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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DCAEV, INC., a Nevada corporation,

Plaintiff,

v.

INTELIUS, INC., a Delaware corporation

Defendant.

Case No.:

**COMPLAINT FOR DAMAGES,
INJUNCTIVE, AND DECLARATORY
RELIEF**

- (1) Trademark Infringement under 15 U.S.C. § 1114(1)
- (2) Unfair Competition under 15 U.S.C. § 1125(a)
- (3) Cybersquatting under 15 U.S.C. § 1125(d)
- (4) Common Law Trademark Infringement
- (5) Common Law Unfair Competition
- (6) Deceptive Trade Practices under N.R.S. § 598.0903 *et seq.*

JURY DEMAND

Plaintiff, DCAEV, Inc. ("Plaintiff" or "Date Check") sues Defendant Intelius, Inc. ("Intelius" or "Defendant"), and alleges as follows:

1 **I. INTRODUCTION**

2 1. This action seeks declaratory relief, injunctive relief, and damages based on
3 Intelius' willful infringement of Plaintiff's registered and common law trademark "DATE
4 CHECK" (hereinafter the "DATE CHECK mark") in violation of 15 U.S.C. §§ 1051 *et seq.* (the
5 "Lanham Act"), NRS 598.0903 *et. seq.*, and the common law doctrines of unfair competition,
6 and trademark infringement.

7 **II. JURISDICTION AND VENUE**

8 2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28
9 U.S.C. §§ 1331, 1338(a), 2201 and 2202, and is further empowered to exercise supplemental
10 jurisdiction over the state and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.
11 This Court has general and specific personal jurisdiction over Intelius because Intelius has
12 substantial contacts within the State of Nevada, regularly conducts business in the State of
13 Nevada, has purposefully directed its commercial activities at residents of Nevada, has caused
14 damages to Plaintiff in Nevada, and the claims herein arise out of Intelius' forum-related
15 activities.

16 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as a substantial part of
17 the events or omissions giving rise to the claims set forth herein occurred in this district and
18 division.

19 **III. THE PARTIES**

20 4. Date Check is a Nevada corporation with its principal place of business at 375 N.
21 Stephanie St., Suite 1411, Henderson, NV 89014.

22 5. Date Check operates the web site located at www.Date-Check.com (the "Date
23 Check site"), which may also be accessed via www.datecheck.com, www.date-check.net, and
24 www.datecheck.net.

25 6. The Date Check site serves as a venue and directory for its users to locate and
26 screen various adult-oriented companion and escort services.

27 7. Date Check is the owner of United States Trademark Registration No. 3,567,258
28 for the mark "DATE CHECK" (the "DATE CHECK[®] registration"). Attached as Exhibit A to

1 this Complaint is a true and correct copy of the DATE CHECK registration as shown via the
2 United States Patent and Trademark Office's TARR database.

3 8. Intelius is a Delaware corporation with its principal place of business in Bellevue,
4 Washington.

5 9. Among other services, Intelius provides online screening and background
6 verification checks for individuals and corporations. According to Intelius' website, Intelius
7 delivered 3.2 million reports in 2008, and over 1 million people visit the Intelius website every
8 day (<http://www.intelius.com>).

9 10. Intelius, in concert with others known and unknown, is the owner and party
10 responsible for the promotion, sale and distribution of the "Date Check" mobile telephone
11 application (the "infringing DATE CHECK app") and the "Date Check" screening services (the
12 "infringing services") available at <http://www.intelius.com/date-check.html> and on other pages
13 of the Intelius website.

14 11. Intelius, in concert with others known and unknown, is also the party responsible
15 for creating "DATE CHECK" gift cards which are or have been for sale at various retail outlets
16 and which are used to sell access to the infringing services available on Intelius' website.

17 IV. BACKGROUND

18 A. **Date Check's Valuable Common-Law and Registered Trademark Rights in** 19 **DATE CHECK[®]**

20 12. Date Check has been using the DATE CHECK mark in commerce in connection
21 with promoting the goods and services of others and with companion screening services since as
22 early as 2002. Date Check offers these services through its web site located at [www.date-](http://www.date-check.com)
23 [check.com](http://www.date-check.com).

