

2015

K-Cup Crusade for Consumers

Shirley Chen

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Shirley Chen *K-Cup Crusade for Consumers*, 27 Loy. Consumer L. Rev. 450 (2015).

Available at: <http://lawcommons.luc.edu/lclr/vol27/iss3/5>

This Consumer News is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

K-CUP CRUSADE FOR CONSUMERS

Shirley Chen¹

I. INTRODUCTION

Keurig Green Mountain, Inc. (“Keurig”) has been a powerful player in the coffee industry with nearly one in five adults drinking single-cup-brewed coffee, and one in three American homes owning a pod-based coffee machine.² However, this coffee company has found itself in hot water as it faces a slew of controversy, ranging from consumer concerns over costs, safety and sustainability to criticisms over its new 2.0 model and use of tactics to exclude competitors from the market, prompting lawsuits. Thus, Keurig’s next actions in moving forward with its business are fundamental to its future success. This Article will first explore the features of Keurig’s products that have caught the hearts of coffee drinkers all over America and the accompanying trade-offs of which consumers should be aware. Next, it will address the litigation related to Keurig’s decision to change its product model nearly two years after its patent expiration over the K-Cup design. Lastly, it will provide some concluding remarks regarding the considerations Keurig should contemplate if it wishes to appeal to consumers and continue dominating the market for single-cup-brewed coffee.

¹ J.D./M.B.A. Candidate, May 2015, Loyola University Chicago School of Law and Quinlan School of Business

² Maddie Oatman, *Your Coffee Pods’ Dirty Secret*, MOTHER JONES (Mar. 19, 2014), <http://www.motherjones.com/blue-marble/2014/03/coffee-k-cups-green-mountain-polystyrene-plastic>; James Hamblin, *A Brewing Problem: What’s the healthiest way to keep everyone caffeinated?*, ATLANTIC (Mar. 2, 2015), <http://www.theatlantic.com/technology/archive/2015/03/the-abominable-k-cup-coffee-pod-environment-problem/386501/>.

II. CONVENIENCE OVER COSTS

One of the greatest benefits that the Keurig machine provides is the ease at which a consumer can make and drink a cup of coffee. While making a traditional pot of coffee does not require an elaborate process that takes an exorbitant amount of energy and time, Keurig still creates an end product with a level of efficiency superior to an existing product, and consumers value that.³ Many consider the product innovative because it has tapped into a trend of extreme convenience at the push of a button.⁴ In fact, other companies are even trying to replicate Keurig's model by delivering other habit-forming substances with ease.⁵ For instance, Synek and Somabar are experimenting with pods that transform into craft beers and cocktails, respectively. Other food companies are participating: Nature Valley is even testing oatmeal pods, while Campbell's is experimenting with soup pods.⁶ The machine is also convenient with its low maintenance requirements.⁷

The costs to purchase and use products like these often become secondary, but consumers should be aware of the trade-off. First, surviving on this single-cup-brewed coffee method involves the actual purchase of a Keurig machine, which runs at a price of at least \$100 in comparison to its \$20 to \$25 basic coffee-maker counterpart.⁸ Moreover, the actual consumption of the Keurig pods, or K-Cups, is where the household economics come into play.⁹ Comparing the small amount of coffee within the actual K-cup to the quantity provided in an average bag of ground or whole coffee beans, the

³ Richard Feloni, *The Keurig K-Cup is the greatest thing to happen to coffee in America*, BUS. INSIDER (Mar. 13, 2015), <http://www.businessinsider.com/in-defense-of-the-k-cup-2015-3>.

⁴ Adam K. Raymond, *'Keurig for X': Pods Invade the Kitchen*, N.Y. MAG. (Mar. 18, 2015), <http://nymag.com/next/2015/03/pods-invade-the-kitchen.html>.

⁵ *Id.*

⁶ *Id.*

⁷ Oatman, *supra* note 2.

⁸ Brad Tuttle, *Here's How Much You'd Save by Dumping K-Cups for Traditional Brewed Coffee*, TIME (Mar. 5, 2015), <http://time.com/money/3733586/k-cups-price-cost-comparison-coffee/> [hereinafter *How Much You'd Save*].

⁹ *Id.*

price of K-Cup coffee costs about \$40 per pound.¹⁰ This is at least three times the price of Starbucks' pound of ground or whole coffee beans.¹¹ Although the actual costs vary depending on the brand of coffee and how often one actually drinks coffee, on average, K-Cups costs about "two or three times more per cup compared with traditionally brewed coffee."¹²

These higher costs are also in line with the additional rising cost incurred by those habitual coffee drinkers. Specifically, costs over a lifetime have increased because coffee drinkers are beginning to drink at a younger age. Furthermore, coffee is consumed more regularly with 83% of the adult population drinking coffee and 75% having coffee at least once a week. Additionally, coffee has become more expensive as gourmet brands are on the rise. Coffee is also increasingly purchased at restaurants and convenient stores as people tend to eat outside the home and on the go.¹³ Although consuming a cup of coffee from a K-Cup may not be as pricey as one from Starbucks on a daily basis,¹⁴ consumers should still take note of how much they spend on this product.

