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Brewing Trouble: The SEC Roasts Keurig for Greenwashing and Misleading Recyclability Claims



Executive Summary

On September 10, 2024, the U.S. Securities and Exchange Commission (SEC) charged Keurig Dr. Pepper Inc. (Keurig) with making misleading statements in its public filings regarding the recyclability of its single-use plastic K-Cup beverage pods.¹ This enforcement action underscores the growing importance of Environmental, Social, and Governance (ESG) disclosures and the increasing scrutiny companies face concerning their environmental claims. As part of the settlement, Keurig agreed to pay a \$1.5 million civil penalty without admitting or denying the SEC's findings. As we discuss, this case offers significant takeaways for public companies regarding ESG disclosures, greenwashing, and the broader regulatory environment surrounding sustainability claims.

Keurig's Recyclability Spin Perks Up SEC Action

Keurig, a publicly traded beverage company, sells a nationally recognized brand of coffee machines and related accessories (including its K-Cup pods) through its coffee brewing systems business segment.

The SEC's action against Keurig centers on allegations that the company misrepresented the recyclability of its K-Cup pods in its annual reports for fiscal years 2019ⁱⁱ and 2020ⁱⁱⁱ. According to the SEC's order, Keurig claimed in its Form 10-K filings that it had "conducted extensive testing with municipal recycling facilities to validate that [its pods] can be effectively recycled." However, Keurig failed to disclose that two of the largest recycling companies in the United States had expressed doubts about the commercial feasibility of recycling K-Cup pods. These recycling companies, involved in the testing of the pods, indicated that they were not equipped to process the pods and did not intend to accept them for recycling at that time.

The SEC's enforcement action falls under Section 13(a) of the Securities Exchange Act of 1934 (Exchange Act), which requires public companies to file accurate and complete annual reports. The SEC charged Keurig with filing incomplete disclosures, thereby misleading investors and consumers about the environmental friendliness of its products.

Keurig's Quest for a More Sustainable Brew

Keurig's sustainability efforts began in 2014 when the company, then known as Keurig Green Mountain, released its first Sustainability Report. One key goal in that report was to make 100% of K-Cup pods recyclable by 2020. In the years that followed, Keurig made significant strides toward that goal, transitioning its pods to polypropylene number 5 plastic (PP5), a material theoretically recyclable in many municipal recycling programs.

However, while the material itself may be recyclable, the practicalities of recycling K-Cup pods proved far more complex. Concerns about the recyclability of small items like the pods emerged as Keurig began testing the recycling process at various facilities. The company conducted tests using tracking chips to monitor the flow of pods through recycling centers. While the tests indicated that the pods could be successfully sorted for recycling, this was not the full story.

Cup Half Green - The Missing Info in Keurig's ESG Disclosures

Despite the testing results, Keurig received significant negative feedback from two of the largest U.S. recycling companies. These companies expressed concerns about the commercial feasibility of curbside recycling of K-Cup pods, citing financial and logistical challenges in processing small-format items like K-Cups. According to the SEC's order, these companies represented more than a third of U.S. recycling facilities, making their feedback particularly relevant.

One of the companies communicated to Keurig that there was "not a sufficient benefit for small format materials, and/or hard-to-recycle materials—including K-Cup pods—to make the financial case for inclusion as part of curbside recycling programs." By failing to disclose this feedback in its public filings, Keurig presented an incomplete and misleading picture of K-Cup pod recyclability, which the SEC alleged violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Misleading Disclosures and Materiality: Why Keurig’s Claims Didn’t Filter Through

The crux of the SEC’s case against Keurig centers on materiality—a key concept in ESG (and other) disclosures. Materiality refers to the relevance of information to investors’ decision-making processes. Keurig’s K-Cup pods represent a significant portion of its revenue, and environmental concerns, particularly recyclability, are an important factor for many consumers when deciding whether to purchase Keurig products.

