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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

K-fee System GmbH, Plaintiff, v. Nespresso USA, Inc., Defendant.	Case No. 2:22-CV-525 **COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff K-fee System GmbH ("K-fee" or "Plaintiff") brings this Complaint against Nespresso USA, Inc. ("Nespresso USA" or "Defendant") for infringement of U.S. Patent Nos. 10,994,923 (the "'923 Patent") and 11,230,430 (the "'430 Patent") (collectively, the "K-fee Patents").

SUMMARY OF THE ACTION

1. This is a patent infringement suit concerning Defendant's unauthorized and unlicensed use of the K-fee Patents to manufacture and sell single-use coffee capsules and related systems. The beverage systems claimed in the K-fee Patents are integral components of Defendant's Vertuo systems and corresponding Vertuo pods.

2. Krüger GmbH & Co. KG ("Krüger") began as an instant tea company with 12 employees in 1971, but has grown into a food and beverage powerhouse that now employs about 5,000 people in 10 countries around the world. As part of that expansion, Krüger envisioned bringing not only tea, but café-style coffees into its customers' homes. After two years of intensive research and development, Krüger completed its pioneering work on a single-serve, multi-beverage product. It launched the new capsule system in 2010, first in Germany and quickly expanded to Australia, Canada, and eventually the United States. In 2012, K-fee was created to handle the capsule business.

3. K-fee's capsule systems include both capsules and machines that work together to deliver the perfect cup, whether it is an espresso, coffee, tea, hot chocolate, or milk specialty drink. The unique capsules protect the beverage's freshness and ensure the correct pressure and flow rate. However, Krüger and K-fee's efforts did not stop there. The next evolution included an innovative barcode system. The capsule contains a barcode that informs the beverage machine of the optimum brewing parameters (such as temperature, pressure, and water amount) for the particular coffee, tea, or specialty drink contained within the capsule. The United States Patent and Trademark Office also recognized the inventiveness of these ideas by issuing K-fee several patents, including the K-fee Patents asserted here.

4. Nespresso USA is part of a global family of premium-price coffee companies that also offer single-serve coffee capsules and systems under the "Nespresso" brand. Nespresso USA is a subsidiary of Société des Produits Nestlé S.A. ("SPN"), a Swiss company. SPN has been involved with the research, design, and development of the VertuoLine system from its beginning to the present.

5. Defendant aided in developing the Vertuo systems of machines and coffee capsules specifically for North American consumers and began marketing the system in the United States and Canada in 2014.

6. Defendant's Vertuo systems infringe claims of the K-fee Patents. K-fee therefore brings this action to address Defendant's unauthorized use of K-fee's patented inventions.

THE PARTIES

I. K-FEE

7. K-fee (K-fee System GmbH) is a company organized under the laws of Germany with a principal place of business at Senefelderstraße 44, 51469 Bergisch Gladbach, Germany. K-fee is a wholly-owned subsidiary of Krüger (Krüger GmbH & Co. KG) (Krüger and its direct and indirect subsidiaries the "Krüger Group") along with Krüger North America, Inc. ("Krüger North America").

8. K-fee and Krüger North America offer three different capsule-brewing machines, along with a selection of coffee and tea products, and other beverage accessories to customers in the United States. These products work together to create an all-inclusive beverage system that uses K-fee's unique technologies. K-fee's proprietary "Smart Brew" and "Duo Pressure" systems provide optimal brewing conditions based on K-fee's patented technologies.

9. K-fee and its parent Krüger invest heavily in producing the best batches of coffee and carefully curated coffee systems available on the market today. K-fee works constantly to improve production and development, particularly its Smart Brew and Duo Pressure technologies, while Krüger has invested substantial resources in

solidifying the brand's reputation as a top-tier food supplier that offers the highest quality products.

II. DEFENDANT

10. Nespresso USA (Nespresso USA, Inc.) is organized under the laws of the state of Delaware and maintains its principal place of business at 100 Park Avenue, 7thFloor, New York, New York 10017. Nespresso is a privately-held subsidiary of Nestlé S.A. that sells single-serve coffee products.

11. Defendant directly and/or indirectly develops, designs, manufactures, uses, distributes, markets, offers to sell, and/or sells infringing products and services in the United States, including in this District, and purposefully directs or induces infringing activities in this District in connection with its products and services.

JURISDICTION AND VENUE

12. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq*. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (action arising under an Act of Congress relating to patents). Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

13. More specifically, this action for patent infringement involves Defendant's manufacture, use, sale and/or lease, and offer for sale and/or lease, of infringing beverage systems and capsules, including the Vertuo Next, VertuoPlus, Evoluo, and Vertuo product lines (the "Infringing Products").

14. Nespresso USA operates numerous retail spaces located in the Central District of California. Nespresso USA operates Nespresso Boutiques at 6600 CA-27, Canoga Park, CA 91303; 408 N Beverly Dr., Beverly Hills, CA 90210; 14060 Riverside Dr., Sherman Oaks, CA 91423; 6333 W 3rd St Suite P-10, Los Angeles, CA 90036; 129 Newport Center Dr., Newport Beach, CA 92660; and 718 Americana Way, Glendale, CA 91210. These Nespresso locations are staffed and managed by persons directly employed by Nespresso USA, many of whom live in this District.

15. Defendant has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271, and has made, used, marketed, distributed, offered for sale, sold, and/or imported its Infringing Products in the State of California, including in this District, and engaged in infringing conduct within and directed at or from this District.

