

TTAB

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 23, 2011

VIA EXPRESS MAIL EM 484828435 US

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

Re: **Defendant Future Publishing Ltd's Reply in Support
of Motion for Cancellation of Reg. No. 3,105,816
Cancellation No.: 92051465**

74/554,730

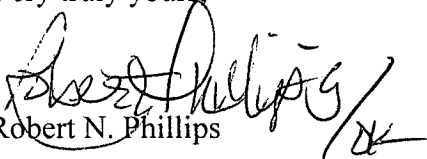
Dear Sir/Madam:

Enclosed please find the following:

1. This transmittal letter (in duplicate);
2. Defendant Future Publishing Ltd's Reply in Support of Motion for Cancellation of Reg. No. 3,105,816
3. Declaration of Robert N. Phillips in Support of Defendant Future Publishing Ltd's Reply in Support of Motion to for Cancellation of Reg. No. 3,105,816; 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



08-23-2011

U.S. Patent & TMO/TM Mail Rpt Dt. #01

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US_ACTIVE-107058909.1

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

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

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.

DEFENDANT FUTURE PUBLISHING LTD'S REPLY IN SUPPORT OF MOTION FOR CANCELLATION OF REG. NO. 3,105,816

Cancellation No. 92051465

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

In its opposition brief¹, Defendant Edge Games, Inc. (hereinafter "Langdell") argues that defendant Future Publishing Ltd ("Future") lacks standing to bring this motion, and that Future's motion is barred by the Board's Decision dated December 13, 2010 (Docket 34) (hereinafter "Board's Decision"). Langdell is mistaken.

First, Future has standing to file this motion for cancellation of Registration No. 3,105,816. Future's standing to file this motion stems from Future being joined by the Board as a party defendant, as set forth in the Board's Decision. (See p.4 of Docket 34). Moreover,

¹ Langdell failed to serve its opposition brief (Docket 46) on Future or its counsel of record. Langdell also failed to serve his pending related motion to withdraw/reverse Section 7 surrenders of registration nos. 3,559,342 and 2,219,837 (Docket 45). Future's counsel discovered both of Langdell's filings by reviewing the TTAB docket on-line.

Future's motion makes it clear that Future is being represented by separate counsel, as requested by the Board in that same decision. Finally, the Board's Decision invited a further filing from the parties regarding the disposition of this proceeding as it pertains to Registration No. 3105816. Future's motion does exactly that.

Second, the Board's Decision does not bar Future's motion because it involves a different issue altogether. As the Board will recall, Langdell previously moved to withdraw his Section 7 Surrender of Registration No. 3105816 on the ground that Future was a partial assignee and had not co-signed the Section 7 Surrender. Future intervened and objected to the cancellation of the portion of the Registration that was assigned to it, and argued that if the surrender is withdrawn and reversed by the Board and the Registration is reinstated, the Board should at least give effect to Langdell's surrender of his partial interest and reinstate the Registration in Future's name only. The Board found that "inasmuch as [Langdell] is not the sole owner of said registration, the Board cannot give effect to [his] surrender thereof." The Board further found that "the present record provides the Board no basis on which to enter the change in ownership that [EA] contemplates" (i.e., in Future's name alone). Therefore, the only issue decided by the Board was whether Langdell's Section 7 Surrender was valid, and whether to reverse it and reinstate the Registration in whole or in part.

In contrast, Future is now moving the Board to comply with a valid and binding Judgment from a United States District Court which orders the Commissioner of Patents and Trademarks to cancel Registration No. 3105816 *in its entirety* pursuant to Section 37 of the Lanham Act (15 U.S.C. §1119). The validity of Langdell's Section 7 Surrender is not at issue in Future's motion, and Future is no longer seeking to maintain the partially assigned portion of the Registration.

As noted in Future's motion, United States District Court for the Northern District of California entered a Final Judgment with the following order:

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.

Langdell has not filed any motion to the District Court seeking to vacate, modify or otherwise seek relief from the Judgment. Future Publishing consents to the cancellation of Registration No. 3,105,816 in its entirety and Future has not raised and does not intend to raise any objections to the Judgment with the District Court.²

Langdell incorrectly argues, without authority, that the Board is not obligated to comply with the District Court's Final Judgment. 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

² See paragraphs 9 and 10 of Declaration of Robert N. Phillips filed and served by first class mail on August 18, 2011 in Opposition To Motion Of Defendant Edge Games Inc. To Withdraw (Reverse) Section 7 Surrender Of Reg. Nos. 3,559,342 And 2,219,837.

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 Registration No. 3,105,816. 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.

