

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: CHOCOLATE : **MDL DOCKET NO. 1935**
CONFECTIONARY ANTITRUST : **(Civil Action No. 1:08-MDL-1935)**
LITIGATION :
_____ : **(Judge Christopher C. Conner)**
:

THIS DOCUMENT APPLIES TO:

**ALL INDIRECT END USERS’
ACTIONS**

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED
PARTIAL SETTLEMENT OF CLASS ACTION,
SETTLEMENT HEARING AND RIGHT TO APPEAR**

**If you indirectly bought for end use and not for resale chocolate
candy manufactured by Cadbury Adams Canada, Inc., Cadbury
Holdings, Ltd., Cadbury plc, Hershey Canada, Inc., The Hershey
Company, Mars, Inc., Mars Snackfood US, LLC or Nestlé U.S.A.,
Inc., a Class Action Lawsuit May Affect You.**

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A class action lawsuit brought by, and on behalf of, indirect end user purchasers of chocolate candy is currently pending. Plaintiffs allege that, beginning as early as December 9, 2002 and continuing through and including December 20, 2007, Defendants engaged in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of chocolate candy in violation of federal and state antitrust laws. Plaintiffs allege that, as a result of the unlawful conspiracy, they and other indirect end user purchasers paid more for chocolate candy than they would have paid absent the conspiracy. Defendants deny Plaintiffs’ allegations.
- A settlement has been reached with Cadbury Adams Canada, Inc., Cadbury Holdings, Ltd. and Cadbury plc (hereinafter “Cadbury”). The settlement

reflects that Cadbury does not sell chocolate candy to members of the Settlement Class.

- The litigation is continuing against Hershey Canada, Inc., The Hershey Company, Mars, Inc., Mars Snackfood US, LLC, and Nestlé U.S.A., Inc. (collectively, “the Non-Settling Defendants”).
- Your legal rights will be affected whether you act or don’t act. **This Notice includes information on the settlement and the litigation. Please read the entire Notice carefully.**
- For the purposes of the settlement, chocolate candy includes chocolate bars and other chocolate confectionery products packaged to be sold at retail.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	You do not have to take any action now to remain part of the continuing litigation.
OBJECT	Write to the Court about why you don’t like the settlement.
EXCLUDE YOURSELF	You can exclude yourself from the settlement with Cadbury. However, you may remain a member of any future Settlement Class or litigation class certified in this case.
HIRE YOUR OWN ATTORNEY	You can choose to be represented by your own attorney instead of counsel for the Settlement Class.

- The Court in charge of this case still has to decide whether to approve the settlement.

1. Why has this notice been issued?

This legal notice is to inform you of the Cadbury Settlement that has been reached in the class action lawsuit, *In re Chocolate Confectionary Antitrust Litigation*, Case No. 08-1935, pending in the United States District Court for the Middle District of Pennsylvania. You have a right to know about the litigation and about your legal rights and options before the Court decides whether to approve the Settlement.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, producers of chocolate candy, conspired to fix, maintain or stabilize prices for chocolate candy. Plaintiffs allege that this conspiracy caused indirect end-user purchasers to pay more for chocolate candy than they would have otherwise paid.

In late 2007 and early 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to fix, maintain or stabilize prices of chocolate candy. On April 7, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Christopher C. Conner, United States District Judge in the United States District Court for the Middle District of Pennsylvania.

Plaintiffs represent both themselves (the named plaintiffs) and the Class of indirect end-user purchasers of chocolate candy. The lawsuit, which is brought as a Class Action, seeks: (a) nationwide injunctive relief to prevent the Defendants' behavior that is the subject of this lawsuit and (b) money for indirect purchasers in certain states. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the proposed Class present and share common questions of law and fact.

3. Who is included in the Settlement?

Plaintiffs and Cadbury have agreed that for purposes of the settlement, the Settlement Class is defined as follows:

All persons and/or entities residing in the United States or Guam who indirectly purchased Chocolate Candy, for their own use and not for resale, from any Defendant or any predecessor, controlled subsidiary, affiliate or division of any Defendant, in, or for delivery into, any state that has enacted a statute extending standing to indirect purchasers asserting claims under state or local antitrust, unfair competition, consumer protection, unfair practices, trade practice, or civil conspiracy law, including but not limited to the states of Arizona, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, Nebraska, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont and Wisconsin, and manufactured by or for a Defendant or any predecessors, controlled

subsidiaries, affiliates or divisions of any Defendant, at any time during the period from December 9, 2002 through and including December 20, 2007 (“Class Period”). Excluded from the Class are Defendants, their co-conspirators, all present or former parents, predecessors, subsidiaries or affiliates of Defendants, and all governmental entities. Nothing in this Agreement is intended to or shall limit the rights of any state Attorney General.

