



# BULKY DOCUMENTS

(Exceeds 100 pages)

Filed: 8/18/2011

Title: DEFENDANT FUTURE PUBLISHING LTD'S OPP.  
TO MOTION OF DEFENDANT EDGE GAMES INC. TO  
WITHDRAW (REVERSE) SECTION 7 SURRENDER OF  
REG. NOS. 3559342 AND 2219837 CANCELLATION NO:  
92051465.

Part 1 of 1

**92051465**

# ReedSmith

Robert N. Phillips  
Direct Phone: +1 415 659 5953  
Email: robphillips@reedsmith.com

Reed Smith LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105-3659  
+1 415 543 8700  
Fax +1 415 391 8269  
reedsmith.com

August 18, 2011

**VIA EXPRESS MAIL EM484828421 US**

Commissioner for Trademarks  
Post Office Box 1451  
Alexandria, VA 22313-1451

**Re: Defendant Future Publishing Ltd's Opposition to Motion of Defendant Edge Games Inc. to Withdraw (Reverse) Section 7 Surrender of Reg. Nos. 3,559,342 And 2,219,837  
Cancellation No.: 92051465**

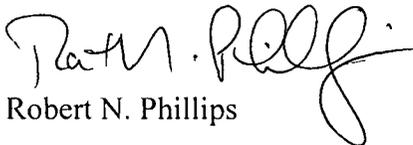
Dear Sir/Madam:

Enclosed please find the following:

1. This transmittal letter (in duplicate);
2. Defendant Future Publishing Ltd's Opposition to Motion of Defendant Edge Games Inc. to Withdraw (Reverse) Section 7 Surrender of Reg. Nos. 3,559,342 And 2,219,837
3. Declaration of Robert N. Phillips in Support of Defendant Future Publishing Ltd's Opposition to Motion of Defendant Edge Games Inc. to Withdraw (Reverse) Section 7 Surrender of Reg. Nos. 3,559,342 And 2,219,837; and
4. A self-addressed stamped postcard to evidence receipt of the above-referenced documents.

Please charge all necessary government fees or credit any overpayment to Deposit Account # 190011 in the name of Sachnoff & Weaver, Ltd., reference 362970.20001/R.N.Phillips.

Very truly yours,

  
Robert N. Phillips

Enclosures  
RNP:dk



08-18-2011

U.S. Patent & TMO/TM Mail Rout Dt #13

NEW YORK • LONDON • HONG KONG • CHICAGO • WASHINGTON, D.C. • BEIJING • PARIS • LOS ANGELES • SAN FRANCISCO • PHILADELPHIA • SHANGHAI • PITTSBURGH  
MUNICH • ABU DHABI • PRINCETON • NORTHERN VIRGINIA • WILMINGTON • SILICON VALLEY • DUBAI • CENTURY CITY • RICHMOND • GREECE • OAKLAND

US\_ACTIVE-106855224.1

**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  
and FUTURE PUBLISHING LTD, a UK  
company,

Co-Defendants.



**08-18-2011**

U.S. Patent & TMO/OTM Mail Root Ct. #11

DEFENDANT FUTURE PUBLISHING  
LTD'S OPPOSITION TO MOTION OF  
DEFENDANT EDGE GAMES INC. TO  
WITHDRAW (REVERSE) SECTION 7  
SURRENDER OF REG. NOS. 3,559,342  
AND 2,219,837

Cancellation No. 92051465

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

**I. INTRODUCTION**

In October 2010, Tim Langdell (the sole owner and alter ego of Edge Games, Inc.) quickly dismissed a frivolous trademark infringement action that he filed against Electronic Arts,

shortly after the United States District Court Judge in that action held that Mr. Langdell might face criminal penalties for making numerous willful false statements under oath to the USPTO and to the Court. As a condition of the dismissal, however, Mr. Langdell was required to stipulate that each of the five above-referenced trademark registrations containing the word EDGE would be ordered cancelled by the Court, Langdell would have to notify all alleged licensees that the marks had been cancelled, and that a copy of the Judgment of cancellation would have to be submitted to the Commissioner of Patents and Trademarks. Judgment was duly entered accordingly, which included an express directive to the Commissioner of Patents and Trademarks to cancel each and every one of the above referenced EDGE based trademarks in their entirety pursuant to Section 37 of the Lanham Act (15 U.S.C. §1119).

Mr. Langdell is now trying persuade the Board to disregard the District Court Judgment by arguing that it is of no force and effect because Future Publishing was not a named party to the litigation, yet held a partial interest in two of the marks at the time the Judgment was entered. Mr. Langdell is incorrect for several reasons. First, the Board is absolutely bound to follow a judgment of cancellation by a District Court and does not have the power or authority to disregard it. Mr. Langell's latest request to "withdraw (reverse)" two of his Section 7 surrenders because they were not co-signed by Future is a moot point, because cancellation by the Board is required based upon the District Court Judgment. A Section 7 surrender is not necessary for the Board to comply with District Court's Judgment.

Second, if Mr. Langdell truly believes the Judgment was defective, his remedy is to return to the District Court (which he obviously wants to avoid) and seek relief from the Judgment. If Mr. Langdell chooses to seek such relief (which he has not to date, and likely won't for fear of being held in contempt), the Court can then decide whether the registrations should be restored, and would clearly have the statutory power to order the Director accordingly.

Third, Mr. Langdell stipulated to the Judgment with full knowledge of his prior partial assignment of two of the registrations to Future. Indeed, these partial assignments were disclosed to the Court in a declaration submitted by Future in support of EA's position in the

Langdell action. Mr. Langdell is therefore estopped from collaterally attacking the Judgment on the basis of his partial assignments to Future.

Fourth, Future has unequivocally stated that it consents to the cancellation of the entirety of the subject registrations, thereby rendering Mr. Langdell's procedural concerns about the Judgment or his Section 7 surrenders moot.

Fifth, Registration No. 2219837 is the parent of a divided registration, and was owned in its entirety by Mr. Langdell at the time of the Judgment. Therefore, contrary to the assertions made by Mr. Langdell in his motion, Future did not have any interest in that registration at the time of the Judgment, and Mr. Langdell's subsequent surrender of it was clearly valid.

For all of the foregoing reasons, Mr. Langdell's motion to withdraw (reverse) two of his Section 7 surrenders must be denied.

## II. PROCEDURAL BACKGROUND

Langdell filed his trademark infringement complaint against EA on June 15, 2010. (Phillips Decl., ¶¶2-3.) He asserted infringement of his "family of EDGE marks", including each of the five registrations referenced above. *Id.*

Langdell also filed a motion for preliminary injunction. The Court denied the motion, and found that EA had made a compelling showing that Langdell's registrations were invalid based upon fraudulent statements and specimens submitted to the USPTO, as well as Langdell's abandonment and naked license of the marks. (Phillips Decl, ¶¶4, Ex. B, 11:17, 17:20-18:9). The Court also found that criminal penalties against Langdell may be warranted for his willful misrepresentations to the USPTO. *Id.* The Court ordered Langdell to appear for a deposition where he could be cross-examined by EA's attorneys about his fraudulent statements. (Phillips Decl, ¶5, Ex. C).

Rather than appear for his deposition, and risk criminal prosecution, Langdell quickly agreed to drop his case against EA. As a condition of the settlement, however, Langdell stipulated to a Judgment directing the Commissioner to cancel all five of his EDGE based

registrations in their entirety, and was required to notify all alleged licensees that the marks had been cancelled. The Clerk of the Court was also directed to certify a copy of the Final Judgment of cancellation to the Commissioner of the Patent and Trademark Office. (Phillips Decl, ¶6, Exs. D and E). The Court entered Final Judgment accordingly on October 8, 2010, which states in pertinent part:

Pursuant to Section 37 of the Lanham Act, 15 U.S.C. §1119, the Commissioner of Patents and Trademarks and the Assistance Commissioner for Trademarks are hereby ordered to cancel U.S. Trademark Registration Nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826. The Clerk of the Court is further directed to certify a copy of this final judgment and a copy of the order denying plaintiff's motion for preliminary injunction to the Commissioner of the Patent and Trademark Office. Each party shall bear its own costs and fees in this matter.

Future Publishing was well aware of the Langdell/EA case, and submitted a declaration in opposition to Langdell's motion for preliminary injunction. (Phillips Decl, ¶7, Ex. F) The declaration disclosed to the Court the partial assignment of two of the EDGE based marks to Future. *Id.* The partial assignments were also referenced by Langdell in the long running UK litigation between Future and Langdell, which recently concluded in Future's favor. (Phillips Decl, ¶8, Ex. G and H). Thus, Langdell was clearly aware of the partial assignments at the time he dropped his case against EA and agreed to a Judgment ordering the Commissioner to cancel his EDGE based marks in their entirety.

Langdell has not filed any motion to the District Court seeking to vacate, modify or otherwise seek relief from the Judgment. (Phillips Decl, ¶9)

Future Publishing consents to the cancellation of all five above-referenced registrations in their entirety and Future does not intend to raise any objections to Judgment with the District Court. (Phillips Decl, ¶10)

Registration No. 2219837 is the parent of a divided registration and was owned in its entirety by Edge Games, Inc. at the time of the Judgment ordering that it be cancelled. The child registration is Registration No. 3,713,604 issued to Future Publishing Ltd. pursuant to a Notice

of Divided Trademark Application dated November 7, 2009 and a Registration Certificate dated December 8, 2009. (Phillips Decl, ¶11).

### III. ARGUMENT

Langdell incorrectly argues, without authority, that the Trademark Trial and Appeal Board is not obligated to comply with the United States District Court for the Northern District of California's Final Judgment that U.S. Trademark Registrations Nos. 2,219,837, 2,251,584, 3,105,816, 3,559,342 and 3,381, 826 be cancelled. Pursuant to 15 U.S.C. § 1119, federal courts not only have concurrent jurisdiction with the TTAB over issues relating to the registration and cancellation of trademarks, but "orders shall be certified to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and *shall be controlled thereby.*" 15 U.S.C. §1119 (emphasis added). Notably, Section 1119 does not except or make any distinctions between different types of orders. Thus, contrary to Langdell's argument, and in accordance with the fundamental statutory canon that words be interpreted as taking their ordinary meaning, unless otherwise defined, *Perrin v. United States*, 447 U.S. 37, 42 (1979) (citing *Burns v. Alcala*, 420 U.S. 575, 580-81 (1975)), the controlling aspect of Section 1119 applies to all court orders (whether pursuant to a stipulation of the parties or an adjudication by a court or jury).

Courts are in agreement that Section 1119 directives are binding on the TTAB and USPTO. *Nolan, LLC v. EZ Moving & Storage*, 2005 WL 2063949 at \*1 (E.D. Mich. Aug. 24, 2005) (finding that decisions by the federal court are binding on the TTAB And USPTO); *Aktieselskabet AF 21. November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 12-13 (D.C. Cir. 2008) (finding that District Courts may order the PTO to cancel a registration in whole or in part or to restore a canceled registration). Likewise, as the Federal Circuit made clear in *In re Wella A.G.*, an inferior court, or administrative agency, such as the TTAB, has "no power or authority to deviate from the mandate issued by a[] [reviewing] court." 858 F.2d 725, 728, 8 USPQ2d 1365, 1368 (Fed. Cir. 1988) (citing *Briggs v. Pennsylvania R.R.*, 334, U.S. 304, 306 (1948), *Fed Power*

*Comm'n v. Pacific Co.*, 307 U.S. 156, 160 (1939). Moreover, the Supreme Court has held that "deviation from a court's remand order in a subsequent administrative proceeding is legal error, [and] subject to reversal on further judicial review . . . ." *Sullivan v. Hudson*, 490 U.S. 877 (1989). Thus, the Board must follow the Final Judgment of the District Court and cancel all of the above referenced registrations. (See Future's Motion for Cancellation of Registration No. 3105816 filed July 28, 2011). If Langdell believes there were defects in the Final Judgment, his remedy is to return to District Court and file a proper motion, and not try to block the TTAB from complying with the Judgment.

Regardless, Mr. Langdell stipulated to the Judgment with full knowledge of his prior partial assignment of two of the registrations to Future. Indeed, these partial assignments were disclosed to the Court in a declaration submitted by Future in support of EA's position in the Langdell action. Mr. Langdell is therefore estopped from collaterally attacking the Judgment on the basis of the partial assignments to Future.

Moreover, Future has unequivocally stated that it consents to the cancellation of the entirety of the subject registrations, thereby rendering Mr. Langdell's procedural concerns about the Judgment or his Section 7 surrenders moot.

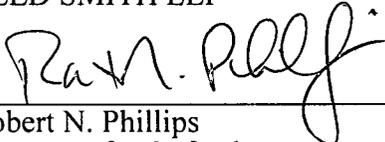
Finally, Registration No. 2219837 is the parent of a divided registration, and was owned in its entirety by Mr. Langdell at the time of the Judgment. Therefore, contrary to the assertions made by Mr. Langdell in his motion, Future did not have any interest in that registration at the time of the Judgment, and Mr. Langdell's subsequent surrender of it was clearly valid.

For all of the foregoing reasons, Mr. Langdell's motion to withdraw (reverse) two of his Section 7 surrenders must be denied.

Dated: August 18, 2011

REED SMITH LLP

By: \_\_\_\_\_

  
Robert N. Phillips  
Attorneys for Defendant  
Future Publishing Limited

Certificate Of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, its is hereby certified that a true copy of the foregoing Defendant Future Publishing Ltd's Opposition To Motion Of Defendant Edge Games Inc. To Withdraw (Reverse) Section 7 Surrender Of Reg. Nos. 3,559,342 And 2,219,837 was served on the following counsel of record for Applicant, by depositing same in the U.S. Mail, first class postage prepaid, this 18 day of August, 2011:

Tim Langdell  
Edge Games Inc.  
530 South Lake Avenue, #171  
Pasadena, CA 91101

Gavin L. Charlston  
COOLEY LLP  
101 California Street, 5<sup>th</sup> Floor  
San Francisco, CA 94111-5800



Deborah L. Kalahela

**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  
and FUTURE PUBLISHING LTD, a UK  
company,

Co-Defendants.

DECLARATION OF ROBERT N.  
PHILLIPS IN SUPPORT OF  
DEFENDANT FUTURE PUBLISHING  
LTD'S OPPOSITION TO MOTION OF  
DEFENDANT EDGE GAMES INC. TO  
WITHDRAW (REVERSE) SECTION 7  
SURRENDER OF REG. NOS. 3559,342  
AND 2,219,837

Cancellation No. 92051465

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

I, Robert N. Phillips, declare:

1. I am an attorney at law licensed to practice in the State of California and a partner of Reed Smith LLP, attorneys of record for defendant Future Publishing Limited. The matters

set forth in this declaration are based upon my personal knowledge, except where otherwise indicated, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the docket for the action entitled Edge Games, Inc. v. Electronic Arts, Inc., Case No. 3:10-cv-02614-WHA in the United States District Court for the Northern District of California ("the Langdell Action).

3. A copy of the complaint that was filed in the Langdell Action can be found at Document No. 26 in this Board proceeding.

4. Attached hereto as Exhibit B is a true and correct copy of the October 1, 2010 Order Denying Preliminary Injunction in the Langdell Action, which is referenced as docket no. 67 in the Langdell Action docket sheet attached as Exhibit A.

5. Attached hereto as Exhibit C is a true and correct copy of the October 4, 2010 Order Regarding Depositions Pertaining to Fraud Allegations in the Langdell Action, which is referenced as docket no. 69 in the Langdell Action docket sheet attached as Exhibit A.

6. Attached hereto as Exhibits D and E respectively are true and correct copies of the Court's October 8, 2010 Order Approving the Stipulation Regarding the Disposition of Claims and Proposed Judgment Subject to Stated Conditions, and October 8, 2010 Final Judgment, which are referenced as docket nos. 77 and 78 in the Langdell Action docket sheet at Exhibit A.

7. Attached hereto as Exhibit F is a true and correct copy of the Declaration of James Binns in Opposition to Plaintiff Edge Games, Inc.'s Motion for Preliminary Injunction. In the declaration, Mr. Binns states that is an employee of Future Publishing Limited, and discloses the partial assignments of two of Langdell's EDGE based registrations to Future (see paragraphs 14 and 15).

8. Attached hereto as Exhibits G and H respectively are true and correct copies of the June 13, 2011 Judgment and July 7, 2011 Order of the High Court of Justice Chancery Division in the United Kingdom in a civil action between Future Publishing Limited and The Edge Interactive Media, Inc., Edge Games, Inc. and Dr. Timothy Langdell. Paragraphs 57 and

58 of Exhibit G indicate that Langdell made reference to the partial assignments in that proceeding as well.

9. According to the docket sheet in the Langdell Action, plaintiff Edge Games, Inc. (e.g. Dr. Langdell) has not filed any motion seeking to vacate, modify or otherwise seek relief from the Judgment directing the Commissioner of Patents and Trademarks to cancel the referenced EDGE based registrations.

10. My client Future Publishing consents to the cancellation of the referenced EDGE based registrations and has no objection to the Judgment in the Langdell Action.

11. Registration No. 2219837 is the parent of a divided registration and was owned in its entirety by Edge Games, Inc. at the time of the Judgment ordering that it be cancelled. The child registration is Registration No. 3,713,604 issued to Future Publishing Ltd. pursuant to a Notice of Divided Trademark Application dated November 7, 2009 and Registration Certificate dated December 8, 2009..

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 18th day of August, 2011, at San Francisco, California.

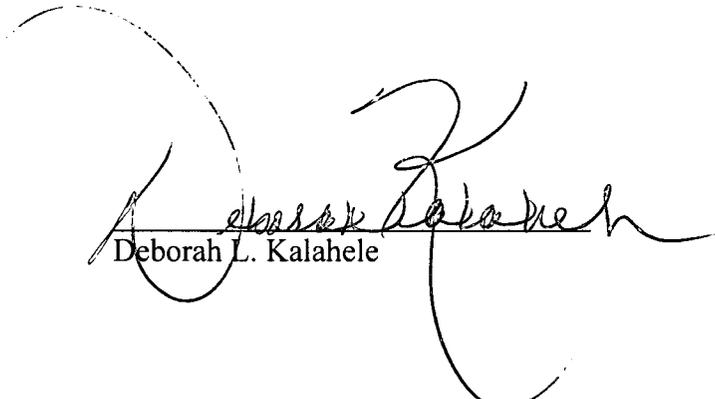
By:   
Robert N. Phillips

Certificate Of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, its is hereby certified that a true copy of the foregoing **Declaration of Robert N. Phillips In Support Of Defendant Future Publishing Ltd's Opposition To Motion Of Defendant Edge Games Inc. To Withdraw (Reverse) Section 7 Surrender Of Reg. Nos. 3559,342 and 2,219,837** was served on the following counsel of record for Applicant, by depositing same in the U.S. Mail, first class postage prepaid, this 18 day of August, 2011:

Tim Langdell  
Edge Games Inc.  
530 South Lake Avenue, #171  
Pasadena, CA 91101

Gavin L. Charlston  
COOLEY LLP  
101 California Street, 5<sup>th</sup> Floor  
San Francisco, CA 94111-5800

  
Deborah L. Kalahela

# EXHIBIT A

ADRMOP, AO279, CLOSED, E-Filing, MEDIATION

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:10-cv-02614-WHA**

Edge Games, Inc. v. Electronic Arts Inc.,  
Assigned to: Hon. William Alsup  
Demand: \$0  
Cause: 15:1114 Trademark Infringement

Date Filed: 06/15/2010  
Date Terminated: 10/08/2010  
Jury Demand: Both  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**Edge Games, Inc.**  
*a California corporation*

represented by **Daniel McArthur Shafer** ,  
The Lanier Law Firm, P.C.  
2200 Geng Road  
Suite 200  
Palo Alto, CA 94303  
650-322-9100  
Fax: 650-322-9103  
Email: dms@lanierlawfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christopher D. Banys**  
The Lanier Law Firm, P.C.  
2200 Geng Road, Suite 200  
Palo Alto, CA 94303  
(650) 322-9100  
Fax: (650) 322-9103  
Email: cdb@lanierlawfirm.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Electronic Arts Inc.,**  
*a Delaware corporation*

represented by **Joshua M. Rodin**  
Kendall Brill & Klieger LLP  
10100 Santa Monica Blvd.  
Suite 1725  
Los Angeles, CA 90067  
310-272-7913  
Fax: 310-556-2705  
Email: jrodin@kbfkfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Robert N Klieger**

Kendall Brill & Klieger LLP  
10100 Santa Monica Blvd  
Suite 1725  
Los Angeles, CA 90067  
310-272-7933  
Email: rklieger@kbfkfirm.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Alan S. Nemes ,**  
Husch Blackwell LLP  
190 Carondelet Plaza  
Suite 600  
St. Louis, MO 64105  
314-345-6461  
Fax: 314-480-1505  
Email:  
alan.nemes@huschblackwell.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Counter-claimant**

**EA Digital Illusions CE AB**  
*a Swedish corporation*

represented by **Joshua M. Rodin**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Robert N Klieger**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Counter-claimant**

**Electronic Arts Inc.,**  
*a Delaware corporation*

represented by **Joshua M. Rodin**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Robert N Klieger**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Alan S. Nemes ,**  
(See above for address)  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Counter-defendant**

**The Edge Interactive Media, Inc.**

represented by **Christopher D. Banys**  
The Lanier Law Firm  
2200 Geng Road  
Suite 200  
Palo Alto, CA 94303  
650-322-9100  
Fax: 650-322-9103  
Email: [cdb@lanierlawfirm.com](mailto:cdb@lanierlawfirm.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Daniel McArtur Shafer**  
The Lanier Law Firm, P.C.  
2200 Geng Road  
Suite 200  
Palo Alto, CA 94303  
650-322-9100  
Fax: 650-322-9103  
Email: [dms@lanierlawfirm.com](mailto:dms@lanierlawfirm.com)  
*ATTORNEY TO BE NOTICED*

**Counter-defendant**

**Edge Games, Inc.**  
*a California corporation*

represented by **Daniel McArtur Shafer ,**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christopher D. Banys**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Counter-claimant**

**Edge Games, Inc.**  
*a California corporation*

represented by **Daniel McArtur Shafer ,**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christopher D. Banys**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Counter-defendant**

