

ORIGINATING NOTICE (ACTION)

2008

S.H. No.

292103

Court Administration

FEB 15 2008

Halifax, N.S.


IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

BARRETT THOMPSON

Plaintiff

- and -


CADBURY ADAMS CANADA INC., MARS, INCORPORATED,
MARS CANADA INC., formerly known as EFFEM INC.,
THE HERSHEY COMPANY, HERSHEY CANADA INC.,
NESTLE CANADA INC. and ITWAL LIMITED

Defendants

TO THE DEFENDANTS:

TAKE NOTICE that this proceeding has been brought by the Plaintiff against you, the Defendants, in respect of the claim set out in the Statement of Claim annexed to this notice.

AND TAKE NOTICE that the Plaintiff may enter judgment against you on the claim, without further notice to you, unless within TWENTY days after the service of this Originating Notice upon you, excluding the day of service, you or your solicitor cause your Defence to be delivered by mail or personal delivery to,

(a) the office of the Prothonotary at 1815 Upper Water Street in Halifax, Nova Scotia, and

(b) to the address given below for service of documents on the Plaintiff:

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff or his solicitor within six days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the 15th day of February, A.D., 2008.

RAYMOND F. WAGNER

Wagners

Co-counsel for the Plaintiffs

whose address for service is

1869 Upper Water Street

3rd Floor Pontac House

HALIFAX, NS B3J 1S9

Tel: 902-425-7330

Email: raywagner@wagnerslawfirm.com

WARD BRANCH

Branch McMaster

Co-counsel for the Plaintiffs

whose address for service is

Suite 1210, 777 Hornby Street

Vancouver, B.C. V6Z 1S4

Telephone: (604) 654-2999

Email: wbranch@branmac.com

ORIGINATING NOTICE (ACTION)

2008

S.H. No. 292103

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BETWEEN:

BARRETT THOMPSON

Plaintiff

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**CADBURY ADAMS CANADA INC., MARS, INCORPORATED,
MARS CANADA INC., formerly known as EFFEM INC.,
THE HERSHEY COMPANY, HERSHEY CANADA INC.,
NESTLE CANADA INC. and ITWAL LIMITED**

Defendants

ORIGINATING NOTICE (ACTION)

AFFIDAVIT OF SERVICE

I, Luciana P. Brasil, of Vancouver, British Columbia, (Lawyer) make oath and say as follows:

Cadbury Adams Canada Inc.

1. On Wednesday, the 30th day of April, A.D., 2008, I served the Defendant Cadbury Adams Canada Inc. with the within Originating Notice and Statement of Claim annexed hereto, by delivering true copies of same to its counsel, Christopher Naudie of Osler, Hoskins & Harcourt LLP at Box 51, 1 First Canadian Place, Toronto, Ontario. Annexed hereto and marked as **Exhibit "A"** is a true copy of the May 6, 2008 letter I received from Mr. Naudie confirming service of the Originating Notice and Statement of Claim on April 30, 2008.

Nestle Canada Inc.

2. On Friday, the 7th day of March, A.D., 2008, I served the Defendant Nestle Canada Inc. with the within Originating Notice and Statement of Claim annexed hereto, by delivering true copies of same to its counsel, Robert Kwinter of Blake Cassels & Graydon LLP at 2800 - 199 Bay Street, Toronto, Ontario. Annexed hereto and marked as **Exhibit "B"** is a true copy of acknowledgment of service I received from Mr. Kwinter confirming service of the Originating Notice and Statement of Claim with my letter of March 3, 2008.

Itwal Limited

3. On Monday, the 3rd day of March, A.D., 2008, I served the Defendant Itwal Limited with the within Originating Notice and Statement of Claim annexed hereto, by delivering true copies of same to its counsel, Donald Houston of McCarthy Tetrault LLP at 4700 – Toronto Dominion Bank Tower, Toronto, Ontario. Annexed hereto and marked as **Exhibit "C"** is a true copy of the March 3, 2008 letter I received from Mr. Houston confirming service of the Originating Notice and Statement of Claim with my letter of February 22, 2008.

