

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court DISTRICT OF HAWAII on the following Patents or Trademarks:

DOCKET NO. CV 08-00378-HG-LEK	DATE FILED 8/21/2008	U.S. DISTRICT COURT DISTRICT OF HAWAII
PLAINTIFF Johnson & Johnson & Lifescan, Inc.		DEFENDANT Interactive Care Technologies, LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,484,989		SEE ATTACHED COMPLAINT FOR INFORMATION
2 2,325,152		
3 2,538,658		
4 2,631,514		
5 2,710,143		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,863,393		
2 3,039,103		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

ORIGINAL

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 21 2008

at 11 o'clock and 05 min. A.M.
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOHNSON & JOHNSON and
LIFESCAN, INC.,

Plaintiffs,

vs.

INTERACTIVE CARE TECHNOLOGIES,
LLC,

Defendant.

) CASE NO. **CV 08-00378 HG BK**
)
) COMPLAINT FOR FEDERAL
) TRADEMARK INFRINGEMENT;
) FEDERAL FALSE DESIGNATION OF
) ORIGIN; AND HAWAII DECEPTIVE
) TRADE PRACTICES; EXHIBITS "A"-
) "R"; SUMMONS
)
)

COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT; FEDERAL FALSE DESIGNATION OF ORIGIN; AND HAWAII DECEPTIVE TRADE PRACTICES

Plaintiffs, Johnson & Johnson and LifeScan, Inc.

("LifeScan"), (collectively the "Plaintiffs"), by their undersigned counsel, bring this Complaint against Defendant, Interactive Care Technologies, LLC ("Defendant" or "iCare"), and in support thereof allege as follows:

NATURE OF THIS ACTION

1. Plaintiffs seek injunctive relieve and damages for iCare's infringement of Johnson & Johnson's federally registered ONE TOUCH marks, and variations thereof, including ONETOUCH (the "ONE TOUCH marks"), for diabetes-related medical goods, including software for diabetes management, and false representations as a result of use of a false and misleading designation, in violation of Sections 32(1) (a) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 (1) (a), 1125(a). Plaintiffs also seek relief for deceptive trade practices under Hawaii Rev. Stat. §481A-3.

2. This suit arises out of iCare's use of the ONE-TOUCH TELEMEDICINE mark to identify telemedicine services and software-based medical systems that enable medical care providers to remotely manage and monitor high-risk patients, including those with diabetes. Through the use of the ONE-TOUCH TELEMEDICINE mark to prominently identify and promote iCare's telemedicine services and medical software systems, iCare

falsely represents that its business and products are endorsed, sponsored, licensed or approved by, or otherwise affiliated with Plaintiffs. Furthermore, iCare's mark dilutes and diminishes the distinctive nature of Johnson & Johnson's famous ONE TOUCH marks, which Johnson & Johnson, through its wholly owned subsidiary LifeScan, Inc., has used for over twenty years to identify medical products.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Counts I-II of this Complaint pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a) for the claims arising out of violations of Section 32(1)(a) and Section 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1)(a) and 1125(a). This Court has supplemental jurisdiction over the remaining state law claims under 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because Defendant maintains its principal place of business at 999 Wilder Avenue, #1705, Honolulu, Hawaii, is a limited liability company of Hawaii and transacts business in Hawaii.

5. On information and belief, venue in this District is proper pursuant to 28 U.S.C. § 1391 because the Defendant resides and transacts business in this district.

THE PARTIES

6. Plaintiff, Johnson & Johnson, is a New Jersey corporation having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, NJ 08933-7001.

7. Plaintiff, LifeScan, is a California corporation having a principal place of business at 1000 Gibraltar Dr., Milpitas, CA 96822.

8. On information and belief, Defendant, iCare is a Hawaii limited liability company, with a principal place of business at 999 Wilder Avenue, #1705, Honolulu, Hawaii 96822.

FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS PLAINTIFFS' ONE TOUCH MARKS

9. Johnson & Johnson was formed in 1885 as a partnership between Robert Wood Johnson and his two brothers, James Wood Johnson and Edward Mead Johnson. The partnership began operations in New Brunswick, New Jersey, in 1886 and incorporated in 1887 as Johnson & Johnson.

10. LifeScan incorporated as a California corporation in 1981 and was acquired by Johnson & Johnson in 1986. LifeScan is a wholly-owned subsidiary of Johnson & Johnson.

11. Plaintiffs have continuously used the ONE TOUCH mark in interstate commerce since at least as early as 1987 to identify medical software systems, hand-held devices and reagent test strips for testing and monitoring blood glucose levels. Representative examples of products, product packaging, and

product inserts demonstrating Plaintiffs' use of the ONE TOUCH mark from 1987 to the present are attached to this Complaint as Exhibits A-F.