**EA Digital Illusions CE AB**  
*a Swedish corporation*

represented by **Joshua M. Rodin**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Robert N Klieger**  
 (See above for address)  
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/15/2010	<u>1</u>	COMPLAINT for Trademark Infringement, False Designation of Origin, Unfair Competition & Unjust Enrichment & Jury Trial Demanded - [Summons Issued]against Electronic Arts Inc., [Filing Fee: \$350.00, Receipt Number 54611007529]. Filed by Plaintiff Edge Games, Inc.. (Attachments: #(1) Civil Cover Sheet). (tn, COURT STAFF) (Filed on 6/15/2010) (Entered: 06/16/2010)
06/15/2010	2	SUMMONS Issued as to Defendant Electronic Arts Inc.. (tn, COURT STAFF) (Filed on 6/15/2010) (Entered: 06/16/2010)
06/15/2010	<u>3</u>	ADR SCHEDULING ORDER: Joint Case Management Statement due 11/22/2010 & InitialCase Management Conference set for 11/29/2010 at 4:00 PM.. (tn, COURT STAFF) (Filed on 6/15/2010) (Entered: 06/16/2010)
06/15/2010	<u>4</u>	REPORT on the Filing or Determination of an Action Regarding Trademark Infringement. (cc: form mailed to register). (tn, COURT STAFF) (Filed on 6/15/2010) (Entered: 06/16/2010)
06/15/2010		CASE DESIGNATED for Electronic Filing. (tn, COURT STAFF) (Entered: 06/16/2010)
06/17/2010	<u>5</u>	Certificate of Interested Entities by Edge Games, Inc. <i>Disclosure Statement</i> (Banys, Christopher) (Filed on 6/17/2010) (Entered: 06/17/2010)
07/02/2010	6	<i>First Amended Complaint For Trademark Infringement, False Designation Of Origin, Unfair Competition, and Unjust Enrichment</i> against Electronic Arts Inc., Filed by Edge Games, Inc.. (Attachments: #(1) Exhibit Exhibit A, #(2) Exhibit Exhibit B, #(3) Exhibit Exhibit C, #(4) Exhibit Exhibit D, #(5) Exhibit Exhibit E, # <u>6</u> Exhibit Exhibit F, #(7) Exhibit Exhibit G, #(8) Exhibit Exhibit H, #(9) Exhibit Exhibit I, #(10) Exhibit Exhibit J, #(11) Exhibit Exhibit K) (Banys, Christopher) (Filed on 7/2/2010) (Entered: 07/02/2010)
07/07/2010	7	STIPULATION re 6 Amended Complaint,, <i>to Extend Defendant's Time to Respond to First Amended Complaint</i> by Edge Games, Inc.. (Banys, Christopher) (Filed on 7/7/2010) (Entered: 07/07/2010)
07/07/2010	8	Declination to Proceed Before a U.S. Magistrate Judge by Electronic Arts Inc., (Rodin, Joshua) (Filed on 7/7/2010) (Entered: 07/07/2010)
07/07/2010	<u>9</u>	NOTICE by Electronic Arts Inc., <i>of Rule 7.1 Corporate Disclosure Statement</i> (Rodin, Joshua) (Filed on 7/7/2010) (Entered: 07/07/2010)
07/07/2010	<u>10</u>	Certificate of Interested Entities by Electronic Arts Inc., (Rodin, Joshua) (Filed on 7/7/2010) (Entered: 07/07/2010)
07/08/2010	<u>11</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (ahy, COURT STAFF) (Filed on 7/8/2010) (Entered: 07/08/2010)

07/08/2010	<u>12</u>	Certificate of Interested Entities by Edge Games, Inc. (Shafer, Daniel) (Filed on 7/8/2010) (Entered: 07/08/2010)
07/08/2010	<u>13</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. William H. Alsup for all further proceedings. Judge Magistrate Judge Bernard Zimmerman no longer assigned to the case. Signed by Judge Executive Committee on 7/8/10. (mab, COURT STAFF) (Filed on 7/8/2010) (Entered: 07/08/2010)
07/13/2010	<u>14</u>	CLERKS NOTICE Rescheduling ICMC on Reassignment. Case Management Statement due by 9/9/2010. Case Management Conference set for 9/16/2010 11:00 AM. (dt, COURT STAFF) (Filed on 7/13/2010) (Entered: 07/13/2010)
07/13/2010	<u>15</u>	SUPPLEMENTAL ORDER TO ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE re <u>14</u> Clerks Notice. Signed by Judge William Alsup on 11/20/08. (dt, COURT STAFF) (Filed on 7/13/2010) (Entered: 07/13/2010)
08/20/2010	<u>16</u>	MOTION for Preliminary Injunction filed by Edge Games, Inc.. Motion Hearing set for 9/23/2010 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Banys, Christopher) (Filed on 8/20/2010) (Entered: 08/20/2010)
08/20/2010	<u>17</u>	Declaration of Dr. Tim Langdell in Support of <u>16</u> MOTION for Preliminary Injunction filed by Edge Games, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y, # <u>26</u> Exhibit Z, # <u>27</u> Exhibit AA, # <u>28</u> Exhibit BB, # <u>29</u> Exhibit CC, # <u>30</u> Exhibit DD, # <u>31</u> Exhibit EE, # <u>32</u> Exhibit FF, # <u>33</u> Exhibit GG)(Related document(s) <u>16</u> ) (Banys, Christopher) (Filed on 8/20/2010) (Entered: 08/20/2010)
08/20/2010	<u>18</u>	Declaration of Daniel M. Shafer in Support of <u>16</u> MOTION for Preliminary Injunction filed by Edge Games, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P)(Related document (s) <u>16</u> ) (Banys, Christopher) (Filed on 8/20/2010) (Entered: 08/20/2010)
08/20/2010	<u>19</u>	Proposed Order re <u>16</u> MOTION for Preliminary Injunction by Edge Games, Inc.. (Banys, Christopher) (Filed on 8/20/2010) (Entered: 08/20/2010)
08/20/2010	<u>20</u>	NOTICE by Edge Games, Inc. re <u>16</u> MOTION for Preliminary Injunction <i>Notice of Corrected Date on Caption</i> (Shafer, Daniel) (Filed on 8/20/2010) (Entered: 08/20/2010)
08/23/2010	<u>21</u>	ORDER REGARDING PRELIMINARY INJUNCTION HEARING. Signed by Judge Alsup on August 23, 2010. (whalc1, COURT STAFF) (Filed on 8/23/2010) (Entered: 08/23/2010)
08/23/2010	<u>22</u>	NOTICE by Edge Games, Inc. re <u>16</u> MOTION for Preliminary Injunction <i>Amended Notice of Corrected Date for Preliminary Injunction</i> (Shafer, Daniel) (Filed on 8/23/2010) (Entered: 08/23/2010)

08/23/2010		Set/Reset Deadlines as to <u>16</u> MOTION for Preliminary Injunction. Motion Hearing set for 9/30/2010 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (wsn, COURT STAFF) (Filed on 8/23/2010) (Entered: 08/24/2010)
08/26/2010	<u>23</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Shafer, Daniel) (Filed on 8/26/2010) (Entered: 08/26/2010)
08/26/2010	<u>24</u>	STIPULATION and Proposed Order selecting Private ADR by Edge Games, Inc. (Shafer, Daniel) (Filed on 8/26/2010) (Entered: 08/26/2010)
08/26/2010	<u>25</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Klieger, Robert) (Filed on 8/26/2010) (Entered: 08/26/2010)
08/29/2010	<u>26</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210.) filed by Electronic Arts Inc.,. (Attachments: # <u>1</u> Proposed Order)(Rodin, Joshua) (Filed on 8/29/2010) (Entered: 08/29/2010)
08/29/2010	<u>27</u>	ANSWER to Amended Complaint by Electronic Arts Inc.,. (Klieger, Robert) (Filed on 8/29/2010) (Entered: 08/29/2010)
08/29/2010	<u>28</u>	COUNTERCLAIM against Edge Games, Inc., The Edge Interactive Media, Inc.. Filed by Electronic Arts Inc.,. (Klieger, Robert) (Filed on 8/29/2010) (Entered: 08/29/2010)
08/30/2010	<u>29</u>	MOTION for leave to appear in Pro Hac Vice - Alan S. Nemes ( Filing fee \$ 210, receipt number 34611049928) filed by Electronic Arts Inc. (Attachments: # <u>1</u> Proposed Order)(wsn, COURT STAFF) (Filed on 8/30/2010) (Entered: 08/30/2010)
09/02/2010	<u>30</u>	AMENDED MOTION for leave to appear in Pro Hac Vice - Alan S. Nemes ( Filing fee \$ 210, receipt number 34611049928) filed by EA Digital Illusions CE AB, Electronic Arts Inc. (Attachments: # <u>1</u> Proposed Order)(Rodin, Joshua) (Filed on 9/2/2010) Modified on 9/3/2010 (wsn, COURT STAFF). (Entered: 09/02/2010)
09/03/2010	<u>31</u>	Summons Issued as to Edge Games, Inc., The Edge Interactive Media, Inc. (wsn, COURT STAFF) (Filed on 9/3/2010) (Entered: 09/03/2010)
09/07/2010	<u>32</u>	ORDER GRANTING PRO HAC VICE APPLICATION OF NEMES by Judge Alsup granting <u>30</u> Motion for Pro Hac Vice (whalc1, COURT STAFF) (Filed on 9/7/2010) (Entered: 09/07/2010)
09/08/2010	<u>33</u>	STIPULATION to Continue Date of Initial Case Management Conference by Edge Games, Inc.. (Shafer, Daniel) (Filed on 9/8/2010) (Entered: 09/08/2010)
09/08/2010	<u>34</u>	Proposed Order re <u>33</u> Stipulation to Continue Date of Initial Case Management Conference by Edge Games, Inc.. (Shafer, Daniel) (Filed on 9/8/2010) (Entered: 09/08/2010)
09/10/2010	<u>35</u>	*** FILED IN ERROR. PLEASE SEE DOCKET # <u>36</u> ***  Reply to Opposition re <u>16</u> MOTION for Preliminary Injunction filed by Electronic Arts Inc. (Klieger, Robert) (Filed on 9/10/2010) Modified on 9/13/2010 (wsn, COURT STAFF). (Entered: 09/10/2010)

09/10/2010	<u>36</u>	Memorandum in Opposition re <u>16</u> MOTION for Preliminary Injunction filed by Electronic Arts Inc. (Klieger, Robert) (Filed on 9/10/2010). CORRECTION OF DOCKET # <u>35</u> . Modified on 9/13/2010 (wsn, COURT STAFF). (Entered: 09/10/2010)
09/10/2010	<u>37</u>	Declaration of Walter Eli Bard in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>38</u>	Declaration of James Binns in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>39</u>	Declaration of Jonathan Correa in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>40</u>	Declaration of Lincoln Hershberger in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>41</u>	Declaration of Jacob Schatz in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Attachments: # <u>1</u> Exhibit M, # <u>2</u> Exhibit N-S)(Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>42</u>	Request for Judicial Notice re <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Attachments: # <u>1</u> Exhibit A-T, # <u>2</u> Exhibit U-PP, # <u>3</u> Exhibit QQ-VV, # <u>4</u> Exhibit WW-YY)(Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>43</u>	Declaration of Robert N. Klieger in Support of <u>36</u> Memorandum in Opposition filed by Electronic Arts Inc.,. (Attachments: # <u>1</u> Exhibit A-R, # <u>2</u> Exhibit S-U, # <u>3</u> Exhibit V-Y)(Related document(s) <u>36</u> ) (Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/10/2010	<u>44</u>	MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION for Preliminary Injunction filed by Electronic Arts Inc.,. (Attachments: # <u>1</u> Affidavit Robert N. Klieger, # <u>2</u> Proposed Order)(Klieger, Robert) (Filed on 9/10/2010) (Entered: 09/10/2010)
09/13/2010	<u>45</u>	ORDER REGARDING MOTION TO EXTEND TIME. Signed by Judge Alsup on September 13, 2010. (whalc1, COURT STAFF) (Filed on 9/13/2010) (Entered: 09/13/2010)
09/14/2010	<u>46</u>	Statement re <u>45</u> Order <i>Statement of Non-Opposition to Defendants' Motion to Extend Time</i> by Edge Games, Inc.. (Banys, Christopher) (Filed on 9/14/2010) (Entered: 09/14/2010)
09/14/2010	<u>47</u>	ORDER GRANTING UNOPPOSED MOTION TO EXTEND TIME by Judge Alsup granting <u>44</u> Motion for Extension of Time to File Response/Reply (whalc1, COURT STAFF) (Filed on 9/14/2010) (Entered: 09/14/2010)
09/14/2010	<u>48</u>	ORDER CONTINUING CASE MANAGEMENT CONFERENCE TO SEPTEMBER 30. Signed by Judge Alsup on September 14, 2010. (whalc1,

		COURT STAFF) (Filed on 9/14/2010) (Entered: 09/14/2010)
09/14/2010		Set/Reset Deadlines:, Set/Reset Hearings: Case Management Statement due by 9/23/2010. Case Management Conference set for 9/30/2010 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (wsn, COURT STAFF) (Filed on 9/14/2010) (Entered: 09/15/2010)
09/17/2010	<u>49</u>	Reply to Opposition re <u>16</u> MOTION for Preliminary Injunction filed byEdge Games, Inc.. (Banys, Christopher) (Filed on 9/17/2010) (Entered: 09/17/2010)
09/17/2010	<u>50</u>	Declaration of Nicholas S. Mancuso in Support of <u>49</u> Reply to Opposition to Motion for Preliminary Injunction filed byEdge Games, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Related document(s) <u>49</u> ) (Banys, Christopher) (Filed on 9/17/2010) (Entered: 09/17/2010)
09/17/2010	<u>51</u>	STIPULATION re <u>49</u> Reply to Opposition <i>Stipulation for Extension of Time to File Reply to Opposition to Motion for Preliminary Injunction</i> by Edge Games, Inc.. (Attachments: # <u>1</u> Proposed Order Proposed Order)(Banys, Christopher) (Filed on 9/17/2010) (Entered: 09/17/2010)
09/17/2010	<u>52</u>	Declaration of Christopher D. Banys in Support of <u>51</u> Stipulation, for <i>Extension of Time to File Reply to Opposition to Motion for Preliminary Injunction</i> filed byEdge Games, Inc.. (Related document(s) <u>51</u> ) (Banys, Christopher) (Filed on 9/17/2010) (Entered: 09/17/2010)
09/21/2010	<u>53</u>	ORDER GRANTING STIPULATED REQUEST TO EXTEND TIME. Signed by Judge Alsup on September 21, 2010. (whalc1, COURT STAFF) (Filed on 9/21/2010) (Entered: 09/21/2010)
09/23/2010	<u>54</u>	Certificate of Interested Entities by EA Digital Illusions CE AB identifying Corporate Parent Electronic Arts Inc. for EA Digital Illusions CE AB. (Rodin, Joshua) (Filed on 9/23/2010) (Entered: 09/23/2010)
09/23/2010	<u>55</u>	JOINT CASE MANAGEMENT STATEMENT <i>and Rule 26(f) Report</i> filed by EA Digital Illusions CE AB, Electronic Arts Inc., (Rodin, Joshua) (Filed on 9/23/2010) (Entered: 09/23/2010)
09/23/2010	<u>56</u>	COUNTERCLAIM to Counterclaim against EA Digital Illusions CE AB. Filed byEdge Games, Inc.. (Banys, Christopher) (Filed on 9/23/2010) (Entered: 09/23/2010)
09/23/2010	<u>57</u>	MOTION to Bifurcate <i>Discovery &amp; Dispositive Motions re Trademark Invalidity</i> filed by EA Digital Illusions CE AB, Electronic Arts Inc., Motion Hearing set for 10/28/2010 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Attachments: # <u>1</u> Proposed Order)(Rodin, Joshua) (Filed on 9/23/2010) (Entered: 09/23/2010)
09/23/2010	<u>58</u>	Declaration of Joshua M. Rodin in Support of <u>57</u> MOTION to Bifurcate <i>Discovery &amp; Dispositive Motions re Trademark Invalidity</i> filed byEA Digital Illusions CE AB, Electronic Arts Inc., (Related document(s) <u>57</u> ) (Rodin, Joshua) (Filed on 9/23/2010) (Entered: 09/23/2010)
09/23/2010	<u>59</u>	ANSWER to Counterclaim byEdge Games, Inc.. (Banys, Christopher) (Filed on 9/23/2010) (Entered: 09/23/2010)

09/24/2010	60	CLERKS NOTICE Rescheduling Hearing. Motion Hearing and Case Management Conference set for 9/30/2010 02:00 PM. (dt, COURT STAFF) (Filed on 9/24/2010) (Entered: 09/24/2010)
09/24/2010	61	Certificate of Interested Entities by The Edge Interactive Media, Inc. (Shafer, Daniel) (Filed on 9/24/2010) (Entered: 09/24/2010)
09/24/2010		Set/Reset Hearings: Case Management Conference set for 9/30/2010 02:00 PM in Courtroom 9, 19th Floor, San Francisco. (wsn, COURT STAFF) (Filed on 9/24/2010) (Entered: 09/27/2010)
09/28/2010	62	Proposed Order <i>re Application for Electronic Equipment to be Brought into the Federal Building</i> by Edge Games, Inc.. (Shafer, Daniel) (Filed on 9/28/2010) (Entered: 09/28/2010)
09/29/2010	63	ORDER ALLOWING A/V EQUIPMENT TO BE BROUGHT INTO COURTROOM ON SEPTEMBER 30. Signed by Judge Alsup on September 29, 2010. (whalc1, COURT STAFF) (Filed on 9/29/2010) (Entered: 09/29/2010)
09/29/2010	64	MOTION to Dismiss <u>28</u> COUNTERCLAIM against <i>Edge Games, Inc., The Edge Interactive Media, Inc., Filed by Electronic Arts Inc.</i> filed by The Edge Interactive Media, Inc. Motion Hearing set for 11/4/2010 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Shafer, Daniel) (Filed on 9/29/2010) Modified on 9/29/2010 (wsn, COURT STAFF). (Entered: 09/29/2010)
09/29/2010	65	Proposed Order re 64 MOTION to Dismiss <i>Counterclaim</i> by The Edge Interactive Media, Inc.. (Shafer, Daniel) (Filed on 9/29/2010) (Entered: 09/29/2010)
09/30/2010	66	CASE MANAGEMENT SCHEDULING ORDER: ORDER REFERRING CASE to ADR Unit for Mediation. Discovery due by 6/30/2011. Jury Trial set for 10/24/2011 07:30 AM in Courtroom 9, 19th Floor, San Francisco. Motions due by 9/1/2011. Pretrial Conference set for 10/17/2011 02:00 PM in Courtroom 9, 19th Floor, San Francisco. Signed by Judge William Alsup on 9/30/2010. (whasec, COURT STAFF) (Filed on 9/30/2010) (Entered: 09/30/2010)
09/30/2010	72	Minute Entry: Initial Case Management Conference held on 9/30/2010 before William Alsup (Date Filed: 9/30/2010), Motion Hearing held on 9/30/2010 before William Alsup (Date Filed: 9/30/2010) re <u>16</u> MOTION for Preliminary Injunction filed by Edge Games, Inc., Case referred to mediation. Jury Trial set for 10/24/2011 07:30 AM. Pretrial Conference set for 10/17/2011 02:00 PM. (Court Reporter Connie Kuhl.) (dt, COURT STAFF) (Date Filed: 9/30/2010) (Entered: 10/06/2010)
10/01/2010	67	ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION by Judge Alsup denying <u>16</u> Motion for Preliminary Injunction (whalc1, COURT STAFF) (Filed on 10/1/2010) (Entered: 10/01/2010)
10/01/2010	68	ORDER REGARDING EVIDENCE PRESERVATION AND DENYING DEFENDANT'S MOTION TO BIFURCATE THE PROCEEDINGS by Judge Alsup denying <u>57</u> Motion to Bifurcate (whalc1, COURT STAFF) (Filed on

		10/1/2010) (Entered: 10/01/2010)
10/04/2010	<u>69</u>	ORDER REGARDING DEPOSITIONS PERTAINING TO FRAUD ALLEGATIONS. Signed by Judge Alsup on October 4, 2010. (whalc1, COURT STAFF) (Filed on 10/4/2010) (Entered: 10/04/2010)
10/05/2010	<u>70</u>	NOTICE by Edge Games, Inc. re <u>68</u> Order on Motion to Bifurcate <i>Certification Regarding Evidence Preservation</i> (Shafer, Daniel) (Filed on 10/5/2010) (Entered: 10/05/2010)
10/05/2010	<u>71</u>	NOTICE by EA Digital Illusions CE AB, Electronic Arts Inc., re <u>68</u> Order on Motion to Bifurcate <i>Certification Regarding Evidence Preservation</i> (Rodin, Joshua) (Filed on 10/5/2010) (Entered: 10/05/2010)
10/06/2010	<u>73</u>	STIPULATION <i>Regarding Disposition of Claims and [Proposed] Order</i> by Edge Games, Inc., The Edge Interactive Media, Inc.. (Attachments: # <u>1</u> Exhibit A)(Banys, Christopher) (Filed on 10/6/2010) (Entered: 10/06/2010)
10/06/2010	<u>74</u>	Proposed Order re <u>73</u> Stipulation <i>Regarding Disposition of Claims</i> by Edge Games, Inc., The Edge Interactive Media, Inc.. (Banys, Christopher) (Filed on 10/6/2010) (Entered: 10/06/2010)
10/06/2010	<u>75</u>	Joint MOTION to Vacate <i>Court's Order Regarding Depositions Pertaining to Fraud Allegations and [Proposed] Order</i> filed by Edge Games, Inc., The Edge Interactive Media, Inc.. (Banys, Christopher) (Filed on 10/6/2010) (Entered: 10/06/2010)
10/06/2010	<u>76</u>	ORDER VACATING THE COURT'S PRIOR ORDERS REGARDING DEPOSITIONS by Judge Alsup granting <u>75</u> Motion to Vacate (whalc1, COURT STAFF) (Filed on 10/6/2010) (Entered: 10/06/2010)
10/08/2010	<u>77</u>	ORDER APPROVING THE PARTIES' STIPULATION REGARDING THE DISPOSITION OF CLAIMS AND PROPOSED JUDGMENT SUBJECT TO STATED CONDITIONS. Signed by Judge Alsup on October 8, 2010. (whalc1, COURT STAFF) (Filed on 10/8/2010) (Entered: 10/08/2010)
10/08/2010	<u>78</u>	FINAL JUDGMENT. Signed by Judge Alsup on October 8, 2010. (whalc1, COURT STAFF) (Filed on 10/8/2010) (Entered: 10/08/2010)
10/12/2010		Mailed certified copies of <u>67</u> ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION and <u>78</u> FINAL JUDGMENT to: Mail Stop 8, Director of the USPTO, PO Box 1450, Alexandria, VA 22313-1450. (wsn, COURT STAFF) (Filed on 10/12/2010) (Entered: 10/12/2010)
10/15/2010	<u>79</u>	NOTICE by Edge Games, Inc. re <u>77</u> Order <i>Regarding Sworn Declaration Regarding Notice to Licensees</i> (Shafer, Daniel) (Filed on 10/15/2010) (Entered: 10/15/2010)
01/05/2011	<u>80</u>	Transcript of Proceedings held on 9-30-2010, before Judge William Alsup. Court Reporter/Transcriber Connie McCarthy Kuhl, Telephone number 415-431-2020. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction.After that date it may be obtained through

PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 4/5/2011. (ck, COURT STAFF) (Filed on 1/5/2011) (Entered: 01/05/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
08/17/2011 16:01:47			
<b>PACER Login:</b>	rs0055	<b>Client Code:</b>	999906/00140/012067
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:10-cv-02614-WHA
<b>Billable Pages:</b>	8	<b>Cost:</b>	0.64

# **EXHIBIT B**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGE GAMES, INC., a California  
corporation,

Plaintiff,

v.

ELECTRONIC ARTS, INC., a Delaware  
corporation,

Defendant.

No. C 10-02614 WHA

**ORDER DENYING MOTION FOR  
PRELIMINARY INJUNCTION**

**INTRODUCTION**

In this trademark infringement action involving video-gaming giant Electronic Arts, Inc. and its “revolutionary” first-person, action-adventure video game “Mirror’s Edge,” plaintiff Edge Games, Inc. — a so-called “small video-gaming company” based in Pasadena — moves to preliminarily enjoin defendant Electronic Arts from using the “MIRROR’S EDGE” mark while this dispute unfolds in court. Because plaintiff has failed to establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, or that an injunction is in the public interest, the motion for a preliminary injunction is **DENIED**.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATEMENT**

**1. PLAINTIFF EDGE GAMES, INC.**

Edge Games, Inc. is “one of the oldest surviving video game development and publishing businesses” on the planet — at least, that’s what its founder, chief executive officer, and sole shareholder, Dr. Tim Langdell, would have a jury believe (Langdell Decl. ¶¶ 1–3). According to Dr. Langdell’s declaration, he began using the “EDGE” mark in connection with video-game marketing and sales back in 1984 through a London-based video-game company called Softek (*id.* at ¶ 2). Softek is supposedly a predecessor-in-interest to Edge Games. After Dr. Langdell moved to Los Angeles in 1990, he reincorporated Softek as Edge Interactive Media (another supposed predecessor-in-interest to Edge Games). He then incorporated Edge Games — the alleged trademark holder herein — in 2005 (*id.* at ¶ 3).

