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

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com
Signature	/Tim Langdell/
Date	10/03/2011
Attachments	ResponseToEA&FuturesOppostionsTo2FurtherSection7s092811.pdf (56 pages) (1732649 bytes)



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

September 30, 2011

Attn: Jennifer Krisp

Re: Cancellation No. 92051465

Dear Ms. Krisp,

We inadvertently filed the wrong version of the files for our filings on September 28. We are thus submitting the corrected papers with our apologies for the error.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Langdell". The signature is stylized and cursive.

Dr. Tim Langdell, CEO.

EDGE Games, Inc.,

530 South Lake Avenue, #171, Pasadena, California, 91101

T: 626 449 4EDGE F: 626 844 4EDGE W: www.edgegames.com E: corp@edgegames.com

2. Future states that Edge Games filed a “frivolous” trademark infringement action against Electronic Arts, but Future fails to say that it represented to Edge Games that it was “side by side” with Edge Games against Electronic Arts in the trademark infringement dispute (see Exhibit A of the attached declaration). Future also fails to mention that it was Future that insisted Edge Games must take whatever action is necessary against Electronic Arts (see Exhibit B of the attached declaration). Future also fails to mention that when Electronic Arts applied to register the Edge mark Future required Edge Games to dispute (“Mirror’s Edge”) the USPTO refused to permit Electronic Art’s application to go forward to publication, stating that there was clear evidence that the mark “Mirror’s Edge” had a likelihood of confusion in the mind of consumers with Edge Games and Future’s mark “Edge” (see Exhibit C of the attached declaration). None of this suggests a law suit that was in any sense “frivolous,” and indeed the law suit was clearly well founded and not frivolous. It was, though, brought by Edge Games at the insistence of Future, which makes Future’s motivation in these making false and deliberately misleading representations highly suspect.

3. Future also falsely state that as a condition of dismissal of the law suit with Electronic Arts, “Mr Langdell” was required to stipulate that “each of the above-referenced trademark registrations [...] would be ordered cancelled by the Court.” Future also falsely state that as a condition of dismissal a copy of the Judgment of cancellation would have to be submitted to the Commissioner for Patents and Trademarks. Neither statement is true: the legal action in question was settled by an agreement reached between Electronic Arts and Edge Games, part of which settlement and associated stipulation included a draft stipulated judgment that the parties asked the judge to sign. These were thus no “conditions of dismissal” as Future seeks to mischaracterize them to the Board, they were not terms that Edge was “*required* to stipulate,” they were terms of settlement that Electronic Arts and Edge Games worked out and agreed upon between them. Terms that, in hindsight, Future needed to be a party to in order for the settlement and stipulated judgment to be valid in law.

4. Co-Defendant Future makes clear by its Opposition (and other papers it has filed in these proceedings) that it has no intention of acting as a defendant in this matter despite being a co-owner of the trademark registration in question. Rather, Future obviously acts as a collaborator with the Petitioners, seeking to use whatever deceitful, underhand and fraudulent means it can to gain cancellation of Edge Game’s lawful trademark registrations and cause Edge Game’s and the jointly

owned registrations harm. This is a clear case of commercial sabotage, with Future acting in collusion with petitioner Electronic Arts against Edge Games. Future has a vested interest in seeking the cancellation of Edge Games' marks, even those that Future co-owns: nearly all of Future's current use of the mark "Edge" in U.S. commerce is under a perpetual and irrevocable trademark license from Edge Games. By forcing the cancellation of Edge Games' registrations and registering the mark Edge itself¹ Future clearly hopes to circumvent its license from Edge Games.