16. Defendant conducts its regular, established business at its locations in this District. These locations and employees work to develop, provide, maintain, make available, use, and assist others in using the Infringing Products, including customers in this District, across the United States, and worldwide. Additionally, Defendant has purposefully and voluntarily placed the Infringing Products into the stream of commerce with the expectation that the Infringing Products will be used in this District. Defendant has and continues to cause the Infringing Products to be distributed and used in this District. Defendant's acts injure K-fee everywhere the Infringing Products are sold and used, including within this District.

17. This Court has general and/or specific personal jurisdiction over Defendant, and venue is proper because Defendant, directly and/or in combination with its parents, subsidiaries, and/or through its agents, conducts continuous and systematic business in this District. This business includes providing Infringing Products to residents of this District, providing its Infringing Products when Defendant knew they would be used in this District, and/or participating in the solicitation of business from residents of this District.

18. Moreover, Defendant, directly or through its parents or subsidiaries, places its Infringing Products into the stream of commerce, which is directed at this District, with the knowledge and/or understanding that such Infringing Products will reach customers within this District. In addition, Defendant, directly or through its parents or subsidiaries, employs individuals within this District, including employees who design, develop, use, offer, or make available their Infringing Products to customers here, and maintains offices, stores, and other facilities here. Defendant, directly or through its

parents or subsidiaries, operates retail stores, offices, and distribution centers in this District. Customers in this District regularly frequent these locations to buy and use the Infringing Products, while employees regularly frequent these locations to use, sell, offer for sale, market, and develop the Infringing Products.

19. Venue is appropriate in this Court because K-fee maintains business connections to this District. As one example, K-fee, through Krüger North America, provides beverage capsules and systems to consumers in this District.

FACTUAL BACKGROUND

III. K-FEE'S DEDICATION TO COFFEE INNOVATION

20. K-fee has established itself as an innovator in the world of at-home coffee. Krüger created K-fee as a separate operating unit specifically so that K-fee could focus solely on coffee systems and products.

21. Krüger began in 1971 with a single entrepreneur—Willibert Krüger—and an idea for granulated tea that he developed in a room adjoining his parents' wholesale business. The company expanded by leaps and bounds in the 1980s, acquiring subsidiaries and establishing production facilities. In the 1990s Krüger expanded into milk products, chocolate, and intermediate food products. By 2008, with the company generating over 1.56 billion euros of revenue, Krüger ventured into the coffee pod industry, establishing K-fee to lead that charge.[1]

22. After years of intensive research and development, K-fee launched its unique K-fee capsule and beverage system. The system provides consumers with access to a variety of café-style coffee drinks, including espresso, lungo, brew-style coffee, cappuccino, lattes, and macchiatos.[2]

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[1] *Our History*, KRÜGER GROUP, https://www.krueger-group.com/en/krueger-group/history-2 (last accessed January 25, 2022).

[2] *The K-fee Concept*, K-FEE, https://K-fee.us/pages/why (last accessed January 25, 2022).

23. In 2012, K-fee partnered with Starbucks and brought its capsule system to the United States. Then, in 2019, K-fee independently entered the American market with its Duo Pressure beverage system. K-fee partnered with major retailers such as Bed, Bath & Beyond and Amazon to reach its customers in the United States.[3]

24. To ensure quality at each step of production, K-fee built its own roasting house in Bergisch-Gladbach to expand production and roast coffees in-house.[4]

25. K-fee currently offers several single-serve coffee machines, including the K-fee Square, the K-fee Twins II, and the K-fee Grande. They are all compatible with K-fee's proprietary drink capsules. Striving to provide an all-inclusive at-home barista experience, K-fee also offers accessories such as milk frothers, specialty espresso glassware sets, and capsule dispensers.

26. Recognizing the value of its intellectual property, K-fee applied for a multitude of patents in the early 2010s. The USPTO subsequently issued several beverage system and capsule patents to K-fee, including the K-fee Patents that are the subject of this suit for which the priority date is at least as early as the date of the priority applications, which were filed between July 22, 2010 and February 7, 2011.

27. Defendant introduced the first of the Infringing Products on March 1, 2014. Defendant developed the Vertuo specifically for North American consumers.[5] Under the control of SPN, Nespresso USA is the Nestlé business arm that operates and sells the Infringing Products in the United States.

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[3] *Id.*

[4] *The K-fee Story*, K-FEE, https://K-fee.us/pages/why (last accessed January 25, 2022).

[5] *Nespresso Set to Revolutionize*, CISION, https://www.prnewswire.com/news-releases/nespresso-set-to-revolutionize-the-north-american-coffee-market-with-the-launch-of-vertuoline-246133981.html#:~:text=VertuoLine%E2%84%A2%20will%20be%20available%20at%20all%20Nespresso%20Flagship%20Boutiques,Hills)%20beginning%20March%201st.&text=Nestl%C3%A9%20Nespresso%20SA%20is%20the,highest%2Dquality%20portioned%20premium%20coffee (last accessed January 25, 2022).

28. Defendant touted the Vertuo as a groundbreaking advancement, emphasizing its "Centrifusion™ technology. . . The intelligent extraction system provides an extremely high level of precision as the machine recognizes, through barcode technology, each expertly designed coffee capsule and adjusts the extraction parameters to brew each blend in the most optimal way."[6] The CEO of Nestlé Nespresso S.A. at the time, Jean-Marc Duvoisin, stated: "We believe we are poised to reshape the entire industry in North America. We are entering a highly competitive market with a premium offering, and VertuoLine will win on quality and technology."[7]

29. Nestlé S.A. released its year-end financial results from 2020, which include the revenue generated by Nespresso and SPN. The data indicates that Nestlé S.A.'s coffee division saw "mid-single digit growth," largely driven by strong Nespresso-brand sales. Coffee continues to reflect some of the strongest growth numbers in Nestlé S.A.'s entire portfolio, and beverages are the largest component of the conglomerate's overall sales. Particularly, "North America continued to see market share gains, with the United States becoming Nespresso's largest market."[8] Defendant specifically markets the Infringing Products to consumers in the United States.

