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

Proceeding	92051465
Party	Plaintiff EA Digital Illusions CE AB and Electronic Arts Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

**EA DIGITAL ILLUSIONS CE AB, a Swedish
corporation; ELECTRONIC ARTS INC., a
Delaware corporation,**)
)
Petitioners,)
)
v.)
)
EDGE GAMES, INC., a California corporation,)
)
Registrant.)
)
_____)

Cancellation No. 92051465

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

AMENDED CONSOLIDATED PETITION FOR CANCELLATION

EA Digital Illusions CE AB, a Swedish corporation having its principal place of business at Katarinavägen 15, 104 60 Stockholm, Sweden, and Electronic Arts Inc., a Delaware corporation having its principal place of business at 209 Redwood Shores Parkway, Redwood City, California 94065, United States of America (collectively, “Petitioners”), believe that they are being and/or will be damaged by the continued registration of Registration No. 3,559,342 for THE EDGE in Classes 9, 16, 21, 25, and 28; Registration No. 3,381,826 for GAMER’S EDGE in Class 9; Registration No. 3,105,816 for EDGE in Class 16; Registration No. 2,251,584 for CUTTING EDGE in Class 16; and Registration No. 2,219,837 for EDGE in Class 16 (referred to collectively herein as the “Subject Registrations”), in the United States Patent and Trademark Office (“USPTO”) by Edge Games, Inc. (“Registrant”), and hereby petition to cancel same under Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064.

Pursuant to 37 C.F.R. § 2.112(b), Petitioners file this single Consolidated Petition against the Subject Registrations as they are all owned by Registrant, they all involve marks containing the term “EDGE,” and there are common issues of law or fact.

As grounds for this Consolidated Petition, Petitioners allege the following:

FACTUAL BACKGROUND

Petitioners And The MIRROR’S EDGE Mark

1. Electronic Arts Inc. (“EA”) is a Delaware corporation, having its principal place of business at 209 Redwood Shores Parkway, Redwood City, California 94065, United States of America. Founded in 1982, EA is a leading developer, publisher and distributor of interactive entertainment software for personal computers, mobile phones and devices, handheld game players, and advanced entertainment systems such as the Nintendo Wii, PlayStation 3, and Xbox

360, as well as related goods and services.

2. EA Digital Illusions CE AB (“EA DICE”) is a Swedish corporation and wholly-owned subsidiary of EA, with a principal place of business at Katarinavägen 15, 104 60 Stockholm, Sweden. EA DICE is among the leading developers of computer games and videogames in northern Europe. EA DICE is the successor to Digital Illusions Creative Entertainment AB, a Swedish corporation founded in the early 1990s and acquired by EA in 2005.

3. In 2007, EA DICE publicly announced its development of a videogame under the mark MIRROR’S EDGE. EA is the exclusive licensee for distribution of the MIRROR’S EDGE videogame and ancillary products and services in the United States. EA is a “related company” of EA DICE within the meaning of Section 45 of the Lanham Act as to the MIRROR’S EDGE mark in the United States, in that its use of the mark is controlled by EA DICE with respect to the nature and quality of the goods or services on or in connection with which the mark is used, and it is authorized to use the mark in connection with the promotion and sale of products under the mark in this country.

4. In November, 2008, Petitioners commenced worldwide sales of the MIRROR’S EDGE videogame.

5. The MIRROR’S EDGE videogame is an action/adventure game set in the future, wherein a “runner” (messenger), the game’s main character, is tasked with saving her sister from wrongful persecution and incarceration by delivering a series of messages and overcoming obstacles and enemies. The videogame incorporates a unique first-person perspective as the main character moves through the game environment in a series of smooth, efficient, and fast movements known as “parkour.” Indeed, the game was designed to convey the characters’ strain

and physical contact with the environment, and is widely recognized for its novel visual effects associated with players' movement.

6. Petitioners' MIRROR'S EDGE game is widely distributed for use on the PlayStation 3 and Xbox 360 videogame consoles, as well as Windows PCs.

7. In addition to distributing videogames, Petitioners also offer music CDs, comic books, entertainment services, message boards, and other related goods and services under the MIRROR'S EDGE mark.

8. The MIRROR'S EDGE videogame is marketed in electronics and videogame stores and online. Additionally, Petitioners maintain a web presence for the game at www.mirrorsedge.com and www.mirrorsedge2d.com, where consumers can access downloadable content, game information, screenshots, video captures, message boards, and news and information related to the MIRROR'S EDGE game.

9. EA DICE owns U.S. common law trademark rights in the MIRROR'S EDGE mark. EA is licensed by EA DICE to use the mark in connection with the promotion and sale of the MIRROR'S EDGE videogame and related products and services in the United States.

10. Since September 2008, Registrant has continuously threatened to file suit against EA for distributing the MIRROR'S EDGE game on the basis of his purported "family of registered EDGE marks." Petitioners reasonably believe that Registrant will contest their right to use the MIRROR'S EDGE mark.

Edge Games, Inc. And The Subject Registrations

11. On information and belief, Registrant Edge Games, Inc. is a California corporation, doing business at 530 South Lake Avenue, Suite 171, Pasadena, California 91101.