Langdell’s arguments regarding the Final Judgment being entered pursuant to a settlement agreement, and not a trial by court or jury, are red herrings. The Final Judgment is exactly that – **a final judgment** – and is of equal force and effect regardless of the basis upon which it is entered. For instance, Langdell’s time to file a Rule 59 Motion to Amend, a Rule 60 Motion for Relief, or a Notice of Appeal under FRAP 4, all started on the date the Judgment was entered. The fact the Judgment was entered pursuant to a stipulation of the parties does not alter Langdell’s obligations. Indeed, Langdell waived his right to appeal, and has yet to file any motions with the District Court to amend or seek relief from the Judgment. Instead, Langdell is trying to make the Board an accomplice in his contemptuous scheme to disregard the Court’s Judgment.³ The Board should not condone Langdell’s behavior.

Likewise, Langdell is incorrect that that he would need to join in the motion for the Board to grant it. This is not a motion for a Section 7 voluntary surrender. Rather, it is a motion

³ Langdell is also in breach of Section 2 of his Settlement Agreement with EA which requires him to cancel Registration No. 3,105,816 and not file any further applications to register EDGE for any classes of goods and services. See Exhibit 1 to Declaration of Robert N. Phillips filed herewith.

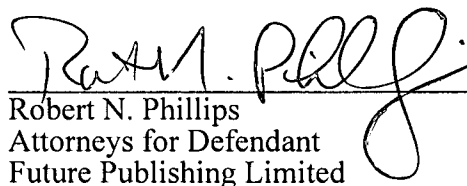
for the Board to follow a District Court Judgment. Future is entitled to bring the Judgment to the Board's attention, and request the Board to comply with it. Future does not need Langdell's consent for this motion.

The Board should put an end to Langdell's long running abuse of the Trademark Office, and follow the Final Judgment of the District Court and cancel Registration No. 3,105,816 as ordered. The fact that Future was not a party to the action in which the Judgment was entered does not give the Board a basis to disregard the Court order. Nor does it give Langdell a basis to collaterally attack the Judgment.⁴ The only party with standing to challenge the Judgment is Future; but Future is content to have the Registration cancelled in its entirety, as Future clearly owns long running common law rights in the EDGE mark, and has filed new applications to register the mark. Therefore, Future's motion is procedurally and substantively proper, and should be immediately granted by the Board.

Dated: August 23, 2011

REED SMITH LLP

By:


Robert N. Phillips
Attorneys for Defendant
Future Publishing Limited

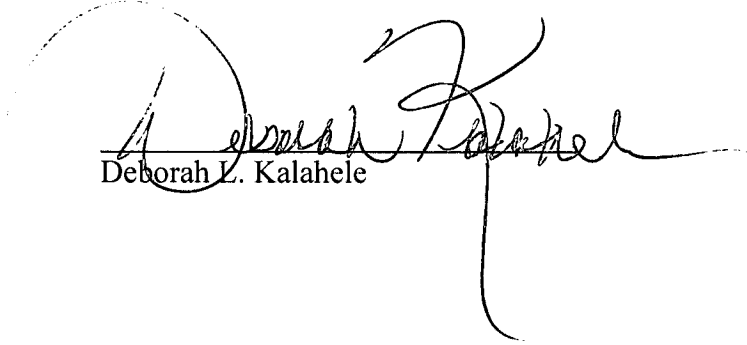
⁴ Indeed, Langdell would be estopped from making any challenge to the Judgment based upon his partial assignment to Future because he clearly knew of the assignment at the time he entered into the settlement with EA. See paragraphs 7 and 8 of Declaration of Robert N. Phillips filed and served by first class mail on August 18, 2011 in Opposition To Motion Of Defendant Edge Games Inc. To Withdraw (Reverse) Section 7 Surrender Of Reg. Nos. 3,559,342 And 2,219,837.

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 REPLY IN SUPPORT OF MOTION FOR CANCELLATION OF REG. NO. 3,105,816 was served on the following counsel of record for Applicant, by depositing same in the U.S. Mail, first class postage prepaid, this 23 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, 5th Floor
San Francisco, CA 94111-5800


Deborah L. Kalahale

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

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

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 FUTURE PUBLISHING LTD'S MOTION FOR CANCELLATION OF REG. NO. 3,105,816

Cancellation No. 92051465

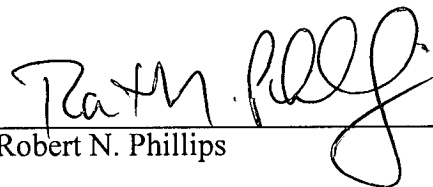
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

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 1 is a true and correct copy of the settlement agreement in 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.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd 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 FUTURE PUBLISHING LTD'S MOTION FOR CANCELLATION OF REG. NO. 3,105,816 was served on the following counsel of record for Applicant, by depositing same in the U.S. Mail, first class postage prepaid, this 23 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, 5th Floor
San Francisco, CA 94111-5800