30. Nestlé S.A. also released its nine-month sales for 2021, which include the revenue generated by Nespresso and SPN. While doing so, Nestlé S.A. announced that it was raising its full-year organic sales growth guidance. Despite "significant supply chain constraints," Nestlé S.A.'s North America division "posted mid single-digit growth" and its "Nestlé Professional and Starbucks out-of-home products saw strong

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[6] *Id.*

[7] *New Nespresso system aims to reshape North American coffee industry*, INTRADO, https://www.globenewswire.com/news-release/2014/02/19/611255/10068929/en/New-Nespresso-system-aims-to-reshape-North-American-coffee-industry.html (last accessed January 25, 2022).

[8] *Nestle reports full-year results for 2020*, NESTLÉ, https://www.nestle.com/media/pressreleases/allpressreleases/full-year-results-2020 (last accessed January 25, 2022).

double-digit growth."[9] Further, "[s]ales in the beverages category, including Starbucks at-home products, *Coffee mate* and *Nescafé*, grew at a mid single-digit rate."[10] Defendant specifically markets the Infringing Products to consumers in the United States and continues to grow sales and market share.

31. Defendant's foray into the high-end American market is centered on the Infringing Products. Defendant's unauthorized and unlicensed use of the K-fee Patents has substantially contributed to Defendant's financial success and continued market-share growth in the United States.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 10,994,923

32. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1–31 of this Complaint.

33. On May 4, 2021, after a full examination on the merits, the United States Patent and Trademark Office issued the '923 Patent. The '923 Patent is valid and enforceable under United States Patent Laws.

34. K-fee owns, by assignment, all right, title, and interest in and to the '923 Patent, including the right to collect for past damages.

35. A copy of the '923 Patent is attached as Exhibit 1.

The '923 Patent

36. Prior to inventing the ideas that form the basis of the '923 Patent, K-fee recognized several problems with existing single-serve beverage systems, especially those for making coffee beverages. For example, because a large number of coffee pods with different characteristics were available in the market, a consumer could insert a type of pod into a beverage system for which it was not designed. This cross-use can destroy the beverage system or harm the user. Indeed, the '923 Patent notes:

[9] Nestlé reports nine-month sales for 2021, raises full-year organic sales growth guidance, NESTLÉ, https://www.nestle.com/media/pressreleases/allpressreleases/nine-month-sales-2021 (last accessed January 25, 2022).

[10] *Id.*

> [I]t is possible that the manufacturer's capsules are used in a coffee machine designed by another manufacturer, although they are not suited for it. This may result in significant security issues and/or the coffee machine may be damaged.

'923 Patent at 1:17–21.

> [I]nserting the wrong portion capsule . . . endangers the brewing chamber's tightness. In this case hot water can be discharged under high pressure and therefore compromise the user's safety. Otherwise it is also possible that inserting the wrong portion capsule damages the coffee machine.

Id. at 8:18–23.

37. To remedy these problems, the '923 Patent provides a barcode on the capsule, which is read and interpreted by the brewing machine. *Id.* at Fig 2A and 2B. This inventive system provides multiple benefits over existing systems on the market. First, it allows the brewing machine to determine whether the capsule is suitable for the machine, thus preventing damage to both the machine and the user. *Id.* at 1:32–34. Second, it allows the machine to control the beverage's brewing parameters. In one embodiment, the machine may "adapt[], for example, the pressure, the temperature and/or the amount of water." *Id.* at 5:60–61. In this way, a consistent, quality beverage can be produced from the system.

38. At a high level, the '923 Patent describes using an apparatus to read barcodes from portion capsules in order to control production of the respective coffee beverages. The portion capsules have a variety of characteristics, including a base element, a flange, a barcode, a cavity, and a cover.

39. More specifically, the '923 Patent describes a "portion capsule for producing a beverage." *Id.* at Abstract. The portion capsule includes, *inter alia*, a base element, cover, cavity, flange, and barcode. *Id.* at claim 1. The capsule's barcode is located on the bottom side of the capsule's flange. *Id.* When the capsule is inserted into a beverage machine, the machine can read the barcode with a barcode reader and control the production process of the beverage based on the read barcode. To prepare the

beverage, the machine pierces the capsule's cover with a mandrel, seals the lid against a seal of the machine, and pushes water into the capsule by way of a pump. The barcode may specify, for example, a particular temperature, pressure, and/or water amount. *Id.* at 3:23–27.

