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**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN**

PAMELA MONTGOMERY, on behalf of
Herself and for the Benefit of All with the
Common or General Interest, Any Persons
Injured, and All Others Similarly Situated,

Plaintiffs,

vs.

KRAFT FOODS GLOBAL, INC., a
Delaware Corporation; and STARBUCKS
CORPORATION, a Washington Corporation,

Defendants

CLASS ACTION COMPLAINT
STATE & NATIONWIDE
REPRESENTATIVE ACTION
FOR (1) VIOLATION OF MCPA AND
SIMILARLY WORDED STATE LAWS;
(2) INNOCENT MISREPRESENTATION;
(3) BREACH OF WARRANTY;
(4) BREACH OF CONTRACT
(5) VIOLATIONS OF THE LANHAM
ACT, and JURY DEMAND

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**FIRST AMENDED CLASS ACTION
COMPLAINT & JURY DEMAND**

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Plaintiff PAMELA MONTGOMERY (“MONTGOMERY” or “Plaintiff,”) brings this
action against KRAFT FOODS GLOBAL, INC. (“KRAFT”) and STARBUCKS
CORPORATION (“STARBUCKS”) (collectively, “defendants”), on behalf of herself, all others
similarly situated and the general public, and alleges upon information and belief, except as to
her own actions, and the investigation of counsel, which included, inter alia, investigation,
review and analysis of Defendants’ press releases, Defendants’ websites, web forums, and
various news articles, as follows:

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I. OVERVIEW & NATURE OF THE ACTION

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1. This action is brought on behalf of plaintiff individually, as representative of the
common or general interest and as class representatives for all others similarly situated
nationwide against KRAFT and STARBUCKS to redress defendants’ breach of contract; breach
of warranty; innocent misrepresentation; unjust enrichment; various violations by defendants of
state consumer protection statutes, including, without limitation, the Michigan Consumer

Protection Act (“MCPA”), MCL 445.903(1)(a) through (cc) and MCL 445.903(b); similarly worded consumer protection laws in effect throughout the numerous states in which defendants marketed and sold the subject products;¹ and 15 U.S.C. §§45(a)(1) and 52(a)(2) (the “FTC Act”) which proscribes “unfair and deceptive trade practices,” including “false advertisement for the purpose of inducing... the purchase of food, drugs, devices, services or cosmetics;”²

2. This action arises from defendants’ independent and joint marketing; packaging; sale; and distribution of their KRAFT-“Tassimo” single-serving coffee brewing system and STARBUCKS-“t-cups” coffee portions;

3. For a period of time that, on information and belief, included a number of months spanning from or about January 2010, or earlier, through present, defendants continued

¹ Other state consumer protection laws similar in scope to Mich. Comp. Laws Ann. §445.901 et seq. defendants violated include, without limitation: (2004); Ala. Code §8-19-1 et seq. (2004); Alaska Stat. §45.50.471 et seq. (2004); Ariz. Rev. Stat. Ann. §44-1521 et seq. (2004); Ark. Code Ann. §4-88-101 et seq.; Cal. Civ. Code 1770 et seq. (2004); Cal. Bus. & Prof. Code §§17200, 17500, et seq. (2004); Colo. Rev. Stat. §6-1-105 et seq. (2004); Conn. Gen. Stat. Ann. §42-110a et seq. (2004); Del. Code Ann. tit. 6 §2511 et seq. (2004); D.C. Code Ann. §28-3901 et seq. (2004); Fla. Stat. Ann. 501.201 et seq. (2004); Ga. Code Ann. §10-1-372 (2004); Ga. Code Ann. §10-1-393 (2004); Ga. Code Ann. §§10-1-420 (2004); Haw. Rev. Stat. §480-1 et seq. (West 2003); Idaho Code §48-601 et seq. (2004); 815 Ill. Comp. Stat. 505/1, et seq. (2004); Ind. Code Ann. §24-5-0.5-3 (2004); Iowa Code §714.16 (2004); Kan. Stat. Ann. §50-623 et seq. (2004); Ky. Rev. Stat. Ann. §367.170 (2004); La. Rev. Stat. Ann. §51:1405 (West 2004); Me. Rev. Stat. Ann. tit. 5, §205-A et seq. (2004); Md. Code Ann., Com. Law §13-301; et seq. (West 2004); Mass. Gen. Laws ch. 93A, §1 et seq. (2004); Minn. Stat. Ann. §325D.43 et seq. (2004); Minn. Stat. Ann. §325F.68 et seq. (2004); Minn. Stat. Ann. §325F.67 et seq. (2004); Miss. Code Ann. §75-24-1 et seq. (2004); Miss. Code Ann. §97-23-3 (2004); Mo. Ann. Stat. §407.010 et seq. (2004); Mont. Code Ann. §30-14-101 et seq. (2004); Neb. Rev. Stat. §59-1601 et seq. (2004); Nev. Rev. Stat. Ann. §598.0903 et seq. (2003); N.H. Rev. Stat. Ann. §358-A:1 et seq. (2004); N.J. Stat. Ann. §56:8-1 et seq. (2004); N.M. Stat. Ann. §57-12-1 et seq. (2004); N.Y. Gen. Bus. Law §§349 to 350-e (2004); N.C. Gen. Stat. §75-1 et seq. (2004); N.D. Cent. Code §51-15-01 et seq. (2003); N.D. Cent. Code §51-12-01 et seq. (2003); Ohio Rev. Code Ann. §1324.01 et seq. (2003); Okla. Stat. Ann. tit. 15 §751 et seq. (West 2004); Or. Rev. Stat. §646.605 et seq. (2003); 73 Pa. Cons. Stat. §§201-1 et seq. (2004); 3 P.R. Laws Ann. §§341 et seq. (2001); R.I. Gen. Laws §6-13.1-1 et seq. (2003); S.C. Code Ann. §39-5-10 et seq. (2003); S.D. Codified Laws §37-24-1 et seq. (2004); Tenn. Code Ann. §47-18-101 et seq. (2004); Tex. Bus. & Com. Code Ann. §17.41 et seq. (2004); Utah Code Ann. §13-11-1 et seq. (2004); Vt. Stat. Ann. tit. 9 §2453 et seq. (2004); Va. Code Ann. §59.1-196 et seq. (2004); Wash. Rev. Code Ann. §§19.86.010 et seq. (2004); W. Va. Code 46A-6-101 et seq. (2003); Wis. Stat. Ann. §100.18 (2003); and Wyo. Stat. Ann. §40-12-101 et seq. (2003).

² *Note:* While defendants’ violations of the FTC Act are probative of the unlawful nature of defendants’ false and misleading conduct, plaintiff concedes that the FTC Act may not, in itself, give rise to a private right of action.

marketing, packaging, selling and distributing said brewing system as the single serve brewing system for which STARBUCKS coffee portions were available or exclusively available.³ Specifically, such marketing and packaging included, without limitation: express representations regarding defendants' association, affiliation, and joint offerings on the outermost packaging of the brewing system; and express representations of the same by way of information and materials contained inside the system's outer container. Among the representations and information was defendant STARBUCKS'S widely familiar symbol, logo, and trademark, which defendants jointly marketed, printed and displayed prominently on said packaging and materials, and statements that defendants' system afforded exclusive use of STARBUCKS single portion brewing cups;⁴

4. That by their actions as described above defendant defendants used, provided, communicated, or disseminated false and misleading information to plaintiff and similarly situated consumers for reason that while engaging in said activities defendants knew the said joint offerings by and affiliation or association between the KRAFT brewing system and STARBUCKS portion brewing cups was highly uncertain; had been terminated, was in the process of being terminated, or was likely in the immediate and foreseeable future to become terminated, and that such had resulted in or would result in the perpetual unavailability of STARBUCKS portion cups compatible for use with the KRAFT brewing system;⁵

³ In competition with, and as compared to, defendant KRAFT's sole or dominant competitor in the single serve coffee brewing market, the class of systems and associated single serving cups offered by Keurig/Green Mountain Coffee.