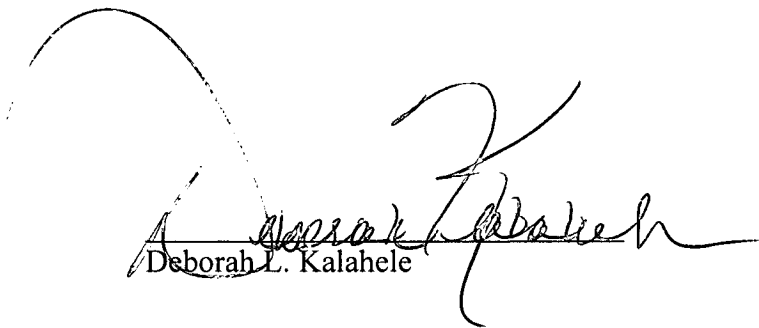

Deborah L. Kalahela

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("**Agreement**") is made and entered into as of October 6, 2010 ("**Effective Date**") by and between Edge Games, Inc. ("**Edge Games**"), The Edge Interactive Media, Inc. ("**EIM**"), Tim Langdell ("**Langdell**" and together with Edge Games and EIM, jointly and severally, the "**Edge Parties**"), on the one hand, and Electronic Arts Inc. and EA Digital Illusions CE AB (collectively, "**EA**"), on the other hand.

WHEREAS, EA develops and publishes the interactive entertainment software product titled "MIRROR'S EDGE," including without limitation all versions, prequels, sequels, expansion sets, spinoff games, and other updates thereof and all works of authorship associated therewith and all derivations thereof, and also develops and/or licenses third parties the rights to use, create, develop, and manufacture other goods and services that do or will use the MIRROR'S EDGE mark, storyline, and/or characters, including but not limited to MIRROR'S EDGE comic books, graphic novels, collectible dolls, merchandise, apparel, movies, TV shows, and other derivative and ancillary works in all media whether existing now or in the future (collectively, the "**Mirror's Edge Franchise**").

WHEREAS, EA uses and owns the trademark MIRROR'S EDGE in the United States and in other jurisdictions, including but not limited to U.S. Registration Nos. 3,806,031; 3,806,032; and 3,806,033, UK Application No. 2,484,088, and Community Trade Mark Registration No. 6123129;

WHEREAS, EA has filed revocation proceedings before the U.K. Intellectual Property Office ("**UKIPO**") against six U.K. trademark registrations owned by the Edge Parties (Revocation Nos. 83419, 83420, 83421, 83422, 83423, and 83424) (collectively, the "**EA Trademark Action**").

WHEREAS, the Edge Parties have instituted opposition, cancellation, and/or revocation proceedings against EA's U.S. and U.K. registrations for MIRROR'S EDGE and EA's U.K. registration for SIMEARTH and POPULOUS, including without limitation U.S. Patent and Trademark Office ("**USPTO**") Opposition Proceeding No. 98,327 and UKIPO Revocation Nos. 83487 and 83488 (the "**Edge Parties Trademark Actions**");

WHEREAS, Edge Games commenced in the United States District Court for the Northern District of California an action captioned *Edge Games, Inc. v. Electronic Arts Inc.*, Case No. 10-CV-02614 WHA (the "**Federal Court Action**");

WHEREAS, the Edge Parties have at various times threatened to file cancellation actions against EA marks and/or to apply to register marks similar to EA marks (collectively with the EA Trademark Action, the Edge Parties Trademark Actions, the Federal Court Action, and all related contentions, claims, or proceedings, the "**Dispute**");

WHEREAS, Edge Games filed a First Amended Complaint in the Federal Court Action on July 2, 2010;

WHEREAS, Edge Games filed a Motion for Preliminary Injunction in the Federal Court Action on August 20, 2010;

WHEREAS, EA filed its Answer and Counterclaim in the Federal Court Action on August 29, 2010;

WHEREAS, Edge Games filed its Counter-Counterclaims in the Federal Court Action on September 23, 2010;

WHEREAS, the Court in the Federal Court Action entered an Order Denying Motion for Preliminary Injunction on October 10, 2010;

WHEREAS, no party makes any admission of wrongdoing nor does any party intend by this Agreement to seek a finding of wrongdoing by any party; and

WHEREAS, the parties now wish to amicably resolve the Dispute upon the terms and conditions set forth herein below;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. DISPOSITION OF FEDERAL COURT ACTION

1.1. Concurrently with the execution of this Agreement, the parties shall execute the Stipulation Regarding Disposition of Claims and [Proposed] Order (the “**Stipulation**”) that is attached as Exhibit A hereto.

1.2. Immediately following the complete execution of the Stipulation and this Agreement, counsel for the Edge Parties shall file the Stipulation, including the [Proposed] Final Judgment attached as an exhibit thereto, in the Federal Court Action.

1.3. The effectiveness of this Agreement is conditioned upon the complete execution and filing of the Stipulation in the Federal Court Action.

1.4. Neither the Stipulation nor this Agreement, nor any act performed or executed pursuant to or in furtherance of the Stipulation or the Agreement, is intended as or shall constitute a concession or an admission of, or evidence of, any fault or wrongdoing.

2. CANCELLATION OF U.S. TRADEMARK REGISTRATIONS

2.1. Within ten (10) days following the Effective Date, Edge Games shall file in the USPTO a petition for voluntary cancellation with prejudice of U.S. Trademark Registration Nos. 2,727,547 and 3,585,463.

