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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
2014 APR 10 PM 4:21  
CLERK OF DISTRICT COURT  
INDIANAPOLIS, INDIANA

Roche Diagnostics GmbH and )  
Roche Diagnostics Operations, Inc., )

Plaintiffs, )

v. )

No.

Polymer Technology Systems, Inc. )  
d/b/a CHEK Diagnostics, )

**1 : 14 -cv- 0552 JMS-DKL**

Defendant. )

**VERIFIED COMPLAINT FOR TRADEMARK INFRINGEMENT,  
UNFAIR COMPETITION, AND DECLARATORY JUDGMENT**

Plaintiffs Roche Diagnostics GmbH and Roche Diagnostics Operations, Inc., for their Complaint against Defendant Polymer Technology Systems, Inc. d/b/a CHEK Diagnostics, hereby state and allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs Roche Diagnostics GmbH and Roche Diagnostics Operations, Inc. (collectively hereinafter, "Roche Diagnostics") are global leaders in healthcare and offer a broad portfolio of products that help healthcare providers and consumers in the prevention, diagnosis, treatment, and management of diseases and other medical conditions. A critical part of Roche Diagnostics' business includes manufacturing and selling products and services relating to diabetes care, including blood glucose testing, monitoring and analysis. In connection with these products

and services, Roche Diagnostics owns and uses several registrations for the federally registered trademark ACCU-CHEK and related marks (hereinafter, “the ACCU-CHEK marks”). The products and services Roche Diagnostics provides under the ACCU-CHEK marks are of exceptional quality and reputation. The relevant public and trade who see ACCU-CHEK branded products and services associate such products and services with Roche Diagnostics and know that such products and services are of the highest quality and reputation. Following are exemplary depictions of Roche Diagnostics’ ACCU-CHEK products and Roche Diagnostics’ use of the ACCU-CHEK trademarks as appearing on the ACCU-CHEK website at <https://www.accu-chek.com/us/>.

## **ACCU-CHEK™**





2. For the past several years, Defendant, doing business as Polymer Technology Systems, Inc. (“PTS”), sold a product under the name CardioChek. The CardioChek product was a multianalyte measuring device that PTS promoted and sold primarily to measure blood cholesterol. PTS also clearly offered the product under the business name Polymer Technology Systems, and, on information and belief, did not offer any products under the name “CHEK” that were exclusively promoted as diabetes-care products. Roche Diagnostics did not oppose Defendant’s sale of the CardioChek product as sold under the PTS business name based upon any Roche Diagnostics trademark rights.

3. The status quo changed, however, on March 27, 2014. On that day, PTS issued a press release announcing that it had changed its name to CHEK Diagnostics. The press release further announced that CHEK Diagnostics had

acquired and would promote a line of diabetes-care products under the business name CHEK Diagnostics. In other words, as of March 27, Defendant has been doing business as CHEK Diagnostics in competition with Roche Diagnostics, offering diabetes-care products under the CHEK name in competition with the ACCU-CHEK diabetes-care products offered by Roche Diagnostics.

4. By promoting products under the CHEK Diagnostics business name, including diabetes-care products, Defendant's actions are likely to cause consumer confusion, mistake, and/or deception as to the source of Defendant's goods, or confusion, mistake, and/or deception regarding the affiliation, connection or sponsorship between Roche Diagnostics and Defendant. Defendant's actions further threaten to impair or destroy the substantial goodwill that Roche Diagnostics has developed in its ACCU-CHEK marks, and threaten Roche Diagnostics' loss of control over the business reputation associated with its products and the ACCU-CHEK marks.

5. Accordingly, Roche Diagnostics brings this complaint for infringement of Roche's ACCU-CHEK marks under Section 32(1) of the Trademark Act of 1946 (the "Lanham Act"), 15 U.S.C. § 1114(1); unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and trademark infringement and unfair competition in violation of the common laws of the State of Indiana. Roche Diagnostics requests that Defendant be preliminarily and permanently enjoined and restrained from using CHEK Diagnostics as a company name or in a manner in any way related to the promotion or sale of diabetes-care products.