12. According to USPTO records, the Subject Registrations and/or underlying

applications were previously owned by The Edge Interactive Media, Inc. On information and belief, Registrant is a successor-in-interest to The Edge Interactive Media, Inc., as both entities communicated with the USPTO through the same self-identified CEO, Tim Langdell, from the same corporate address, and The Edge Interactive Media, Inc. represented itself as doing business as “Edge Games/The Edge.”

13. Petitioners have reason to believe that Registrant or its predecessor fraudulently obtained, maintained, and renewed the Subject Registrations, based on the results of third party investigations of Registrant and its activities that are posted on the Internet. For example, online postings at <http://chaosedge.wordpress.com> and <http://www.tigsource.com/articles/2009/06/09/tim-langdell-and-edge-part-two> detail an alleged history of Registrant’s misconduct and misrepresentation vis-à-vis the EDGE family of marks. These and other online articles, combined with Petitioners’ long-time experience in the industry and the specific bases identified below, are the grounds for Petitioners’ information and belief that Registrant or its predecessor fraudulently obtained, maintained, or renewed the Subject Registrations.

Registration No. 3,559,342: THE EDGE

14. According to USPTO records, Registration No. 3,559,342 issued January 13, 2009 to Registrant for and in connection with “[v]ideo game peripherals, namely, video game controllers; computers; computer accessories, namely, keyboards, mice; game controllers for computer games; memory cards; headphones; augmented reality headsets for use with computers; virtual reality headsets for use with computers; storage disc cases, namely, compact disc cases and DVD cases; video display and capture cards; audio cards; audio speakers; web-cameras; backpacks, carrying cases and bags all designed for carrying portable computers, computer accessories, and computer peripherals; video game machines for use with televisions

and accessories therefore, namely, video game controllers; video game software; computer game software, computer game software for use in location based entertainment centers,” in Class 9, claiming a first use date and first use in commerce date of June 4, 1984; “[m]agazines, namely, magazines in the fields of business, entertainment, popular culture and education; Magazines, namely, in the fields of computer games, video games, board games, hand-held games, interactive media, television, music, video, movie, clothing, fashion, leisure activities and lifestyle; computer and video game magazines, comic books, posters, note paper, note cards, bumper stickers, stickers, pencils, ball point pens, ink pens, stationery; folders,” in Class 16, claiming a first use date and first use in commerce date of April 14, 1993; “[m]ugs and cups,” in Class 21, claiming a first use date and first use in commerce date of August 12, 1995; “[t]-shirts, sweatshirts, jackets,” in Class 25, claiming a first use date and first use in commerce date of August 12, 1995; and “[t]oys and playthings, namely, battery operated action toys, bendable toys, collectable toy figures, electronic action toys, electronically operated toy vehicles, fantasy character toys, mechanical action toys, modeled plastic toy figurines, model toy figures, plastic character toys, plush toys, positionable toy figures, toy action figures, toy boxes, toy figures; hand held units for playing games and accessories therefore, namely, carrying cases designed for hand-held units for playing electronic games; stand alone video game machines and accessories therefore, namely, carrying cases and covers designed for stand-alone video game machines,” in Class 28, claiming a first use date and first use in commerce date of August 12, 1995.

15. According to USPTO records, the application associated with Registration No. 3,559,342 was filed in the name of The Edge Interactive Media, Inc. on March 22, 1996. According to USPTO records, on or about October 15, 2004, The Edge Interactive Media, Inc. assigned the entire interest in the mark and the application associated with Registration No.

3,559,342 to Future Publishing Ltd. of the United Kingdom. According to USPTO records, on or about November 2, 2005, The Edge Interactive Media, Inc. recorded a “corrective assignment,” dated October 15, 2004, and USPTO records state that “Assignor(s) hereby confirms that the application should register in the name of The Edge Interactive Media, subject to a partial assignment to Future Publishing.” According to USPTO records, on December 1, 2005, Registrant or its predecessor submitted an Office Action Response in connection with the associated application stating that “the assignment on October 25, 2004 to Future Publishing Ltd. WAS A CLERICAL ERROR and that this has been subsequently corrected. Ownership of this application is now back with (and should never have left) The EDGE Interactive Media Inc.” (emphasis in original). According to USPTO records, on or about February 21, 2008, The Edge Interactive Media, Inc. assigned the entire interest in the mark and the application associated with Registration No. 3,559,342 to Edge Games, Inc.