24 13. On June 17, 2008, Date Check filed a federal trademark application for DATE
25 CHECK, with a date of first use in commerce of May 22, 2002. The application matured into
26 registration on the Principal Register on January 27, 2009, and DATE CHECK was issued U.S.
27 Registration No. 3567258. Attached as Exhibit A is a true and accurate copy of the TARR
28 printout showing Date Check's U.S. trademark registration.

1 14. As shown in Exhibit A, the DATE CHECK[®] description of services in its
2 trademark registration is:

- 3 • Promoting the goods and services of others by providing hypertext links to the
- 4 web sites of others; and
- 5 • Providing a web site featuring product ratings of the consumer services of
- 6 others in the field of escorts.

7 15. Date Check owns overwhelming common law trademark rights in the DATE
8 CHECK mark established by seven (7) years of continuous and widespread use on the Internet,
9 over 1.6 million unique annual visitors to the Date Check websites, as well as near ubiquitous
10 recognition in the relevant channels of trade.

11 16. Date Check has been using the DATE CHECK mark as a source identifier for its
12 services since at least 2002. Plaintiff's use of the DATE CHECK mark has spanned across the
13 globe via online commerce, and the DATE CHECK services are available throughout the entire
14 United States, and abroad.

15 17. In addition to being a registered trademark, the DATE CHECK mark has
16 achieved strong commercial recognition as an identifier of services available on the Date Check
17 site.

18 18. Users of Date Check's services are able to read user comments and other
19 screening information for potential dates with professional escorts and other adult companions.
20 Through Date Check's own verification system and the reviews and ratings of its users, Date
21 Check provides a comprehensive screening system designed to provide users of the system with
22 peace of mind before meeting a previously-unknown individual for a social outing. To that end,
23 Intelius' and Date Check's services are identical.

24 19. Date Check's screening services are so respected that third parties sometimes
25 accept a lesser personal screening protocol for individuals that have gone through Plaintiff's
26 DATE CHECK screening process (i.e. if a DATE CHECK user has gone through the DATE
27 CHECK process, then further screening of that person may not be necessary). The DATE
28 CHECK services are therefore highly respected, and those seeking to screen or otherwise

1 research escorts and other online companion services associate the DATE CHECK mark
2 uniquely and solely with Plaintiff.

3 20. The DATE CHECK mark (in connection with the registered services and related
4 services) can only identify Plaintiff, and Internet users who encounter Defendants' use of DATE
5 CHECK would be misled to believe that Intelius is in some way connected to or affiliated with
6 Plaintiff.

7 21. This misuse of the DATE CHECK mark creates confusion between Plaintiff's and
8 Defendants' services.

9 22. In addition to the main www.date-check.com websites, Plaintiff also operates
10 over sixty (60) additional websites incorporating the DATE CHECK mark, including [las-](http://las-vegas.date-check.com)
11 vegas.date-check.com, orlando.date-check.com, and sites referencing multiple other cities.

12 23. Furthermore, since July of 2008, Plaintiff has provided a version of its website
13 optimized for viewing on mobile phones and Personal Digital Assistant (PDA) devices. A
14 printed copy of the login page to the mobile version of the Date Check site is attached as Exhibit
15 B, and the site may be accessed via www.date-check.com/m/.

16 **B. Intelius' Wrongful Conduct**

17 24. On or about November 6, 2009, Intelius released the infringing DATE CHECK
18 app for the iPhone platform. See Exhibit C. Upon information and belief, the infringing app is a
19 mobile version of the infringing services that Intelius has been offering at
20 <http://www.intelius.com/date-check.html> (and/or additional pages on the Intelius website) since
21 at least June 2008.

22 25. Upon information and belief, Intelius has already released or intends to release
23 additional versions of the infringing DATE CHECK app for non-iPhone platforms such as
24 Android and Blackberry. See Composite Exhibit D.

25 26. Prior to the release of the infringing app (and continuing to this day), Intelius
26 engaged in a nationwide publicity campaign that highlighted the benefits of the infringing DATE
27 CHECK app and associated services.

