

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEURIG, INCORPORATED,

Plaintiff,

v.

STURM FOODS, INC.,

Defendants.

Civil Action No. 1:10-CV-00841-SLR

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT**

Plaintiff Keurig, Incorporated (“Keurig”), by and through its undersigned counsel, for its Amended Complaint against Defendant Sturm Foods, Inc. (“Sturm”), alleges as follows:

**THE PARTIES**

1. Keurig is a Delaware corporation with a place of business at 55 Walkers Brook Drive, Reading, Massachusetts 01867.
2. Sturm is a Wisconsin corporation with a place of business at 1215 Center Street, Manawa, Wisconsin 54949.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, and for trademark infringement, trade dress infringement, unfair competition, false advertising, deceptive trade practices, dilution, and unjust enrichment under the laws of the United States, namely, the Lanham Act, 15 U.S.C. § 1051 *et seq.*
4. This action also includes claims for unfair competition arising under the laws of the State of Delaware.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391, 1400.

### **COUNT I**

#### **Infringement of United States Patent No. 7,165,488**

7. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

8. Keurig is the owner of United States Patent No. 7,165,488, entitled “Brew Chamber For A Single Serve Beverage Brewer” (the “‘488 patent”). Keurig has the right to sue for infringement of the ‘488 patent. A copy of the ‘488 patent is attached hereto as Exhibit A.

9. Sturm offers beverage cartridges that are advertised for use with Keurig’s single-serve beverage brewers.

10. On information and belief, Sturm has infringed, and continues to infringe, literally or under the doctrine of equivalents, the ‘488 patent, at least by making, using, offering to sell, and/or selling infringing beverage cartridges intended for use with Keurig’s single-serve beverage brewers within the United States.

11. On information and belief, Sturm had knowledge of the ‘488 patent before the filing of Keurig’s original complaint in this case. Keurig was informed, before the filing of the original complaint in this case, that Sturm represented to prospective buyers that it was aware of Keurig’s patent portfolio. At the very latest, Sturm had knowledge of the ‘488 patent on October 4, 2010, the date Sturm accepted service of Keurig’s original complaint in this case.

12. Sturm is inducing infringement of the ‘488 patent by causing others to use its beverage cartridges in Keurig’s single-serve beverage brewers in a manner that is covered, literally or under the doctrine of equivalents, by one or more of the claims of the ‘488 patent

within the United States. For example, the packaging for Sturm's beverage cartridges states they are "For use by owners of Keurig® coffee makers." In fact, Sturm's beverage cartridges have no other use. The packaging for Sturm's beverage cartridges also provides instructions for the use of Sturm's beverage cartridges in Keurig's single-serve beverage brewers. When "owners of Keurig® coffee makers" and other third-party consumers purchase Sturm's beverage cartridges and use them in the manner instructed by the packaging for Sturm's beverage cartridges they are directly infringing the '488 patent.

13. Sturm is contributing to infringement of the '488 patent, by causing others to use its beverage cartridges in Keurig's single-serve beverage brewers in a manner that is covered, literally or under the doctrine of equivalents, by one or more of the claims of the '488 patent within the United States. Sturm's beverage cartridges are a material part of the patent invention covered by the '488 patent. The packaging for Sturm's beverage cartridges states they are "For use by owners of Keurig® coffee makers." Sturm's beverage cartridges are not staple articles; they are, as their packaging clearly states, especially designed "For use by owners of Keurig® coffee makers." Sturm's beverage cartridges have no other use; they have no substantial noninfringing use. The packaging for Sturm's beverage cartridges also provides instructions for the use of Sturm's beverage cartridges in Keurig's single-serve beverage brewers. When "owners of Keurig® coffee makers" and other third-party consumers purchase Sturm's beverage cartridges and use them in the manner instructed by the packaging for Sturm's beverage cartridges they are directly infringing the '488 patent. By offering to sell, and/or selling its beverage cartridges, Sturm is contributing to the direct infringement by such "owners of Keurig® coffee makers" and other third-party consumers.

14. On information and belief, Sturm's infringement of the '488 patent has been and continues to be knowing and willful.

15. Sturm's infringement of the '488 patent has caused and continues to cause Keurig to suffer substantial money damages.