6. Further, in light of the controversy and harm caused by Defendant's actions, Roche Diagnostics also seeks a judicial declaration pursuant to 28 U.S.C. § 2201 that the use of CHEK Diagnostics as a company name, or in a manner in any way related to the promotion or sale of diabetes-care products, would constitute trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a), and would constitute trademark infringement and unfair competition under Indiana common law.

#### **PARTIES**

7. Roche Diagnostics Operations, Inc. is a Delaware corporation with its principal place of business at 9115 Hague Road, Indianapolis, Indiana 46256.

8. Plaintiff Roche Diagnostics GmbH is a limited liability company organized under the laws of Germany.

9. Defendant Polymer Technology Systems, Inc. ("PTS"), is a corporation organized under the laws of the State of Indiana and has its principal place of business at 7736 Zionsville Road, Indianapolis, Indiana 46268. PTS is conducting business under the assumed name CHEK Diagnostics. PTS is in the business of researching, developing, manufacturing, and selling health-related diagnostic products.

#### **JURISDICTION AND VENUE**

10. This action arises under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, and Indiana common law. This Court has subject matter jurisdiction over the

federal law claims under 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121. This Court has subject matter jurisdiction over the declaratory judgment claims under 28 U.S.C. § 2201. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

11. The Court has personal jurisdiction over Defendant because Defendant is located in this state and transacts business in this state, and further because Defendant's activities have caused and will further cause injury to Roche Diagnostics in this district.

12. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and (d).

#### FACTS COMMON TO ALL COUNTS

##### A. Roche Diagnostics' ACCU-CHEK Trademarks

13. Since November of 1981, Roche Diagnostics has continually used in commerce several ACCU-CHEK marks to identify medical instruments and apparatus, and other products and services, related to blood-glucose monitoring and diabetes management and education. Roche Diagnostics uses these marks throughout the United States.

14. Roche Diagnostics GmbH owns U.S. registrations for, and Roche Diagnostics Operations, Inc. is an authorized licensee for, the following ACCU-CHEK marks in addition to other ACCU-CHEK marks:

- (a) ACCU-CHEK (Reg. No. 1,277,867, issued May 15, 1984) for a blood glucose monitor in Class 9. First use date is November 9, 1981. This registration is incontestable.

- (b) **ACCU-CHEK** (Reg. No. 2,403,536, issued November 14, 2000) for diagnostic test strips for determining the level of glucose in blood for medical and clinical use; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips for medical and clinical use in Class 5; blood glucose monitors, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions in Class 10. First use date is April 1, 1998. This registration is incontestable.
- (c) **ACCU-CHEK COMPACT** (Reg. No. 2,628,696, issued October 1, 2002) for blood glucose test strips for medical use; and control solutions for testing the accuracy of a blood glucose monitor for medical and clinical use in Class 5; and blood glucose monitors, and blood glucose monitoring devices, namely a kit consisting of a blood glucose monitor, glucose test strips, lancets and control solutions for blood glucose monitoring in Class 10. First use date is October 8, 2001. This registration is incontestable.
- (d) **ACCU-CHEK** (Reg. No. 2,651,417, issued November 19, 2002) in-vitro diagnostic agents for medical use; and chemical reagents for the verification of diagnostic findings for medical use in Class 5; computer hardware and computer software for evaluation, verification and administration of medical data in

Class 9; computer hardware sold as a component of blood glucose monitors and computer software for use in operating such apparatus; electronic data management systems comprised of chemical analyzers, personal computers, electronic diaries, interfaces, modems and cables for clinical medical use; surgical and medical instruments, equipment and apparatus, namely, blood glucose monitors in Class 10; education and teaching, namely, providing classes, workshops and seminars in the field of diabetes management, publication of printed products, namely books, brochures, leaflets, and journals related to the field of diabetes for professionals and patients in Class 41; and computer programming in the medical field for others; and services related to the field of diabetes for professionals and patients, namely medical consultation, documentation in the nature of maintaining files and records concerning the medical condition of individuals, weight reduction diet planning and supervision, and providing information about diabetes via a website on the internet in Class 42. This registration is incontestable.