1 27. As part of the publicity campaign, Intelius, or its authorized agents, participated in
2 a whirlwind media tour to show off the infringing app. As shown in Exhibit E, which is a copy
3 of Intelius' YouTube portal, this media tour included appearances on the "Fox and Friends"
4 television program (on Fox News Channel) and on CNN. In all such appearances, Intelius used
5 "DATE CHECK" as a mark to identify its services.

6 28. Intelius was also an exhibitor at the 2010 International Consumer Electronics
7 Show ("CES") in Las Vegas, Nevada on January 7-10, 2010. In connection with Intelius'
8 appearance at CES, Intelius participated in a "Mobile Apps Showdown" to further advertise the
9 infringing app. See Composite Exhibit F.

10 29. In addition to the media tour, prior to releasing the infringing app, Intelius used
11 the DATE CHECK mark on its website, and this use continues as of the date of this complaint.
12 See Composite Exhibit D. Intelius also uses the DATE CHECK mark in its direct mail
13 electronic marketing campaigns, as shown in Exhibit G. Furthermore, Intelius has appropriated
14 the DATE CHECK mark as its username on the popular micro-blogging site, Twitter, and
15 Intelius uses the Twitter account to further cause confusion as to the source of its services. See
16 Exhibit H.

17 30. On its website, Intelius uses the slogan "Look Up Before You Hook Up" to
18 describe the screening services made available via the infringing app and Defendants' other
19 online services. See Composite Exhibit D. In the dating context, "hook up" means to have
20 sexual relations with someone, and Intelius' slogans and marketing are directed at that
21 connotation. Essentially, Intelius invites users to use the infringing DATE CHECK app to
22 screen potential partners by aggregating characteristics and information about an individual
23 dating candidate. This encouragement to "hook up" is also shown in the slogan used in the e-
24 mail shown in Exhibit G which poetically states that the infringing app "gives singles a safer way
25 to mingle by delivering the dirt on potential dates right to your phone."

26 31. Defendant's DATE CHECK app allows its users to search for people based on
27 name, address, or other characteristics. Upon locating a specific person, the DATE CHECK app
28 uses Google's mapping services to show where the person is located, and the app also provides

1 links to other premium Intelius services and services offered by Intelius partners. The app
2 further provides hypertext links to third party websites which may include various social
3 networking websites, career/professional networking websites, and other websites where the
4 target of the search may be referenced.

5 32. Upon information and belief, Intelius has purchased, or caused to be purchased in
6 its behalf, the DATE CHECK[®] registered mark via Google's AdWords program in an attempt to
7 draw Internet visitors to its own website for commercial gain. As shown in Exhibit I, a search on
8 the Google search engine for "date check" reveals a paid advertisement by Intelius which
9 features Plaintiff's DATE CHECK mark.

10 33. In addition to the unlawful purchase of AdWords, upon information and belief,
11 Intelius, in concert with others known and unknown, is using the domain name
12 "datecheckapp.com" in a bad faith attempt to profit from the DATE CHECK mark. See Exhibit
13 J. Upon visiting www.datecheckapp.com, Internet users arrive at the Intelius webpage for the
14 infringing app, which is also the same page as found at www.intelius.com/mobile, as shown in
15 Composite Exhibit D.

16 **C. Defendants' infringing behavior prior to launching the infringing DATE**
17 **CHECK app**

18 34. Upon learning of the infringing DATE CHECK app, Plaintiff also became aware
19 of additional, pre-existing and ongoing infringing uses of the DATE CHECK mark by Intelius.

20 35. Upon information and belief, at least as early as July 2008, Intelius offered gift
21 cards bearing the DATE CHECK mark. Attached as Exhibit K is a true and correct copy of a
22 webpage found on Intelius' website whereby gift card owners can redeem the "Date Check
23 Card." The gift card enables purchasers to use Intelius' infringing DATE CHECK services via
24 the Intelius website.