16. Sturm's infringement of the '488 patent has caused and continues to cause Keurig to suffer irreparable harm for which there is no adequate remedy at law.

17. This case is exceptional and therefore Keurig is entitled to an award of its attorneys fees pursuant to 35 U.S.C. § 285.

## **COUNT II**

### Infringement of United States Patent No. 6,606,938

18. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

19. Keurig is the owner of United States Patent No. 6,606,938, entitled "Two Step Puncturing And Venting Of Single Serve Filter Cartridge In A Beverage Brewer" (the "'938 patent"). Keurig has the right to sue for infringement of the '938 patent. A copy of the '938 patent is attached hereto as Exhibit B.

20. Sturm offers beverage cartridges that are advertised for use with Keurig's single-serve beverage brewers.

21. On information and belief, Sturm has infringed, and continues to infringe, literally or under the doctrine of equivalents, the '938 patent, at least by making, using, offering to sell, and/or selling infringing beverage cartridges intended for use with Keurig's single-serve beverage brewers within the United States.

22. On information and belief, Sturm had knowledge of the '938 patent before the filing of Keurig's original complaint in this case. Keurig was informed, before the filing of the

original complaint in this case, that Sturm represented to prospective buyers that it was aware of Keurig's patent portfolio. At the very latest, Sturm had knowledge of the '938 patent on October 4, 2010, the date Sturm accepted service of Keurig's original complaint in this case.

23. Sturm is inducing infringement of the '938 patent by causing others to use its beverage cartridges in Keurig's single-serve beverage brewers in a manner that is covered, literally or under the doctrine of equivalents, by one or more of the claims of the '938 patent within the United States. For example, the packaging for Sturm's beverage cartridges states they are "For use by owners of Keurig® coffee makers." In fact, Sturm's beverage cartridges have no other use. The packaging for Sturm's beverage cartridges also provides instructions for the use of Sturm's beverage cartridges in Keurig's single-serve beverage brewers. When "owners of Keurig® coffee makers" and other third-party consumers purchase Sturm's beverage cartridges and use them in the manner instructed by the packaging for Sturm's beverage cartridges they are directly infringing the '938 patent.

24. Sturm is contributing to infringement of the '938 patent, by causing others to use its beverage cartridges in Keurig's single-serve beverage brewers in a manner that is covered, literally or under the doctrine of equivalents, by one or more of the claims of the '938 patent within the United States. Sturm's beverage cartridges are a material part of the patent invention covered by the '938 patent. The packaging for Sturm's beverage cartridges states they are "For use by owners of Keurig® coffee makers." Sturm's beverage cartridges are not staple articles; they are, as their packaging clearly states, especially designed "For use by owners of Keurig® coffee makers." Sturm's beverage cartridges have no other use; they have no substantial noninfringing use. The packaging for Sturm's beverage cartridges also provides instructions for the use of Sturm's beverage cartridges in Keurig's single-serve beverage brewers. When

“owners of Keurig® coffee makers” and other third-party consumers purchase Sturm’s beverage cartridges and use them in the manner instructed by the packaging for Sturm’s beverage cartridges they are directly infringing the ‘938 patent. By offering to sell, and/or selling its beverage cartridges, Sturm is contributing to the direct infringement by such “owners of Keurig® coffee makers” and other third-party consumers.

25. On information and belief, Sturm’s infringement of the ‘938 patent has been and continues to be knowing and willful.

26. Sturm’s infringement of the ‘938 patent has caused and continues to cause Keurig to suffer substantial money damages.

27. Sturm’s infringement of the ‘938 patent has caused and continues to cause Keurig to suffer irreparable harm for which there is no adequate remedy at law.

28. This case is exceptional and therefore Keurig is entitled to an award of its attorneys fees pursuant to 35 U.S.C. § 285.

### **COUNT III**

#### **Trademark Infringement Under 15 U.S.C. § 1114**

29. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

30. Keurig owns a United States trademark registration for the mark KEURIG (U.S. Reg. No. 2,933,253; registered March 15, 2005) for coffee and tea sold in single-serve containers for use in coffee and tea brewing machines. The registration for the KEURIG mark is in full force and effect. A copy of the registration is attached to this Complaint as Exhibit C.

