

ESTTA Tracking number: **ESTTA12522**

Filing date: **07/28/2004**

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

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Shurfine Foods, Inc.
<b>Granted to Date of previous extension</b>	07/28/2004
<b>Address</b>	Shurfine Foods, Inc. 6700 SW Sandburg Street Tigard, OR 97223 UNITED STATES

<b>Attorney information</b>	Graciela G. Cowger Marger Johnson & McCollom, PC 1030 SW Morrison Street Portland, OR 97205 UNITED STATES docketing@techlaw.com, graciela@techlaw.com, beth@techlaw.com, laura@techlaw.com Phone:5032223613
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#### Applicant Information

<b>Application No</b>	76534586	<b>Publication date</b>	03/30/2004
<b>Opposition Filing Date</b>	07/28/2004	<b>Opposition Period Ends</b>	07/28/2004
<b>Applicant</b>	Chembio Diagnostic Systems, Inc.		

**Goods/Services Affected by Opposition**

Class 005. First Use: 19980901 First Use In Commerce: 19980901  
All goods and services in the class are opposed, namely: IN VITRO RAPID  
DIAGNOSTIC TEST KITS FOR DETECTION OF INFECTIOUS DISEASES AND  
PREGNANCY

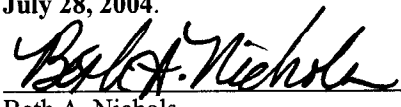
<b>Attachments</b>	NoticeOpp.pdf ( 5 pages )
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<b>Signature</b>	/Graciela G. Cowger/
<b>Name</b>	Graciela G. Cowger
<b>Date</b>	07/28/2004

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

In the matter of trademark application Serial No. 76/534,586  
Filed August 5, 2003  
For the mark SURE CHECK  
Class: 005  
Published in the Official Gazette at TM 102 on March 30, 2004

SHURFINE FOODS, INC., )  
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 Opposer, )  
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 v. )  
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 )  
 CHEMBIO DIAGNOSTIC SYSTEMS, INC., )  
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 Applicant. )

<p>I hereby certify that this correspondence is being submitted electronically to the Trademark Trial and Appeal Board on July 28, 2004.</p>  <hr/> <p>Beth A. Nichols</p>
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**NOTICE OF OPPOSITION**

1. SHURFINE FOODS, INC., an Illinois corporation having its principal place of business at 6700 S.W. Sandburg Street, Tigard, Oregon 97223 (hereinafter "Opposer"), believes that it is damaged by registration of the mark SURE CHECK that is the subject of U.S. Trademark Application Serial No. 76/534,586 (hereinafter "'586 application") for in vitro rapid diagnostic test kits for detection of infectious diseases and pregnancy by Chembio Diagnostic Systems, Inc., a Delaware corporation having an address at 3661 Horseblock Road, Medford, New York 11763, (hereinafter "Applicant"). The '586 application was filed August 5, 2003 and published in the Official Gazette at TM 102 on March 30, 2004. Opposer opposes registration of the '586 application.

As first grounds for opposition, Opposer alleges as follows:

2. Opposer owns numerous registrations for SHUR- prefix marks, i.e., U.S. Registration Nos. 2,710,943; 2,506,497; 2,425,809; 2,341,464; 2,285,574; 2,170,823; 1,965,622; 1,928,809; 1,916,702; 1,847,799; 1,820,916; 1,702,791; 1,691,599; 1,683,923; 1,134,376; 807,575; and 558,657 for the marks SHUR FINE and SHURFINE as service marks and trademarks for a variety of grocery and household products; U.S. Registration Nos. 2,153,416; 2,112,899; 1,546,999; and 770,099 for the mark SHUR VALU as a collective service mark and

trademark for a variety of grocery and household products; U.S. Registration Nos. 2,276,332; 1,286,296; 1,152,556; 945,843; 786,505; 686,418; and 663,880 for the mark SHURFRESH for a variety of grocery products; U.S. Registration No. 2,314,177 for the mark SHURSAVE for retail grocery store services; U.S. Registration Nos. 1,737,906; 1,722,210; 1,711,996; 1,703,595; 1,445,491; 1,435,870; 1,435,869; 1,435,858; 1,435,514; 1,431,181; 1,430,811; and 1,237,527 for the mark SHUR SAVING for grocery and household products; U.S. Registration No. 2,222,998 for the mark SHUR TECH for various automotive maintenance products; U.S. Registration No. 2,506,498 for SHUR FINE CAFE; U.S. Registration No. 2,116,787 for the mark SHURFINE PAID CALL for prepaid long-distance telephone services; and U.S. Registration No. 2,775,641 for the mark SURECOMFORT for adult incontinence products, namely, diapers and incontinence garments.