⁴ See Declaration of KRAFT employee Lori Acker, attached as "**Exhibit A.**" KRAFT and STARBUCKS worked jointly and cooperatively to promote the Starbucks/Tassimo system. KRAFT's Lori Acker attested that the two collaborated closely on all such matters daily. **Acker Decl. ¶ 12, 16-18, 28, 49-50, 53-55 , at "Exhibit A."**

⁵ See Kraft Foods Global, Inc. v Starbucks Corporation, Case No. 11-389-cv (2nd Cir.), wherein defendant KRAFT appealed from the SDNY District Court's order entered on January 31, 2011 denying KRAFT's

5. Throughout said period, Defendants understood that in the context of a then-emerging single-serve system consumer coffee market, of considerable importance and materiality to plaintiff's and similarly situated consumers' decisions to purchase a KRAFT "t-cup" style system, as compared to a competing Keurig "k-cup" style system was what brands of Tassimo-compatible portion-cups would be available to consumers for use with the Tassimo system; and specifically, whether Tassimo-compatible STARBUCKS portion cups would remain available.⁶

6. That despite KRAFT's actual or constructive knowledge that its underlying agreements with STARBUCKS regarding the continued availability of said STARBUCKS t-cups to consumers, KRAFT, and on information and belief, STARBUCKS also, continued to engage in the marketing, packaging, sale and distribution of said brewing system with false information so as to mislead consumers into believing the Tassimo system afforded consumers' the present and continued availability of compatible STARBUCKS portion cups;

7. Among the false and misleading information, advertising, labeling, and other representations defendants made, throughout the subject period of time, they continued to display

application for a preliminary injunction. By letter dated November 5, 2010, Defendant-Appellee STARBUCKS notified KRAFT that, effective March 1, 2011, it would terminate the parties' distribution agreement and other related agreements regarding the Tassimo system on the basis that KRAFT had materially breached its obligations under the agreements and failed to cure those breaches. KRAFT sought a preliminary injunction to prevent STARBUCKS from terminating the agreements which the district court denied; *See also*, Email Correspondence between defendants, attached as "**Exhibit B.**"

⁶ Neither KRAFT nor STARBUCKS can plausibly deny knowledge that STARBUCKS' affiliation with the Tassimo system was material [and central] to consumers' decisions to purchase the Tassimo system. Contrary to defendants' recent arguments, it is widely understood in the marketplace that *no variable is more important* for consumers when selecting a pod brewing system than the coffee brand aligned with the system. After abandoning Tassimo owners, when STARBUCKS announced its decision to jump ship and align with Keurig/Green Mountain, Keurig/Green Mountain's actual share price jumped more than 40% as a direct result of the announcement, and STARBUCKS' shares jumped 10%. *See* Press Reports attached as "**Exhibit C.**" Conversely, the share price of the parent of the coffee brand formerly aligned with Keurig dropped 12% as a result of the STARBUCKS/Keurig announcement. *See* "**Exhibit C.**" *See also*, Declaration of KRAFT employee Stephen Schwarz, attached as "**Exhibit D.**" *See also*, Declaration of David Hyland, attached as "**Exhibit E.**"

77 and sell to consumers Tassimo systems packaged in cartons bearing defendant STARBUCKS'
78 familiar logo and representing that defendant STARBUCKS' portion cups were available and
79 would remain available for use or exclusive use with the Tassimo system;

80 8. Defendants continued to engage in said conduct for a protracted period of, on
81 information and belief, approximately two (2) years, despite knowing their agreements allowing
82 continued distribution of the STARBUCKS T-cups had terminated or would imminently
83 terminate;

84 9. That during said period of time, defendants could have, but to maximize their
85 economic and pecuniary interests, did not undertake any actions or efforts to correct the Tassimo
86 system's false and misleading labeling and information; and did not undertake any actions or
87 efforts to provide or facilitate notice among retailers or consumers that the Tassimo's packaging,
88 labeling, and marketing was false and misleading in light of the actual status of defendants'
89 dealings and agreements;

90 10. During said period of time, despite receiving numerous inquiries and other calls
91 for response from consumers and the public requesting clarification of the continued availability
92 of STARBUCKS T-cups, defendants further engaged in the affirmative publication of false and
93 misleading information regarding the then current and prospective KRAFT/STARBUCKS
94 offerings, and actively concealed information known to them at the time in an effort to mislead
95 consumers and the marketplace;

96 11. That while defendants were engaging in said conduct which they naturally
97 understood would result in the discontinuation of Tassimo-compatible STARBUCKS portion
98 cups, defendant STARBUCKS was contemporaneously engaging in contentious negotiations
99 with defendant KRAFT as well as negotiations intended to result in offerings by STARBUCKS

100 of portioned brewing cups for use with Keurig systems, the Tassimo's system direct competitor
101 in the marketplace, all at the expense of consumers who were still purchasing the Tassimo
102 system under the belief that STARBUCKS brewing cups would be- and for a reasonable time
103 remain available;

104 12. That on information and belief, the discontinuation of STARBUCKS T-cups was
105 caused, at least in part, by contractual breaches and failures by defendant KRAFT,⁷ which
106 KRAFT undertook to maximize its pecuniary and economic interests to the detriment of plaintiff
107 and those numerous other consumers defendants induced to purchase the Tassimo system by
108 falsely representing the present and continued availability of Tassimo-compatible STARBUCKS
109 portion cups;

110 13. That defendants' conduct further constituted unfair, deceptive and unlawful
111 competitive and business practices for reason that it consented to, endorsed, and benefited from
112 the joint advertising, labeling, marketing, sales, and distribution in which STARBUCKS engaged
113 with defendant KRAFT, knowing at all relevant times that KRAFT's and Green Mountain
114 Coffee Roasters, Inc.'s proprietary T-cup and K-cup brewing systems existed as a competitive
115 dichotomy in the marketplace. Defendants also knew, at all relevant times that: defendants' false
116 and misleading packaging and advertising and concealment of the STARBUCKS/KRAFT
117 dispute and ultimate separation and disassociation; the timing and circumstances surrounding its
118 discontinuation of STARBUCKS' T-cups; and its actions in furtherance of the production of

⁷ See Email Correspondence between defendants, attached as "Exhibit B."

STARBUCKS K-cups would confuse and damage consumers in their selection of and purchase of a T-cup or K-cup system;⁸

14. That after defendants knew or had reason to know their agreements concerning the continued distribution of the STARBUCKS T-cups were in dispute; had terminated; or would terminate in the future, defendants concealed the information by failing to correct the packaging of the Tassimo brewing system; by failing to disclose the same to consumers; and by engaging in systemic concealment as regarded its retailers, online sellers, and the consuming public generally, thereby causing and perpetuating the false belief by retailers and the public that defendants' agreements, joint venture, and joint product offerings related to the Tassimo system and STARBUCKS T-cups still existed and would remain in existence prospectively;

15. Defendants' conduct as set forth herein above, and more fully below, has caused plaintiff and a great number of similarly situated consumers actual, statutory, and otherwise available damages at law or in equity;

16. As a result of wrongful acts and omissions of the defendant in this case, plaintiff and numerous consumers have been exposed to and damaged by what constitutes one of the more historically blatant specimens of consumer confusion and fraud, caused by the deliberate and self-interested actions of defendants. Representative examples of the sentiment expressed by consumers in response to defendants' conduct, include the following comments posted to defendant STARBUCKS' very own website:

Allieogo6

3/15/2011 9:13 AM

But now the T-discs are no longer :(I bought a Tassimo over a Keurig just for the Starbucks discs. I am so sad about this!

⁸ November 29, 2010 Statement to Press by defendant Kraft General Counsel Marc Firestone: "Starbucks' unilaterally and unjustifiably declared in public statements the agreement's termination, **needlessly risking confusion among customers about the agreement's status.**" (emphasis added). See "**Exhibit F.**"

SoCalTplant
5/13/2011 3:29 PM

Really not happy about the move to Keurig. The Keurig coffees I've had are not very good. I bought Tassimo BECAUSE of Starbucks. I understand that Keurig blew away Tassimo and gained a much larger market share of the market for coffee makers, and I can see why Starbucks is following that.

Beta & VHS again. Guess it's better to jump the Beta ship and get on the VHS bandwagon. It's all about the coffee- so some kind of Starbucks discount to buy a new Keurig for Tassimo users could really solidify the consumers who've invested in the Starbucks brand to get behind the Keurig.

Airliejane
5/25/2011 9:11 PM

Unbelievable. This announcement marks a sad day in our household. Our beloved Tassimo is essentially useless now. I don't know who to blame first: Tassimo/Kraft or Starbucks.

This will mark the end of the Tassimo system, essentially Starbucks coffee was the only reason we bought the damn thing.

Boyle_Fam
7/3/2011 5:39 PM

I, like the others, am disappointed that you are not offering both T-disks and K cups. I am very loyal to Starbucks and shelled out a lot of money for a Tassimo I now can't use. You really should offer incentives to those of us who purchased the Tassimo because of your marketing on that one.

tiffanylynn_
8/19/2011 11:39 AM

I'm disappointed with the Starbucks employees reading this blog. Anytime someone sings praises about the addition of K-Cups, they respond. They have yet to reply to a single Tassimo owner who is disappointed. Like the other Tassimo owners commenting, I bought my coffee maker specifically for the Starbucks. I couldn't be more upset about the discontinuation of T Discs.

melbaredd
9/6/2011 7:58 AM

Like many of you I bought (actually got for Mother's Day) a Tassimo (who is, by the way, still advertising on their boxes "Featuring Starbucks..." on their boxes) for the sole purpose of drinking my Starbucks coffees. I haven't tried any of the other coffees that can be found. Locally the selections for it are crap (Maxwell House, blechhhh!) I think it sucks that now my Mother's day gift is useless as I'm almost out of Starbucks discs. I spent over \$100 on Tdiscs once I found out that it was no longer being manufactured. It's really infuriating that now I'm faced with going back to a multi-cup coffee pot to enjoy my Starbucks or buy another single cup brewing system. Dissatisfied with the decision on Starbucks part to stop production in Tassimo products, yet more disappointed in Tassimo for misleading my family into believing I was machine that we can no longer use (because we used it exclusively for Sbux).