SWORN TO at Vancouver,
Province of British Columbia this
21 day of July A.D., 2008 before me:

Sharon Precious
A COMMISSIONER FOR)
TAKING AFFIDAVITS IN)
BRITISH COLUMBIA)

Luciana P. Brasil
LUCIANA P. BRASIL

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Ottawa
Calgary
New York

May 6, 2008

Christopher Naudie
Direct Dial: (416) 862-6811
cnaudie@osler.com
Our Matter Number: 1108053

SENT BY FACSIMILE AND E-MAIL

Ms. Luciana Brasil
BRANCH MACMASTER
1410 - 777 Hornby Street
Vancouver, B.C. V6Z 1S4

This is Exhibit "A" referred to in the
affidavit of Luciana Brasil
this 21 day of July 2008
Susan Preims
A Commissioner for taking Affidavits
for British Columbia

Dear Ms. Brasil:

Re: Proceedings against Cadbury Adams Canada Inc.

I am writing further to your email dated April 29, since I was travelling for part of last week.

I confirm that we admit service of the seven identified pleadings on behalf of Cadbury Adams Canada Inc. ("Cadbury Adams") as of April 30, 2008 (since we received your email after the close of business on April 29, we have admitted service as of the next business day, namely April 30). As agreed, we make this admission in accordance with the terms and understandings set out in our exchange of correspondence on April 10 and 14, 2008. For the purpose of calculating our timelines in the various jurisdictions, we have admitted service on the basis that these seven pleadings were served in Ontario. I trust that this is acceptable.

However, we have noted that you delivered two additional pleadings in your email that were not included in your list of seven pleadings. In particular, you have included an amended statement of claim from B.C., as well as a pleading from Quebec. We were not aware of the amended claim in B.C., and Cadbury Adams has already filed an appearance in respect of the proceeding in Quebec. If it was your intention to serve these two additional pleadings, please let us know and we will seek the appropriate instructions.

Otherwise, we will be taking the necessary steps in the coming weeks to file appearances on behalf of Cadbury Adams in respect of the seven identified jurisdictions. In the interim, we confirm that you will not take any steps to note Cadbury Adams in default without reasonable prior notice to us. And as per your letter dated April 14, 2008, we also confirm that you will not require a Statement of Defence in any of these proceedings at this point in time, and that if you require a pleading before certification, you will provide us with reasonable notice so that Cadbury Adams can take appropriate steps to prepare a defence or contest your position.

OSLER

Page 2

Yours very truly,



Christopher Naudie
CPN/nm

c: L. Lowenstein (*Osler*)
J.-M. LeClerc (*Osler*)

This is Exhibit " B " referred to in the
affidavit of Luciana Brasil
this 21 day of July, 2008
Susan Preuss
A Commissioner for taking Affidavits
for British Columbia

BRANCH MACMASTER
BARRISTERS & SOLICITORS

1210 - 777 Hornby Street
Vancouver, B.C. V6Z 1S4
Telephone 604 654-2999
Facsimile 604 684-3429
Website www.branmac.com

Direct Line: 604 654-2960
Email: lbrasil@branmac.com
File No: X01-016

March 3, 2008

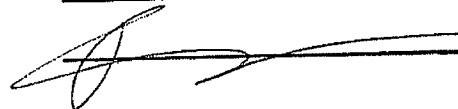
Delivered by Courier

Blake, Cassels & Graydon LLP
199 Bay Street
2800 Commerce Court West
Toronto, ON M5L 1A9

Attention: Robert Kwinter

Dear Sirs/Mesdames:

Receipt acknowledged this 7th day of
March, 2008



Re: Proceedings against Nestle Canada

Thank you for your email of February 27, 2008, wherein you confirmed you will accept service of the originating pleadings in all actions commenced by our counsel group against Nestle Canada. We enclose filed copies of the following:

1) Statement of Claim filed in Alberta

David William Cowan v. Cadbury Adams Canada Inc. and others, Court of Queen's Bench of Alberta, Judicial District of Edmonton, Action No. 0803 02316

2) Writ of Summons and Amended Statement of Claim in British Columbia

Jacob Stuart Main v. Cadbury Schweppes Plc Inc. and others, Supreme Court of British Columbia Action No. S078807

3) Notice of Action with Statement of Claim Attached filed in New Brunswick

Rick Thompson v. Cadbury Schweppes Plc. and others, Court of Queen's Bench of New Brunswick, Judicial District of Moncton, Cause No. MC011608