- (e) **ACCU-CHEK COMPASS** (Reg. No. 2,681,644, issued January 28, 2003) for computer software for maintaining a database of blood test results from a blood glucose monitor for

use by individuals with diabetes in Class 9. First use date is March 16, 2001. This registration is incontestable.

- (f) **ACCU-CHEK ACTIVE** (Reg. No. 2,703,048, issued April 1, 2003) for diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips, all sold over-the-counter to consumers for medical diagnostic use in Class 5; and blood glucose monitor; and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions, all sold over-the-counter to consumers for medical diagnostics in Class 10. First use date is August 8, 2001. This registration is incontestable.
- (g) **ACCU-CHEK INFORM** (Reg. No. 2,732,629, issued July 1, 2003) for blood glucose monitor with data management capabilities in Class 10. First use date is April 30, 2001. This registration is incontestable.
- (h) **ACCU-CHEK AVIVA** (Reg. No. 3,071,846, issued March 21, 2006) for Diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips all for medical diagnostic use in Class 5 and Blood glucose monitors; and blood glucose monitoring kits consisting of a blood glucose monitor,

diagnostic test strips, lancets and control solutions all for medical diagnostic use in Class 10. First use date is January 20, 2005. This registration is incontestable.

- (i) **ACCU-CHEK** (Reg. No. 3,076,905, issued April 4, 2006) for Instruments, devices and apparatus for medical, surgical and veterinary purposes, namely, blood glucose meters, disposable infusion sets, lancets and insulin pumps and accessories therefor, namely, catheters, pen needles, syringes and patches in Class 10 and Medical services in the field of diabetes; health care consultancy in the field of diabetes in Class 44. This registration is incontestable.
- (j) **ACCU-CHEK MULTICLIX** (Reg. No. 3,127,170, issued August 8, 2006) for Lancet devices and lancets for obtaining blood in Class 10. This registration is incontestable.
- (k) **ACCU-CHEK SPIRIT** (Reg. No. 3,194,287, issued January 2, 2007) for Insulin pumps and accessories thereof, namely, catheters, infusion sets and tubing, pen needles, syringes, adapters, ampoules, batteries, filling devices used for filling ampoules for insulin pumps with insulin, sterile dressings and carrying cases in Class 10. This registration is incontestable.
- (l) **ACCU-CHEK TENDER** (Reg. No. 3,199,675, issued January 16, 2007) for Medical instruments and apparatuses, namely,

catheters and infusion sets and accessories thereof, namely, adapters and ampoules, all for the subcutaneous administration of drugs in Class 10. This registration is incontestable.

- (m) **ACCU-CHEK LINKASSIST** (Reg. No. 3,202,402, issued January 23, 2007) for Medical instruments, namely, insertion tools for the insertion of needles and infusion sets all for the subcutaneous administration of insulin in Class 10. This registration is incontestable.
- (n) **ACCU-CHEK 360°** (Reg. No. 3,256,740, issued June 26, 2007) for Computer hardware and computer software for evaluation, verification and administration, of medical data; computer software for medical and diagnostic purposes, namely, for use in transferring data from blood glucose monitors or insulin pumps to electronic data management systems such as personal computers, electronic diaries, interfaces, modems and cables for clinical medical use in Class 9. This registration is incontestable.
- (o) **ACCU-CHEK SMART PIX** (Reg. No. 3,411,797, issued April 15, 2008) for Electronic apparatus for recording, transmission and presentation of medical data, namely, electronic readers for blood glucose meters and insulin pumps; software for medical purposes, namely, for formatting, viewing and transmitting

medical data collected and stored on blood glucose meters and insulin pumps to a personal computer and vice versa in Class 9.

