

ESTTA Tracking number: **ESTTA660464**

Filing date: **03/11/2015**

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

Name	Clasado Inc.
Granted to Date of previous extension	03/11/2015
Address	Edificio Interseco, Elvira Mendez No. 10 Apartado 0816-01560 Panama, 5 PANAMA
Attorney information	Martin W. Schiffmiller Kirschstein Israel Schiffmiller & Pieroni, P.C. 425 Fifth Avenue, 5th Floor New York, NY 10016-2223 UNITED STATES mws@kirschsteinlaw.com

Applicant Information

Application No	86298469	Publication date	11/11/2014
Opposition Filing Date	03/11/2015	Opposition Period Ends	03/11/2015
Applicant	EpitoGenesis, Inc. ATL Building Room 101 Storrs, CT 06268 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Nutraceuticals for boosting the immune system, dietary supplements, pharmaceutical preparations for treating and preventing infectious diseases, cancer, allergies and autoimmune diseases

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3376147	Application Date	03/09/2006
Registration Date	01/29/2008	Foreign Priority Date	02/16/2006
Word Mark	BI2MUNO		

Design Mark	B²MUNO
Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0 PHARMACEUTICAL PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; VETERINARY PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; [SANITARY PREPARATIONS FOR MEDICAL PURPOSES;] DIETETIC FOOD AND SUGAR ADAPTED FOR MEDICAL USE, BABY FOOD INCLUDING INFANT MILK FORMULAE; [MEDICAL PLASTERSFOR DRESSINGS; MATERIAL FOR STOPPING TEETH DECAY AND DENTAL WAX; ALL PURPOSE DISINFECTANTS; PREPARATIONS FOR DESTROYINGVERMIN; FUNGICIDES, HERBICIDES;] NUTRITIONAL AND DIETARY SUPPLEMENTS; NUTRITIONAL ADDITIVES TO FOODSTUFFS FOR ANIMALS FOR MEDICAL PURPOSES; NUTRITIONAL AND DIETARY ADDITIVES, NAMELY, A PREBIOTIC FORUSE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION</p> <p>Class 029. First use: First Use: 0 First Use In Commerce: 0 [MEAT; FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUITS AND VEGETABLES; JELLIES, JAMS, COM-POTES; EGGS, MILK AND] DAIRY PRODUCTS INCLUDING MILK POWDER, FUNCTIONAL MILKS AND FERMENTED DAIRY PRODUCTS, EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT; [EDIBLE OILS AND FATS;] ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT</p> <p>Class 030. First use: First Use: 0 First Use In Commerce: 0 COFFEE, [TEA, CACAO, RICE, TAPIOCA, SAGO,] ARTIFICIAL COFFEE; [FLOURS AND PREPARATIONS MADE FROM CEREALS, NAMELY, BREAK-FAST CEREALS, PORRIDGE, PUDDINGS,] CEREAL BASED SNACK FOODS AND CEREAL BASEDBARS; BREAD, PASTRY AND CONFECTIONERY, NAMELY, CANDY SNACK BARS, CHOCOLATES, SWEETS; ICES, NAMELY, ICE CREAM, ICE MILK AND FROZEN YOGURT; [HONEY, TREACLE SYRUP; YEAST, BAKING POWDER, SALT, VINEGAR, CONDIMENT SAUCES, NAMELY, MUSTARD, KETCHUP COOK-IN SAUCES, READY MADE SAUCES ANDSIDE OF PLATE SAUCES SUCH AS CHUTNEYS, SALSA SAUCE, SALAD DRESSING AND SALAD CREAM, MAYONNAISE; SPICES;] ICE FOR REFRESHMENT; ALL THE AFOREMENTIONED ENHANCED WITH A DIET-ARY SUPPLEMENT</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0 [BEERS; MINERAL AND AERATED WATERS ANDNON-ALCOHOLIC DRINKS, NAMELY, CARBONATED SOFT DRINKS, SPORT DRINKS, FRUIT FLAVORED BEVERAGES; RECREATIONAL BEVERAGES, NAMELY, STILL AND CARBONATED WATERS, FLAVORED AND NON-FLAVORED; FRUIT DRINKS AND FRUIT JUICES; SYRUP AND OTHER PREPARATIONS, NAMELY, POWDER FOR MAKING SOFT DRINKS, NON-ALCOHOLIC EN-ERGY DRINKS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT]</p>

Attachments	79022793#TMSN.png(bytes) B-MUNE Opposition.pdf(371949 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Martin W. Schiffmiller/
Name	Martin W. Schiffmiller
Date	03/11/2015

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

In the Matter of Application Serial No. 86-298469
filed June 3, 2015 for the mark **B-MUNE**
Published in the Official Gazette of November 11, 2014

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Clasado, Inc., :
Opposer, :
v. : Opposition No.
EpitoGenesis, Inc, :
Applicant. :
-----X