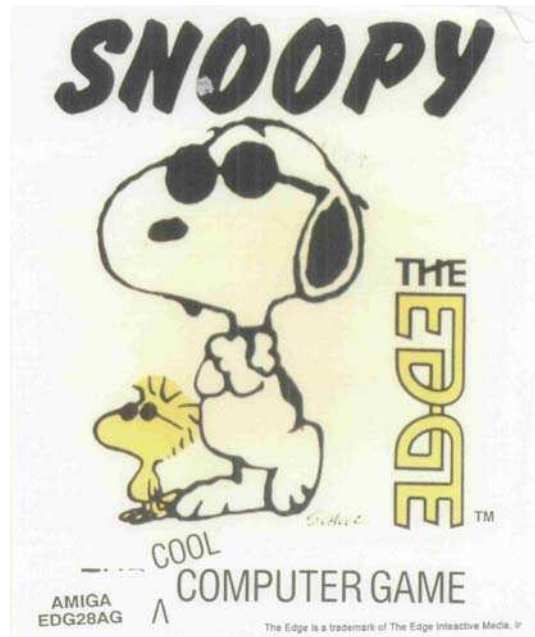
16. On information and belief, the mark that is the subject of Registration No. 3,559,342 is no longer in use and has been abandoned within the meaning of Section 45 of the Lanham Act as a result of non-use with an intent not to resume use.

17. On information and belief, Registration No. 3,559,342 was fraudulently obtained, based on the following non-exhaustive list of misrepresentations made by Registrant and/or its predecessor-in-interest, The Edge Interactive Media, Inc., to the USPTO.

a. On or about March 22, 1996, Registrant or its predecessor filed the application associated with Registration No. 3,559,342 and stated under penalty of perjury (1) that it was currently using its THE EDGE mark in commerce in connection with all of the goods listed therein; (2) that it had first used the mark anywhere as early as June 1985; (3) that it had first used the mark in commerce in connection with the goods

listed therein as early as June 1985; and (4) that the mark was imprinted on the exterior/cover of all of the referenced goods. On information and belief, these statements were false or misleading at the time they were made, and the true facts were as follows: (1) the THE EDGE mark was not in use in connection with many, if not all, of the goods listed in the application; and (2) Registrant or its predecessor had not in fact used the mark and used the mark in commerce in connection with all of the goods listed in the application as early as June 1985. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on Registrant and/or its predecessor's subsequent amendments to the application (to delete certain goods and to modify its first use dates), EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of its competitors.

b. On or about March 22, 1996, Registrant or its predecessor submitted the following specimen with its application, for goods ranging from mugs, to t-shirts, to magazines:



On information and belief, this submission constituted a false or misleading statement to the USPTO because the mark was not being used in commerce, as portrayed in the specimen, at the time of submission in connection with all of the products listed in its recitation of goods. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors, as well as the fact that the specimen indicates that the purported game software item was for the Commodore "Amiga" computer platform, which, on information and belief, was discontinued years before the filing of the application.

c. On or about November 21, 1996, Registrant or its predecessor stated to the USPTO in response to an Office Action that “the dates of first use and use in commerce . . . are substantially earlier than the date of application.” On information and belief, this statement was false or misleading at the time it was made, because Registrant or its predecessor had not in fact used the THE EDGE mark, in commerce, in connection with all of the goods identified in its application prior to filing the application in 1996. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant’s control. Petitioners’ information and belief are based on a review of the relevant USPTO files and other investigation, EA’s experience in the videogame industry, and/or Petitioners’ awareness of the state of the market and the activities of competitors.

d. On or about August 31, 2000, Registrant or its predecessor declared to the USPTO, under penalty of perjury in connection with its response to an Office Action, “that the substitute specimens [it] supplied were in use in commerce at least as early as the filing date of th[e] application.” On information and belief, this statement was false or misleading at the time it was made, because Registrant or its predecessor was not in fact using the mark in commerce, as presented on the submitted specimens, at the time of the filing of its application. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark,

and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors.

e. On or about December 1, 2005, Registrant or its predecessor submitted specimens in connection with Registration No. 3,559,342 in response to an Office Action regarding specimens for the goods listed in Classes 16, 21, 25, and 28, and stated to the USPTO, under penalty of perjury, that "[t]he specimens provided for each class of goods . . . were each in use in commerce on or in connection with the goods listed in the application at least as early as the filing date of the application. The dates of first use in the application apply to each of the classes in question, and this applies to both anywhere and in commerce, and these dates are at least as early as the date of application." On information and belief, this submission constituted a false or misleading statement to the USPTO, because those specimens were not in fact used in commerce at the time of submission of the associated application and/or the claimed first use in commerce date in connection with the products listed in its recitation of goods. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and

belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors.

f. On or about December 19, 2006, Registrant or its predecessor stated to the USPTO in responding to an Office Action, under penalty of perjury, (1) that the alleged dates of first use and first use in commerce of THE EDGE mark in connection with the identified goods was accurate, and (2) that all specimens submitted prior and therewith reflect use of the mark as of the time of the filing of the application. On information and belief, this submission constituted a false and/or misleading statement to the USPTO, because Registrant or its predecessor had not actually used the mark in commerce in connection with all of the goods identified in its application at the time of the claimed first use dates, and the submitted specimens did not reflect use of the mark, in commerce, as of the time of the filing of the application. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors.

g. On or about December 19, 2006, Registrant or its predecessor submitted a substitute specimen associated with the goods identified in Class 28 of its application in

response to an Office Action. On information and belief, this submission constituted a false and/or misleading statement to the USPTO, in that the substitute specimen was not in fact used in commerce at the time of submission of the application and/or the claimed first use in commerce date in connection with the goods listed in the Class 28 recitation. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors.

h. On or about September 4, 2007, in response to an Office Action, Registrant or its predecessor amended its application to provide additional specification of the types of goods it was offering under the THE EDGE mark. On information and belief, this submission constituted a false and/or misleading statement to the USPTO, in that Registrant or its predecessor was not using the mark in connection with all of these goods as of its claimed dates of first use and/or the date of submission of its application. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the THE EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control.

Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the state of the market and the activities of competitors.

18. The continued registration of Registration No. 3,559,342 is causing actual harm to Petitioners.

Registration No. 3,381,826: GAMER'S EDGE

19. According to USPTO records, Registration No. 3,381,826 was issued February 12, 2008 to The Edge Interactive Media, Inc. for GAMER'S EDGE for and in connection with "[c]omputers; computer hardware; computer peripherals; computer games software; plug-on computer interface boards; computer accessories, namely, keyboards, mice, player-operated electronic game controllers for computers and electronic video game machines, computer memories, headphones, augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, storage disc cases, video display and capture cards, sound cards, audio speakers, web-cameras, carrying cases and bags, all for carrying portable computers or computer accessories; video game software; video game consoles, namely, video game machines for use with televisions and video monitors; video game accessories, namely, joysticks made for video games, video game interactive control floor pads and mats, and video game interactive remote control units; video game peripherals, namely, external hard drives for computers and video game machines and other storage devices in the nature of plug-in memory devices that attach to the USB port which are commonly known as 'flash drives' or 'thumb drives' and video adapters in the nature of adapters which convert the video output of the computer or video game machine to the video input of a monitor or television; set top boxes, cable modems, dsl [sic] modems," in Class 9, claiming a first use date

and first use in commerce date of June 1, 1986.

20. According to USPTO records, The Edge Interactive Media, Inc. assigned its entire interest in the GAMER'S EDGE mark and Registration No. 3,381,826 to Edge Games, Inc. on or about February 21, 2008.

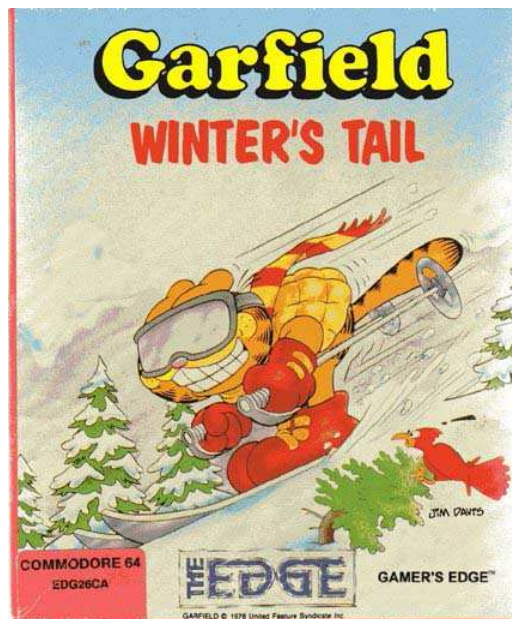
21. On information and belief, the mark that is the subject of Registration No. 3,381,826 is no longer in use and has been abandoned within the meaning of Section 45 of the Lanham Act as a result of non-use with an intent not to resume use.

22. On information and belief, Registration No. 3,381,826 was fraudulently obtained, based on the following non-exhaustive list of misrepresentations made by Registrant and/or its predecessor-in-interest, The Edge Interactive Media, Inc., to the USPTO.

a. On or about February 5, 2006, Registrant or its predecessor filed the application associated with Reg. No. 3,381,826 and stated, under penalty of perjury, (1) that it was currently using the GAMER'S EDGE mark in commerce in connection with all of the goods listed therein; (2) that it had first used the mark anywhere as early as June 1, 1986; (3) that it had first used the mark in commerce in connection with the goods listed therein as early as June 1, 1986; and (4) that the mark has become distinctive of its goods through its substantially exclusive and continuous use of the mark in commerce for at least the preceding five years. On information and belief, these statements to the USPTO were false and/or misleading, because (1) Registrant or its predecessor was not in fact using the GAMER'S EDGE mark in commerce at the time of the filing of its application in connection with the associated goods; (2) Registrant or its predecessor had not used the mark in commerce in connection with all of the associated goods as early as June 1, 1986; and (3) Registrant or its predecessor had not substantially and exclusively

used the GAMER'S EDGE mark in connection with the associated goods for the preceding five years. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the GAMER'S EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors.

b. On or about February 5, 2006, Registrant or its predecessor submitted the following specimen of use of its mark in commerce in connection with the goods identified in its application:



On information and belief, this submission constituted a false and/or misleading

statement to the USPTO, as the submitted specimen featuring the GAMER'S EDGE mark was not actually used in commerce at the time of submission. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the GAMER'S EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors.

c. On or about January 30, 2007, Registrant or its predecessor amended its application to provide additional specification regarding the goods offered under the GAMER'S EDGE mark in response to an Office Action. On information and belief, this amendment constituted a false and/or misleading statement to the USPTO, as Registrant or its predecessor was not using the mark in connection with the newly-identified goods at the time it filed its application, nor as of the claimed first use date. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the GAMER'S EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness

of the videogame market and the activities of competitors.