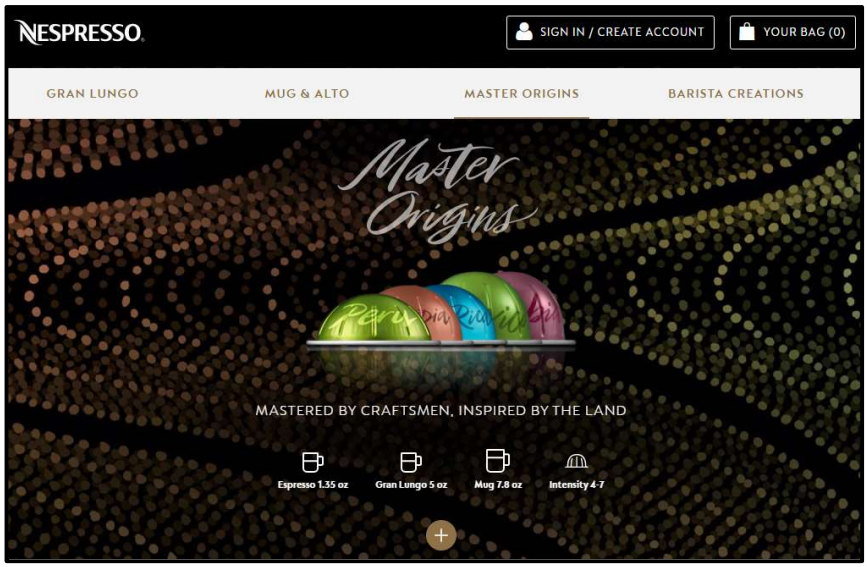
'923 Patent Allegations

40. Defendant has designed, marketed, and sold, and continues to design, market, and sell, a variety of coffee capsules, most notably and pertinently the Infringing Products. Nespresso USA boasts that the Infringing Products use capsule recognition and a barcode system to prevent third-party capsules from being used in the Infringing Products.[11] Nespresso USA touts the Infringing Products as "an entirely new segment."[12]

41. Defendant's Infringing Products practice the claims of the '923 Patent.

42. Defendant's Infringing Products comprise coffee capsules for making a beverage, as discussed in detail below.

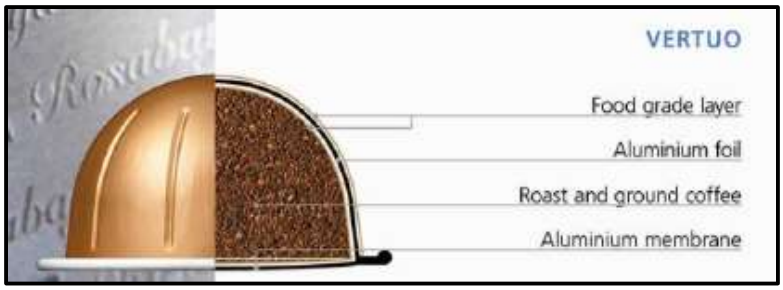
43. Defendant's Infringing Products include single-serve capsules, as shown below:



[11] https://www.nestle.com/sites/default/files/asset-library/documents/investors/nis-2014-boston/nespresso.pdf (last accessed January 25, 2022).

[12] https://nestle-nespresso.com/news/nespresso-sets-to-revolutionise-north-american-coffee-market (last accessed January 25, 2022).

NESPRESSO
SIGN IN / CREATE ACCOUNT
YOUR BAG (0)
A WORLD OF COFFEE TO DISCOVER
Explore limited edition blends, single origin, and seasonal specialties.
HAZELINO MUFFIN
CARAMEL COOKIE
VANILLA CUSTARD PIE
BIANCO FORTE
BIANCO LEGGERO
CHOCOLATE FUDGE
MEXICO
7
COLOMBIA
5


VERTUO
Food grade layer
Aluminium foil
Roast and ground coffee
Aluminium membrane

https://www.nespresso.com/us/en/vertuo-coffee-capsules (last accessed January 25, 2022); https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022); https://sustainability.nespresso.com/why-aluminium (last accessed January 25, 2022).

44. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a base element made of metal, such as aluminum foil, with a cavity, in which a raw beverage material is provided.

45. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a flange extending outwardly from the base element, the flange comprising a top side and an opposing bottom side.

46. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a metal cover that is fastened to the top side of the flange to close the cavity.

47. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise: a wall region extending between the flange and a bottom region of the base element. The wall region includes radially spaced and vertically oriented grooves that are free from extending entirely to the bottom region.

48. As depicted above in the Defendant's Infringing Products, the single-serve capsule is free of a filter that is located inside of the cavity. The cavity includes radially spaced and vertically oriented ribs.

49. In the Defendant's Infringing Products, the single-serve capsules comprise: an identifier, such as a barcode, provided on the bottom side of the flange directed away from the metal cover. The identifier makes it possible to individualize the single-serve capsules. For example, the Nespresso website indicates that the Infringing Products include a "barcode on each capsule":

https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022). *See also:*

Nespresso, "Nespresso Vertuo: How To – Coffee Preparation," video at https://www.youtube.com/watch?v=__KOHPZXzcs (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso).[13]

[13] In March and April 2021 and on August 25, 2021, K-fee's counsel accessed the publicly available videos posted on YouTube by Nespresso. K-fee used those videos, and screenshots therefrom, in its Complaint and Infringement Contentions in *K-fee Sys. GmbH v. Nespresso USA, Inc.*, Case No. 2:21-cv-03402-GW-AGR (C.D. Cal.).

50. Defendant's Infringing Products can be used with, for example, a beverage machine that can use a sensor/detector to read the barcode. For example, the beverage machine includes "technology [that] reads the barcode on each capsule." https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022). And a variety of Nespresso videos explain how the apparatus reads the barcode on the capsule:

Experience the Revolution of Coffee: Introducing the Nespresso VertuoLine

See, e.g., Nespresso "Experience the Revolution of Coffee: Introducing the Nespresso VertuoLine," video at https://www.youtube.com/watch?v=+yo40pcEfbP (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso); Nespresso, "Nespresso Vertuo: How To – Coffee Preparation," video at https://www.youtube.com/watch?v=__KOHPZXzcs (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso); https://www.youtube.com/watch?v=RTzUiX101C0 (last accessed January 25, 2022);

Complaint filed Apr. 21, 2021). After they were cited in the Complaint, Nespresso removed the videos from YouTube, which Nespresso has an obligation to not destroy and provide in discovery.

Nespresso, "Nespresso VertuoLine: How To – Directions For Use, video at https://www.youtube.com/watch?v=9zya9IN3rEA (last accessed January 25, 2022).