4) Statement of Claim filed in Newfoundland & Labrador

William Kelly and Gerald Ledrew v. Cadbury Adams Canada Inc. and others, Supreme Court of Newfoundland and Labrador, No. 2008 01 T 0650 CP

5) Statement of Claim filed in Nova Scotia

Barrett Thompson v. Cadbury Adams Canada Inc. and others, Supreme Court of Nova Scotia, S.H. No. 292103

6) Statement of Claim filed in Saskatchewan

Brian Kjelskus v. Cadbury Adams Canada Inc. and others, Court of Queen's Bench for Saskatchewan, Judicial Centre of Melfort, Q.B.G. No. 12 of A.D. 2008

We ask that you please acknowledge service of all above noted documents by signing and returning to us the enclosed copy of this letter.

Additionally, in order to comply with specific service requirements in Saskatchewan, we ask that you also complete and return to us the enclosed Acknowledgment of Service form. While the form indicates you are required to provide an address in Saskatchewan in order to receive notice of subsequent proceedings, we will not be insisting on compliance with this requirement and unless you indicate otherwise, will use your Ontario office as the delivery address for all subsequent pleadings and correspondence.

Yours truly,

BRANCH MACMASTER



Luciana P. Brasil

LPB/lpb

Encls.

Cc: Counsel Group

Barristers & Solicitors
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP
Box 48, Suite 4700
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Canada
Telephone: 416 362-1812
Facsimile: 416 868-0673
mccarthy.ca

Donald B. Houston
Direct Line: 416 601-7506
Direct Fax: 416 868-0673
E-Mail: dhouston@mccarthy.ca

March 3, 2008

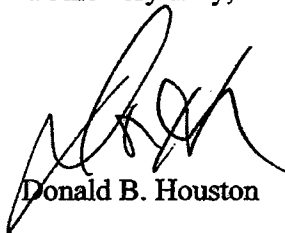
Ms. Luciana P. Brasil
Branch MacMaster
Barristers and Solicitors
1210-777 Hornby Street
Vancouver, BC V6Z 1S4

Dear Ms. Brasil:

Re: Proceedings Against Itwal Limited

As requested in your letter of February 22, I have enclosed our acknowledgement of service of the proceedings referenced in your letter. Our client is in the process of retaining Saskatchewan counsel who we will ask to execute the Acknowledgement of Service enclosed with your letter.

Yours very truly,



Donald B. Houston

DBH/hm
Encl.

This is Exhibit "C" referred to in the
affidavit of Luciana Brasil
this 21 day of July 2008
Sharon Perkins
A Commissioner for taking Affidavits
for British Columbia

BRANCH MACMASTER
BARRISTERS & SOLICITORS

1210 - 777 Hornby Street
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Direct Line: 604 654-2960
Email: lbrasil@branmac.com
File No: X01-016

February 22, 2008

Delivered by Courier

McCarthy Tetrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Attention: Donald B. Houston

Dear Sirs/Mesdames:

Re: Proceedings against Itwal Limited

Receipt acknowledged this 3rd day of
March, 2008

McCarthy Tetrault LLP
Solicitors for ITWAL Limited

Thank you for your letter of February 22, 2008, wherein you confirmed you will accept service of all pleadings commenced by our counsel group against Itwal Limited. We enclose filed copies of the following:

1) Statement of Claim filed in Alberta

David William Cowan v. Cadbury Adams Canada Inc. and others, Court of Queen's Bench of Alberta, Judicial District of Edmonton, Action No. 0803 02316

2) Statement of Claim filed in Manitoba

Rosalyn Golfman v. Cadbury Adams Canada Inc. and others, Court of Queen's Bench of Manitoba, Winnipeg Centre, File No. CI 08-01-55595

3) Notice of Action with Statement of Claim Attached filed in New Brunswick

Rick Thompson v. Cadbury Schweppes Plc. and others, Court of Queen's Bench of New Brunswick, Judicial District of Moncton, Cause No. MC011608

4) Statement of Claim filed in Newfoundland & Labrador

William Kelly and Gerald Ledrew v. Cadbury Adams Canada Inc. and others, Supreme Court of Newfoundland and Labrador, No. 2008 01 T 0650 CP

