



Court File No. T-557-22

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

B E T W E E N:

(Court Seal)

JANE FINCH

Plaintiff

and

KEURIG CANADA INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you must prepare a Statement of Defence in Form 171B prescribed by the [Federal Court Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court.

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Court Rules](#).

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date 10-MAR-2022 Issued by Abigail Grimes, Registry Officer
Local Registrar

Address of local office: Federal Court
180 Queen Street West,
Toronto ON M5V 1Z4

TO: **KEURIG CANADA INC.**
3700 Rue Jean-Rivard
Montreal, QC H1Z 4K3

CLAIM

I. DEFINED TERMS

1. In this Statement of Claim, the following terms have the following meanings:
 - (a) “**Class**”, including the “**Class Period**”, means all persons in Canada who purchased K-Cups marketed as recyclable, or a Keurig Coffee Maker, between April 15, 2016 and the date of certification of this proceeding;
 - (b) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34;
 - (c) “**K-Cups**” means single-serve beverage capsules sold or marketed by Keurig or in partnership with Keurig or licensed by Keurig, and designed for use in a Keurig Coffee Maker;
 - (d) “**Keurig**” means the defendant, Keurig Canada Inc.;
 - (e) “**Keurig Coffee Maker**” means any single-serve beverage machine that uses K-Cups, sold or marketed by Keurig or in partnership with Keurig or licensed by Keurig;
 - (f) “**Misrepresentations**” means the representations described below at paragraphs 8 to 11.

II. RELIEF SOUGHT

2. The proposed representative plaintiff, on behalf of the Class, claims:

- (a) an order certifying this action as a class proceeding and appointing her as the representative plaintiff for the Class;
- (b) a declaration that Keurig breached s. 52 of the *Competition Act*;
- (c) damages or losses under s. 36 of the *Competition Act* in the amount of \$50 million, or such amounts to be particularized prior to trial;
- (d) investigative costs and the costs of this proceeding pursuant to s. 36 of the *Competition Act*;
- (e) the costs of this proceeding on a substantial indemnity basis, plus applicable taxes;
- (f) pre-judgment interest and post-judgment interest; and
- (g) such further and other relief as this court may deem just.

III. FACTS

A. Overview

3. Keurig has marketed and sold Keurig Coffee Makers and K-Cups in Canada since 1998. Keurig Coffee Makers and K-Cups are advertised to the public as convenient and simple ways to brew coffee and other beverages. However, K-Cups were not recyclable and were not advertised as recyclable when they were introduced to the market.

4. Keurig knew that the lack of recycling options for K-Cups was an important issue for the public and consumers. In 2013, Keurig acknowledged that “[t]he lack of recycling options for used K-Cup packs stand out front and centre” and that “our customers and consumers have been asking for greater progress, especially as our Keurig Brewing Systems continue to grow in popularity and as we look to expand to global markets.” In 2013, Keurig set a target for all of its K-Cups to be recyclable by 2020.

5. However, in 2014 and 2015, there were growing public criticisms expressed about the non-recyclable nature of K-Cups and their deleterious impact on the environment. In response, Keurig acknowledged that if it failed to successfully develop and introduce a recyclable K-Cup, the public would lose trust and confidence in its brand, resulting in damage to the Keurig brand.

6. As a result, Keurig accelerated its development and marketing of recyclable K-Cups. By 2016, Keurig launched a campaign to communicate the representation that certain K-Cups were recyclable.

7. Keurig continued to develop and market recyclable K-Cups from 2016 to 2018 and promoted the representation that its new K-Cups were conveniently recyclable across Canada. By 2018, ahead of the 2020 target Keurig had set in 2013, all K-Cups sold in Canada were marketed as conveniently recyclable.

8. Keurig represented that K-Cups are recyclable in each location where those representations were made to the public in Canada (the “**Recyclable Representations**”). However, contrary to the Recyclable Representations, K-Cups are not widely accepted for recycling in municipal recycling programs outside the provinces of British Columbia and Quebec. The Recyclable Representations

were false or misleading in a material respect in locations where K-Cups are not recyclable in municipal recycling programs.