Plaintiff Edge Games and its predecessors supposedly developed, distributed, and sold several dozen video games from the mid-1990s through 2010 bearing the asserted marks (*id.* at ¶ 17). Examples of recent video-game products purportedly marketed by Edge Games and bearing one or more of the asserted marks include “Bobby Bearing,” “Raffles,” “Mythora,” “Pengu,” “Battlepods,” and “Racers” (*id.* at ¶ 14, Exhs. K–T). Between 2003 and 2009, Edge Games purportedly sold over 11,000 units of Raffles, Mythora, and Racers, which are “packaged PC video game” products, as well as over 45,000 units of Bobby Bearing, Pengu, and BattlePods, which are games that can be played on certain mobile phones (*id.* at ¶¶ 15–16). In addition to PC and mobile-phone video games, Dr. Langdell also claims that Edge Games develops, publishes, and/or licenses games for major gaming consoles such as the Sony PlayStation 3, and that various releases are currently being developed for gaming consoles and platforms including Microsoft’s Xbox 360, the Nintendo Wii, and the Apple iPhone and iPad (*id.* at ¶ 15).

According to Dr. Langdell, these “upcoming” releases from Edge Games will supposedly be sold through the same retailers that the accused products were (and are still being) sold, such as Amazon.com, Best Buy, and Target (*id.* at ¶ 20). In sum, based upon Dr. Langdell’s declaration, Edge Games is a legitimate “small video-gaming company” that is active in the video-gaming industry.

1           **2.       DEFENDANT ELECTRONIC ARTS, INC.**

2           Electronic Arts — or EA for short — is a leading “interactive entertainment” company  
3 that develops, publishes, and distributes video games and related software for modern gaming  
4 consoles including Microsoft’s Xbox 360, the Sony PlayStation 3, and the Nintendo Wii, as well  
5 as for PCs, Macs, and various mobile-gaming devices. Since its formation in 1982, EA has  
6 grown to become an international, publicly traded corporation with more than ten video-game  
7 development studios spanning the globe. In 2009 alone, EA had sales exceeding one million  
8 units for at least 31 of its active video-game franchises (Hershberger Decl. ¶ 2).

9           “Mirror’s Edge” is one of EA’s modestly successful video-game franchises. Developed  
10 by EA Digital Illusions CE AB (or “EA DICE” for short) in Stockholm, Sweden — one of EA’s  
11 ten video-game development studios — the “Mirror’s Edge” franchise stands at the heart of the  
12 instant trademark dispute (*id.* at ¶ 3).

13           **3.       THE “MIRROR’S EDGE” FRANCHISE**

14           In July 2007, EA announced in “Edge Magazine” — a leading print and online video-  
15 game magazine published by Future Publishing — that its EA DICE development studio was  
16 creating a “revolutionary new take on the first-person action adventure game” entitled “Mirror’s  
17 Edge” (*id.* at ¶ 4). The announcement was a cover story in the magazine, and it was accompanied  
18 by a press release issued by EA on July 11, 2007, officially announcing the development of the  
19 “Mirror’s Edge” video game (*id.* at Exh. A; Binns Decl. ¶ 3, Exh. F). According to EA’s senior  
20 marketing director, Lincoln Hershberger, “Mirror’s Edge” was widely known and discussed  
21 throughout the gaming industry and became one of the most anticipated video-game releases of  
22 2008 (Hershberger Decl. ¶ 5). Tens of millions of dollars were invested by EA in the game’s  
23 development, which spanned three years and involved a team of over 60 individuals (*id.* at ¶ 8).

24           The game itself is set in a city of gleaming skyscrapers with reflective surfaces and empty  
25 streets, whose population has been marginalized by a totalitarian regime. Players interact with  
26 and explore this world through the eyes of a character named “Faith,” who is a messenger (or, as  
27 the game describes her, a “runner”) tasked with covertly delivering information, messages, and  
28 other items within the city while evading government surveillance. The network of rooftops and

1 aerial skyways that Faith and other “runners” utilize to make these deliveries and evade the  
2 government is dubbed the “Mirror’s Edge” (*id.* at ¶ 6).

3 Prior to its official release, “Mirror’s Edge” was demonstrated and publicized at numerous  
4 industry events, including the Game Developers Conference in February 2008 and the Electronic  
5 Entertainment Expo (or “E3”) in July 2008. E3 is widely regarded as the most important expo in  
6 the video-game industry (*id.* at ¶ 9). Also in July 2008, “Mirror’s Edge” was showcased at  
7 Comic-Con, the largest comic-book convention in the world, where a limited-run comic-book  
8 adaptation of “Mirror’s Edge” was announced. The six-issue “Mirror’s Edge” comic “mini-  
9 series” was published in 2008 and 2009 by a division of DC Comics (*id.* at ¶ 10). In total, EA  
10 invested over \$9 million to market “Mirror’s Edge” in North America (*id.* at ¶ 11).

11 In November 2008, “Mirror’s Edge” was released for the Sony PlayStation 3 and  
12 Microsoft’s Xbox 360. A PC version followed in January 2009 (*id.* at ¶ 13). These games were  
13 sold through retail channels including mass merchandisers (*e.g.*, Walmart, Target), electronics  
14 sellers (*e.g.*, Best Buy), video-game resellers (*e.g.*, GameStop), club stores (*e.g.*, Costco), and  
15 online retailers (*e.g.*, Amazon.com) (*id.* at ¶ 14). Since its initial release, over two million units of  
16 “Mirror’s Edge” have been sold worldwide, including over 750,000 units in North America alone  
17 (*id.* at ¶ 17). While EA is no longer manufacturing or distributing copies of “Mirror’s Edge” for  
18 the Sony PlayStation 3, the Microsoft’s Xbox 360, or the PC for third-party retailers, the PC  
19 version of the game remains available for download on EA’s online store (*id.* at ¶ 18).

20 Due to its modest success, additional products were developed for the “Mirror’s Edge”  
21 franchise. In February 2009, EA released “additional downloadable content” for the game, which  
22 was sold as “Mirror’s Edge Pure Time Trials Map Pack” (*id.* at ¶ 15). Additionally, a separate  
23 and “substantially scaled down” side-scrolling version of the game was announced in December  
24 2009 and developed from scratch for the Apple iPad, iPhone, and iPod Touch (Correa Decl. ¶¶  
25 2–6). This side-scrolling version of the game — published in 2010 — was entitled “Mirror’s  
26 Edge 2D.” It is currently available for purchase through Apple’s App Store, where over 37,000  
27 units have already been downloaded for the Apple iPad (*id.* at ¶¶ 4–6; Hershberger Decl. ¶ 15).

28

1 Finally, a Mac version of the original “Mirror’s Edge” video game is currently under  
2 development and is slated for release later this year (Hershberger Decl. ¶ 13).

3 **4. THE ASSERTED AND ACCUSED MARKS**

4 As should be obvious by this point, this trademark battle centers on EA’s use of the word  
5 “Edge” in the “Mirror’s Edge” franchise. The logo for “Mirror’s Edge” and examples of how  
6 “Mirror’s Edge” appeared in advertising and product packaging are reproduced below (*id.* at ¶¶  
7 11–13, Exhs. D–E; Shafer Decl. ¶ 2, Exhs. A–H):



21 As shown, the logos for both EA and EA DICE were prominently displayed on the game’s  
22 packaging and advertising. In the reproductions above, the logos for EA and EA DICE are most  
23 clearly seen on the bottom right of the Xbox 360 cover art. The logos for EA and EA DICE were  
24 also placed on the advertisement (to the left of “There’s No Looking Back”). While difficult to  
25 see in the reproduction above, the logos are clearly visible on the normal sized version.

26 The “MIRROR’S EDGE” mark is owned by EA DICE. The application was filed in  
27 September 2009 and — over a letter of protest filed by Edge Games — the United States Patent  
28 and Trademark Office approved the registration of the “MIRROR’S EDGE” mark on June 22,

1 2010, for computer and video game software, comic books, and online video games (Schatz Decl.  
2 ¶ 21, Exh. S).

3 Turning next to the asserted marks in this action, Edge Games is the purported owner of  
4 six federally registered trademarks that it supposedly “uses and selectively licenses” to other  
5 companies. These marks are: (1) “EDGE,” (2) “THE EDGE,” (3) “GAMER’S EDGE,” (4)  
6 “EDGE OF EXTINCTION,” (5) “CUTTING EDGE,” and (6) “EDGE GAMES.” Edge Games  
7 also claims common-law trademark rights over the “EDGE” logo (Langdell Decl. at ¶¶ 4–12,  
8 Exh. T). Each mark will be described briefly below.

9 **A. “EDGE”**

10 Edge Games purportedly owns two valid USPTO registrations for the mark “EDGE” as  
11 used in connection with printed matter and publications relating to video games and comic books.  
12 According to Dr. Langdell, the “EDGE” mark was in continuous use since 1985, and — for at  
13 least one of the two registrations — is incontestable. Edge Games also asserts ownership over the  
14 common-law mark “EDGE” for use in connection with video-game software and related goods  
15 and services, with continuous use supposedly extending back to 1984 (*id.* at ¶ 6, Exhs. A–C).

16 **B. “THE EDGE”**

17 Plaintiff also supposedly owns a valid registration for the mark “THE EDGE,” issued by  
18 the USPTO in 2009 for use in connection with video-game software, video-game controllers, and  
19 video-game magazines, with continuous use allegedly extending back to 1995 (*id.* at ¶ 7, Exh. D).

20 **C. “GAMER’S EDGE”**

21 Another registered mark purportedly owned by Edge Games is “GAMER’S EDGE,”  
22 issued by the USPTO in 2008 for use in connection with video-game software and various video-  
23 game accessories, with continuous use supposedly extending back to 1986 (*id.* at ¶ 8, Exh. E).

24 Again, Dr. Langdell asserts that the plaintiff owns a valid registration over this mark.

25 **D. “EDGE OF EXTINCTION”**

26 Ownership of the “EDGE OF EXTINCTION” mark is also claimed by Edge Games. This  
27 mark was originally registered by a non-party and issued by the USPTO in 2003 for use in  
28 connection with computer-game software, with continuous use purportedly extending back to

1 2000. The mark was later assigned to Edge Games by the original registrant. According to Dr.  
2 Langdell, the “EDGE OF EXTINCTION” mark is incontestable (*id.* at ¶ 9, Exh. F, G)

3 **E. “EDGEGAMERS”**

4 Edge Games also asserts ownership over the supposedly valid registered mark  
5 “EDGEGAMERS,” issued by the USPTO in 2008 for use in connection with an online computer-  
6 gaming club, with continuous use extending back to 2006 (*id.* at ¶ 11, Exh. J).

7 **F. “CUTTING EDGE”**

8 The last registered mark purportedly owned by Edge Games — “CUTTING EDGE” — is  
9 *not* related to video games. This mark was issued by the PTO in 1999 for use in connection with  
10 comic books. The mark has supposedly been in continuous use extending back to 1995 and has  
11 become incontestable (*id.* at ¶ 10, Exh. H, I).

12 **G. The “EDGE” Logo**

13 Finally, Edge Games claims ownership over a common-law mark, reproduced below, that  
14 it asserts has been used continually as a trademark and service mark in connection with its video-  
15 game software and related websites since 2001 (*id.* at ¶ 12):



19 **5. PLAINTIFF’S LICENSING PRACTICES**

20 According to Dr. Langdell’s declaration, plaintiff’s licensing practices have been prolific,  
21 extending the reach of its asserted marks well beyond video-game software to gaming-related  
22 print publications and websites, comic books, video-game hardware, and computers (*id.* at ¶ 21).  
23 Licensed products supposedly include “Cross Edge,” a video game for the Sony PlayStation 3  
24 published by NIS America, and Edge Magazine, a leading video-gaming news magazine and  
25 website published by Future Publishing, Inc. (*ibid.*; *id.* at Exhs. U, V). Additional products  
26 purportedly licensed by Edge Games include (*id.* at ¶ 22):

- 27 • The “Edge” line of high-performance gaming computers  
28 sold by Velocity Micro, Inc. (*id.* at Exh. W).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- The online computer game “Edge of Extinction” by Cybernet Systems Corp. (*id.* at Exh. Z).
- The website and video game “Edge of Twilight” by Fuzzyeyes Stupio Pty. Ltd. (*id.* at Exh. AA).
- The “Cutting Edge,” “Over the Edge,” and “Double Edge” comic-book series published by Marvel Comics, as well as the “Edge” comic-book series published by Malibu Comics (which is owned by Marvel) (*id.* at Exh. BB).
- The video-game controller for the Nintendo Wii called “The Edge,” sold by Datel Design & Development Ltd. (*id.* at Exh. T).
- The “EdgeGamers” video-gaming website, operated by EdgeGamers Organization, LLC (*id.* at Exh. Y).

**6. ALLEGATIONS OF FRAUD AND ABANDONMENT**

According to EA, almost nothing set forth above regarding Edge Games and its asserted marks can be trusted. Indeed, EA’s opposition brief invests a substantial number of pages to a no-holds-barred attack on the validity of each of plaintiff’s asserted marks and the credibility of Dr. Langdell’s sworn representations made to both the USPTO and the Court. These attacks and supporting evidence — which raise serious questions regarding the veracity of Dr. Langdell’s entire declaration — are set forth in detail below.

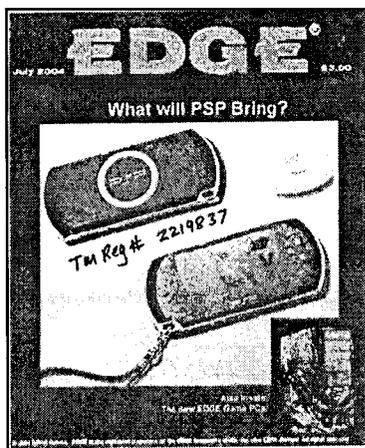
**A. Fraud and Abandonment Regarding “EDGE”**

According to EA, the two registrations obtained by plaintiff for the “EDGE” mark were soaked in fraud. *First*, in January 1999, Edge Interactive Media (a predecessor to Edge Games) registered the “EDGE” mark for use in connection with various paper goods, including magazines related to video games (RJN Exh. K).<sup>1</sup> Five years later, in 2004, Edge Interactive Media filed a “Combined Declaration of Use and Incontestability under Sections 8 & 5,” wherein Dr. Langdell certified to the USPTO that (1) his companies had made continuous use of the “EDGE” mark in commerce for at least five years following the January 1999 registration date, and (2) were continuing to use the mark in commerce as reflected in a specimen described as a “Color scan of the front cover of our EDGE Games magazine, July 2004 edition, with the registration serial

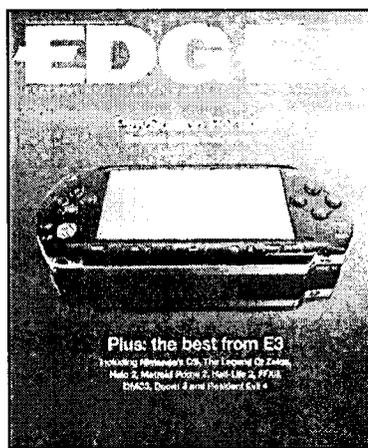
---

<sup>1</sup> Defendants’ request for judicial notice of the records and documents cited herein is **GRANTED**.

1 number written clearly on it” (*id.* at Exh. L).<sup>2</sup> According to a declaration submitted by the  
 2 publisher of Edge Magazine, however, the magazine cover submitted to the USPTO by Dr.  
 3 Langdell was *not* a genuine copy of any magazine cover that had ever been published (Binns  
 4 Decl. ¶ 13, Exh. C). *It was faked.* The specimen submitted by Dr. Langdell to the USPTO (left)  
 5 and the actual Edge Magazine cover for July 2004 (right) are shown below:



As Submitted to the USPTO



Actual Cover

16 The USPTO apparently relied upon Dr. Langdell’s declaration and false specimen and maintained  
 17 the “EDGE” registration (RJN Exh. M).

18 *Second*, in January 2003, Edge Interactive Media filed a separate application with the  
 19 USPTO for the “EDGE” mark in connection with various paper goods, including comic books  
 20 (RJN Exh. S). As evidence of his company’s “use” of the “EDGE” mark in commerce, Dr.  
 21 Langdell submitted to the USPTO a “[s]canned cover of our comic book EDGE issue 2.” The  
 22 comic-book cover submitted as a specimen, however, had been published by an entirely different  
 23 and unrelated company *more than a decade earlier* (Bard Decl. ¶ 11). Even more remarkable,  
 24 according to the magazine’s publisher, Marvel Entertainment, LLC, the last “Edge” comic book  
 25 ever published was in the spring of 1995 (*id.* at ¶¶ 9–11). Nevertheless, the USPTO registered the  
 26 “EDGE” mark on June 20, 2006, in apparent reliance on Dr. Langdell’s sworn representation that

27  
 28 <sup>2</sup> This order notes that all of the USPTO filings and declarations signed by Dr. Langdell contained a clear warning that “willful false statements . . . are punishable by fine or imprisonment” and could jeopardize the validity of the document.

1 the comic book cover was representative of plaintiff's *current use* of the "EDGE" mark in  
2 commerce (RJN Exh. T).

3 In this connection, EA also presents compelling evidence that there was no bona fide use  
4 of the "EDGE" mark in commerce by plaintiff, its licensees, or its predecessors in interest *at all*  
5 between 1989 and to at least 2003.<sup>3</sup> In presenting this evidence, EA asserts that Dr. Langdell's  
6 declaration filed in support of the instant motion contains numerous misrepresentations. For  
7 example, in his declaration, Dr. Langdell asserts (Langdell Decl. ¶ 22) (emphasis added):

8 22. Attached hereto as Exhibits W, X, Y, Z, AA, BB &  
9 CC are true and correct exemplars of product packaging and  
10 services *currently marketed by Edge's duly authorized licensees*  
that display one or more of the EDGE family of marks. These  
include:

11 \* \* \*

12 f. Licensee Marvel Comics' "CUTTING EDGE," "Over the  
13 EDGE," and "Double EDGE" comic book series, and  
licensee Malibu Comics' "Edge" comic book series, as  
14 promoted at [www.edgegames.com](http://www.edgegames.com). See Exhibit BB.

15 As stated, however, the last installment of the "Edge" comic-book series was published by Malibu  
16 Comics (owned by Marvel) in the spring of 1995 (Bard Decl. ¶ 11). Similarly, the last  
17 publication of Marvel's "Cutting Edge" comic book was in December 1995, the last publication  
18 of Marvel's "Over the Edge" comic mini-series was in August 1996, and the last publication of  
19 Marvel's "Double Edge Alpha" and "Double Edge Omega" comics was in October 1995 (*id.* at ¶¶  
20 4–6). In other words, none of these comic books is being "currently marketed" — all have been  
21 out of print for nearly 15 years. Even more egregious, according to Marvel Vice President and  
22 Deputy General Counsel Walter Bard, neither Marvel nor Malibu Comics are or were ever  
23 licensees of Dr. Langdell's companies for any of these marks (*id.* at ¶¶ 7, 10).

24 Similar alleged untruths plague Dr. Langdell's representations with respect to Edge  
25 Magazine's status as a licensee. Although the magazine's publisher — Future Publishing —  
26 confirmed that it was a licensee of Edge Interactive Media between 1996 and 2004, the publisher  
27 also confirmed that the license only covered the use of the "EDGE" mark in relation to print and  
28

---

<sup>3</sup> This evidence is presented by EA to support its claim that the asserted marks have been abandoned.

1 online versions of Edge Magazine *in the United Kingdom* (Binns Decl. ¶ 6). During that time  
2 period, Edge Magazine was not even distributed within the United States (*ibid.*). Then, in  
3 October 2004, Future Publishing and Edge Interactive Media entered into a new agreement  
4 wherein Future Publishing was granted a worldwide license to the marketing and promotion of  
5 electronic versions of Edge Magazine (*id.* at ¶¶ 7–8). Critically, neither of these licensing  
6 agreements granted plaintiff the right to exercise quality control over the use of the “EDGE”  
7 marks. They were “naked” licenses.

8 Even after 2003, the evidence that plaintiff had been making bona fide use of the “EDGE”  
9 mark in commerce is suspect. For example, Dr. Langdell’s declaration asserted that Edge Games  
10 has been selling the video game Mythora (supposedly bearing the “EDGE” mark) since 2004.  
11 Curiously, while the exterior packaging submitted by Dr. Langdell to the USPTO for the Mythora  
12 video game included a website address “www.mythora.com,” this website wasn’t even registered  
13 by Edge Games until October 2008 — nearly four years after the game’s purported release (RJN  
14 Exhs. O, P). The USPTO relied upon this questionable video-game packaging when it renewed  
15 plaintiff’s “EDGE” mark in 2009 (*id.* at Exh. R).

#### 16 **B. Fraud and Abandonment Regarding “THE EDGE”**

17 Compelling evidence of fraud on the USPTO has also been submitted by EA with respect  
18 to plaintiff’s “THE EDGE” mark. For example, in March 1996, in his application to register the  
19 mark “THE EDGE” for use with various goods, including video-game software and comic books,  
20 Dr. Langdell submitted as evidence of supposed use of the mark a box cover of a game entitled  
21 “Snoopy: The Cool Computer Game” (*id.* at Exh. E). The game, however, was already seven  
22 years old at the time of the application, rendering it doubtful that it was still being sold in 1996  
23 (Klieger Decl. ¶ 4, Exh. C). Even more disturbing, it appears as though the specimen of the box  
24 cover for the video game submitted by plaintiff to the USPTO was doctored. The specimen  
25 submitted by Dr. Langdell (left) and the actual box cover for “Snoopy: The Cool Computer  
26 Game” (right) are shown below:

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



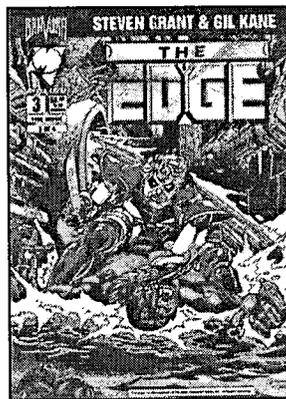
As Submitted to the USPTO



Actual Box Cover

As shown, the “box cover” specimen submitted to the USPTO by Dr. Langdell and the actual box cover of the video game differ in two key respects. *First*, a “TM” has been added next to the logo for “THE EDGE” in the specimen submitted to the USPTO. *Second*, instead of a copyright disclaimer for the “PEANUTS characters,” which appears on the bottom right of the genuine box, the specimen submitted to the USPTO contained an entirely different disclaimer that stated “The Edge is a trademark of The Edge Interactive Media, Inc.”

Even more evidence of fraud is seen in the comic-book specimen submitted to the USPTO by Dr. Langdell in November 2005 for his application to register “THE EDGE” in connection with comic books (RJN Exh. F). In support of the application, Dr. Langdell submitted the cover of the “Edge” comic book — which, as stated, was last published a decade earlier by an unrelated company who was *never* a licensee of plaintiff — as a specimen. The specimen submitted to the USPTO (left) and the *actual* comic book (right) are shown below (Klieger Decl. ¶ 5, Exhs. D, E):



As Submitted to the USPTO



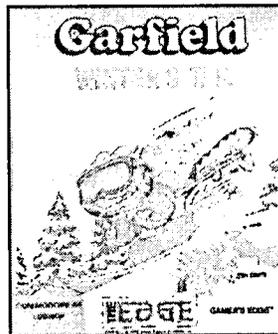
Actual Comic Book

1 Once again playing “spot the differences,” the specimen submitted to the USPTO appears to have  
 2 been doctored in three material ways. *First*, and most egregious, the name of the comic book was  
 3 changed from “Edge” to “The Edge” in the specimen. This was done apparently to show that  
 4 “THE EDGE” mark was being used in commerce in connection with comic books. *Second*, a  
 5 “TM” was added to the manipulated title (it is visible on the top right of the last “E” in “EDGE”).  
 6 *Third*, a disclaimer was tacked on to the bottom of the specimen that stated “‘The Edge’ is the  
 7 trademark of The Edge Interactive Media, Inc. All Rights Reserved.” These “enhancements”  
 8 were not present in the original comic-book cover. Nevertheless, the USPTO relied upon Dr.  
 9 Langdell’s application when it issued the registration for “THE EDGE” in 2009 (RJN Exh. G).