(p) **ACCU-CHEK INNER CIRCLE** (Reg. No. 3,481,185, issued August 5, 2008) for providing customized medical health care consultancy in the field of diabetes, namely, maintaining files and records concerning the medical condition of individuals and providing information about diabetes via a website on the Internet in Class 44.

(q) **ACCU-CHEK WORKSPACE** (Reg. No. 3,595,149, issued March 24, 2009) for provision of access to the Internet, provision of access to databases and provision of access to proprietary collections of information by means of global computer information networks, said access being for purposes of training physicians and healthcare professionals on the usage of blood glucose monitoring devices and devices for monitoring data relating to blood glucose in Class 38.

(r) **ACCU-CHEK AVIVA EXPERT** (Reg. No. 3,602,825, issued April 7, 2009) for Instruments, devices and apparatus for medical and diagnostic purposes, namely, blood glucose meters in Class 10.

(s) **ACCU-CHEK AVIVA COMBO** (Reg. No. 3,602,826, issued April 7, 2009) for Instruments, devices and apparatus for

medical and diagnostic purposes, namely, blood glucose meters in Class 10.

- (t) **ACCU-CHEK SPIRIT COMBO** (Reg. No. 3,609,052, issued April 21, 2009) for Insulin pumps and accessories therefor, namely, catheters, pen needles, syringes and patches; infusion sets in Class 10.
- (u) **ACCU-CHEK FLEXLINK** (Reg. No. 3,676,782, issued September 1, 2009) for Infusion sets for the subcutaneous administration of insulin in Class 10.
- (v) **ACCU-CHEK TESTING IN PAIRS** (Reg. No. 3,703,434, issued October 27, 2009) for printed matter, namely, personal log sheets for recording and tracking medical data relating to diabetes in Class 16.
- (w) **ACCU-CHEK UNISON** (Reg. No. 3,749,950, issued February 16, 2010) for Insulin pumps in Class 10.
- (x) **ACCU-CHEK AVIVA INSIGHT** (Reg. No. 3,991,903, issued July 12, 2011) for Instruments, devices and apparatus for medical and diagnostic purposes, namely, blood glucose meters; lancet and lancet devices, namely, a blood-letting device for obtaining a capillary blood sample; insulin pumps and infusion sets in Class 10.

- (y) **ACCU-CHEK NANO** (Reg. No. 4,214,217, issued September 25, 2012) for Blood glucose meters in Class 10.
- (z) **ACCU-CHEK SMARTVIEW** (Reg. No. 4,230,563, issued October 23, 2012) for diagnostic test strips for determining the level of glucose in blood for medical and clinical use; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips for medical and clinical use in Class 5.
- (aa) **ACCU-CHEK NANO SMARTVIEW** (Reg. No. 4,226,844, issued October 16, 2012) for Blood glucose monitors, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions in Class 10.

15. Copies of the federal registrations from the official database of the United States Patent and Trademark Office for each of Registration Nos. 1,277,867; 2,403,536; 2,628,696; 2,651,417; 2,681,644; 2,703,048; 2,732,629; 3,071,846; 3,076,905; 3,127,170; 3,194,287; 3,199,675; 3,202,402; 3,256,740; 3,411,797; 3,481,185; 3,595,149; 3,602,825; 3,602,826; 3,609,052; 3,676,782; 3,703,434; 3,749,950; 3,991,903; 4,214,217; 4,230,563; and 4,226,844, are attached to this Complaint as Exhibit A.