See STARBUCKS Customer Feedback, attached as "Exhibit G."

II. THE PARTIES

17. Plaintiff Pamela Montgomery is a citizen and resident of Michigan, residing in Okemos, Michigan.

18. Defendant KRAFT, being Kraft Foods Global, Inc., is a Delaware corporation with its principal place of business located in Northfield, Illinois. At all relevant times, KRAFT engaged in, *inter alia*, the promotion, distribution and sale of aforementioned Tassimo consumer goods brewing system; and in connection with its agreements with defendant STARBUCKS, consumer packaged “Starbucks” coffee products, including Starbucks T-cup portioned brewing cups;

19. Defendant STARBUCKS, being Starbucks Corporation, is a Washington corporation with its principal place of business located in Seattle, Washington. At all relevant times, STARBUCKS engaged in, *inter alia*, the promotion, distribution and sale of its consumer packaged “Starbucks” coffee products, including Starbucks T-cup portioned brewing cups, and engaged in the negotiation of-, performance of-, and varied activities related to certain agreements related to said products with defendant KRAFT;

III. REPRESENTATIVE PLAINTIFF

20. Dr. Montgomery purchased her KRAFT Tassimo brewing system after comparing the Tassimo and Keurig systems, based on the false and misleading representations by defendants regarding the KRAFT/STARBUCKS association described herein;

21. After the system was purchased, with time it became increasingly difficult and impossible to find and purchase the Starbucks T-cup portioned brewing cups;

22. Seeking further information regarding the continued availability of the subject product Plaintiff inquired from several sources, including the internet;

23. That local retailers, including, without limitation, Fred Meijer, where Plaintiff's system was purchased, and Walmart Stores, did not and would not refund Tassimo purchases or provide any remedy, and represented throughout the class period they were unable to assure when Starbucks T Cups would again become available or be replenished;

IV. OTHER PROPOSED MEMBERS' EXPERIENCES

24. On information and belief, thousands of consumers have suffered the same consumer experience as plaintiff, and thusly were similarly damaged. Specifically, these consumers purchased Defendants' Tassimo brewing system, which exterior packaging contained on its face the Starbucks logo and information and included documents with the brewing system which defined to the purchasing customers the availability and use of Starbucks compatible brewing cups which were designed for use with the Tassimo/Starbucks brewing system;

25. The alteranative brewing system in the marketplace during the relevant class period, the Keurig brewing system, and all other available brewing systems, did not allow, by design, for the use of Starbucks brewing cups;

V. CLASS ACTION ALLEGATIONS

26. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and on behalf of a class;

27. Plaintiff seeks certification of the following:

NATIONAL CLASS

All persons in the United States who purchased, between August 9, 2010⁹ and December 31, 2011 the Tassimo/Starbucks coffee brewing system which exterior box packaging contained on its face the Starbucks logo and Starbucks information and included documents with the brewing system which defined to the purchasing customers the availability and use of Starbucks

⁹ See KRAFT v STARBUCKS Complaint in Case No. 7:10-cv-09085-CS, ¶ 53, attached as "Exhibit H."

195 compatible brewing cups which were designed for use only with
196 the Tassimo/Starbucks brewing system.

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198 Plaintiff expressly reserves her right to amend this
199 definition if discovery and further investigation reveal that the
200 National Class should be expanded or otherwise modified.

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202 MICHIGAN CLASS

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204 All persons in the State of Michigan who purchased,
205 between August 9, 2010 and December 31, 2011 the
206 Tassimo/Starbucks coffee brewing system which exterior box
207 packaging contained on its face the Starbucks logo and Starbucks
208 information and included documents with the brewing system
209 which defined to the purchasing customers the availability and use
210 of Starbucks compatible brewing cups which were designed for
211 use only with the Tassimo/Starbucks brewing system

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213 Plaintiff expressly reserves her right to amend this
214 definition if discovery and further investigation reveal that the
215 Michigan Class should be expanded or otherwise modified.

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217 NUMEROSITY

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219 28. The National and Michigan Classes (collectively the "Class") are so numerous
220 that the individual joinder of all members, in this or any action, is impracticable. The exact
221 number or identification The National Class and the District of Columbia Class (collectively the
222 "Class"). The exact number or identification of Class members is presently unknown to Plaintiff,
223 but it is believed that the National Class numbers in the hundreds of thousands, while the
224 Michigan number is at least in the thousands. The identity of Class members is ascertainable.
225 Class members may be informed of the pendency of this class action by a combination of direct
226 mail and public notice, or other means, including through the records possessed by defendants
227 and their retail affiliates;

COMMONALITY

29. Common questions of fact and law exist as to all members of the Class, which predominate over questions affecting only individual members of the Class. These include, but are not limited to, the following:

- (a) whether defendants and their retail affiliates packaged, promoted, distributed or sold products with false and/or misleading information;
- (b) whether as more fully particularized in the following causes of action defendants' conduct in marketing, promoting, distributing and selling said Tassimo/Starbucks system violated federal and/or Michigan laws;
- (c) whether defendant and their retail affiliates engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce or otherwise unlawful business and trade practices under applicable state and federal law;
- (d) whether and to what extent representative plaintiff and the Class members are entitled to compensatory damages, including actual damages;
- (e) additionally and alternatively, whether and to what extent representative plaintiff and the Class members are entitled to compensatory damages, including statutory damages;

(f) additionally and alternatively, whether and to what extent representative plaintiff and Class members are entitled to declaratory, injunctive and/or equitable relief;

TYPICALITY

30. Plaintiff's claims are typical of the claims of the Class and all such claims arise out of the same wrongful course of conduct engaged in by defendants;

ADEQUACY

31. Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff is represented by experienced and able counsel, and plaintiff's counsel intends to prosecute this action vigorously for the benefit of all Class members. Plaintiff and her counsel can fairly and adequately protect the interests of the members of the Class;

PREDOMINANCE AND SUPERIORITY

32. The class action is the best available method for the efficient adjudication of this litigation because individual litigation of the Class members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single-adjudication, economies of scale, and comprehensive supervision by a single court;

274 **VI. CAUSES OF ACTION**

275 **COUNT I**

276 **Violation of the Michigan Consumer Protection Act**
 277 **MCL 45.903 et seq.**

278 33. Plaintiff repeats and realleges each of the foregoing and following allegations as if
 280 fully set forth herein;

282 34. The Michigan Consumer Protection Act (hereinafter "MCPA" or the "Act"), at
 283 MCL § 45.903 et seq., prohibits unfair, unconscionable, or deceptive methods, acts, or practices
 284 in conduct of trade or commerce;

285 35. As for fully set forth herein above and below, defendants who at all relevant times
 286 were engaged in trade or commerce, violated the following pertinent provisions of the MCPA,
 287 which sections define the types of conduct constituting violations thereunder during the subject
 288 time period, being January 2010 through August 2011 or approximately that period:

- 289 (a) Causing a probability of confusion or misunderstanding as to the
 290 source, sponsorship, approval, or certification of goods or services;
- 291 (c) Representing that goods or services have sponsorship, approval,
 292 characteristics, ingredients, uses, benefits, or quantities that they do
 293 not have or that a person has sponsorship, approval, status,
 294 affiliation, or connection that he or she does not have;
- 295 (h) Advertising goods or services with intent not to supply reasonably
 296 expectable public demand, unless the advertisement discloses a
 297 limitation of quantity in immediate conjunction with the advertised
 298 goods or services.
- 299 (n) Causing a probability of confusion or of misunderstanding as to the
 300 legal rights, obligations, or remedies of a party to a transaction.
- 301 (p) Disclaiming or limiting the implied warranty of merchantability and
 302 fitness for use, unless a disclaimer is clearly and conspicuously
 303 disclosed.
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- (q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.
- (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- (t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.
- (u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.
- (w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.
- (cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

36. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(a), (c), and (bb) for reason that the aforementioned false and misleading product information caused and resulted in a high probability of confusion or misunderstanding among consumers as to the overall state of affairs surrounding the Tassimo/Starbucks system; and the Tassimo system's and Starbucks T-cups' source, sponsorship, approval, certification or characteristics, namely that such sponsorship, approval, or certification by defendant

STARBUCKS regarding Starbucks T-cups with respect to defendant KRAFT, or by defendant KRAFT regarding the Tassimo system with respect to defendant STARBUCKS existed and would continue to exist, despite defendants' actual and constructive knowledge to the contrary, which knowledge defendants possessed, on information and belief, from or before October, 2010;

37. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(h) for reason that from, on information and belief, or about October 2010 through or about August 2011 defendants' independently and jointly advertised and sold the Tassimo system and corresponding Starbucks T-cups including false and misleading information regarding the same despite their actual or constructive knowledge and intent that reasonably expectable public demand for the Starbucks T-cups would not be met;

38. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(n) and (t) for reason that defendants caused confusion and misunderstanding among consumers as to their legal obligations, rights, remedies, and benefits in relation to their purchase or other receipt of a Tassimo brewing system;