23. The continued registration of Registration No. 3,381,826 is causing actual harm to Petitioners.

Registration No. 3,105,816: EDGE

24. According to USPTO records, Registration No. 3,105,816 issued June 20, 2006 to The Edge Interactive Media, Inc. for and in connection with “printed matter, namely, comic books, comic book reference guide books, books featuring stories in illustrated forms, graphic novels, comic strips, picture postcards, comic postcards, printed postcards, novelty stickers, decals, bumper stickers, note cards, note paper, stationery folders, computer magazines, video game magazines, magazines and posters about interactive entertainment; writing instruments, namely pencils, ball point pens, ink pens,” in Class 16, claiming a first use date and first use in commerce date of January 6, 1985.

25. According to USPTO records, The Edge Interactive Media, Inc. assigned its entire interest in the EDGE mark and Registration No. 3,105,816 to Edge Games, Inc. on or about February 21, 2008.

26. On information and belief, the mark that is the subject of Registration No. 3,105,816 is no longer in use and has been abandoned within the meaning of Section 45 of the Lanham Act as a result of non-use with an intent not to resume use.

27. On information and belief, Registration No. 3,105,816 was fraudulently obtained based on, among others, the following misrepresentations made by Registrant and/or its predecessor-in-interest, The Edge Interactive Media, Inc., to the USPTO.

a. On or about January 29, 2003, The Edge Interactive Media, Inc. filed the application associated with Reg. No. 3,105,816 and stated, under penalty of perjury, (1)

that it was currently using the EDGE mark in commerce in connection with all of the goods listed therein; (2) that it had first used the mark anywhere as early as January 6, 1985; and (3) that it had first used the mark in commerce in connection with the goods listed therein as early as January 6, 1985. On information and belief, this submission constituted a false and/or misleading statement to the USPTO, because at that time Registrant or its predecessor was not in fact using the EDGE mark in commerce in connection with all of the goods listed in the application, and had not done so as early as January 6, 1985. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to register the EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors.

b. On or about January 29, 2003, Registrant or its predecessor submitted a comic book cover as the specimen associated with its application. On information and belief, that particular specimen dated back to a comic book series published in the early 1990s that had been discontinued. On information and belief, this submission constituted a false and/or misleading statement to the USPTO, because Registrant or its predecessor was not using the mark in the manner portrayed in its specimen at the time of submission to the USPTO. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or

induce authorized agents of the USPTO to register the EDGE mark, and the USPTO relied on those misstatements in registering the mark. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors.

28. The continued registration of Registration No. 3,105,816 is causing actual harm to Petitioners.

Registration No. 2,251,584: CUTTING EDGE

29. According to USPTO records, Registration No. 2,251,584 issued to Marvel Entertainment Group, Inc. on June 8, 1999, for and in connection with "publications, namely comic books and comic magazines and stories in illustrated form," in Class 16, claiming a first use date and first use in commerce date of December 1, 1995.

30. According to USPTO records, on or about September 1, 1995, Marvel Entertainment Group, Inc. assigned the entire interest in the mark and the application associated with Registration No. 2,251,584 to Marvel Characters, Inc. According to USPTO records, on or about September 26, 1997, Marvel Characters, Inc. assigned the entire interest in the mark and the application associated with Registration No. 2,251,584 to The Edge Interactive Media, Inc. According to USPTO records, on or about February 21, 2008, The Edge Interactive Media, Inc. assigned the entire interest in the mark and Registration No. 2,251,584 to Edge Games, Inc.

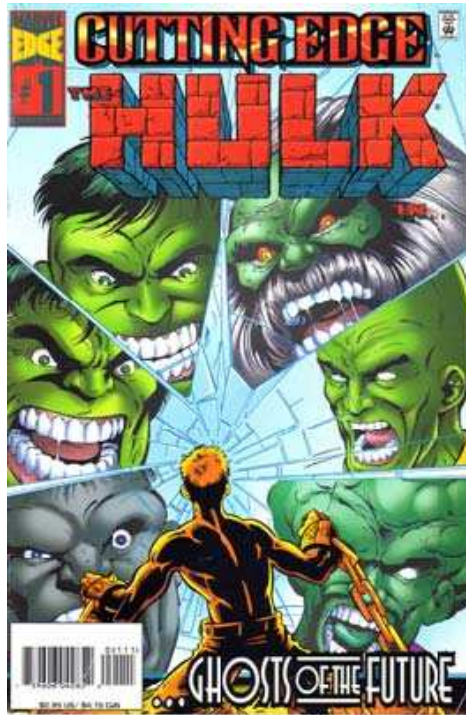
31. On information and belief, the mark that is the subject of Registration No. 2,251,584 is no longer in use and has been abandoned within the meaning of Section 45 of the Lanham Act as a result of non-use with an intent not to resume use.

