

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRAFT FOODS GLOBAL, INC., :

Plaintiff, :

-against- : INDEX NO. 10 CIV 09085 (Seibel)

STARBUCKS CORPORATION, :

Defendant. :

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DECLARATION OF PAUL NOJAIM

I, Paul Nojaim, declare based on personal knowledge and under penalty of perjury that the following is true and correct:

1. I am currently the Senior Customer Business Manager for Kraft Foods Global, Inc. (“Kraft”). I have held this position since 2005, and I have been employed by Kraft since 1995. Prior to being Senior Customer Business Manager, I was a Category Sales Planning Manager. Since 2005, I have been responsible for managing certain aspects of Kraft’s relationship with Kroger, one of Kraft’s major CPG customers.

2. Specifically, I am currently responsible for two business units in Kraft’s dealings with Kroger: (i) Beverages (Coffee); and (ii) Snacks. I am therefore responsible for managing Kraft’s Starbucks CPG business with Kroger.

3. I am the primary contact at Kraft for the buyers at Kroger. I am involved in all strategic conversations with Kroger involving Starbucks. I interact with my counterpart at Kroger on an almost daily basis, which includes conference calls, in-person meetings, and email

communications. While I handle all strategic planning, the day-to-day non strategic selling of Starbucks brands is handled by people who report to me.

4. Part of my responsibility is to attempt to maintain and secure shelf space for Starbucks products. As a retail food chain and vendor in the CPG market, Kroger sells thousands of products from hundreds of manufacturers in its stores. Shelf space for CPG products is therefore limited in each of Kroger's stores and manufacturers must vie for such space.

5. I have met with Larry Cronin, the current Director of National Retail Merchandising for the CPG Group at Starbucks, on multiple occasions including in Ohio and Washington to meet with my customers, and in New York for purposes of planning the Starbucks business at Kroger. I have reviewed Mr. Cronin's declaration submitted in support of Starbucks Opposition.

6. In paragraph 22 of his declaration, Mr. Cronin claims that Starbucks' Natural Fusions coffee product was launched in the latter part of 2009. In fact, the product launch for Natural Fusions did not occur until sometime in mid-2010.

7. In paragraph 17 of his declaration, Mr. Cronin references a sales call that Kraft had with "a major retailer in the Northwest" during which Kraft "spent most of the time during the sales call talking about Maxwell House, and very little about Starbucks." The retailer to which Mr. Cronin is referring is Fred Meyer, which is a division of Kroger.

8. The Fred Meyer meeting to which Mr. Cronin refers in his declaration occurred on January 20, 2010 and I attended that meeting with Mike Prchlik, the Director, Premium Coffee, Tea and Tassimo for Kraft Foods Global, Inc. . Mr. Cronin's declaration fails to disclose the reason the focus of the discussion was on Maxwell House rather than Starbucks, namely, that

the purpose of the meeting was not to discuss Starbucks. Instead, I arranged the meeting with Fred Meyer for the purpose of addressing the absence of Maxwell House Fred Meyer stores. Unlike Maxwell House, Starbucks was already being sold in Fred Meyer's retail outlets. At the meeting, however, Mr. Prchlik and I planned to talk about the anticipated launch of Starbucks' premium flavored Natural Fusions coffee.¹

9. On January 14, 2010, Starbucks instructed Kraft not to discuss Natural Fusions with any CPG customer. Accordingly, although we were prepared to discuss Natural Fusions at the Fred Meyer meeting, Starbucks demanded that we not do so. We complied with that demand.

10. CPG customers have what is known as "shelf reset windows," which is the time period during which distributors vie for shelf space as retailers reset the allocation of products on its shelves. These shelf reset windows typically occur one to two times per year. Because Starbucks continued to object to discussions about Natural Fusions through Kroger's first shelf reset window of 2010, Kraft was unable to obtain shelf space for Natural Fusions at Kroger during this time period. Kroger did not have Starbucks' Natural Fusions coffee products on its shelves until Kroger's next shelf reset window which was approximately seven (7) months after the Natural Fusions launch.

11. Although Starbucks' insistence that Kraft not discuss Natural Fusions resulted in a missed opportunity at Kroger when the product launched, Kraft leveraged its goodwill and strong relationship with several Kroger divisions, inclusive of Fred Meyer stores, to obtain shelf space for Natural Fusions at those stores.

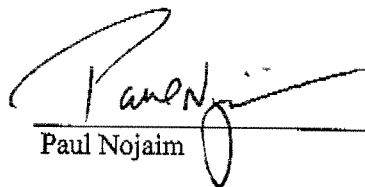
12. I have attended every strategic meeting on Kraft coffee with Kroger since assuming my responsibility for this major CPG customer.

¹ See, a redacted excerpt of the draft Fred Meyer sales presentation attached as Ex.1 hereto.

13. I attended a Kroger meeting with Mike Prchlik and Mr. Cronin as recently as July 26, 2010 and disagree with the assessment Mr. Cronin makes in paragraph 7 of his declaration that he is able to “much more effectively” present Starbucks products and communicate to retailers the power of the Starbucks brand. In fact, having attended the July 26 meeting and consistent with other Kraft customer meetings with Mr. Cronin, I observed no respect in which Mr. Cronin contributed in any way to the effectiveness of those meetings.

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

Executed on January 20, 2011.


Paul Nojaim