

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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**SUPPLEMENTAL DECLARATION OF MIKE PRCHLIK**

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

1. I am the Director, Premium Coffee, Tea and Tassimo for Kraft Foods Global, Inc. (“Kraft”) responsible for sales planning for Kraft’s U.S. coffee business and have held this position since 2002. I have been employed by Kraft and involved in sales in the CPG segment since 1983. Specifically, I am responsible for delivering the top line, bottom line and market share goals on Kraft’s coffee brands including the Starbucks partnership brands; development of sales strategies, priorities and execution for the Kraft coffee portfolio; communications with Kraft’s sales force on coffee related information; Trade deployment and execution; and, Sales liaison to Starbucks Coffee Company for the U.S. business.

2. I have reviewed the declarations of Michele Waits and Larry Cronin that Starbucks submitted in connection with this matter.

### **Kraft Sales Force Structure and CPG Customer Relationship**

3. Mr. Cronin's statements regarding Kraft's sales team structure, the CPG market and how Kraft interacts with its CPG customers are inaccurate.

4. Kraft has developed strong relationships with CPG customers. Kraft highly values its CPG customer relationships and considers its deep relationships with its CPG customers to be one of its unique attributes that distinguishes Kraft from its competitors.

5. Kraft's CPG customers are inundated with requests by hundreds of manufacturers offering thousands of products, all of whom are trying to convince the CPG customer that its product is one for which the CPG customer should allocate space on the shelf for ultimate sale to a consumer. Kraft's knowledge of these demands on the CPG customers in part defines Kraft's interaction with its customers.

6. Kraft's Sales Force is among the largest in the CPG industry and has consistently been ranked No. 1 (by Kantar, a prominent global retail insights and consulting firm) among all CPG companies, including Procter & Gamble, PepsiCo, Unilever, Nestlé, Kellogg, and General Mills.

7. I disagree with the statement in paragraph 6 of Mr. Cronin's declaration that Kraft has not made commercially reasonable efforts to sell the Starbucks brands effectively. The Kraft sales force is comprised of thousands of individuals who are located in every state in the United States. The Kraft sales force took tremendous pride in selling and helping to build the Starbucks brand. Starbucks has been one of Kraft's key growth brands and, as such, commanded a disproportionate level of time, effort and resources. At each major customer, Kraft appoints one or more Senior Customer Business Manager(s) who are responsible for all aspects of our relationship with that customer for a given category of CPG product. The Senior Customer

Business Manager for coffee is involved in all strategic conversations with the CPG customer involving the Starbucks brands. The Senior Customer Business Manager often interacts (i.e., meetings, telephone calls, or emails) with the CPG customer on a daily basis. For each major customer, Kraft also appoints an account manager (who reports to the Senior Customer Business Manager) responsible for coffee, including the Starbucks brands. While the Senior Customer Business Manager is responsible for all strategic conversations and planning, the day-to-day non-strategic selling of the Starbucks brands is handled by people who report to the Senior Customer Business Manager.

8. Each of the Senior Customer Business Managers assigned to our major CPG customers and responsible for coffee interact directly with me. I speak to those individuals regularly to discuss strategy on coffee, including our sales of the Starbucks brands.

**Starbucks' Involvement with Kraft's Sales Planning for Kraft/Starbucks CPG Business**

9. Mr. Cronin's suggestion in his declaration that Kraft has not included Starbucks in sales planning is incorrect. In addition to the conversations (by phone and in person) that I have had with Mr. Cronin regarding sales planning, the cross-functional team that reports to Lori Acker, Kraft's Sr. Director of Marketing, U.S. Premium Coffee & Tea, conduct weekly joint team meetings with Starbucks' personnel to discuss all aspects of the business, including sales opportunities.<sup>1</sup>

10. Kraft's cross-functional team likewise closely collaborates with Starbucks and solicits Starbucks' input on the preparation of the annual sales presentation templates that Kraft's utilizes with its CPG customers.

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<sup>1</sup> See, for example, December 21, 2010 Declaration of Lori Acker at ¶18 and the exhibits referenced thereto.

11. The individual sales team's dedicated to Kraft's major CPG customers devote substantial resources to the development of sales strategies for those major customers.

12. Specifically, in the Spring through early Fall of each year, Kraft's major customer CPG sales teams begin sales planning and strategy for the Fall of the following calendar year.