51. Defendant has infringed and are infringing, individually and/or jointly, either literally or under the doctrine of equivalents, claims 1–16 of the '923 Patent in violation of 35 U.S.C. §§ 271, *et seq.*, directly and/or indirectly, by making, using, offering for sale, selling, offering for lease, leasing in the United States, and/or importing into the United States without authority or license, the Infringing Products.

52. Defendant has been, and currently is, an active inducer of infringement of one or more claims of the '923 Patent under 35 U.S.C. § 271(b). One or more of Defendant's Infringing Products directly and/or indirectly infringe (by induced infringement) claims 1–16 of the '923 Patent, literally and/or under the doctrine of equivalents.

53. Defendant has been monitoring K-fee's patent portfolio and pending patent applications that includes the application that led to the '923 Patent, and the patent itself, since at least 2018. Starting in 2018 and through 2020, Defendant's affiliates Société des Produits Nestlé S.A, Nestlé Nespresso S.A., and/or Nestec S.A. commenced opposition and interference proceedings against the grant of K-fee's patents.

54. Also from 2018 to 2021, representatives of K-fee and Nespresso and/or its affiliate Nestlé Nespresso S.A. participated in several meetings and discussions regarding Nespresso's Infringing Products and associated infringement of K-fee's patents. In connection with these meetings and the opposition and interference proceedings described herein and the related matters in this Court and before the United States Patent and Trademark Office, Defendant had notice of the application that ultimately matured into the '923 Patent, and its infringement of the '923 Patent, by at least the date the application was published on September 26, 2019, or the date the patent issued on May 4, 2021. This Complaint serves as further notice to Defendant of the '923 Patent and its infringement.

55. Additional allegations regarding Defendant's knowledge of the '923 Patent and willful infringement will likely have evidentiary support after a reasonable opportunity for discovery.

56. Defendant further infringes by, without authority: (1) supplying or causing to be supplied in or from the United States all or a substantial portion of the components of K-fee's patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the '923 Patent if such combination occurred within the United States; and/or (2) supplying or causing to be supplied in or from the United States any component of K-fee's patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the '923 Patent if such combination occurred within the United States.

57. Defendant's infringement of the '923 Patent is willful and deliberate, entitling K-fee to enhanced damages and attorneys' fees.

58. Defendant's infringement of the '923 Patent is exceptional and entitles K-fee to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

59. K-fee has been damaged by Defendant's infringement of the '923 Patent and will continue to be damaged unless Defendant is enjoined by this Court. K-fee has suffered and continues to suffer irreparable injury for which there is no adequate remedy at law. The balance of hardships favors K-fee, and public interest is not disserved by an injunction.

60. K-fee is entitled to recover compensation from Defendant for all damages that K-fee has sustained as a result of Defendant's infringement of the '923 Patent, including without limitation, lost profits and/or not less than a reasonable royalty.

SECOND CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 11,230,430

61. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1–60 of this Complaint.

62. On January 25, 2022, after a full examination on the merits, the United States Patent and Trademark Office issued the '430 Patent. The '430 Patent is valid and enforceable under United States Patent Laws.

63. K-fee owns, by assignment, all right, title, and interest in and to the '430 Patent, including the right to collect for past damages.

64. A copy of the '430 Patent is attached as Exhibit 2.

The '430 Patent

65. Prior to inventing the ideas that form the basis of the '430 Patent, K-fee recognized several problems with existing single-serve beverage systems, especially those for making coffee beverages. For example, because a large number of coffee pods with different characteristics were available in the market, a consumer could insert a type of pod into a beverage system for which it was not designed. This cross-use can destroy the beverage system or harm the user. Indeed, the '430 Patent notes:

> [I]t is possible that the manufacturer's capsules are used in a coffee machine designed by another manufacturer, although they are not suited for it. This may result in significant security issues and/or the coffee machine may be damaged.

'430 Patent at 1:17–21.

> [I]nserting the wrong portion capsule . . . endangers the brewing chamber's tightness. In this case hot water can be discharged under high pressure and therefore compromise the user's safety. Otherwise it is also possible that inserting the wrong portion capsule damages the coffee machine.

Id. at 8:22–27.

66. To remedy these problems, the ’430 Patent provides a barcode on the capsule, which is read and interpreted by the brewing machine. *Id.* at Fig 2A and 2B. This inventive system provides multiple benefits over existing systems on the market. First, it allows the brewing machine to determine whether the capsule is suitable for the machine, thus preventing damage to both the machine and the user. *Id.* at 1:32–34. Second, it allows the machine to control the beverage’s brewing parameters. In one embodiment, the machine may “adapt[], for example, the pressure, the temperature and/or the amount of water.” *Id.* at 5:60–61. In this way, a consistent, quality beverage can be produced from the system.

67. At a high level, the ’430 Patent describes using an apparatus to read barcodes from portion capsules in order to control production of the respective coffee beverages. The portion capsules have a variety of characteristics, including a base element, a flange, a barcode, a cavity, and a cover.

68. More specifically, the ’430 Patent describes a “[a] beverage system for making a beverage that includes a single-serve capsule and a beverage machine.” *Id.* at Abstract. The portion capsule includes, *inter alia*, a base element, cover, cavity, flange, and barcode. *Id.* at claim 1. The capsule’s barcode is located on the bottom side of the capsule’s flange. *Id.* When the capsule is inserted into the beverage machine, the machine reads the barcode with a barcode reader and controls the production process of the beverage based on the read barcode. *Id.* To prepare the beverage, the machine pierces the capsule’s cover with a mandrel, seals the lid against a seal of the machine, and pushes water into the capsule by way of a pump. *Id.* The barcode may specify, for example, a particular temperature, pressure, and/or water amount. *Id.* at 3:23–27.

