

## **NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING IN THE MATTER OF CHOCOLATE PRODUCTS CLASS ACTION LITIGATION**

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.**

**TO: All Persons in Canada who, between February 1, 2001 and December 31, 2008, purchased Chocolate Products in Canada, except the Defendants and certain parties related to the Defendants (the "Settlement Class").**

Chocolate Products mean any and all chocolate confectionary products of the Defendants sold in Canada. The Defendants are: Cadbury Schweppes plc, Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle S.A., Nestle Canada Inc., and ITWAL Limited ("ITWAL").

### **I. BACKGROUND**

Class proceedings lawsuits have been initiated across Canada alleging that the Defendants conspired to fix prices for Chocolate Products in Canada and that ITWAL engaged in price maintenance. With the exception of ITWAL, the Defendants are manufacturers of Chocolate Products. ITWAL operates a retail and foodservice wholesale distribution network and was a major purchaser and distributor of Chocolate Products during the relevant period.

### **II. CLASS ACTION SETTLEMENT**

Hershey Canada, Inc. has entered into a settlement that will resolve the allegations and litigation against it and its related entities (including The Hershey Company) in Canada. Hershey does not admit any wrongdoing or liability, and the settlement represents resolution of the disputed claim. Under the terms of the settlement agreement, Hershey Canada Inc. has agreed to pay CDN \$5.3 million for the benefit of the Settlement Class in exchange for a full release of claims asserted in the class actions against it and its related entities, including The Hershey Company. Hershey Canada Inc. has also agreed to provide cooperation to the Plaintiffs in pursuing their claims against the remaining Defendants.

The settlement must be approved by the Ontario, British Columbia and Quebec courts before becomes effective. A joint hearing to approve the settlement will be held before the Ontario, British Columbia and Quebec courts on May 28, 2012 at 11 am. PST / 2 pm EST. At this hearing, the Ontario, British Columbia and Quebec courts will determine whether the settlement is fair, reasonable, and in the best interests of Settlement Class Members.

Settlement Class Members who do not oppose the proposed settlements need not appear at the settlement approval hearings or take any other action at this time to indicate their desire to participate in the settlements.

Settlement Class Members who do not oppose the proposed settlement need not attend the settlement approval hearing or take any other action at this time to indicate their desire to participate in the settlement. If you wish to attend the settlement approval hearing, please contact the appropriate Class Counsel for additional details.

Settlement Class Members are entitled to appear and make submissions at the settlement approval hearing. If you wish to comment on or make an objection to the Settlement Agreement, a written submission must be delivered to the appropriate Class Counsel at one or both of the addresses listed below, postmarked no later than May 21, 2012. Class Counsel will forward all such submissions to the appropriate court. All written submissions will be considered by the court. If you do not file a written submission by May 21, 2012, you may not be entitled to participate, through oral submissions or otherwise, in the settlement approval hearing.

If the Settlement Agreement is approved by the courts in Ontario, British Columbia and Quebec, further notices will be published and posted online at [www.classaction.ca](http://www.classaction.ca) to advise Settlement Class Members in Canada of such court approval and the process for filing a claim under the Settlement Agreements.

### **III. THE SETTLEMENT FUNDS**

The way in which the settlement funds will be distributed will be determined at a later date. The settlement funds are being held in trust for the benefit of Settlement Class Members for the time being. Once the court has approved the method for distributing the settlement funds, another notice will be provided and posted online at [www.classaction.ca](http://www.classaction.ca) explaining which class members are eligible for direct payment and how class members can apply to receive payment.

### **IV. OPTING OUT**

The deadline for opting out (or excluding oneself) of this proceeding has passed. Settlement Class Members who have not validly opted out are bound by the terms of the settlement agreement (if approved by the courts).

### **V. PREVIOUS SETTLEMENTS**

Previous settlements have been reached with Cadbury Holdings Limited (as the successor to Cadbury Schweppes plc) and Cadbury Adams Canada Inc. (collectively, "Cadbury"), and ITWAL. Under the terms of the Cadbury settlement, Cadbury has paid \$5.7 million, which amount is being held in an interest bearing account for the benefit of Settlement Class Members. Under the terms of the ITWAL settlement, ITWAL has agreed to assign to the Settlement Class any and all claims that it may have against the other Defendants in relation to any allegations asserted in the litigation. Cadbury and ITWAL have also agreed to provide cooperation to the plaintiffs in the continued prosecution of these proceedings. The Cadbury and ITWAL settlements have received the requisite court approval.

### **VI. CLASS COUNSEL**

The law firms of Siskinds<sup>LLP</sup> and Sutts, Strosberg<sup>LLP</sup> represent Settlement Class Members in Ontario, and in provinces other than British Columbia or Quebec, as well as corporations of more than 50 employees in Quebec. Siskinds<sup>LLP</sup> can be reached toll free at 1-800-461-6166 ext. 2455, by email at [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com), or by mail at 680 Waterloo Street, London, Ontario N6A 3V8, Attention: Charles Wright. Sutts, Strosberg<sup>LLP</sup> can be reached toll free at 1-800-229-5323 ext. 8296, by email at [hpeter@strosbergco.com](mailto:hpeter@strosbergco.com), or by mail at 600-251 Goyeau Street, Windsor, ON N9A 6V4, Attention: Heather Rumble Peterson.

The law firms of Camp Fiorante Matthews Mogerma and Branch MacMaster LLP represent Settlement Class Members in British Columbia. Camp Fiorante Matthews Mogerma can be reached at 604-689-7555, by email at [DJones@cfmlawyers.ca](mailto:DJones@cfmlawyers.ca), or by mail at 400 – 856 Homer Street, Vancouver, BC V6B 2W5, Attention: David Jones. Branch MacMaster LLP can be reached at 604-654-2966, by email at [lbrasil@branmac.com](mailto:lbrasil@branmac.com), or by mail at 1410-777 Hornby Street, Vancouver, BC V6Z 1S4, Attention: Luciana Brasil.

The law firm of Siskind Desmeules s.e.n.c.r.l. represents individuals and corporations of 50 or less employees who are Settlement Class Members in Quebec. Quebec Class Counsel can be reached at 418-694-2009, by email at [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com), or by mail at Les promenades du Vieux-Quebec, 43 rue De Buade, bureau 320, Quebec City, QC G1R 4A2, Attention: Me Simon Hébert.

Class Counsel legal fees and disbursements must be approved by the courts. Class Counsel will collectively be requesting court approval of legal fees in an amount not to exceed 25% of the value of the settlement, plus disbursements and applicable taxes. Legal fees, disbursements and applicable taxes will be paid from the Settlement Funds.

## VII. QUESTIONS ABOUT THE SETTLEMENTS

This notice contains only a summary of the Settlement Agreement and Settlement Class Members are encouraged to review the complete Settlement Agreement online at [www.classaction.ca](http://www.classaction.ca). Updates and copies of important court filings, including the Certification Record filed by the plaintiffs, will be posted at the website [www.classaction.ca](http://www.classaction.ca). If you have questions that are not answered online at [www.classaction.ca](http://www.classaction.ca), please contact the appropriate Class Counsel. QUESTIONS SHOULD NOT BE DIRECTED TO THE COURT.

## VIII. INTERPRETATION

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, including the appendices of the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

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**This notice has been authorized by the Ontario Superior Court of Justice, the Supreme Court of British Columbia, and the Superior Court of Quebec**