

## **Coffee's On: Claims Dismissed in Single-Cup Brewing Class Litigation**

December 30, 2011 by [Sean Wajert](#)

A federal court last week dismissed the claims in a case accusing Green Mountain Coffee Roasters of misrepresenting the performance quality of its single-cup brewing systems. See [Green v. Green Mountain Coffee Roasters Inc., et al.](#), 2011 WL 6372617 (12/20/12 D.N.J.).

Your humble blogger is in the minority, not being a coffee drinker. Nearly 60% of adults drink coffee daily. The average American drinks 3.1 cups of coffee each day. This contributes to an \$18 billion U.S. coffee market. One of the tremendous innovations (speaking from experience, having given these as holiday gifts) in the market is the single cup brewing machine for the home, allowing coffee lovers to make less than a full pot, and to choose from among hundreds of flavors and brands of coffee-related beverages.

Defendants are in the specialty coffee and coffee maker businesses. They manufacture single-cup brewers, accessories and coffee, tea, cocoa and other beverages in "K-Cup portion packs." Plaintiff Green maintained that his machine failed to brew the programmed amounts of K-Cup coffee within a few weeks of use. Plaintiff asserted that the machines had defective components, including defective pumps. As a result, the machines allegedly failed and brewed less than the specified amount. Furthermore, this defect allegedly caused consumers to use additional K-Cups to brew a single beverage.

Plaintiff maintained that defendants' actions were in violation of the New Jersey Consumer Fraud Act ("CFA"), N.J. Stat. Ann. § 56:8-1, et seq., and constituted a breach of implied warranty.

Defendants moved to dismiss. The court noted that threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). If the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint should be dismissed for failing to show that the pleader is entitled to relief. A plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.

The motion challenged plaintiffs' standing. To have standing, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. The injury-in-fact element is often determinative.

The injury must affect the plaintiff in a personal and individual way. Here, Green alleged that he purchased and used the Keurig Platinum Brewing System (model series B70). Nevertheless, he sought to represent all individuals in New Jersey who “purchased or received” a variety of Keurig Brewing Systems. Plaintiff did not have standing to pursue a claim that products he neither purchased nor used did not work as advertised.

Regarding that model series B70, plaintiff contended in his complaint that, because of defective components, the coffee machines at issue brew a lesser amount of coffee than the companies represented, compromising the quality of the beverage. Consumers are then forced to use additional K-Cups, which are a portion pack for the systems, according to the complaint. Defendants maintained that even if their alleged conduct was unlawful, plaintiff had not sufficiently pled ascertainable loss. In a misrepresentation case, a plaintiff generally may show ascertainable loss by either out-of-pocket loss or a demonstration of loss in value. In this case, Green did not allege that he made a claim for warranty repair or replacement of his machine. The warranty provided as part of the contract of sale is part of the benefit of the bargain between the parties. Any defects that arise and are addressed by warranty, at no cost to the consumer, do not provide the predicate loss that the CFA expressly requires for a private claim. Because plaintiff had not availed himself of defendants' warranty, he could not allege that the warranty does not address the defect in his machine.

Furthermore, the court found unpersuasive plaintiff's argument that the warranty did not address the defects in the brewers because other consumers allegedly reported that their replaced or repaired brewers were equally defective. Allegations regarding the experience of absent members of the putative class, in general, cannot fulfill the requirement of pleading injury with adequate specificity.

Similarly, plaintiff did not sufficiently plead loss in value. Plaintiff broadly asserted that he suffered a loss because each brewer failed to perform its advertised purpose and caused purchasers to suffer a loss of value of the product. But Green failed to allege how much he paid for his brewer and how much other comparable brewers manufactured by competitors cost at the time of purchase. Furthermore, Green had not suffered a diminution in value because the defective brewer could have been repaired or replaced with a new brewer which would have had its own one-year warranty.

Regarding the implied warranty claim, the general purpose of the brewers is to brew beverages. Even if defendants may have advertised that the machines would brew a specific amount of beverage, that alone did not transform the “general” purpose. Green did not allege that his machine would not brew coffee or that it was inoperable. The complaint was also devoid of any allegation that plaintiff can no longer use his brewer. Therefore, Green had not sufficiently alleged that his brewer was unfit for its ordinary purpose of brewing beverages at the time of purchase.

Defendants also contended that the class allegations should be dismissed. Plaintiff argued that the Court should deny the motion because it was premature. Nevertheless, a court may strike

class action allegations in those cases where the complaint itself demonstrates that the requirements for maintaining a class action cannot be met. Here, the court concluded that the plaintiff could not meet the predominance requirement set forth in Fed.R.Civ.P. 23(b).

The complaint did not allege that all individuals in New Jersey who purchased the Keurig Brewing Systems had experienced the defect. Plaintiff acknowledged that there were members in the putative class who had not yet suffered the alleged pump failure. Consequently, the putative class included individuals who do not presently have a claim against defendants. Proving that defendants breached the implied warranty of merchantability would also require an individualized inquiry. Not every member of the putative class experienced a defect with the model series B70. Even if the purported defect had manifested in all of the brewers purchased within the class period, the court would have to make individual inquiries as to the cause and extent of the defect. Motion granted.