

ESTTA Tracking number: **ESTTA399463**

Filing date: **03/23/2011**

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

Proceeding	92051465
Party	Defendant Edge Games, Inc.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
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Date	03/23/2011
Attachments	ReplyToIntervenorsResponse92051465.pdf ( 6 pages )(65904 bytes )



**REPLY TO INTERVENER’S RESPONSE TO REGISTRANT’S  
MOTION TO WITHDRAW (REVERSE) SECTION 7  
SURRENDER OF REG. NO. 3,105,816 AND TO  
PETITIONERS’ OPPOSITION THERETO**

1. First, Registrant notes that Intervener agrees that since Intervener was not a party to the civil litigation, or to the TTAB petition action, or to the settlement agreement between Registrant and Petitioners, therefore Registrant did not have the right or the authority to surrender Reg. No. 3,105,816 – either in its entirety (as happened) or at all.

2. It follows that since the registration was not divided at the time of the civil court order or the time of the settlement or at the time Registrant filed the Section 7 Surrender, therefore Registrant could not have surrendered part of this registration. The registration could only be surrendered in its entirety, or not at all.

3. Intervener suggests it would be acceptable to them that if the USPTO were to divide the registration and permit only “their” part of it to be reinstated and registered solely in their name. However, this registration is not divided and thus it cannot have part of it restored to registration – the entire registration would need to be restored, the Section 7 Surrender entirely reversed.

4. Intervener in making its suggestion, which parallel’s the suggestion made by Petitioners, is assuming what was going through the mind of the parties at the time of the settlement between Petitioners and Registrant, or was going through the mind of the court when it made the civil order. Namely, the suggestion that the registration be only partly restored to registration and put in the name of Intervener assumes that what was really intended by the court and by the parties to the settlement was that Registrant’s part

of the instant registration is what the court and the parties intended to be surrendered – not the part assigned to Intervener. But that is nowhere in the record and this suggestion and the conclusion it has implicit in the suggestion it is not supported either by civil court order or the settlement between Registrant and Petitioners. Nowhere does it say that what was intended by either the court or the parties was that only Registrant’s portion of the instant registration be surrendered. What is explicitly stated in the settlement and the civil court order is that the entirety of this registration be surrendered/canceled.

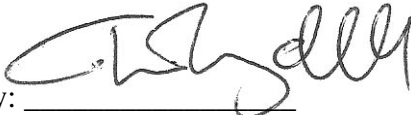
5. Registrant has previously argued, and restates here, that Petitioners made a fundamental error in not including Intervener as a defendant in the Civil Action (as they should have done) or as a defendant/co-registrant (as they should have done) in the TTAB petition to cancel action, either. Because Intervener was a part owner of the registration in question, Petitioners were obliged to include Intervener as a party to both the civil action and the TTAB petition. Even if Petitioners argue they were not aware of the joint ownership of this registration at the time of filing the petition before the TTAB, they certainly became aware of it shortly thereafter and had an obligation to add Intervener as a party (co-defendant/co-registrant). And clearly Petitioners knew about the joint ownership of this registration substantially before the civil action was first filed, and thus they had an obligation to name the Intervener in their cross-complaint/counterclaim that they filed against Registrant and the other parties to the civil action. Petitioners also knew about the Intervener’s part ownership of this registration substantially before the settlement was executed between Petitioners and Registrant, and yet denied Intervener the right to be a party to that settlement as it should have done. In short, Petitioners’ failure to include Intervener as a party in either the TTAB petition action or the civil

action renders the outcome of both those actions invalid as to this particular registration; and their failure to include Intervener as a party to the settlement also renders the settlement imperfect.

6. Consequently, the Section 7 Surrender in respect to this registration should be reversed (withdrawn) in its entirety on the basis that Registrant did not have the authority to surrender the entire registration and yet both the court order and the settlement called for a total surrender of this registration, not a partial surrender of it. For these reasons, Registrant repeats its conclusion that the USPTO should reinstate this registration (withdraw/reverse the Section 7 Surrender) and that the parties – Registrant, Petitioners and Intervener – should be left to resolve between themselves what further action should be taken in respect to this registration. The USPTO should not attempt to read the minds of the parties or read the mind of the civil court, and thus should not follow either of the proposals made by the Petitioners or Intervener.

Date: March 23, 2011

Respectfully submitted,

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2011, a true and correct copies of the attached Registrant's Reply To Intervener's Response regarding Reg. No. 3,105,816 in respect to Cancellation No. 92051465 filed by Edge Games, Inc., a California corporation, have been served by mailing said copy, via U.S. mail, postage prepaid, addressed to:

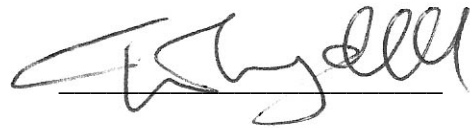
Cooley, Godward, Kronish LLP  
Attn. John W. Crittenden  
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CA 94111-5800

and to:

Trade Mark Trial & Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

and to:

Howrey  
Attn: James R Cady  
1950 University Avenue, 4<sup>th</sup> Floor  
Palo Alto, CA 94303

A handwritten signature in black ink, appearing to read 'Tim Langdell', written over a horizontal line.

Dr. Tim Langdell