<u>’430 Patent Allegations</u>

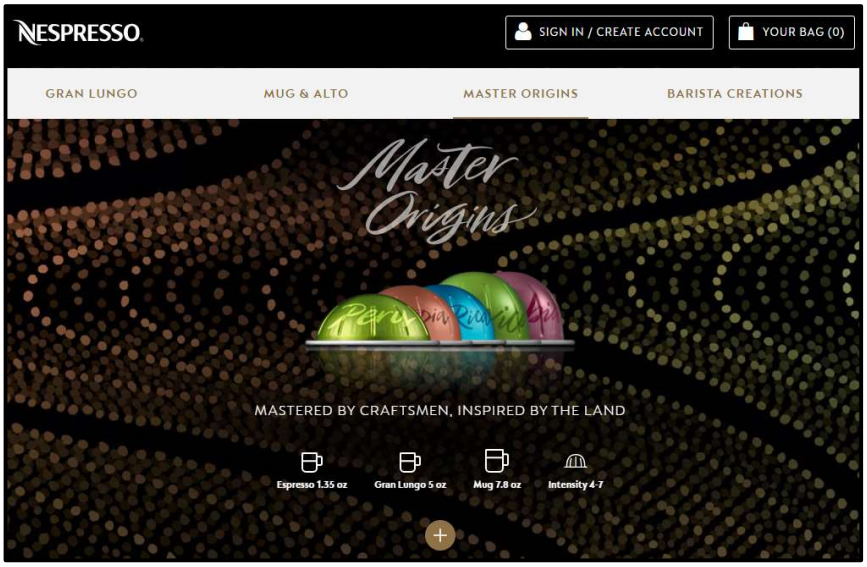
69. Defendant has designed, marketed, and sold, and continues to design, market, and sell, a variety of coffee capsules and systems, most notably and pertinently the Infringing Products. Nespresso USA boasts that the Infringing Products use capsule

recognition and a barcode system to prevent third-party capsules from being used in the Infringing Products.[14] Nespresso USA touts the Infringing Products as "an entirely new segment."[15]

70. Defendant's Infringing Products practice the claims of the '430 Patent.

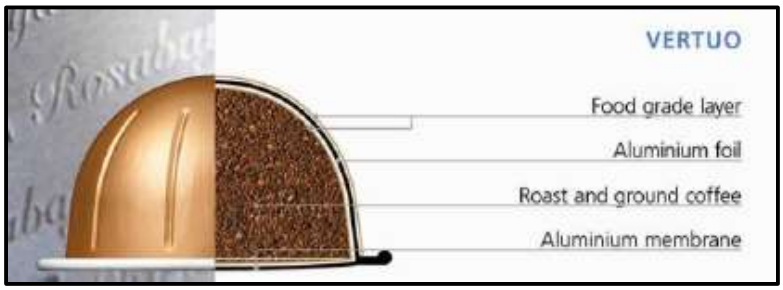
71. Defendant's Infringing Products comprise beverage systems for making a beverage, as discussed in detail below.

72. Defendant's Infringing Products include single-serve capsules, as shown below:



[14] https://www.nestle.com/sites/default/files/asset-library/documents/investors/nis-2014-boston/nespresso.pdf (last accessed January 25, 2022).

[15] https://nestle-nespresso.com/news/nespresso-sets-to-revolutionise-north-american-coffee-market (last accessed January 25, 2022).



https://www.nespresso.com/us/en/vertuo-coffee-capsules (last accessed January 25, 2022); https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022); https://sustainability.nespresso.com/why-aluminium (last accessed January 25, 2022).

73. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a base element with a cavity, in which a raw beverage material is provided.

74. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a flange extending outwardly from the base element, the flange comprising a top side and an opposing bottom side.

75. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a cover that is fastened to the top side of the flange to close the cavity.

76. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise an upper end portion that has an annular convexity and a lower end portion that has an annular concavity relative to a central axis of the base element.

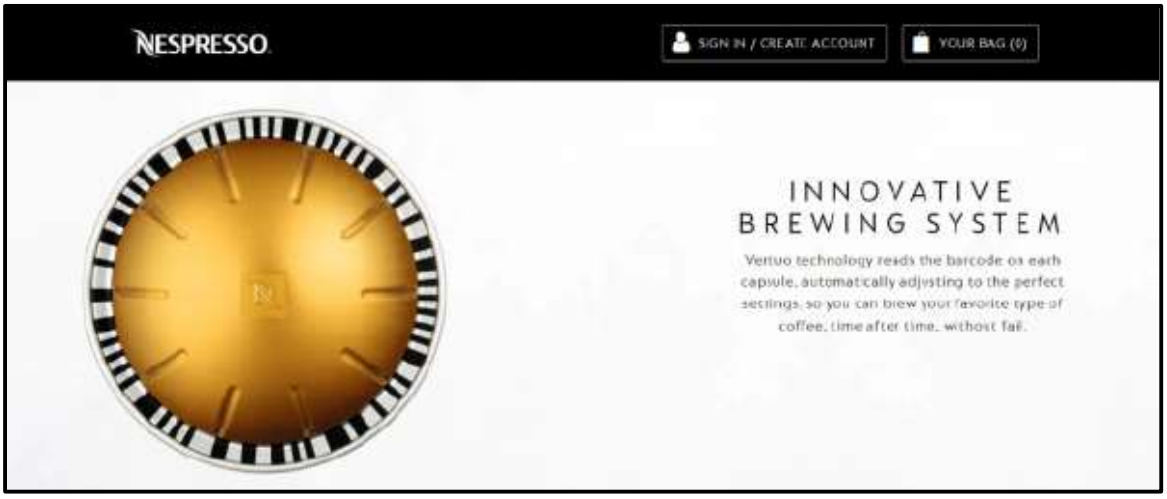
77. As depicted above in the Defendant's Infringing Products, the single-serve capsules comprise a barrier layer to prevent moisture or aroma from escaping out of the single-serve capsule.