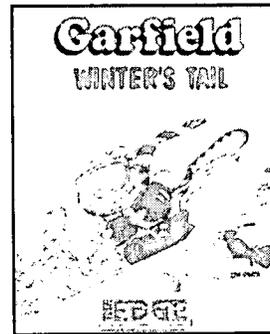
10 In light of these misrepresentations, EA argues that there are serious doubts over whether  
 11 “THE EDGE” mark was actually being used on *any* products by Edge Games during the period  
 12 between 1989 and 2003.

13 **C. Fraud and Abandonment Regarding “GAMER’S EDGE”**

14 Evidence of fraud infects plaintiff’s registration for “GAMER’S EDGE” as well. In  
 15 February 2006, Dr. Langdell submitted an application to the USPTO to register “GAMER’S  
 16 EDGE” for various goods, including video-game software (*id.* at Exh. H). As a specimen of his  
 17 company’s use of the mark in commerce, Dr. Langdell submitted the box cover of a video game  
 18 entitled “Garfield: Winter’s Tail,” which had been released by Softek (a predecessor-in-interest to  
 19 Edge Games) *over seventeen years earlier* in 1989. The specimen submitted to the USPTO (left)  
 20 and what EA asserts as being the *actual* box cover for the video game (right) are shown below  
 21 (Klieger Decl. ¶ 7, Exh. F):



22  
23  
24  
25  
26  
27  
28  
As Submitted to the USPTO



Actual Box Cover

1 One critical difference stands out: the “GAMER’S EDGE” mark that is visible on the specimen  
 2 submitted to the USPTO is *not* present anywhere on the genuine box cover for the video game.  
 3 Based upon this apparently doctored specimen submitted by Dr. Langdell, the “GAMER’S  
 4 EDGE” mark was issued to plaintiff in February 2008 for use with video games (RJN Exh. J).

5 In addition to this evidence assaulting the validity of plaintiff’s “GAMER’S EDGE”  
 6 registration, EA has also submitted evidence calling into question whether plaintiff made bona  
 7 fide use of the “GAMER’S EDGE” mark over the past two decades. In particular, EA has  
 8 submitted evidence demonstrating that Dr. Langdell’s claimed sales of video games supposedly  
 9 bearing the “GAMER’S EDGE” mark are highly suspect (Opp. 13). For example, when counsel  
 10 for EA attempted to purchase various video games that Dr. Langdell represented in his  
 11 declaration as being *currently sold* by Edge Games, they only received error messages stating that  
 12 “[t]he resource requested . . . cannot be found” (Langdell Decl. Exhs. K, N, O, R; Klieger Decl.  
 13 Exhs. G–R).<sup>4</sup> Additionally, it is unclear from Dr. Langdell’s exhibits whether certain games were  
 14 being sold in the United States rather than the United Kingdom (Langdell Decl. Exh. T). In any  
 15 event, given disturbing evidence that the “GAMER’S EDGE” mark may have been grafted  
 16 retroactively onto product packaging by plaintiff, the record is tainted as to whether the mark has  
 17 actually been used continuously by Edge Games or has been abandoned.

18 Finally, while Dr. Langdell claimed in his declaration that both “EDGE” and “GAMER’S  
 19 EDGE” were used in connection with the sale of personal computers since 1998, EA has  
 20 presented evidence that the vendor of these computers — Velocity Micro — did not even become  
 21 a licensee of plaintiff until 2008, when plaintiff sued Velocity Micro for trademark infringement  
 22 (*id.* at ¶ 23; RJN Exh. D). In sum, there is no clear evidence — at least on this record — that  
 23 plaintiff or its licensees made any bona fide use of the “GAMER’S EDGE” mark prior to 2008.

24 **D. Fraud and Abandonment Regarding “CUTTING EDGE”**

25 Fraud is also alleged by EA surrounding plaintiff’s registration of the “CUTTING EDGE”  
 26 mark. In April 1995, Marvel filed an application with the USPTO to register “CUTTING EDGE”  
 27

28 <sup>4</sup> While counsel for plaintiff attempted to explain these error messages at the hearing, the suspect  
 legitimacy of plaintiff’s current sales activities — including plaintiff’s misleading representation that its  
 products were sold on Amazon.com rather than Amazon.com Marketplace — cannot be ignored.

1 for use as the title of a comic book (Bard Decl. ¶ 3). A single issue of “Cutting Edge” was then  
2 published in December 1995. No other “Cutting Edge” comic book has ever been published by  
3 Marvel since that single issue (*id.* at ¶ 3). In November 2006, Dr. Langdell filed a Notice of  
4 Opposition to Marvel’s registration of “CUTTING EDGE,” claiming that his companies had  
5 made “extensive use” of the mark since October 1984 (RJN Exh. U). Marvel responded by  
6 assigning its rights in the mark, including the pending application, to plaintiff in September 1997.  
7 The registration issued in June 1999 (*id.* at Exh. V).

8 Fast-forward six years to November 2005. Despite the fact that only *one* issue of the  
9 “Cutting Edge” comic was ever published by Marvel in 1995, Dr. Langdell filed a “Combined  
10 Declaration of Use and Incontestability under Sections 8 & 15” wherein he certified that the  
11 “CUTTING EDGE” mark had been in *continuous use* in commerce for at least five years after the  
12 June 1999 registration date. To support this contention, he attached as a specimen what he  
13 described as: “Cover of *currently on sale* comic book sold via our licensee bearing the mark” (*id.*  
14 at Exh. W) (emphasis added). The specimen submitted to the USPTO, however, was the cover of  
15 the same *single-issue* “Cutting Edge” comic published by Marvel in 1995. In other words, the  
16 specimen was most certainly *not* the cover of a comic book “currently on sale” in November  
17 2005. Additionally, the comic book was not, and had never been, “sold via [plaintiff’s] licensee.”  
18 As stated, Marvel was never a licensee of any of Dr. Langdell’s companies.

#### 19 7. EVIDENCE OF DELAY IN FILING SUIT

20 By his own admission, Dr. Langdell knew about the release of “Mirror’s Edge” shortly  
21 after it was announced in July 2007. Indeed, he claims to have mailed a cease-and-desist letter to  
22 EA (which was attached to his declaration) two days after “Mirror’s Edge” was publicly  
23 announced (Langdell Decl. ¶ 25, Exh. DD). EA’s legal department has no record of this July  
24 2007 letter and Dr. Langdell did not receive a reply to it (*id.* at ¶ 25; Schatz Decl. ¶ 3). According  
25 to his declaration, Dr. Langdell then purportedly sent numerous letters to EA’s legal department  
26 in January, March, May, July, and September 2008, and left voice mails with the department in  
27 February, April, June, and August of that year (Langdell Decl. ¶ 26). Despite these assertions,  
28 EA claims that it received *no* voice mails from Dr. Langdell during this time period and that the

1 first letter it received from him was on September 24, 2008 (Schatz Decl. ¶ 3).<sup>5</sup> In response to the  
 2 September 2008 letter, EA — through outside counsel — sent a letter in reply to Dr. Langdell  
 3 explaining EA why its “Mirror’s Edge” video game did not infringe. EA’s reply letter also  
 4 requested additional documentation regarding the ownership and use of the asserted “EDGE”  
 5 marks (*id.* at ¶ 4, Exh. B). A back-and-forth between EA’s outside counsel, EA DICE, and Dr.  
 6 Langdell continued through December 2008, with Dr. Langdell threatening to seek a preliminary  
 7 injunction against EA in a letter dated November 10, 2008, and representing to EA that his  
 8 companies had recently prevailed in a similar trademark action against a third party “with  
 9 judgments in our favor” and “on the merits” (*id.* at ¶¶ 5–12, Exhs. C–J).<sup>6</sup> Numerous purported  
 10 “final warnings” were given by Dr. Langdell to EA in these communications. Meanwhile, sales  
 11 of “Mirror’s Edge” began in earnest on November 11, 2008, with a PC version released shortly  
 12 thereafter on January 16, 2009 (Hershberger Decl. ¶ 13).

13 Instead of immediately seeking a preliminary injunction to halt these sales, Dr. Langdell  
 14 waited until June 2009 to re-attempt negotiations with EA (*id.* at ¶ 13; Langdell Decl. ¶ 28). In  
 15 these negotiations, EA reiterated its position to Edge Games that there was no likelihood of  
 16 confusion between “Mirror’s Edge” and the “EDGE” marks purportedly owned by Dr. Langdell.  
 17 The talks ended in July 2009 without an agreement (Schatz Decl. ¶ 13). EA did not receive  
 18 another communication from Dr. Langdell until March 2010, shortly after EA had announced the  
 19 release of “Mirror’s Edge” for the Apple iPad and iPhone. In this communication, Dr. Langdell  
 20 once again called upon EA to cease using the “Mirror’s Edge” name. EA did not respond to the  
 21 email, and had no further interactions with Dr. Langdell until this action was filed three months  
 22 later (*id.* at ¶¶ 14–15).

23 \* \* \*

26 <sup>5</sup> Dr. Langdell did *not* attach to his declaration any copies of these “numerous letters” that were  
 27 supposedly sent to EA in January, March, May, July, and September 2008.

28 <sup>6</sup> In fact, that separate action, in which Velocity Micro filed suit against Dr. Langdell’s companies in  
 the United States District Court for the Eastern District of Virginia, ended pursuant to a confidential settlement  
 agreement.

1 Edge Games filed this action on June 15, 2010 (Dkt. No. 1). Nearly two months passed  
2 without any motions being filed. Finally, on August 20, over 21 months after EA first began  
3 selling the “Mirror’s Edge” video game to the public, the instant preliminary injunction motion  
4 was filed (Dkt. No. 16). This order follows a hearing held on September 30.

5 **ANALYSIS**

6 A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
8 balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v.*  
9 *Natural Resources Defense Council*, ---- U.S. ----, ----, 129 S.Ct. 365, 374 (2008). As explained  
10 below, plaintiff Edge Games has failed to establish — based upon the preliminary injunction  
11 record detailed herein — that any of these factors weigh in its favor.

12 **1. LIKELIHOOD OF SUCCESS ON THE MERITS**

13 To prevail on its claim of trademark infringement, Edge Games “must demonstrate that it  
14 owns a valid mark, and thus a protectable interest.” *Lahoti v. VeriCheck, Inc.*, 586 F.3d 1190,  
15 1197 (9th Cir. 2009) (citation omitted). If ownership of such a mark is established, Edge Games  
16 must then show that EA’s “use of the mark ‘is likely to cause confusion, or to cause mistake, or to  
17 deceive.’” *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 602 (9th  
18 Cir. 2005) (quoting 15 U.S.C. 1114(1)(a)–(b)).

19 **A. Trademark Validity**

20 On the issue of whether plaintiff has sufficiently demonstrated that it owns a protectable  
21 interest in the asserted “EDGE” marks, the preliminary injunction record speaks for itself. As  
22 detailed above, the record contains numerous items of evidence that plaintiff wilfully committed  
23 fraud against the USPTO in obtaining and/or maintaining registrations for many of the asserted  
24 “EDGE” marks, possibly warranting criminal penalties if the misrepresentations prove true. If  
25 EA’s evidence is credited, such fraud could (and likely would) strip these registered marks of  
26 their “presumption of validity.” *See Tie Tech, Inc. v. Kinedyne Corp.*, 296 F.3d 778, 783 (9th Cir.  
27 2002). These misrepresentations also support EA’s argument that many (if not all) of plaintiff’s  
28 marks have been abandoned, which would also render them invalid.

1           Additionally, EA has put forth substantial evidence calling into severe question many of  
2 the representations made by Dr. Langdell in his declaration submitted to the Court. Indeed, the  
3 declarations provided by EA from two of plaintiff's supposed "licensees" — Marvel  
4 Entertainment and Future Publishing — revealed that many of Dr. Langdell's assertions in his  
5 declaration were materially misleading or downright false. These falsehoods infect all of Dr.  
6 Langdell's assertions regarding the bona fide and continuous use of the asserted marks in  
7 commerce and the purported "sales" of his company's video-game products. In other words, all  
8 of his representations have become highly suspect in light of the evidence presented by EA. They  
9 cannot be credited to justify the extraordinary relief requested herein.

10           In sum, based upon the evidence in the record, this order finds that plaintiff has not  
11 demonstrated a likelihood of success in proving that the asserted marks are valid. *See Tie Tech*,  
12 296 F.3d at 783; *see also* 15 U.S.C. 1127 ("Nonuse [of a mark] for 3 consecutive years shall be  
13 prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of such mark  
14 made in the ordinary course of trade, and not made merely to reserve a right in a mark."). Since a  
15 valid trademark is a prerequisite to a finding of infringement, Edge Games has failed to establish  
16 that it is likely to succeed on the merits.

17           **B. Likelihood of Confusion**

18           Even if the asserted marks were presumed valid and protectable, the preliminary  
19 injunction record does not support a likelihood of confusion between the asserted and accused  
20 marks. As such, Edge Games has not established that it is likely to succeed on the merits.

21           To determine whether a "likelihood of confusion" exists, this order must examine the  
22 eight factors set forth in *AMF Inc. v. Sleekcraft Boats*: (1) strength of the mark, (2) proximity of  
23 the goods, (3) similarity of the marks, (4) evidence of actual confusion, (5) marketing channels  
24 used, (6) type of goods and the degree of care likely to be exercised by the purchaser, (7)  
25 defendant's intent in selecting the mark, and (8) likelihood of expansion of the product lines.  
26 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979); *One Industries, LLC v. Jim*  
27 *O'Neal Distributing, Inc.*, 578 F.3d 1154, 1162 (9th Cir. 2009)

28

1           The preliminary injunction record and the *Sleekcraft* factors do not support a finding that a  
2 “reasonably prudent consumer” in the marketplace is likely to be confused as to the origin,  
3 endorsement, or approval of the competing products herein. Indeed, the majority of plaintiff’s  
4 arguments on this issue are tainted by the suspect evidence set forth in Dr. Langdell’s declaration.  
5 For example, according to Dr. Langdell, Edge Games is currently selling (or plans to sell)  
6 numerous “EDGE”-branded video games for modern gaming consoles through the exact same  
7 retail channels used by EA to distribute “Mirror’s Edge.” The evidence to support this assertion  
8 — beyond Dr. Langdell’s bare statements in his suspect declaration — is paper thin. Indeed, Dr.  
9 Langdell never states exactly how much capital he has invested in developing, marketing, and  
10 selling his company’s current and future video-game products. Given that “Mirror’s Edge” was  
11 marketed with significant monetary investments through sophisticated, high-profile channels,  
12 including pre-announcements and demonstrations at major industry events, and was sold by  
13 *major* retailers, plaintiff has not established that the marketing channels used or the proximity of  
14 the goods in the marketplace support its claims of infringement. Indeed, EA has produced  
15 compelling evidence that plaintiff’s video-game products may not even be available for sale to  
16 consumers at all.

17           Additionally, there is no evidence in the record that EA chose to call its product  
18 “Mirror’s Edge” for any reason but to describe the visual and thematic aspects of the video game.  
19 This conclusion is bolstered by the fact that the word “edge” in “Mirror’s Edge” is used to modify  
20 the word “Mirror.” In this connection, the “strength” of plaintiff’s asserted marks is also highly  
21 susceptible to attack. Even if the “EDGE” marks were deemed “arbitrary,” as plaintiff argues,  
22 there is no evidence of actual confusion (despite over 21 months of “Mirror’s Edge” being sold to  
23 the public). Moreover, plaintiff has failed to show that each of the asserted marks is confusingly  
24 similar to the “Mirror’s Edge” mark or that purchasers of “Mirror’s Edge” would exercise such a  
25 low degree of care as to be confused as to the publisher or developer of the competing products.<sup>7</sup>  
26 Similarly, under plaintiff’s “reverse confusion” theory of infringement, the record does not

---

27  
28 <sup>7</sup> The fact that the various asserted marks are not even visually similar to each other and that the EA and EA DICE marks are prominently displayed on “Mirror’s Edge” advertising and packaging further reduces the likelihood of confusion (Opp. 22).

1 support plaintiff's claim that purchasers of its various "EDGE"-branded products (to the extent  
 2 that any exist) would believe that they were associated with EA, EA DICE, or the "Mirror's  
 3 Edge" franchise.<sup>8</sup>

4 Yet another failed argument is plaintiff's assertion that the various "EDGE" marks  
 5 constitute a "family of marks" where confusion can be analyzed based upon a common element  
 6 shared between them. On this issue, there is no evidence in the record showing that the  
 7 purchasing public recognizes that the term "edge" in the asserted marks is indicative of a common  
 8 origin of goods. By contrast, EA has produced evidence that the term "edge" is found in many  
 9 registered trademarks and product names within the video gaming industry that are *not* owned or  
 10 licensed by Edge Games (Opp. 20–21). Given this crowded field, the scope of protection (if any)  
 11 that can be afforded to the asserted marks is limited. Finally, with respect to plaintiff's "EDGE"  
 12 logo, EA has put forth convincing evidence that the logo itself was first used in commerce by  
 13 *another* entity, Future Publishing, and that its appearance was recently altered to make it appear  
 14 more "similar" to EA's "Mirror's Edge" logo (specifically, it was changed from blue to red).

15 In sum, under the *Sleekcraft* factors, plaintiff has not sufficiently shown that consumers  
 16 are likely to be confused as to the origin, endorsement, or approval of any of the products at issue  
 17 in this litigation.<sup>9</sup> For these reasons, Edge Games has failed to establish that it is likely to succeed  
 18 on the merits.

## 19 2. IRREPARABLE HARM

20 Following the Supreme Court's decision in *Winter*, irreparable harm cannot be presumed  
 21 — even for trademark actions. Rather, it is the plaintiff's burden to prove that "he is likely to  
 22 suffer irreparable harm in the absence of preliminary relief." *Winter*, 129 S.Ct. at 374. In the  
 23 context of preliminary injunctive relief, irreparable harm is established when a plaintiff is  
 24

---

25 <sup>8</sup> Reverse confusion occurs when a junior user engages in such extensive promotion of goods under a  
 26 mark that the market is swamped, resulting in a likelihood that consumers will mistakenly believe the senior  
 27 user's goods are associated with the junior user. "In a reverse confusion situation, rather than trying to profit  
 28 from the senior user's mark, the junior user saturates the market and 'overwhelms the senior user.'" 3 J.  
 Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:10 (2006).

<sup>9</sup> This order is not bound by, and declines to defer to, determinations by the USPTO as to whether the  
 asserted and accused marks are confusingly similar.

1 unlikely to be made whole by an award of monetary damages or some other legal remedy at a  
2 later date, in the ordinary course of litigation. *See California Pharmacists Ass'n v.*  
3 *Maxwell-Jolly*, 563 F.3d 847, 851–52 (9th Cir. 2009). As explained below, plaintiff has failed to  
4 meet this burden.

5 *First*, as stated in the prior section, the preliminary injunction record contains compelling  
6 evidence that the asserted marks were fraudulently registered and/or have been abandoned by  
7 plaintiff. While a jury may ultimately find otherwise, this thunderstorm over the validity of  
8 plaintiff's asserted marks tempers the likelihood of irreparable harm. Indeed, without valid and  
9 protectable marks, Edge Games cannot suffer *any* harm to its property rights due to EA's  
10 continued use of the "Mirror's Edge" name.

11 *Second*, given the suspect nature of Dr. Langdell's representations to both the USPTO and  
12 the Court concerning plaintiff's current and future sales and business activities, it is an open  
13 question whether plaintiff's business activities legitimately extend beyond trolling various  
14 gaming-related industries for licensing opportunities. In this connection, plaintiff has not  
15 adequately shown that the potential harm to the "EDGE" marks during the interim period between  
16 the filing and resolution of this action could not be adequately remedied by legal damages.

17 *Third*, and most telling, it is undisputed that Edge Games waited over three years since  
18 "Mirror's Edge" was first announced and 21 months since "Mirror's Edge" was first offered for  
19 sale to the public before seeking a preliminary injunction. Due to this unreasonable delay, the  
20 bulk of the alleged "irreparable harm" to the asserted marks purportedly caused by the "Mirror's  
21 Edge" franchise has already been done. Edge Games has not shown why issuing a preliminary  
22 injunction *now* would prevent any irreparable harm to its marks beyond the "harm" that has  
23 already occurred. The undisputed fact that plaintiff did not timely act to prevent the "Mirror's  
24 Edge" franchise from inundating the market is *alone* sufficient to deny the instant motion.

25 For these reasons, this order finds — based upon the record presented — that Edge Games  
26 has *not* demonstrated that it is likely to suffer irreparable harm absent preliminary relief.

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3. BALANCING THE EQUITIES AND THE PUBLIC INTEREST**

Finally, the two remaining factors weigh heavily against granting the relief sought by plaintiff. *First*, for all the reasons already discussed in this order, Edge Games has *not* established that the balance of equities tips in its favor. All of its representations regarding the validity and use of the asserted marks are infected by evidence of deceit. Moreover, there is scant evidence that Edge Games has invested *any* amount of funds into the development of recent products and services bearing the asserted marks.

By contrast, EA has shown that it has invested millions of dollars into building and promoting the “Mirror’s Edge” franchise. It now has millions of customers. While Edge Games could have sought a preliminary injunction prior to (or shortly after) sales of the original “Mirror’s Edge” video game began in earnest, it did not. Instead, plaintiff waited 21 months to allow the “Mirror’s Edge” franchise to develop and expand. During this delay, EA continued to create and release products carrying the “Mirror’s Edge” name, including newly released versions of the video game for the Apple iPad and iPhone. Given this record, allowing Edge Games to obtain a preliminary injunction after allowing EA to invest in and develop the “Mirror’s Edge” franchise over such a long period of time would be plainly inequitable and highly prejudicial to defendant. *See E-Systems, Inc. v. Monitek, Inc.*, 720 F.2d 604, 607 (9th Cir. 1983).

*Second*, Edge Games has not shown that the public interest typically associated with trademark infringement actions — avoiding confusion to consumers — would favor a preliminary injunction. Rather, as stated, plaintiff has not sufficiently established that consumers are likely to be confused or deceived by the products at issue.

\* \* \*

For the foregoing reasons, this order finds that plaintiff has failed to establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, or that an injunction is in the public interest. As such, a preliminary injunction is not warranted under the factors set forth in *Winter*.

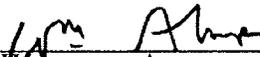
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

Based upon the findings and conclusions set forth herein, plaintiff's motion for a preliminary injunction is **DENIED**.

**IT IS SO ORDERED.**

Dated: October 1, 2010.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

**United States District Court**  
For the Northern District of California

# EXHIBIT C

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGE GAMES, INC., a California corporation,

No. C 10-02614 WHA

Plaintiff,

**ORDER REGARDING  
DEPOSITIONS PERTAINING  
TO FRAUD ALLEGATIONS**

v.

ELECTRONIC ARTS, INC., a Delaware corporation,

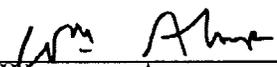
Defendant.

\_\_\_\_\_  
AND RELATED COUNTERCLAIMS.  
\_\_\_\_\_

To ensure fairness to both sides, defendant Electronic Arts, Inc. shall make available for depositions next week any declarants — including counsel — whose sworn statements were relied upon to support its allegations of fraud on the United States Patent and Trademark Office by plaintiff Edge Games, Inc. and Dr. Tim Langdell. As with Dr. Langdell's deposition this week, these depositions would be limited to the alleged misrepresentations made to the USPTO regarding the asserted marks herein.