5) Statement of Claim filed in Nova Scotia

Barrett Thompson v. Cadbury Adams Canada Inc. and others, Supreme Court of Nova Scotia, S.H. No. 292103

6) Statement of Claim filed in Saskatchewan

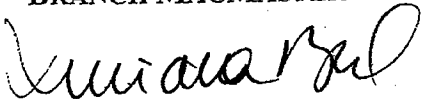
Brian Kjeshus v. Cadbury Adams Canada Inc. and others, Court of Queen's Bench for Saskatchewan, Judicial Centre of Melfort, Q.B.G. No. 12 of A.D. 2008

We ask that you please acknowledge service of all above noted documents by signing and returning to us the enclosed copy of this letter.

Additionally, in order to comply with specific service requirements in Saskatchewan, we ask that you also complete and return to us the enclosed Acknowledgment of Service form. While the form indicates you are required to provide an address in Saskatchewan in order to receive notice of subsequent proceedings, we will not be insisting on compliance with this requirement and unless you indicate otherwise, will use your Ontario office as the delivery address for all subsequent pleadings and correspondence.

Yours truly,

BRANCH MACMASTER



Luciana P. Brasil

LPB/lpb
Encls.

Cc: Counsel Group

2008

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

BARRETT THOMPSON

Plaintiff

- and -

**CADBURY ADAMS CANADA INC., MARS, INCORPORATED,
MARS CANADA INC. formerly known as EFFEM INC.,
THE HERSHEY COMPANY, HERSHEY CANADA INC.,
NESTLE CANADA INC. and ITWAL LIMITED**

Defendants

STATEMENT OF CLAIM

(Proposed Common Law Class Proceeding)

THE REPRESENTATIVE PLAINTIFF

1. The plaintiff Barrett Thompson (“Mr. Thompson”) is a student who resides in Dartmouth, Nova Scotia. During the Class Period as defined below, Mr. Thompson purchased chocolate products manufactured, marketed and distributed by the defendants (the “Chocolate Products”) for his own personal consumption.

THE CLASS AND THE CLASS PERIOD

2. The plaintiff seeks to certify this action as a class proceeding and pleads the Supreme Court of Canada's decision in *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's *Civil Procedure Rules*, as providing the basis for such certification. This action is brought on behalf of the plaintiff and all persons resident in Nova Scotia who purchased Chocolate Products excluding the defendants and their present and former directors, officers, parents, subsidiaries and affiliates (collectively the “Class Members”) from January 1, 2001 through to the present (the “Class Period”) or such other class definition or class period as the Court may ultimately decide on the motion for certification.

CHOCOLATE PRODUCTS

3. Chocolate Products consist of all chocolate confectionary manufactured, marketed and distributed by the defendants for sale to the Canadian public including chocolate bars such as Mars, Snickers, M&Ms, Twix, Kit Kat, Oh Henry, Skor, Hershey's, Reese, Caramilk, Dairy Milk, Mr. Big, Crunch, Coffee Crisp, Aero and Smarties.

THE DEFENDANTS

4. Cadbury Adams Canada Inc. ("Cadbury Canada") is a business entity organized under the laws of Canada with its principal place of business in Toronto, Ontario. During the Class Period, Cadbury Canada supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

5. Mars, Incorporated ("Mars") is a business entity organized under the laws of the USA and a manufacturer, marketer and distributor of certain Chocolate Products with its headquarters in McLean, Virginia, USA. During the Class Period, Mars supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

6. Mars Canada Inc. formerly known as Effem Inc. ("Mars Canada") is a business entity organized under the laws of Ontario and a subsidiary of Mars with its principal place of business in Bolton, Ontario. During the Class Period, Mars Canada supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

7. The business of each of Mars and Mars Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, supply, sale and/or distribution of certain Chocolate Products in Canada including in Nova Scotia and for the purposes of the conduct hereinafter described.

8. The Hershey Company ("Hershey") is a business entity organized under the laws of Delaware, USA and a manufacturer, marketer and distributor of certain Chocolate Products with its headquarters in Hershey, Pennsylvania, USA. During the Class Period, Hershey

supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

9. Hershey Canada Inc. (“Hershey Canada”) is a business entity organized under the laws of Ontario and a subsidiary of Hershey with its principal place of business in Mississauga, Ontario. During the Class Period, Hershey Canada supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

10. The business of each of Hershey and Hershey Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, supply, sale and/or distribution of certain Chocolate Products in Canada including in Nova Scotia and for the purposes of the conduct hereinafter described.

