

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

In re Opposition No.: 91161530

Mark: SURE CHECK

Applicant: Chembio Diagnostic Systems,
Inc.

Class: 5

Opposer: Shurfine Foods, Inc.

For: in vitro rapid diagnostic test kits for
detection of infectious diseases and
pregnancy

Serial No.: 76/534586

Opposition Filing Date: 7/28/04

I hereby certify that this correspondence is being deposited on Sept 5, 2014 as first
class mail in an envelope addressed to BOX TTAB Assistant Commissioner for Trademarks,
2900 Crystal Drive, Arlington, VA 22202-3513

David P. Gordon

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

TTAB

Sir:

This is a timely reply to a Notice of Opposition mailed July 30, 2004.

ANSWER TO OPPOSITION

1. CHEMBIO DIAGNOSTIC SYSTEMS, INC. (hereinafter "Applicant") denies that SHURFINE FOODS, INC. (hereinafter "Opposer") will be damaged by the registration of the mark SURE CHECK that is the subject of U.S. Trademark Application Serial No. 76/534,586 for in vitro rapid diagnostic test kits for detection of infectious diseases and pregnancy. Applicant admits the remainder of paragraph 1 regarding the addresses of the parties and the filing and publication dates of the '586 application.



09-10-2004

2. Applicant admits that Opposer owns numerous registrations which include the "SHUR" prefix.

3. Applicant denies that Applicant's mark SURE CHECK resembles Opposer's registered trademarks so as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, mistake or deception.

4. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHURFINE.

5. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHURFRESH.

6. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHUR VALU.

7. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHURSAVE.

8. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHUR SAVING.

9. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHUR TECH.

10. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHUR FINE CAFE.

11. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SHURFINE PAID CALL.

12. Applicant lacks information or knowledge sufficient to form a belief as to the Opposer's use or abandonment of the mark SURECOMFORT.

13. Denied.

14. Applicant admits that the Opposer owns a number of registrations for marks containing the prefix SHUR.

15. Applicant lacks information or knowledge sufficient to form a belief as to the allegations of this paragraph.

16. Denied.

17. Applicant denies that Opposer's marks SHURFINE, SHURFRESH, SHUR VALU, SHURSAVE, SHUR SAVING, SHURTECH, SHUR FINE CAFE, 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. Denied.

19. Denied.

20. Denied.

AS AN AFFIRMATIVE DEFENSE

21. Applicant already owns a registration (U.S. Trademark Registration #2,186,236) for SURE CHECK in International Class 5 for Pregnancy Test Kits for Home Use. Over the last six years (since the registration), there has been no confusion in the marketplace between Applicant's use of U.S. Trademark Registration #2,186,236 and Opposer's trademarks.

22. The U.S. Trademark database reveals that there are more than 3500 trademark files that include the word "SURE" or its equivalents as part of a trademark, including hundreds of registered trademarks not owned by Opposer which use "SURE" or its equivalent as a prefix.

WHEREFORE, it is respectfully requested that this opposition be dismissed and that the Applicant's mark be allowed for registration.

Respectfully submitted,



David P. Gordon
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Sept. 8, 2004

CERTIFICATE OF SERVICE ON ATTORNEY FOR OPPOSER

I hereby certify that a true copy of the above ANSWER with AFFIRMATIVE DEFENSE was served by First Class Mail on September 8, 2004 addressed to:

Graciela G. Cowger
Marger Johnson & McCollom, PC
1030 SW Morrison Street
Portland, OR 97205



David P. Gordon