**IT IS SO ORDERED.**

Dated: October 4, 2010.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT D**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGE GAMES, INC., a California corporation,

Plaintiff,

v.

ELECTRONIC ARTS, INC., a Delaware corporation,

Defendant.

No. C 10-02614 WHA

**ORDER APPROVING THE PARTIES' STIPULATION REGARDING THE DISPOSITION OF CLAIMS AND PROPOSED JUDGMENT SUBJECT TO STATED CONDITIONS**

\_\_\_\_\_  
AND RELATED COUNTERCLAIMS  
AND COUNTER-COUNTERCLAIMS.  
\_\_\_\_\_

The undersigned judge will approve the parties' stipulation regarding the disposition of all claims in this action and will enter the proposed judgment *subject to the following conditions*:

1. The Clerk of the Court shall send a copy of the order denying plaintiff's motion for a preliminary injunction along with a copy of the final judgment to the Commissioner of the Patent and Trademark Office.

2. Plaintiff shall notify all persons and entities with whom a licensing agreement has been obtained involving the trademarks asserted herein that the marks have been cancelled and provide these persons and entities with a copy of the order denying plaintiff's motion for a

1 preliminary injunction and the final judgment. Plaintiff shall certify to the Court in a sworn  
2 declaration **BY NOON ON FRIDAY, OCTOBER 15, 2010**, that such notice has been provided to all  
3 such licensees.

4 Subject to the stated conditions, the parties' stipulation regarding the disposition of all  
5 claims, counterclaims, and counter-counterclaims in this action is **APPROVED**. Final judgment  
6 will be entered accordingly.

7

8 **IT IS SO ORDERED.**

9

10 Dated: October 8, 2010.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**United States District Court**  
For the Northern District of California

# **EXHIBIT E**

1 THE LANIER LAW FIRM, P.C.  
Christopher D. Banys (230038)  
2 *cdb@lanierlawfirm.com*  
Daniel M. Shafer (244839)  
3 *dms@lanierlawfirm.com*  
2200 Geng Road, Suite 200  
4 Palo Alto, California 94303  
Telephone: 650.322.9100  
5 Facsimile: 650.322.9103

6 Attorneys for EDGE GAMES, INC. and  
THE EDGE INTERACTIVE MEDIA, INC.

7  
KENDALL BRILL & KLIEGER LLP  
8 Robert N. Klieger (192962)  
*rklieger@kbfirm.com*  
9 Joshua M. Rodin (224523)  
*jrodin@kbfirm.com*  
10 10100 Santa Monica Blvd., Suite 1725  
Los Angeles, California 90067  
11 Telephone: 310.556.2700  
Facsimile: 310.556.2705

12  
HUSCH BLACKWELL SANDERS LLP  
13 Alan S. Nemes (admitted *pro hac vice*)  
*alan.nemes@huschblackwell.com*  
14 190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
15 Telephone: 314.345.6461  
Facsimile: 314.480.1505

16 Attorneys for ELECTRONIC ARTS INC.  
17 and EA DIGITAL ILLUSIONS CE AB

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

20 EDGE GAMES, INC., a California  
21 corporation,

22 Plaintiff,

23 v.

24 ELECTRONIC ARTS INC., a Delaware  
25 corporation,

26 Defendant.

Case No. 10-CV-2614-WHA

~~PROPOSED~~ FINAL JUDGMENT

Hon. William Alsup

Complaint Filed: June 15, 2010

27 AND RELATED COUNTERCLAIMS AND  
28 COUNTER-COUNTERCLAIMS

1           The parties having stipulated to the disposition of the claims in this action, **FINAL**  
2 **JUDGMENT IS HEREBY ENTERED** in favor of Defendant and Counterclaimant Electronic  
3 Arts Inc. ("EA") and Counterclaimant and Counter-Counterdefendant EA Digital Illusions CE AB  
4 ("DICE"), and against Plaintiff, Counterdefendant, and Counter-Counterclaimant Edge Games,  
5 Inc. and Counterdefendant The Edge Interactive Media, Inc., on all claims, counterclaims, and  
6 counter-counterclaims, with the exception of the Sixth Claim for Relief (Declaratory Relief) in the  
7 Counterclaim asserted by Counterclaimants EA and EA DICE, which is dismissed without  
8 prejudice in accordance with the parties' stipulation.

9           Pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119, the Commissioner of Patents  
10 and Trademarks and the Assistant Commissioner for Trademarks are hereby ordered to cancel  
11 U.S. Trademark Registration Nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826.  
12 The Clerk of the Court is further directed to certify a copy of this final judgment and a copy of the  
13 order denying plaintiff's motion for a preliminary injunction to the Commissioner of the Patent  
14 and Trademark Office. Each party shall bear its own costs and fees in this matter.

15           **THE CLERK SHALL CLOSE THE FILE.**

16  
17           **IT IS SO ORDERED.**

18  
19 Dated: October 8, 2010.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT F**

1 KENDALL BRILL & KLIEGER LLP  
Robert N. Klieger (192962)  
2 *rklieger@kbbkfirm.com*  
Joshua M. Rodin (224523)  
3 *jrodin@kbbkfirm.com*  
10100 Santa Monica Blvd., Suite 1725  
4 Los Angeles, California 90067  
Telephone: 310.556.2700  
5 Facsimile: 310.556.2705

6 HUSCH BLACKWELL SANDERS LLP  
Alan S. Nemes (admitted *pro hac vice*)  
7 *alan.nemes@huschblackwell.com*  
190 Carondelet Plaza, Suite 600  
8 St. Louis, Missouri 63105  
Telephone: 314.345.6461  
9 Facsimile: 314.480.1505

10 Attorneys for Defendant and Counterclaimant  
Electronic Arts Inc. and Counterclaimant  
11 EA Digital Illusions CE AB

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

14  
15 EDGE GAMES, INC., a California corporation,

16 Plaintiff,

17 v.

18 ELECTRONIC ARTS INC., a Delaware  
corporation,

19 Defendant.

20  
21 ELECTRONIC ARTS INC., a Delaware  
corporation; and EA DIGITAL ILLUSIONS CE  
22 AB, a Swedish corporation,

23 Counterclaimants,

24 v.

25 EDGE GAMES, INC., a California corporation;  
and THE EDGE INTERACTIVE MEDIA, INC.  
26 a California corporation,

27 Counterdefendants.  
28

Case No. 10-CV-2614-WHA

**DECLARATION OF JAMES BINNS IN  
OPPOSITION TO PLAINTIFF EDGE  
GAMES, INC.'S MOTION FOR  
PRELIMINARY INJUNCTION**

[Memorandum of Points and Authorities;  
Declarations of Walter Eliot Bard, Jonathan  
Correa, Lincoln Hershberger, Robert N. Klieger,  
and Jacob Schatz; and Request for Judicial  
Notice filed concurrently herewith]

Date: September 30, 2010  
Time: 8:00 a.m.  
Crtrm.: 9

Hon. William H. Alsup

Complaint Filed: June 15, 2010

**DECLARATION OF JAMES BINNS**

I, James Binns, declare as follows:

1. I am Head of Edge International and PC Gaming at Future Publishing Limited ("Future"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Future is one of the world's leading special-interest media and publishing companies. Founded in 1985 with one magazine, Future today has operations in the United Kingdom, United States, and Australia and employs more than 1,200 people creating over 180 special-interest publications, websites and events, for people who are passionate about their interests.

3. One of Future's publications is Edge Magazine, a leading computer and video game magazine. Future has published the Edge Magazine monthly (i.e. 13 editions per year) since October 1993, and has also published a number of special editions. Edge Magazine published its 200th edition in 2009, and has won numerous awards.

4. Edge Magazine has used the same stylized logo, which was specifically designed for the magazine by one of Future's employees (the "Edge Logo"), since launching in October 1993. The Edge Logo appears, and has appeared, prominently on the cover of every issue of the magazine (although some of the special editions have used specially adapted versions of the Edge Logo). Attached hereto as Exhibit A are the covers of the Christmas 2008 and February 2009 editions of Edge Magazine, which accurately depict the Edge Logo as it has been used by Future since 1993. Future has used the Edge Logo in a variety of colors, including red.

5. In 1994, Edge Interactive Media, Inc. ("EIM") (together with an associated company, Softek International Limited) brought proceedings against Future before the English Courts, in an attempt to enforce alleged prior common law rights in the mark EDGE (the "1994 Proceedings"). Those proceedings were stayed indefinitely in June 1994, following an Order that EIM provide security for costs, and the action did not progress.

1           6.     In December 1996, Future entered into an agreement with EIM to settle the 1994  
2 Proceedings (the "1996 Agreement"). Pursuant to the 1996 Agreement, EIM granted Future a  
3 license to use the mark EDGE in relation to print and online versions of Edge Magazine in the  
4 UK, such license being deemed to have commenced when Edge Magazine was first published.  
5 Neither Future nor, to the best of Future's knowledge, EIM distributed print or online versions of  
6 Edge Magazine in the United States from the date of the 1996 Agreement until late 2004.

7           7.     In October 2004, the 1996 Agreement was terminated pursuant to a Concurrent  
8 Trading Agreement made between EIM and Future (the "CTA"). Under the CTA, EIM assigned  
9 to Future its rights in certain parts of class 16 of a number of trade marks involving the word  
10 EDGE, together with all goodwill attaching thereto, in the UK, Germany and United States.  
11 Further details of some of those assignments are provided at paragraphs 14 and 15 below. Future  
12 did not begin distributing print versions of Edge Magazine in the United States until after the CTA  
13 was executed.

14           8.     Pursuant to the CTA, EIM also granted Future a worldwide license in relation to  
15 *inter alia* electronic publication versions of Edge Magazine, and associated marketing and  
16 promotion of the same. Future first created an Edge Magazine website in 2000 and the site was  
17 active at [www.edge-online.com](http://www.edge-online.com) by May of that year. In June 2005 Future launched a website at  
18 [www.next-gen.biz](http://www.next-gen.biz) and ran content from Edge Magazine on this site. This URL was used because  
19 Edge Magazine was not available in the United States at that time and so the brand had no  
20 presence there. Edge Magazine moved the website to the domain name [www.edge-online.com](http://www.edge-online.com) in  
21 July 2008, after it had begun distributing Edge Magazine in the United States. In July 2010 the  
22 website was moved back to [www.next-gen.biz](http://www.next-gen.biz).

23           9.     Future has not entered into any agreement with Edge Games, Inc. ("Edge Games")  
24 and has no relationship with Edge Games. The CTA is personal to EIM and non-assignable. At  
25 no time has EIM or Tim Langdell sought permission for the CTA to be assigned from EIM to  
26 Edge Games and Future has never given its consent to such an assignment.

27           10.    Future owns Registration No. 3,713,604, issued by the United States Patent and  
28 Trademark Office ("USPTO") on January 26, 1999, for the word mark EDGE in International

1 Class 16, for "printed materials and publications, namely, magazines, newspapers, journals and  
2 columns and sections within such magazines, newspapers and journals, all in the fields of  
3 business, entertainment, and education relating to computers, computer software, computer games,  
4 video games, handheld games, interactive media." A true and correct copy of Registration No.  
5 3,713,604 is attached hereto as Exhibit B.

6 11. None of Edge Games, EIM, or Tim Langdell has any interest in Future, Edge  
7 Magazine, the Edge Logo, or Registration No. 3,713,604. Edge Games and EIM have made  
8 unauthorized use of the same or colorable imitations of the Edge Logo, including at  
9 www.edgegames.com, and Future is presently pursuing claims against Edge Games, EIM and Tim  
10 Langdell in the High Court of Justice in England for, infringement of copyright (in amongst other  
11 things the Edge Logo), passing off and breach of the CTA.

12 12. Aside from entering into the 1996 Agreement and CTA, neither EIM nor Tim  
13 Langdell has, or has ever had, any involvement in Edge Magazine, the online version of Edge  
14 Magazine, or any of Future's offerings. Likewise, Edge Games does not have, and has never had,  
15 any involvement in Edge Magazine, the online version of Edge Magazine, or any of Future's  
16 offerings. In particular, none of Edge Games, EIM or Tim Langdell has, or has ever had, any right  
17 to control the quality or content of Edge Magazine, the online version of Edge Magazine, or any  
18 other of Future's offerings. Neither of the licenses granted by EIM to Future (i.e. under the 1996  
19 Agreement or the CTA) provides for any such right.

20 13. I have reviewed the Combined Declaration of Use and Incontestability Under  
21 Section 8 & 15 that EIM filed with the USPTO on August 18, 2004 with respect to Registration  
22 No. 2,219,837, which attaches a specimen that purports to be the front cover of "EDGE Games  
23 magazine, July 2004 edition." Although that specimen bears Future's stylized logo, it is not a  
24 genuine copy of the cover of that or any other edition of Edge Magazine. A true and correct copy  
25 of the actual front cover of the July 2004 edition of Edge Magazine is attached hereto as Exhibit  
26 C.

27 14. Pursuant to the CTA, EIM recorded a partial assignment of all rights, title and  
28 interest in USPTO Application Serial No. 78/208,607 for the mark EDGE to Future Publishing,

1 Ltd. with respect to the following goods in International Class 16: computer magazines, video  
2 game magazines, magazine about interactive entertainment. Such application later matured into  
3 U.S Registration No. 3,105,816. A true and correct copy of Registration No. 3,105,816.is attached  
4 hereto as Exhibit D.

5 15. Pursuant to the CTA, EIM assigned all rights title and interest into certain goods  
6 associated with the mark EDGE under USPTO Application Serial No. 75/077,113 for the mark  
7 THE EDGE to Future Publishing, Ltd. Such assignment assigned the application in connection  
8 with the following goods in International Class 16: printed matter and publications, namely,  
9 magazines, newspapers, journals and columns and sections within such magazines, newspapers  
10 and journals, all in the fields of business, entertainment and education, relating to computers,  
11 computer software, computer games, video games, hand-held games and other interactive media.  
12 Such application later matured into U.S Registration No. 3,559,342. A true and correct copy of  
13 Registration No. 3,559,342 is attached hereto as Exhibit E.

14 16. None of Edge Games, EIM or Tim Langdell has ever done anything to assert or  
15 exercise any quality control of the mark and neither the 1996 Agreement nor the CTA provided for  
16 any such quality control.

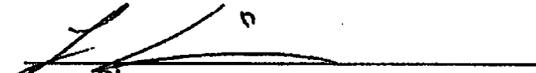
17 17. The August 2007 edition of Future Publishing's Edge Magazine (edition 178)  
18 featured an exclusive article announcing the launch of EA's MIRROR'S EDGE video game, a true  
19 and correct copy of which is attached hereto as Exhibit F. That article was also posted as a feature  
20 in the online version of Edge Magazine, at [www.edge-online.com](http://www.edge-online.com). Edge Magazine previewed  
21 MIRROR'S EDGE in its April and December 2008 editions (editions 187 and 195) and carried a  
22 review of the game in the Christmas 2008 edition (edition 196).

23 18. Future Publishing and EA have coexisted in the market with their respective marks  
24 for EDGE and MIRROR'S EDGE since 2008. I am unaware of any customers inquiring about any  
25 possible affiliation, sponsorship or connection between Future Publishing and EA or EA DICE, or  
26 between any of Edge Games, EIM, or Tim Langdell, in connection with EA's use of the  
27 MIRROR'S EDGE mark. I have never become aware of any confusion whatsoever that EA or  
28 MIRROR'S EDGE are related to Future or Edge Magazine, or vice versa. Nor have I become of

1 aware of any confusion whatsoever that EA or MIRROR'S EDGE are related to Edge Games,  
2 EIM, or Tim Langdell, or vice versa

3 I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct.

5 Executed September 9, 2010, at Bath, England.

6  
7  
8   
9 James Binns

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

VIDEOGAME CULTURE

CHRISTMAS 2008 \$4.99

# EDGE

NINTENDO | SONY | MICROSOFT | XBOX 360 | WII | PS3 | PC | DVD-OP | SET-TOP | ONLINE

## STAR WARS: THE OLD REPUBLIC

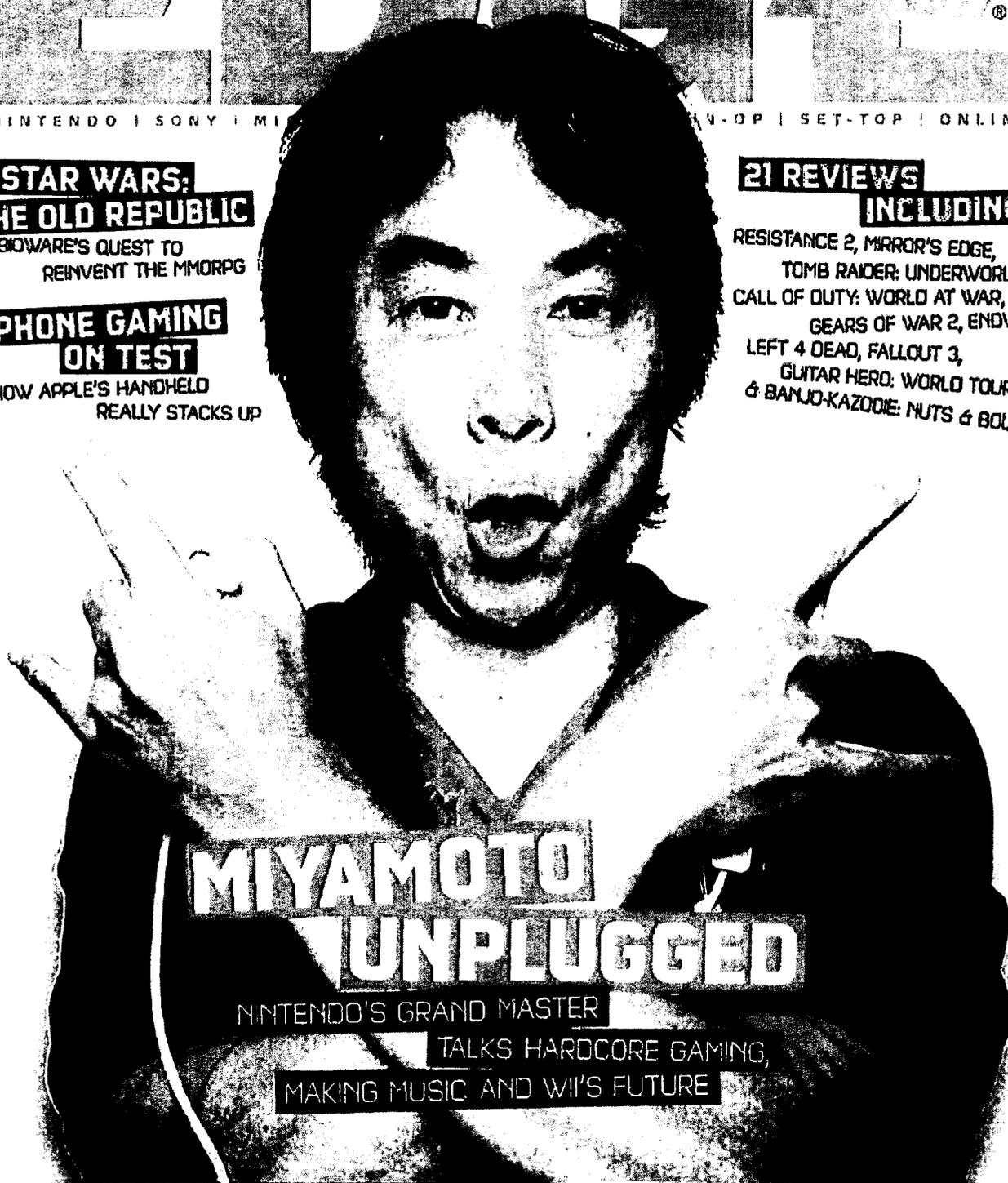
BIOWARE'S QUEST TO  
REINVENT THE MMORPG

## IPHONE GAMING ON TEST

HOW APPLE'S HANDHELD  
REALLY STACKS UP

## 21 REVIEWS INCLUDING

RESISTANCE 2, MIRROR'S EDGE,  
TOMB RAIDER: UNDERWORLD,  
CALL OF DUTY: WORLD AT WAR,  
GEARS OF WAR 2, ENDWAR,  
LEFT 4 DEAD, FALLOUT 3,  
GUITAR HERO: WORLD TOUR  
& BANJO-KAZOOIE: NUTS & BOLTS



# MIYAMOTO UNPLUGGED

NINTENDO'S GRAND MASTER

TALKS HARDCORE GAMING,  
MAKING MUSIC, AND WII'S FUTURE

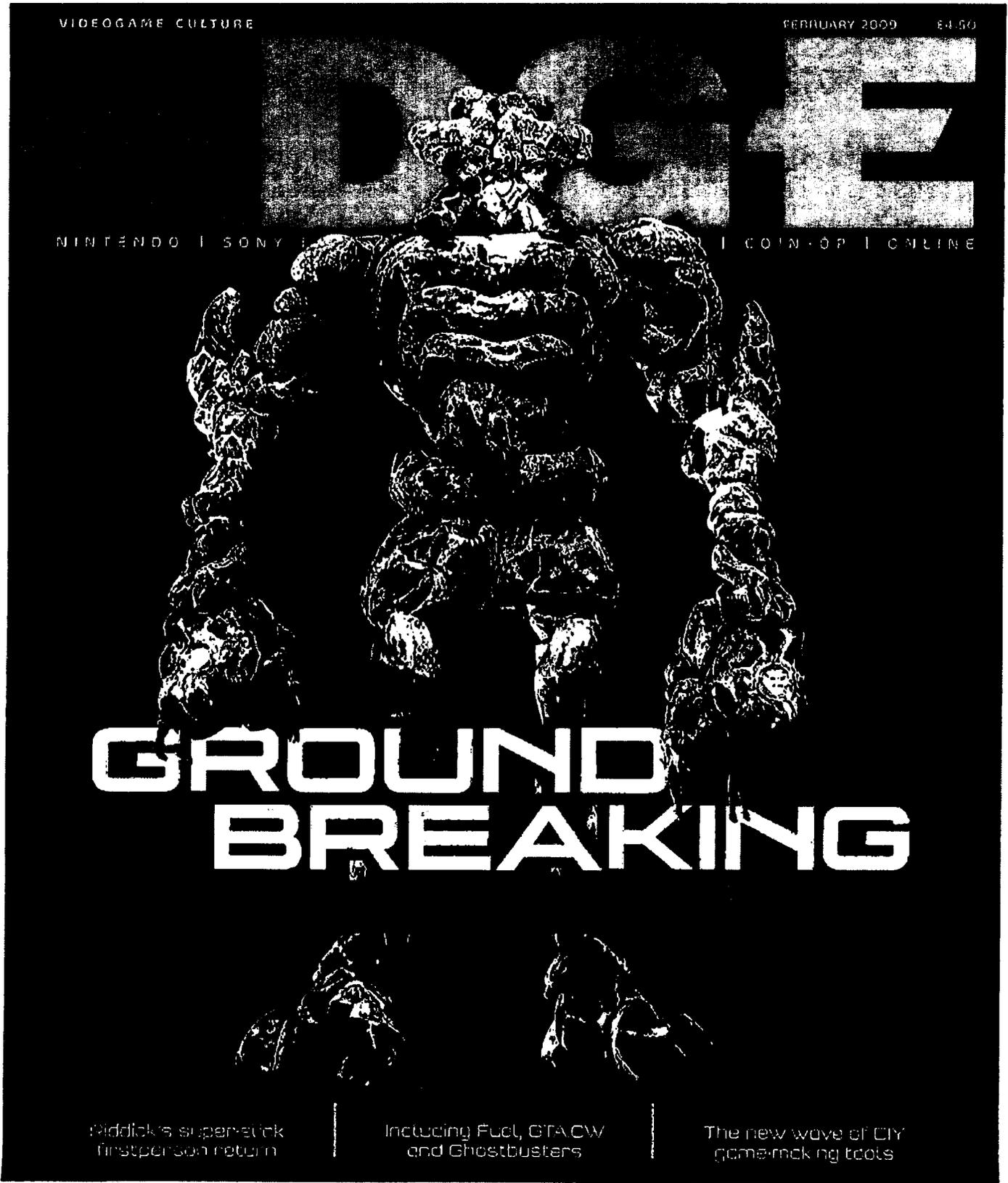


EXHIBIT A  
Page 7

**EXHIBIT B**

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 3,713,604

United States Patent and Trademark Office

Registered Jan. 26, 1999

10 Year Renewal/New Cert.

Renewal Term Begins Jan. 26, 2009

**TRADEMARK  
PRINCIPAL REGISTER  
REGISTRATION ASSIGNED**

**EDGE**

FUTURE PUBLISHING LTD. (UNITED  
KINGDOM COMPANY)  
BRAUFORD COURT  
30 MONMOUTH STREET  
BATH BA1 1BW, UNITED KINGDOM  
PRIORITY CLAIMED UNDER SEC.  
44(D) ON UNITED KINGDOM APPLICA-  
TION NO. 1562099 FILED 2-11-1994, REG.  
NO. 1562099, DATED 11-11-1994.  
OWNER OF U.S. REG. NO. 1,853,705.