25 36. Upon information and belief, Intelius paid a "BlogHer" user to review the
26 searching and screening services offered by the Date Check gift cards. The results of this paid
27 review were published on April 1, 2009, and a true and correct copy of the review is attached as
28

Exhibit L. (According to <http://www.blogher.com>, BlogHer is a “community for women who blog.”)

37. Upon information and belief, in conjunction with Intelius’ paid review, Intelius offered, and continues to offer, a special page on its website directed toward “BlogHer” readers. This page offered a method for BlogHer readers to receive a discount on the services offered under Intelius’ use of the DATE CHECK mark. The page also features a testimonial from an apparent user of Intelius’ infringing DATE CHECK services in which the user discusses purchasing Defendants’ infringing services to screen potential dates. Attached as Exhibit M is a true and correct copy of the BlogHer page on Intelius’ website.

38. Upon information and belief, in June of 2008, Intelius acquired the domain name or otherwise hosted the content found at www.datedetectives.com. That site serves as a portal to Intelius’ infringing DATE CHECK services located at the Intelius website. In addition to directing users to the infringing services, the datedetectives.com site offers dating safety tips and advises users to screen potential companions “well in advance of meeting someone face to face.” See Exhibit N.

39. Upon information and belief, in June of 2008, Intelius also registered the domain name “datecheckcard.com” in a bad faith attempt to profit from the DATE CHECK mark. See Exhibit O. The website currently found at www.datecheckcard.com appears to be a “parked page” which supplies advertisement revenue to Intelius. By registering a domain name which incorporates the DATE CHECK® registration in its entirety and subsequently “squatting” on it for commercial gain, Intelius is wrongfully profiting from Plaintiff’s mark.

D. Legal Allegations Common to All Facts and Claims

40. Upon information and belief, Intelius knew about Date Check, the DATE CHECK mark, and Date Check’s business at the time it adopted the DATE CHECK mark and began offering the closely-related or identical services under the DATE CHECK mark.

41. Intelius’ first commercial use of Plaintiff’s DATE CHECK mark occurred after Date Check’s first use of the mark in connection with its services.

42. Intelius' promotion of its services under the DATE CHECK mark is directed at consumers of Plaintiff's services and is conducted through the same channels of trade as are used by Date Check to promote its services under its DATE CHECK mark.

43. Intelius' use of the DATE CHECK mark, and its actions described herein are certain or likely to cause confusion, deception, and/or mistake as to: (a) the source or origin of Intelius' services; and (b) whether Date Check sponsors, endorses, or approves of Intelius or its services or is otherwise affiliated with Date Check.

44. Intelius' use of the DATE CHECK mark, and its actions described herein have been, and continue to be deliberate, willful, and with disregard of Date Check's rights.

45. Intelius' continuing conduct constitutes an ongoing risk that the public will be confused as to the source or origin of the services provided by Intelius.

46. Date Check has sustained, and will continue to sustain, irreparable injury as a result of Intelius' conduct. This injury is not compensable solely by the award of monetary damages. Unless Intelius is immediately restrained and enjoined from engaging in its infringing and unfair conduct, Date Check will continue to suffer irreparable injury.

47. Plaintiff has engaged the undersigned attorneys to prosecute this action, and have agreed to pay said attorneys a reasonable fee for their services.

FIRST CLAIM FOR RELIEF
Trademark Infringement under 15 U.S.C. § 1114(1)

48. Date Check incorporates by reference and realleges the allegations set forth in paragraphs 1-47, inclusive, as though set forth in their entirety herein.

49. Date Check is the owner of a valid federal trademark registration for DATE CHECK.

50. Consumers are likely to be confused by Intelius' use of the DATE CHECK mark.

51. Intelius' activities have irreparably harmed and, if not enjoined, will continue to irreparably harm Date Check.

THIRD CLAIM FOR RELIEF
Cybersquatting under 15 U.S.C. § 1125(d)

63. Date Check incorporates by reference and realleges the allegations set forth in paragraphs 1-47, inclusive, as though set forth in their entirety herein.

64. This is an action for damages and injunctive and declaratory relief pursuant to the Anticybersquatting Consumer Protection Act ("ACPA"), codified at 15 U.S.C. § 1125(d).

65. Intelius' aforementioned acts of registering, trafficking in, and using www.datecheckapp.com and www.datecheckcard.com (the "infringing domain names") constitute a bad faith intent to profit from Plaintiff's DATE CHECK® registration in violation of 15 U.S.C. § 1125(d).

66. The infringing domain names incorporate the entirety of Plaintiff's DATE CHECK® registration and are confusingly similar to Plaintiff's mark.

67. Plaintiff's DATE CHECK mark was distinctive at the time that Defendant registered or conspired to register the infringing domain names.

68. Intelius' activities have irreparably harmed and, if not enjoined, will continue to irreparably harm Date Check and its long-used federally registered and common law marks.

69. By reason of Intelius' acts alleged herein, Date Check's remedy at law is not adequate to compensate for the damages caused by Intelius. Accordingly, Date Check is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

70. By reason of Intelius' acts, Date Check is entitled to damages, and that those damages be trebled under 15 U.S.C. § 1117.

71. This is an exceptional case making Date Check eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

FOURTH CLAIM FOR RELIEF
Common Law Trademark Infringement

72. Date Check incorporates by reference and realleges the allegations set forth in paragraphs 1-47, inclusive, as though set forth in their entirety herein.

SIXTH CLAIM FOR RELIEF
Deceptive Trade Practices under N.R.S. §§ 41.600 and 598.0915

83. Date Check incorporates by reference and realleges the allegations set forth in paragraphs 1-47, inclusive, as though set forth in their entirety herein.

84. This is an action for damages and injunctive and declaratory relief pursuant to the laws of the State of Nevada, over which this court is empowered to exercise supplemental jurisdiction under 28 U.S.C. § 1367.

85. Intelius' aforementioned acts constitute deceptive trade practices under the common law and under Nevada Revised Statutes §§ 41.600 and 598.0915.

86. Intelius' use of a mark identical and/or confusingly similar to Plaintiff's trademark infringes Plaintiff's rights in its DATE CHECK mark. In the course of its business or occupation Intelius has knowingly made false representations as to the source, sponsorship, approval, affiliation, and connection with Date Check and Date Check's services. This use is likely to cause confusion, mistake, or deception among consumers, who will believe that Intelius' goods and services originate from, or are affiliated with, or endorsed by Date Check when, in fact, they are not.

87. By engaging in the aforementioned acts, Intelius knew or should have known that its conduct was unfair or deceptive, and Intelius is therefore in violation of NRS §§ 41.600 and 598.0903 et. seq.

88. As a direct and proximate result of Intelius' actions, Date Check suffered damages, and is therefore entitled to all remedies allowable under NRS Chapter 598.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this court grant the following relief:

1. Issuance of a preliminary and permanent injunction prohibiting Intelius, its respective officers, agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from using Date Check's mark or confusingly similar variations thereof,

1 alone or in combination with any other letters, words, letter strings, phrases or designs, in
2 commerce or in connection with any business, advertising, or for any other purpose (including,
3 but not limited to, on web sites, mobile telephone applications and in domain names);

4 2. A preliminary and permanent injunction preventing Intelius from transferring the
5 infringing domain names referenced above from transferring the domain names or taking actions
6 to frustrate or dilute the jurisdiction of this court over the domain names, and requiring the
7 current domain name registrar to lock and thereafter transfer www.datecheckapp.com,
8 www.datecheckcard.com and any other domain confusingly similar to Plaintiff's mark and
9 which was registered by or is in use by Intelius to Plaintiff;

10 3. In connection with Plaintiff's claims under the ACPA, an award of \$100,000 in statutory
11 damages for each infringing domain name registered or used by Intelius;

12 4. An award of compensatory, consequential, statutory, treble, and punitive damages,
13 including corrective advertising, to Date Check in an amount to be determined at trial;

14 5. An award of interest, costs and attorneys' fees incurred by Date Check in prosecuting this
15 action; and

16 6. All other relief to which Date Check is entitled.

17 DATED: February 19, 2010

18 Respectfully submitted,

19 LEWIS AND ROCA LLP

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