31. Keurig owns a United States trademark registration for the mark KEURIG (U.S. Reg. No. 2,057,361; registered April 29, 1997) for coffee brewing machines for domestic and

commercial use. The registration for the KEURIG mark is in full force and effect. A copy of the registration is attached to this Complaint as Exhibit D.

32. These trademark registrations for the mark KEURIG have become incontestable pursuant to the provisions of 15 U.S.C. § 1065. The United States Patent and Trademark Office has acknowledged and accepted the status of these registrations for the KEURIG mark as incontestable.

33. Keurig sells Keurig® brand coffee and tea in single-serve containers for use in coffee and tea brewing machines in the United States.

34. Keurig sells Keurig® brand coffee brewing machines for domestic and commercial use in the United States.

35. Sturm offers beverage cartridges that are advertised “For use by owners of Keurig® coffee makers” implying that the Sturm beverage cartridges are authorized, sponsored, or endorsed by Keurig, and/or that Sturm is affiliated with Keurig.

36. Packages of Sturm’s beverage cartridges include a statement that “Sturm Foods, Inc. has no affiliation with Keurig, Incorporated,” hidden on the underside of the packaging that is not visible to consumers in the normal manner in which the package is displayed on shelves in retail locations.

37. On information and belief, Sturm is currently offering to sell and selling such beverage cartridges to retailers in interstate commerce.

38. On information and belief, despite receiving letters from Keurig explaining its concerns with Sturm’s beverage cartridges, Sturm began offering its beverage cartridges on a limited basis to consumers through certain retail stores in late September or early October, without first responding to Keurig’s concerns.

39. On information and belief, the Sturm beverage cartridges are available in limited retail locations, such as certain Price Chopper stores, but that an expanded offering of these cartridges through mass-market retailers may be imminent.

40. Keurig has not authorized Sturm to use its KEURIG mark.

41. Keurig has not endorsed, sponsored, or otherwise authorized Sturm's beverage cartridges.

42. Keurig is not in any way affiliated with Sturm.

43. Sturm's use of the KEURIG mark is without permission of Keurig and is likely to cause confusion or mistake or to deceive.

44. Sturm is liable to Keurig for infringement under 15 U.S.C. § 1114.

45. On information and belief, such use by Sturm is knowing and willful and with the intent to trade off the good will established by Keurig in its KEURIG mark.

46. Keurig has been damaged by such conduct in an amount to be determined at trial.

47. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief. It is also entitled to damages for the infringement.

#### **COUNT IV**

##### **False Designation of Origin Under 15 U.S.C. § 1125(a)**

48. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

49. The KEURIG mark is recognized for quality in coffee and tea brewed in single-serve containers.

50. Sturm is targeting its beverage cartridges to an identical class of consumers as Keurig in the same areas. Indeed, Sturm is advertising such cartridges for use in Keurig's brewers. Sturm's cartridges have no other use except in Keurig's brewers.

51. Sturm's use of the KEURIG mark is confusingly similar to Keurig's use of the KEURIG mark. Indeed it is identical. Such use has the effect of associating Sturm and its products with the KEURIG mark in the minds of the purchasing public and of trading off the goodwill acquired by Keurig.

52. Sturm's actions are likely to cause confusion or mistake, or to deceive as to the affiliation, connection, or association of Sturm with Keurig or as to the origin, sponsorship, or approval of Sturm's sale of goods by Keurig, entitling Keurig to relief under 15 U.S.C. § 1125(a).

53. On information and belief, such use by Sturm is knowing and willful and with the intent to trade off the good will established by Keurig in its KEURIG mark.

54. Keurig has been damaged by such conduct in an amount to be determined at trial.

55. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief. It is also entitled to damages for such false designation of origin.

#### **COUNT V**

##### **Trade Dress Infringement Under 15 U.S.C. § 1125(a)**

56. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

57. Keurig sells single-serve beverage cartridges in packaging that has a distinctive look and feel stemming from, among other things, an image of single-serve beverage cartridges, with at least one beverage cartridge depicted on its side and one beverage cartridge depicted right-side up, and a tagline below the image of the cartridges that states they are for use in

Keurig brewers, an image of spilled coffee beans, an indication of the coffee's roast strength on a graded bar with shading varying from light to dark, along with an indication whether the coffee is caffeinated, perforations for opening the package that form an opening that is tapered in a v-shape and ending in a u-shaped tab, prominent lettering displaying the name of the beverage, and another face of the packaging providing a product story (the "distinctive trade dress").