12. In 1993, Plaintiffs expanded interstate use in commerce of the ONE TOUCH mark to identify a utility medical software product enabling users to: (a) transfer blood glucose readings from a meter to a computer; (b) maintain long-term records of blood glucose test results for ongoing reference; and (c) analyze and chart blood glucose levels. A sample of Plaintiffs' ONE TOUCH utility medical software product is attached to this Complaint as Exhibit G.

13. Plaintiffs have continuously used the ONE TOUCH and ONE TOUCH II DATA DOCK marks in interstate commerce since at least as early as November 1997 to identify handheld devices enabling healthcare providers to monitor patients' blood glucose levels at bedside and maintain patient clinical data. A photograph of Plaintiffs' handheld device and procedure guide demonstrating Plaintiffs' use of the ONE TOUCH and ONE TOUCH II DATA DOCK marks are attached to this Complaint as Exhibit H.

14. Plaintiffs have continuously used the ONE TOUCH ULTRA mark in interstate commerce since at least as early as January 2001 to identify blood glucose monitoring devices, and related parts and accessories. Representative product packaging

demonstrating Plaintiffs' use of the ONE TOUCH ULTRA mark is attached to this Complaint as Exhibits C-D and F.

15. Plaintiffs market ONE TOUCH brand products throughout the United States as well as worldwide.

16. Plaintiffs have spent millions of dollars each year in advertising and promoting the ONE TOUCH marks for diabetes-related products, including medical software. As a result, Plaintiffs have created substantial industry and consumer recognition in the ONE TOUCH brand.

17. To protect its rights in the ONE TOUCH marks, Johnson & Johnson holds numerous valid and subsisting trademark registrations and applications for the ONE TOUCH mark and variations thereof, including:

- a. Incontestable Reg. No. 1,484,999 - ONE TOUCH for "in vitro diagnostic reagent test strips used by diabetics to test their blood glucose levels; hand-held diagnostic blood testing device used by diabetics to test their blood glucose levels"; registered on April 19, 1988; based on use since at least as early as July 31, 1987.
- b. Incontestable Reg. No. 2,325,152 - ONE TOUCH II DATA DOCK for "blood glucose monitoring and testing device[s]"; registered on March 7, 2000;

based on use since at least as early as December 18, 1997.

- c. Incontestable Reg. No. 2,538,658 - ONE TOUCH ULTRA for "blood glucose monitoring devices, and parts and accessories therefore"; registered on February 12, 2002; based on use since at least as early as January 15, 2001.
- d. Reg. No. 2,631,514 - ONE TOUCH for "lancets"; registered on October 8, 2002; based on use since at least as early as July 30, 1998.
- e. Reg. No. 2,710,143 - ONE TOUCH for "printed materials, namely, newsletters, pamphlets, and brochures relating to diabetes care"; registered on April 22, 2003; based on use since at least as early as November 1, 2002.
- f. Reg. No. 2,863,393 - ONETOUCH for "tests strips used for blood glucose monitoring; blood glucose monitoring devices and parts and attachments therefore"; registered on July 13, 2004; based on use since at least as early as November 15, 2001.
- g. Reg. No. 3,039,103 - ONETOUCH for "diabetes management software"; registered on January 10, 2006; based on use since at least as early as March 31, 2003.

Copies the federal trademark registrations for the above-identified marks are attached to this Complaint as Exhibits I-0.

DEFENDANT'S INFRINGEMENT OF PLAINTIFFS' ONE TOUCH MARKS

18. On information and belief, iCare incorporated as a Hawaii limited liability company on February 22, 2005.

19. On information and belief, on September 26, 2006, iCare filed federal trademark application Ser. No. 77/007,918 -- ONETOUCH TELEMEDICINE for "telemedicine"; based on alleged use since March 13, 2003 and alleged use in commerce since August 1, 2004.

20. On August 7, 2007, Johnson & Johnson filed with the Trademark Trial and Appeal Board (the "Board") a trademark opposition against iCare's Ser. No. 77/007,918 on the ground that the ONETOUCH TELEMEDICINE mark is likely to cause confusion with Johnson & Johnson's prior-used and federally registered ONE TOUCH marks.

21. The Board entered a default judgement against iCare sustaining Johnson & Johnson's opposition and refusing registration of Ser. No. 77/007,918 - ONETOUCH TELEMEDICINE on December 12, 2007. A copy of the Board's order is attached to this Complaint as Exhibit P. Accordingly, Ser. No. 77/007,918 - ONETOUCH TELEMEDICINE has been abandoned. A copy of the PTO's online record for this application is attached as Exhibit Q.

22. On information and belief, Plaintiffs' use of the ONE TOUCH marks predates iCare's use of the ONE-TOUCH TELEMEDICINE mark.

23. On information and belief, Plaintiffs' use of the ONE TOUCH marks in connection with computer software in the medical field predates iCare's use of the ONE-TOUCH TELEMEDICINE mark. A copy of a promotional piece featuring iCare's ONE-TOUCH TELEMEDICINE services and software-based medical system is attached to this Complaint as Exhibit R.