Keurig’s Form 10-K filings stated that testing had validated the recyclability of K-Cup pods, which was technically accurate under ideal conditions. However, the company failed to mention that many recycling centers could not practically recycle the pods, an omission which led the SEC to charge the company with filing an incomplete disclosure in violation of the Exchange Act.

In her dissent,^{iv} SEC Commissioner Hester Peirce argued that Keurig’s statements were not misleading. She compared the situation to a car company claiming its vehicle can accelerate from 0 to 60 miles per hour in under three seconds, despite knowing that “its more conservative drivers do not press the pedal to the metal” to test the car’s limits. In Peirce’s view, Keurig’s statement that the pods “*could*” be recycled was not a promise that they “*would*” be recycled, and the company should not be penalized for failing to disclose every potential obstacle. She also noted the absence of charges based on the antifraud rules—such as Section 10(b), Rule 10b-5, and Rule 12b-20 of the Exchange Act and Section 17(a) of the Securities Act of 1933—highlighted the weaknesses in the SEC’s case.

Despite this dissent, the SEC’s action emphasizes the importance of making not only accurate statements but also providing complete information to avoid disclosures being misleading by omission.

Too Green to Be True: Why the SEC is Cracking Down on Greenwashing

The Keurig case is part of the SEC’s broader efforts to combat “greenwashing”—the practice of making exaggerated or misleading claims about a company’s environmental initiatives or the sustainability of its products. Greenwashing has become a significant concern as companies increasingly market themselves as environmentally conscious to appeal to consumers and investors.

Indeed, a 2023 survey^v found that nearly three-quarters of executives believe most companies in their industry engage in greenwashing, while almost 60% admitted that their own organizations may overstate their sustainability achievements.

As ESG considerations gain prominence in the market, the SEC has ramped up its scrutiny of companies’ environmental claims, requiring such claims to be substantiated with reliable data.

Closing the Lid: What Companies Can Learn from Keurig’s ESG Spill

The SEC’s enforcement action against Keurig for its misleading recyclability claims serves as a cautionary tale for public companies navigating the complex world of ESG disclosures. Greenwashing,

whether intentional or inadvertent, is becoming a focal point for regulators seeking to hold companies accountable for their environmental claims.

As Keurig learned, even technically accurate statements can be deemed misleading if they omit important context. To avoid a similar fate, companies should ensure that their ESG disclosures are not only accurate but also complete and non-misleading. Robust internal disclosure controls and procedures should be in place and followed. Companies should carefully review their sustainability claims to ensure they are backed by reliable evidence and consider disclosing any material limitations or uncertainties. Failure to do so can lead to significant financial penalties and reputational damage.

Importantly, it's not just the SEC that is scrutinizing ESG claims. Other regulators, such as the Federal Trade Commission (FTC) and state attorneys general, as well as private litigants, are increasingly focused on ESG-related communications outside of SEC filings, including sustainability reports, corporate websites, and marketing materials. Companies should conduct periodic "health checks" of all public statements and marketing claims related to sustainability to mitigate the risk of being accused of greenwashing.

In the evolving ESG regulatory landscape, companies should proactively evaluate their sustainability practices, statements and disclosures to ensure they are prepared for the heightened scrutiny accompanying the SEC's (and other authorities') crackdown on greenwashing. Those who don't filter their green claims carefully may find themselves in hot water.

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ⁱ In the Matter of Keurig Dr Pepper Inc., Rel. No. 34-100983, (Sept. 10, 2024), available [here](#).

ⁱⁱ Keurig Dr Pepper Inc., Form 10-K for the Year Ended December 31, 2019, filed Feb. 27, 2020, available [here](#).

ⁱⁱⁱ Keurig Dr Pepper Inc., Form 10-K for the Year Ended December 21, 2010, filed Feb, 25, 2021, available [here](#).

^{iv} “Not so Fast: Statement on In the Matter of Keurig Dr Pepper Inc.”, Statement of Commissioner Hester M. Peirce (Sept. 10, 2024), available [here](#).

^v “Global Executives Say Greenwashing Remains Rife,” Wall Street Journal (Apr. 13, 2023), available [here](#).