16. As indicated above, many of Roche Diagnostics' **ACCU-CHEK** trademarks are incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and such incontestable status serves as conclusive evidence of Roche

Diagnostics' ownership of such marks and of Roche Diagnostics' exclusive right to use the marks in connection with the identified and applicable products as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

17. Based on Roche Diagnostics' longstanding and consistent use of the **ACCU-CHEK** marks and its billions of dollars of sales of **ACCU-CHEK** products, coupled with the considerable time, effort and the over \$1 billion that Roche Diagnostics has spent on advertising and promoting the **ACCU-CHEK** marks, the relevant public and trade recognize the **ACCU-CHEK** marks as being associated with Roche Diagnostics. As a result of the recognition of Roche Diagnostics' **ACCU-CHEK** marks, the relevant public and trade recognize the **CHEK** component of Roche Diagnostics' **ACCU-CHEK** marks as used in connection with Roche Diagnostics' products and services related to blood-glucose monitoring and diabetes management and education.

18. Because of the success and appeal of the Roche Diagnostics products and services sold in connection with the **ACCU-CHEK** mark, and because of the goodwill and reputation Roche Diagnostics has acquired in the **ACCU-CHEK** marks, the **ACCU-CHEK** trademarks have acquired enormous value and have become well-known to consumers, the public, and the relevant trade as identifying and distinguishing Roche Diagnostics exclusively as the source of diabetes-care products and services offered in connection with the **ACCU-CHEK** trademarks.

**B. Defendant's Name Change To CHEK Diagnostics And Promotion Of Diabetes-Care Products**

19. Before March 27, 2014, Defendant operated under the business name, Polymer Technology Systems, Inc. ("PTS"). Operating under that name, PTS sold a multianalyte-measuring product under the product name CardioChek.

20. On information and belief, PTS primarily marketed the CardioChek product as a cholesterol-measuring device. Further, on information and belief, PTS did not offer any products under the CHEK name that were exclusively promoted as diabetes-care products.

21. Because PTS was primarily promoting the CardioChek product as a cholesterol-measuring device sold under the PTS business name, and because PTS was not, on information and belief, offering any products under the CHEK name that were exclusively promoted as diabetes-care products, Roche Diagnostics did not oppose Defendant's sale of the CardioChek product based upon any Roche Diagnostics trademark rights.

22. On March 27, 2014, the status quo changed when PTS issued a press release announcing that it had changed its name to CHEK Diagnostics. A copy of Defendant's press release is attached to this Complaint as Exhibit B. Defendant's press release announced that Defendant had recently acquired a line of diabetes-care products from Bayer Diabetes Care, touting the company's plans to expand into "ever-broadening" diagnostic technologies. "We're very excited about the new name because it better reflects our company's ever-broadening portfolio of diagnostic products and technical capabilities," the press release quoted from Robert

Huffstodt, Defendant's President and CEO. "Our proficiency in providing fast, reliable test results utilizing multiple technologies helps healthcare providers detect and moderate risk factors for millions of people around the world." The release discussed the "natural synergies" between Defendant's CardioChek product and Defendant's newly acquired diabetes-care product line. The release stated that "[t]he company also offers a variety of single and combination tests for ... glucose [.]"

**C. Likelihood Of Confusion, Mistake, And Deception**

23. The diabetes-care goods Defendant is offering under the CHEK Diagnostics business name are or will be competitive and/or related to the products and services offered and sold by Roche Diagnostics under the ACCU-CHEK trademarks, and are likely to be purchased and used by the same class of purchasers.

24. Defendant's CHEK business name is so confusingly similar in appearance, sound, meaning and commercial impression to Roche Diagnostics' ACCU-CHEK marks, which the public and trade already recognize and associate with Roche Diagnostics, so as to cause confusion, mistake, and/or deception as to the source of Defendant's goods, or to cause confusion, mistake, and/or deception regarding some affiliation, connection or sponsorship between Roche Diagnostics and Defendant.

25. The CHEK component of Roche Diagnostics' ACCU-CHEK trademarks is recognized by consumers, the public, and the relevant trade in connection with Roche Diagnostics' products and services related to blood glucose monitoring and diabetes management and education. Because the CHEK component of Defendant's

CHEK Diagnostics business name is identical to the CHEK component in Roche Diagnostics' ACCU-CHEK marks, and because Defendant's "CHEK" name is so confusingly similar in appearance, sound, meaning and commercial impression to Roche Diagnostics' ACCU-CHEK marks that the public and trade already recognize and associate with Roche Diagnostics, the Defendant's use of the CHEK business name is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant's goods, or to some affiliation, connection or sponsorship between Roche Diagnostics and Defendant.

