



April 26, 2023

Mindy Weinstein, Director  
Debra Lawrence, Regional Attorney  
Washington Field Office  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Fourth Floor, Suite 4NWO2F  
Washington, DC 20507-0100

**Investigation Request: Mars, Incorporated**

Dear Ms. Weinstein and Ms. Lawrence:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write under 29 C.F.R. § 1601.6(a) seeking a Commissioner’s charge for an inquiry into individual or systemic discrimination by Mars, Incorporated (“Mars”).<sup>1</sup> Mars is a privately held company, incorporated in the State of Delaware, with its corporate headquarters located at 6885 Elm St, McLean, VA 22101. Based on the evidence, there are strong reasons to believe that Mars is intentionally and systemically violating Title VII of the Civil Rights Act of 1964 by unlawfully conditioning hiring, promotion, and training on race, color, national origin, and/or sex.

As you know, Title VII prohibits employers from discriminating against any prospective or current employee because of his or her race, color, religion, sex, or national origin.<sup>2</sup> It also prohibits discrimination because of race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.<sup>3</sup> However, in a February 14, 2023, press release, Mars admits to acting to “achieve gender balance [sic] across one hundred percent of its leadership teams” and ensuring that its “leadership teams and Associate representation...reflect the race and ethnicities of the labor force in the markets in which it operates.” It claims that the company is “working” to “increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent and is promoting expanded opportunities

---

<sup>1</sup> Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them under 29 C.F.R. § 1601.6(a).

<sup>2</sup> 42 U.S.C. § 2000e-2(a).

<sup>3</sup> 42 U.S.C. § 2000e-2(d).

for all racial minorities across its total workforce.”<sup>4</sup> In other words, the company is employing numeric quotas to “balance” the immutable characteristics of its workers and thus facially violating Title VII.

The company’s official “Commitment To Inclusion & Diversity” statement demonstrates how deeply unlawful discrimination is embedded in Mars’s employment and contracting<sup>5</sup> practices. Here too, the company promises to increase “racial minority representation among our management population in our Mars CPG businesses in the U.S. by 40%” and to “promote expanded opportunities for all racial minorities across our total workforce,” necessarily and unlawfully excluding White Americans because of their race, color, or national origin.<sup>6</sup> Perniciously, the company admits to using race, color, national origin, or sex to structure interview panels<sup>7</sup> and apparently also for candidate lists.<sup>8</sup> To meet its hiring and promotion quotas, the company claims that it is “launch[ing] technologies” to achieve a “larger and more diverse talent pool.”<sup>9</sup> Although the company claims these technologies merely “eliminate bias,” the massive shifts in Mars’s self-reported hiring demographics strongly suggest algorithmic discrimination based on race, color, national origin, or sex.<sup>10</sup>

Furthermore, it is illegal to discriminate in “any program established to provide apprenticeship or other training” based on sex.<sup>11</sup> Yet Mars does just that by providing

---

<sup>4</sup> Mars, Incorporated, *Mars Incorporated Appoints New Equity, Inclusion & Diversity Lead for North America* (“February 2023 Press Release”), PR NEWSWIRE, (Feb. 14, 2023), <https://tinyurl.com/45k9m6d9>. The company affirmed, *inter alia*, that it “aspires to achieve gender balance across one hundred percent of its leadership teams,” is “working to increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent,” and “aiming to strengthen its senior leader representation from Emerging Markets [sic] by twenty percent.”

<sup>5</sup> The Commission’s jurisdiction does not include the company’s contracting policies and practices. However, we note that Mars admits to steering hundreds of millions of dollars in business to persons based on their race, color, sex, and national origin, in facial violation of 42 U.S.C. § 1981. *See* Mars, Incorporated, *Here to be Heard* (“Heard”), (2021) at 30, <https://tinyurl.com/mrxjnz4a>; *see also* Mars, Incorporated, *Mars Supplier Diversity Program*, MARS, <https://tinyurl.com/2s4abu9t>, (accessed Apr. 14, 2023). These practices are illegal, immoral, and deeply offensive to human dignity.

<sup>6</sup> Mars, Incorporated, *Our Commitment To Inclusion & Diversity* (“Commitment to Diversity”), <https://tinyurl.com/mryy6brw>, (accessed Apr. 14, 2023).

<sup>7</sup> Commitment to Diversity at “Moving forward”; Heard at 29.

<sup>8</sup> Heard at 29.

<sup>9</sup> Mars, Incorporated, *Mars Earns High Marks in Diversity & Inclusion*, MARS, <https://tinyurl.com/f2myrbv9>, (accessed Apr. 14, 2023).

<sup>10</sup> Either Mars’s claims regarding the steps it has taken to “balance” its workforce based on race, color, national origin, and sex are mere puffery or the company is intentionally violating Title VII and its core principle that individuals are to be judged on merit and not on their immutable characteristics. There is no plausible third alternative.