Another large concern and trade-off from using a Keurig machine is the environmental impact it has. The small, individualized K-Cups require packaging, which is not biodegradable¹⁵ and inevitably end up in landfills. Based on Keurig's production of K-Cups in 2013, there were enough K-Cups to wrap around the equator 10.5 times.¹⁶ To date, only five percent of its current cups are recyclable plastic, which also requires that the consumer separate the

¹⁰ *Id.*; Hamblin, *supra* note 2.

¹¹ *How Much You'd Save*, *supra* note 8.

¹² *Id.*

¹³ Brad Tuttle, *7 Reasons Our Coffee Habit Is Costing More These Days*, TIME (Sept. 29, 2014), <http://time.com/money/3433281/coffee-prices-costs-habit/> [hereinafter *Coffee Habit Cost*].

¹⁴ *How Much You'd Save*, *supra* note 8.

¹⁵ Hamblin, *supra* note 2.

¹⁶ Oatman, *supra* note 2; Courtney Pomeroy, *Keurig Sustainability Report Sheds Light on Environmental Impact of Single-Use 'K-Cups'*, CBS LOCAL (Mar. 2, 2015), <http://washington.cbslocal.com/2015/03/02/keurig-sustainability-report-sheds-light-on-environmental-impact-of-single-use-k-cups/>; Megan Anderle, *Brewing a coffee monopoly at Keurig, one single-serving cup at a time*, GUARDIAN (Oct. 2, 2014), <http://www.theguardian.com/sustainable-business/2014/oct/02/keurig-k-cup-coffee-monopoly-biodegradable-compost-pods>.

aluminum lid in order for the cup to be truly recyclable.¹⁷ Additionally, even if the K-Cups were diligently separated from the lids, they are often too small to be recycled.¹⁸

According to its sustainability report, Keurig plans to produce 100% recyclable pods by 2020.¹⁹ However, these promises have not stopped criticism over the product. Even Keurig's own creator, John Sylvan, stated in an interview that he felt bad that he ever invented it in the first place. In the midst of public condemnation of the pollution that K-Cups produce, Sylvan is convinced that the pods will never be recyclable given their makeup of no. 7 plastic.²⁰ Moreover, a campaign titled, "Kill the K-Cup" emerged, in which a small production company created a short viral video to encourage consumers to cease from using the product.²¹

Most recently, safety concerns have likewise arisen over the plastic used in the pods, as well as the functionality of the machine itself. In regards to the plastic, Darby Hoover of the National Resources Defense Council explains that no. 7 plastic indicates "other", or a plastic mix with the potential presence of polystyrene along with the possible carcinogen chemical styrene.²² The actual makeup of Keurig's no. 7 plastic used in its packaging remains unknown as Keurig claims that the information is proprietary.²³ Furthermore, Keurig recalled 7.2 million coffee makers in the United States and Canada earlier this year.²⁴ Keurig worked with the U.S. Consumer Product Safety Commission after nearly 200 reports of incidents resulting from use of the machine, in which hot liquid escaped from the brewer and caused roughly 90 burn-related injuries.²⁵

¹⁷ Oatman, *supra* note 2.

¹⁸ *Id.*

¹⁹ Pomeroy, *supra* note 16; Anderle, *supra* note 16.

²⁰ Hamblin, *supra* note 2.

²¹ *Id.*

²² Oatman, *supra* note 2.

²³ *Id.*

²⁴ Laura Castro, *Keurig Recalls 7.2 Million Coffee Makers Amid Safety Concerns*, NAT'L L. J. (Jan. 8, 2015).