Purchasers of single-serve beverage cartridges associate the distinctive appearance of the packaging for Keurig's single-serve beverage cartridges with Keurig.

58. The appearance of Keurig's single-serve beverage cartridge packaging is sufficiently distinctive that this trade dress identifies Keurig as the source of the single-serve beverage cartridges. The display of the Keurig packaging for its single-serve beverage cartridges is a major source of Keurig's advertising. Keurig has invested substantial sums in the design and promotion of these single-serve beverage cartridges.

59. Over 7.5 billion single-serve cartridges have been sold under the KEURIG mark. The appearance of Keurig's packaging for single-serve beverage cartridges is distinctive and has acquired secondary meaning and consumers of single-serve beverage cartridges identify the appearance of such KEURIG single-serve beverage cartridges as originating with Keurig.

60. The distinctive trade dress of Keurig's packaging for single-serve beverage cartridges, among other things, constitutes non-functional, protectable trade dress.

61. Sturm makes, sells, offers to sell and/or uses within the United States, and/or imports into the United States certain single-serve beverage cartridges, including its coffee beverage cartridges.

62. On information and belief, Sturm is and has at all material times been aware of Keurig, its products, and its trade dress.

63. Sturm has infringed and continues to infringe on Keurig's trade dress rights though its imitation in interstate commerce of Keurig's trade dress for its single-serve beverage cartridges.

64. Sturm's imitation of Keurig's trade dress for its single-serve beverage cartridge packaging is likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of Sturm's coffee beverage cartridges with Keurig.

65. As a result of Sturm's wrongful conduct, Keurig has been damaged and will continue to be damaged in an amount to be determined at trial. Keurig has suffered and continues to suffer immediate and irreparable injury for which it has no adequate remedy at law.

66. On information and belief, such use by Sturm is knowing and willful and with the intent to trade off the good will established by Keurig in its trade dress.

67. Unless Sturm is enjoined from these acts, it will continue to misappropriate Keurig's trade dress, further diminishing the value of Keurig's goodwill.

#### **COUNT VI**

#### **False Advertising Under 15 U.S.C. § 1125(a)**

68. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

69. Keurig is a pioneer and leading manufacturer of single-serve brewing systems. Single-serve brewing systems permit users to enjoy freshly brewed coffee one cup at a time while eliminating the inconvenience of grinding beans, measuring coffee, and handling messy filters. Cartridges used in single-serve brewing systems are sealed containers that preserve the freshness of the ground coffee that they contain.

70. Keurig has invested and continues to invest a great deal of time, money, and effort in designing single-serve brewing systems that brew a coffeehouse-quality cup of coffee each time.

71. Over the 16 years Keurig has been using the KEURIG mark, it has invested a great deal of time, money, and effort in promoting its KEURIG mark and the goodwill it embodies.

72. Keurig has built a reputation of high-quality brewed beverages around the KEURIG mark. Over 8 million brewers and over 7.5 billion single-serve cartridges have been sold under the KEURIG mark.

73. Sturm's single-cup coffee cartridge is "instant" coffee. Instant coffee is not freshly brewed coffee but rather is a dehydrated soluble powder that can be mixed with water to yield a coffee-like beverage.

74. Sturm's advertising for its single-cup coffee cartridges, through the descriptions on the packaging for these cartridges, conveys the false impression that Sturm's instant coffee is actually fresh-brewed.

75. For instance, Sturm indicates on the center of the front facing panel of its cartridge package that its coffee is "Naturally Roasted, Soluble & Microground Arabica Coffee." An average consumer would not interpret this description to mean "instant coffee" or something other than fresh-brewed coffee.

76. Further in the description on the upper portion of the front-facing panel of its cartridge package, Sturm represents that its coffee is similar to that found in "neighborhood coffee shops" where the coffee was "simply fresh, hot, and delicious." Sturm indicates that it has "recaptured this rich traditional cup."

77. Sturm depicts spilled whole coffee beans on its cartridge package, implying that its cartridges produce brewed coffee.