32. On information and belief, Registration No. 2,251,584 was fraudulently obtained, maintained, or renewed, based on the following non-exhaustive list of misrepresentations made by Registrant and/or its predecessor-in-interest, The Edge Interactive Media, Inc., to the USPTO.

a. On or about November 26, 2005, Registrant or its predecessor filed its Combined Section 8 and 15 Declaration and stated, under penalty of perjury, (1) that it is using the CUTTING EDGE mark, through a licensee or related company, in connection with all of the goods contained in the existing registration, (2) that the CUTTING EDGE mark had been in continuous use in commerce for five consecutive years after the date of registration or publication, and (3) that the specimen submitted therewith was the cover of a “currently on sale comic book sold via our licensee bearing the mark.” On information and belief, these constituted false and/or misleading statements to the USPTO, in that the CUTTING EDGE mark was not being used and had not been used in commerce for the preceding five years as of the filing of its declarations. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to maintain the registration for the CUTTING EDGE mark, and the USPTO relied on those misstatements in maintaining the registration and deeming it incontestable. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant’s control. Petitioners’ information and belief are based on its factual investigation and information obtained from third-party sources.

b. On or about November 26, 2005, Registrant or its predecessor submitted the following specimen related to the goods identified in Registration No. 2,251,584, described in its accompanying Declaration, under penalty of perjury, as a “[c]over of

currently on sale comic book sold via our licensee bearing the mark”:



On information and belief, the submission of this specimen and statement describing the specimen constituted false and/or misleading statements to the USPTO, in that the specimen is the cover of a comic book published in the mid-1990s, and that the specimen did not reflect use of the mark at the time of the filing of the Declaration nor in the preceding five years. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to maintain the registration for the CUTTING EDGE mark, and the USPTO relied on those misstatements in maintaining the registration and deeming it incontestable. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on its factual investigation and information

obtained from third-party sources.

33. The continued registration of Registration No. 2,251,584 is causing actual harm to Petitioners.

Registration No. 2,219,837: EDGE

34. According to USPTO records, Registration No. 2,219,837 issued January 26, 1999 to The Edge Interactive Media, Inc., for and in connection with “printed matter and publications, namely, magazines, newspapers, journals, and columns and sections within such magazines, newspapers, and journals, and pamphlets and booklets, all in the fields of business, entertainment, and education, relating to toys, games, computers, computer software, computer games, video games, board games, hand-held games, interactive media, television, interactive music, and video; stationery; posters; exterior packaging for software, namely, cardboard cartons; printed paperboard inserts for plastic packaging of software; paper bags; plastic bubble packs for packaging; envelopes; and paper pouches for packaging,” in Class 16, claiming a first use date and first use in commerce date of May 1984.

35. According to USPTO records, on or about October 15, 2004, The Edge Interactive Media, Inc. assigned the entire interest in the mark and Registration No. 2,219,837 to Future Publishing Ltd. of the United Kingdom. According to USPTO records, on or about September 15, 2005, The Edge Interactive Media, Inc. recorded a “corrective assignment,” dated October 15, 2004, and USPTO records state that the assignment to Future Publishing was a “partial assignment” and that the owner of the registration should be listed as The Edge Interactive Media, Inc. According to USPTO records, on or about October 28, 2005, The Edge Interactive Media, Inc. recorded a “corrective” assignment, dated October 15, 2004, to “correct the owner of record – Edge Interactive Media, Registrant (subject to the partial assignment to

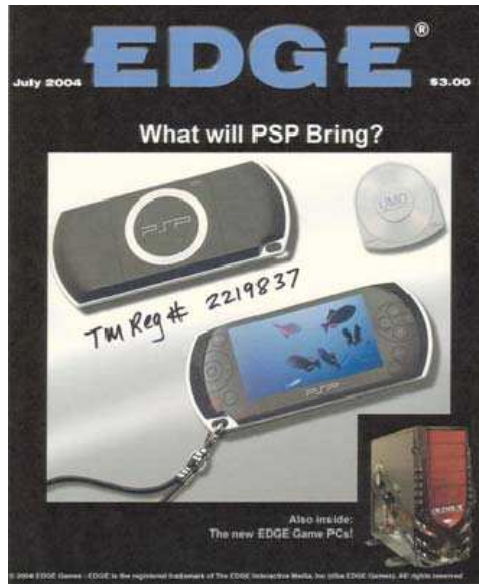
Future Publishing Ltd.).” According to USPTO records, on or about February 21, 2008, The Edge Interactive Media, Inc. assigned the entire interest in the mark and Registration No. 2,219,837 to Registrant.

36. According to USPTO records, on or about July 31, 2009, Future Publishing Ltd. of the United Kingdom submitted a request to divide Registration No. 2,219,837, such that Registrant would retain ownership of the registration under this same registration number in connection with the Class 16 goods identified above.

37. On information and belief, the mark that is the subject of Registration No. 2,219,837 is no longer in use and has been abandoned within the meaning of Section 45 of the Lanham Act as a result of non-use with an intent not to resume use.

