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

Proceeding	91237196
Party	Defendant Pohl Enterprises, Inc.
Correspondence Address	JULIA M. KNEARL LAW OFFICES OF JULIA M. KNEARL, LLC 945 FRONT STREET LOUISVILLE, CO 80027 Email: julia@juliaklaw.com
Submission	Motion to Amend Application
Filer's Name	Julia M. Knearl
Filer's email	julia@juliaklaw.com
Signature	/julia m. knearl/
Date	12/15/2017
Attachments	Fully Executed Settlement Agreement and Motion 121517.pdf(1062399 bytes)

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**"), effective as of the date of the last signature by a party to this Agreement ("**Effective Date**"), is by and between Genesis Design, Inc., a Colorado corporation, with a business address at 1166 Santa Fe Drive, Denver, Colorado 80204 ("**Genesis**"), and Pohl Enterprises, Inc., a Colorado corporation, with a business address at 6521 West 91st Avenue, Westminster, Colorado 80027 ("**Pohl**"). Genesis and Pohl are individually referred to as a "**Party**" and collectively referred to as the "**Parties**."

1. RECITALS

WHEREAS, Genesis owns and has used the mark GENESIS in connection with business marketing, business consulting, communication, brand development, graphic design, and related services (the "**GENESIS services**") for nearly fifty (50) years.

WHEREAS, Genesis owns U.S. service mark registrations for the mark GENESIS as detailed in Schedule A (collectively, the "**GENESIS Marks**").

WHEREAS, Pohl has filed an intent-to-use U.S. service mark application for the mark REGENESIS for use in connection with "*business consulting services, namely, providing assistance in development of business strategies and creative ideation; business organization and management consulting; new business venture development and formation consulting services*", as detailed in Schedule B (the "**REGENESIS Application**").

WHEREAS, Genesis has opposed the REGENESIS Application at the U.S. Trademark Trial and Appeal Board ("**TTAB**") under Opposition No. 91237196.

WHEREAS, Pohl represents and warrants that the REGENESIS Application is the only trademark application or registration it, or any of its affiliated companies, owns or has filed that incorporates the term GENESIS or any variation thereof.

WHEREAS, the Parties desire to avoid any further conflict and to resolve amicably between them all rights with respect to Pohl's use and registration of the REGENESIS mark as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

2. POHL'S OBLIGATIONS

- a. Pohl shall amend the identification of services covered by the REGENESIS Application to: "*Consulting services for business operations, namely, providing assistance in development of operational strategies, and business organization and management consulting to maximize operational efficiency*" (the "**REGENESIS Services**"),
 - i. Within ten (10) business days of the Effective Date of this Agreement, Pohl shall file the *Consented Request To Amend Application and Contingent Dismissal of Opposition* attached as Schedule C to this Agreement, and shall provide proof of filing to counsel for Opposer.
 - ii. If the TTAB rejects the request to amend the REGENESIS Application to the REGENESIS Services, then Pohl and Genesis shall work together in good faith to develop a revised amendment acceptable to the TTAB.
 - iii. To the extent Pohl, or a related or affiliated entity, files additional applications that consist of or contain the term REGENESIS, each such application shall be limited to the REGENESIS Services.
- b. Pohl shall limit its use of the REGENESIS mark to the REGENESIS Services.

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- c. Pohl shall not use any mark containing or comprised of REGENESIS, GENESIS, or any variation thereof, in connection with (i) services related to the development of brand identity, brand strategy, and brand positioning; (ii) design services, including graphic design services; (iii) marketing and advertising services; or (iv) communication services.
- d. Pohl shall not use Search Engine Optimization (SEO) for the term REGENESIS, the term GENESIS or any variations thereof, on any website under its direct or indirect control including, without limitation, The Capitalist Alliance website currently located at <https://www.capitalistalliance.com/>. Genesis hereby acknowledges that the only exception to this limitation is that searches of the term REGENESIS or GENESIS that return a search result for any website under the direct or indirect control of Pohl and that result not from SEO but from ordinary search engine operation outside of Pohl's control and without SEO shall not be a violation of this Agreement. In addition, Pohl agrees to take all commercially reasonable steps to ensure that a search of the term REGENESIS will not return a search result for www.genesisinc.com.
- e. Pohl shall not, directly or indirectly, challenge the ownership, validity, application, or registration of, the mark GENESIS by Genesis in any country throughout the world. Upon request by Genesis, Pohl shall execute additional documentation necessary to give effect to this agreement including without limitation, letters of consent to registration.

3. GENESIS' OBLIGATIONS

- a. Provided that Pohl, and its related and affiliated entities, comply with the obligations set forth in Section 2 of this Agreement, Genesis shall take no further legal action with

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respect to Pohl's use or registration of the mark REGENESIS in connection with the REGENESIS Services.

- b. Genesis shall not, directly or indirectly, challenge the ownership, validity, application, or registration of the mark REGENESIS in connection with the Regenesi s Services by Pohl in any country throughout the world. Upon request by Pohl, Genesis shall execute additional documentation necessary to give effect to this agreement including without limitation, letters of consent to registration.

