

TTAB

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



BIOLAB SERVICES, INC.<sup>1</sup> )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 ARCH CHEMICALS, INC. )  
 )  
 Applicant. )

03-27-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #57

Opposition No.

NOTICE OF OPPOSITION

Opposer, BIOLAB SERVICES, INC, a Delaware corporation whose principal place of business is 300 Delaware Avenue, 9<sup>th</sup> Floor, Wilmington, Delaware 19801, believes that it is, or will be, damaged by Serial No. 78/080,486 filed with the U.S. Patent and Trademark Office on August 22, 2001 by Applicant for the trademark SWIFT 'N CLEAR, in connection with "chemicals used to sanitize and to treat water, swimming pools, spas and hot tubs" in International Class 1. Opposer hereby opposes said application.

As grounds for the Opposition, it is alleged that:

(1) Opposer is the owner of several trademarks incorporating the construction "N CLEAR" in connection with water treatment chemicals and products for use in swimming pools and spas (the "N CLEAR" trademarks). Opposer has used these marks in commerce since 1983, expending substantial sums in advertising and promoting those marks. In the United States,

<sup>1</sup> Pursuant to Section 206.02 of the Trademark Trial and Appeal Board Rules of Procedure, a Notice of Opposition may be filed in the name of a party other than the party in whose name Extensions of Time to Oppose were filed, if the parties are in privity. In this case, as will be explained further below, although BioLab, Inc. is the current listed owner of the senior registration relied upon by Opposer, Biolab Services, Inc., in this Opposition, Opposer is the owner of two additional applications upon which Opposer relies. Further, counsel for Opposer is in the process of recording an assignment from Biolab, Inc. to Opposer of the registration at issue. Thus, the parties are in privity and this action may properly be brought in Opposer's name.

Opposer is the owner of several registrations and applications for such marks, including 'NICE N CLEAR', Registration No. 1,314,238 for "algaecide for swimming pools"; NICE N CLEAR, Serial No. pending, for "algaecide for swimming pools and spas"; and SHOCK 'N CLEAR, Serial No. pending, for "water treatment chemicals for swimming pools and spas."

(2) Since its initial use of the aforementioned trademarks, Opposer has extensively used, and has advertised, promoted and offered Opposer's goods under its famous trademarks in interstate commerce, through various channels of trade. As a result, Opposer's customers and the public in general have come to know and recognize Opposer's "N CLEAR" trademarks and associate same with Opposer, and Opposer has thus built up extensive and invaluable goodwill in connection with the sale of goods and services under its famous marks.

(3) Notwithstanding Opposer's long-prior rights in and to its aforementioned "N CLEAR" trademarks, on August 22, 2001, Applicant filed an intent to use application for registration of the trademark SWIFT 'N CLEAR for "chemicals used to sanitize and to treat water, swimming pools, spas and hot tubs" in International Class 1. Said application was assigned Serial No. 78/080,486.

(4) Applicant's SWIFT 'N CLEAR trademark, as shown in Application No. 78/080,486, is confusingly similar to, and a colorable imitation of, Opposer's "N CLEAR" trademarks, and the respective goods and services of the parties are substantially similar and/or related and would normally be marketed within the same or similar channels of trade, and to the same class of customers, with the result that Opposer's customers, the trade and the public in general are likely to be confused, mistaken or deceived as to the origin and/or sponsorship of Applicant's goods under the SWIFT 'N CLEAR mark, and misled into believing that such goods

are marketed by, or are in some way directly or indirectly associated with Opposer, thus resulting in damage and detriment to Opposer and its reputation and goodwill.

(5) That by virtue of the foregoing, if Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Opposer will be subjected to great and irreparable damage, and Applicant will enjoy unlawful gain, and advantage to which it is not entitled under the Trademark Act of 1946.

WHEREFORE, this Opposer believes and avers that it is being, and will continue to be, damaged by registration of the SWIFT 'N CLEAR mark, and prays that said Application Serial No. 78/080,486 be rejected, that no registration be issued thereon to Applicant, and that the Opposition be sustained in favor of Opposer.

Opposer hereby appoints Ann K. Ford, Esq., a member of the Bars of the District of Columbia and the State of New York, Mark H. Tidman, Esq., a member of the Bar of the District of Columbia, Lisa R. Trovato, Esq., a member of the Bars of the District of Columbia and the State of Maryland, Adam D. Resnick, Esq., a member of the Bars of the District of Columbia and the State of Maryland, Emily C. Sexton, Esq., a member of the Bars of the District of Columbia and the State of Maryland, Thomas E. Zutic, Esq., a member of the Bars of the District of Columbia and of the State of Maryland, and Eliza P. Nagle, Esq., a member of the Bar of the Commonwealth of Virginia, all of the law firm of Piper Marbury Rudnick & Wolfe LLP, 1200 19<sup>th</sup> Street N.W., Washington, D.C. 20036-2412, telephone number (202) 861-3900, to transact all business in the Patent and Trademark Office in connection with the above opposition proceeding and hereby revokes all previous powers of attorney herein.

Please address all correspondence to:

Ann K. Ford, Esq.  
Piper Marbury Rudnick & Wolfe LLP  
1200 19<sup>th</sup> Street N.W.  
Washington, DC 20036

The filing fee for this opposition, in the amount of \$300, is enclosed herewith. Should the check become detached, or the amount be insufficient, please charge our deposit account No. 501150.

BIOLAB SERVICES, INC.

By: 

Ann K. Ford  
Emily C. Sexton  
Piper Marbury Rudnick & Wolfe LLP  
1200 19<sup>th</sup> Street N.W.  
Washington, DC 20036

(202) 861-3900

Attorneys for Opposer

Dated: March 27, 2002

File Dkt. No. 19926-46



**PIPER  
MARBURY  
RUDNICK  
& WOLFE LLP**

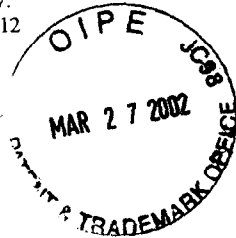


03-27-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #57

1200 Nineteenth Street, N.W.  
Washington, D.C. 20036-2412  
www.piperrudnick.com

PHONE (202) 861-3900  
FAX (202) 223-2085



EMILY C. SEXTON

emily.sexton@piperrudnick.com  
PHONE (202) 861-6680

March 27, 2002

**VIA HAND DELIVERY**

BOX TTAB - FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: NOTICE OF OPPOSITION to  
Serial No. 78/080,486  
Mark: **SWIFT 'N CLEAR**  
Our Reference: 19926-46

APR-3 AM 9:27

Sir or Madam:

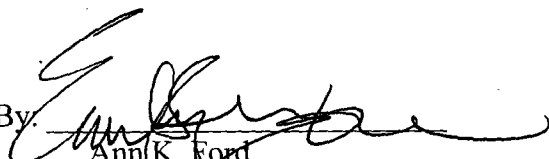
We enclose the following for filing in the Patent and Trademark Office:

XX Notice of Opposition and one (1) copy

Also, enclosed is our check for the required filing fee in the amount of **\$300**. Should this check become detached, or the amount be insufficient, please charge our Deposit Account No. 501150.

Respectfully submitted,

PIPER MARBURY RUDNICK & WOLFE LLP

By:   
Ann K. Ford  
Emily C. Sexton

AKF/ECS/cds  
Enclosures