2.2. In the event that the Court in the Federal Court Action for any reason fails or refuses to order cancellation of U.S. Trademark Registration Nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and/or 3,381,826, the Edge Parties shall file in the USPTO a petition for

voluntary cancellation with prejudice of each such registration within ten (10) days of such refusal or upon EA's written request.

2.3. The Edge Parties shall not file any further applications in the USPTO to register the marks EDGE, THE EDGE, EDGEGAMERS, EDGE OF EXTINCTION, GAMER'S EDGE, and/or CUTTING EDGE for any classes of goods or services.

3. OTHER TERMS RELATING TO TRADEMARK REGISTRATION AND USE

3.1. The Edge Parties shall dismiss with prejudice and without costs the Edge Parties Trademark Actions and any other opposition, cancellation, and/or revocation proceedings that they have filed with the USPTO, UKIPO, or any other trademark office worldwide. The Edge Parties shall also expressly abandon the following pending U.K. applications: UKIPO Nos. 2,516,573 (MIRROR'S SPORE) and 2,516,575 (SOULSPORE).

3.2. EA shall dismiss without prejudice and without costs the EA Trademark Action.

3.3. Concurrently with the execution of this Agreement, the parties shall execute the Letter of Agreement that is attached as Exhibit B hereto, which EA shall then file in the UKIPO in satisfaction of the parties' obligations under Sections 3.1 and 3.2.

3.4. Within ten (10) days following the Effective Date, the Edge Parties shall file requests for abandonment with prejudice of the following pending applications: U.S. Application Serial Nos. 78/807,479 (EDGE); 78/981,284 (EDGE); and 85/032,734 (MIRRORS).

3.5. The Edge Parties shall not adopt, use, register, or attempt to register, on any register worldwide, any mark, game title, domain name, trade name, or other designation of origin that is comprised in whole or in part of any words or symbols that EA has used, now uses, or may hereafter use as a mark, in a game title, or otherwise as a designation of origin; provided, however, that this is not intended to preclude the Edge Parties from using the EDGE mark in a manner that is not confusingly similar to any EA mark or other EA designation of origin and that otherwise comports with this Agreement.

3.6. The Edge Parties shall not cause, encourage, promote, or authorize the adoption, use, or registration, on any register worldwide, by any third party of any mark, game title, domain name, trade name, or other designation of origin that is comprised in whole or in part of any words or symbols that EA has used, now uses, or may hereafter use as a mark, in a game title, or otherwise as a designation of origin.

4. SETTLEMENT PAYMENT

4.1. The Edge Parties shall pay to EA the amount of twelve thousand dollars (\$12,000) (the "**Settlement Amount**").

4.2. The Settlement Amount shall be paid in twelve equal installments of one thousand dollars (\$1,000) each, with the first payment made on or before October 17, 2010 and the remaining payments made on the first calendar day of each month commencing November 1,

2010 and continuing for ten (10) consecutive months thereafter. Payments shall be wired to the following account, or such other account as EA may designate in writing:

Account Holder: Electronic Arts Inc.
Bank: Citibank
Account Number: 30610985
Swift Number: CITIUS33

5. RELEASE AND COVENANT NOT TO SUE

5.1. Each of the Edge Parties, on behalf of himself or itself, and on behalf of each of his or its predecessors, successors, parents, subsidiaries, divisions, partners, joint venturers, representatives, heirs, marital communities, assigns, licensees, and other affiliated or related persons or entities, and each of their respective present and former principals, officers, directors, employees, representatives, agents, shareholders, members, attorneys, and assigns (collectively, the "**Releasing Parties**") hereby releases and forever discharges EA and its predecessors, successors, parents, subsidiaries, divisions, partners, joint venturers, representatives, assigns, licensees, distributors, manufacturers, vendors, customers, and other affiliated or related persons or entities, and each of their respective present and former principals, officers, directors, employees, representatives, agents, shareholders, members, attorneys, and assigns (collectively, the "**Released Parties**") from any and all claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, anywhere worldwide (collectively, "**Claims**") that the Releasing Parties, or any of them, have had, now have, or may claim to have against the Released Parties, or any of them, through the Effective Date.

5.2. Further, and without limiting the foregoing, the Edge Parties, on behalf of themselves and the other Releasing Parties, release and forever discharge the Released Parties from all Claims that the Releasing Parties, or any of them, may hereafter have or claim to have based upon, arising out of, or related directly or indirectly to (a) any events, acts, or omissions occurring before the Effective Date; and/or (b) the Dispute; and/or (c) any of the allegations, contentions, and claims made in the EA Trademark Action, the Edge Parties Trademark Actions, and/or the Federal Court Action; and/or (d) any trademark, service mark, or other designation of origin or any other intellectual property worldwide that has been, is being, or may in the future be used by EA or the other Released Parties (collectively with the Claims released above, the "**Released Claims**").