11. Nestle Canada Inc. (“Nestle Canada”) is a business entity organized under the laws of Ontario with its principal place of business in Toronto, Ontario. During the Class Period, Nestle Canada supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia, either directly or indirectly through the control of its affiliates and/or subsidiaries.

12. ITWAL Limited (“ITWAL”) is a food distributor with a national distribution network with its headquarters in Brampton, Ontario. During the Class Period, ITWAL supplied, marketed, sold and/or distributed certain Chocolate Products in Canada including in Nova Scotia.

13. Throughout the period of time covered by this action, the defendants engaged in the business of manufacturing, marketing, supplying, selling and distributing Chocolate Products throughout Canada including Nova Scotia.

CONSPIRACY AND TORTIOUS INTERFERENCE WITH ECONOMIC INTERESTS

14. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants, conspired with each other to illegally fix the prices of Chocolate Products sold in Canada including in Nova Scotia. In furtherance of the conspiracy, such persons engaged in communications, conversations and attended meetings with

each other at times and places and as a result of these communications and meetings, the defendants unlawfully agreed to:

- (a) fix, increase and maintain at artificially high levels the prices at which the defendants would sell Chocolate Products in Canada including in Nova Scotia;
- (b) exchange information in order to monitor and enforce adherence to the agreed-upon prices for Chocolate Products;
- (c) fix, increase and maintain at artificially high levels the resale prices at which Chocolate Products would be offered for sale to the public in Canada including in Nova Scotia;
- (d) refuse to supply to, discriminate against and punish those retailers whose low pricing policies were contrary to the defendants' suggested resale prices for Chocolate Products; and
- (e) prevent or lessen, unduly, competition in the manufacture, marketing, supply, sale and distribution of Chocolate Products in Canada including in Nova Scotia.

15. In furtherance of the conspiracy, during the Class Period, the following acts were done by the defendants and their respective servants and agents:

- (a) they fixed, increased and/or maintained at artificially high levels the retail price of Chocolate Products and coordinated the retail prices for the sale of Chocolate Products;
- (b) they fixed, increased and/or maintained at artificially high levels the trade price of Chocolate Products and coordinated the trade prices for the sale of Chocolate Products;
- (c) they agreed on measures to reduce discounting of trade prices and reduce "trade spend" to resellers of Chocolate Products;
- (d) they met secretly to discuss the prices of Chocolate Products in Toronto, Vancouver and Niagara-on-the-Lake;
- (e) they secretly exchanged pricing information regarding Chocolate Products;
- (f) they limited supplies of Chocolate Products to retailers who did not maintain the defendants' recommended retail prices of Chocolate Products;
- (g) they provided false reasons for increased prices of Chocolate Products by describing such increases as the result of external cost increases;
- (h) they destroyed documents that evidenced the conspiracy;
- (i) they instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy; and

(j) they disciplined any corporation which failed to comply with the conspiracy.

16. The defendants were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the plaintiff and other Class Members by requiring them to pay artificially high prices for Chocolate Products; and
- (b) to illegally increase their profits on the sale of Chocolate Products.

17. The acts alleged in this claim to have been done by each corporate defendant were authorized, ordered and done by each corporate defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

18. The acts particularized in paragraphs 14 to 16 were in breach of sections 45 and 61, Part VI of the *Competition Act* RS 1985 c. C-34. Consequently, according to section 36 of the *Competition Act*, the defendants are jointly and severally liable to the plaintiff and the other Class Members for their damages in respect of all purchases of Chocolate Products in Nova Scotia supplied by the defendants. Further, the plaintiff and the other Class Members are entitled to their costs of investigation into this matter.

19. Further, or alternatively, the acts particularized in paragraphs 14 to 16 were unlawful acts directed towards the plaintiff and the other Class Members which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and the other Class Members. Consequently, pursuant to the law of civil conspiracy, the defendants are jointly and severally liable to the plaintiff and the other Class Members for their damages in respect of all purchases of Chocolate Products manufactured and/or supplied by the defendants.