The Court has preliminarily certified this Settlement Class. However, the Settlement Class is being preliminarily certified solely for the purposes of settling potential claims against Cadbury. The Settlement Class is distinct from any other class that may be certified in this case. Regardless of whether you decide to remain in the Settlement Class or exclude yourself from the Settlement Class, your rights are fully preserved with respect to any and all claims against all remaining Defendants other than Cadbury.

4. What does the Cadbury Settlement provide?

After extensive settlement negotiations, Plaintiffs and Cadbury reached a Settlement on April 28, 2011. The Settlement is between Plaintiffs and Cadbury only. The Cadbury settlement reflects that Cadbury does not sell chocolate candy to members of the Settlement Class. The vast majority of sales of Cadbury chocolate candy products in the United States are made by The Hershey Company pursuant to a trademark license agreement. This settlement does not affect any of the remaining Non-Settling Defendants, against whom this case continues.

Under the Settlement Agreement, Cadbury has paid \$250,000.00 (the “Settlement Fund”) into an account to be administered in accordance with the provisions of the Settlement Agreement. Class Counsel will seek approval of the Court to use the entire Settlement Fund to pay such expenses as may reasonably be incurred in the prosecution of this lawsuit. If the Settlement Fund is utilized for that purpose, there will not be any payments to members of the Settlement Class from the Settlement Fund. In addition, Cadbury has paid \$250,000.00 into a Notice and Administration Cost Fund, which will be shared by the three proposed classes: the Direct Purchaser Class Plaintiffs, the Indirect End User Plaintiffs, and the Indirect Purchaser for Resale Plaintiffs to give notice to class members.

The settlement payments by Cadbury will be the sole source of payment for the costs of notice and administration of this settlement, and for satisfaction of the

Settlement Class members' claims against Cadbury.

In addition to the monetary component of the settlement, Cadbury has also agreed to provide certain cooperation in the prosecution of the litigation against the Non-Settling Defendants. This cooperation includes the obligation of Cadbury to use reasonable efforts to make witnesses available for interviews and depositions in Canada and the United Kingdom without the need to issue subpoenas or comply with any applicable foreign legal requirements. Cadbury has similarly agreed to use reasonable efforts to voluntarily produce witnesses at trial, if necessary.

On August 12, 2011, the Court granted preliminary approval to the Cadbury Settlement, finding it sufficiently fair, reasonable and adequate to warrant notifying the Settlement Class.

The complete terms of the proposed Settlement Agreement are on file and may be examined or copied during regular business hours at the office of the Clerk of the United States District Court for the Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and may be printed from the Internet website dedicated to this lawsuit, www.ChocolateSettlementIndirect.com

The Cadbury Settlement should not be taken as an admission by Cadbury of any allegation by Plaintiffs or of wrongdoing of any kind.

5. What is the effect of the Court's final approval of the Cadbury Settlement?

If the Court grants final approval, the Cadbury Settlement will be binding upon you and all other members of the Settlement Class. By remaining part of the Cadbury Settlement Class, if approved, you will give up any claims against Cadbury relating to the claims made or which could have been made in this lawsuit. Paragraph 36 of the Settlement Agreement, which is available at www.ChocolateSettlementIndirect.com, provides the complete terms of the release of claims against Cadbury. By remaining a part of the Settlement Class, you will retain all claims against all other Defendants, named and unnamed.