5.3. It is the intent of the parties to give the broadest release and discharge of the Released Claims possible under the law. To that end, the Edge Parties, on behalf of themselves and the other Releasing Parties, expressly waive and relinquish any and all provisions, rights, and benefits conferred by any law of the United States, of any state or territory of the United States, or of any foreign jurisdiction or territory, or by any principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. With respect to any and all Released Claims, the Edge Parties, on behalf of themselves and the other Releasing Parties, waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Edge Parties, on behalf of themselves and the other Releasing Parties, acknowledge that they may hereafter discover facts different from or in addition to those which they now know or believe to be true with respect to the Released Claims, and which, if known to them at the time they executed this Agreement, may have materially affected their decision to execute this Agreement. The Edge Parties, on behalf of themselves and the other Releasing Parties, acknowledge and agree that by reason of this Agreement and the releases contained herein, they are voluntarily, knowingly, and after receiving the advice of counsel assuming any risk of such unknown facts and such unknown and unsuspected claims, and that this Agreement shall be and shall remain in full force and effect in all respects.

5.4. The Edge Parties, on behalf of themselves and the other Releasing Parties, covenant and agree that they shall not file or maintain, or cause, encourage, promote, or authorize the filing or maintenance, in any state, federal, or foreign court, agency, trademark or patent office, tribunal, or other judicial body in any territory or jurisdiction worldwide, any claim or action of any kind, nature, and character whatsoever, known or unknown, suspected or unsuspected, which the Releasing Parties, or any of them, may now or in the future have or claim to have against the Released Parties, any persons acting in privity with them, and any person or entity involved in any way (including without limitation in connection with creation, development, sales, distribution, advertising, marketing, promotion, licensing, use, or play) with the Mirror's Edge Franchise and/or other EA goods or services or EA-licensed goods or services, or any of them, based upon, arising out of, or related directly or indirectly to the Released Claims and/or any other intellectual property matters. The Edge Parties shall pay all costs and attorneys' fees that EA or any other Released Party incurs in defending against any claim or action that is threatened or filed in violation of this covenant.

5.5. The Edge Parties, on behalf of themselves and the other Releasing Parties, covenant and agree that they shall not directly or indirectly challenge or contest, or file or maintain, or cause, encourage, promote, or authorize the filing or maintenance, in any state, federal, or foreign court, trademark, or patent office, agency, tribunal, or other judicial body in any territory or jurisdiction worldwide, any claim or action of any kind, nature, and character whatsoever, known or unknown, suspected or unsuspected, relating to any trademark application and/or trademark registration (including without limitation those relating to MIRROR'S EDGE) or other intellectual property that is now or hereafter owned or controlled by the Released Parties or any of them. The Edge Parties shall pay all costs and attorneys' fees that EA or any other Released Party incurs in defending against any challenge, contest, claim, or action that is threatened or filed in violation of this covenant.

6. MISCELLANEOUS

6.1. **Successors, Assigns, and Beneficiaries.** This Agreement, including the parties' respective rights and reservations hereunder, shall inure to the benefit of and be binding upon the respective parties and any related parties, including but not limited to their officers, directors, agents, heirs, representatives, parents, subsidiaries, divisions, marital communities, successors

and assigns, to the extent applicable, as well as their respective successors and assigns and all those acting in concert or participation with them or under their direction or control.

6.2. **No License.** Nothing in this Agreement shall be construed as a license by any party to the Agreement to use any trademark, service mark, trade name, logo, or other designation of origin of any other party to this Agreement, and each party agrees that it shall not make any statement to any third party that suggests or implies that EA has obtained a license from the Edge Parties.

6.3. **Relationship of the Parties.** The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

6.4. **Governing Law.** This Agreement, together with all the rights and obligations of the parties hereunder, shall be construed and enforced under the internal laws of the State of California, without regard to its conflict of laws principles.

6.5. **Disputes.** Any dispute, claim, or controversy arising out of or relating to this Agreement, other than a claim for trademark or other intellectual property infringement arising under federal law, shall be submitted to JAMS or its successor for final and binding arbitration before a single arbitrator. Any future trademark or other intellectual property infringement claims arising under federal law shall be filed solely in the United States District Court for the Northern District of California, and each party expressly consents to exclusive jurisdiction therein. The parties further agree to request that any such action be assigned to Judge William Alsup. The prevailing party in any such arbitration or court action shall be awarded all of its costs and attorneys' fees, including costs and attorneys' fees incurred by such party prior to the commencement of the arbitration or court action, and further including any costs and attorneys' fees incurred in enforcing and collecting any judgment or award.

6.6. **Liquidated Damages.** The Edge Parties agree that any breach or violation by them of any terms or provisions of Sections 2 or 3 of this Agreement will result in substantial damages and injury to EA, the precise amount of which would be extremely difficult or impracticable to determine. Accordingly, the parties have made a reasonable endeavor to estimate a fair compensation for potential losses and damages to EA that would result from any such breach. Specifically, and without limiting any equitable or other relief that may be available to EA, the Edge Parties agree that they shall be obligated to pay the sum of one hundred thousand dollars (\$100,000) for each such breach or violation of Sections 2 or 3 as a reasonable and fair amount of liquidated damages to compensate EA for any loss or damage resulting from each such breach. The parties agree that such sum bears a reasonable and proximate relationship to the actual damages that EA will or may suffer from each such breach.