9. Keurig also represented the general impression that members of the public could conveniently and easily prepare K-Cups for recycling by peeling the lid off and emptying out the contents (“Dump and Toss”) (the “**Disposal Representations**”). As described above, most municipalities in Canada forbid recycling of K-Cups. Further, for the few municipalities in Canada that do allow K-Cups to be recycled, they ban the “Dump and Toss” method of recycling described in Keurig’s Disposal Representations. The Disposal Representations were false or misleading in a material respect throughout Canada.

10. Keurig also represented that recycling of the product in the manner shown in its advertisements was good for the environment (the “**Green Representations**”). However, contrary to the Green Representations, encouraging consumers to include K-Cups in their recycling bins was harmful to municipal recycling programs and therefore had harmful impacts on the environment.

11. The “Recyclable Representations”, “Disposal Representations” and the “Green Representations” are collectively described as the “**Representations**” or as “**Conveniently Recyclable**”.

12. Keurig knowingly or recklessly made the false or misleading Representations, contrary to s. 52 of the *Competition Act*.

13. In 2021, Keurig entered into a Consent Agreement with the Commissioner of Competition pursuant to s. 74.12 of the *Competition Act* with respect to the Recyclable Representations and the

Disposal Representations under s. 74.01(1)(a) of the *Competition Act* and agreed to pay an administrative monetary penalty of \$3 million. Keurig agreed to notify the public that K-Cups “are not widely recycled in municipal recycling programs outside of British Columbia and Quebec,” contrary to the impression that K-Cups could be conveniently recycled across Canada.

14. The proposed class claims damages and losses pursuant to s. 36 of the *Competition Act*, arising out of a breach of s. 52 of the *Competition Act*.

B. The Parties

(i) *The Defendant*

15. Keurig is a corporation incorporated under the laws of New Brunswick. It has two headquarters, in Montreal and Mississauga, and has branch offices in 30 cities across Canada.

(ii) *The Plaintiff*

16. The proposed representative plaintiff, Jane Finch, is a resident of Toronto.

17. Ms. Finch purchased a Keurig Coffee Machine in 2016 and purchased K-Cups for use in the machine. She suffered loss or damage as a result of the Recyclable Representations and the Disposal Representations. She would not have purchased the Keurig Coffee Machine or K-Cups but for her belief that K-Cups were recyclable.

C. The Misrepresentations

18. As early as 2013, Keurig knew that there was public concern that ubiquitous K-Cups were not recyclable and were not environmentally friendly. Keurig announced a plan for all of its K-Cups to be recyclable by 2020.

19. In 2014 and 2015, Keurig faced increasing amounts of public criticism over the non-recyclable nature of K-Cups and their negative impact on the environment. Keurig acknowledged the issue was damaging for its brand.

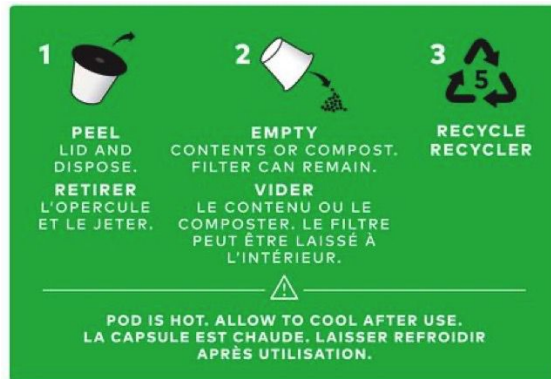
20. As a result, Keurig accelerated the drive to make K-Cups recyclable. Beginning in or about April, 2016, Keurig announced that three of four pod types available for the Keurig 2.0 hot system brewer were recyclable and that an increasing number of K-Cup pods would transition to a recyclable format each year.

21. By 2017, Keurig knew that over 60 percent of its customers considered the impact on the environment to be their #1 concern with purchasing Keurig Coffee Machines and K-Cups. By 2018, all K-Cups sold in Canada were advertised to the public as conveniently recyclable.

22. Keurig's made the Representations during the Class Period. Keurig represented to the public that K-Cups were Conveniently Recyclable on its website, online videos, social media posts, product packaging and product displays, among others. Examples of these Representations are reproduced below:

HOW TO RECYCLE K-CUP® PODS IN THREE EASY STEPS





Keurig Dr Pepper Canada
@KDP_Canada



Simple and clear messaging is key to drive behaviour change. This is why we've made it as easy as possible to recycle our new recyclable K-Cup® pods!