13. Kraft's major 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. the physical act of loading the shelf per the planogram) at most 1-2 times per year. Kraft conducts its major CPG customer sales planning typically in the Fall prior to the beginning of the year, not in the first quarter of the year as Mr. Cronin suggests<sup>2</sup>, to ensure that Kraft is able to accommodate its CPG customer lead times.

14. Kraft involves Starbucks with its major CPG customers sales strategy regularly via meetings, informal calls, and, since 2008, quarterly reviews.<sup>3</sup>

15. Kraft's major CPG customer sales strategy has also been discussed at MCM meetings between Kraft and Starbucks.<sup>4</sup>

16. Contrary to the suggestion in Mr. Cronin's declaration, Kraft shares drafts of its CPG strategic sales presentations with Starbucks for their input and feedback. Starbucks will preapprove the "form" or basic element of a sales presentation. While Customer specific presentations are customized for the particular CPG customer, there is no variance from pre-approved strategic elements. Because there is no substantive change, the customer tailored versions may not always be shared with Starbucks. The communication among the Starbucks

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<sup>2</sup> See Cronin, ¶ 19.

<sup>3</sup> See, for example, June 8, 2010 email from K. Glancy (Kraft) to, among others, M. Prchlik (Kraft), L. Acker (Kraft), L. Cronin (Starbucks), G. Price (Starbucks) and M. Waits (Starbucks) attaching (redacted) Premium Customer Status Update, a copy of which is attached hereto as Ex. 1.

<sup>4</sup> See, for example, redacted excerpt of 2009 Key Customer Status, a copy of which is attached hereto as Ex. 2.

internal team was often not coordinated resulting in confusion among its own team. For example, Michele Waits would provide Kraft with approval for a marketing plan without informing Larry Cronin and then Mr. Cronin would question me about that approval. I would be forced to spend the time informing Mr. Cronin about Ms. Waits' approval, rather than the Starbucks own team communicating that internally.

### **Kraft's Distribution of Starbuck CPG Products**

17. By 2005, Kraft had successfully leveraged its relationship in the CPG market for the benefit of the Starbucks brands and had over 90% ACV ("All Commodity Volume," a measurement of the breadth of a brand's distribution) of its grocery, mass merchandiser and drug CPG customers. As a consequence, the Starbucks brands are currently sold in over 40,000 stores across every state in the United States. Prior to its relationship with Kraft, Starbucks's ACV was 19%.

18. Despite a challenging economy for higher priced goods and an extremely competitive premium coffee market, the Starbucks brand dollar market share remains 1.5x larger than any other premium coffee within the CPG channel.

19. In 2005 the average number of Starbucks items carried by Kraft's CPG customers was 12.4 and in 2010 it was 16.5. As of December 2010, our performance is approximately 1.5x that of our nearest premium competitor.

20. During the period from 2005 to 2010, Kraft grew the Total Distribution Points ("TDP's") (a measurement that combines % ACV and average items carried to illustrate shelf presence) for the Starbucks brand by 20%. Our TDP's are more than twice that of our nearest premium competitor.

## **Starbucks Stymied Kraft's Ability to Effectively Sell-In Natural Fusions**

21. Mr. Cronin's and Ms. Waits' statements regarding Natural Fusions are inaccurate and leave out very relevant points. First, Natural Fusions premium flavored coffee was not launched in the latter part of 2009 as Mr. Cronin suggests but rather was launched in May of 2010.<sup>5</sup>

22. Second, Kraft, not Starbucks, identified the flavored coffee opportunity and pushed for innovation that led to the development of the Natural Fusions product.

23. Third, Starbucks created obstacles to effectuate the sell-in of Natural Fusions.

24. By way of background, when introducing a new product, like Starbucks' Natural Fusions to the CPG Premium Coffee market, the objective of Kraft's sales team 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 in a timely manner. As mentioned, the CPG customer is inundated with such requests, so the benefit to the customer must be clear.

25. To convince a CPG customer that it should allocate shelf space for a new product, Kraft's sales team develops what is referred to as a sell-in story. 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) such as, 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.) ultimately attempting to show how the sku will add incremental sales and profits for our customers.

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<sup>5</sup> Cronin Decl., ¶ 22; Waits Decl., ¶ 48.

26. In order to take advantage of our CPG customers' shelf reset windows, Kraft strives to begin the presentation of its sell-in story as far in advance of the launch as possible.