39. Defendants, in violation of MCL § 45.903(3)(1)(p) and (t) on information and belief, will claim that certain information or notice operated in some way to affect the warranty of merchantability and fitness for use, or other obligation, right, remedy, or benefit to which plaintiff and consumers are entitled, despite not clearly and conspicuously disclosing the same as required;

40. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(q) for reason that from, on information and belief, or about October 2010 through or about August 2011 defendants' independently and jointly advertised and sold the Tassimo

373 system and corresponding Starbucks T-cups including the false and misleading information
374 mentioned herein despite their actual or constructive knowledge that the subject of the
375 transactions, that being plaintiff's and consumers' brewing and consumption of coffee using
376 compatible Starbucks T-cups, would not be provided promptly, or at a specified time, or within a
377 reasonable time;

378 41. Defendants' conduct as described herein above and below violated MCL §
379 45.903(3)(1)(s) for reason that defendants independently and jointly advertised, distributed and
380 sold the Tassimo system and corresponding Starbucks T-cups including the false and misleading
381 information mentioned herein while failing to reveal to Plaintiff, Class members, and the public
382 the true status of their relationship, association, agreements and disputes as those related to the
383 continued availability and supply of Starbucks T cups as represented, which information
384 constitutes material facts, the omission of which by defendants tended to and did actually
385 mislead and deceive plaintiff, the Class, and the Public, and which facts could not reasonably
386 have been known or ascertained by plaintiff, the Class, or the Public;

387 42. Defendants' conduct as described herein above and below violated MCL §
388 45.903(3)(1)(u) for reason that upon plaintiff's, Class members' and others' attempts to rescind,
389 cancel, or otherwise terminate purchases of the Tassimo system in accordance with defendants'
390 advertisements, representations, and other provisions of law, defendants and defendants' agents
391 did not promptly restore the payments such persons gave for the Tassimo systems;

392 43. Defendants' conduct as described herein above and below violated MCL §
393 45.903(3)(1)(w) for reason that defendants represented to plaintiff, the Class, and to the public,
394 as an inducement for purchasing the Tassimo/Starbucks system, that they would receive the
395 benefit of having available and using compatible Starbucks brewing cups, when in actuality that

benefit was not reasonably certain and secure for the subject time period, and in fact the provision of which was, contrary to law, contingent on events and conditions defendants knew had not occurred, consummated, or become assured prior to the systems being purchased;

44. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(cc) for reason that Defendants failing to reveal to plaintiff, the Class, and the public facts material to their purchases of the Tassimo/Starbucks system in light of defendants' affirmative and positive representations regarding the state of affairs surrounding the Tassimo/Starbucks system and the continued availability of compatible Starbucks brewing cups, which representations included, but were not limited to, the images and information printed on the Tassimo system's outside carton;

45. Defendants violated the MCPA provisions identified above on each occasion a Tassimo/Starbucks system was sold to plaintiff and/or any member of the Class during the subject time period, as a result of which plaintiff and the Class have suffered actual harm;

WHEREFORE, Plaintiff, a person who has suffered damage as a result of defendants' violations of the MCPA, together with Class members, seeks actual and/or compensatory damages; restitution; and equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

COUNT II

Innocent Misrepresentation

46. Plaintiff repeats and realleges each of the foregoing and following allegations as if fully set forth herein;

421 47. Defendants' representations, as set forth in the preceding paragraphs, were made
422 in connection with the making of a contract between plaintiff and Class members, and
423 defendants;

424 48. Plaintiff and the Class would not have entered into the contracts to purchase the
425 Tassimo/Starbucks system had the representations not been made;

426 49. Plaintiff and the Class suffered damage and economic losses as a result of
427 entering into the contract, which losses benefited defendants and continue to benefit defendants;

428 WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory
429 damages; restitution; requests their purchases of said Tassimo systems be voided; and further
430 seek equitable relief, including, without limitation, refunds of the payments tendered for the
431 Tassimo systems purchased during the subject period; the costs and expenses of litigation,
432 including attorneys' fees; and any additional and further relief deemed available and appropriate
433 under the circumstances.

434 COUNT III

435 **Breach of Express and Implied Warranties**

436
437 50. Plaintiff repeats and realleges each of the foregoing and following allegations as if
438 fully set forth herein;

439 51. Defendants are merchants with respect to the subject consumer products pursuant
440 to MCL 440.2104;

441 52. The Tassimo/Starbucks systems plaintiff and the Class purchased were subject to
442 implied warranties of merchantability under MCL 440.2314;

443 53. Defendants, to induce the sales made certain express warranties and
444 representations to Plaintiff, both orally and in writing (including, but not limited to, the

445 Tassimo/Starbucks statements contained on the outer container in which the systems were
446 packaged, and which defendants and their affiliates placed on display) and through their
447 advertising and conduct;

448 54. These express and implied warranties and representations, and the corresponding
449 impressions they created, included, but were not limited to representations that the Tassimo
450 systems afforded consumers' the present and continued availability of compatible STARBUCKS
451 portion cups for use with the systems, and that the systems was designed for use with Starbucks
452 brewing cups, and that Starbucks brewing cups were designed for use with the Tassimo brewing
453 systems;

454 55. That contrary to said warranties and representations, contemporaneous to and
455 following plaintiff's and Class members' purchases, defendants terminated and discontinued
456 supply of Starbucks T cup brewing cups;

457 56. As a result, plaintiff and Class members cannot use the systems they purchased to
458 brew Starbucks coffee;

459 57. Defendants have been unable and/or have refused to correct this problem or to
460 void the purchases within a reasonable time;

461 58. As a direct and proximate result of defendants' various breaches of warranty,
462 plaintiff and the Class have suffered damages, including the cost of purchasing the
463 Tassimo/Starbucks system; diminished resale value of the system; interruption in use of the
464 system to brew Starbucks coffee; and the cost of cover including having to purchase Tassimo's
465 competing system, the Keurig type system, together with costs and attorney fees incurred in
466 attempting to obtain relief from defendants' wrongful conduct;

WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory damages; restitution; requests their purchases of said Tassimo systems be voided; and further seek equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

COUNT IV

Breach of Contract

59. Plaintiff repeats and realleges each of the foregoing and following allegations as if fully set forth herein;

60. That plaintiff's and Class members' transactions to purchase Tassimo/Starbucks systems constitute valid, enforceable contracts;

61. Defendants have breached the contracts by failing to provide or ensure reasonable availability and supply of compatible Starbucks brewing cups as represented and promised;

62. As a result of defendants' breach, plaintiff and Class members have suffered damages;

WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory damages; restitution; requests their purchases of said Tassimo systems be voided; and further seek equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff together with Class members, requests judgment in their favor and against defendants on each and every Count set forth herein in an amount exceeding \$5,000,000.00 to satisfy their actual and/or compensatory damages and restitution; and further seek equitable relief, including, without limitation, ordering defendants to tender refunds of the payments made for said products; together with any other remedies available under the Lanham Act, including, but not limited to, treble damages; disgorgement of profits; and costs and attorney's fees, and any additional and further relief deemed available and appropriate under the circumstances.

JURY DEMAND

Plaintiff and the Class demand trial by jury in all matters so triable.

Dated: October 9, 2012

Respectfully submitted,

By: /s/timothy mccarthy/
 Timothy H. McCarthy Jr. (P74698)

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EXHIBIT A

Declaration of KRAFT employee Lori Acker

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
KRAFT FOODS GLOBAL, INC.,	:	
	:	
Plaintiff,	:	
	:	INDEX NO. 10 CIV 09085 (Seibel)
-against-	:	
	:	
STARBUCKS CORPORATION,	:	
	:	
Defendant.	:	
-----	X	

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 executorial 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.

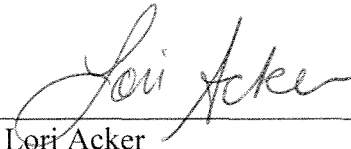
²⁶ See, email dated December 9, 2010 regarding production planning, attached hereto as Exhibit 23.

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

EXHIBIT B

KRAFT / STARBUCKS email correspondence

**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:

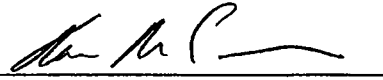
1. I am an attorney with the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., and counsel of record herein for Defendant Starbucks Corporation ("Starbucks").
2. I am familiar with the facts of this case and submit this Declaration in support of Starbucks' Opposition to the Motion for 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

EXHIBIT C

Press Reports demonstrating materiality of coffee brand /
brewing system affiliations in pod-system marketplace

MARKET SNAPSHOT

U.S.	EUROPE	ASIA
DOW	12,956.60 -9.12	-0.07%
S&P 500	1,359.19 -3.02	-0.22%
NASDAQ	2,939.58 -8.99	-0.30%

772.40 +0.79% ↑ **EUR-USD** 1.3251 0.1243% ↓ **Nasdaq** 2,939.58 -0.30% ↓ **Dow** 12,956.60 -0.07% ↓ **S&P 500** 1,359.19 -0.22% ↓ **FTSE 100** 5,916.55 -0.20% | Pause

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Green Mountain Soars on Starbucks Coffee Distribution Deal

By Duane Stanford - Mar 10, 2011 4:14 PM ET

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A coffee maker made by Keurig, a unit of Green Mountain Coffee Roasters Inc. Photographer: Herb Swanson/Bloomberg

Green Mountain Coffee Roasters Inc. (GMCR) surged 41 percent, the most in almost 18 years, in Nasdaq trading after agreeing to distribute Starbucks Corp. (SBUX)'s coffee and teas for its single-serve Keurig brewing systems.

