

TTAB

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Date: February 1, 2002

Typed or Printed Name: Sherry E. Cozart

Signature: Sherry E. Cozart

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Deposit Account

The Commissioner is hereby authorized to deduct any defect or deficiency in fee, or credit any overpayment to Deposit Account No. 02-3223.



02-01-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION SERIAL No.: 76/210,082

Filed on: February 14, 2001

For the Mark: ACCUCARE

Published: December 4, 2001

ROCHE DIAGNOSTICS GMBH,)
)
and)
)
ROCHE DIAGNOSTICS CORPORATION,)
)
Opposers,)
)
v.)
)
MEDLINE INDUSTRIES, INC.,)
)
Applicant.)

Proceeding No. _____

02/06/2002 TSMITH 00000243 76210082

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600.00 OP

NOTICE OF OPPOSITION

Box TTAB FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Commissioner:

Pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1051 et seq., as amended) and Trademark Rules (37 CFR, as amended) § 2.101, 2.102, and 2.104, Roche Diagnostics GmbH, a limited liability company organized and existing under the laws of the Federal Republic of Germany, located and doing business at Sandhofer Strasse 116 D-68305, Mannheim, Germany (“Opposer RDG”), and Roche Diagnostics Corporation, a corporation organized and existing under the laws of the State of Indiana, located and doing business at 9115 Hague Road, Bldg. D, Indianapolis, Indiana 46250 (“Opposer RDC”), by counsel, hereby oppose registration of the mark ACCUCARE in International Class 10 (medical apparatus), which registration is sought in the above-identified Application.

1. On or about February 14, 2001, Applicant, Medline Industries, Inc., filed its Trademark Application Serial No. 76/210,082 in the United States Patent and Trademark Office for registration of “ACCUCARE” (the “Application”).
2. Opposer RDG believes that it will be damaged by the registration of the mark ACCUCARE which is sought in the above-identified Application and has grounds for this Opposition as follows:
 - a. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK FOR ME trademark (United States Trademark Application Serial No. 76/178,884, filed December 11, 2000) for use in connection with “diagnostic test strips for determining levels 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;” and “blood glucose monitor, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions, all for medical and clinical use.”
 - b. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK ACTIVE trademark (United States Trademark Application Serial No. 76/178,662, filed December 11, 2000) for use in connection with “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;” 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.”

- c. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK INFORM trademark (United States Trademark Application Serial No. 76/078,713, filed June 27, 2000) for use in connection with “blood glucose monitor with data management capabilities.”
- d. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK COMPASS trademark (United States Trademark Application Serial No. 76/070,019, filed June 14, 2000) for use in connection with “computer software for maintaining a database of blood test results from a blood glucose monitor for use by individuals with diabetes.”
- e. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK RELAY trademark (United States Trademark Application Serial No. 76/060,020, filed May 30, 2000) for use in connection with “medical apparatus, namely, a blood glucose monitor with data management capabilities for medical diagnostic use, instruction manuals and accessories.”
- f. Opposer RDG owns a United States federal application for registration of the ACCU-CHEK COMPACT trademark (United States Trademark Application Serial No. 75/792,547, filed September 3, 1999) for use in connection with “blood glucose test strips for medical use; and control solutions for testing the accuracy of a blood glucose monitor for medical and clinical use;” 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.”
- g. Opposer RDG owns a United States federal registration for the ACCU-CHEK trademark (United States Trademark Registration No. 2,403,536, issued November 14, 2000) for use in connection with “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;” and “blood glucose monitors, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions.”
- h. Opposer RDG owns a United States federal registration for the ACCU-CHEK trademark (United States Trademark Registration No. 1,277,867, issued May 15, 1984) for use in connection with “a [b]lood [g]lucose [m]onitor.”
- i. Through Opposer RDG’s use of and/or preparations to use the above-noted ACCU-CHEK FOR ME, ACCU-CHEK ACTIVE, ACCU-CHEK INFORM, ACCU-CHEK COMPASS, ACCU-CHEK RELAY, ACCU-CHEK COMPACT, ACCU-CHEK, and ACCU-CHEK trademarks, Opposer RDG has expended substantial resources and/or developed substantial trademark rights and goodwill in said marks.