5. What Future avoids mentioning, presumably because they wish the Board to overlook it, is that by virtue of being co-owners of three of the registrations in these proceedings they not only shared with Edge Games in the benefits and protection afforded by owning a trademark registration, but as co-owners Future share with Edge Games all responsibility and liability associated with procurement, renewal and existence of the registrations. Thus not only should Future have been a party to the District Court proceedings, Future should have also had the same accusations levied against it in respect to fraud on the USPTO and non-use of the registrations in question. By conveniently avoiding becoming a party to the Court action, and instead joining Electronic Arts in attacking Edge Games, Future sought to give the illusion that it had no responsibility for the trademarks it jointly owns with Edge Games. By virtue of this deceit Future sought to make it appear that Edge Games alone was guilty of some wrongdoing, but in reality while the accusations levied by Electronic Arts and supported by Future were false and unfounded, they should have been aimed at Future as well as Edge Games. The Judge's opinions, then, should have also been targeted equally at Future and its principal officers, just as much as at Edge Games and Dr Langdell.

6. In its Opposition Future argues that the Board is obliged to comply with the District Court's Order. Future also argues that Edge Games' recourse if it felt the District Court's Order was not valid was to file a motion to the District Court seeking to vacate, modify or otherwise seek relief from the Judgment. Future is mistaken on both points: first, neither the Board, nor the

¹ Future currently have two trademark applications before the USPTO for the mark "Edge," Serial Nos. 85153981 and 85130964. These applications are in large part for goods and services that Future currently licenses the right to from Edge Games (electronic publication of its magazine entitled "Edge"). Office Actions by the PTO in these two applications have cited the marks jointly owned by Edge Games and Future (2219837 and 3559342) against the applications, stopping both applications from moving forward to publication. Future thus has a vested interest in having the instant Edge Games registrations cancelled so that its applications can move forward. However, in a bizarre twist Future has claimed to the PTO that it is the sole owner of reg. nos. 2219837 and 3559342.

Commissioner For Trademarks, is obliged to comply with a District Court Order that is clearly invalid. Indeed, the Board should not comply with a void judgment. The District Court Judgment sought to bind and/or impact a third party (a non-party) – Future Publishing Ltd – in an action to which Future was not a party. It is axiomatic that any Judgment or Court Order that seeks to bind and/or impact a third party who was not a party to the action (a “non-party”) is invalid and thus *void ab initio* (see *Potenz Corp. v. Petrozzini*, 170, Ill, App, 3d 617, 525 N.E. 2d 173, 175 (1988)). Where a court seeks to make an order that would bind a non-party then all that is required to determine the order is void is to inspect the record of the case and determine that the party the court sought to bind and/or impact (here Future) was not a party to the case. That being determined then the order (judgment) is automatically deemed *void ab initio*.

7. It is a common misconception even among attorneys that only a judge can declare an order or judgment void, but this is not the law. If a court acts beyond its authority – here seeking to bind and/or impact an entity that was not a party to the law suit – then the judgment in question and all orders arising from the judgment are automatically void. As the U.S. Supreme court stated “Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but are simply void, and this is even prior to reversal”[emphasis added] (*Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S. Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L.Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

8. That is, any judgment or order that seeks, even just in part, to bind and/or impact a person or entity that was not a party to the court action is invalid in its entirety. It is not merely “voidable” (in the sense of being *subject to being* voided by a judge upon a motion to vacate or similar or upon appeal), such judgments and such orders are automatically void. Indeed, case law (see above) states that such judgments and orders by virtue of being void, rather than voidable, may not be appealed and may not have motions in respect to them filed for them to be vacated or modified. The judgment or order in question being *void ab initio* in a real sense does not exist, and thus cannot be modified, vacated or appealed. Here, since the District Court’s Judgment and Order were *void ab initio* because the court sought to bind and/or impact a non-party, there was no need

for Edge Games to file any motion or to appeal for the District Court's Final Judgment to be deemed void. In the District Court case Future was an *indispensable party*, and a *necessary party* – no final judgment could be made without Future being a party to the action. Future's absence from the court proceedings thus made it impossible for a valid final judgment to be reached. The fact a judgment was issued indicates that the judgment was invalid and hence void (not merely voidable).