Starbucks, the world's biggest coffee chain, jumped 9.9 percent. The companies will sell Starbucks and Tazo tea K-Cup portion packs at retailers in the U.S. and Canada this year, according to a statement today. Starbucks K-Cup packs and the Keurig system will be available at Starbucks outlets and through the companies' websites by 2012, they said.

The deal gives Waterbury, Vermont-based Green Mountain the chance to recruit new users with a premium coffee and access through Starbucks' more than 11,000 outlets. The company, led by

Larry Blanford, is the largest player in the U.S. single-serve coffee market, which generated almost \$2 billion in sales last year.

"For Starbucks, it provides needed distribution within a growth market, which should help it build upon its consumer products business," said Joel Levington, managing director of Brookfield Investment Management Inc. in New York. "For Green Mountain, it reduces the risk that Starbucks pushes its own hardware, and it adds a high-end product for its leading machinery."

Green Mountain advanced \$18.07 to \$61.71, the most since its 1993 initial public offering, at 4 p.m. New York time on the Nasdaq Stock Market. Starbucks, based in Seattle, rose \$3.43 to \$37.97, the largest gain since 2009.

Legal Spat

Starbucks won an appeals court ruling last month that upholds a decision allowing it to end

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a deal under which Kraft Foods Inc. (KFT) distributed Starbucks coffee to grocery stores. Kraft sued in December to prevent Starbucks from ending the arrangement prior to arbitration. In January, U.S. District Judge Cathy Seibel rejected Kraft's contention that it would be irreparably harmed if Starbucks were to end the agreement.

More than 80 percent of Starbucks customers don't own a single-cup brewing system, Starbucks Chief Executive Officer Howard Schultz said in today's statement. Green Mountain has about 80 percent of the U.S. single-cup coffee market. Schultz said in a memo last month that there were "no demonstrated, long-term winners" yet in the single-cup industry, comments that sent Green Mountain shares tumbling.

To contact the reporter on this story: Duane Stanford in Atlanta at dstanford2@bloomberg.net

To contact the editor responsible for this story: Robin Ajello at rajello@bloomberg.net

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Starbucks Plans to Open 200 Drive-Throughs in U.K.



Big Number: \$1 Billion



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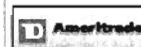
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Originally published March 10, 2011 at 11:06 AM | Page modified March 11, 2011 at 11:13 AM

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Starbucks, Green Mountain ink deal, but it's not an acquisition

After weeks of heavy speculation about whether Starbucks would buy Green Mountain Coffee Roasters — chatter so intense that it sent the Vermont firm's stock to an all-time high — the companies have announced something short of an acquisition.

By Melissa Allison

Seattle Times business reporter

After weeks of heavy speculation about whether Starbucks would buy Green Mountain Coffee Roasters — chatter so intense that it sent the Vermont firm's stock to an all-time high — the companies have announced something short of an acquisition.

- Starbucks will put its coffee and tea into single-serve pods that fit into Green Mountain's popular Keurig brewing machines, as Tully's Coffee and other roasters have done for years. Until now, Starbucks made single-serve discs solely for a brewing system marketed by Kraft, with which Starbucks has parted ways.

- Starbucks stores will sell the Keurig machines, which cost roughly \$100 to \$250. Keurig has the vast majority of the single-brewer market, with some estimating its share as high as 80 percent.

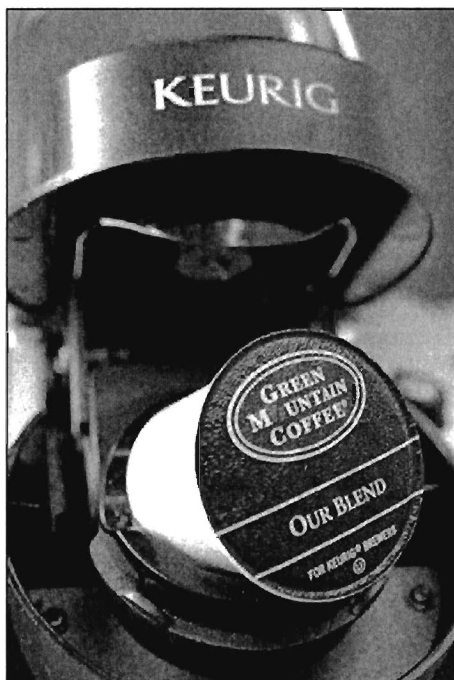
The news sent Starbucks' shares up \$3.43, or 9.9 percent, to \$37.97 Thursday. The stock also set a new 52-week high in interday trading of \$38.21.

Green Mountain investors were even more thrilled — sending shares up \$18.07, or 41.4 percent, to \$61.71 — after having had hopes for an acquisition dashed weeks ago when Starbucks said in a news release that just having a patent did not ensure the Vermont company's continued primacy in the \$2 billion single-serve category.

One analyst suggested Starbucks was playing games with that release.

"We are amused at the public battles Starbucks finds the need to wage when it cannot get its way in private negotiations," wrote Janney Capital Markets analyst Mitchell Pinheiro, who covers Green Mountain but not Starbucks.

Fewer than 20 percent of Starbucks' U.S. customers



enlarge
 Starbucks and Green Mountain Coffee Roasters say they have reached a deal that will bring single-cup Starbucks coffee and Tazo tea pods to Keurig users.

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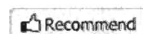
own a single-cup brewer, Starbucks said Thursday in announcing the new arrangement.

It is unclear whether other brands of coffee will continue to be offered for Keurig brewers.

"Starbucks is the exclusive, licensed super-premium coffee brand produced by [Green Mountain] for the Keurig Single-Cup brewing system," the release said.

David Tarantino, a Peet's Coffee analyst with Robert W. Baird, wrote to clients that the agreement appears to lock Peet's out of doing a deal with Green Mountain. Now Peet's will have to find another partner or wait until the Keurig system's patents expire, he wrote, which could be in late 2012.

Melissa Allison: 206-464-3312 or mallison@seattletimes.com



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By Lisa Baertlein and Phil Wahba

LOS ANGELES/NEW YORK | Thu Mar 10 2011 2:54pm EST

(Reuters) - Starbucks Corp (SBUX.O) and Green Mountain Coffee Roasters Inc (GMCR.O) are joining

single-serve coffee market, sending shares in both names skyrocketing.

The partnership between the world's biggest coffee chain and the company that controls about 80 percent of the North American single-serve brewing segment poses a formidable challenge for rivals from Peet's Coffee & Tea Inc (PEET.O) to Kraft Foods Inc. (KFT.N)

During the session, shares of Green Mountain jumped as much as 43

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percent while Starbucks gained 10 percent, the stock's biggest one-day move since July 2009. The biggest move in Peet's was a decline of 14.6 percent.

The companies will sell Starbucks coffee and Tazo tea for Keurig machines at wholesale clubs, drugstores and supermarkets in North America starting this autumn.

Early next year, Starbucks cafes will sell Keurig machines and the Starbucks coffee and tea pods.

The announcement follows a Reuters report last month that the two rivals would join forces in the U.S. single-cup coffee segment.

It also quieted speculation that Starbucks would debut its own single-serving brewer.

Financial details were not disclosed.

The deal "is an absolute validation that Keurig is the industry standard and that it is going to be the dominant system," Canaccord Genuity analyst Scott Van Winkle said.

Van Winkle estimated that Green Mountain already has about 80 percent of the U.S. sales in the market for the single-serve coffee, which is fast-brewed from pods or containers that are specially designed for use in the brewing machines.

U.S. retail sales in the single-serve coffee category will likely top \$4 billion in 2011, including brewers and coffee pods, he said, with coffee sales accounting for roughly three-quarters of those sales.

Green Mountain's Keurig-related revenue, including sales of machines and its K-cup coffee pods, was \$1.19 billion in 2010, representing 88 percent of overall sales.

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The systems are gaining popularity because they cater to U.S. consumers' demand for convenience and customization. Unlike traditional drip coffee brewers, the machines make one cup at a time and different users can have different brews.

Many U.S. office workers are familiar with Keurig because the machines are a common fixture in company break rooms.

Starbucks will be the exclusive licensed super-premium brand for the Keurig brewer for the length of the deal, which leaves Starbucks open to strike similar deals with other companies overseas. The length of the deal was not disclosed.

Shares of Peet's fell 12 percent after Janney Capital Markets analyst Mitchell Pinheiro downgraded the stock to "sell" from "buy" because the deal appeared to block the high-end coffee company from the Keurig system. Peet's executives were not immediately available.

