

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

**IN RE: CHOCOLATE
CONFECTIONARY ANTITRUST
LITIGATION**

**THIS DOCUMENT APPLIES TO
THE DIRECT PURCHASER
CLASS**

**MDL DOCKET NO. 1935
(Civil Action No. 1:08-MDL-01935)**

(Judge Conner)

**MOTION BY DEFENDANTS THE HERSHEY COMPANY AND
HERSHEY CANADA INC. FOR SUMMARY JUDGMENT
AS TO THE DIRECT PURCHASER CLASS**

Pursuant to Federal Rule of Civil Procedure 56 and this Court's May 14, 2013 Order, Defendants The Hershey Company ("Hershey") and Hershey Canada Inc. ("Hershey Canada") move for summary judgment on the claims alleged in the Direct Purchaser Class's Consolidated Class Action Complaint (Doc. 418). Those claims are brought under Section 1 of the Sherman Act (15 U.S.C. § 1).

Based upon this Court's statements during the January 25, 2013 status hearing (*see* 1/25/13 Status Conf. Tr. at 14:12-15:18 (Doc. 1311)), Hershey and Hershey Canada expressly incorporate by reference the summary judgment papers they previously filed in connection with the Individual Purchaser Plaintiff claims,

including their Motion for Summary Judgment (Doc. 1206), memorandum in support (Doc. 1211), reply brief (Doc. 1323), Rule 56.1 Statement (Doc. 1223), and response to the statement of additional facts (Doc. 1332).

For the reasons set forth in those previous papers, and the Memorandum in support of this Motion, Hershey and Hershey Canada are entitled to summary judgment.

Dated: May 31, 2013

By: /s/ William F. Cavanaugh

William F. Cavanaugh (NY 1715481)

Adeel A. Mangi (NY 3949997)

Vivian Storm (NY 4573838)

**PATTERSON BELKNAP WEBB &
TYLER LLP**

1133 Avenue of the Americas

New York, N.Y. 10036

Tel: (212) 336-2000

Fax: (212) 336-2222

Craig S. Primis, P.C. (NY 2733293)

Michael Becker (DC 44732)

KIRKLAND & ELLIS LLP

655 15th Street N.W.

Washington, DC 20005

Tel: (202) 879-5000

Fax: (202) 879-5200

Alan R. Boynton, Jr. (PA 39850)

**McNEES WALLACE & NURICK
LLC**

100 Pine Street, PO Box 1166

Harrisburg, PA 17108-1166

Tel: (717) 232-5352

Fax: (717) 237-5300

aboynton@mwn.com

***Counsel for The Hershey Company and
Hershey Canada Inc.***