78. These statements and images, descriptive of traditional, freshly brewed coffee have a tendency to deceive a substantial segment of consumers for single-serve beverage cartridges into buying Sturm's product under the impression that the single-cup coffee cartridge, when used with Keurig's brewer system, will produce freshly brewed coffee.

79. Sturm's false representation of the quality and nature of its single-serve instant coffee products have a tendency to deceive a substantial segment of consumers for single-serve beverage cartridges into buying Sturm's product under the impression that Sturm's product is freshly brewed coffee and constitutes false advertising in violation of the Lanham Act's prohibition on deceptive trade practices.

80. Keurig's reputation for making high quality brewed coffee and the goodwill associated with its KEURIG mark will be harmed if consumers associate poor quality instant coffee made using KEURIG branded brewers with Keurig.

81. Keurig has been damaged by such conduct in an amount to be determined at trial.

82. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief.

#### **COUNT VII**

#### **Dilution Under 15 U.S.C. § 1125(c)**

83. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

84. As described above, Keurig owns valid and existing rights in the KEURIG mark.

85. Through continued use, product promotion, and consumer and industry recognition, Keurig has developed the KEURIG mark to the point that it is famous. Sturm is now using the KEURIG mark on its packaging for a similar, but lesser quality product. In so doing Sturm is creating an association between the Sturm instant (and lesser quality) coffee and the KEURIG mark that has been long equated with high quality, freshly-brewed, single-serve coffee.

86. This association is likely to cause a dilution of the strong correlation that Keurig has built between its KEURIG mark and its high-quality product in violation of 15 U.S.C. § 1125(c).

87. As a result of Sturm's wrongful conduct, Keurig has been damaged and will continue to be damaged in an amount to be determined at trial.

88. On information and belief, such use by Sturm is knowing and willful and with the intent to trade off the good will established by Keurig in its KEURIG mark.

89. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief.

#### **COUNT VIII**

Unfair Competition Under Delaware Uniform Deceptive Trade Practices Act -  
6 Del. C. 1953, § 2531 *et. seq.*

90. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

91. Sturm's use of the KEURIG mark and its misleading statements as described above are likely to cause consumers and members of the public to be confused about, or to

believe mistakenly that Sturm's single-serve coffee cartridges are affiliated, connected, associated, or otherwise being sold with the approval of Keurig.

92. Sturm's conduct constitutes unfair deceptive trade practices in violation of the Uniform Deceptive Trade Practices Act, 6 Del. C. 1953, § 2532 *et. seq.*

93. Sturm's deceptive trade practices are causing and will cause direct harm to Keurig for which there is no adequate remedy at law. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm. Keurig is entitled to an injunction under the principles of equity and on terms deemed reasonable by the court.

94. On information and belief, such use by Sturm is knowing and willful and with the intent to trade off the good will established by Keurig in its KEURIG mark.

95. Because of Sturm's willful deception, this case is exceptional and therefore Keurig is entitled to an award of its attorneys fees pursuant to 6 Del. C. 1953, § 2533(b).

**COUNT IX**  
Unfair Competition – Delaware Common Law

96. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

97. Sturm's use of the KEURIG mark and its misleading statements as described above are likely to cause consumers and members of the public to be confused about, or to believe mistakenly that Sturm's single-serve coffee cartridges are affiliated, connected, associated, or otherwise being sold with the approval of Keurig.

98. Sturm knows, or in the exercise of reasonable discretion should know, that its labeling practices encourage the sale of its single-serve coffee cartridges and the deception of consumers about the nature, characteristics and qualities of the cartridges in comparison, connection, or association with KEURIG.

99. On information and belief, Sturm's acts are deliberate and willful, and have been undertaken with the purpose of deceiving customers. As a result, Sturm has traded and continues to trade in an unlawful manner on the goodwill of Keurig and its excellent reputation as one of the leading providers of high-quality, single-serve beverage cartridges.

100. Sturm's conduct constitutes unfair competition pursuant to the common law of the State of Delaware.

101. As a result, Keurig has suffered damages in an amount to be determined at trial.

102. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief.

### **COUNT X**

#### False Advertising Under 15 U.S.C. § 1125(a)

103. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

104. Sturm offers beverage cartridges that are falsely advertised "For use by owners of Keurig® coffee makers."

105. The packaging for the Sturm beverage cartridges falsely states that use of the cartridges will result in "a fresh, delicious cup of Grove Square® coffee."