NOTICE OF OPPOSITION

CLASADO, Inc., a corporation organized and existing under the laws of Panama, located and doing business at c/o Arosemena Noriega & Contreras, Edificio Interseco, Calle Elvira Mendez No. 10, Apartado 0816-01560, Panama 5, Panama, believes that it will be damaged by registration of the mark shown in the above-mentioned Application Serial No. 86-298469 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer has for many years been engaged in the manufacture, distribution and sale of, *inter alia*, various types of dietary supplements, prebiotic additives for foods and pastilles containing such supplements and/or additives. Opposer's products are favorably known by the consuming public because of the excellence and high quality of its said products, and said

products are known and called for by the trademarks which Opposer has adopted and used to identify itself as the source thereof.

2. Since long prior to filing date of Application Serial No. 86-298469, Opposer adopted, commenced to use and has continued to use the trademark:

BIMUNO

(hereinafter referred to as “**BIMUNO & Design**”) in U.S. commerce in connection with its dietary supplement and additive products. The trademark **BIMUNO & Design** identifies a single source of the goods and services to which it has been applied, that source being Opposer.

3. The mark **BIMUNO & Design** has been applied to Opposer's goods by means of labels, by being affixed to containers for the goods, and in other ways customary to the trade. The products so marked have been distributed and used throughout the United States.

4. Opposer's trademark **BIMUNO & Design** has been registered in the United States Patent and Trademark Office on the Principal Register under Registration No. 3,376,147 dated January 29, 2008. A copy of the aforesaid registration is attached hereto as Exhibit A. Said registration is valid and subsisting. Opposer hereby gives notice, in accordance with Trademark Rule 2.122(b), that it will rely thereon as evidence on its behalf in this proceeding, and a status copy showing present title will be introduced into evidence during its testimony period.

5. On July 29, 2014 applicant filed a Declaration of Continued Use/Excusable Non-Use of Mark in Commerce under Section 71 with respect to its Reg. No. 3,376,147. As a result of that declaration filing, a number of categories of goods were deleted from Reg. No. 3,376,147. Attached hereto as Exhibit B is a printout from the TESS database reflecting those goods which

currently remain in Reg. No. 3,376,147 and which of the goods originally identified therein were deleted.

6. The goods in International Class 5 currently identified in Opposer's Reg. No. 3,376,147 include "pharmaceutical products, namely, a dietary supplement to be used for the enhancement and/or maintenance of general health; veterinary products, namely, a dietary supplement to be used for the enhancement of general health; dietetic good and sugar adapted for medical use, baby food including infant milk formulae; nutritional and dietary supplements; nutritional additives to foodstuffs for animals for medical purposes; nutritional and dietary additives, namely, a prebiotic for use in foods and dietary supplements for human consumption."

7. The goods to which Applicant intends to apply the published mark **B-MUNE** namely, nutraceuticals for boosting the immune system, dietary supplements, pharmaceutical preparations for treating and preventing infectious diseases, cancer, allergies and autoimmune diseases, are identical and/or highly similar to the goods on which Opposer has used its mark **BIMUNO & Design** in U.S. commerce and the goods identified in Class 5 in Opposer's Reg. No. 3,376,147. The parties' respective goods are of such similar nature that when sold under the same or similar trademarks, they would be considered by the public as originating from the same source. Upon information and belief, the parties' above-identified goods would be sold to the same class of customers.

8. Moreover, Applicant's trademark **B-MUNE** for nutraceuticals for boosting the immune system, dietary supplements, pharmaceutical preparations for treating and preventing infectious diseases, cancer, allergies and autoimmune diseases is confusingly similar to Opposer's trademark **BIMUNO & Design** used for its goods. Accordingly, it is likely that when

Applicant's mark **B-MUNE** is applied to its goods, confusion or mistake among purchasers and potential purchasers will be caused, and such persons will be deceived into believing that Applicant's goods emanate from Opposer or are in some way approved by or associated with Opposer or its goods sold under the mark **BIMUNO & Design**

9. Because of the confusion, mistake or deception which is likely to result from the concurrent use and/or registration by Opposer and Applicant of their respective trademarks in connection with Opposer's products and Applicant's products, Opposer's business and reputation and its rights in its trademark **BIMUNO & Design** will be impaired by registration of the mark **B-MUNE**.

WHEREFORE, the Opposer demands judgment sustaining this opposition and adjudging that the applicant is not entitled to the registration of the trademark for which it has made Application Serial No. 86-298469.

Respectfully submitted,

KIRSCHSTEIN, ISRAEL,
SCHIFFMILLER & PIERONI, P.C.
Attorneys for Opposer
425 Fifth Avenue, 5th Floor
New York, New York 10016-2223
(212) 697-3750

By /Martin W. Schiffmiller/
Martin W. Schiffmiller

Dated: New York, New York
March 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was served on Applicant via first class mail, postage prepaid, in an envelope addressed to Applicant's counsel:

Jennifer Calcagni, Esq.
Carmody Torrance Sandak Hennessey LLP
195 Church Street, P.O. Box 1950
New Haven, CT 06509

this 11th day of March, 2015.

/Deborah A. Egan/

Deborah A. Egan

EXHIBIT A

Int. Cls.: 5, 29, 30 and 32

Prior U.S. Cls.: 6, 18, 44, 45, 46, 48, 51 and 52

Reg. No. 3,376,147

United States Patent and Trademark Office

Registered Jan. 29, 2008

TRADEMARK
PRINCIPAL REGISTER

B²MUNO

CLASADO INC. (PANAMA CORPORATION)
C/O AROSEMENA NORIEGA & CONTRERAS
EDIFICIO INTERSECO, CALLE ELVIRA MENDEZ-
NO 10
APARTADO 0816-01560, PANAMA 5, PANAMA

FOR: PHARMACEUTICAL PRODUCTS, NAME-
LY, A DIETARY SUPPLEMENT TO BE USED FOR
THE ENHANCEMENT AND/OR MAINTENANCE
OF GENERAL HEALTH; VETERINARY PRO-
DUCTS, NAMELY, A DIETARY SUPPLEMENT TO
BE USED FOR THE ENHANCEMENT AND/OR
MAINTENANCE OF GENERAL HEALTH; SANI-
TARY PREPARATIONS FOR MEDICAL PURPOSES;
DIETETIC FOOD AND SUGAR ADAPTED FOR
MEDICAL USE, BABY FOOD INCLUDING INFANT
MILK FORMULAE; MEDICAL PLASTERS FOR
DRESSINGS; MATERIAL FOR STOPPING TEETH
DECAY AND DENTAL WAX; ALL PURPOSE DIS-
INFECTANTS; PREPARATIONS FOR DESTROY-
ING VERMIN; FUNGICIDES, HERBICIDES;
NUTRITIONAL AND DIETARY SUPPLEMENTS;
NUTRITIONAL ADDITIVES TO FOODSTUFFS
FOR ANIMALS FOR MEDICAL PURPOSES; NUTRI-
TIONAL AND DIETARY ADDITIVES, NAMELY, A
PREBIOTIC FOR USE IN FOODS AND DIETARY
SUPPLEMENTS FOR HUMAN CONSUMPTION, IN
CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FOR: MEAT; FISH, POULTRY AND GAME;
MEAT EXTRACTS; PRESERVED, DRIED AND
COOKED FRUITS AND VEGETABLES; JELLIES,
JAMS, COMPOTES; EGGS, MILK AND DAIRY
PRODUCTS INCLUDING MILK POWDER, FUNC-
TIONAL MILKS AND FERMENTED DAIRY PRO-
DUCTS, EXCLUDING ICE CREAM, ICE MILK AND
FROZEN YOGURT; EDIBLE OILS AND FATS; ALL
THE AFOREMENTIONED ENHANCED WITH A
DIETARY SUPPLEMENT, IN CLASS 29 (U.S. CL. 46).

FOR: COFFEE, TEA, CACAO, RICE, TAPIOCA,
SAGO, ARTIFICIAL COFFEE; FLOURS AND PRE-

PARATIONS MADE FROM CEREALS, NAMELY,
BREAKFAST CEREALS, PORRIDGE, PUDDINGS,
CEREAL BASED SNACK FOODS AND CEREAL
BASED BARS; BREAD, PASTRY AND CONFEC-
TIONERY, NAMELY, CANDY SNACK BARS, CHO-
COLATES, SWEETS; ICES, NAMELY, ICE CREAM,
ICE MILK AND FROZEN YOGURT; HONEY, TREA-
CLE SYRUP; YEAST, BAKING POWDER, SALT,
VINEGAR, CONDIMENT SAUCES, NAMELY, MUS-
TARD, KETCHUP COOK-IN SAUCES, READY
MADE SAUCES AND SIDE OF PLATE SAUCES
SUCH AS CHUTNEYS, SALSA SAUCE, SALAD
DRESSING AND SALAD CREAM, MAYONNAISE;
SPICES; ICE FOR REFRESHMENT; ALL THE
AFOREMENTIONED ENHANCED WITH A DIET-
ARY SUPPLEMENT, IN CLASS 30 (U.S. CL. 46).