24. Pursuant to 15 U.S.C. § 1072, iCare adopted the ONE-TOUCH TELEMEDICINE mark with constructive notice of Plaintiffs' ONE TOUCH Marks.

25. Plaintiffs' have not granted iCare a license or otherwise consented to iCare's use of the ONE-TOUCH TELEMEDICINE mark.

26. On information and belief, iCare is in the middle to late stage of product development for the ONE-TOUCH TELEMEDICINE services and software-based medical system.

27. On information and belief, iCare intends to target sales of its service and products to clients in North America, but currently it has deployed ONE-TOUCH TELEMEDICINE services and software-based medical systems only in Hawaii.

COUNT I - FEDERAL TRADEMARK INFRINGEMENT
(Violation of Section 32 (1)(a) of the Lanham Act)

28. Plaintiffs hereby incorporate by reference and reallege each of the allegations set forth in paragraphs 1 through 27 above.

29. Defendant's use of the ONE-TOUCH TELEMEDICINE mark to identify and promote telemedicine services and software-based medical systems that enable medical care providers to remotely manage and monitor high-risk patients with diabetes is likely to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendant with Plaintiffs and Plaintiffs' federally registered trademarks, all in violation of Section 32 (1)(a) of the Lanham Act, 15 U.S.C. § 1114 (1)(a).

30. Defendant's adoption and ongoing use of its ONE-TOUCH TELEMEDICINE mark is irreparably injuring Plaintiffs and, unless Defendant is restrained, will continue to do so.

COUNT II - FALSE DESIGNATION OF ORIGIN
(Violation of Section 43(a) of the Lanham Act)

31. Plaintiffs hereby incorporate by reference and reallege each of the allegations set forth in paragraphs 1 through 30 above.

32. Defendant's use of the ONETOUCH mark to identify and promote telemedicine services and software-based medical systems that enable medical care providers to remotely manage

and monitor high-risk patients with diabetes is likely to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendant with Plaintiffs and Plaintiffs' ONE TOUCH Marks, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

33. Defendant's adoption and ongoing use of the ONE-TOUCH TELEMEDICINE mark is irreparably injuring Plaintiffs and, unless Defendant is restrained, will continue to do so.

**COUNT III - DECEPTIVE TRADE PRACTICES
(Violation of Haw. Rev. Stat. § 481A-3)**

34. Plaintiffs hereby incorporate by reference and reallege each of the allegations set forth in paragraphs 1 through 33 above.

35. Defendant's use of the ONETOUCH mark to identify and promote telemedicine services and software-based medical systems that enable medical care providers to remotely manage and monitor high-risk patients with diabetes violates Hawaii Uniform Deceptive Trade Practices Act, Haw. Rev. Stat § 481A-3 because Defendant's actions and conduct are likely to cause confusion or misunderstanding as to the: (a) source, sponsorship, approval or certification of Defendant's goods and services; and (b) affiliation, connection or association with, or certification with Plaintiffs.

WHEREFORE, Plaintiffs, Johnson & Johnson and LifeScan, pray that this Court enter a judgment in its favor and against Defendant, iCare, on each and every Count in this Complaint in the following particulars:

A. Preliminarily and permanently enjoining iCare, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from using, as a mark, ONE-TOUCH TELEMEDICINE or any other designation confusingly similar to Plaintiffs' ONE TOUCH marks in connection with telemedicine and software-based medical systems that enable medical care providers to remotely manage and monitor high-risk patients with diabetes.

B. Ordering an accounting and entering a judgment that iCare shall account to Plaintiffs for and pay to Plaintiffs, all profits, realized by iCare by reason of iCare's unlawful acts set forth in this Complaint.

C. Ordering iCare, pursuant to 15 U.S.C. §1118, to deliver for destruction, upon the entry of judgment, all materials and goods in the possession of iCare or under its control which bear the ONE-TOUCH TELEMEDICINE mark, or any variant thereof, as well as all plates, molds, matrices, masters, tapes, film, negatives, computer programs, electronic files, computer servers or other equipment, or other articles by means of which infringing copies of iCare's ONE-TOUCH

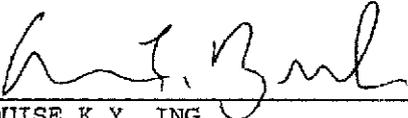
TELEMEDICINE mark are displayed by iCare as set forth in this Complaint.

D. Ordering iCare to pay to Plaintiffs the costs of this action, including reasonable attorney's fees and expenses.

E. Ordering iCare to file with the Court and to serve upon Plaintiffs, within 30 days after service of any injunction entered in this action, a written report under oath setting forth in detail the manner and form in which iCare has complied with the injunction.

F. Awarding to Plaintiffs such other and further relief as this Court may seem just and proper.

Dated: Honolulu, Hawaii, AUG 21 2008



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