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

Proceeding no.	92081911
Party	Defendant GIST Advisory Switzerland SA, c/o PavanSukhdev
Correspondence address	GIST ADVISORY SWITZERLAND SA, C/O PAVANSUKHDEV AVENUE PERDTEMPS 21 CH-1206 NYON SWITZERLAND Primary email: info@lzlawoffice.com 201-645-5616
Submission	Other Motions/Submissions
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Date	02/05/2024
Attachments	MOTION TO SET ASIDE DEFAULT JUDGMENT.pdf(112584 bytes) NCX Answer.pdf(97921 bytes)

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

Natural Capital Exchange Inc.)	Mark: NCX
Petitioner,)	
)	Cancellation No. 92081911
)	
v.)	Reg. No. 6344114
)	
GIST Advisory Switzerland SA)	
Registrant.	/	

REGISTRANT'S AMENDED MOTION TO SET ASIDE DEFAULT JUDGMENT

Pursuant to TBMP § 312.02, GIST Advisory Switzerland SA ("Registrant") respectfully submits this showing of good cause why default judgment should not be entered against Registrant and respectfully requests that the Board set aside the default judgment issued on August 9, 2023, and accept Registrant's late Answer.

Among the factors to be considered in determining a motion to vacate a default judgment for failure to answer the complaint are:

- (1) whether the plaintiff will be prejudiced,
- (2) whether the default was willful, and
- (3) whether the defendant has a meritorious defense to the action.

TBMP § 312.03.

...[B]because default judgments for failure to timely answer the complaint are not favored by the law, a motion under Fed. R. Civ. P. 55(c) or 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board than are other motions under Fed. R. Civ. P. 60(b)...” *Id.*

1. The Delay in Filing an Answer Was Not the Result of Willful Conduct or Gross Neglect

Petitioner Natural Capital Exchange Inc ("Petitioner") filed the instant Petition for Cancellation on March 23, 2023. The Board issued its Order instituting the proceeding setting Registrant's May

5, 2023 deadline to Answer. On May 13, 2023, the Board issued its Notice of Default against Registrant, allowing Registrant thirty days from the date of its Order to show cause why judgment by default should not be entered against it. On June 28, 2023 Board issued a Default Judgment. On August 9, 2023 that Board terminated the proceeding and ordered cancellation of Registrar's Reg. No. 6344114.

According to 37 C.F.R. §2.17(G), Registrant was not represented by a US counsel in connection with Reg. No. 6344114 after its registration and hence all Board's correspondences were to be mailed directly to a correspondent address on the record and Registrant's physical address at "GIST ADVISORY SWITZERLAND SA, C/O Pavan Sukhdev Avenue Perdtemps 21 Ch-1206 Nyon, Switzerland". However, the Registrant did not receive Notice of Default issued by the Board. After registration of Reg. No. 6344114, the Registrant asked U.S. Trademark Attorney Alexander Lazouski ("Lazouski") in January 2023, to verify the status of Reg. No. 6344114. Lazouski confirmed shortly thereafter that Reg. No. 6344114 was active. Recently Lazouski conducted a manual status check of the registration and for the first time learned about the cancellation proceeding. After that Lazouski immediately informed Registrant and engaged in discussion with Registrant in connection with all possible options on how to proceed as soon as possible. Registrant and Lazouski promptly arranged a retainer and Lazouski prepared this Motion and Answer. Registrant was unaware that a Petition for Cancellation and Default Judgment had been served. Registrant did not engage in any willful conduct or gross neglect. See, e.g., *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991) ("the failure to timely file the answer was clearly due to an inadvertence on the part of Registrant's counsel and not the result of any willful conduct or gross neglect").

2. Petitioner Will Not Be Substantially Prejudiced by the Delay

Upon learning of the Petition for Cancellation, Notice of Default and Default Judgment, Registrant immediately took steps to reasonably investigate the facts that resulted in this inadvertent failure to timely file an Answer and to rectify same. As soon as Registrant learned about the Cancellation Proceeding, it contacted Registrant's attorney, retained his services and started preparing the instant Motion.

Petitioner will not be prejudiced by the short delay in receiving Registrant's Answer. *Delorme Publishing Co., Inc. v. Eartha's, Inc.*, 60 USPQ2d 1222, 1223-24 (TTAB 2000) (six month delay in filing answer is "regrettable" but not prejudicial to Petitioner). This action is in its infancy and no discovery has been taken by either party.

3. Registrant Has a Meritorious Defense to the Action

"The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint." TBMP § 312.02. Registrant submits Answer, which denies the salient allegations of Petitioner's claims. Registrant's concurrent submission of this Motion along with the Answer, which is not frivolous, establishes its meritorious defense.

CONCLUSION

For the foregoing reasons, Registrant respectfully submits that good cause exists why default judgment should not be entered against it and respectfully requests that the Board set aside the Default Judgment, and pleads the Board to accept the Answer to allow Registrant and reinstate all subsequent deadlines so Respondent will have a fair chance to defend its trademark.

Respectfully submitted,

Date: February 5, 2024

Respectfully submitted,

By: /alexander lazouski/

Alexander S. Lazouski
Attorney for Registrant
Lazouski IP LLC
14726 Bowfin Terrace, Suite 1
Lakewood Ranch, FL 34202

CERTIFICATE OF SERVICE

I hereby certify that according to TBMP §311.01 (c) and 37 CFR § 2.119(b) a true and complete copy of the foregoing has been served on Petitioner's counsel by email bdavis@vlpawgroup.com, trademarks@vlpawgroup.com on February 5, 2024.

By: /alexander lazouski/

Alexander S. Lazouski

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

Natural Capital Exchange Inc
Petitioner,

v.

Cancellation No.: 92081911
Reg. No. 6344114
Mark: NCX

GIST Advisory Switzerland SA
Registrant.

REGISTRANT'S AMENDED ANSWER

1. Registrant lacks sufficient information to admit or deny the allegations, and therefore denies such allegations.
2. Registrant lacks sufficient information to admit or deny the allegations, and therefore denies such allegations.
3. Registrant denies such allegations.
4. Registrant denies such allegations.
5. Registrant denies such allegations
6. Registrant denies such allegations.

Respectfully submitted,

Date: January 31, 2024

By: /alexander lazouski/

Alexander S. Lazouski
Attorney for Registrant
Lazouski IP LLC
14726 Bowfin Terrace, Suite 1
Lakewood Ranch, FL 34202

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing by causing a true and correct copy thereof to be to Petitioner's Attorney at bdavis@vlplawgroup.com, trademarks@vlplawgroup.com on February 5, 2024.

Date: February 5, 2024

/alazouski/
Alex Lazouski