

1 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
2 Sean L. Litteral (State Bar No. 331985)
Elvia M. Lopez (State Bar No. 331986)
3 1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
4 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
5 E-mail: ltfisher@bursor.com
slitteral@bursor.com
6 elopez@bursor.com

7 *Attorneys for Plaintiff*

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 JENILE THAMES, individually and on behalf of
13 all others similarly situated,

14 Plaintiff,

15 v.

16 MARS INC.,

17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Jenile Thames (“Plaintiff”) brings this action on behalf of himself, and all others
2 similarly situated against Mars, Inc. (“Defendant”). Plaintiff makes the following allegations
3 pursuant to the investigation of his counsel and based upon information and belief, except as to the
4 allegations specifically pertaining to himself, which are based on personal knowledge.

5 NATURE OF THE ACTION

6 1. Plaintiff brings this Class action lawsuit on behalf of himself and similarly situated
7 consumers (“Class Members”) who purchased for personal, family, or household consumption,
8 Defendant’s candies sold under the brand name “Skittles” (the “Products”),¹ which are unfit for
9 human consumption because they contain titanium dioxide (“TiO₂”), a known toxin. Defendant has
10 long known of the health problems posed by TiO₂. In fact, in February 2016, Defendant publicly
11 committed to phasing out TiO₂. But Defendant has flouted its own promise to consumers. More
12 than six years later, Defendant continues to sell the Products with TiO₂, unbeknownst to reasonable
13 consumers who purchase the Products.

14 2. Interestingly, in its February 2016 press release, Defendant blew smoke, suggesting
15 that its planned phase out of TiO₂ was called for simply because “consumers today are calling on
16 food manufacturers to use more natural ingredients in their products.” Incredibly, Defendant even
17 claimed that “[a]rtificial colors pose no known risks to human health or safety.” In doing so,
18 Defendant concealed from consumers material information it knew. Namely, that numerous of its
19 competitors and other food manufacturers had long removed the toxin from their product lines
20 because of scientific research showing that the toxin is unsafe for consumption.

21 3. Several nations have banned the harmful toxin. For example, in 2019, the toxin was
22 banned in France, where Defendant maintains offices and announced that it could and would comply
23 with France’s law.

24 4. In May 2021, the European Food Safety Authority (“EFSA”) released its report on
25 the health concerns associated with TiO₂, determining that TiO₂ could not be considered safe for
26 consumption. Professor Maged Younes, Chair of EFSA’s expert Panel on Food Additives and

27 _____
28 ¹ This includes Skittles Original, Skittles Wild Berry, Sour Skittles, Tropical Skittles, and Smoothies Skittles, among others.

1 Flavourings (“FAF”) underscored these findings, stating that: “Taking into account all available
 2 scientific studies and data, the Panel concluded that titanium dioxide can no longer be considered
 3 safe as a food additive. A critical element in reaching this conclusion is that we could not exclude
 4 genotoxicity concerns after consumption of titanium dioxide particles.”²

5 5. Building on EFSA’s research, the European Commission (“EC”) announced that it
 6 too would adopt a ban on the use of TiO₂ as a food additive. Under that plan, the ban would apply
 7 following a six-month transition period, and beginning summer 2022, the additive should no longer
 8 be added to food products. That plan was adopted unanimously by Member States.

9 6. Defendant—with offices in Netherland, Denmark, Ireland, Italy, Portugal, Germany,
 10 Norway, Czech Republic, Romania, Belgium Switzerland, Austria, Slovakia, Hungary, France,
 11 Greece, and Spain³—and with sales in each of those Member States was reminded of the scientific
 12 findings concerning TiO₂ and was required to comply with the EC’s ban.

13 7. Nonetheless, in the United States, Defendant maintains sales with TiO₂ as an additive,
 14 failing to inform consumers of the implications of consuming the toxin. Instead, Defendant relies
 15 on the ingredient list which is provided in miniscule print on the back of the Products, the reading of
 16 which is made even more challenging by the lack of contrast in color between the font and packaging,
 17 as set out below in a manner in which consumers would normally view the product in the store.



26
27
28

² EFSA, “Titanium dioxide: E171 no longer considered safe when used as a food additive,” (May 6, 2021), <https://www.efsa.europa.eu/en/news/titanium-dioxide-e171-no-longer-considered-safe-when-used-food-additive>.

³ MARS, “Our Locations,” https://cze.mars.com/en/locations?language_content_entity=en.

1 result of Mars Inc.'s material misrepresentations and omissions, Mr. Thames suffered, and continues
2 to suffer, economic injuries.

3 12. Mr. Thames remains interested in purchasing candies from Defendant that are safe
4 for consumption. However, Plaintiff is unable to determine if the Products are actually safe for
5 consumption. Plaintiff understands that the composition of the Products may change over time. But
6 as long as Defendant may market the Products as safe for consumption when the Products are not
7 safe consumption, then when presented with false or misleading information when shopping, he will
8 be unable to make informed decisions about whether to purchase Defendant's Products and will be
9 unable to evaluate the different prices between Defendant's Products and competitor's Products.
10 Plaintiff is further likely to be repeatedly misled by Defendant's conduct, unless and until Defendant
11 is compelled to ensure that Products marketed and labeled as safe for consumption, are, in fact, safe
12 for consumption.

13 13. Defendant Mars Inc. is a foreign corporation with its domestic headquarters located
14 at 9885 Elm Street, McLean, Virginia 22101. Relevant to Plaintiff's claim herein, Mars is a leading
15 manufacturer, packager, and distributor of, among other products, candy, and confectionery. Mars
16 Inc. has done business throughout California and the United States at all times during the Class
17 Period. At all relevant times, Mars Inc., has advertised, marketed, manufactured, distributed, and/or
18 sold candy and confectionery, including the Products at issue, to consumers in and throughout
19 California and the United States. At all relevant times, Mars Inc., formulated, directed, controlled,
20 had the authority to control, and/or participated in the acts and practices set fourth in this Complaint.

21 14. Plaintiffs reserve the right to amend this Complaint and add different products and
22 additional defendants, including without limitation and officer, director, employee, supplier, or
23 distributor of Defendant who has knowingly and willfully aided, abetted, and/or conspired in the
24 false and deceptive conduct alleged herein.

25 JURISDICTION AND VENUE

26 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
27 amended by the Class Action Fairness Act of 2005 ("CAFA"), because this case is a class action
28 where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.