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Starbucks, looking to expand beyond its namesake cafes, wants to be a big player in single-serve and in September 2009 entered the market with the launch of Via instant coffee.

William Blair & Co analyst Sharon Zackfia said the Green Mountain relationship could add modestly to Starbucks earnings in its 2012 fiscal year starting October 1, but she also has concerns about coffee prices, which are at historic highs.

Oppenheimer analyst Matthew DiFrisco called the deal "incrementally positive" for Starbucks and joined some other analysts in raising earnings estimates for next year: "It is an immediate low risk and low investment solution to address the fast growing at-home single-serve market, in turn furthering the growth of (Starbucks) higher margin consumer products division."

The deal comes nine days after Starbucks terminated an agreement under which it provided coffee discs for Kraft's Tassimo one-cup home brewer, which is not a big contributor to Kraft revenue. At the same time, it ended its grocery distribution agreement with Kraft.

The Keurig system's rivals in the U.S. single-cup coffee sector include Kraft's Tassimo machine, Sara Lee's (SLE.N) Senseo brewer and Nestle SA's (NESN.VX) Nespresso system, which leads in Europe, where single-serve is more established.

"This probably makes the hurdle higher" for Green Mountain's single-cup rivals, Bernstein Research analyst Sara Senatore said.

Premium coffee customers have been fastest to switch over to single-cup brewers like Keurig, but she noted that J.M. Smucker Co's (SJM.N) mainstream Folgers coffee also saw brisk sales after it began providing coffee for the system.

Green Mountain shares were up 40 percent at \$60.85 in afternoon trading after touching a session high of \$62.37. Starbucks was up 10.1 percent at \$38.03.

(Reporting by Lisa Baertlein and Phil Wahba; Editing by Derek Caney, John Wallace and Matthew Lewis)

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By Dan Mitchell, contributor November 23, 2010 5:08 PM ET

FORTUNE -- Traders have sent shares of Green Mountain Coffee Roasters (**GMCR**) soaring by 15 percent since opening Monday. The bid-up amounts to a huge sigh of relief: late Friday, the company announced that it would restate nearly three years' worth of earnings downward. But the total amount of the restatement comes to just \$5.8 million, and the company blamed accounting errors -- not malfeasance -- for its 11 quarters' worth of erroneous financial statements.

But that doesn't mean Green Mountain's troubles are over - far from it. Some observers, including short sellers, thought the company's shares were overpriced well before Monday's runup, and even before the announcement in September that the Securities and Exchange Commission had opened an investigation into Green Mountain's "revenue-recognition practices with one of its fulfillment vendors."

Just a few months ago, everything was looking great for Green Mountain. Revenues and profits were soaring, as was the stock price, and the company was enjoying a growing reputation as a responsible corporate citizen. But lurking beneath all the good news was the

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simple fact that Green Mountain was about to face a flurry of competition that could take big chunks out of its industry-leading 36 percent share of the growing single-cup coffee market.

With the restatement, that share is already a tiny bit smaller. But two weeks ago, Starbucks (**SBUX**, **Fortune 500**) announced that it

would be entering the business with its own machines and coffee packets. More worrisome, however, Green Mountain's patent on its K-Cup coffee packets is set to expire in 2012.

More than 80 percent of Green Mountain's sales come from its popular Keurig machines and K-Cups. It's a classic razor/blades business: the machine is relatively inexpensive; the packets are relatively pricey. You need the machine to use the packets, just like you need Proctor & Gamble's (**PG**, **Fortune 500**) cheap Gillette Fusion razor to use the expensive Fusion blades, which you continue to buy for years.

But once Green Mountain's patent runs out, anyone will be able to make K-Cups packets.

That's not necessarily a big problem, but it will force Green Mountain to adjust its whole business model. With the patent, it enjoys wide margins on its K-Cups packets, while it sells the machines with almost no margin at all, or even, perhaps, at a loss. When the patent expires, margins from the packets will no doubt sink, perhaps precipitously so. But if lots of other companies start making the packets, that could allow Green Mountain to raise prices on the Keurig machines. At the same time, though, competition from competitors' machines -- such as Nestle's Nespresso and Kraft Foods' (**KFT**, **Fortune 500**) Tassimo, as well as whatever Starbucks comes up with -- will become more meaningful.

Green Mountain's market share will surely fall. But the market is growing fast, both at home and in the workplace. Green Mountain says that only about 7 percent of homes have single cup brewers, leaving lots of room for growth. AC Nielsen Data reports that the single-cup market has grown by about 105 percent over the past year.

Starbucks' entry into the market will muddy things up even more. The company hasn't released many details so far. (It is already in the single-sup market with its highly successful rollout of Via instant coffee. Starbucks sold \$135 million worth of Via in the product's first year.)

Further, Starbucks and Kraft are embroiled in a dispute over how to end its distribution relationship. Starbucks wants out, in order to handle the distribution of its grocery products (such as Via and bagged coffee beans) on its own. Kraft says: Fine, but you must pay us many millions of dollars. Negotiations are ongoing.

What's unclear is the impact on Kraft's single-cup business. Starbucks supplies coffee packets for Kraft's Tassimo machine. (Neither company will comment on the dispute). Even before Starbucks' announcement that it would start selling its own machines, observers were wondering about Kraft's future in the market. Some analysts said that the end of Kraft's relationship with Starbucks might lead the food giant to get out of the coffee business altogether -- even divesting itself of its own Maxwell House brand. Kraft is spending about 10 times to market Tassimo in 2010 than it spent in 2009, according to Marketing Magazine.

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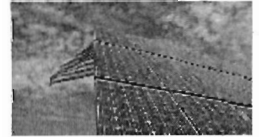
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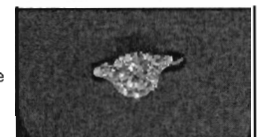
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And there was speculation that Starbucks could sign on with Green Mountain to supply K-Cups. That could conceivably still happen, even if Starbucks becomes a direct rival to Green Mountain with its own machine.

The only sure thing is that, thanks to deft management and luck, investors seem willing to always give Green Mountain the benefit of the doubt. ■

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DECLARATION OF STEPHEN J. SCHWARZ

I, Stephen J. Schwarz, hereby depose and state as follows:

1. I am the Director of Trade Strategy for the Beverages Unit of Kraft Foods Global, Inc. (“Kraft”). In my capacity as Director of Trade Strategy, my duties and responsibilities generally include planning leadership to increase overall volume and profits for Kraft’s Beverage business unit focusing on Tassimo as a top priority. Prior to becoming Director of Trade Strategy, I had also worked on other Kraft grocery and coffee business during a 20 year career with Kraft selling and planning grocery products.

2. Tassimo is Kraft’s proprietary single cup brewing system that utilizes individual discs of coffee, tea, hot chocolate or milk based beverages, referred to as “T Discs”, to brew a variety of beverages on demand.

3. The market for single cup beverage machines and their associated beverage discs, also known as “on demand” beverage systems, represents the best opportunity for growth in the coffee market.

4. Under agreements with Starbucks Corporation (“Starbucks”), Kraft has the

exclusive right to manufacture, market, distribute and sell T Discs containing coffee and tea supplied by Starbucks and bearing the Starbucks, Seattle's Best Coffee and Tazo brands in authorized venues that include grocery stores, drug stores, mass merchandisers, and club stores.

5. Tassimo is a closed brewing system, which means that only Tassimo T Discs can be used in the Tassimo brewers (and, conversely, T Discs can only be used in Tassimo brewers). Kraft is the exclusive manufacturer and seller of the Tassimo T Discs.

6. An important feature that distinguishes Tassimo from competing on demand brewers is the fact that, by reason of Kraft's Starbucks exclusivity rights, it is the only one for which Starbucks products are available. This competitive advantage has been highlighted extensively in marketing and sales strategies for the Tassimo line since the time Kraft obtained exclusivity.

7. Kraft developed a comprehensive plan to significantly grow Tassimo distribution and sales volumes with the focus of "winning" in the critical fourth quarter of 2010. An essential element of the plan is to greatly expand retail distribution of the Tassimo system.

8. The market for proprietary "on demand" brewers is rapidly developing, with industry-wide sales of such systems in 2010 through September up by 87% versus the same period in 2009 (previously the highest year ever).

9. Because of the closed nature of nearly all such systems, success in this market requires early and substantial market penetration in the sale of brewers.

10. Sales of brewers are the only way to create a market for the sale of beverage discs, because, as closed systems, the only consumers of particular beverage discs are the owners of the associated brewers or those who have access to them.

11. Fourth quarter sales are critical to Kraft's strategy regarding Tassimo. In 2008

and 2009 approximately 60% of all Tassimo brewers sold were sold in the fourth quarter, during the holiday shopping period.

12. Beginning in late 2009 Kraft met with potential retail customers to secure additional distribution points for Tassimo brewers and T Discs for the fourth quarter of 2010. Kraft's ability to offer Starbucks beverages for the Tassimo system was a key point of difference between its Tassimo system and other on demand systems that helped secure new and expanded distribution.

