

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA  
HARRISBURG DIVISION**

**IN RE: CHOCOLATE** : **MDL DOCKET NO. 1935**  
**CONFECTIONERY ANTITRUST** : **(Civil Action No. 1:08-MDL-**  
**LITIGATION** : **1935)**

\_\_\_\_\_ :  
: **(Judge Conner)**

**THIS DOCUMENT APPLIES TO:**

**ALL CASES**

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***FILED ELECTRONICALLY***

**DEFENDANTS CADBURY PLC, CADBURY HOLDINGS LTD., AND  
CADBURY ADAMS CANADA INC.'S MOTION TO DISMISS DIRECT  
PURCHASER PLAINTIFFS' CONSOLIDATED CLASS ACTION  
COMPLAINT, INDIVIDUAL PLAINTIFFS' AMENDED CONSOLIDATED  
COMPLAINT, INDIRECT END USERS' CONSOLIDATED COMPLAINT,  
AND INDIRECT PURCHASERS FOR RESALE'S CONSOLIDATED  
COMPLAINT**

Defendants Cadbury plc, Cadbury Holdings Ltd., and Cadbury Adams Canada Inc. move pursuant to Rules 8, 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Direct Purchaser Plaintiffs' Consolidated Class Action Complaint, the Individual Plaintiffs' Amended Consolidated Complaint, the Indirect End Users' Consolidated Complaint, and the Indirect Purchasers for Resale's Consolidated Complaint.

As set forth in Defendants' joint memoranda in support of this motion and the Cadbury Defendants' memorandum in further support of this motion, dismissal

is appropriate because these complaints (a) fail to state a plausible claim for relief under Section 1 of the Sherman Act, *see Bell Atlantic Co. v. Twombly*, 127 S. Ct. 1955 (2007); *In re Elevator Antitrust Litig.*, 502 F.3d 47, 50 (2d Cir. 2007), and (b) assert claims beyond this Court's subject matter jurisdiction as limited by the Foreign Trade Antitrust Improvements Act of 1982 (FTAIA). *See F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004). In addition, Plaintiff Giant Eagle Inc.'s separate claim for relief under the Ohio Valentine Act fails for the same reasons, because Ohio law is interpreted to be consistent with federal antitrust law, *see, e.g., C.K. & J.K., Inc. v. Fairview Shopping Ctr. Corp.*, 407 N.E. 2d 507, 509 (Ohio 1980).

Dated: September 29, 2008

By: s/ Bridget E. Montgomery  
Bridget E. Montgomery (PA 56105)  
Jennifer L. Eul (PA 88443)  
ECKERT SEAMANS CHERIN &  
MELLOTT LLC  
213 Market Street  
8th Floor  
Harrisburg, PA 17101  
Tel: (717) 237-6000  
Fax: (717) 237-6019

By: s/ Thomas M. Mueller  
Dennis P. Orr (NY 2024406)  
Thomas M. Mueller (NY 2119600)  
MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, NY 10104  
Tel: (212) 468-8161  
Fax: (212) 468-7900

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