3. Applicant's mark SURE CHECK so resembles Opposer's registered SHURFINE, SHURFRESH, SHUR VALU, SHURSAVE, SHUR SAVING, SHUR TECH, SHUR FINE CAFÉ, SHURFINE PAID CALL and SURECOMFORT marks as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, mistake or deception.

As second, alternative, grounds for opposition, Opposer alleges as follows:

4. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHURFINE as a service mark, collective mark, and trademark for a variety of grocery and household products sold in grocery, drug, and convenience stores.

5. Opposer, since prior to Applicant's filing date or any date of first use upon which Registrant can rely, has used and not abandoned the mark SHURFRESH for grocery products sold in grocery, convenience, and drug stores.

6. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHUR VALU for grocery and household products sold in grocery, convenience, and drug stores.

7. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHURSAVE for retail grocery store services.

8. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHUR SAVING for grocery and household products sold in grocery, convenience, and drug stores.

9. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHUR TECH for automotive products sold in grocery, convenience, and drug stores.

10. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHUR FINE CAFÉ for restaurants, food services, namely home meal replacement services consisting of the preparation and service of carryout, home-style meals sold in grocery, convenience, and drug stores.

11. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SHURFINE PAID CALL for prepaid long-distance telephone services sold in grocery, convenience, and drug stores.

12. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and not abandoned the mark SURECOMFORT for adult incontinence products, namely, diapers and incontinence garments.

13. Applicant's mark SURE CHECK so resembles Opposer's previously used marks SHURFINE, SHURFRESH, SHUR VALU, SHURSAVE, SHUR SAVING, SHURTECH, SHUR FINE CAFÉ, SHURFINE PAID CALL and SURECOMFORT as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, mistake or deception.

As third, alternative, grounds for opposition, Opposer alleges as follows:

14. Opposer is the owner of a family of SHUR- prefixes marks including SHURFINE, SHURFRESH, SHUR VALU, SHURSAVE, SHUR SAVING, SHURTECH, SHUR FINE CAFÉ, SHURFINE PAID CALL and SURECOMFORT.

15. Opposer, since prior to Applicant's filing date or any date of first use upon which Applicant can rely, has used and promoted its marks SHURFINE, SHURFRESH, SHUR VALU, SHUR SAVING, SHURSAVE, SHUR TECH, SHUR FINE CAFÉ, SHURFINE PAID CALL and SURECOMFORT as a family of marks.

16. Applicant's mark SURE CHECK is so similar to Opposer's family of marks that, when used on or in connection with the goods or services of the Applicant, is likely to be perceived as another member of Opposer's family of marks, and is likely to cause confusion, mistake or deception.

As fourth, alternative, grounds for opposition, Opposer alleges as follows:

17. Opposer's marks SHURFINE, SHURFRESH, SHUR VALU, SHURSAVE, SHUR SAVING, SHUR TECH, SHUR FINE CAFÉ, SHURFINE PAID CALL and SURECOMFORT have become distinctive and famous within the meaning of Section 43(c) of the Lanham Act [15 U.S.C. Section 1125(c)].

18. Applicant's use and registration of the mark SURE CHECK will cause dilution of the distinctive quality of Opposer's marks.

As fifth, alternative, grounds for opposition, Opposer alleges as follows:

19. Applicant's mark SURE CHECK when used on or in connection with the goods of the Applicant is merely descriptive.

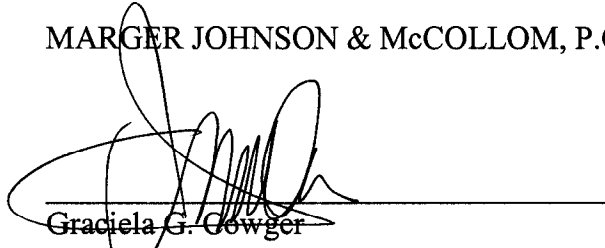
As a sixth, alternative, grounds for opposition, Opposer alleges as follows:

20. Applicant's mark SURE CHECK when used on or in connection with the goods of the Applicant suggests a false connection with Opposer within the meaning of Section 2(a) of the Trademark Act [15 U.S.C. Section 1052(a)].

Opposer asks the Board to sustain this opposition and refuse registration to the Applicant.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

A handwritten signature in black ink, appearing to read 'Graciela G. Gowger', is written over a horizontal line. The signature is stylized and somewhat illegible.

Graciela G. Gowger  
Reg. No. 42,444  
Attorneys for Opposer

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