6.7. **Notices.** All notices hereunder shall be in writing and, in addition to any other delivery methods, must be sent by certified mail, return receipt requested, to the following addresses (or such other addresses as such party may hereafter designate in a writing delivered in accordance with this notice provision):

If to EA: Electronic Arts Inc.
 VP, Legal
 209 Redwood Shores Parkway
 Redwood City, California 95065

If to Edge Parties: Dr. Tim Langdell
 Edge Games, Inc.
 530 South Lake Avenue, #171
 Pasadena, California 91101

6.8. **Construction.** The Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party because of the manner in which this Agreement was drafted or prepared. The titles and headings used are for reference purposes only and will not in any manner limit the construction of this Agreement, which will be considered as a whole. The Recitals are part of the Agreement between the parties.

6.9. **Provisions Severable.** Each provision contained in this Agreement is severable. If any provision in this Agreement is found to be void or unenforceable, the remaining provisions shall not be affected by such finding and shall remain in full force and effect.

6.10. **Fees and Costs.** The parties shall bear their own costs, expenses, and attorneys' fees incurred in connection with the Federal Court Action and this Agreement.

6.11. **Entire Agreement; Waiver and Amendment.** This Agreement constitutes the entire agreement of the parties and shall not be modified, except by a writing signed by each party. No covenants, agreements, representations, or warranties of any kind have been made by any party, except as specifically set forth in this Agreement. All prior discussions, written communications, and negotiations have been merged and integrated into and are superceded by this Agreement. No breach of any provision hereof can be waived unless done so expressly and in writing. Express waiver of any one breach shall not be deemed a waiver of any other breach of the same or of any other provision hereof.

6.12. **No Undue Influence.** Each party represents that it has read and understands all of the provisions contained herein. Each party represents it has relied solely upon its own judgment and knowledge, and on the advice of the party's own counsel and representatives, concerning the nature, extent and duration of its rights, duties, and claims.


6.13. **Signature Authority.** Each person executing this Agreement warrants that s/he is authorized to execute this Agreement on behalf of the party for whom s/he signs.

6.14. **Execution in Counterparts.** This Agreement may be executed by facsimile or PDF and in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no


signatory will be bound until all the parties named below have executed or caused to be executed a counterpart of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement on the dates indicated below.

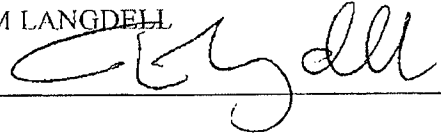
Dated: October 6, 2010

EDGE GAMES, INC.
By: 
Title: CEO

Dated: October 6, 2010

THE EDGE INTERACTIVE MEDIA, INC.
By: 
Title: CEO

Dated: October 6, 2010

TIM LANGDELL


Dated: October 6, 2010

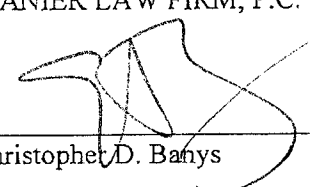
ELECTRONIC ARTS INC.
By: _____
Title: _____

Dated: October 6, 2010

EA DIGITAL ILLUSIONS CE AB
By: _____
Title: _____

APPROVED AS TO FORM:

Dated: October 6, 2010

THE LANIER LAW FIRM, P.C.
By: 
Christopher D. Banys

EXECUTION COPY

signatory will be bound until all the parties named below have executed or caused to be executed a counterpart of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement on the dates indicated below.

Dated: October 6, 2010

EDGE GAMES, INC.

By: _____

Title: _____

Dated: October 6, 2010

THE EDGE INTERACTIVE MEDIA, INC.

By: _____

Title: _____

Dated: October 6, 2010

TIM LANGDELL

Dated: October 6, 2010

ELECTRONIC ARTS INC.

By: VP

Title: IP Legal Counsel

Dated: October 6, 2010

EA DIGITAL ILLUSIONS CE AB

By: VP

Title: IP Legal Counsel

APPROVED AS TO FORM:

Dated: October 6, 2010

THE LANIER LAW FIRM, P.C.

By: _____

Christopher D. Banys

EXECUTION COPY

Dated: October 6, 2010

KENDALL BRILL & KLIEGER LLP


By:  _____
Robert N. Klieger

EXHIBIT A

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.

27 AND RELATED COUNTERCLAIMS AND
28 COUNTER-COUNTERCLAIMS

Case No. 10-CV-2614-WHA

**STIPULATION REGARDING
DISPOSITION OF CLAIMS AND
[PROPOSED] ORDER**

Hon. William Alsup

Complaint Filed: June 15, 2010

1 3. With respect to Edge Games' Third Claim for Relief in the First Amended
2 Complaint (Common Law Trademark Infringement), judgment will be entered in favor of EA and
3 against Edge Games.