106. Sturm's statements on the packaging of its beverage cartridges expressly and impliedly mislead the public as to the suitability of the Sturm beverage cartridges for use in KEURIG coffee makers.

107. Keurig tested 30 Sturm beverage cartridges in KEURIG brewers.

108. Testing revealed a number of serious problems with the Sturm beverage cartridges.

109. Over 25% (8 out of 30) of the Sturm beverage cartridges failed to work properly with the KEURIG brewers.

110. Several of the failures were critical, including one in which a failed Sturm beverage cartridge delaminated during the brew cycle causing pressurized 186 °F – 190 °F water to flow out of the cartridge at the joint between the cartridge lid and the cartridge container creating a serious scalding risk.

111. One of the Sturm beverage cartridges experienced a delamination during the brew cycle causing pressurized 186 °F – 190 °F water to flow out of the cartridge at the joint between the cartridge lid and the cartridge container creating a serious scalding risk. Keurig considers this a critical failure of the cartridge. The inner layer of plastic forming the Sturm beverage cartridge appears to have delaminated and allowed the lid to separate from the cartridge. After this attempted use, the defective Sturm beverage cartridge was found to be distorted and soft when it was removed from the brewer. This indicates that the Sturm beverage cartridges may not be capable of withstanding the pressurized 186 °F – 190 °F water used during the KEURIG brew cycle. Because of the serious potential scalding risk to users, Keurig's standard testing protocols do not allow any delamination or other lid seal failures in qualification of a cartridge design. A single delamination or other lid seal failure, like the one exhibited by the Sturm beverage cartridge, would disqualify the cartridge design under Keurig's established testing protocols used for qualifying all authorized KEURIG cartridges.

112. One of the Sturm beverage cartridges experienced a “non puncture” at the outlet side of the cartridge. Although the inlet needle penetrated the cartridge lid and the brewer built up pressure, there was no flow through the cartridge because the outlet needle failed to pierce the bottom of the Sturm beverage cartridge. The side wall of the defective Sturm beverage cartridge

was found to be creased after the attempted use, indicating that the sidewall had collapsed during the puncturing process. Keurig considers this a critical failure of the cartridge. It is an indication that the cartridge design is defective. Keurig's standard testing protocols do not allow any non punctures in qualification of a cartridge design. A non puncture in the qualification testing of a cartridge, like that exhibited by the Sturm beverage cartridges, would disqualify the cartridge design under Keurig's established testing protocols used for qualifying all authorized KEURIG cartridges.

113. Two of the Sturm beverage cartridges exhibited no flow out of the cartridges during attempted use in a KEURIG brewer even though the cartridges appeared to be punctured by the inlet and outlet needles of the brewer. Such failures are frustrating to the user, indicative of poor quality, and unacceptable. For that reason, Keurig's standard testing protocols would not allow any such no flow failures in qualification of a cartridge design. A single no flow failure, like those exhibited by the Sturm beverage cartridges, will disqualify the cartridge design under Keurig's established testing protocols used for qualifying all authorized KEURIG cartridges.

114. A coffee cartridge manufactured by one of Keurig's licensed coffee roasters was used immediately after these failures of the Sturm beverage cartridges. The KEURIG brewer performed normally with the cartridge manufactured by one of Keurig's licensed coffee roasters.

115. One of the Sturm beverage cartridges experienced a "needle stick" after the brew cycle. Keurig considers this a critical failure of the cartridge. In a "needle stick," the cartridge gets stuck to the inlet needle of the brewer after the brew cycle is complete and the brew chamber is opened, rather than remain in the cartridge holder of the KEURIG brewer. When this occurs, the cartridge lifts from the cartridge holder and jams the brewer's puncture mechanism. In order to remove the stuck cartridge from the brewer, the cartridge must be crushed and pulled

out by the user. To do this, the user must reach into the brewer, close to the sharp inlet needle, to remove the stuck cartridge. In addition to exposing the user to risk of injury, the stuck cartridge and its removal have the potential to damage the brewer. If a consumer tried to close the brewer with a cartridge stuck to the inlet needle, the inlet needle or the brewer's puncture mechanism may be damaged. For these reasons, Keurig's standard testing protocols do not allow any needle sticks in qualification of a cartridge design. A single needle stick in the qualification testing of a cartridge, like the one exhibited by the Sturm beverage cartridge, would disqualify the cartridge design under Keurig's established testing protocols used for qualifying all authorized KEURIG cartridges.