27. By early January 2010, Kraft had prepared the sell-in story for Starbucks' premium flavored Natural Fusions coffee.<sup>6</sup>

28. On January 14, 2010, however, Starbucks instructed Kraft that it was prohibited from discussing the launch of Starbucks premium flavored Natural Fusions coffee with any of its CPG customers. My understanding is that Kraft was not to discuss Natural Fusions with customers until Starbucks had developed its public relations response to explain Howard Schultz's original antagonism to flavored coffee.

29. When Starbucks finally gave Kraft permission to discuss the Natural Fusions launch, the lead-time for these sell-in presentations was significantly compressed.

30. Starbucks' mandate that we not discuss Natural Fusions with our customers during the normal sell in window negatively impacted our relationships with our customers. Customers were upset that Kraft had not given the customer sufficient notice and the Kraft sales force had to deal with additional obstacles to close the sale. Despite the foregoing and based largely on Kraft's close relationships with customers, Kraft was successful in securing acceptances from major customers.

31. As a result of Starbucks' prohibition on discussing Natural Fusions, Kraft missed the first shelf reset window of 2010, for Kroger. As a consequence, Kraft was unable to obtain widespread shelf space for Natural Fusions at this customer until its next shelf reset window (January '11) which was approximately seven (7) months after the Natural Fusions launch.

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<sup>6</sup> See, draft of January 20, 2010 Fred Meyer Natural Fusions sell-in presentation, a redacted copy of which is attached hereto as Ex. 3.

32. Because the lead times for Natural Fusions sell-in presentations were so compressed, we did not have the luxury of securing Starbucks specific appointments. As a result, Kraft's sales force had to present the Natural Fusions sell-in story on an opportunistic basis without the benefit of a pre-planned meeting, whenever they had the opportunity to do so. Because of the foregoing, I was invited to and attended just one presentation on Natural Fusions, as was Mr. Cronin.

33. Ms. Waits' suggestion that Starbucks led the initiative for Natural Fusions and Mr. Cronin's insinuation that Kraft's sell-in of Natural Fusions was flawed are incorrect. As more fully set forth in Lori Acker's Declaration dated, January 21, 2011, although Starbucks originally resisted the idea of a premium flavored coffee, Kraft pushed for the premium flavored coffee innovation that led to the development of the Natural Fusions product. Starbucks was involved in the development of the product and the sales story throughout the process. The constraints Starbucks placed on Kraft in communicating with customers about the product significantly impaired Kraft's ability to properly launch this product. Despite these constraints, Kraft achieved product acceptance with its CPG customers and a retail build that exceeded the performance of Starbucks VIA (a Starbucks product not managed by Kraft) which was launched with great fanfare and a much more significant budget. Kraft's ability to overcome the hurdles Starbucks imposed on the Natural Fusions launch is a prime example of how Kraft helped develop the Starbucks brand.

### **Kraft's Meeting with its CPG Customer Fred Meyer**

34. 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, a division of Kroger.

35. Kraft had scheduled a meeting with Fred Meyer for January 20, 2010.

36. The meeting was principally scheduled to discuss the lack of distribution of Kraft's Maxwell House coffee in the Fred Meyer stores. At the time, Starbucks brand products were already offered at the stores. Maxwell House is widely distributed and in fact Fred Meyer is the only major grocery customer in the United States that does not carry Maxwell House canned coffee.

37. I attended the Fred Meyer meeting along with Paul Nojaim, Kraft's Senior Customer Business Manager for Kroger.

38. Although the meeting was primarily scheduled to address Maxwell House, we had prepared a sell-in presentation for the Starbucks' premium flavored Natural Fusions coffee that we anticipated would launch in the late Spring of 2010.<sup>7</sup>

39. Six days before the scheduled January 20, 2010 meeting, Starbucks instructed Kraft that it was prohibited from discussing with its CPG customers the Natural Fusions products.

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<sup>7</sup> See, Ex. 3 hereto.

40. Contrary to the statement in paragraph 17 of Mr. Cronin's declaration, I didn't devote significant time during the Fred Meyer meeting to the Starbucks products not because I didn't want to, but because I was instructed by Starbucks that I was prohibited from discussing Natural Fusions.

**Mr. Cronin's Presence at Sales Calls Did Not Enhance the Presentation**

41. I have attended a number of sales presentations at CPG customers where Mr. Cronin attended the meeting, and I can't recall an occasion in which Mr. Cronin contributed in any way to the effectiveness of the 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 21, 2011.

A handwritten signature in cursive script, appearing to read "Mike Prehlik", written over a horizontal line.

Mike Prehlik