4 4. With respect to Edge Games' Fourth Claim for Relief in the First Amended
5 Complaint (Unfair Competition), judgment will be entered in favor of EA and against Edge
6 Games.

7 5. With respect to Edge Games' Fifth Claim for Relief in the First Amended
8 Complaint (Common Law Unfair Competition), judgment will be entered in favor of EA and
9 against Edge Games.

10 6. With respect to Edge Games' Sixth Claim for Relief in the First Amended
11 Complaint (Unjust Enrichment), judgment will be entered in favor of EA and against Edge
12 Games.

13 Claims for Relief in Counterclaim

14 7. With respect to EA's and DICE's First Claim for Relief in the Counterclaim
15 (Cancellation of Registration No. 3,105,816 (EDGE)), judgment will be entered in favor of EA
16 and DICE and against Edge Games and EIM.

17 8. With respect to EA's and DICE's Second Claim for Relief in the Counterclaim
18 (Cancellation of Registration No. 2,219,837 (EDGE)), judgment will be entered in favor of EA
19 and DICE and against Edge Games and EIM.

20 9. With respect to EA's and DICE's Third Claim for Relief in the Counterclaim
21 (Cancellation of Registration No. 3,381,826 (GAMER'S EDGE)), judgment will be entered in
22 favor of EA and DICE and against Edge Games and EIM.

23 10. With respect to EA's and DICE's Fourth Claim for Relief in the Counterclaim
24 (Cancellation of Registration No. 3,559,342 (THE EDGE)), judgment will be entered in favor of
25 EA and DICE and against Edge Games and EIM.

26 11. With respect to EA's and DICE's Fifth Claim for Relief in the Counterclaim
27 (Cancellation of Registration No. 2,251,584 (CUTTING EDGE)), judgment will be entered in
28 favor of EA and DICE and against Edge Games and EIM.

1 12. With respect to EA's and DICE's First, Second, Third, Fourth, and Fifth Claims for
2 Relief in the Counterclaim, the Court may order cancellation, pursuant to Section 37 of the
3 Lanham Act, 15 U.S.C. § 1119, of U.S. Trademark Registration Nos. 2,219,837; 2,251,584;
4 3,105,816; 3,559,342; and 3,381,826.

5 13. Pursuant to Fed. R. Civ. P. 41(a), EA and DICE agree to dismiss without prejudice
6 their Sixth Claim for Relief in the Counterclaim (Declaratory Relief).

7 Claims for Relief in Counter-Counterclaims

8 14. With respect to Edge Games' First Claim for Relief in the Counter-Counterclaim
9 (Infringement of Federally Registered Trademarks), judgment will be entered in favor of DICE
10 and against Edge Games.

11 15. With respect to Edge Games' Second Claim for Relief in the Counter-Counterclaim
12 (False Designation of Origin), judgment will be entered in favor of DICE and against Edge
13 Games.

14 16. With respect to Edge Games' Third Claim for Relief in the Counter-Counterclaim
15 (Common Law Trademark Infringement), judgment will be entered in favor of DICE and against
16 Edge Games.

17 17. With respect to Edge Games' Fourth Claim for Relief in the Counter-Counterclaim
18 (Unfair Competition), judgment will be entered in favor of DICE and against Edge Games.

19 18. With respect to Edge Games' Fifth Claim for Relief in the Counter-Counterclaim
20 (Common Law Unfair Competition), judgment will be entered in favor of DICE and against Edge
21 Games.

22 19. With respect to Edge Games' Sixth Claim for Relief in the Counter-Counterclaim
23 (Unjust Enrichment), judgment will be entered in favor of DICE and against Edge Games.

24 20. With respect to Edge Games' Seventh Claim for Relief in the Counter-
25 Counterclaim (Cancellation of Registration No. 3,806,031), judgment will be entered in favor of
26 DICE and against Edge Games.

27

28

1 21. With respect to Edge Games' Eighth Claim for Relief in the Counter-Counterclaim
2 (Cancellation of Registration No. 3,806,032), judgment will be entered in favor of DICE and
3 against Edge Games.

4 22. With respect to Edge Games' Ninth Claim for Relief in the Counter-Counterclaim
5 (Cancellation of Registration No. 3,806,033), judgment will be entered in favor of DICE and
6 against Edge Games.

7 23. Neither this Stipulation nor the Settlement, nor any act performed or executed
8 pursuant to or in furtherance of the Stipulation or the Settlement, is intended as or shall constitute
9 a concession or an admission of, or evidence of, any fault or wrongdoing by any party.

10 24. Each party shall bear its own costs and attorneys' fees in this matter.

11 **IT IS SO AGREED.**

12 Dated: October 6, 2010

THE LANIER LAW FIRM, P.C.