26. Further, Defendant's addition of Diagnostics to its business name only increases the likelihood of confusion, mistake, or deception concerning any affiliation between CHEK Diagnostics and Roche Diagnostics, particularly considering Defendant's intent to market diabetes-care products under the CHEK name in competition with Roche Diagnostics' ACCU-CHEK diabetes-care products.

**D. Damage And Irreparable Harm To Roche Diagnostics**

27. Defendant's use of CHEK Diagnostics as its business name and Defendant's identification of goods and services under the CHEK Diagnostics name—particularly diabetes-care goods of a related nature to the goods and services offered by Roche under the ACCU-CHEK marks—is likely to cause confusion, mistake, and/or deception as to the source of Defendant's goods, or to some affiliation, connection or sponsorship between Roche Diagnostics and Defendant. This confusion, mistake, deception, and/or wrongful affiliation would cause damage and injury to Roche Diagnostics. Such damage would include, without limitation, damage to Roche Diagnostics' goodwill in the ACCU-CHEK marks and Roche

Diagnostics' loss of control over the business reputation associated with the ACCU-CHEK marks.

28. Roche Diagnostics has expended considerable time, effort, and money in advertising and otherwise promoting the ACCU-CHEK marks and in encouraging the public and trade to recognize the ACCU-CHEK marks, including the CHEK component of the marks, with Roche Diagnostics' goods and services. If Defendant is permitted to use CHEK as its business name, Defendant would unjustly reap the benefits of the goodwill attached to Roche Diagnostics' ACCU-CHEK marks, and Roche Diagnostics would suffer irreparable damage and injury.

29. Any defect or fault found with any goods Defendant provided under the CHEK Diagnostics name would impact and injure the reputation that Roche Diagnostics has cultivated and established for goods and services offered under the ACCU-CHEK marks.

30. The ACCU-CHEK trademarks are vital to Roche Diagnostics, and Roche Diagnostics has suffered and will continue to suffer irreparable harm if Defendant is permitted to use the CHEK business name as such use falsely suggests to consumers a connection with Roche Diagnostics and its ACCU-CHEK products and services. Further, such use will confuse and mislead consumers, the public, and the relevant trade. Defendant's encroachment on Roche Diagnostics' trademark rights will lead consumers to mistakenly believe that the Defendant's products—in particular, any diabetes-care products offered by Defendant—are

being offered for sale by Roche Diagnostics, or are otherwise related or affiliated with Roche Diagnostics.

31. Defendant's decision to use the CHEK Diagnostics business name, and offer diabetes-care products under that name, was made with full knowledge of Roche Diagnostics' prior use of and rights in the ACCU-CHEK trademarks. Defendant has acted and is acting in willful disregard of Roche Diagnostics' trademark rights, and is engaging in a course of conduct that will confuse and deceive consumers, the public, and the relevant trade concerning the source and sponsorship of Defendant's products.

32. Defendant's use of the CHEK Diagnostics business name, if not immediately enjoined, will continue to cause consumer confusion and irreparable injury to Roche Diagnostics, including by damaging the value of Roche Diagnostics' ACCU-CHEK trademarks and brand, and injuring Roche Diagnostics' goodwill and reputation by associating Roche Diagnostics with products over which Roche Diagnostics exercises no control. Such activities, if not immediately enjoined, will greatly injure the value of Roche Diagnostics' ACCU-CHEK trademarks and Roche Diagnostics' ability to distinctively identify Roche Diagnostics as the source of diabetes-care products and services sold under the ACCU-CHEK trademarks.