FOR: PRINTED MATTER AND PUB-  
LICATIONS, NAMELY, MAGAZINES,  
NEWSPAPERS, JOURNALS AND COL-

UMNS AND SECTIONS WITHIN SUCH  
MAGAZINES, NEWSPAPERS AND JOUR-  
NALS, ALL IN THE FIELDS OF BUSI-  
NESS, ENTERTAINMENT, AND  
EDUCATION RELATING TO COMPU-  
TERS, COMPUTER SOFTWARE, COMPU-  
TER GAMES, VIDEO GAMES, HAND-  
HELD GAMES, INTERACTIVE MEDIA,  
IN CLASS 16 (U.S. CLS. 2, 3, 22, 23, 29,  
37, 38 AND 50).

FIRST USE 5-0-1984; IN COMMERCE  
5-0-1984.

SER. NO. 75-983,667, FILED 8-3-1994.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Dec. 8, 2009.*

**EXHIBIT C**

The future of electronic entertainment issue#138

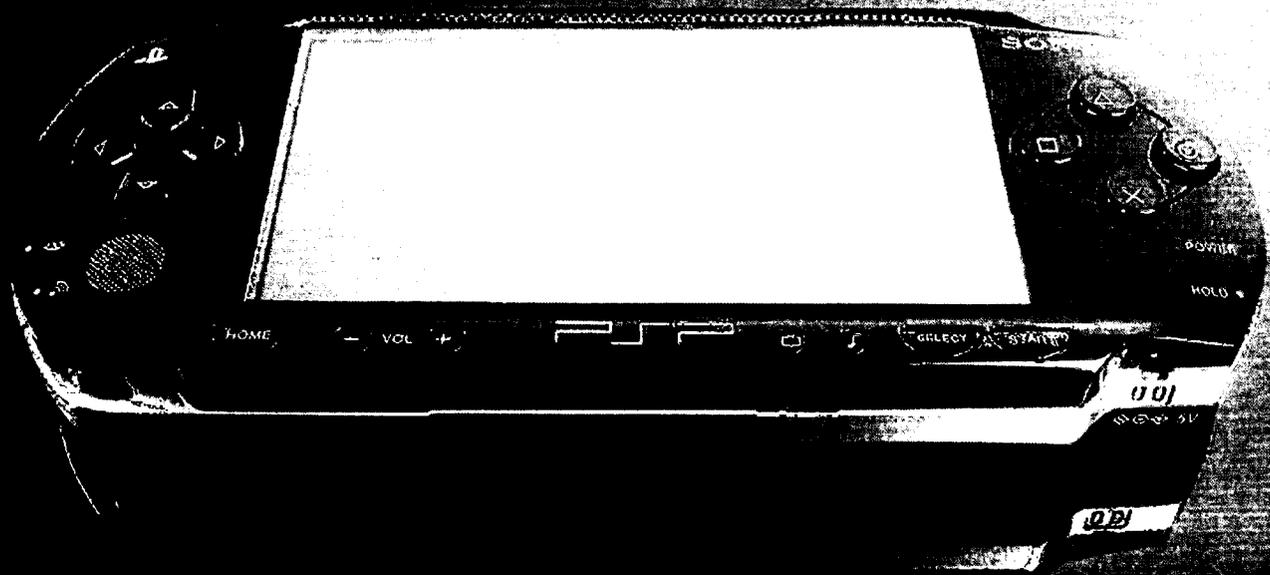
www.edg-gaming.com

# EDGE

PLAYSTATION 2 | XBOX 360 | PC | NINTENDO DS | WII

## PlayStation Portable

Handheld gaming finally grows up



## Plus: the best from E3

Including Nintendo's DS, The Legend Of Zelda,  
Halo 2, Metroid Prime 2, Half-Life 2, FFXII,  
DMC3, Doom 3 and Resident Evil 4

**EXHIBIT D**

**Int. Cl.: 16**

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50**

**Reg. No. 3,105,816**

**United States Patent and Trademark Office**

**Registered June 20, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**EDGE**

**THE EDGE INTERACTIVE MEDIA, INC. (CALIFORNIA CORPORATION)  
530 SOUTH LAKE AVENUE #171  
PASADENA, CA 91101**

**FOR: 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 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).**

**FIRST USE 1-6-1985; IN COMMERCE 1-6-1985.**

**OWNER OF U.S. REG. NO. 2,219,837.**

**SER. NO. 78-208,607, FILED 1-29-2003.**

**ALLISON SCHRODY, EXAMINING ATTORNEY**

**EXHIBIT D**

**Page 10**

**EXHIBIT E**

Int. Cls.: 9, 16, 21, 25 and 28

Prior U.S. Cls.: 2, 5, 13, 21, 22, 23, 26, 29, 30, 33, 36,  
37, 38, 39, 40 and 50

Reg. No. 3,559,342

**United States Patent and Trademark Office**

Registered Jan. 13, 2009

**TRADEMARK  
PRINCIPAL REGISTER**

**THE EDGE**

EDGE GAMES, INC. (NOT PROVIDED COR-  
PORATION)  
530 SOUTH LAKE AVENUE  
SUITE 171  
PASADENA, CA 91101

FOR: VIDEO GAME PERIPHERALS, NAMELY, VIDEO GAME CONTROLLERS; COMPUTERS; COMPUTER ACCESSORIES, NAMELY, KEY-BOARDS, 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 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-4-1984; IN COMMERCE 6-4-1984.

FOR: MAGAZINES, 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 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 4-14-1993; IN COMMERCE 4-14-1993.

FOR: MUGS AND CUPS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 8-12-1995; IN COMMERCE 8-12-1995.

FOR: T-SHIRTS, SWEATSHIRTS, JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-12-1995; IN COMMERCE 8-12-1995.

FOR: TOYS 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 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 8-12-1995; IN COMMERCE 8-12-1995.

OWNER OF U.S. REG. NO. 2,219,837.

SER. NO. 75-077,113, FILED 3-22-1996.

COLLEEN DOMBROW, EXAMINING ATTORNEY

**EXHIBIT E**

**EXHIBIT F**





ED01787\_01rw 84

25047 08-03-07



**H**istorically, when first-person games have demanded acrobatics of even a limited sort, the results have been somewhat... Even a title as accomplished as *Halo 3* is tripped up by including a fortuitous sequence of jumping puzzles (and thus an increasing succession of quickloads) in the final stages of the game. So it's easy to be cynical when DICE tells you that the entirety of its new game, given the preliminary title of *Mirror's Edge*, centres on making an energetic use of movement - jumping, climbing, diving - all things that have either been poorly implemented or avoided altogether in first-person games of the past.

Even running is something that most games implement simply as a doubling of the camera's speed - the character's legs don't actually hammer the ground with greater force, arms swinging in rhythm with each powerful bound. But they do in *Mirror's Edge*. And this is exactly how DICE hopes to surpass the problems of movement in the past:

FILE CHANGE AND  
 CHECK THE  
 SYSTEMS AND  
 CHECK THE  
 STATUS: 7/11

33

EDD178L\_0009 05

2007 08-03-08



Development is headed up by chief to right Tobias Dahl, lead animator Ben Ferrer, producer and Owen O'Brien, senior producer. All three are quick to show the producers of the team's imagination and can-do attitude. O'Brien says that the two most common phrases in the office are "Wouldn't it be cool if..." and "How can we do it?"

by creating an acutely physical sense of the player's body within the environment.

It's something of a strange paradox that firstperson games, while placing you more directly in the gameworld, mostly offer fewer options for interaction with your environment than thirdperson games. The reason for this, however, is not terribly obscure — there is simply less visual feedback in firstperson to tell the player what his or her digital body is doing. It's no surprise then that most firstperson games, lacking an ability to convey your physical presence in the environment, tend to reduce the avatar in question to a floating gun. That such titles then feature shooting as their *métier* is an inevitability: It's an interaction based on line-of-sight, the appreciation of which is enhanced by the firstperson perspective, and doesn't require radical movement within the world.

As such, DICE's decision to name the nimble protagonist Faith Bogins to seem particularly appropriate for a character representing both the literal and figurative embodiment of the team's vision — one

**"We believe we've got freedom of movement that you haven't seen in this genre of game before"**



The scenes below are taken from a "white room" — an undecorated test world. "I don't want to give behind on" says O'Brien of this particular animation. "The more of the game has to be fun in the world, it's really good on (works on it). At a white room, then, once you start adding art to it, everything else is just a matter of art that."

As different from *Dante's Inferno* as *Mirror's Edge* is, it wouldn't be a DICE game without the inclusion of a compelling multiplayer component. Although the developer didn't yet want to reveal the precise method by which this part of its game will work, it does transport the theme of those evident in singleplayer to the team-based game play. Further, *Mirror's Edge* will be given to the singleplayer aspect by the inclusion of "minis." Usually considered a genre of firstperson game play, *Mirror's Edge* has to be distinguished with in the game — and partly so, given the emphasis on perpetual movement that *Mirror's Edge* entails.

which happily flouts convention in a way that must demand a substantial amount of self-belief.

"At the start, everybody thought: 'Yeah, that sounds cool, but it's not going to work,'" says senior producer Owen O'Brien. "A lot of other people have tried it and failed, and this is why we think we've got something really innovative, because we've overcome all these hurdles and got something that really works now. We believe we've got freedom of movement that you haven't seen in this genre of game before — it's more like what *Prince of Persia* has done, but in firstperson."

"There's always been a lot of focus on the gun in firstperson games," says producer Ben Ferrer, ruefully. "No one puts that much focus on the movement, how you move around the environment. We wanted to capture a real sense of physicality. Games like *Unreal Tournament* have movement — double jumps, rocket jumps — but it's very abstracted. We wanted to place you in the world and convey the strain and physical contact with the environment."

O'Brien describes the game's philosophy as a "through the character" experience rather than a "through the gun" experience. "The aspirations of that are that you have a body, that the camera movement is organic — and it should feel like it's really you, it should feel fluid and realistic. We wanted to work, not on creating bigger and better and more intricate weapons, but on really bringing in the hands of the person."

The task of projecting a sense of embodiment falls largely in the lap of Tobias Dahl, the lead animator on the project. It's a change in emphasis that requires a rethinking of the usual expenditure of the polygon budget. "What you usually see when you look at the hands in firstperson shooters is that you have a big loss



of volume when it comes to the lower arms, the knuckles disappearing and so on," he explains. "I would say most of the firstperson shooters just ignore the hands and focus a whole lot on the weapons. We have projects at DICE where we have lead weapon artists and a crew under him or her to develop the shaders for the weapons — but then you have these low-polygon cubic hands holding the weapons. We focused on the hands from the start. So we have no loss of volume, we have veers showing and knuckles that grow depending on how the hand is bent. In a normal firstperson game you have about 30 animations for the hands — right now, I think we're up to 300."

The game does feature guns, however, but they act more like tools rather than the focus of the game. "Principally, this is an action adventure," says O'Brien. "We're not positioning this as a shooter — the focus isn't on the gun, it's on the person. As the marketing is saying, it's 'putting the person back into firstperson'. So it's all about you, it's about the movement."





the audiovisual feedback that makes the player feel so coupled with the avatar – crucially, DICE has nailed the sense of acceleration and deceleration. The latter is particularly obvious if you hit the crouch button while moving at speed – the avatar throws herself into a slide, feet outstretched in front (useful for evading slowly descending garage doors, for example), and, skidding to a gravelly-sounding halt, the viewpoint skews with plausible imitations of naturalistic head movement. It's all suggestive of a friction with the surrounding world that is simply absent from other firstperson games – and perhaps it takes an effort like DICE's to recognize that there even was a common disconnect occurring in the genre that needed to be addressed.

This sense of embodiment could easily have been frustrating – we're used to instant and constant run speeds in games, rather than having to labour to build up momentum. But the emphasis Morrow edge places on the physical exists simply to enable your athletic aim, rather than to

You stop seeing obstacles and start seeing opportunities: 'I could wall-run up there and jump there and do this and that'. Even on a very small rooftop everyone approaches it differently.

"Doing the cool moves is relatively easy," explains Farrer, "but you want to maintain a flow – that's where the skill element is introduced. Coming to the bottom of the zip-line you want to time your landing properly so you can continue to maintain that speed and carry on moving, whereas if you fall you may stumble, slow down or even fall over."

Similarly, when approaching a metre-high wall – which in other firstperson games might be an impassable structure – the velocity with which you hit it will enable you to vault straight over or, failing that, leave you hanging. Maintaining speed via fluid combinations of moves is the central tenet of the gameplay. Your average speed also determines the amount of Reaction Time you have, a slow-motion feature implemented to aid you in the more complex and rapidly chained moves. Although perhaps more obviously a gimmick than the game's other integrated notions concerning movement, it is certainly of some considerable benefit during the more hectic moments: when you launch yourself from the edge of a building and spin in mid-air to shoot back over your flying body

**"When you play this game it changes the way you look at other firstperson games. You stop seeing obstacles and start seeing opportunities"**

finder it – allowing the player to perform stunts of grace and energy that would have felt clumsy were the player's agency more abstracted from the environment.

"A lot of the moves you do are parkour moves," says O'Brien. "We decided fairly early on in development that we wanted to do a game that was based in an urban environment, pulling it away from military and war and the big open spaces of Battlefield 2, and we found that one of the things we wanted to do we couldn't, which was to move around the city on foot – we found that vehicles were quickly abandoned. In the narrow city streets people shove them for ten yards, jumped out of them again and ducked down an alley, or ran up them, or ran into the subways. We've got a very vertical world, and found that people wanted to move around that quickly on foot."

The result is fluid acrobatic movement – a continuing series of elegant wall-runs, leaps, vaults and the like that turns the urban environment of vertiginous walkways and roofs into an elaborate assault course.

"It is going to sound like typical developer hyperbole," says O'Brien apologetically, "but when you play this game for a while it changes the way you look at levels in other firstperson games.

At your pursuers, Reaction Time gives you a few critical moments to get a bead on your foes before you slam in to the ground.

"Aside from just considering how this was all possible technically," says Farrer, "we spent a lot of time thinking about what you'd be doing with the controller. We want to keep control of movement off the face buttons, because the second you use a face button you move your thumb off the analogue stick and you lose control of your aiming."

Although still undergoing development, the controls have been streamlined in other ways. There is no 'grab' button as such; the game uses a complex edge-detection system to allow you to automatically gain purchase on ledges. Only two buttons determine your context-sensitive actions. The jump button becomes an all-purpose movement button, executing vaulting manoeuvres as well as repelling yourself off adjacent walls. An 'aggression' button not only shoots, but allows you to barge down doors while moving at speed, or kick them open if standing still.

Combat maintains the focus on motion, as Farrer explains: "Your enemies are powerful and heavily armoured. They're dangerous – your pistol isn't going to do much damage to them. So what we wanted to do is to infuse movement into the combat – firstly in avoiding your enemies; the more acrobatically you navigate the world, the harder a target you become.

"Alternatively you can get in close to them and turn their own weapons against them; snatching a weapon from them and using this more powerful gun to dispatch the harder enemies. We look at these larger weapons as temporary power-ups, because once



Gameplay screenshot showing the character's hands and arms as they vault over a ledge or wall. The character is wearing a dark jacket and gloves. The background shows a dark, industrial-looking environment with structural beams and shadows.



0001761\_010101 00

09/07 08:45:30



With its emphasis on driving to create ever longer...  
The great utilization of movement is not so much that...  
...of the game is not so much that...  
...of the game is not so much that...  
...of the game is not so much that...



you take them you're limiting your mobility but increasing your power. It's an interesting trade-off. You can't carry around an enormous assault rifle while you're doing these athletic stunts."

The game clearly isn't about dispatching endless thousands of bad guys, however - your enemies represent a real threat, and one that, for the most part, you must outrun rather than outgun. "One of the conventions we were interested in breaking was never putting enemies behind you," says Farrer. "Other first-person games often have you moving towards your enemy, and clearing the threat. We wanted to give this idea of chase. The enemies aren't there for cannon fodder; they're lightning and powerful."

"And you're always chased by a horde of them," continues O'Brien. "You're outnumbered - there's no doubt that you need to be running."

This central premise of continuous acrobatic movement wouldn't work if the environments weren't designed to encourage and direct it. Yet, at the same time, the urban setting must remain convincing, necessitating a delicate balance between giving an impression of openness to the rooftop world, and making sure the player doesn't continually plummet to the tarmac far below. It's a balance made possible by the art direction the team is pursuing, one that is perhaps even bolder than its innovations in first-person movement. It's an art direction that directly informs the gameplay while at the same time creating a vivid sense of the unique and intelligent backstory.

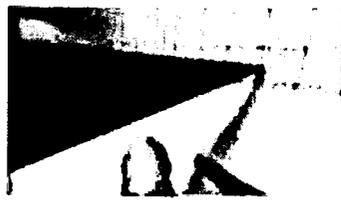
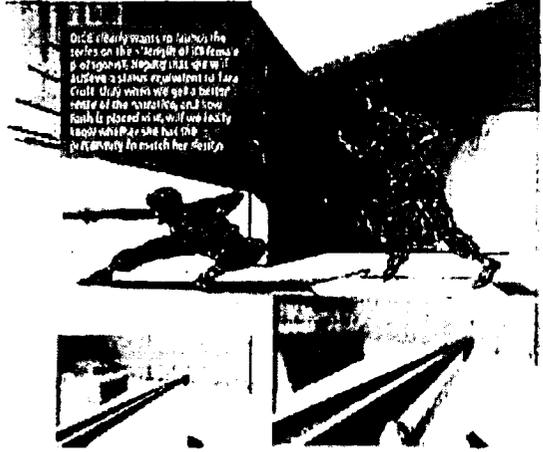
"Your character, Faith, has a Jason Bourne-style sense of potential escape routes," explains O'Brien. "We wanted to get that feel into the game, seeing the world as she would see it; stripping out everything except that which would be important to her. We want

the player to move through the world very quickly, and we want the player to know what their options are. All the things that are important to you will pop out."

Potential paths and objects that Faith can use to propel herself through the environment are indicated with vibrant splashes of primary colour. Routes that will lead to certain death tend to be marked with shadow, while safe paths are illuminated, giving the player an instinctive sense of how to navigate the perilous rooftop paths without having to stop and check ahead.

Unusually, *Mirror's Edge* departs from the videogame industry's obsession with grim, gritty dystopias - and is all the more terrifying for it. In many ways a vision of aspirational urban design, the cityscape is a pristine utopian metropolis.

"Our city's a hybrid of east and west," says O'Brien. "It looks clean, attractive. It looks like a nice place to live. People seem to be happy. It's crime-free. It's almost a utopian city, but a modern city, a contemporary city. But this is the catch:

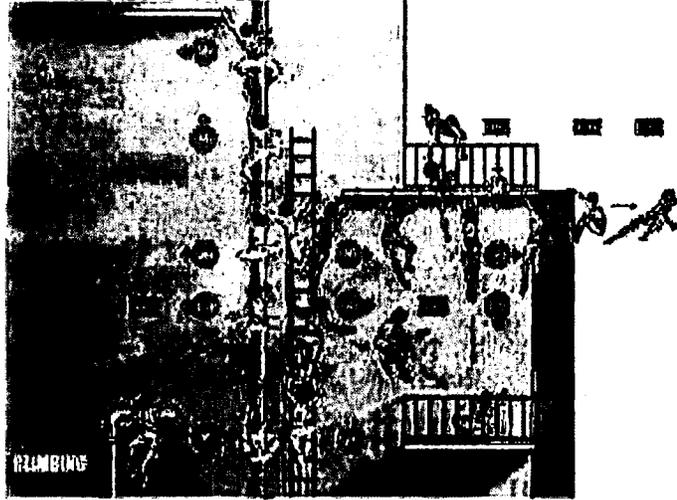




it's fine for you so long as you're willing to be part of a system - it's actually a very controlled city."

"There's a sense of underlying menace that is perfectly communicated by the city's sterile perfection, an austerity compounded by the splashes of primary colour, which begin to look like transparent attempts to enliven a world that is emotionally dead, its diversity stifled, its people subjected to draconian unity of thought and behaviour. The image of civil order that *Mirror's Edge* paints is a chilling extrapolation of policies being enacted today for the protection and comfort of citizens but which, all the same, signal a disturbing restriction of liberty.

"It's set in a fictitious city, but it's a city that could exist today," says O'Brien. "We've taken a lot of things that are happening in the world and amalgamated them and exaggerated some of them slightly. Some cities are already starting to be like this. There are congestion charges at the moment - we've taken that to the next step: vehicles need a licence which only the rich can afford,



so movement by vehicle is very controlled. The city has damped down a lot on internet traffic, and mobile phone traffic is monitored. The streets are safe to walk, but that's because they're patrolled by a very efficient, almost paramilitary police force."

But the fear of such authoritarian government is really a fear of that power being misused, as O'Brien explains: "Like any utopia, if you scratch the surface things start to fall apart. It's being run by a coalition of corrupt politicians and police, controlling the citizens for their own means. For me, this is the core of the game and the message, if it has a message: the greater good has come at the expense of personal freedom. It's what's happening around the world a lot. How much personal freedom are you willing to give up for a comfortable life? That's the crux of the game. A lot of people in this city don't even realise they're kept."

The protagonist, of course, is well aware of the city's oppressive order, and chooses to exist outside of it - or on top of it. Illicit behaviour, eradicated from the streets, is pushed upwards to the roofs, creating a criminal overground. With the means of communication so stringently monitored and restricted, criminality is served by a more low-tech mode of information transport - athletic cosmers, known as runners, who can move around on foot, mostly at height. And in one such runner, Faith, they have found a protagonist of ambiguous morality, one who exists in a state of liminality, between corrupt authoritarianism and ferocious criminality. She is, as you might expect from the team's other nonconformist design decisions, an atypical game heroine.

"We wanted to get a strong female character," says O'Brien, "one who didn't have pneumatic breasts and wasn't overly sexual - someone who is strong and athletic but also realistic." Whether or not she will



become iconic in the way the team hopes remains to be seen - but at least the attention the designers have given to her character should make you feel more comfortable inhabiting her body.

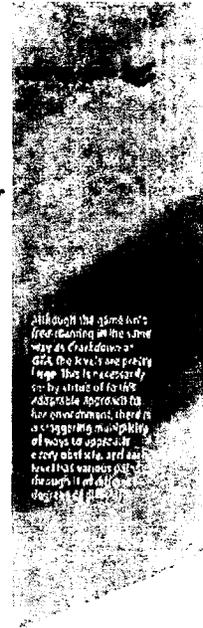
DICE clearly hasn't made easy choices in the creation of this new property, pursuing a design that deviates bravely from the firstperson groupthink. Not only should this disregard for convention be

**"How much personal freedom are you willing to give up for a comfortable life? That's the crux of the game"**

applauded for itself, but it is particularly important in a genre whose most recent mechanical innovation was *Half-Life 2*'s implementation of free-looking mouse control 13 years ago.