116. Three of the Sturm beverage cartridges failed to eject from the KEURIG brewer after the brew cycle was complete and the brew chamber was opened. These defective cartridges remained in the brewer cartridge holder after the brew chamber was opened, but did not transfer out of the cartridge holder during the ejection stroke. Failure to eject from the cartridge holder can cause damage to the brewer.

117. The Sturm beverage cartridges are not compatible for use with KEURIG brewers. The critical failures that these cartridges exhibited during testing pose serious risks of scalding or other injury to consumers, e.g., in attempting to clear a failed Sturm cartridge from their KEURIG brewer, and create the potential that the KEURIG brewers used with these Sturm beverage cartridges will be damaged.

118. Sturm's statements that the cartridges are to be used in KEURIG coffee makers to make fresh, delicious coffee are, therefore, false and constitute false advertising in violation of the Lanham Act's prohibition on deceptive trade practices.

119. Keurig's reputation for making high quality brewers and brewed coffee and the goodwill associated with its KEURIG mark will be harmed if consumers associate scalding or other injuries, failing cartridges, damaged brewers, or poor quality instant coffee made using KEURIG branded brewers with Keurig.

120. Keurig has been damaged by such conduct in an amount to be determined at trial.

121. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief.

### **COUNT XI**

#### **Unfair Competition Under 15 U.S.C. § 1125(a)**

122. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

123. The KEURIG mark is recognized for quality in single-serve brewing systems.

124. Sturm offers beverage cartridges that are advertised "For use by owners of Keurig® coffee makers."

125. For the reasons detailed above, Sturm beverage cartridges are not compatible for use with KEURIG brewers.

126. The use of the Sturm beverage cartridges in KEURIG brewers may scald consumers and/or expose consumers to injury when attempting to clear a failed Sturm cartridge from a KEURIG brewer as detailed above. Consumers injured by defective Sturm beverage cartridges may mistakenly believe that such harm was caused by defective KEURIG brewers or that the defective Sturm beverage cartridges were produced by Keurig, approved by Keurig, or somehow affiliated, connected, or associated with Keurig.

127. The use of the Sturm beverage cartridges in KEURIG brewers may cause damages to the KEURIG brewers as detailed above. Consumers with malfunctioning brewers damaged through use of Sturm beverage cartridges may mistakenly believe that the KEURIG brewer is of poor quality to blame for the failures. Such consumers may demand warranty work on the brewers or may discontinue using the KEURIG brewers and discontinue purchasing KEURIG cartridges for use with the brewers.

128. Sturm's single-cup coffee cartridge is "instant" coffee. Instant coffee is not freshly brewed coffee but rather is a dehydrated soluble powder that can be mixed with water to yield a coffee-like beverage.

129. For the reasons detailed above, Sturm's false representation of the quality and nature of its single-serve instant coffee products have a tendency to deceive a substantial segment of consumers for single-serve beverage cartridges into buying Sturm's product under the impression that use of Sturm's product with KEURIG brewers will result in freshly brewed coffee.

130. Sturm's actions constitute unfair competition, entitling Keurig to relief under 15 U.S.C. § 1125(a).

131. On information and belief, such acts by Sturm are knowing and willful and with the intent to trade off the good will established by Keurig.

132. Keurig has been damaged by such conduct in an amount to be determined at trial.

133. Unless enjoined, Sturm's behavior will continue and will cause Keurig to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Keurig is entitled to injunctive relief. It is also entitled to damages for such unfair competition.

