



6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 17-C0002]

Keurig Green Mountain, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Keurig Green Mountain, Inc., containing a civil penalty in the amount of five million, eight hundred thousand dollars (\$5,800,000) within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by

[INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 17-C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Daniel R. Vice, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-6996.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.¹

Dated: February 16, 2017.

Todd A. Stevenson,

Secretary.

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding Keurig Green Mountain, Inc. Commissioner Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Acting Chairman Buerkle voted to reject the Settlement Agreement and Order.

STAFF CHARGES

4. Between December 2009 and December 2014, Keurig imported and offered for sale in the United States approximately 6.6 million Keurig MINI Plus Brewing Systems (model K10, previously identified as model B31) (“Brewers” or “Subject Products”).

5. The Brewer is a “consumer product” “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Keurig is a “manufacturer” of the Brewers, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. § 2052(a)(11).

6. The Brewers contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury because hot water, coffee, and coffee grounds can spray out of the Brewers, posing a burn hazard to consumers.

7. Between February 2010 and November 2014, Keurig received approximately 200 incident reports of hot water, coffee, and coffee grounds spraying out of the Brewers (“Incidents”).

8. In more than 100 of these Incidents, consumers suffered burn-related injuries to their faces, hands, and bodies. Some of these injuries resulted in severe burns, including second and third-degree burns. Multiple consumers sought medical treatment for severe burns, including one consumer who was seen by a plastic surgeon. These severe burns included two reports of burns that resulted in facial scarring and three consumers who reported that Brewers sprayed them in the face with hot liquid, including one consumer who reported an eye injury. Keurig also paid two claims brought by consumers who were injured when the Brewers sprayed them with hot water, coffee, and coffee grounds.

9. On two occasions, Keurig was notified by a retailer of Incidents, including one that caused first-degree burns requiring medical attention. Each time, the retailer requested that Keurig undertake a product safety investigation and asked Keurig whether there were any potentially reportable safety concerns regarding the Brewers. Keurig did not immediately report to CPSC after learning of either of these Incidents.

10. In late June 2014, Keurig began an investigation of the Brewers. By late August 2014, Keurig began to consider developing a splash guard to prevent consumers from being injured if Brewers expelled hot water, coffee or coffee grounds.

11. Firms may conduct a reasonably expeditious investigation, not normally exceeding 10 days, to evaluate their reporting obligations. *See* 16 C.F.R. § 1115.14(d). Keurig's investigation took more than 4 months to complete.

12. Keurig delayed filing a Full Report with the Commission under 15 U.S.C. § 2064(b), until November 25, 2014.

13. Keurig and the Commission jointly announced a recall of 6.6 million Brewers on December 23, 2014.

14. Despite having information reasonably supporting the conclusion that the Brewers contained a defect and created an unreasonable risk of serious injury, Keurig did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

15. Because the information in Keurig's possession constituted actual and presumed knowledge, Keurig knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

16. Pursuant to Section 20 of the CPSA, 15 U.S.C. § 2069, Keurig is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF KEURIG

17. The signing of this Agreement does not constitute an admission by Keurig of the staff's charges in paragraphs 4 through 16, including, but not limited to, the charge that (a) the Brewers contained a defect that could create a substantial product hazard and created an unreasonable risk of serious injury; (b) the Firm failed to notify the Commission in a timely manner, in accordance with Sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4); (c) the Firm failed to furnish information required as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4); and (d) there was any "knowing" violation of the CPSA as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

18. The Firm conducted a reasonable, expeditious, and diligent investigation about consumer complaints relating to the Brewers after personnel monitoring customer reports noticed a slightly higher rate of Incidents. Due to the nature of the product, consumer report data can be difficult to evaluate, since the Brewers, like all coffeemakers, involve hot water, coffee, and steam, and necessarily include pressure-brewing to force water from the attached water tank through the K-Cup® portion pack and rapidly dispense it out of the Brewers and into a cup placed on the drip tray.

19. The voluntary recall of the Brewers, as well as the Section 15(b) reporting, by the Firm was conducted out of an abundance of caution and without the Firm having determined or concluded that the Brewers contained a defect or posed an unreasonable risk of serious injury.

20. The Firm enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation.

AGREEMENT OF THE PARTIES

21. Under the CPSA, the Commission has jurisdiction over the matter involving the Brewers and over Keurig.

22. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Keurig or a determination by the Commission that Keurig violated the CPSA's reporting requirements.

23. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Keurig shall pay a civil penalty in the amount of \$5.8 million (\$5,800,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Keurig under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

24. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Keurig to the United States, and interest shall accrue and be paid by Keurig at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Keurig shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or

exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Keurig agrees not to contest, and hereby waives and discharges, any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Keurig shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

25. After staff receives this Agreement executed on behalf of Keurig, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

26. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Keurig, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

27. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Keurig, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Keurig hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection

with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Keurig failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

28. Keurig shall develop, implement, and maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm, and which shall contain the following elements:

- (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced;
- (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;
- (iv) the Firm's senior management responsibility for, and general board oversight of, CPSA compliance; and
- (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon request.

29. Keurig shall maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by Keurig: (i) information required to be disclosed by Keurig to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to Keurig's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Keurig's ability to record, process and report to the Commission in accordance with applicable law.

30. Upon reasonable request of staff, Keurig shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Keurig shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Keurig's compliance with the terms of the Agreement.

31. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

32. Keurig represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Keurig, enforceable against Keurig in accordance with its terms. Keurig will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Keurig pursuant to the Agreement and Order. The individuals signing the

Agreement on behalf of Keurig represent and warrant that they are duly authorized by Keurig to execute the Agreement.

33. The signatories represent that they are authorized to execute this Agreement.

34. The Agreement is governed by the laws of the United States.

35. The Agreement and the Order shall apply to, and be binding upon, Keurig and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Keurig, and each of its successors, transferees, and assigns, to appropriate legal action.

36. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

37. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

38. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

39. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Keurig agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

KEURIG GREEN MOUNTAIN, INC.

Dated: 2/2/17

By: _____

Michael J. Degnan, Chief Legal
Officer & Corporate General Counsel
Keurig Green Mountain, Inc.
33 Coffee Lane
Waterbury, VT 05676

Dated: 2/2/17

By: _____

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Counsel to Keurig Green Mountain, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary T. Boyle
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: January 31, 2017

By: _____

Daniel R. Vice
Trial Attorney
Division of Compliance
Office of the General Counsel

Provisionally accepted and provisional Order issued on the 16th day of February, 2017.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

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