9. In the case of a stipulated judgment – as here – the invalidity is even more clear. Here the so-called “final judgment” in the District Court case was arrived at by the stipulation between the parties in litigation, namely Electronic Arts and Edge Games. A stipulation is a contract and a contract cannot bind (or impact the interests of) a person or entity that is not a party to the contract. Thus since the underlying settlement agreement (between Electronic Arts and Edge Games) and the court stipulation both sought to bind and/or impact a non-party (Future), both the settlement agreement and the court stipulation were invalid and thus void, too. Consequently, not only is the District Court Judgment invalid, but also the related settlement agreement and court stipulation are also both invalid – all three are *void ab initio*.

10. The reason the Judgment, settlement contract and court stipulation are all *void ab initio* is because in each case they sought to bind or impact an entity (Future) that was not a party. When a Judgment or a contract (such as a settlement or a court stipulation) seeks to bind or impact a non-party, then that renders the entire Judgment, Order or contract void not just the part of it that sought to bind or impact the non-party. Pursuant to the Vallely court decision (above), a void order (or judgment) does not have to be reversed by a court to be a void order or void judgment. Courts have consistently held that a void order cannot, by definition, be a “final order” (irrespective of how they are titled or referred to), and that indeed a void order is not an order at all. A void order has no legal force or effect.

11. Future were impacted by the settlement, the stipulation and the court judgment in that a trademark registration that they co-owned was ordered cancelled without their receiving proper notice or being given the opportunity to defend the action. They are thus ultimately bound by the judgment – certainly their interests were impacted by it – even though it does not call on Future itself to take any specific action since the judgment binds them to the decision that the marks they co-owned be cancelled. Future had no due notice, due process or the right to be a party to the court

decision which they now have no standing to appeal. It is irrelevant whether they would have wished to appeal or would have agreed to the settlement and stipulation, the fact they were not given the opportunity renders the settlement, stipulation and subsequent judgment invalid and hence void. An indispensable or necessary party must be a party to a law suit for any final judgment to be made, and it is not relevant whether that indispensable or necessary party later seeks to waive their right to be a party to the original suit, or seeks to say it approves of the suit's outcome, or etc – no such action or statement by the indispensable or necessary part reverses the fact that the court could not make a valid final judgment absent such an entity being a party to the suit.

12. In addition and in the alternate (while still maintaining the Judgment is void), the court ordered the cancellation of the trademark registrations because it was requested to do so by the parties as part of a settlement between the parties. The court judgment, then, was a result of Edge Games agreeing with Electronic Arts to voluntarily surrender the registrations in question, not because the court heard the merits of the case and ordered cancellation based on full litigation of the merits. However, Edge Games lacked the standing and authority to enter into the settlement and court stipulation since it was not the sole owner of all the trademark registrations in question. Edge Games had no authority to stipulate to the court that it agreed to the cancellation of the registrations since it was not the sole owner of those registrations (indeed, had Edge Games been fully cognizant that it was not the sole owner of the trademark registrations in question at the time then it would not have entered into the court stipulation or the settlement. Had it been properly aware it was not the sole owner, Edge would not have just entered into a stipulation or settlement as to its part of the registrations, rather it would not have entered into a stipulation or a settlement at all). These facts render the settlement and the court stipulation invalid and thus void. Since the settlement and court stipulation are invalid and void, consequently the court judgment – which was based solely on the settlement and stipulation – itself must be invalid, and hence void. And, again, the fact Future may now try to say that in retrospect it agrees to the settlement or stipulation, or does not object to them, is irrelevant to the question of whether the settlement and stipulation were valid. Future would have had to be a party to the court case, a party to the settlement and a party to the court stipulation for the judgment to be valid.