78. As depicted above in the Defendant's Infringing Products: the single-serve capsules comprise a side wall having indentations; a side wall of the base element includes indentations; and/or the base element comprises a bottom having an indentation.

79. As depicted above in the Defendant's Infringing Products, the single-serve capsule is free of a filter that is located inside of the cavity.

80. In the Defendant's Infringing Products, the single-serve capsules comprise: a barcode provided on the bottom side of the flange; and/or an identifier provided on the bottom side of the flange, the identifier being a barcode. For example,

the Nespresso website indicates that the Infringing Products include a "barcode on each capsule":



https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022). *See also:*

Nespresso, "Nespresso Vertuo: How To – Coffee Preparation," video at https://www.youtube.com/watch?v=__KOHPZXzcs (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso).

81. Defendant's Infringing Products include a beverage machine comprising: a sensor/detector; and/or a sensor/detector configured to read the barcode. For example, the Infringing Products include "technology [that] reads the barcode on each capsule." https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022). And a variety of Nespresso videos explain how the apparatus reads the barcode on the capsule:

Experience the Revolution of Coffee: Introducing the Nespresso VertuoLine

See, e.g., Nespresso "Experience the Revolution of Coffee: Introducing the Nespresso VertuoLine," video at https://www.youtube.com/watch?v=+yo40pcEfbP (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso); Nespresso, "Nespresso Vertuo: How To – Coffee Preparation," video at https://www.youtube.com/watch?v=__KOHPZXzcs (last accessed August 25, 2021 and has since been removed by the uploader, Nespresso); https://www.youtube.com/watch?v=RTzUiX101C0 (last accessed January 25, 2022); Nespresso, "Nespresso VertuoLine: How To – Directions For Use, video at https://www.youtube.com/watch?v=9zya9IN3rEA (last accessed January 25, 2022).

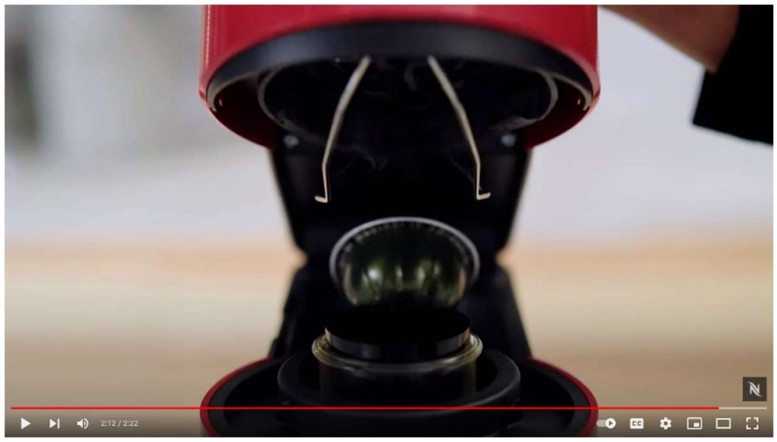
82. In the Defendant's Infringing Products, the beverage machine comprises: a brewing chamber configured to receive the base element of the single-serve capsule and having an end portion that opposes the bottom side of the flange; a pump controlled to supply water into the single-serve capsule; a mandrel that is configured to pierce the cover in a region that is offset from the central axis of the base element; a seal that is configured to seal against the cover in a region between a peripheral edge of the flange and the region of the cover that is pierced by the mandrel; and a pair of holding arms for engaging the single-serve capsule and/or for engaging opposite sides of the single-serve capsule. These features are depicted in the following video stills:

Nespresso, "At the heart of Nespresso Vertuo system," video at https://www.youtube.com/watch?v=RTzUiX101C0 (last accessed January 25, 2022).

Nespresso, "Nespresso VertuoLine How To – Directions for Use," video at https://www.youtube.com/watch?v=9zya9IN3rEA (last accessed January 25, 2022).

Nespresso, Nespresso Vertuo Next – Coffee Preparation, video at https://www.youtube.com/watch?v=T9nixM1467Y (last accessed January 25, 2022).

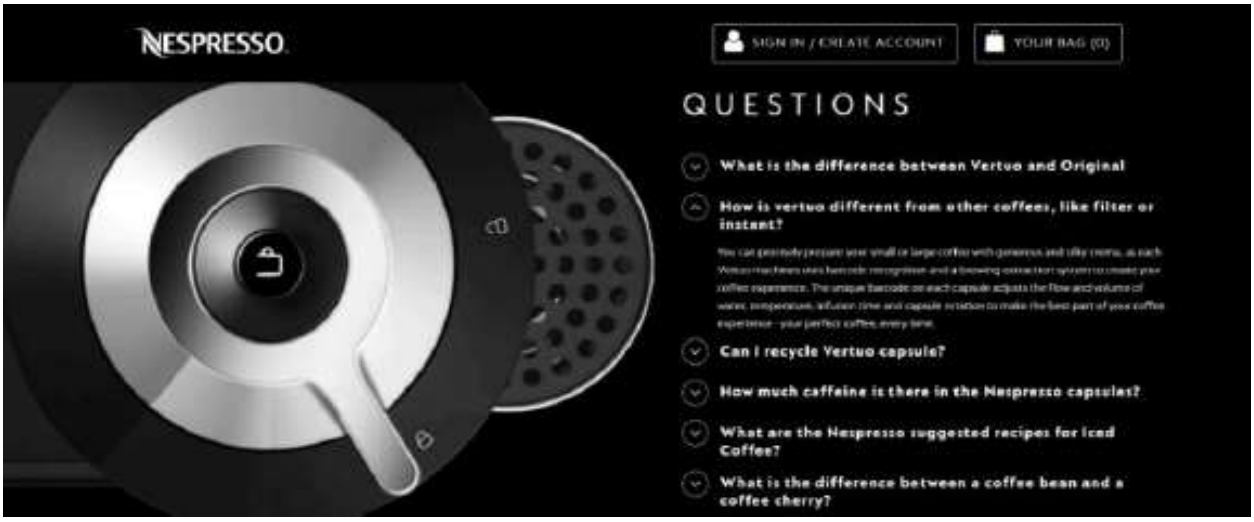
83. In the Defendant's Infringing Products, the beverage machine comprises a dropping box for the single-serve capsule to fall into, as depicted in the following video still.