13

14

By: 

Christopher D. Banys
Attorneys for EDGE GAMES, INC. and THE
EDGE INTERACTIVE MEDIA, INC.

15

16

17 Dated: October 6, 2010

KENDALL BRILL & KLIEGER LLP

18

19

By: 

Robert N. Klieger
Attorneys for ELECTRONIC ARTS INC. and
EA DIGITAL ILLUSIONS CE AB

20

21

22

23

The stipulation is hereby **APPROVED.**

24

IT IS SO ORDERED.

25

Dated: _____

Hon. William Alsup
United States District Judge

26

27

28

EXHIBIT A
to
EXHIBIT A

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

12
13 HUSCH BLACKWELL SANDERS LLP
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.

27 AND RELATED COUNTERCLAIMS AND
28 COUNTER-COUNTERCLAIMS

Case No. 10-CV-2614-WHA

[PROPOSED] FINAL JUDGMENT

Hon. William Alsup

Complaint Filed: June 15, 2010

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 to the
13 Commissioner of the Patent and Trademark Office.

14 Each party shall bear its owns costs and fees in this matter.

15 **IT IS SO ORDERED.**

16
17 Dated: _____

18 Hon. William Alsup
United States District Judge

EXHIBIT B

LETTER OF AGREEMENT TERMINATING UK PROCEEDINGS

Whereas Edge Games Inc and The Edge Interactive Media Inc are jointly and severally known as the 'Edge' parties

Whereas Electronic Arts, Inc and EA Digital Illusions CE AB are jointly and severally known as 'EA' and

Whereas the parties concerned have signed and concluded a settlement and release agreement on the 6th October 2010

Whereas further to that agreement 'EA' and the 'Edge' parties have agreed to take the following actions before the UK Intellectual Property Office:-

EDGE PARTIES ACTIONS

OPPOSITION

The Edge Interactive Media Inc. hereby confirms that they withdraw with immediate effect UK Opposition No. 98327 to the EA Digital Illusions CE AB UK Trade Mark MIRROR'S EDGE No. 2484088.

APPLICATIONS

Edge Games Inc. hereby confirms that they withdraw with immediate effect, their UK Trade Mark Application No's.

2516573 MIRROR'S SPORE and

2516575 SOUL.SPORE.

REVOCACTION ACTIONS

Edge Games Inc. hereby confirms that they withdraw with immediate effect **Revocation No's:-**

83487 POPULOUS Registration No. 1368069 and

83488 SIMEARTH Registration No. 1448190

EA ACTIONS

REVOCACTION ACTIONS

'EA' hereby confirms that they withdraw with immediate effect **Revocation No's:-**

83419 EDGE Registration No. 1562099A

83420 EDGE 3D Registration No. 2147008A

83421 THE EDGE Registration No. 2147013A

83422 MAGIC EDGE Registration No. 2147022A

83423 EDGE NET Registration No. 2147035A

83424 GAMERS EDGE Registration No. 2147040A

OPPOSITION ACTIONS

'EA' hereby confirms that they withdraw with immediate effect **Opposition No's:-**

99951 MIRROR'S SPORE Application No. 2516573

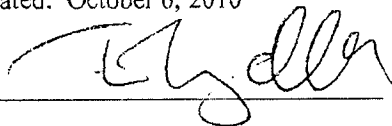
99952 SOULSPORE Application No. 2516575

Both 'EA' and the 'Edge' parties hereby agree that the letter terminating these proceedings may be filed on their behalf at the UKIPO by 'EA's solicitors Lewis Silkin LLP.

IN WITNESS WHEREOF, the parties executed this Letter of Agreement on the dates indicated below.

Dated: October 6, 2010

EDGE GAMES, INC.

By: 
Title: CEO

Dated: October 6, 2010

THE EDGE INTERACTIVE MEDIA,
INC.

By: 
Title: CEO

Dated: October 6, 2010

ELECTRONIC ARTS INC.

By: _____
Title: _____

Dated: October 6, 2010

EA DIGITAL ILLUSIONS CE AB

By: _____
Title: _____

OPPOSITION ACTIONS

'EA' hereby confirms that they withdraw with immediate effect **Opposition No's:-**

99951 MIRROR'S SPORE Application No. 2516573

99952 SOULSPORE Application No. 2516575

Both 'EA' and the 'Edge' parties hereby agree that the letter terminating these proceedings may be filed on their behalf at the UKIPO by 'EA's solicitors Lewis Silkin LLP.

IN WITNESS WHEREOF, the parties executed this Letter of Agreement on the dates indicated below.

Dated: October 6, 2010

EDGE GAMES, INC.

By: _____

Title: _____

Dated: October 6, 2010

THE EDGE INTERACTIVE MEDIA,
INC.

By: _____

Title: _____

Dated: October 6, 2010

ELECTRONIC ARTS INC.

By: VB _____

Title: IP Legal Counsel

Dated: October 6, 2010

EA DIGITAL ILLUSIONS CE AB

By: VB _____

Title: IP Legal Counsel