33. Defendant's actions have caused and will continue to cause irreparable damage to Roche Diagnostics' business and goodwill unless Defendant is preliminarily and permanently enjoined by this Court. Roche Diagnostics has no adequate remedy at law for such damage. Accordingly, Roche Diagnostics brings

this action for trademark infringement and unfair competition under federal, state and common law seeking an injunction against Defendant's use of CHEK Diagnostics as its business name and against Defendant's sale of any products in association with the CHEK name. Roche Diagnostics also seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 seeking judicial declarations that Defendant's use of CHEK as a business name or in connection with offering diabetes-care products would infringe Roche Diagnostics' trademark rights under the federal Lanham Act and Indiana common law, and would constitute unfair competition under the Lanham Act and Indiana common law.

### **FIRST CLAIM FOR RELIEF**

#### **Trademark Infringement Under The Lanham Act**

34. Roche Diagnostics repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

35. Defendant's acts complained of herein violate Section 32 of the Lanham Act, 15 U.S.C. § 1114. Defendant's use of the CHEK Diagnostics business name and offering of diabetes-care products under that name violates Roche Diagnostics' rights in the federally registered **ACCU-CHEK** trademarks. Defendant's use of the CHEK name is practically identical to Roche Diagnostics' federally registered **ACCU-CHEK** trademarks, and Defendant is using the infringing CHEK name in connection with products that are competitive, similar, or related to goods and services Roche Diagnostics is offering under the **ACCU-CHEK** marks.

36. Defendant's acts are likely to cause confusion, mistake, and/or deception as to the affiliation, connection, or association of Defendant and its products, services, and commercial activities with Roche Diagnostics and its products, services, and commercial activities.

37. Defendant's actions are further likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's products and commercial activities.

38. Roche Diagnostics has been injured and will continue to be injured by Defendant's violations. Roche Diagnostics has suffered and will continue to suffer irreparable harm unless this Court enjoins Defendant's actions. Roche Diagnostics has no adequate remedy at law.

39. Defendant's violations of Roche Diagnostics' trademark rights were knowing, deliberate, and intentional. Accordingly, Roche Diagnostics is entitled to a recovery of enhanced damages and attorneys' fees.

## **SECOND CLAIM FOR RELIEF**

### **Unfair Competition Under The Lanham Act**

40. Roche Diagnostics repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

41. Defendant's acts complained of herein violate Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A). Defendant's use of the CHEK Diagnostics business name and offering of diabetes-care products under that name violates Roche Diagnostics' trademark rights and is likely to cause confusion, mistake,

and/or deception as to the affiliation, connection, or association of Defendant and its products, services, and commercial activities with Roche Diagnostics and its products, services, and commercial activities.

42. Defendant's actions are further likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's products and commercial activities.

43. Roche Diagnostics has been injured and will continue to be injured by Defendant's violations. Roche Diagnostics has suffered and will continue to suffer irreparable harm unless this Court enjoins Defendant's actions. Roche Diagnostics has no adequate remedy at law.

44. Defendant's violations of Roche Diagnostics' trademark rights were knowing, deliberate, and intentional. Accordingly, Roche Diagnostics is entitled to a recovery of enhanced damages and attorneys' fees.

### **THIRD CLAIM FOR RELIEF**

#### **Common Law Trademark Infringement and Unfair Competition**

45. Roche Diagnostics repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

46. Defendant's actions complained of herein, including Defendant's use of CHEK as a business name, constitute trademark infringement and unfair competition in violation of the common law of Indiana.

47. Defendant's acts complained of herein are likely to cause confusion, mistake and/or deception, including but not limited to confusion, mistake and/or

deception regarding the source, origin, and/or affiliation of products promoted or sold by Defendant.

48. Defendant's actions have caused and will continue to cause Roche Diagnostics to suffer damages and irreparable injury to its reputation and goodwill. Roche Diagnostics has been and will continue to be irreparably damaged unless and until this Court enjoins Defendant's violations.

