantitative market research is to project the results to a larger population in order to validate the potential success of a new product and forecast sales. Additionally, Kraft

utilizes the consumer feedback to adjust certain characteristics of the new product prior to launch, thereby providing for the best chance of success.

8. Kraft engages in consumer market research to optimize and validate the product, the product's positioning, packaging and to build a rationale for the sell-in story.

9. The sell-in story is the sales presentation that is made to the CPG customer and is intended to answer the CPG customer's question: "Why should I carry this product?" The sell-in story includes information about the stock keeping unit (SKU), how the product will be priced, the quality of the product's ingredients, results of consumer research, and the marketing support that Kraft will employ to support the new product (i.e. in-store promotion, in-store displays, coupons etc.).

10. The ability to conduct quantitative consumer research is critical to the launch of a new product as CPG customers use the results of this consumer research in making a decision to carry a new product, which will likely replace another product on their shelves.

11. Conducting the quantitative consumer research necessary to support the quantitative rationale for a new product launch takes at least six (6) weeks and up to eight (8) weeks to complete.

12. In connection with the launch of a new product Kraft would develop marketing, advertising and promotional plans.

13. 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 CPG customer (retailer) merchandising commitments

14. The U.S. CPG Premium Coffee market is comprised of those coffee products that are generally in a bag and made with high quality coffee beans such as Arabica beans.

15. The U.S. CPG Premium Coffee market is highly competitive and saturated with at least eight (8) major Premium Coffee brands (including Starbucks and the Seattle's Best Coffee brands, hereinafter the "Starbucks brands") along with Private Label offerings vying for market share.

16. When introducing a new product to the CPG Premium Coffee market, the objective is to convince the CPG customer that the new product is one for which the CPG customer should allocate space on its shelf for ultimate sale to a consumer.

17. On average, samples of the new product must be available to the sales force at least twelve (12) weeks in advance of the launch of a new product.

18. Kraft's top eleven CPG customers design their planograms (a diagram used to map out where particular products are displayed in a store) and reset their shelves (i.e. decide how space on their shelves will be allocated among products) at most 1-2 times per year.

19. If Kraft is unable to speak to its CPG customers about a new product offering in advance of when those CPG customers prepare their planograms, Kraft will likely lose the opportunity to have its new product on its CPG customer's shelves and available for purchase by consumers.

20. I have become familiar with the Supply and License Agreement between Kraft and Starbucks dated March 29, 2004 ("R&G Agreement").

21. Kraft has Gevalia, another Super Premium Coffee product, in its product portfolio but it is my understanding that the R&G Agreement prohibits Kraft from distributing, marketing or selling Gevalia or any other Super Premium Coffee product in the CPG market during the term of the Agreement.

22. Because Kraft disputes Starbucks' assertion that the R&G Agreement has been terminated effective March 1, 2011, Kraft has refrained from conducting any quantitative market research concerning consumer receptiveness to Gevalia or any other Super Premium Coffee product to replace the Starbucks brands in its product portfolio in the CPG market.

23. Because Kraft disputes Starbucks' assertion that the R&G Agreement has been terminated effective March 1, 2011, Kraft has refrained from communicating with its CPG customers about Gevalia or any other Super Premium Coffee product to replace the Starbucks brands in its product portfolio in the CPG market.

24. Because Kraft disputes Starbucks' assertion that the R&G Agreement has been terminated effective March 1, 2011, Kraft has refrained from taking all steps necessary to launch an alternative Super Premium Coffee product to replace the Starbucks brands in its product portfolio in the CPG market.

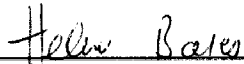
25. The uncertainty associated with the current circumstances places Kraft at a competitive disadvantage because the longer Kraft is delayed in its ability to launch a competing product the more difficult it is to carve out space on our CPG customers' shelves.

26. If Kraft misses its CPG customers' shelf re-set window then any new product Kraft offers will likely not be on CPG customer shelves and available to consumers for six months to one year.

27. In my experience, whenever there is a disruption in ownership (or, "marketing, sale and distribution") of a product, like Starbucks threatens to do in our case, competitors will increase their focus on advertising, promotion and shelf placement to try to take advantage of vulnerabilities caused by the changeover.

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 January 12, 2011.



Helene Bates