Learn more in this article from @SustainBrands:
bit.ly/2sBaxXH

#KeepItSimple

1:36 PM · Jun 6, 2018 · Twitter Web Client

23. Keurig further stated in its advertisements to the public:
- (a) “[R]ecycling with Keurig is easy”
 - (b) “At work, respecting the environment can be difficult [...] But with Keurig, recycling is easy.”
 - (c) “KEURIG PRESENTS 3 EASY RECYCLING STEPS”
 - (d) “KEURIG K-CUP PODS NOW RECYCLABLE”
 - (e) “[...] see how we pursued innovative strategies to make sure our K-Cup® pods were not only recyclable. but could actually be recycled.*”
 - (f) "SAME PERFECT TASTE, NOW RECYCLABLE”
24. However, contrary to the Representations, K-Cups were not Conveniently Recyclable:
- (a) at least fifteen major cities, metropolitan areas, and regional municipalities prohibit K-cups altogether from their recycling systems. These include: Calgary, Durham Region, Edmonton, Halton Region, Hamilton, Moncton, Ottawa, PEI, Peel Region, Regina, Saskatoon, St. John’s, Toronto, Winnipeg and York Region;
 - (b) although some municipalities accept K-Cups in their recycling program, such as Vancouver, Halifax, Quebec City and Montreal, they do not accept the “Dump and Toss” method described in the Disposal Representations;

- (c) contrary to the Green Representations, recycling K-Cups as shown in Keurig's ads creates significant contamination in municipal recycling programs, and therefore results in harmful impacts on the environment.

25. The Representations were false or misleading in a material respect. Keurig knowingly or recklessly made the false or misleading Representations for the purpose of promoting and selling Keurig Coffee Machines and K-Cups. The Representations resulted in confusion and had a deleterious impact on the effectiveness of municipal recycling programs, causing a negative impact on the environment.

26. Keurig knew the Representations were false or misleading in a material respect. It did nothing to correct the Representations until January 6, 2022.

D. The Consent Agreement

27. On January 6, 2022, Keurig entered into a consent agreement (the "**Agreement**") with the Commissioner of Competition ("**Commissioner**"). The Agreement was registered with the Competition Tribunal pursuant to the *Competition Act*.

28. In the Agreement, the Commissioner concluded that Keurig's "Recycling Representations" and "Disposal Representations" were contrary to s. 74.01(1)(a) of the *Competition Act*. Keurig recognized in the Agreement "the importance that many consumers place on recycling and sustainability for the protection of the environment". In the Agreement, Keurig did not contest the Commissioner's conclusions but did not agree with them.

29. Pursuant to the Agreement, Keurig agreed to pay an administrative monetary penalty of \$3,000,000 and to pay \$800,000 to a "charitable organisation focused on environmental causes."

Keurig also agreed to publish and distribute corrective notices, extracts of which stated that “[...] K-Cup pods are not widely recycled in municipal recycling program outside of British Columbia and Quebec.”

30. The Agreement provides for no compensation for purchasers of Keurig Coffee Machines or K-Cups.

IV. CAUSE OF ACTION

A. Breach of s. 52 of the *Competition Act*

31. Keurig knowingly or recklessly made the Representations to the public for the purposes of promoting Keurig Coffee Makers and K-Cups. The Representations were false or misleading in a material respect. Keurig knew that the Representations were false or misleading, or it was reckless.

32. The Representations were made in a consistent, common and uniform manner in television and radio promotions, websites, videos, social media posts and other marketing materials.

B. Losses or Damages under s. 36 of the *Competition Act*

33. As a result of Keurig’s false or misleading Representations contrary to s. 52 of the *Competition Act*, the Class suffered loss or damage. The Class requests losses or damages as a result of Keurig’s breach of s. 52.

C. Discoverability

34. The plaintiff and other members of the Class did not discover, and could not discover through the exercise of reasonable diligence the existence of the false and misleading Representations during the Class Period.

V. OTHER

35. The plaintiff proposes that this action be tried in Toronto.(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)

March 10, 2022

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Plaintiff

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KEURIG CANADA INC.
Defendant

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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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