²⁵ *Id.*

III. K-CUP LITIGATION

In 2012, Keurig's patent on the K-Cup design expired. This allowed other companies to enter into the market and create coffee pods that could be used in Keurig machines. In fact, many of these competitors tried to address some of the issues discussed above, namely the cost-effectiveness of using the product alongside the environmental concerns. For instance, Canterbury Coffee, a Canadian brand, makes a 92 percent biodegradable version in which everything, except for the nylon filter, can be broken down.²⁶ The Rogers Family Co. ("RFC"), based in Lincoln, California, has created a pod that is 97 percent biodegradable.²⁷ The problem that companies like these face is that Keurig's new 2.0 model has a "lock-out" technology which only allows the machine to brew K-Cups from its licensed partners.²⁸

This is where much of the litigation against Keurig stems. In February 2014, TreeHouse Foods Inc. ("TreeHouse") hit Keurig with an antitrust suit in a New York federal court.²⁹ Specifically, TreeHouse alleged that Keurig was implementing anti-competitive tactics by entering into exclusive deals with distributors and manufacturers to illegally maintain a monopoly over single-serve coffee brewers, notwithstanding the fact that Keurig's patent over the K-Cup had already expired.³⁰ For example, Dunkin' Donuts entered into a deal with Keurig in which Keurig would be the exclusive producer of Dunkin' K-Cup.³¹ Keurig also has the right to distribute the Dunkin' packs to specialty stores and office supply retailers.³²

²⁶ Oatman, *supra* note 2.

²⁷ Anderle, *supra* note 16.

²⁸ David Friend, *Keurig: People Are Hacking Our Coffee Machines Because They Need A Challenge*, CAN. PRESS (Nov. 17, 2014), http://www.huffingtonpost.ca/2014/11/17/keurig-canada-backlash_n_6172626.html.

²⁹ Michael Lipkin, *Keurig Hit With Antitrust Suit Over Alleged Coffee Monopoly*, LAW 360 (Feb. 11, 2014).

³⁰ *Id.*

³¹ Lisa Baertlein & Anjali Athavaley, *Dunkin' Brands' K-Cup packs to be sold online and at retail stores*, REUTERS (Feb. 26, 2015), <http://www.reuters.com/article/2015/02/26/dunkinbrands-agreement-kcup-idUSL4N0W056F20150226>.

³² *Id.*

Thus, due to this agreement, Dunkin' K-Cups are compatible with the new 2.0 model.

Keurig's push to enter into exclusive licensing agreements, TreeHouse argues, is to push out other companies that create K-Cups in order to charge a higher price for its own version.³³ Furthermore, Keurig's actions are allegedly in violation of the Sherman Act, the Clayton Act, and unfair competition laws in several states (New York, Wisconsin and Illinois), given that its actions coerced business partners throughout the K-Cup distribution system to maintain its monopoly after its patents expired.³⁴ Most notably, TreeHouse claims that Keurig's multiyear agreements with sellers of machinery used to make Keurig-compatible cups, coffee roasters and others, cuts off resources to other companies which are needed to effectively compete with Keurig.³⁵

Lastly, TreeHouse takes issue with the 2.0 brewer because Keurig does not have a patent on the new K-cups and essentially forces consumers to pay more for Keurig K-Cups as well as limits their options for preferred beverages.³⁶ The model uses a technology that was originally used to prevent copyrighted material from being pirated.³⁷ In fact, TreeHouse contends that its own products would provide consumers with more choice for quality products at substantially lower prices.³⁸ Keurig, on the other hand, claims that the technology is not meant to kick others out of the market, but rather ensure quality of coffees brewed by its machine.³⁹

³³ Lipkin, *supra* note 29.

³⁴ *Id.*; Dan D'Ambrosio, *Lawsuits claim K-Cup maker violates antitrust laws*, USA TODAY (Apr. 22, 2014), <http://www.usatoday.com/story/news/nation/2014/04/22/lawsuits-claim-k-cup-maker-violates-antitrust-laws/8028197/>; Seth Golden, *Keurig Green Mountain's Litigation Situation Is Heating Up In the Consumer Space*, SEEKING ALPHA (Dec. 22, 2014), <http://seekingalpha.com/article/2773235-keurig-green-mountains-litigation-situation-is-heating-up-in-the-consumer-space>.

³⁵ Lipkin, *supra* note 29.

³⁶ *Id.*

³⁷ Anna Gallegos, *Lawsuit Claims Keurig Wants Coffee Monopoly with New Single-Cup System*, LEXBLOG NETWORK (Mar. 5, 2014), <http://www.lxbn.com/2014/03/05/lawsuit-claims-keurig-wants-coffee-monopoly-new-single-cup-system/>.

³⁸ D'Ambrosio, *supra* note 34.

³⁹ Gallegos, *supra* note 37.