"If you look at thirdperson games there's been a lot of evolution there," says Farner. "We haven't seen that in firstperson games." O'Brien continues: "I think what we're doing is cool and innovative, and we've broken a lot of taboos and overcome lots of problems - but I also think it's the next logical step for firstperson. Like most great ideas, once you've done them everyone goes: 'Well, yeah, why doesn't everybody do that?'"

And hopefully, once the game has demonstrated what is possible, not simply with the mechanics and presentation of firstperson movement but with the game's imaginative vision and politically informed narrative, others will follow suit. You've just got to have faith.



Although the game isn't free-looking in the same way as *Half-Life 2*, it's not a firstperson game. This is necessary so by virtue of Faith's adaptable approach to her environment, there is a staggering multiplicity of ways to approach a core objective, and we have that variety of play that's a hallmark of the genre.



# **EXHIBIT G**



Neutral Citation Number: [2011] EWHC 1489 (Ch)

Case No: HC09CO2265

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/06/2011

Before :

**MRS JUSTICE PROUDMAN**

Between :

**FUTURE PUBLISHING LIMITED**

**Claimant**

- and -

**(1) THE EDGE INTERACTIVE MEDIA INC**

**Defendants**

**(2) EDGE GAMES INC**

**(3) DR TIMOTHY LANGDELL**

-----  
-----

**Iain Purvis QC and David Wilkinson (solicitor advocate) (instructed by Stevens & Bolton  
LLP) for the Claimant**

**Dr Tim Langdell (the 3<sup>rd</sup> Defendant) in person for the Defendants**

Hearing dates: 7, 8, 9, 10, 13, 14, 15, December 2010, 12 January, 16 February, 2 March 2011  
(and further written submissions 9 and 11 March 2011)

-----  
**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this  
Judgment and that copies of this version as handed down may be treated as authentic.

.....

Approved Judgment**Mrs Justice Proudman :**

1. These proceedings are brought by Future Publishing Limited for breach of contract, breach of copyright and passing off against two companies registered in the United States, Edge Interactive Media Inc (“EIM”) and Edge Games Inc (“Games Inc”) and Dr Timothy Langdell, an individual of British origin who now lives in Pasadena USA. I am satisfied that EIM and Games Inc are controlled exclusively by Dr Langdell. A “Jack Phillips” has occasionally put his name to witness statements on behalf of EIM in the past but he is not mentioned at all by Dr Langdell in his evidence and I suspect (without making any findings in this respect) that the claimant is right in saying that he does not exist and is an invention of Dr Langdell. At all events, I find that anything EIM and Games Inc have done has been procured solely through Dr Langdell’s intervention. In so far as there is tortious liability on the part of EIM Dr Langdell is liable as joint tortfeasor on the principles set out in **MCA v. Charly Records** (No 5) [2002] FSR 26.
2. EIM and Games Inc have previously been, but are not now, legally represented in the action. Dr Langdell has appeared in person on behalf of all the defendants and I will sometimes refer to him rather than the particular defendant in question.
3. The claimant is a well-known publisher of magazines and it sells approximately 3.6m magazines per month. For present purposes its speciality is computer gaming magazines, in particular the magazine EDGE, which has been distributed in the United Kingdom since 1993. EDGE magazine has a large circulation. Its website is visited by over 400,000 visitors per month. Many jobs in the computer gaming industry are advertised in its pages, it has many corporate subscribers and it has won a number of awards over the years, including Games Magazine of the Year 2008. It is plainly a substantial enterprise engendering a substantial following and substantial respect in the gaming industry.
4. Since its initial launch in 1993 the magazine has been published under the name EDGE and has used a particular and distinctive form of logo. The letters “E” in the logo extend the cross bar on the left hand side (with a corresponding shortening on the right) and there is a sharp scalpel like point at the edge of the extension.
5. In the 1980s and early 1990s Dr Langdell had a business writing games software, under the name Softek and then Edge. He is now well-known, indeed the claimant says notorious, for pursuing third parties using the name Edge for licence fees, failing which he pursues them for damages for trade mark infringement.
6. It is common ground that Dr Langdell and the defendant companies have used three versions of an EDGE logo, all based on a stretched version of the Franklin Gothic or Helvetica fonts. One of these versions is indistinguishable from the logo used by the claimant and was used on the defendants’ letter heading in 2008 and 2009 and on EIM’s website at various times. A second has a shorter bevelled trapezoid and was used on EIM’s website from about 2003-4 until June 2009. A third has a much shorter trapezoid to the left of the vertical stanchion of the “E”, amounting to no more than a triangle shape. I only have photocopies which Dr Langdell assures me accentuate the shadow produced by the bevelling. In all three cases, however, the slashed middle bar of the E was retained, as well as the stretching effect of the letters.

Approved Judgment

7. A number of preliminary issues arise of fact and law with which I intend to deal first.

**Action unnecessary**

8. Dr Langdell alleges that this present action was unnecessary as the defendants met all the claimant's requests for undertakings before the claim was served. However it seems to me wholly reasonable that the claimant should bring the action. The defendants' solicitors letter of 29<sup>th</sup> June 2009 says as follows;

“The EDGE logo has been used by our clients for many years and they will not cease using it because they are entitled to use it.”

9. I am unable to find unequivocal undertakings in the correspondence, despite Dr Langdell's assertions that they were given. Further, Dr Langdell continued to contend before me that he was entitled to continue to use the EDGE logo and that he intended to do so.

**Originality**

10. Dr Langdell submitted that the claimant can have no copyright in its EDGE logo because it is not original over the Franklin Gothic typeface. I do not accept this submission. The stretching of the font was combined with the distinctive slash and projection on the middle bar of the “E”. What is required for artistic originality is the expenditure of more than negligible or trivial effort or relevant skill in the creation of the work: see *Copinger and Skone James on Copyright* 16<sup>th</sup> Ed at 3-130 and **Ladbroke v. William Hill** [1964] 1 WLR 273 at 287. The claimant's logo is original within this test.

**Consensual use**

11. Dr Langdell claims that in 2005 he asked for and obtained the consent of Mr Pierce of the claimant to use of the EDGE logo. I accept Mr Pierce's evidence, which was not seriously challenged, that there were no discussions on the subject at any time. I therefore reject the defendants' contention under this head.
12. Dr Langdell accepted in cross-examination that he copied the EDGE logo when he used it in his letter head to write to the claimant. He said this was what he called “an estoppel representation”, by which I understood him to mean that he was using it as a deliberate challenge to the claimant to complain about the use. He asserted rather vaguely that this entitled him to a licence by conduct. I do not accept his contention.

**1991 invention by Dr Langdell**

Approved Judgment

13. A third preliminary matter is that Dr Langdell asserts that he invented the EDGE logo in 1991. He contends that he did not copy the EDGE logo from any work of the claimant. Indeed he said that, consciously or unconsciously, the claimant copied his invention when the claimant started to use the EDGE logo in 1993.
14. I observe that Mr Williams, the claimant's creative director, gave evidence that he specifically designed the logo for the magazine in the course of his employment. His evidence that he was unaware of the existence of any logo used by Dr Langdell at that time was not seriously challenged in cross-examination.

**5.25" floppy disks**

15. The most important part of Dr Langdell's case under this head is the question of the floppy disks which he adduced as evidence in support of his case that he had invented the EDGE logo in January 1991.
16. The defendants allege in their pleading that Dr Langdell's invented logo was published and distributed in a single page catalogue and then on a printed flysheet to promote the defendants' products at trade shows and elsewhere. Dr Langdell said in opening that this was known "really clearly" to the claimant at all times and that he had been using the logo continuously for 19 years. When the court asked him what evidence there was of use of the logo in the 1990s Dr Langdell then claimed that there had in fact been what he termed "scarcity of use" at that time.
17. The evidence, and the only evidence, of his creation of the logo, supporting Dr Langdell's own testimony as to the two pages of documents, is that of certain floppy disks. They were first mentioned by Dr Langdell in open correspondence in a letter dated 20<sup>th</sup> May 2010 and his account of what happened in relation to the disks did not emerge until his seventh witness statement of 29<sup>th</sup> November 2010.
18. He claims that he saved the catalogue and flysheet on to a 5.25" banana brand floppy disk in 1991, for what reason he cannot now remember. This disk ("disk 1") was sent to the defendants' expert, Mr Steggles of Disklabs, who said not only that it was a genuine 1991 disk but also gave his opinion that the information on it was genuinely created at that time. However when the claimant's expert, Mr Dearsley of Kroll Computers, examined it he pointed out that although disk 1 was an old disk the alleged 1991 content had been created using Windows 95, that is to say, later software. He also said that the content had been deliberately backdated as though it had been created at an earlier date. When the matter was referred back to him, Mr Steggles agreed with Mr Dearsley that the content of disk 1 could not date back to 1991.
19. Dr Langdell then claimed that disk 1 had been sent in error and was a copy he had created in the mid-1990s for some reason he said he was unable to remember. He then produced an involved and absurd story about how he had found two disks in a box in 2009, one of which was a mid-90s back up disk ("disk 2") and the other of which, (disk 1) was used to clone the original. He said he took the two disks to a "repair man" and mixed them up by marking the wrong one. His oral evidence did

Approved Judgment

not tally with his witness statement and his evidence about the boxes in which he allegedly found disk 1 and disk 2 was confused and unpersuasive.

20. He sought to explain the backdating of the images on disk 1 by saying that he wanted to create a clone as close as possible to the original. However he was wholly unable to explain to the Court's satisfaction why he should wish to create a clone at all rather than a simple back-up copy. It was not until October 2010, according to his account, that he found disk 3, the alleged original 1991 disk, although I found his evidence confusing under this head; it is possible that disk 2 and disk 3 were supposed to be one and the same.
21. At any rate, by October 2010 Dr Langdell had seen Mr Dearsley's report setting out the reasons why the information on disk 1 could not have been produced on the disk in 1991. Mr Dearsley's view was that it would be possible to create a disk which did not show these software anomalies once the maker was armed with the Report's explanation of what was wrong with the previous version. Dr Langdell said that he was technically incompetent to do such a thing but I do not accept his evidence that he did not either do it himself or procure someone else to do it.
22. In May 2010 Dr Langdell had claimed that the relevant disk was too delicate to be moved to the UK, despite the fact that he says that he shipped it twice across the Atlantic in the early part of that year. He was ordered to provide inspection by Order of the Master on 19<sup>th</sup> August 2010 which resulted in the examination by the experts.
23. Dr Langdell then produced a long and tortuous explanation of the emails he had sent to Mr Stegges, which were disclosed only a week before trial. The emails were presented to the court in a sequence which gave the impression that an email received from Mr Stegges on 3<sup>rd</sup> October 2010 was in response to an email from Dr Langdell ("the suspect Stegges email") which in fact had never been received by Mr Stegges. The suspect Stegges email mentioned no fewer than 5 times that a clone had been made. The email actually received by Mr Stegges (and to which his own email was a response) made no reference to the creation of a clone. Moreover the format of the suspect Stegges email is suspicious in itself and I have no doubt not merely that it was not received but that it was never in fact sent. The overwhelming inference is that the suspect Stegges email was concocted as support for Dr Langdell's story that he had created a cloned disk.
24. Dr Langdell's story is incredible. The truth is a prosaic one, namely that Dr Langdell concocted disk 1 in support of his claim that he had invented the EDGE logo in 1991. When this was exposed by the claimant's expert he constructed an elaborate explanation and created disk 3, having learned from the Report how to avoid the mistakes he made the first time.
25. There is however a further and very important aspect of the matter. In his closing submissions, Mr Purvis QC pointed out that in all the correspondence about disclosure there had never been a suggestion prior to May 2010 that the evidence relied on by the defendants was contained in disk rather than paper form.
26. The claimant had expressed willingness to let the court read the without prejudice correspondence passing between the parties but Dr Langdell, as was his right, refused to waive the privilege attaching to it.

Approved Judgment

27. In his closing written submissions, however, Dr Langdell made the serious allegation against the claimant and its solicitors that they were deliberately misleading the court. He asserted that they knew very well that the disks had been referred to in without prejudice correspondence.
28. Mr Purvis took me to the relevant authorities and I held that this allegation resulted in a waiver by the defendants of their right to keep the without prejudice correspondence from the court. Mr Purvis then produced a clip of what the claimant said was the entire without prejudice correspondence for the relevant period. None of the letters in that clip mentioned the existence of a disk. In response, Dr Langdell subsequently produced a hard copy of two emails allegedly written by him to Mr Millar of the claimant (respectively dated October 2<sup>nd</sup> 2009 and February 23<sup>rd</sup> 2010) which he alleged had been deliberately and dishonestly excluded from the string of correspondence and which do indeed refer to the disk on which he relies.
29. I was in some difficulty as the matter of the without prejudice correspondence had arisen entirely in the course of closing submissions. No evidence had been formally given and there had been no cross-examination. However the correspondence and the counter allegations could not simply be ignored. Not only was the claimant's allegedly dishonest behaviour now part of Dr Langdell's case but, if the emails were genuine, they would support Dr Langdell's substantive case about the genuineness of the disk.
30. By this stage Dr Langdell had returned to Pasadena and arranging a mini-trial on the issue of the emails would be no easy task and would add substantially to the costs of the proceedings. Neither side wished me to do so.
31. I have decided that I should apply some common sense to this issue. I cannot let the case run on indefinitely in circumstances where the evidence (properly and fully tested in cross-examination) is overwhelming that the disks were concocted.
32. In deciding not to reopen the matter I have taken into account the following. The claimant has, pursuant to its continuing disclosure obligations, carried out a full search of its IT systems for the emails. No trace has been found. Dr Langdell has at no stage said that he has conducted a similar exercise and at no stage has he offered to let the claimant's experts examine any of his digital material.
33. Secondly, although Dr Langdell was aware of the claimant's allegation in mid-January, the two emails were not produced to the claimant until the hearing of 2<sup>nd</sup> March 2011, giving the claimant no opportunity to test them forensically, to seek permission to adduce evidence about them or to cross-examine Dr Langdell as to their authenticity. The emails had never been referred to before and, in common with other emails which Dr Langdell alleges were sent but not received, were not produced until the very last moment. It is hard to escape the inference that (in common with the suspect Steggles email and the email to Randall C opland referred to below) the intention was to try and reduce the scope for investigation by the claimant. It is also hard to escape the inference that crucial emails, said to have been sent by Dr Langdell but not received (for example an email sent to Jo Clayton of the claimant, together with an alleged "read receipt") were never in fact sent at all.

Approved Judgment

34. Thirdly, Dr Langdell claimed (as with the email to Randall Copland) that the email of 2<sup>nd</sup> October 2009 was a “stand-alone place-holder” reply and not part of a thread. However he was unable to explain why it was headed “Original Message”. The email of 23<sup>rd</sup> February 2010 is also headed “Original Message” and again no thread has been disclosed.
35. Fourthly, a subsequent email to the claimant (dated 18<sup>th</sup> December 2010) from Dr Langdell says in terms that he had not responded to the claimant’s without prejudice email timed at 1.18 am on 2<sup>nd</sup> October 2009. The alleged email of 11.34 am of 2<sup>nd</sup> October 2009 is therefore inconsistent with this assertion.
36. Lastly, the format of these emails differs from the thread disclosed by the claimant and its solicitors and resembles that of the suspect Steggle’s email and the Copland email, both of which were extensively dealt with in evidence.
37. I accept that it would be wrong to make positive findings of forgery of the two alleged without prejudice emails without proper evidence formally adduced. I cannot and should not make any findings of fact about them. The above factors are merely the circumstances against which I have decided that it would not be in accordance with the overriding objective to re-open the issue of whether the disks are genuine. In all those circumstances I propose to attach no weight to the two alleged without prejudice emails on the basis of a new allegation made by Dr Langdell.
38. I now turn to the claims made by the claimant in the action.

**Contract**

39. In October 1993 Dr Langdell issued proceedings against the claimant for passing off, alleging that he had unregistered rights in the mark EDGE. On 11<sup>th</sup> February 1994 Dr Langdell applied to register the trade mark EDGE in the class 16 (printed matter) category in respect of various items including gaming magazines. The action was stayed pending payment by Dr Langdell of security for costs but was then settled by an agreement dated 4<sup>th</sup> December 1996 (“the 1996 Agreement”). By that date, the claimant as well as EIM had applied to register the name EDGE in the class 16 (printed matter) category.
40. The thrust of the 1996 Agreement was that EIM would keep its registered mark and would be given the claimant’s trade mark application in return for a royalty-free licence for the claimant to use the mark EDGE in relation to EDGE magazine in any form, electronic, on-line or otherwise. The claimant paid EIM the sum of £20,000. All rights and goodwill arising out of the mark EDGE were to vest in EIM. EIM was prohibited from publishing or licensing anyone else to publish a magazine substantially similar to EDGE magazine under the name EDGE or any colourably similar mark. EIM was prohibited from claiming any association or connection with EDGE magazine or with the claimant, save that in response to an unsolicited request EIM could confirm that it had licensed the mark EDGE to the claimant in relation to EDGE magazine.

Approved Judgment

41. The claimant's case is that thereafter, as EDGE magazine's success grew, Dr Langdell's behaviour became increasingly burdensome. The claimant wanted to abrogate the licensing agreement and buy all necessary trade marks from the defendants.
42. Agreement was reached in 2004, both with EIM and with Dr Langdell. The result was a Concurrent Trading Agreement ("CTA") with EIM and a Deed with Dr Langdell. Each was paid a substantial sum of money in consideration of entering into the deeds, \$250,000 to EIM and \$25,000 to Dr Langdell, although the total sum was paid into Dr Langdell's bank account.
43. I should say at this juncture that Dr Langdell relied before me on Recital F to the 1996 Agreement, saying (although this was not pleaded) that it barred the claimant from bringing these present proceedings against EIM. Recital F provided (the emphasis is mine),

"EIM Softek and Future wish to settle the Proceedings and all actual and potential disputes between them relating to the publication by Future of EDGE Magazine upon the terms hereinafter appearing."

This contention is misconceived as it ignores the fact that the 1996 Agreement was expressly (see Recital 4 of the CTA) terminated and replaced by the CTA.

44. The primary effect of the CTA was to assign to the claimant those parts of the trade marks owned by EIM which included the word EDGE and which covered EDGE magazine. Because Class 16 includes not only magazines but also other printed matter such as posters, booklets and instruction manuals the agreements provided that EIM would assign to the claimant that part of each mark in Part 16 which covered:

"Printed matter and publications, namely magazines, newspapers, journals, columns and sections within such magazines, newspapers and journals, all in the field of business, entertainment and educations relating to computers, computer software, computer games, video games, hand-held games and other interactive media."

The Register of Trade Marks was duly amended accordingly, with a suffix "A" for EIM's marks and a suffix "B" for the claimant's marks.

45. The assignment included all rights in the agreed part of the trade marks,

"including all goodwill attaching to the use of the Agreed Part of the Trademarks in class 16 and all rights of action, powers and benefits arising from ownership of the Agreed Part..."

"Trademarks" was defined as including not only the registered marks but also "all unregistered trademark rights of EIM in those marks."

46. Under clause 2.1.2 of the CTA, EIM granted the claimant certain licensed rights, making it clear that EIM could not object to claimant using the mark EDGE in

Approved Judgment

relation to electronic publications. By Clause 2.9, the claimant undertook not to use the mark EDGE outside the publication of computer games magazines, their associated marketing and promotion and the uses covered by clause 2.1.2.

47. Importantly, both agreements provided as follows:

CTA clause 2.4:

“EIM further undertakes that it shall not use or permit the use by any other person of any Trade marks in a way which is or could reasonably be confusing with Future’s use of the same in accordance with this Agreement and Deed.”

The Deed clause 2.1.6:

“Not [to] use or permit the use by any other person of any of the Trademarks in a way which is or could reasonably be confusing with Future’s use of the same in accordance with the [CTA].”

48. I will also cite the provisions of clause 6.9 of the CTA as Dr Langdell set great store by them, saying that the claimant never fulfilled its obligations under the last part of the sub-clause:

“...The Parties acknowledge that specifically in respect to the trademark and brand “EDGE” in the computer and video games sectors, they will both be actively promoting, building and enforcing rights in the brand to the Parties’ mutual benefit, and that the Parties will share a common aim to use their reasonable endeavours to grow and enhance the EDGE brand in the computer and video game industry and promote worldwide consumer recognition of the EDGE brand as one associated with innovative quality goods and services. While not committing either Party to take any specific action after Completion, the Parties agree in good faith to use their reasonable endeavours to identify ways in which they may work together to jointly promote and enhance the EDGE brand in the worldwide computer and video game markets.”

49. I am not sure of the relevance of clause 6.9 to the case. Dr Langdell’s counterclaim has been struck out. He seeks to use the provision (and the claimant’s alleged shortcomings, which in any event the claimant denies) as some sort of defence to the claim, justifying his use of the EDGE logo and his claims to be responsible for the magazine. However while clause 6.9 recognises that both parties will be, and should in good faith be, promoting the EDGE brand, it does not provide any mandate for making claims to the business of the other party or for causing confusion between the undertakings of the two parties. Dr Langdell’s assertion that his use of the EDGE logo was merely “a good faith effort to comply with paragraph 6.9” is misplaced.

## **Breaches of the CTA and of the Deed**

### **Confusing use of the EDGE logo**

50. I have no doubt that the defendants deliberately adopted a logo which is an obvious replica of the claimant's EDGE mark. I was taken to many examples and I mention only the following. The version on the home page of EIM's website in June 2010. A version used in July 2010 on EIM's page on the Café press website. A version used on a letterhead in 2008 and 2009. (Dr Langdell accepted in cross-examination that the logo adopted on his letterhead for the purposes of a letter to the claimant's solicitors was a deliberate copy.) A version used on the homepage of EIM's website between 2003/4 and June 2009. A version used on EIM's game Mythora. Versions used on the game Bobby Bearing.
51. I accept the claimant's submission that all such uses are confusing or could reasonably be confused with the claimants' EDGE logo within the meaning of CTA clause 2.4. This is so whether the test to be applied is the "defective recollection" test appropriate to passing off, or a straight comparison of the marks side by side: see generally **British Telecommunications plc v One in a Million Ltd** [1999] FSR 1 at 23.
52. Dr Langdell admitted in cross-examination that he adopted the EDGE logo on his website in June 2009 in order to create a connection in the mind of the public with the claimant. He said he believed he had the right to do so but that was on the basis of his assertion, which I have already rejected, that he himself devised the EDGE logo in 1991. The logo was adopted to indicate Dr Langdell's entire business including his own games business and I reject his claim that he only used it on his webpage to promote the claimant's magazine.
53. There is also some hearsay evidence of confusion to be found in blog comments on the Internet. Dr Langdell shrugged this off saying that this evidence could have been written by the claimant. This seems to me inherently unlikely but I ascribe less weight to such evidence as the origin is unknown and there is no possibility of analysing its trustworthiness.

### **Deceptive statements**

54. I also accept the claimant's submission that various statements made by Dr Langdell, combined with his use of the EDGE logo, are designed to confuse visitors to his website. For example, in his letter to Apple of 31st March 2009 Dr Langdell stated that "EDGE is extremely well known for its other game products and services such as EDGE magazine." Dr Langdell operated a domain name using the title "EDGE Magazine", claiming that the magazine was published under licence from EDGE

**Approved Judgment**

Games. The EDGE games website stated that the magazine was “published by our trading partner, Future Publishing”. Dr Langdell’s personal website stated that “the EDGE brand is now known for many game related products and services, notably the UK top selling games magazine EDGE”. His biography on the International Games Developers Association (“IGDA”) website stated that EDGE games “spawned such well-known EDGE branded ventures as EDGE magazine.”

