

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

ASSOCIATED WHOLESALE  
GROCERS, INC.,

Plaintiff,

v.

CADBURY ADAMS CANADA, INC.,  
CADBURY ADAMS USA, LLC,  
CADBURY HOLDINGS LTD.,  
CADBURY PLC, HERSHEY  
CANADA, INC., THE HERSHEY  
COMPANY, MARS, INC., MARS  
SNACKFOOD US, LLC, AND  
NESTLÉ U.S.A. INC.,

Defendants.

**Civil Action No. 1:12-cv-01604-CCC**

**MDL DOCKET NO. 1935**

**Honorable Christopher C. Conner**

**FILED ELECTRONICALLY**

**CADBURY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Cadbury Adams Canada, Inc., Cadbury Adams USA, LLC, Cadbury Holdings, Ltd., and Cadbury plc (collectively, the "Cadbury Defendants") move this Court for an order granting the Cadbury Defendants summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This motion is based upon the annexed Declaration of Dennis P. Orr, dated May 31, 2013, the exhibits

attached thereto, the annexed 56.1 Statement of Material Facts as to which there is no genuine issue to be tried, and the accompanying Memorandum of Law.

As set forth in the Cadbury defendants' memorandum in support of this motion, summary judgment should be granted as a matter of law because there is no genuine issue as to any material fact. FED. R. CIV. P. 56(c). The record is devoid of evidence that the Cadbury Defendants (a) engaged in any form of "concerted action" with the other defendants, *see, In re Ins. Brokerage Antitrust Litig*, 618 F.3d 300, 315, 323; and (b) participated in the relevant market, in which AWG alleges the anticompetitive activity occurred. *See United States v. Sargent Electric Co.*, 785 F.2d 1123, 1127 (3d Cir. Pa. 1986).

Respectfully submitted,

/s/Bridget E. Montgomery

---

Bridget E. Montgomery, Esquire (No. 56105)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, Eighth Floor  
Harrisburg, PA 17101  
Tel: (717) 237-6000  
Fax: (717) 237-6019  
[bmontgomery@eckertseamans.com](mailto:bmontgomery@eckertseamans.com)

/s/Dennis P. Orr

---

Dennis P. Orr, Esquire  
Jessica L. Kaufman, Esquire  
Morrison & Foerster LLP  
1290 Avenue of the Americas  
New York, NY 10104-0050  
Tel.: (212) 468-8000  
Fax: (212) 468-7900  
[dorr@mofo.com](mailto:dorr@mofo.com)  
[jkaufman@mofo.com](mailto:jkaufman@mofo.com)

Date: May 31, 2013

*Counsel for Defendants Cadbury Adams  
Canada, Inc., Cadbury Adams USA, LLC,  
Cadbury Holdings, Ltd., and Cadbury plc*

**CERTIFICATE OF CONCURRENCE / NON-CONCURRENCE**

Counsel for the Cadbury Defendants has requested concurrence of all counsel in the foregoing Motion for Summary Judgment.

Counsel for the following parties have responded and stated they do not concur in the Motion:

- Associated Wholesale Grocers, Inc.

Counsel for the following parties have not responded and, therefore, they are deemed to have refused to concur:

- Hershey Canada, Inc.
- The Hershey Company
- Mars, Inc.
- Mars Snackfoods, LLC
- Nestle U.S.A., Inc.

*/s/Jessica Kaufman*

---

Jessica Kaufman, Esquire

*Counsel for Defendants Cadbury Adams Canada, Inc., Cadbury Adams USA, LLC, Cadbury Holdings, Ltd., and Cadbury plc*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of May, 2013, I caused to be served on all counsel of record, via the Court's ECF system, a true and correct copy of the foregoing CADBURY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

*/s/Bridget E. Montgomery*

---

Bridget E. Montgomery, Esquire

*Counsel for Defendants Cadbury Adams  
Canada, Inc., Cadbury Adams USA, LLC,  
Cadbury Holdings, Ltd., and Cadbury plc*