**RELIEF REQUESTED**

WHEREFORE, Keurig requests that this Court:

- A. Enter judgment that Sturm has infringed the '488 and '938 patents;
- B. Enter judgment that Sturm has contributed to and induced infringement of the '488 and '938 patents;
- C. Enter a preliminary and permanent injunction enjoining Sturm and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for it or on its behalf, or acting in concert or privity with it, from committing further direct infringement of the '488 and '938 patents, or contributing to or inducing the infringement of the '488 and '938 patents;
- D. Award Keurig compensatory damages under 35 U.S.C. § 284;
- E. Award Keurig treble damages for Sturm's willful infringement;
- F. Award Keurig its reasonable attorney fees under 35 U.S.C. § 285 or other applicable law;
- G. Enter a judgment that Keurig's KEURIG mark and U.S. Registration Nos. 2,933,253 and 2,057,361 are valid and subsisting and are infringed by Sturm;
- H. Enter a judgment that Sturm is liable to Keurig for infringement and false designation of origin under 15 U.S.C. §§ 1114 and 1125(a);
- I. Enter a judgment that Sturm is liable to Keurig for dilution under 15 U.S.C. § 1125(c);
- J. Enter a judgment that Sturm is liable to Keurig for false advertising under 15 U.S.C. § 1125(a);

K. Enter a preliminary and permanent injunction enjoining Sturm, as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it, from further distributing its single serve beverage cartridges;

L. Enter a preliminary and permanent injunction enjoining Sturm, as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it, from maintaining, using, disseminating, reproducing, promoting, distributing, or otherwise using the mark KEURIG or any mark confusingly similar thereto, as all or part of any mark, product, product packaging, configuration, or design;

M. Enter a preliminary and permanent injunction enjoining Sturm, as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it, from describing its instant coffee in a false or misleading manner suggesting it is brewed coffee;

N. Enter a preliminary and permanent injunction enjoining Sturm, as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it, from stating or suggesting that its single serve beverage cartridges are compatible for use with KEURIG brewers;

O. Enter judgment that Sturm has infringed Keurig's rights in the trade dress for its packaging for coffee and tea in single-serve containers for use in coffee and tea brewing machines pursuant to 15 U.S.C. § 1125(a);

P. Enter a preliminary and permanent injunction enjoining Sturm, as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it, from using or selling single serve beverage cartridges in packaging imitating or similar to Keurig's trade dress, or from doing any other act or thing likely to induce the mistaken belief that

Sturm's goods are in any way affiliated, connected, or associated with Keurig or its goods, or from doing any other act or thing likely to cause confusion with respect to Keurig's trade dress;

Q. Enter a judgment that Sturm's trademark and trade dress infringement, false designation of origin, and dilution have been willful;

R. Order Sturm to deliver to Keurig or to the Court for destruction all materials bearing the infringing mark or trade dress or colorable copies of Keurig's mark or trade dress;

S. Order Sturm to file and serve a report in writing, and under oath, setting forth the manner and form in which it has complied with the Court's order and injunction;

T. Order Sturm to pay Keurig any damages attributable to Sturm's infringement of the KEURIG mark and Keurig's trade dress, dilution of the KEURIG mark, and Sturm's false designation of origin, unjust enrichment, and account for all gains, profits, and advantages derived through that infringement, dilution, false advertising, and false designation of origin (including an accounting up through the entry of injunction), and unjust enrichment, and such damages authorized by law, including 15 U.S.C. § 1117;

U. Order Sturm to pay for corrective advertising as the Court deems appropriate;

V. Order Sturm to pay Keurig its reasonable costs pursuant to 28 U.S.C. § 1920 and attorneys' fees pursuant to 15 U.S.C. § 1117;

W. Enter judgment that Sturm's acts constitute unfair competition in violation of the common law of the State of Delaware and 6 Del. C. 1953, § 2532;

X. Enter a judgment that Sturm's acts in violation of 6 Del. C. 1953, § 2532 have been willful;

Y. Enter a preliminary and permanent injunction enjoining Sturm as well as its agents, representatives, employees, assigns and all persons acting in concert or privity with it,

from using or selling single-serve beverage cartridges in a manner that constitutes unfair competition under the common law of the State of Delaware or 6 Del. C. 1953, § 2532;

Z. Order Sturm to pay damages in an amount to be proven at trial under Keurig's Common Law Unfair Competition Claim and claim for unfair competition under 6 Del. C. 1953, § 2532;

AA. Declare this an exceptional case and award Keurig its attorneys' fees and costs pursuant to 6 Del. C. 1953 § 2533(b);

BB. Award Keurig its costs, pre-judgment interest and post-judgment interest; and

CC. Award Keurig such other relief as the Court deems just and proper.

**JURY DEMAND**

Keurig hereby demands a trial by jury of all issues so triable.

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