55. The primary defence advanced by Dr Langdell at trial was that the statements are true. Some (but not all) of them may well be literally true, but that does not prevent them from being misleading and in my judgment they are. My one doubt was about the phrase “trading partners”, since in a letter Mr Millar himself described the claimant and the defendants in these very terms. However even leaving this one phrase on one side there is enough material amply to justify my finding that the defendants’ statements on websites controlled by them claim, explicitly or otherwise, a relationship between EIM and the claimant which does not exist and which comprises a confusing use of the trade mark EDGE in breach of the CTA.
56. I should add that Dr Langdell denies any responsibility for the contents of his biography on the IGDA website. However he was a director of IGDA when complaint was first made, and no positive defence was pleaded to this effect at a time when the point could have been investigated with IGDA.

**Clauses 2.3 and 4.2**

57. The claimant pursued two allegations of breach in relation to US registered trade marks. It is notable that although the distinction between denial and non-admission was carefully explained to Dr Langdell by the Court during the course of the hearing, the defence advanced no positive case but merely pleaded non-admissions. Dr Langdell claims to have assigned these trademarks to the claimant in compliance with the CTA and during the course of the trial produce extracts from the US Patent Office Website which records the existence of a corrective assignment on its assignment page. He contends that the claimant’s claim in these respects is yet more evidence of its bad faith in its dealings with him.
58. It not clear exactly what did happen with these assignments as EIM had already assigned the marks to EDGE Games. However that may be, the claimant (without making any admissions) does not now pursue these claims since in proceedings in the USA the US Court has now revoked EDGE Games’ ownership portion of the relevant trade marks. I therefore say no more about this aspect of the case.

**Fundamental breach**

59. The final contractual issue is whether the breaches of the CTA and the Deed by EIM and Dr Langdell are such as to constitute fundamental breach and, if so, whether the claimant has accepted the repudiation. This is an important issue since the claimant is restricted by the CTA from using the mark EDGE for any purpose other than the publication of computer games magazines and certain ancillary uses.

Approved Judgment

60. The test for fundamental breach, approved by Lord Wilberforce in **Federal Commerce v. Molena Alpha** [1979] AC 757 at 778-9 is that expounded by Buckley LJ in **Decro-Wall v. Practitioners in Marketing** [1971] 1 WLR 361 at 380:

“...the... breach must be such as to deprive the injured party of a substantial part of the benefit to which he is entitled under the contract...Will the consequences of the breach be such that it would be unfair to the injured party to hold him to the contract and leave him to his remedy in damages”.

61. Further, as Lord Wright said in **Ross T Smyth v. T D Bailey** [1940] 3 All ER 60 at 72,

“I do not say that it is necessary to show that the party alleged to have repudiated should have an actual intention not to fulfil the contract. He may intend in fact to fulfil it, but may be determined to do so only in a manner substantially inconsistent with his obligations and not in any other way.”

62. However, although the mere fact that a breach is deliberate will not of itself make it a fundamental breach, deliberateness is a relevant factor. As Lord Wilberforce recognised in **Suisse Atlantique Société d’Armement SA v. NV Riddersche Kolen Centrale** [1967] 1 AC 361 at 435,

“a deliberate breach may give rise to a right for the innocent party to refuse further performance because it indicates the other party’s attitude towards further performance.”

63. In deciding that the defendants’ breaches were fundamental, I take into account the following matters. First, the breaches are of critically important terms of the CTA and the Deed. They are breaches of the terms regulating the ongoing obligations of the parties. Clause 2.4 of the CTA balances the restrictions on the claimant’s use of the EDGE logo in areas in which EIM had no interest by protecting the claimant’s independent goodwill in the area allocated to it. As Scrutton LJ said in **Gibaud v. Great Eastern Rly** [1921] 2 KB 426 at 435,

“If you undertake to do a thing in a certain way, or to keep a thing in a certain place, with certain condition protecting it, and have broken the contract by not doing the thing contracted for, or not keeping the article in the place where you have contracted to keep it, you cannot rely on the conditions which were only intended to protect you if you carried out the contract in the way in which you had contracted to do it.”

I agree with the claimant that EIM cannot continue to claim the benefit of the CTA while at the same time refusing to comply with its own obligations not to damage the claimant’s goodwill. Where, as here, the parties have agreed terms which are to apply to both sides, the defendants’ continuing refusal to comply with their side of the bargain is inconsistent with a right to insist on the contract continuing in force. Dr Langdell on behalf of the defendants has made it quite clear before and during this trial that they intend to continue to use their versions of the EDGE logo.

Approved Judgment

64. Secondly, the defendants' breaches were deliberately calculated to cause confusion. Thirdly, that confusion has necessarily caused substantial damage to the claimant's reputation.
65. There was a great deal of evidence before the court of Dr Langdell's increasing notoriety in the gaming industry. Dr Langdell submitted that his reputation was unjustified and had been orchestrated by the claimant. As to the former, it does not matter for present purposes whether the generally held view about Dr Langdell is justified or not. What matters is that connection with him harms the claimant. As to the latter point, I find it unlikely that all of the very considerable amount of internet condemnation of Dr Langdell has been posted by the claimant. In any event, there was other evidence of notoriety. For example, evidence from some of the claimant's witnesses (in particular Mr Binns and Mr Douglas) which was not seriously challenged. The fact that Dr Langdell pre-empted a petition to remove him from the Board of IGDA by resigning, followed by his expulsion from IGDA on ethical grounds. The fact that serious findings have been made against him and his companies in two sets of litigation in the US. Dr Langdell protested that those findings were made in interim proceedings only, but it is plain that the US court took a robust view of his conduct which will deleteriously affect the claimant's reputation if it is thought that the two businesses are connected.
66. In principle, therefore it is my view that the defendants' breaches of the CTA and the Deed were fundamental breaches within the test propounded by Lord Wilberforce.
67. Termination of a contract by acceptance of repudiation can be effected notwithstanding the prior acquisition of rights unconditionally acquired. Accordingly the assignment to the claimant of goodwill and registered trade mark rights in the name EDGE and the payments to EIM and Dr Langdell of consideration under the agreements do not prevent termination. Each side is entitled to retain those benefits: see *Chitty on Contracts* (30<sup>th</sup> Edition) at 24-051 and cases therein cited.
68. The only outstanding question is whether the claimant can be said to have unequivocally affirmed the CTA in such a manner as to debar it from terminating it through acceptance of fundamental breach. I have in mind that in August 2009 the claimant brought these proceedings for breach only. The claimant only purported to accept the defendants' repudiatory breaches by amendment to its pleading on 19<sup>th</sup> August 2010.
69. However this was a case in which the breaches were persisted in by the defendants. In those circumstances the fact that the claimant continued to press for performance should not preclude it from treating itself as discharged from its obligations under the contract. The claimant is not discharging on account of the original repudiation and trying to go back on an election to affirm. It is instead treating the contract as being at an end on account of the continuing repudiation reflected in the other party's behaviour: see *Chitty* (above) at 24-004 and cases therein cited.
70. I therefore find that the claimant has accepted the defendants' repudiatory breaches and validly terminated the CTA.

Approved Judgment**Passing off claims**

71. I have found that Dr Langdell has tried to appropriate for his own business the goodwill associated with EDGE Magazine by statements leading the public to believe that EIM is responsible for EDGE Magazine or that EIM's games are in some way approved or authorised by EDGE Magazine. It follows that all the pleaded breaches of the CTA committed within the jurisdiction of the court also comprise acts of passing off as representations likely to lead to confusion.
72. The court will assume damage where the goodwill associated with the product is being used and eroded by the actions of the defendant: see **Blazer v. Yardley** [1992] FSR 501 at 509-10, **BT v. One in a Million** at 23 and **Irvine v. Talksport** [2002] FSR 60.
73. Further, as I have already found, association with Dr Langdell is likely to cause serious damage to the claimant and EDGE Magazine.

**Infringement of copyright**

74. I have already said that I accept Mr Williams's evidence that he created the EDGE Logo for the claimant and that it has artistic originality. Dr Langdell's case in copyright was put squarely on the basis that he invented the EDGE Logo in 1991. I have rejected that claim. Accordingly use by the defendants of all three versions of the EDGE logo are in my judgment copies infringing the claimant's copyright.
75. There were infringing acts within the jurisdiction of this court. Merchandise bearing the EDGE logo was advertised on the Café Press website and sold in the UK pursuant to an order from the claimant. This is an issue of copies of the work to the public within s. 16 (1) (b) of the Copyright Designs and Patents Act 1988. In addition Dr Langdell has continued to threaten to infringe copyright through use of the EDGE logo. An injunction is thus in my judgment justified and appropriate.

**De-registration through non-use**

76. The claimant contends that all of EIM's registered trade marks in the UK are invalid for non-use under s. 46 (1) (b) of the Trade Marks Act 1994, namely:

“that such use has been suspended for an uninterrupted period of five years and there are no proper reasons for non-use”.

The burden of proof lies on the proprietor to show that his marks have been used: s.100 of the Act.

77. Use for the purposes of s. 46 must be genuine use. In **La Mer Technology Inc v. Laboratoires Goemar SA** [2004] Case C-258/02 at [21]-[22], the European Court of Justice explained that use as follows,

Approved Judgment

“...use of the mark may in some cases be sufficient to establish genuine use within the meaning of the Directive, even if that use is not quantitatively significant. Even minimal use can therefore be sufficient to qualify as genuine, on condition that it is deemed to be justified, in the economic sector concerned, for the purpose of preserving or creating market share for the goods or services protected by the mark.

The question whether use is sufficient to preserve or create market share for those products or services depends on several factors and on a case-by-case assessment which is for the national court to carry out. The characteristics of those products or services, the frequency or regularity of the use of the mark, whether the mark is used for the purpose of marketing all the identical products or services of the proprietor or merely some of them, or evidence which the proprietor is able to provide, are among the factors which may be taken into account.”

78. This action was started in 2009 but until the end of November 2009 the only evidence produced by Dr Langdell in support of trade mark use in the UK was by way of assertion in his witness statements. He says there that his annual turnover in the UK has never fallen below £100,000 and that he has consistently sold the game “Bobby Bearing” and other games for mobile phones and personal computers throughout the relevant period.
79. A number of points arise. First, there is no suggestion that these games have been advertised or promoted for sale in the UK in the relevant period. The only evidence of anyone finding and purchasing them in the UK is evidence of “trap” orders placed by the claimant for the purposes of the proceedings. Indeed when such orders were placed EIM did not even deliver the games. The only outlets through which any of the games could be purchased are Dr Langdell’s websites which redirect to amazon.com and another website. On both websites the games are priced in dollars. Amazon shows no instance of feedback from any buyers. There is therefore nothing to show that the marks “preserve or create market share for the goods or services protected by the mark”. The mere placing of the mark on the defendants’ websites is not genuine use in the absence of active promotion of the website since it is insufficient to establish a market for the goods.
80. Secondly, Dr Langdell seeks to rely on the claimant’s use of the mark. He cannot do this for the simple reason that he has no registered marks in relation to computer gaming magazines. They belong to the claimant alone.
81. Thirdly, Dr Langdell seeks to rely on sales of goods by others whom he claims are licensees of EIM. One matter relied upon is 20<sup>th</sup> Century Fox’s movie “The EDGE”. I would need cogent supporting evidence to convince me that this company is EIM’s licensee and no such evidence has been forthcoming. In any event it is doubtful whether the name of the movie fulfils the function of a trade mark in indicating the origin of goods. Another supposed licensee is Datel, which who sells a Wii game controller called “the Edge” in the US and over the internet. Again there is no evidence in support of trade mark use in the UK. A third supposed licensee is NIS

Approved Judgment

which sells a Playstation 3 game called "Cross Edge". Again there is no corroborative evidence and the relevance of this product is dubious in any event since "Cross Edge" is not one of the registered marks.

82. The defence, drafted at a time when the defendants were legally represented, did not give particulars of use. On 7<sup>th</sup> October and again on 22<sup>nd</sup> October 2010 the claimant served a request for further information asking for particulars of all uses relied on in relation to each mark including turnover figures and requesting support from accounts. The request was sent by recorded delivery to Dr Langdell's address for service in Regent Street and also to Dr Langdell's email address. No response was received and Dr Langdell claims he did not receive any such request. By contrast, the documents in Dr Langdell's list on disclosure which might relate to use were not actually provided with the covering letter purporting to enclose them. They were still not provided despite a letter from the claimant's solicitors of 19<sup>th</sup> October 2010 informing him of the omissions.
83. Just before the trial Dr Langdell served a supplemental list of documents. They include alleged sales figures in the UK for a number of the defendants' games. However no underlying records were produced and it was plainly too late to investigate the position in any event. No evidence of payments has ever been offered even though it is claimed that all payments were made through Paypal. No person who is said to have purchased a game has given evidence. It is not explained how sales could have been achieved in the absence of marketing or distributorship. I observe that although the games are offered on Amazon at \$24.99 each the sale price on the document is less than \$10. No explanation has been given as to why Dr Langdell has disclosed only one order ID from Amazon, although he alleges that he sold 471 copies of the game "Racers".
84. Another document shows sales of Bobby Bearing by a Polish company, Artegence. No evidence is tendered as to how such sales could have been effected in the UK. In any event, the sales shown are inconsistent with the contract that the defendant had with Artegence, which was in evidence. The contract does not require breakdown of sales by country, it requires payment of 30% gross revenue less sales tax and commission and there is no reference in the sales document to the exchange to dollars. The sales document does not in any event identify the number of units alleged to have been sold.
85. One of the documents disclosed by Dr Langdell shortly before trial was an EIM invoice and shipping notice dated 26<sup>th</sup> November 2010 addressed to Creative Distribution Ltd, a video game distributor in Croydon, for 50 copies of the Racers game. Dr Langdell offered no reason at all for not having disclosed documentation about this sale as soon as it was available. The invoice was a very recent one, bearing the date of only some 10 days before trial. However, under cross-examination, Dr Langdell was unable to recall the name of the person to whom he had dealt at Creative Distribution, whether the communication was by telephone or email, when the transaction had occurred, how Creative Distribution is said to have seen the game or what were the terms and conditions of sale. The invoice is in these circumstances insufficient proof of the sale it purports to record.
86. Importantly, Dr Langdell sought to rely on sales in the UK by his licensee Velocity Micro Inc. Apparently in response to the claimant's Part 18 request on 7<sup>th</sup> October

Approved Judgment

2010 Dr Langdell emailed the claimant's solicitors on 30<sup>th</sup> November 2010 with two emails, comprising an exchange with Randall Copland of Velocity Micro. Dr Langdell claims that he had sent hard copies of these documents to the claimant's solicitors twice by post but they were not received.

87. The first email was an alleged email from Dr Langdell to Mr Copland timed at 10.26 am on 11<sup>th</sup> June 2010, requesting UK sales figures for Velocity Micro's "Edge" and "Gamer's Edge" products for the years 2006-9. The second email is the alleged response timed at 6.34 am on 14 June 2010, saying simply,

"The figure is way over \$1m for each year".

88. The claimant contacted Mr Copland and he made a witness statement dated 3<sup>rd</sup> December 2010 attaching his correspondence with Dr Langdell. He said that the emails disclosed were not in the form sent and received. He attached the true copies of the emails he sent and received, explains how the disclosed emails appear to have been altered and confirms that the actual UK sales figures for the years in question were nil. Dr Langdell did not disclose the email dated 11<sup>th</sup> June that he had actually sent, nor did he disclose the email from Randall Copland in unredacted form which he actually received. His explanation for these omissions was totally unconvincing.

89. Having been served with Mr Copland's statement on the following working day Dr Langdell wrote to the claimant's solicitors saying that he had never alleged that Mr Copland's 14<sup>th</sup> June email was in response to his 11<sup>th</sup> June email. In cross-examination he insisted that he sent the email to Mr Copland. His explanation was that,

"...we have been let down by Velocity Micro, who said they were selling to the UK."

90. He elaborated on the Velocity Micro position by saying that he found Mr Copland's statement that he sold nothing in the UK market "surprising" as he had done some test purchases from Velocity Micro system during the years in question and had them shipped to his UK office. Again, however, there was no evidence whatsoever of this.
91. Instead, crucially, the claimant called Dr Langdell's bluff and offered to tender Mr Copland for cross-examination on his witness statement. The court explained to Dr Langdell that if he did not accept Mr Copland's evidence he would be well-advised to cross-examine him or else the court would be likely to accept his evidence as unchallenged. Dr Langdell then made the deliberate and informed choice not to take up the offer to explore his case with Mr Copland in cross-examination.
92. In all the above circumstances there is no cogent evidence that the defendants have had any presence in the UK market during the relevant period. I reject the sales figures contended for by Dr Langdell.
93. I would add that Dr Langdell contended that the claimant's allegations of passing off were inconsistent with their claims that he had not used his registered mark. However representations can still be made on websites directed into the UK in the absence of

Approved Judgment

the conduct of a genuine business under that mark: see **Euromarket Designs Inc v. Peters** [2001] FSR 20.

**Conclusion**

94. The claimant therefore succeeds in establishing all claims pursued at trial.

# EXHIBIT H

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

The Honourable Mrs Justice Proudman  
7 July 2011

BETWEEN

CLAIMANT

IF YOU TIMOTHY LANGDELL  
DISOBEY THIS ORDER YOU MAY  
BE HELD TO BE IN CONTEMPT  
OF COURT AND MAY BE IMPRISONED,  
FINED OR HAVE YOUR ASSETS SEIZED.

**FUTURE PUBLISHING LIMITED**

**Claimant**

and

IF YOU THE EDGE  
GAMES, INC  
DISOBEY THIS ORDER YOU  
MAY BE HELD TO BE IN CONTEMPT  
OF COURT AND MAY BE IMPRISONED,  
FINED OR HAVE YOUR ASSETS SEIZED.

**(1) THE EDGE INTERACTIVE MEDIA, INC  
(2) EDGE GAMES, INC  
(3) DR TIMOTHY LANGDELL**

**Defendants**

IF YOU EDGE GAMES, INC DISOBEY  
THIS ORDER THE COMPANY'S ASSETS  
MAY BE SEIZED AND ANY  
RESPONSIBLE INDIVIDUAL MAY BE  
IMPRISONED.

\_\_\_\_\_

**ORDER**

\_\_\_\_\_

ANY OTHER PERSON WHO KNOWS  
OF THIS ORDER AND DOES ANYTHING  
TO OBSTRUCT OR DELAY THE  
COURT IN ENFORCING THE TERMS  
OF THIS ORDER MAY BE HELD  
TO BE IN CONTEMPT OF COURT AND MAY  
BE IMPRISONED, FINED OR HAVE THEIR  
ASSETS SEIZED.

**UPON** the trial of this claim

**AND UPON** judgment for the Claimant having been given on 13 June  
2011

**AND UPON** hearing Counsel for the Claimant and the Third Defendant  
in person

**IT IS ORDERED THAT:**

**Injunction**

- 1 The First and Second Defendants (whether acting through their officers, employees, agents or any of them or otherwise howsoever) and the Third Defendant (whether acting by himself or through his employees, agents or any of them or otherwise howsoever), must not do the following acts or any of them:
  - (a) copy or issue to the public in the United Kingdom copies of the Claimant's Logo (as the same is defined in Annex 1 to this Order) or any substantial part thereof without the licence of the Claimant;
  - (b) otherwise infringe the Claimant's copyright in the Claimant's Logo;
  - (c) pass themselves off as being endorsed by or connected to the Claimant and/or its products or services.
  
- 2 Without prejudice to the generality of the foregoing, the Defendants must within 7 days of the date of this Order:
  - (a) permanently remove any and all copies of the Claimant's Logo from the following websites:
    - (i) [www.edgegames.com](http://www.edgegames.com);
    - (ii) [www.edgegames.co.uk](http://www.edgegames.co.uk);
    - (iii) [www.edge-mobile.com](http://www.edge-mobile.com);

(iv) [www.cafepress.com/EDGEGAMES](http://www.cafepress.com/EDGEGAMES); and

(v) any other websites within the Defendants' custody or control;

(b) permanently remove and/or not repeat the following statement from the website at [www.edgegames.com](http://www.edgegames.com):

*Future's use of the mark EDGE in relation to electronic publication versions of their EDGE Magazine is under license from Edge.*

(c) permanently remove and/or not repeat the following statement from the website at [www.timlangdell.com](http://www.timlangdell.com):

*the EDGE brand is now known for many game related products and services, notably the UK top-selling games magazine EDGE...*

#### **Revocation of trade marks**

3 UK Registered Trade Marks 1562099A, 2147008A, 2147013A, 2147022A, 2147035A and 2147040A be revoked.

4 Notice of the Order be given to the Registrar of Trade Marks by serving a copy of this Order upon the Registrar.

5 Paragraphs 3 and 4 above shall be stayed for 21 days from the date of this Order and in the event that the First Defendant within that period makes an application for permission to appeal to the Court of Appeal in relation to revocation of trade marks or an application to the Court of Appeal for an extension of time for making the said

application for permission, paragraph 4 shall be further stayed until that application for permission to appeal and/or application for an extension of time and/or any subsequent appeal is finally determined.

### **Declaration**

6 It is hereby declared that the Concurrent Trading Agreement (as defined in Annex 1 hereto) terminated with effect from 20 August 2010.

### **Damages**

7 The Defendants must pay to the Claimant:

- (a) damages for copyright infringement;
- (b) damages for passing off; and
- (c) damages for breach of contract.

8 The Claimant is entitled to an Inquiry as to the quantum of damages payable pursuant to paragraph 7 above (including the question as to whether additional damages for copyright infringement should be payable) and has permission to apply for further directions relating to the said Inquiry.

### **Contempt of Court**

9 The Claimant has permission to bring proceedings against the Third Defendant for contempt of court by reason of the Third Defendant's false statements in his witness statements dated 17 September 2010 and 29 November 2010.

### **Costs**

- 10 The Defendants shall pay to the Claimant its costs of this action on the indemnity basis, such costs to be subject to detailed assessment if not agreed.
- 11 The Defendants shall within 28 days of the date of this Order pay to the Claimant the sum of £340,000 on account of such costs.

### **Interest**

- 12 All sums found due and payable herein shall be subject to interest pursuant to Section 35A of the Senior Courts Act 1981 or under the equitable jurisdiction of the Court.

### **Defendants' applications**

- 13 The Defendants' applications for a stay of execution of judgment, permission to bring proceedings for contempt of court and permission to appeal the judgment of 13 June and this Order are dismissed.

ANNEX 1

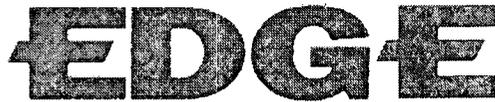
**Defined terms used in the Order**

**Concurrent Trading Agreement**

means the agreement between the Claimant and the First Defendant dated 15 October 2004.

**The Claimant's Logo**

means the stylised logo version of the word "EDGE" as used by the Claimant in its Edge magazine (shown below):



The logo consists of the word "EDGE" in a bold, blocky, sans-serif font. The letters are filled with a dense, stippled or halftone pattern, giving them a textured, metallic appearance. The letters are closely spaced and have a slightly irregular, hand-drawn quality.

CLAIM NO HC09 CO2265

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

B E T W E E N

FUTURE PUBLISHING LIMITED

Claimant

and

(1) THE EDGE INTERACTIVE MEDIA,  
INC

(2) EDGE GAMES, INC

(3) DR TIMOTHY LANGDELL

Defendants

---

ORDER

---

Stevens & Bolton LLP  
Wey House  
GUILDFORD  
GU1 4YD

DX 2423 GUILDFORD 1

Tel: 01483 302 264

Fax: 01483 302 254

Ref: FCW.EMO.FU0899.27

Solicitors for the Claimant