Nespresso, Nespresso Vertuo Next – Coffee Preparation, video at https://www.youtube.com/watch?v=T9nixM1467Y (last accessed January 25, 2022).

84. As depicted above in the Defendant's Infringing Products: the pump is controlled to push the water into the single-serve capsule only upon a determination that the read barcode agrees with a stored reference; the pump is controlled to not push water into the single-serve capsule upon a determination that the read barcode does not agree

with the stored reference; the sensor/detector of the beverage machine is configured to read the barcode and/or compare the read barcode with a stored reference; and the beverage machine, by reading or detecting the identifier with the sensor/detector, is configured to determine if the single-serve capsule belongs to a group of single-serve capsules operable for use with the beverage machine, and only if the beverage machine determines that the single-serve capsule belongs to the group of single-serve capsules operable for use with the beverage machine is the pump controlled to push the water into the single-serve capsule. As described by Nespresso's website, "each Vertuo machine[] uses barcode recognition . . . The unique barcode on each capsule adjusts the flow and volume of water, temperature, infusion time and capsule rotation . . .":



https://www.nespresso.com/us/en/choose-your-technology-vertuo (last accessed January 25, 2022).

In the Infringing Products, a barcode reader reads the capsule's barcode and controls sending hot water into the capsule based on the barcode agreeing with a stored reference so that the system "automatically adjust[s] to the perfect settings." *See* https://www.nespresso.com/us/en/choose-your-technology#vertuo (last accessed

January 25, 2022). *See also*: Nespresso, "At the heart of Nespresso Vertuo system," video at https://www.youtube.com/watch?v=RTzUiX101C0 (last accessed January 25, 2022).

85. Defendant has infringed and are infringing, individually and/or jointly, either literally or under the doctrine of equivalents, claims 1–10 of the '430 Patent in violation of 35 U.S.C. §§ 271, *et seq.*, directly and/or indirectly, by making, using, offering for sale, selling, offering for lease, leasing in the United States, and/or importing into the United States without authority or license, the Infringing Products.

86. Defendant has been, and currently is, an active inducer of infringement of one or more claims of the '430 Patent under 35 U.S.C. § 271(b). One or more of Defendant's Infringing Products directly and/or indirectly infringe (by induced infringement) claims 1–10 of the '430 Patent, literally and/or under the doctrine of equivalents.

87. On information and belief, Defendant had notice of the application that ultimately matured into the '430 Patent, and its infringement of the '430 Patent, by at least the date the application was published on December 23, 2021. This Complaint serves as further notice to Defendant of the '430 Patent and its infringement.

88. Defendant further infringes by, without authority: (1) supplying or causing to be supplied in or from the United States all or a substantial portion of the components of K-fee's patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the '430 Patent if such combination occurred within the United States; and/or (2) supplying or causing to be supplied in or from the United States any component of K-fee's patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the '430 Patent if such combination occurred within the United States.

89. Defendant's infringement of the '430 Patent is exceptional and entitles K-fee to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

90. K-fee has been damaged by Defendant's infringement of the '430 Patent and will continue to be damaged unless Defendant is enjoined by this Court. K-fee has suffered and continues to suffer irreparable injury for which there is no adequate remedy at law. The balance of hardships favors K-fee, and public interest is not disserved by an injunction.

91. K-fee is entitled to recover compensation from Defendant for all damages that K-fee has sustained as a result of Defendant's infringement of the '430 Patent, including without limitation, lost profits and/or not less than a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, K-fee prays for a judgment in its favor and against Defendant and respectfully requests the following relief:

1. A judgment declaring that Defendant has infringed one or more claims of the K-fee Patents asserted in this litigation;

2. An injunction pursuant to 35 U.S.C. § 283 permanently enjoining Defendant, its officers, directors, attorneys, agents, servants, employees, parties in privity with, and all persons in active concert or participation with any of the foregoing, from continued acts of infringement, contributing to infringement, or inducing infringement of the K-fee Patents;

3. A judgment requiring Defendant to make an accounting of damages resulting from Defendant's infringement of the K-fee Patents;

4. A judgment awarding K-fee its damages resulting from Defendant's infringement of the K-fee Patents, and increasing such damages pursuant to 35 U.S.C. § 284 because of the willful and deliberate nature of Defendant's conduct;

5. A judgment requiring Defendant to pay K-fee's costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the K-fee Patents;

6. A judgment finding that this is an exceptional case and awarding K-fee's attorneys' fees pursuant to 35 U.S.C. § 285;

7. In the event a permanent injunction is not awarded, awarding a compulsory royalty for all future acts of infringement; and

8. Such other relief as the Court deems just and proper.

Dated: January 25, 2022

Respectfully Submitted,

By: */s/ Yuri Mikulka*

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DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38-1, Plaintiff respectfully demands a jury trial of all issues triable to a jury.

Dated: January 25, 2022

Respectfully Submitted,

By: */s/ Yuri Mikulka*

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