- j. Through Opposer RDG's use of and/or preparations to develop a plurality of the above-noted ACCU-CHEK FOR ME, ACCU-CHEK ACTIVE, ACCU-CHEK INFORM, ACCU-CHEK COMPASS, ACCU-CHEK RELAY, ACCU-CHEK COMPACT, ACCU-CHEK, and ACCU-CHEK trademarks as a family of "ACCU" marks, Opposer RDG has expended substantial resources and/or developed substantial trademark rights and goodwill in said ACCU family mark.
 - k. The Application should be refused because Medline Industries, Inc.'s proffered use of ACCUCARE in connection with "[d]iagnostic medical instruments, namely, oral and rectal thermometers and glucose monitoring systems, comprising - meter with battery, case test strips, control solution, lancing device, and owner's manual" is likely to cause confusion relative to one or more uses of the above-noted (see paragraphs 2(a)-(j)) trademarks and/or family mark by Opposer RDG in connection with the goods/services identified in Opposer RDG's above-noted (see paragraphs 2(a)-(h)) already existing trademark applications and/or registrations.
 - l. If a trademark registration for ACCUCARE were to issue in favor of Medline Industries, Inc., it would be a source of damage and injury to Opposer RDG.
3. Opposer RDC believes that it will be damaged by the registration of the mark ACCUCARE which is sought in the above-identified Application and has grounds for this Opposition as follows:
- a. Opposer RDC owns a United States federal registration for the ACCU-CHEK SIMPLICITY trademark (United States Trademark Registration No. 2,417,957, issued January 2, 2001) for use in connection with "glucose test strips, for medical diagnostic use, for use with blood glucose meters sold over-the-counter for consumer home use."
 - b. Opposer RDC owns a United States federal registration for the ACCULINK trademark (United States Trademark Registration No. 2,248,191, issued May 25, 1999) for use in connection with "data transfer apparatus, namely, a modem for use in transferring patient data from a blood glucose monitor to a remote site."
 - c. Opposer RDC owns a United States federal registration for the ACCUTILITY trademark (United States Trademark Registration No. 2,237,576, issued April 6, 1999) for use in connection with "computer software for performing utility functions on medical diagnostic equipment, namely, blood glucose meters."
 - d. Opposer RDC owns a United States federal registration for the ACCUDATA trademark (United States Trademark Registration No. 1,933,434, issued November 7, 1995) for use in connection with "medical apparatus; namely, a

system of electronic devices for storing, processing, transferring and analyzing data collected from bedside medical analyzers; namely, a blood glucose monitor.”

- e. Opposer RDC owns a United States federal registration for the ACCU-CHEK A1C trademark (United States Trademark Registration No. 2,336,435, issued March 28, 2000) for use in connection with, among other things, “chemical reagent test strips for collecting a sample for medical diagnostic use.”
- f. Through Opposer RDC’s use of and/or preparations to use the above-noted ACCU-CHEK SIMPLICITY, ACCULINK, ACCUTILITY, ACCUDATA, and ACCU-CHEK A1C trademarks, Opposer RDC has expended substantial resources and/or developed substantial trademark rights and goodwill in said marks.
- g. Through Opposer RDC’s use of and/or preparations to develop a plurality of the above-noted ACCU-CHEK SIMPLICITY, ACCULINK, ACCUTILITY, ACCUDATA, and ACCU-CHEK A1C trademarks as a family of “ACCU” marks, Opposer RDC has expended substantial resources and/or developed substantial trademark rights and goodwill in said “ACCU” family mark.
- h. The Application should be refused because Medline Industries, Inc.’s proffered use of ACCUCARE in connection with “[d]iagnostic medical instruments, namely, oral and rectal thermometers and glucose monitoring systems, comprising - meter with battery, case test strips, control solution, lancing device, and owner’s manual” is likely to cause confusion relative to one or more uses of the above-noted (see paragraphs 3(a)-(g)) trademarks and/or family mark by Opposer RDC in connection with the goods/services identified in Opposer RDC’s above-noted (see paragraphs 3(a)-(e)) already existing trademark applications and/or registrations.
- i. If a trademark registration for ACCUCARE were to issue in favor of Medline Industries, Inc., it would be a source of damage and injury to Opposer RDC.

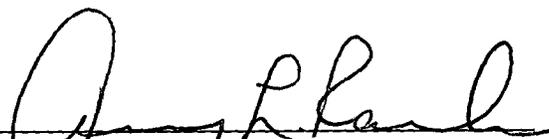
4. The Commissioner is respectfully requested to direct all correspondence in this opposition proceeding to Ms. Rankin, whose address is:

Amy L. Rankin, Esq., Atty. #15052-49
BOSE McKINNEY & EVANS LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 684-5000
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5. In accordance with 37 CFR § 2.6(a)(17), a \$600 check in payment of the petition fees is submitted herewith.
6. As required by 37 CFR § 2.104(a), this document is being submitted in duplicate.

WHEREFORE, Opposer, Roche Diagnostics GmbH, and Opposer, Roche Diagnostics Corporation, by counsel, deem that one or both of them will be damaged in the event that ACCUCARE is registered as a trademark and petition this Board to refuse Medline Industries, Inc.'s Application under Serial No. 76/210,082 for registration of ACCUCARE, specifically in International Class 10, to prevent registration of ACCUCARE as a trademark, and for all other appropriate relief.

Respectfully submitted,



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