RFC has also brought a parallel lawsuit against Keurig, alleging similar violations of anti-competitive behavior, specifically the exclusive agreements with suppliers and distributors.⁴⁰ In its own experience, the company has felt that Keurig implements bullying tactics to force other cup manufacturers to enter into exclusive anti-competitive agreements—agreements to which many, in fact, did enter.⁴¹ RFC also attempted to halt the production of Keurig's 2.0 brewers while the lawsuit was pending, but on September 19, 2014, a district court judge in Manhattan denied the request.⁴² RFC has gone beyond merely filing a case against Keurig. It created the "Freedom Clip" which is a video that demonstrates how to get around the lock-out technology that the 2.0 Keurig currently uses.⁴³ Vice President of RFC, Jim Rogers, states, "it boils down to you shouldn't tell the American consumer what they can or can't use."⁴⁴ Not only are consumer rights at stake, but Rogers also believes that a win for Keurig would be a significant blow to innovation and the movement towards more sustainable coffee.⁴⁵

Shortly after the district court judge denied RFC's request for an injunction on the production of the 2.0 brewer, Canada's Club Coffee ("CCC") joined the movement to sue Keurig, likewise alleging anti-competitive measures to maintain a near-monopoly in the single-cup-brewed coffee market.⁴⁶ The company is specifically seeking \$600 million in damages, claiming that Keurig was disseminating false information regarding its competitor's coffee pods. In particular, Keurig allegedly claimed that CCC's products would damage Keurig brewers.⁴⁷ Furthermore, the complaint also alleges that Keurig coerced third parties into exclusive agreements,

⁴⁰ Claudia Buck, *Lincoln company sells device to fool Keurig machine*, SACRAMENTO BEE (Mar. 21, 2015), <http://www.sacbee.com/news/business/article15746789.html>.

⁴¹ Anderle, *supra* note 16.

⁴² *Id.*

⁴³ Buck, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ Anderle, *supra* note 16.

⁴⁶ Ashutosh Pandey & Yashaswini Swamynathan, *UPDATE 2 — Canada's Club Coffee sues Keurig Green Mountain for \$600 million*, REUTERS (Oct. 1, 2014), <http://www.reuters.com/article/2014/10/01/keurig-green-club-coffee-idUSL3N0RW3BF20141001>.

⁴⁷ *Id.*; Golden, *supra* note 34.

which prevents other companies from effectively competing in the market.⁴⁸

These individual lawsuits brought upon by competitors are joined with about a dozen class action complaints brought by individuals in California, Florida, New York, Massachusetts and New Jersey, along with one insurance company in Maryland.⁴⁹ Additionally, in June 2014, the U.S. Judicial Panel on Multidistrict Litigation ordered that 25 actions in the District of Delaware, the Southern District of New York, Eastern District of California, and District of Massachusetts all be centralized in pretrial in the Southern District of New York.⁵⁰ Plaintiff TreeHouse opposed centralization in New York because it claimed that it suffered unique harm from prior “sham” litigation that Keurig brought against it.⁵¹ However, given that the actions shared common factual allegations, the panel decided to consolidate the complaints in the Southern District of New York, which was the best location for multidistrict litigation due to Keurig’s principal place of business in Vermont, which would make it easy to obtain evidence.⁵²

Throughout the onslaught of suits filed, Keurig maintains that the lawsuits are without merit and plans to defend them vigorously.⁵³

IV. CONCLUSION

The approach that Keurig is taking in response to these lawsuits may not be the best strategy if it intends to continue dominating the single-cup-brewed coffee market. While it claims that the lawsuits have no merit, consumers themselves are speaking out against many of the actions Keurig has taken and the actual product itself. For instance, the Keurig 2.0 brewers received an abundance of negative feedback because consumers were not adequately informed of the lock-out technology.⁵⁴ As the number of complaints to the

⁴⁸ *Id.*

⁴⁹ D’Ambroso, *supra* note 34.

⁵⁰ Amaris Elliott-Engel, *Antritrust MDL Formed Over Keurig Coffee Machines*, NAT’L L. J., (June 4, 2014).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Anderle, *supra* note 16.

⁵⁴ Golden, *supra* note 34.

Better Business Bureau increase,⁵⁵ Keurig should be mindful of how consumers actually think and behave, rather than making assumptions. For instance, consumers do not want to be forced to use certain products, and Keurig made the mistake of believing that its brand loyalty was sufficient enough to launch the 2.0 model.⁵⁶ Furthermore, Keurig needs to recognize the purchasing power that consumers have in making decisions that align with their values. Environmental concerns and sustainability are also on the minds of consumers, which companies like Chipotle and Starbucks have incorporated into in their business models.⁵⁷ Thus, the next steps that Keurig takes in addressing consumer concerns and fighting these legal battles may drastically alter the landscape of the single-cup-brewed coffee industry.

⁵⁵ *Id.*

⁵⁶ Ashley Lutz, *Keurig is making 2 mistakes that are driving customers away*, BUS. INSIDER (Apr. 3, 2015), <http://www.businessinsider.com/keurigs-biggest-mistakes-hurting-business-2015-4>.

⁵⁷ *Id.*