38. On information and belief, Registration No. 2,219,837 was fraudulently obtained, maintained, or renewed, based on the following non-exhaustive list of misrepresentations made by Registrant and/or its predecessor-in-interest, The Edge Interactive Media, Inc., to the USPTO.

a. On information and belief, on or about August 18, 2004, Registrant or its predecessor submitted to the USPTO a specimen associated with its Combined Section 8 and 15 Declaration, and stated, under penalty of perjury, that the specimen was a “[c]olor scan of the front cover of our EDGE Games magazine, July 2004 edition” The specimen appeared as follows:



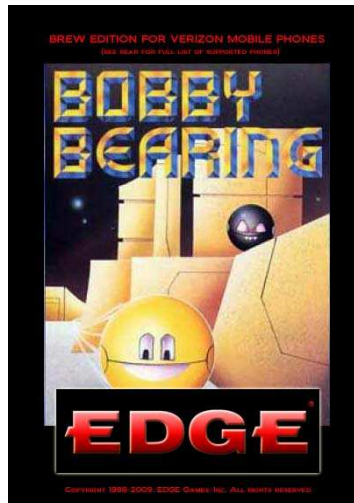
On information and belief, this submission and statement constituted false and/or misleading statements to the USPTO, because the specimen was not an actual issue of EDGE Games magazine, but rather a mock-up of a magazine cover, and because the specimen did not feature the mark as actually used in commerce . Below is the cover of the July 2004 issue of EDGE Games magazine published by Future Publishing, which was sold in the United Kingdom but not in U.S. commerce:



On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to maintain the registration for the EDGE mark, and the USPTO relied on those misstatements in maintaining the registration and deeming it incontestable. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control.

b. On or about February 10, 2009, Registrant or its predecessor filed a Combined Section 8 and 9 Declaration with the USPTO, and stated, under penalty of perjury, (1) that it the EDGE mark is used in commerce in connection with all of the goods listed in the existing registration, and (2) that the EDGE mark has been used in commerce continuously with the goods listed in the existing registration over the preceding five years. On information and belief, these constituted false and/or misleading statements to the USPTO, in that the mark was not being used and had not been used in commerce as claimed in its declaration. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to renew the registration for the EDGE mark, and the USPTO relied on those misstatements in maintaining and renewing the registration. Petitioner alleges that the necessary information regarding these false or misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors and third-parties.

c. On information and belief, on or about February 10, 2009, Registrant or its predecessor submitted the following specimen in connection with its Section 8 and 9 Declaration, which it described, under penalty of perjury, as “[c]over for exterior packaging of game "Bobby Bearing" for mobile phones in use continuously over the past 5 years in this format (previously [sic] available in other formats since June 1986)”:



On information and belief, this submission constitutes a false and/or misleading statement to the USPTO, in that (1) the specimen does not reflect use of its mark in connection with the goods identified in its registration, but instead is allegedly packaging material for a product allegedly offered by Registrant or its predecessor; and (2) the specimen was not used in commerce during the preceding five years or at the time of the filing of the Section 8 and 9 Declaration. On information and belief, Registrant and/or its predecessor knew that its representations were false and made its false statements with the intent to deceive and/or induce authorized agents of the USPTO to renew the registration for the EDGE mark, and the USPTO relied on those misstatements in maintaining and renewing the registration. Petitioner alleges that the necessary information regarding these false or

misleading statements is in Registrant's control. Petitioners' information and belief are based on a review of the relevant USPTO files and other investigation, EA's experience in the videogame industry, and/or Petitioners' awareness of the videogame market and the activities of competitors and third-parties.

39. The continued registration of Registration No. 2,219,837 is causing actual harm to Petitioners.

FIRST CLAIM FOR RELIEF

**Registration Nos. 3,559,342; 3,381,826; 3,105,816;
2,251,584; And 2,219,837 Have Been Abandoned**

40. Petitioners repeat and reallege each and every allegation set forth in Paragraphs 1 through 38 as if fully set forth herein.

41. Registration Nos. 3,559,342 (THE EDGE); 3,381,826 (GAMER'S EDGE); 3,105,816 (EDGE); 2,251,584 (CUTTING EDGE); and 2,219,837 (EDGE) may be cancelled under Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064(3), due to abandonment.

42. On information and belief, Registrant has discontinued use of the marks associated with the Subject Registrations with the intent not to resume such use.

43. Section 10 of the Trademark Act of 1946, 15 U.S.C. § 1060, allows for assignment of a registered mark "with the good will of the business in which the mark is used." An assignment without such good will is an invalid assignment in gross.

44. On information and belief, the 2008 assignment of the Subject Registrations and underlying trademarks from The Edge Interactive Media, Inc. to Registrant was an assignment in gross, in that the marks identified in the Subject Registrations had been abandoned and in that no good will associated with the marks identified in the Subject Registrations was transferred to Registrant in connection with the assignment.

45. On information and belief, Registrant or its predecessor never used the marks identified in the Subject Registrations in connection with all of the goods described in the respective Subject Registrations and had no intent to use the mark in connection with those goods.