13. Starbucks was aware of these efforts, was aware of Starbucks being a focus of the presentations, and even attended a meeting with SuperValu, Inc. – one of the largest grocery retailers in the United States. At no point did Starbucks ever suggest that they might attempt to terminate the Tassimo agreement early, such that Kraft should not rely on Starbucks continued involvement in the Tassimo system as a differentiating factor during sales presentations to prospective customers.

14. In September of 2010, Tassimo T Discs were only available in approximately 7% of United States grocery food stores.

15. During the third and fourth quarters of 2010, Kraft sales personnel secured agreements with leading US grocery food retailers, including Safeway, Publix, Hannaford, Wegmans, Shaws, Raley's, and Lowe's, to distribute Tassimo brewers and/or T Discs. Each of the sales presentations emphasized Kraft's ability to supply Starbucks' brands for the Tassimo system.

16. By December 1, 2010 distribution for Tassimo T Discs was approved in grocery food retailers US grocery food retailers that account for approximately 28% of United States grocery food sales.

17. Starbucks T Discs represent 37% of the total range of T Discs offered by Kraft for Tassimo for distribution in grocery food retailers.

18. I personally attended a sales presentation to Safeway. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Safeway agreed to carry the Tassimo brewers and T-Disc varieties. Of the latter, 100% were Starbucks brands.

19. I personally attended a sales presentation to Publix. The presentation made at that meeting emphasized that the Tassimo system is the only on demand system for which Starbucks coffee is available and that this distinguished Tassimo favorably from its competitors. As a result of these efforts, Publix agreed to carry Tassimo T Disc varieties – 66% of the varieties selected were Starbucks brands.

20. Kraft personnel made a sales presentation to Hannaford. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Hannaford agreed to carry Tassimo brewers and T-Disc varieties. Of the latter, 33% were Starbucks brands. Later, after the Tassimo authorization, Hannaford Category Manager Brian Bloom expressed his concern over Starbucks announcement to pull out of Tassimo, suggesting that consumers would be less likely to buy Tassimo. Attached as Exhibit 1 is a true and complete copy of an email from Brian Bloom expressing his concerns.

21. Kraft personnel made a sales presentation to Wegmans. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Wegmans agreed to carry Tassimo T Disc varieties – 50% of them Starbucks brands. Subsequently, on November 3,

2010, I personally attended a sales presentation to the Category Manager for coffee brewers. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system and we brewed Starbucks Cappuccino to demonstrate Tassimo's differentiation from its competitors. The brewer presentation went very well and, based upon my experience and the buyer's signals, I would have expected Wegmans to have authorized the brewer by now. They have not yet done so.

22. Kraft personnel made a sales presentation to Shaws. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of those efforts, Shaws agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 40% were Starbucks brands.

23. Kraft personnel made a sales presentation to Raley's. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of these efforts, Raley's agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 100% were Starbucks brands.

24. Kraft personnel made a sales presentation to Lowe's. The presentation made at that meeting emphasized the availability of Starbucks brands for the Tassimo system, and that this differentiated Tassimo from its competitors. As a result of that meeting, Lowe's agreed to carry Tassimo brewers and T Disc varieties. Of the latter, 42% are estimated to be Starbucks brands.

25. Another essential component of the plan was to increase the volume of shelf space retailers allotted to the Tassimo T Disc line in order to maximize the amount of shelf space for existing accounts.

26. Target agreed to offer the Tassimo brewer by April of 2010, and agreed to

increase the number of T Disc offerings by June of 2010.

27. Based upon a combined sales effort by the Tassimo team, Wal-Mart agreed to increase the number of stores that carry the Tassimo brewer from approximately 300 to approximately 3,000 stores by October of 2010, and significantly increased the number of T Disc varieties offered.

28. After a presentation that emphasized the availability of Starbucks brands for the Tassimo system as a differentiating feature that distinguished Tassimo from its competitors, Kohl's, one of the leading national retailers of on demand beverage systems, agreed to begin offering the Tassimo brewer and eight T Disc varieties (50% of them Starbucks brands) in approximately 1,100 stores by September of 2010.

29. On October 26, 2010, along with a team of Kraft employees, I made a presentation to Ahold, an international food retailer whose U.S. stores include the Stop 'n Shop, and Giant Foods chains, to present the Tassimo system. During the presentation, we demonstrated the use the Tassimo brewer with Starbucks Cappuccino T Discs. The presentation was so well received by Ahold that Ahold inquired as to the possibility of quickly implementing a program for the November/December 2010 holiday period.

30. On November 30, 2010, a Kraft/Tassimo team, including myself, had a second meeting at Ahold with the intent to discuss sales of Tassimo brewer. We met with Mike Taverna, Brewer Category Manager, and Monica Simmons-Dolce, Coffee Category Manager at Ahold.

31. Mr. Taverna and Ms. Simmons-Dolce asked specifically about Kraft's relationship with Starbucks. Although we explained that Kraft was continuing to fulfill its contractual obligations to Starbucks, both Mr. Taverna and Ms. Simmons-Dolce expressed

concern over the “uncertainty” surrounding the Kraft-Starbucks relationship. They mentioned that Starbucks was a key point of difference for Tassimo that distinguished it from its competitors.

32. Based on my experience in this industry and in working with Kraft’s customers, I believe that, as a direct result of Starbucks’ attempt to terminate, Ahold is unlikely make a firm decision about whether to take on the Tassimo product line so long as the uncertainty about future availability of Starbucks T Discs persists. I also believe that, but for Starbucks’ announcement that it would terminate its relationship with Kraft, Ahold would more likely have been in a position to move forward with the sale of the Tassimo brewers and T Discs.

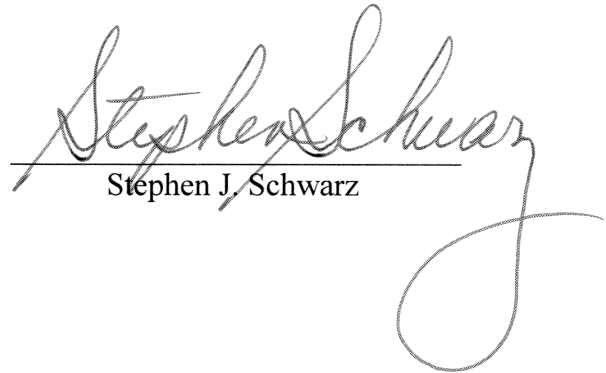
33. Attached as Exhibit 1 is a true and correct copy of an email from Brian Bloom, Customer Category Manager of Hannaford, a retailer that agreed to carry the Tassimo system beginning January 2011, who also expressed concerns about Tassimo resulting from the Starbucks announcements.

34. Attached as Exhibit 2 is a true and correct copy of an email from David Shields, Director Strategy and Specialty Development for Kraft, relaying concerns expressed by Bed Bath & Beyond. These concerns about the Tassimo are caused by the uncertainty created by the Starbucks’ announcements. Bed Bath & Beyond is the largest retailer of on demand beverage systems in North America.

35. This declaration is based upon my personal knowledge and/or upon my review of true and correct copies of documents created and/or kept in the normal course of business by Kraft, and I could competently testify to these facts if called as a witness.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing information is true and correct.

Dated: December ____, 2010



Stephen J. Schwarz

EXHIBIT E

Declaration of KRAFT employee David Hyland

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff, :

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

STARBUCKS CORPORATION, :

Defendant. :
----- X

DECLARATION OF DAVID C. HYLAND

I, David C. Hyland, hereby depose and state as follows:

1. I am the Senior Director of Tassimo for Kraft Foods Global, Inc. (“Kraft”). My duties and responsibilities generally include developing the annual and long term strategy for marketing, advertising, sales and market research. Prior to becoming Senior Director of Tassimo, I was Director of Gevalia, another coffee brand in Kraft’s product portfolio.

2. Industry analyses demonstrate that the market for single-cup beverage machines, also known as “on demand” beverage systems, represents one of the best opportunities for growth in the coffee market. Attached hereto as Exhibit 1 is a true and correct copy of a Bank of America/Merrill Lynch Report on Green Mountain Coffee Roasters (“Unit sales of single serve coffee makers have increased +38.7% since 2004, faster than overall industry average. Single-cup coffee portion pack sales are currently growing at a double-digit rate as more consumers have adopted the product.” p. 5). Attached hereto as Exhibit 2 is a true and correct copy of a Cannacord/Genuity analysis of Green Mountain Coffee Roasters (“Our thesis remains that single cup brewing is a major consumer trend that will lead to short-term and long-term conversion of

home coffee brewing.” p. 1). Industry-wide sales of such systems in 2010 through September up by 87% versus the same period in 2009 (previously the highest year ever).

3. Single-cup beverage machines use pre-packaged beverage products (such as coffee, tea, or milk products) contained in a cup, pod, filter, bag or other container used to quickly prepare a single-cup beverage (“beverage discs”). As a closed system, the only consumers of particular beverage disc types are the owners of the associated brewers or those who have access to them.

