

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*

**AFFIDAVIT OF EDMOND SOULLIERE
(sworn October 26, 2009)**

I, Edmond Soulliere, of the City of Windsor, in the County of Essex, representative of Metro (Windsor) Enterprises Inc., **MAKE OATH AND SAY AS FOLLOWS:**

1. I have been the Chief Executive Officer of Metro (Windsor) Enterprises Inc. ("Metro") since 2004. Prior to becoming CEO, I was President of the company for some 42 years. As such, I have knowledge of the matters to which I hereinafter depose, either personally or from having been advised by my counsel Jay Strosberg. All of the information I have deposed to I verily believe to be true.

NATURE OF THE MOTION

2. The plaintiffs in Canada have entered into two separate settlements with:
 - (a) Cadbury Adams Canada Inc. and Cadbury Holdings Limited, as the successor to Cadbury Schweppes plc (collectively "Cadbury"), dated October 14, 2009 (the "Cadbury Settlement Agreement"); and
 - (b) ITWAL Limited ("ITWAL"), dated October 6, 2009 (the "ITWAL Settlement Agreement").

BACKGROUND

3. Metro is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office located in the City of Windsor. Metro is in the catering and vending machine business.
4. Metro retained Sutts, Strosberg LLP ("Strosberg") to commence an action with respect to the alleged conspiracy to fix, maintain, and/or raise the price of chocolate confectionary products in Canada. A copy of the retainer agreement entered into by Metro is attached as Exhibit "A".
5. I appreciate that Strosberg has been working cooperatively with Siskinds LLP ("Siskinds") in the prosecution of this case. I understand that similar actions have been commenced in British Columbia, Quebec and elsewhere in Canada, and that Siskinds and Strosberg are working cooperatively with counsel to other proceedings. Metro supports the approach of counsel pooling their resources to prosecute the proceedings.
6. In the absence of this class proceeding, Metro would not have commenced litigation against the defendants due to concerns regarding the expense associated with such complex litigation.

7. During the relevant period, Metro purchased chocolate confectionary products in Ontario directly from Mars Canada Inc. and indirectly from Cadbury, The Hershey Company, Hershey Canada Inc., Nestlé Canada, Inc., Mars, Incorporated, and Mars Canada Inc.

CERTIFICATION

8. I have reviewed the proposed settlement class definitions set out in the Settlement Agreements, and Metro is a class member within the Ontario settlement class definition. Metro is prepared to assume the role of representative plaintiff on behalf of the Ontario settlement class.
9. I believe that Metro will fairly and adequately represent the interests of the members of the proposed Ontario settlement class. I do not believe that Metro's interests are in conflict with those of other members of the Ontario settlement class (or the classes in the other proceedings) on the proposed common issues.
10. I understand that Cadbury and ITWAL have agreed to a consent certification order for settlement purposes.

SETTLEMENT APPROVAL

11. Counsel has explained the terms of the Settlement Agreements to me and I understand that the Settlement Agreements must be approved by the courts in Ontario, British Columbia and Quebec.
12. I understand that under the terms of the Cadbury Settlement Agreement, Cadbury is required to pay \$5,700,000 for the benefit of the settlement classes in Canada. I understand that the settlement benefits payable under the Cadbury Settlement Agreement will be paid into an interest-bearing account for the benefit of the settlement classes. I further understand that, due to the costs associated with administering class members'

claims, the settlement benefits will not be distributed until a later date, after additional settlements and/or judgments have been achieved.

13. I understand that, unlike the other defendants, ITWAL is not a manufacturer of chocolate confectionary products. Rather, ITWAL operates a retailer and foodservice wholesale distribution network, and was a major purchaser and distributor of chocolate confectionary products during the relevant period. I further understand that under the terms of the ITWAL Settlement Agreement, ITWAL has agreed to assign to the settlement classes any and all claims that it may have against the defendants in relation to any allegations asserted in the proceedings.
14. I understand that the Settlement Agreements require Cadbury and ITWAL to provide substantial cooperation in the prosecution of the proceedings. In particular, I understand that Cadbury and ITWAL are required to provide information, documents and testimony relevant to the claims alleged in the proceedings.
15. I believe that the Settlement Agreements are a fair and reasonable compromise of the litigation against the settling defendants. Consequently, Metro has instructed Class Counsel to seek approval of the Settlement Agreements.

CLASS COUNSEL FEES

16. I understand that this litigation was undertaken on a contingency basis and that Class Counsel would not be paid for fees or disbursements unless successful. I understand that it is Class Counsel's intention to request fees in the amount of 25% of total value of the Settlement Agreements, plus disbursements and applicable taxes. Class Counsel fees in

this amount would be consistent with the terms of Metro's retainer agreement and I have no difficulty with such an application.

SWORN OR AFFIRMED before)
me at the City of Windsor, in the)
County of Essex, this 26th day of)
October, 2009.)

[Redacted signature block]

A Commissioner, etc.)

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EDMOND SOULLIERE