4. MISCELLANEOUS

- a. **Geographic Scope.** Worldwide.
- b. **Choice of Law.** This Agreement is made and entered into in the State of Colorado and shall be in all respects exclusively interpreted, enforced, and governed under the laws of the State of Colorado without regard to that state's rules regarding choice of law. The Parties agree that any action brought to enforce or interpret their respective rights under this Agreement shall be brought exclusively in the United States District Court for the District of Colorado at a district court location in Denver, Colorado. The Parties hereby consent to all forms of personal jurisdiction and venue in the United States District Court for the District of Colorado at a district court location in Denver, Colorado for actions to enforce or interpret this Agreement.
- c. **Cooperation.** Should the Parties become aware of any actual confusion resulting from the concurrent use by the Parties of their respective marks for their respective services in compliance with the terms of this Agreement, the Parties agree to cooperate diligently and in good faith, and take reasonable efforts to alleviate such confusion and to avoid any further confusion thereafter.

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- d. **Acknowledgments.** The Parties represent and acknowledge that they (i) have read the Agreement; (ii) have made such investigation of the matters pertaining to this Agreement as they deem necessary and find the terms of the Agreement to be satisfactory; (iii) understand all of the terms in this Agreement; (iv) execute this Agreement freely, voluntarily, and without coercion, with full knowledge of its significance and the legal consequences thereof; and (v) have been represented by counsel, and have had an adequate opportunity to review and consider the terms of this Agreement. The Parties waive all rights to challenge the validity or enforceability of this Agreement.
- e. **Participation of Parties in the Drafting of the Agreement.** The Parties have participated in the drafting of this Agreement, and no party shall be deemed the drafter for the purposes of interpreting any term or provision herein.
- f. **Waiver.** The failure of a Party to insist upon strict and complete performance of any and all obligations of the other Party under this Agreement, irrespective of the length of time for which such failure continues, shall not be a waiver of its right to demand strict and complete compliance for any and all obligations in the future. No consent or waiver, by any Party, to any breach or default in the performance of any obligation hereunder by the other Party shall constitute a consent or waiver to any breach or default in the performance of the same or any other obligation under this Agreement in the future.
- g. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under applicable law. If any part, term, or provision of this Agreement is declared invalid, prohibited, void, or unenforceable, the Agreement

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shall be construed as if such invalid or prohibited provision had not been inserted herein, and the remaining parts, terms, and provisions of this Agreement shall remain in full force and effect and shall not be invalidated, impaired, or affected.

- h. **Specific Performance.** In the event of breach of this Agreement, the Parties acknowledge that recovery of damages will not be a sufficient remedy and agree that the aggrieved Party shall be entitled to specific performance thereof in addition to any or all other remedies, legal or equitable, to which it may be entitled.
- i. **Effect of Agreement.** This Agreement shall be binding upon and inure to the benefit of the undersigned Parties as well as their related companies, subsidiaries, successors, assigns, licensees, and legal representatives upon execution by all Parties; and the signatures of the undersigned representatives shall constitute a warranty that they have authority to enter into this Agreement and bind the party being represented.
- j. **Entire Agreement.** This Agreement constitutes the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes any and all prior understandings, whether written or oral. The section headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement. This Agreement shall not be modified or amended except by express written consent of both Parties.
- k. **Execution of Agreement in Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, including by facsimile or electronic mail, each of them deemed an original, but all of which together shall constitute one and the same agreement.

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- l. **Term and Termination.** This Agreement shall commence on the Effective Date and shall continue perpetually thereafter, unless and until terminated pursuant to this Section or by the express written consent of each Party. Either Party may terminate this Agreement by written notice to the other Party in the event that the other Party breaches any of its obligations under this Agreement, as set forth above in Sections 2 and 3, respectively.
- m. **Notice.** Unless otherwise provided, all notices required or permitted under this Agreement shall be in writing and shall be sent by nationally recognized courier services (e.g., DHL, Federal Express), with all postage or delivery charges prepaid, and delivery tracking, and shall be addressed to:

Genesis

Deborah E. Kelly
Partner
Genesis Design, Inc.
1166 Sana Fe Drive
Denver, Colorado 80204

with a copy – which shall not constitute notice – to:

Marshall J. Brown
Foley & Lardner LLP
321 North Clark Street
Suite 2800
Chicago, Illinois 60654

Pohl

Matthew Pohl
P.O. Box 36
Broomfield, CO 80038

with a copy – which shall not constitute notice – to:

Julia M. Knearl
Law Offices of Julia M. Knearl, LLC

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945 Front Street
Louisville, CO 80027

- n. **Reservation of Rights.** The Parties reserve all rights not expressly addressed by this Agreement.
- o. **Successors and Assigns.** This shall Agreement shall be binding upon and inure to the benefit of all successors and assigns of either Party.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Agreement.

For and on behalf of,

GENESIS DESIGN, INC.:

By: *Deborah E. Kelly*
Name: DEBORAH E. KELLY
Title: PARTNER
Date: 12.7.17

For and on behalf of,

POHL ENTERPRISES, INC.:

By: *Matthew E. Pohl*
Name: Matthew E. Pohl
Title: President
Date: 11/28/2017