FOR: BEERS; MINERAL AND AERATED WA-
TERS AND NON-ALCOHOLIC DRINKS, NAMELY,
CARBONATED SOFT DRINKS, SPORT DRINKS,
FRUIT FLAVORED BEVERAGES; RECREATIONAL
BEVERAGES, NAMELY, STILL AND CARBONA-
TED WATERS, FLAVORED AND NON-FLAVORED;
FRUIT DRINKS AND FRUIT JUICES; SYRUP AND
OTHER PREPARATIONS, NAMELY, POWDER FOR
MAKING SOFT DRINKS, NON-ALCOHOLIC EN-
ERGY DRINKS; ALL THE AFOREMENTIONED
ENHANCED WITH A DIETARY SUPPLEMENT, IN
CLASS 32 (U.S. CLS. 45, 46 AND 48).

PRIORITY DATE OF 2-16-2006 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION
0882171 DATED 3-9-2006, EXPIRES 3-9-2016.

OWNER OF U.S. REG. NO. 3,199,028.

SER. NO. 79-022,793, FILED 3-9-2006.

KRISTINA MORRIS, EXAMINING ATTORNEY

EXHIBIT B

**United States Patent and Trademark Office**

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BI²MUNO**Word Mark****BI2MUNO****Goods and Services**

IC 005. US 006 018 044 046 051 052. G & S: PHARMACEUTICAL PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; VETERINARY PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; [SANITARY PREPARATIONS FOR MEDICAL PURPOSES;] DIETETIC FOOD AND SUGAR ADAPTED FOR MEDICAL USE, BABY FOOD INCLUDING INFANT MILK FORMULAE; [MEDICAL PLASTERS FOR DRESSINGS; MATERIAL FOR STOPPING TEETH DECAY AND DENTAL WAX; ALL PURPOSE DISINFECTANTS; PREPARATIONS FOR DESTROYING VERMIN; FUNGICIDES, HERBICIDES;] NUTRITIONAL AND DIETARY SUPPLEMENTS; NUTRITIONAL ADDITIVES TO FOODSTUFFS FOR ANIMALS FOR MEDICAL PURPOSES; NUTRITIONAL AND DIETARY ADDITIVES, NAMELY, A PREBIOTIC FOR USE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION

IC 029. US 046. G & S: [MEAT; FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUITS AND VEGETABLES; JELLIES, JAMS, COMPOTES; EGGS, MILK AND] DAIRY PRODUCTS INCLUDING MILK POWDER, FUNCTIONAL MILKS AND FERMENTED DAIRY PRODUCTS, EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT; [EDIBLE OILS AND FATS;] ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

IC 030. US 046. G & S: COFFEE, [TEA, CACAO, RICE, TAPIOCA, SAGO,] ARTIFICIAL COFFEE; [FLOURS AND PREPARATIONS MADE FROM CEREALS, NAMELY, BREAKFAST CEREALS, PORRIDGE, PUDDINGS,] CEREAL BASED SNACK FOODS AND CEREAL BASED BARS; BREAD, PASTRY AND CONFECTIONERY, NAMELY, CANDY SNACK BARS, CHOCOLATES, SWEETS; ICES, NAMELY, ICE CREAM, ICE MILK AND FROZEN YOGURT; [HONEY, TREACLE SYRUP; YEAST, BAKING POWDER, SALT, VINEGAR, CONDIMENT SAUCES, NAMELY, MUSTARD, KETCHUP COOK-IN SAUCES, READY MADE SAUCES AND SIDE OF PLATE SAUCES SUCH AS CHUTNEYS, SALSA SAUCE, SALAD DRESSING AND SALAD CREAM, MAYONNAISE; SPICES;] ICE FOR REFRESHMENT; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

(CANCELLED) IC 032. US 045 046 048. G & S: [BEERS; MINERAL AND AERATED WATERS AND NON-ALCOHOLIC DRINKS, NAMELY, CARBONATED SOFT DRINKS, SPORT DRINKS, FRUIT

FLAVORED BEVERAGES; RECREATIONAL BEVERAGES, NAMELY, STILL AND CARBONATED WATERS, FLAVORED AND NON-FLAVORED; FRUIT DRINKS AND FRUIT JUICES; SYRUP AND OTHER PREPARATIONS, NAMELY, POWDER FOR MAKING SOFT DRINKS, NON-ALCOHOLIC ENERGY DRINKS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT]

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Trademark Search Facility Classification Code LETS-2 BI Two letters or combinations of multiples of two letters
 NUM-2 The number 2 or the word Two

Serial Number 79022793

Filing Date March 9, 2006

Current Basis 66A

Original Filing Basis 66A

Published for Opposition November 13, 2007

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 3376147

International Registration Number 0882171

Registration Date January 29, 2008

Owner (REGISTRANT) CLASADO Inc. CORPORATION PANAMA c/o Arosemena Noriega & Contreras Edificio Interseco, Calle Elvira Mendez no 10 Apartado 0816-01560, Panama 5 PANAMA

Attorney of Record David B. Kirschstein

Priority Date February 16, 2006

Prior Registrations 3199028

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECTION 71

Live/Dead Indicator LIVE

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