46. Because use of the mark identified in the Subject Registrations, on information and belief, ceased more than three years ago, a presumption of abandonment arises under Section 45 of the Trademark Act of 1964, 15 U.S.C. § 1127.

47. Further, because The Edge Interactive Media, Inc., on information and belief, abandoned the marks identified in the Subject Registrations prior to assigning those marks and registrations to Edge Games, Inc., the 2008 assignments of the Subject Registrations and associated marks are invalid.

48. Even if The Edge Interactive Media, Inc. did not abandon the marks identified in the Subject Registrations prior to the 2008 assignments, the 2008 assignments are invalid on the ground that no good will associated with the marks identified in the Subject Registrations was transferred in connection with those assignments.

49. Finally, because, on information and belief, Registrant has never used or intended to use the marks identified in the Subject Registrations in connection with all of the goods described in the respective Subject Registrations, Registrant has no independent use that could

support registrations of the marks in connection with those goods. Petitioners allege that the Subject Registrations have been abandoned and should be cancelled.

50. Petitioners are and will continue to be harmed by the continued registration of the marks shown in the Subject Registrations.

SECOND CLAIM FOR RELIEF

**Registration Nos. 3,559,342; 3,381,826; 3,105,816;
2,251,584; And 2,219,837 Were Fraudulently
Obtained, Maintained, And/Or Renewed**

51. Petitioners repeat and reallege each and every allegation set forth in Paragraphs 1 through 49 as if fully set forth herein.

52. Registration Nos. 3,559,342 (THE EDGE); 3,381,826 (GAMER'S EDGE); 3,105,816 (EDGE); 2,251,584 (CUTTING EDGE); and 2,219,837 (EDGE) may be cancelled under Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064(3), because they were fraudulently obtained, maintained, and/or renewed.

53. As set forth above, Registrant and/or its predecessor-in-interest made material misrepresentations of fact in connection with obtaining, renewing, and/or maintaining the Subject Registrations, as follows:

a. Registrant intentionally made false statements to the USPTO on March 22, 1996, November 21, 1996, August 31, 2000, December 1, 2005, December 19, 2006, and September 4, 2007, in order to deceive and induce the USPTO to issue Reg. No. 3,559,342 for THE EDGE.

b. Registrant intentionally made false statements to the USPTO on February 5, 2006 and January 30, 2007 in order to deceive and induce the USPTO to issue Reg. No. 3,381,826 for GAMER'S EDGE.

c. Registrant intentionally made false statements to the USPTO on January 29, 2003 in order to deceive and induce the USPTO to issue Reg. No. 3,105,816 for EDGE.

d. Registrant intentionally made false statements to the USPTO on November 26, 2005 in order to deceive and induce the USPTO to maintain and deem incontestable Reg. No. 2,251,484 for CUTTING EDGE.

e. Registrant intentionally made false statements to the USPTO on August 18, 2004 in order to deceive and induce the USPTO to maintain and deem incontestable Reg. No. 2,219,837 for EDGE. Registrant also intentionally made false statements to the USPTO on February 10, 2009, in order to deceive and induce the USPTO to maintain and renew Reg. No. 2,219,837 for EDGE.

54. Upon information and belief, Registrant and/or its predecessor-in-interest knew that those representations were false, and made its false or misleading statements with the intent to deceive and/or induce authorized agents of the USPTO to grant, maintain, or renew the Subject Registrations.

55. Upon information and belief, the USPTO reasonably relied upon the truth of the representations of Registrant or its predecessor's representations, and did in fact grant, maintain, and renew the Subject Registrations based thereon. Upon information and belief, the USPTO would not have issued, maintained, or renewed the Subject Registrations but for Registrant or its predecessor's false or misleading representations.

56. Registrant or its predecessor's actions in the procurement, maintenance, and renewal of the Subject Registrations constitute fraud, thereby invalidating the Subject Registrations. The Subject Registrations should be cancelled in their entirety.

**AMENDED CONSOLIDATED PETITION TO
CANCEL REG. NOS. 3,559,342; 3,381,826;
3,105,816; 2,251,584; 2,219,837**

57. Petitioners are and will continue to be harmed by the continued registration of the marks shown in the Subject Registrations.

WHEREFORE, Petitioners pray that Registration Nos. 3,559,342; 3,381,826; 3,105,816; 2,251,584; 2,219,837 be cancelled and that this Consolidated Petition for Cancellation be sustained in Petitioners' favor.

Date: March 24, 2010

Respectfully submitted,

COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN
GAVIN L. CHARLSTON

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San Francisco, California 94111
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Email: trademarks@cooley.com

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that this *Amended* Consolidated Petition For Cancellation is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below.

I hereby further certify that on the date indicated below, a true and correct copy of this *Amended* Consolidated Petition For Cancellation was placed in the United States Mail, postage prepaid, addressed to the identified correspondent for this proceeding and the Subject Registrations as follows:

EDGE GAMES, INC.
530 SOUTH LAKE AVENUE, #171
PASADENA, CA 91101
UNITED STATES

Date: March 24, 2010


Gavin L. Charlston