<sup>11</sup> 42 U.S.C. § 2000e-2(d).

“leadership development training”<sup>12</sup> and “mentoring circles”<sup>13</sup> solely for women and “Diversify Veterinary Medicine Coalition ... mentorship programs”<sup>14</sup> apparently limited to members of certain ethnicities or races. In 2021, Mars mandated “100% gender-balanced business leadership teams. Gender Balanced is defined as 40–60% of any one gender, in Leadership Teams with five or more Associates.”<sup>15</sup> Mars reports that forty-one percent of its “leaders” are women.<sup>16</sup> The quota, it seems, has been met. Nevertheless, the company continues to unlawfully favor women.

Mars’s discriminatory hiring and training programs are patently illegal and deeply harmful. Discrimination against job applicants or employees based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>17</sup> The company’s employment practices foment contention and resentment—they are “odious and destructive.”<sup>18</sup> It truly “is a sordid business, this divvying us up” by race or sex.<sup>19</sup> Therefore, a Commissioner’s charge is particularly appropriate here because there is ample evidence suggesting that the company has knowingly and intentionally violated federal law and will continue to do so.

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ James Rogers

Senior Counsel

America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair  
The Honorable Jocelyn Samuels, Commission Vice Chair  
The Honorable Keith E. Sonderling, Commissioner  
The Honorable Andrea R. Lucas, Commissioner

---

<sup>12</sup> Commitment to Diversity.

<sup>13</sup> Mars Incorporated, *Mars, Incorporated Recognized for Diversity and Inclusion Efforts*, (Dec. 5, 2016), <https://tinyurl.com/bddu83m7>.

<sup>14</sup> Commitment to Diversity.

<sup>15</sup> Heard at 29.

<sup>16</sup> *Id.*

<sup>17</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

<sup>18</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>19</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

## APPENDIX

To track against its inclusion and diversity progress, Mars has outlined specific and measurable ambitions tied to inclusion, gender balance, and workforce representation:

- Mars strives to build an inclusive culture where all of its Associates can achieve their full potential. The company continues track its progress against its goal as measured by the Mars Associate Survey, which also serves as its internal inclusion barometer.
- Mars aspires to achieve gender balance across one hundred percent of its leadership teams. The company rolled out its [Full Potential](#) platform to help advance gender equity and its [#HereToBeHeard](#) global listening study to help amplify the voices of women across the globe.
- Mars believes its leadership teams and Associate representation should reflect the race and ethnicities of the labor force in the markets in which it operates. The company is working to increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent and is promoting expanded opportunities for all racial minorities across its total workforce. Mars is also aiming to strengthen its senior leader representation from Emerging Markets by twenty percent.
- **Workforce Representation:** We believe our leadership teams and Associate representation should reflect the race and ethnicities of the labor force in the markets in which we operate. Our ambition includes:
  - **Increasing racial minority representation** among our management population in our Mars CPG businesses in the U.S. by 40%. We will also promote expanded opportunities for all racial minorities across our total workforce.
  - **Strengthening our senior leader representation** from Emerging Markets by 20%.

### **Workforce Representation:**









- In leadership representation, we've seen an almost **5% increase in both our racial/ethnically underrepresented groups and Emerging Market talent** among our global management population.
- In the U.S., we've made **significant improvements in hiring ethnically under-represented groups**, such that nearly one of two external hires are from this population.
- As we continue to act, we're intentionally leaning on **new and expanded strategic partnerships**, including the [National Hispanic Corporate Council](#), [McKinsey's Black Leadership Academy program](#), [ASCEND \(pan-Asian\)](#) and others.
- To further advance our work related to racial equity, we're working with the [W.K. Kellogg Foundation Expanding Equity Program](#) and with [PolicyLink](#), a U.S. research and action institute.
- We're advocating for **equal opportunity for quality education and addressing the disparate impact of COVID-19** on communities of color and Black-owned businesses through our partnerships with [NAACP Legal Defense Fund \(LDF\)](#) and HBCUs.
- We're proud to partner with [The Martin Luther King, Jr. Center for Nonviolent Social Change "The King Center."](#)
- Within our Veterinary Health businesses, we taking action including joining the Diversify Veterinary Medicine Coalition, inclusion **training and mentorship programs**, and a partnership with Tuskegee University College of Veterinary Medicine.

### **Gender Balance:**

- 41% of Mars leaders are women and we've **advanced the number of gender-balanced** (defined as between 40% and 60% of any one gender) **leadership teams** from 43% to 50% over the past year.
- We've **expanded leadership development training for women** across our regions and functions, based on our flagship "Women Leading Purposefully" course designed with Harvard University.
- We've recently **launched a pilot program, "Advancing Female Leaders,"** and are placing a dedicated focus on functions that have underrepresentation of women, including Supply and Digital Technologies.