20. Further, or alternatively, the acts particularized in paragraphs 14 to 16 were unlawful acts intended to cause the plaintiff and the other Class Members economic loss and constituted tortious interference with the economic interests of the plaintiff and the other Class Members and render the defendants jointly and severally liable to pay the resulting damages in respect of all purchases of Chocolate Products in Nova Scotia manufactured and/or supplied by the defendants.

UNJUST ENRICHMENT, WAIVER OF TORT AND CONSTRUCTIVE TRUST

21. In the alternative, the plaintiff waives the tort and pleads that he and the other Class Members are entitled to recover under restitutionary principles.

22. The defendants have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of Chocolate Products. The plaintiff and other Class Members have suffered a deprivation in the amount of such overcharge attributable to the sale of Chocolate Products in Nova Scotia.

23. Since the artificially induced overcharge received by the defendants from the plaintiff and each Class Member resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of such overcharge and in particular, any contracts upon which the defendants purport to rely to receive the illegal overcharge are void and illegal.

24. The defendants are constituted as constructive trustees in favour of the Class Members for all of the artificially induced overcharge from the sale of Chocolate Products because, among other reasons:

- (a) the defendants were unjustly enriched by the artificially induced overcharge;
- (b) the Class Members suffered a deprivation because of the artificially induced overcharge;
- (c) the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Chocolate Products;
- (d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
- (e) justice and good conscience require the imposition of a constructive trust;
- (f) the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
- (g) there are no factors that would, in respect of the artificially induced overcharge, render the imposition of a constructive trust unjust.

25. The plaintiff pleads that equity and good conscience requires the defendants to hold in trust for the plaintiff and the other Class Members all of the artificially induced

overcharge from the sale of Chocolate Products and to disgorge this overcharge to the plaintiff and the other Class Members.

THE DAMAGES OF THE PLAINTIFF AND THE OTHER CLASS MEMBERS

26. The plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing prices of Chocolate Products at artificial and non-competitive levels.

27. During the Class Period, the plaintiff and other Class Members have purchased millions of dollars of Chocolate Products. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other Class Members paid more for Chocolate Products than they would have paid in the absence of the illegal combination and conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

28. The plaintiff asserts that his damages combined with the damages suffered by the other Class Members are capable of being quantified on an aggregate basis as the difference between the actual prices of Chocolate Products and the prices which would have prevailed in the absence of the unlawful conspiracy.

PUNITIVE DAMAGES

29. The plaintiff pleads that the defendants' conduct as particularized in paragraphs 14 to 16 was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of each Class Member, indifferent to the consequences and as such renders the defendants liable to pay punitive damages.

THE RELEVANT STATUTES

30. The plaintiff pleads and relies upon the *Competition Act*, R.S. 1985, c. 19, (2nd Supp.) and all amendments thereto.

WHEREFORE the plaintiff, on his own behalf, and on behalf of the Class Members, claims against the defendants:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
- (b) general damages for conspiracy, tortious interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act*, R.S. 1985, c. 19 (2nd Suppl.);
- (c) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other Class Members by their receipt of the illegal overcharge;
- (d) a declaration that the defendants hold the illegal overcharge in a constructive trust for the benefit of the plaintiff and the other Class Members;
- (e) an order directing the defendants to disgorge their illegal overcharge;
- (f) costs of investigation pursuant to section 36 of the *Competition Act*, R.S.C, 1985, c. 19 (2nd Suppl.);
- (g) punitive damages;
- (h) prejudgment interest pursuant to the *Judicature Act*, R.S.N.S. 1989, c. 240;
- (i) an injunction enjoining the defendants from further unlawful conduct;
- (j) costs; and
- (k) such further and other relief as to this Honourable Court may seem just.

DATED at Halifax, Nova Scotia this 15th day of February, 2008.

PLACE OF TRIAL: HALIFAX, NOVA SCOTIA

RAYMOND F. WAGNER
Wagners
Co-counsel for the Plaintiffs
1869 Upper Water Street
3rd Floor Pontac House
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: raywagner@wagnerslawfirm.com

Ward
WARD BRANCH
Branch McMaster
Co-counsel for the Plaintiffs
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Vancouver, B.C. V6Z 1S4
Telephone: (604) 654-2999
Email: wbranch@branmac.com