6. Who represents the Settlement Class?

The Settlement Class is represented by the following attorneys:

Steven F. Benz

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

1615 M Street, N.W., Suite 400

Washington, DC 20036

Telephone: (202) 326-7929

E-mail: sbenz@khhte.com

Christopher Lovell

LOVELL STEWART HALEBAIN & JACOBSON LLP

61 Broadway, Suite 501

New York, NY 10006

Telephone: (212) 608-1900

E-mail: clovell@lsblp.com

7. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold a hearing at the United States District Court for the Middle District of Pennsylvania, Courtroom #2, 228 Walnut Street, Harrisburg, Pennsylvania 17108, on December 12, 2011 at 10:30 a.m., to determine whether the proposed settlement should be approved as fair, adequate and reasonable (“Fairness Hearing”). If you wish to speak at the Fairness Hearing, you must send a letter saying that it is your “Notice of Intention to Appear”. Your letter must be postmarked no later than November 28, 2011 and sent to the Clerk of Court, Class Counsel, and Counsel for Cadbury Defendants at the addresses listed under Questions No. 8. The Fairness Hearing may be continued without further notice. It is not necessary for you to appear at the Fairness Hearing. You or your own lawyer may attend the hearing if you wish, at your own expense.

8. How do I object to the Settlement?

If you are a member of the Settlement Class and do not elect exclusion from the Settlement Class, you may object to the terms of the Settlement Agreement prior to final approval. If you wish to object to the Settlement Agreement, you must mail such written objection, including proof of membership in the Settlement Class and a statement of the nature and grounds for your objection, to the Clerk of the Court at the following address: 228 Walnut Street, Harrisburg, PA 17108. The written objection must be received and filed with the Court no later than November 28, 2011. Copies of any objections must be sent to counsel for the Plaintiffs and Cadbury Defendants as well as the Court at the addresses listed below.

Counsel for Plaintiffs:

Steven F. Benz

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

1615 M Street, N.W., Suite 400

Washington, DC 20036

Telephone: (202) 326-7929

E-mail: sbenz@khhte.com

Christopher Lovell

LOVELL STEWART HALEBAIN & JACOBSON LLP

601 Broadway, Suite 501

New York, NY 10006

Telephone: (212) 608-1900

E-mail: clovell@lsbllp.com

Counsel for Cadbury:

Dennis P. Orr

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, NY 10104

Telephone: (212) 468-8161

E-Mail: dorr@mofocom

The Court:

United States District Court
Federal Building & U.S. Courthouse
228 Walnut Street
P.O. Box 983
Harrisburg, PA 17108

9. How do I exclude myself from the Settlement?

If you elect to exclude yourself from the Settlement Class, you must mail a written request to be excluded to the Clerk of the Court c/o Settlement Administrator at the following address: The Notice Company, P.O. Box 455, Hingham, MA 02043, and to Counsel for Plaintiffs at the addresses listed under Question No. 8. The written request for exclusion must include your name, address, and telephone number. Each request for exclusion must also contain a signed statement that “I/we hereby request that I/we be excluded from the proposed Settlement Class in the *In re Chocolate Confectionary Antitrust Litigation*.” The written request for exclusion must be received no later than October 21, 2011. If you elect to be excluded from the Settlement Class, you will remain free to pursue any legal rights you may have against Cadbury.

10. May I hire my own attorney?

If you are a member of the Settlement Class and do not wish to be represented by the Plaintiffs and their counsel, you may enter an appearance through your own attorney. To do so, you must file an Entry of Appearance with the Clerk of the Court for the United States District Court for the Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and send a copy of the Entry of Appearance to counsel for the Plaintiffs and Cadbury identified under Question No. 8. Such Entry of Appearance must be filed with the Court no later than November 28, 2011. You will then continue, as a member of the class with representation by your own attorney, and you will be responsible for the fees and costs of that attorney.

11. What happens if I do nothing?

If you are a member of the Settlement Class described above, and wish to remain a member, you do not have to do anything. If you choose to take no action, your interests as a member of the Settlement Class will be represented by the Plaintiffs and their counsel. You will be bound by the terms of the Settlement Agreement and any final judgment that may be entered.

As a member of the Settlement Class, you will not be responsible for attorneys' fees or litigation expenses.

In addition, if the Court grants final approval of the Settlement Agreement, you will be bound by the terms of that agreement and by any judgment entered in accordance with that agreement.

Your decision with respect to the Settlement Class does not affect your right to remain in or exclude yourself from any other class that may be certified in this case against Defendants other than the Cadbury Defendants.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

/ S /

Clerk of Court
**United States District Court
for the Middle District of Pennsylvania**