

Court File No. 08-CV-347263PD2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID OSMUN and  
METRO (WINDSOR) ENTERPRISES INC.

Plaintiffs

- and -

CADBURY ADAMS CANADA INC.,  
THE HERSHEY COMPANY, HERSHEY CANADA, INC.,  
NESTLÉ CANADA, INC., MARS INCORPORATED,  
MARS CANADA INC. and ITWAL LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION**

The Plaintiffs will make a motion to the court on Wednesday April 21, 2010 at 10:00 a.m. or as soon after as the motion can be heard, before Mr. Justice Strathy at the Court House, 361 University Ave, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard

in writing under subrule 37.12(1), on consent;

in writing as an opposed motion under subrule 37.12.1(4);

orally

**THE MOTION IS FOR:**

1. An Order approving the retainer agreements entered into with the Representative Plaintiffs, David Osmun and Metro (Windsor) Enterprises Inc., pursuant to section 32(2) of the *Class Proceedings Act, 1992*;

2. An Order approving Class Counsel legal fees plus applicable taxes;
3. An Order approving Class Counsel disbursements plus applicable taxes;
4. An Order that the Class Counsel legal fees, disbursements, and applicable taxes be paid from the Settlement Funds, payable pursuant to the terms of the Settlement Agreement entered into between the Plaintiffs and the Defendants, Cadbury Adams Canada Inc. and Cadbury Holdings Limited, dated October 14, 2009; and
5. Such further and other relief as counsel may request and as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. David Osmun and Metro (Windsor) Enterprises Inc. retained Sutts Strosberg LLP in relation to the alleged conspiracy to fix prices and allocate markets for Chocolate Products, which is the subject of the within proceeding;
2. Following adversarial negotiations, two separate settlement agreements were reached, one with Cadbury Adams Canada Inc. and Cadbury Holdings Limited (collectively "Cadbury") and one with ITWAL Limited ("ITWAL");
3. Class Counsel undertook significant risk in pursuing this litigation. The litigation was undertaken on a contingency basis and all of the disbursements were funded by Class Counsel;
4. Class Counsel seeks payment of legal fees, disbursements and taxes from the monies payable under the Settlement Agreements and in accordance with the retainer agreements entered into;

5. The *Class Proceedings Act, 1992*, S.O. 1992, c.6;
6. The *Rules of Civil Procedure*, R.R.O. Reg. 194, Rule 12; and
7. Such further and other grounds as this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Affidavit of Andrea DeKay, sworn February 25, 2010;
2. The Affidavit of David Osmun, sworn October 27, 2009;
3. The Affidavit of Edmond Soulliere, sworn October 26, 2009; and
4. Such further and other material as counsel may advise and the Honourable Court may permit.

Date: February 25, 2010

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