4. Kraft has been in the single-cup brewer market since 2004, and developed, with Bosch, a single-cup beverage machine using proprietary technology belonging to Kraft under the “Tassimo” brand name.

5. The Tassimo system uses beverage discs containing coffee, tea, hot chocolate, or milk, referred to as “T Discs,” to brew a single-cup of coffee, tea, or other beverage on demand.

6. Tassimo is a closed brewing system, meaning that only Tassimo T Discs can be used in the Tassimo brewers (and, conversely, T Discs can only be used in Tassimo brewers). Kraft Foods is the exclusive manufacturer and distributor of Tassimo T Discs.

7. Tassimo brewers are manufactured and sold by Bosch in certain grocery stores and in other retail outlets such as Bed, Bath and Beyond, and sold by Kraft through direct to consumer channels like Tassimo.com.

8. It is important to the success of any single-cup beverage machine that beverage discs containing super-premium coffee be available on the system.

9. In August 2006 and July 2007, Kraft and Starbucks entered into Tassimo Supply and License Agreements (“Tassimo Agreements”), which together gave Kraft the exclusive right to license, market, sell, and distribute T Discs bearing the Starbucks, Seattle’s Best and Tazo

trademarks in specified channels in the United States (that include grocery stores, drug stores, mass merchandisers, and club stores).

10. The Tassimo Agreements preclude Kraft from offering T Discs containing any super-premium coffee other than Starbucks' brand coffee in those channels specified in the agreements. It also precludes Starbucks from marketing, distributing, or selling any other beverage discs in the United States through the specified channels and from granting any license permitting any third party to do so, under the Starbucks, Seattle's Best, or Tazo trademarks. Kraft's exclusive ability to offer Starbucks products in T Discs clearly distinguishes the Tassimo system from other single-cup brewers and gives it a significant competitive advantage over competing single-cup brewers. But the Tassimo system would have no super-premium coffee other than the Starbucks products in the defined channels. Kraft believed this risk was minimized by the Agreements.

11. In 2009, more than 22% of Kraft's revenues from sales of T Discs came from T Discs bearing the Starbucks brands (i.e., Starbucks, Seattle's Best, and TAZO). Through November of 2010, over one quarter of Kraft's 2010 revenues from sales of T Discs came from T Discs bearing the Starbucks brands.

12. Kraft developed comprehensive plans to gain market share in the on-demand segment with the focus culminating in the fourth quarter of 2010. One of the essential components of the plan is expanded retail distribution of the Tassimo brewer.

13. Because of the closed nature of nearly all such systems, success in this market requires early and substantial market penetration in the sale of brewers. *See* Exhibit 1 [BOA report] p. 9 stating "**Increasing the installed brewer base is critical:** . . . long-term sales

opportunity can be estimated by forecasting the potential for total installed brewers and the average rate of [beverage disc] use per brewer.

14. Fourth quarter sales are critical to Kraft's strategy regarding Tassimo. In 2008 and 2009 approximately 60% of all Tassimo brewers sold were sold in the fourth quarter, during the holiday shopping period.

15. Beginning in late 2009 Kraft met with potential retail customers to secure additional distribution points for Tassimo brewers and T Discs for the fourth quarter of 2010. Kraft's ability to offer Starbucks beverages for the Tassimo system was a key point of difference between its Tassimo system and other on demand systems that helped secure new and expanded distribution. Starbucks was aware of these efforts, was aware of Starbucks being a focus of the presentation, and even attended a meeting with SuperValu, Inc. – one of the largest grocery retailers in the United States. At no point did Starbucks ever suggest that Kraft should not use Starbucks as a focus of sales presentations to prospective customers.

16. As a result of Kraft's efforts in the first three quarters of 2010, during the fourth quarter holiday sales, the Tassimo system (brewers and T Discs) is available in significantly more locations than in 2009, and has a significantly increased presence in many of the locations in which they had already been available.

17. In coordination with the increased availability of the Tassimo system, Kraft nearly doubled its fourth quarter promotional investment in Tassimo from 2009, including a 129% increase in in-store spending and more than a 500% increase in television advertising.

18. As a part of the plan, Kraft negotiated with Starbucks to expand the companies' partnership with respect to Tassimo in early 2010. Pursuant to this negotiation, Starbucks

requested information from Kraft relating to every detail of Kraft's on-demand beverage business.

19. Kraft provided Starbucks with highly confidential, detailed information about its on-demand beverage business, including comprehensive marketing plans, sales information, and detailed profit/loss calculations and planning. Much of what was provided was confidential trade secret information that Kraft designated accordingly, including Kraft's strategy for capturing market share in the "on demand" single serve coffee market which included Kraft's intentions regarding the fourth quarter of 2010. In early May 2010, the parties were unable to come to agreement and the negotiations ended.

20. With Starbucks knowledge and participation, Kraft moved forward with the plans to use Kraft's ability to provide Starbucks super-premium coffees as a means to help position Tassimo to take advantage of the 2010 holiday shopping season.

21. In November, Starbucks made public statements that it was terminating its distribution agreements with Kraft that generated substantial commentary by the public-at-large on Tassimo's future. Attached hereto as Exhibit 3 is a true and correct copy of a CNNMoney.com report of November 23 (speculating whether Starbucks leaving Kraft would end Kraft's involvement with Tassimo and Kraft's coffee business altogether). Attached hereto as Exhibit 4 is a true and correct copy of a Fox News article of November 5, 2010 (speculating on Starbucks moving to a Tassimo competitor, Keurig, and whether Kraft would get out of the coffee business).. Attached hereto as Exhibit 5 is a true and correct copy of a December 9, 2010 Comment of Euromonitor International (speculating on Starbucks moving to Keurig). Attached hereto as Exhibit 6 is a true and correct copy of A December 1, 2010 analysis of Kraft foods ("In addition single serve Tassimo has been a struggle and loss of the premium Starbucks retail brand

is difficult to offset” p. 1; “It isn’t clear whether Tassimo can get a fresh start and grow more rapidly to become a factor in the market. Given the early struggle, it will likely take significant funding to emerge as a viable concept in the eyes of U.S. consumers. While the agreement between Kraft and Starbucks that is currently under dispute is different from the contract between Kraft’s Tassimo and Starbucks, one has to wonder how long that relationship continues.” p. 4).

22. This commentary also included social media consumer statements responding to the news reports of Starbucks announcement, the blog commentary, and the analysis. The comments indicate that consumers’ decision to buy the Tassimo system is heavily effected by the uncertainty created by Starbucks’ actions. Attached hereto as Exhibit 7 is a true and correct copy of comments left on the Tassimo Community Board at (<http://innercircle.tassimodirect.com/category/Forums/3>) between November 3-29, 2010 (multiple stated concerns regarding Tassimo’s future and offerings, highlighting added). Attached hereto as Exhibit 8 is a true and correct copy of comments left on the Tassimo Facebook page from November 1-29, 2010 (expressing concerns over the fate of and offering for the Tassimo, highlighting added).

23. Kraft has the ability to bring another super-premium coffee offering for the Tassimo system to the market within six months, but a significant investment is needed to do so.

24. This investment includes securing a replacement super-premium coffee brand, notifying consumers and retailers of the replacement, and a significant marketing campaign to raise the consumer awareness and appreciation for the replacement brand.

25. If Starbucks had exercised its right to terminate the R&G Agreement (and then the Tassimo Agreements) as of March of 2011, by providing notice in September 2010 and

paying the monetary payment, and refraining from attacks Kraft would have been able to suitably replace Starbucks brand offerings by March 1, 2011, and convey to consumers and retailers, with certainty, what would be available on the Tassimo system.

26. By not exercising that option, and instead attempting to impermissibly, unilaterally terminate the R&G Agreement (and the Tassimo Agreements), Starbucks has left Kraft unable to appropriately replace Starbucks brand super-premium coffee offerings in Tassimo.

27. Under the current conditions, Kraft cannot inform its retailers what super-premium offerings will be available for Tassimo after March 1, 2011, because the exclusivity provisions restricting Kraft would still be in effect if the Agreements are still in effect after March 1, 2011.

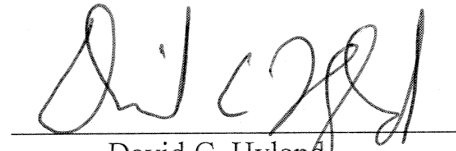
28. Under the current conditions, Kraft cannot make any commitments to or reach any agreements with providers of alternative super-premium coffees that might be offered in Tassimo in the specified channels to replace the Starbucks coffee brands because the exclusivity provisions restricting Kraft remain in effect and it is uncertain when they will no longer apply.

29. Under the current conditions, Kraft cannot inform consumers wishing to buy a Tassimo system what super-premium coffee offerings will be available, because the exclusivity provisions restricting Kraft would still be in effect if the Agreements are still in effect after March 1, 2011.

30. This declaration is based upon my personal knowledge and/or upon my review of true and correct copies of documents created and/or kept in the normal course of business by Kraft Foods, and I could competently testify to these facts if called as a witness.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing information is true and correct.

Dated: December 21, 2010



David C. Hyland