

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

In the Matter of Application Serial No. 86455011
filed November 14, 2014 for the mark **BIMUNO**
Published in the *Official Gazette* of April 14, 2015

_____	:	05/15/2015 DJEFFCOA 00000001 86455011	
EPITO GENESIS, INC,	:	01 FC:6402	900.00 OP
	:		
Opposer,	:		
	:		
v.	:	Opposition No.:	
	:		
CLASADO INC.,	:		
	:		
Applicant.	:		
_____	:		

OPPOSER'S OPPOSITION TO MARK **BIMUNO**

1. EPITOGENESIS INC. ("Opposer") is a corporation organized and existing under the laws of the state of Delaware with their principal place of business located at ATL Building Room 101 1392 Storrs Road, Storrs, Connecticut 06268.
2. That CLASADO INC. ("Applicant") is a business entity of unknown origin whose address is c/o Arosemena Noriega & Contreras Edificio Interseco, Calle Elvira Mendez no 10 Apartado 0816-01560, Panama 5 PANAMA.
3. That Applicant has applied for the mark "**BIMUNO**", (Serial No. 86455011).
4. EPITOGENESIS INC. believes that it will be damaged by registration of the mark "**BIMUNO**" and does hereby oppose the same.



As grounds of opposition, it is alleged that:

5. Applicant's filing for the trademark name **BIMUNO** was done in bad faith.¹
6. That on November 11, 2014, Opposer's marks **BE-IMMUNE** (Serial No. 86298471) and **B-MUNE** (Serial No. 86298469)² were published for opposition.
7. That immediately thereafter on November 14, 2014 Applicant filed an application for the trademark name **BIMUNO**, (Serial No.: 86455011) which was published for opposition on April 14, 2015.
8. That Applicant's filing for the mark **BIMUNO** would not have occurred had it not been made aware that the USPTO had approved for publication the Opposer's marks, **BE-IMMUNE** and **B-MUNE**.
9. That Applicant filed for the mark **BIMUNO** as a business scheme with the end result being financial gain.
10. That on March 11, 2015, Applicant in its capacity as owner of the mark **BI2MUNO**³ filed opposition to the Opposer's marks.⁴
11. That not long after Applicant's Oppositions were filed, Applicant began threatening Opposer with costly protracted litigation if they did not settle the dispute in the manner that was prescribed by Applicant.
12. That there is no reason to believe that Applicant possesses a product which they intend to market under the name **BIMUNO**.

¹ See *Fry Consulting Pty Ltd v Sports Warehouse Inc (No.2)*[2012] FCA 81.

² The marks **BE-IMMUNE** and **B-MUNE** are collectively referred to herein as Opposer's marks.

³ **BI2MUNO** is purportedly known as **BIMUNO & DESIGN**.

⁴ The opposition numbers which were assigned to Opposer's marks are #91221006 and #91221007 and are collectively referred to herein as "Applicant's Oppositions".

13. On information and belief, at the time Applicant filed the Application, Applicant did not have actual use of Applicant's Mark as a trademark with each of Applicant's Services.

14. Applicant's Application should not be granted because it was not filed based on Applicant's actual use of Applicant's Mark as a trademark with each and every one of Applicant's Services, and on information and belief, Applicant failed to satisfy the requirements of Trademark Act Section 1(a) and related Trademark Rules and Regulations.

15. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

16. That in addition to the above there exists a likelihood of confusion which exists between Applicant's **BIMUNO** mark as it is distinctly similar to Opposer's marks **BE-IMMUNE** and **B-MUNE**.

17. That Applicant has sought registration of the mark **BIMUNO** in 3 international classes:

- a). IC 001. US 001 005 006 010 026 046. G & S: Chemical additives for use in the manufacture of cosmetics; prebiotics used in the manufacture of cosmetics
- b). IC 003. US 001 004 006 050 051 052. G & S: Non-medicated skin care preparation ingredient sold as an integral component of non-medicated skin care preparations
- c). IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements in lotion/powder form sold as an integral component of nutritional skin care products; pharmaceutical products, namely, a dietary supplements to be used for the enhancement and maintenance of general health; nutritional and dietary supplements; nutritional and dietary additives, namely, a prebiotic for use in food and dietary supplements for human consumption

18. That International Class 05 is the same class which Opposer filed under for its marks, **BE-IMMUNE** and **B-MUNE**. Attached hereto as Exhibit A and Exhibit B are printouts from the TESS database for Serial No. 86298471 and Serial No. 86298469. Attached hereto as Exhibit C is a printout from the TESS database for Serial No. 86455011.

19. That because of the confusion, mistake or deception which is likely to result from the registration of Applicant's trademark which was applied for after Opposer's marks Opposer's business and reputation and its rights in its trademarks **BE-IMMUNE** and **BMUNE** will be impaired by registration of the mark **BIMUNO**.

20. That for the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes it will be damaged thereby.

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. 8645501.

Respectfully submitted,

DATED: May 12, 2015

By:



EPITO GENESIS, INC.

ATL Building Room 101

Storrs, CT 06269

Attn: Michael Vajdy

Shore Padrah

Telephone: (860) 477-0241

Facsimile: (860) 477-0775

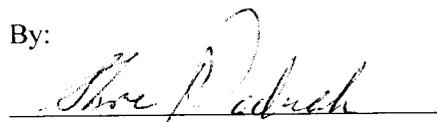
CERTIFICATE OF SERVICE

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

KIRSCHSTEIN, ISRAEL,
SCHIFFMILLER & PIERONI, P.C.
Attorneys for Applicant
425 Fifth Avenue, 51h Floor
New York, New York 10016-2223
(212) 697-3750

DATED: May 12, 2015

By:


Shore Padrah

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EXHIBIT A



Trademarks > Trademark Electronic Search System (TESS)

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BE-IMMUNE

Word Mark	BE-IMMUNE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Nutraceuticals for boosting the immune system, dietary supplements, pharmaceutical preparations for treating and preventing infectious diseases, cancer, allergies and autoimmune diseases
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86298471
Filing Date	June 3, 2014
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	November 11, 2014
Owner	(APPLICANT) EpitoGenesis, Inc. CORPORATION DELAWARE ATL Building Room 101 1392 Storrs Road Storrs CONNECTICUT 06268
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT B



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B-MUNE

Word Mark	B-MUNE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Nutraceuticals for boosting the immune system, dietary supplements, pharmaceutical preparations for treating and preventing infectious diseases, cancer, allergies and autoimmune diseases
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86298469
Filing Date	June 3, 2014
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	November 11, 2014
Owner	(APPLICANT) EpitoGenesis, Inc. CORPORATION DELAWARE ATL Building Room 101 1392 Storrs Road Storrs CONNECTICUT 06268
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT C



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BIMUNO

Word Mark **BIMUNO**

Goods and Services IC 001. US 001 005 006 010 026 046. G & S: Chemical additives for use in the manufacture of cosmetics; prebiotics used in the manufacture of cosmetics

IC 003. US 001 004 006 050 051 052. G & S: Non-medicated skin care preparation ingredient sold as an integral component of non-medicated skin care preparations

IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements in lotion/powder form sold as an integral component of nutritional skin care products; pharmaceutical products, namely, a dietary supplements to be used for the enhancement and maintenance of general health; nutritional and dietary supplements; nutritional and dietary additives, namely, a prebiotic for use in food and dietary supplements for human consumption

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86455011

Filing Date November 14, 2014

Current Basis 1B

Original Filing Basis 1B

Published for Opposition April 14, 2015

Owner (APPLICANT) 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 Martin W. Schiffmiller

Prior Registrations 3376147

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE