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case 7-319-442
July 29, 2025

Keurig and Its K-Cups: Recyclability Claims and an SEC Investigation

Lucas Harrison,[i] a young attorney who began working at the U.S. Securities and Exchange Commission (SEC) in January 2021, was sitting at his desk, enjoying his morning coffee. Harrison was employed within the SEC's Office of Market Intelligence, which focused on analyzing tips, complaints, and referrals in order to prioritize cases for investigation.[1] Now, after a year on the job, one new file had especially caught his attention. This potential case involved Keurig Dr Pepper (KDP), a company with a $41.6-billion market capitalization and tens of thousands of employees.[2] Harrison was immediately intrigued and knew that a case against a company of this size could make a significant impact on investors and the future of the company. The tip said KDP's sustainability statement that its K-Cup pods were 100% recyclable was potentially misleading investors.[3] Harrison didn't know much about KDP. However, he knew that a claim of this magnitude would be a significant case. It would take him, and the SEC, more than two years to reach a substantive conclusion.

The SEC had a commitment to address misleading claims related to greenwashing. In greenwashing, a company or organization markets its products as sustainable or environmentally friendly but its claims are either misleading or outright incorrect.[4] The SEC, the Federal Trade Commission (FTC), and similar agencies in other countries had been intensifying efforts to address companies engaging in greenwashing.[5] For example, investment bank DWS was fined $25 million by the SEC after being charged with environmental, social, and governance (ESG) misstatement allegations.[6] Kohl's and Walmart suffered similar FTC action; both retailers stated that one of the products they were selling was sustainable and manufactured using bamboo, which was found to be false. The two corporations settled for a combined $5.5 million.[7] Where the SEC's purpose was to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation, the FTC's purpose was to protect consumers and promote competition by preventing fraud, deception, and unfair business practices.[8]

[i] Lucas Harrison is a fictional character.

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