## 8 RECOMMENDATIONS FOR BUSINESS ACTION

- 1 Make gender-balanced leadership a reality.
- 2 Embrace flexible work.
- 3 Step up parental leave.
- 4 Support gender-equal learning.
- 5 Support women's physical and mental health.
- 6 Work to prevent and respond to gender-based violence.
- 7 Men step up as allies.
- 8 Brands take a stand.

MAIN THEMES		Including these topics
	<b>80%</b> <small>of women mentioned</small> <b>An End to Systemic Discrimination and Harmful Gender Stereotypes</b>	<ul style="list-style-type: none"> <li>- Structural Inequality</li> <li>- Entrenched Gender Roles</li> <li>- Treating Women as Inferior</li> <li>- Women Not Treated as Humans</li> <li>- Lack of Motivation and Confidence</li> </ul>
	<b>79%</b> <small>of women mentioned</small> <b>Equal Career Opportunities</b>	<ul style="list-style-type: none"> <li>- The Gender Wage Gap</li> <li>- Lack of Equal Pay</li> <li>- The Glass Ceiling</li> <li>- No Level Playing Field</li> <li>- Male-Dominated Professions</li> <li>- Unequal Career Opportunities</li> </ul>
	<b>65%</b> <small>of women mentioned</small> <b>More Decision-Making Power</b>	<ul style="list-style-type: none"> <li>- Excluding Women's Voices</li> <li>- Excluding Women from Decision-Making</li> <li>- Lack of Women in Leadership</li> </ul>
	<b>30%</b> <small>of women mentioned</small> <b>Support as Parents</b>	<ul style="list-style-type: none"> <li>- Unaffordable Childcare</li> <li>- Not Enough Parental Leave</li> <li>- The "Stay-at-Home Mom" Stereotype</li> </ul>
	<b>26%</b> <small>of women mentioned</small> <b>Greater Work/Life Balance</b>	<ul style="list-style-type: none"> <li>- Inflexible Working Arrangements</li> <li>- Lack of Work/Life Balance</li> <li>- Household Chores</li> </ul>
	<b>24%</b> <small>of women mentioned</small> <b>Gender-Equal Learning</b>	<ul style="list-style-type: none"> <li>- Gender Stereotypes in Early Education</li> <li>- Educating Future Generations</li> <li>- Lack of Role Models</li> </ul>
	<b>19%</b> <small>of women mentioned</small> <b>Mental and Physical Well-Being</b>	<ul style="list-style-type: none"> <li>- Poor Mental, Physical, and Emotional Well-Being</li> <li>- Sexual and Reproductive Health and Rights</li> </ul>
	<b>15%</b> <small>of women mentioned</small> <b>An End to Gender-Based Harassment and Violence</b>	<ul style="list-style-type: none"> <li>- Harassment and Domestic Violence</li> <li>- Threatening Male Behavior</li> <li>- Men Not Taking Accountability</li> </ul>

**Moving forward we will** continue progressing against our gender-balanced leadership team target and increase representation in our talent pipelines. We're launching standards for diverse interview panels and candidate slates, and we are reviewing our leadership development programs to enhance their focus on inclusion and diversity. Our flagship Women Leading Purposefully course - designed by Harvard University - has already reached over 200 women. We will continue to expand this program and are also building tailored programs to reach 2,000+ women. Mars is piloting male allyship programs to increase inclusion competencies and to scale up these efforts more effectively. We're also actively exploring new ways to strengthen accountability of leaders and Associates to deliver on our inclusion and diversity priorities.



After receiving a 60 percent in 2015, we looked at different ways to further establish our commitment to a diverse and inclusive workplace, and we put into place a number of different initiatives to ensure we're pulling from a diverse talent pool and fostering workplace inclusivity. We've launched technologies designed to eliminate bias in the application and assessment process, resulting in a larger and more diverse talent pool. We also offer inclusive leadership training for line managers to drive diversity of thought across our business. Additionally, we added transgender benefits to our list of LGBTQ-related policies, which includes non-discrimination protections and domestic partner benefits. Outside the office, we celebrated the LGBTQ community by participating in both the New York City and London Pride parades.

**Moving forward we are** committing to spend \$1 billion with diverse suppliers by 2025, including a \$500 million focus on women-led suppliers. We've joined the global WeConnect network and sit on the Leadership Advisory Council in the EU to support our procurement teams around the world as we drive toward this goal. We're also working to better understand how we can best support more training and innovation for women-owned businesses across supply chains as well as deepen our focus on gender inclusive sourcing strategies at origin in key raw materials starting with cocoa, shea, mint, palm oil and fish, where relevant.