#### **FOURTH CLAIM FOR RELIEF**

##### **Declaratory Judgment**

49. Roche Diagnostics repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

50. As identified above, Defendant's use of CHEK as a business name and in connection with the sale of diabetes-care products will cause immediate and irreparable injury to Roche Diagnostics and will both damage Roche Diagnostics and deceive the public unless such conduct is enjoined by this Court.

51. An actual case and live controversy has arisen and currently exists between the Parties regarding Defendant's use of the CHEK business name, and specifically regarding whether Defendant's acts constitute trademark infringement under the Lanham Act and Indiana common law and unfair competition under the Lanham Act and the common law of Indiana.

52. Roche Diagnostics seeks a judicial declaration pursuant to 28 U.S.C. § 2201 that Defendant's use of the CHEK business name, and use of the CHEK name in connection with the sale of diabetes-care products, constitutes trademark

infringement under the Lanham Act and under Indiana common law, and constitutes unfair competition under the Lanham Act and the common law of Indiana.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Roche Diagnostics GmbH and Roche Diagnostics Operations, Inc. request judgment against Defendant as follows:

1. That a preliminary and permanent injunction be issued enjoining Defendant, and any companies owned or controlled by Defendants, and the officers, agents, privies, shareholders, principals, directors, licensees, attorneys, servants, employees, affiliates, subsidiaries, successors and assigns of any such companies, and all those persons in active concert or participation with them, from:

- (a) using CHEK Diagnostics as a business name or from using any form of CHEK as part of Defendant's business name;
- (b) using the CHEK name in connection with any sale, offer, promotion, distribution, advertising, of any diabetes-care products or services, or from engaging in any other commercial activities using the CHEK name in connection with diabetes-care products or services;
- (c) using any representation of the CHEK name that could, or would be likely to, lead consumers, the public, or the trade to believe that Defendant or its products is sponsored by,

associated with, authorized by, endorsed by, or otherwise connected with Roche Diagnostics;

- (d) engaging in any other activity constituting unfair competition with Roche Diagnostics, or constituting an infringement of Roche Diagnostics' **ACCU-CHEK** trademarks;
- (e) instructing, assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the subparagraphs above or taking any action that contributes to any of the activities referred to in the subparagraphs above.

2. Directing that Defendant, at its own expense, immediately recall its entire inventory of products, advertisements, promotions, and any other materials bearing the CHEK business name that were distributed to any third party.

3. Directing such other relief as the Court may deem appropriate to prevent any confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's products and commercial activities; to prevent the public from being deceived as to the relationship between Defendant and Roche Diagnostics; and to prevent Defendant from misappropriating the reputation and goodwill of Roche Diagnostics and Roche Diagnostics' **ACCU-CHEK** trademarks and products.

4. Declaring that Defendant's use of the CHEK business name, and use of the CHEK name in connection with the sale of diabetes-care products, constitutes

trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); and constitutes a violation of the state and common law of the State of Indiana.

5. Directing that Defendant cancels, amends or otherwise modifies any applications Defendant has filed seeking registration of a trademark containing the CHEK name.

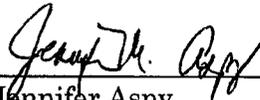
6. Awarding Roche Diagnostics any monetary damages incurred due to Defendant's actions, and awarding Roche Diagnostics all costs, disbursements, and attorneys' fees incurred in this matter, as provided by law, including 15 U.S.C. § 1117 and any other applicable federal or Indiana law.

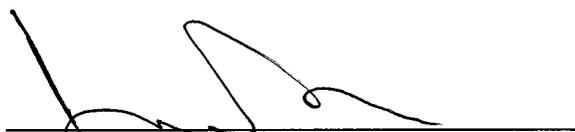
7. Granting such other and further relief as the Court may deem just and proper.

**VERIFICATION**

I declare and affirm under penalties of perjury that the foregoing facts are true and accurate.

Dated: 4/10/14

  
\_\_\_\_\_  
Jennifer Aspy  
Director of Product Marketing,  
Diabetes Care  
Roche Diagnostics Corporation



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