13. The point made that Edge Games and the District Court may have been aware of the partial assignment of the registration to Future does not make the Court's Final Judgment valid. Just

as when the fact of the partial assignment to Future – that is, the joint ownership of the registration by both Edge Games and Future – was brought to the Board’s attention the Board responded by adding Future as a Co-Defendant, similarly, the District Court had an obligation to add Future as a party to the court action upon being notified that Future was co-owner of at least one (and Edge Games says three) of the trademark registrations in question. The fact that there was some mention of partial assignment of a registered trademark from Edge Games to Future in the court proceedings does not mean the Final Judgment was valid even though it sought to bind a non-party. On the contrary, it could be argued that the fact the court was aware that in making the Final Judgment it was seeking to bind and/or impact the interests of an entity it knew very well was a non-party makes the error in making the Judgment greater than if the court had been unaware that it was effectively seeking to bind a non-party. That is, it added to the invalidity of the judgment and did not take away from it.

14. Further and in the alternate (while still maintaining the Judgment is void), even if the District Court Final Judgment were valid (which clearly it is not), the Board is still not obliged to comply with the Judgment (indeed should not comply with it) for the following additional reasons. Beyond the clear error of the Court’s Final Judgment seeking to bind a non-party, the Judgment also gave no reason for cancellation of the five trademark registrations it referenced (including the one in question in this motion by Future). There are three (and only three) possible grounds for a court to rule that a trademark registration should be canceled: (i) there was fraud on the PTO in obtaining the registration; (ii) the mark was abandoned; (iii) the mark is generic and thus not capable of distinction in the market. The third basis was not in consideration in the District Court matter, not least since some of the registrations had achieved incontestability. Electronic Arts only sought to have the court cancel the five registrations based either on alleged fraud on the PTO or on the basis of alleged non-use. However, the settlement and stipulation entered into between Electronic Arts and Edge Games specifically stated that Edge Games was to be deemed not to have committed fraud on the PTO and was not to be deemed to have abandoned its marks. Indeed, had the court matter gone forward the court would have had to add Future as a party and consider whether Future had committed fraud on the USPTO in obtaining at least three of the registrations in question (since it was co-owner of three), and consider whether Future had abandoned any of the three trademark registrations it was co-owner of. Since Future boasts in paper filed in this proceeding that it has substantial common law rights in the registrations in question, and since Future does not appear to

be admitting it committed fraud on the USPTO in obtaining the instant registration it is seeking to force the cancellation of, presumably Future would have vigorously opposed the allegations by Electronic Arts had Future been added to the District Court case. This then highlights the absurdity of the Final Judgment and the even greater absurdity of Future seeking to compel the Board to comply with the invalid Judgment.

15. The stipulation as well as the settlement (each exhibited by Future) both clearly state that there is to be deemed no wrongdoing by any party and no finding as to wrongdoing by any party (hence no finding of fraud on the USPTO in obtaining any of the registrations, including the instant one). Indeed, since the case was not litigated on the merits, there obviously was no such finding. Further, in the Final Judgment the Sixth Claim for Relief by Electronic Arts (Declaratory Relief) was not found in Electronic Arts favor but was found in Edge Games favor. This Sixth Claim for Declaratory Relief (see Exhibit D to the attached declaration) called upon the court to declare that Edge Game's had no common law rights associated with its trademark registrations . By denying this Sixth Claim, and instead ruling in Edge Games favor on it, the court effectively ruled that Edge Games does have all its common law rights in its trademarks, and thus had certainly not abandoned any of its trademark registrations.

16. Consequently, the District Court's Final Judgment contains an order to the Trademark Office to cancel the five referenced trademark registrations without stating any reason why they should be canceled. What the Board can determine, though – by reviewing the stipulation, the settlement and the Final Judgment itself -- is that the cancellations were not to be on the basis of either fraud on the USPTO or on the basis of abandonment – and yet those are the only bases a court could order cancellation. The only conclusion that can reasonably be drawn, which conclusion is supported by the settlement and stipulation, is that the court was seeking to order the USPTO to act on Edge Games' voluntary surrender of the registrations – surrender that Edge would not have agreed to had it been properly aware it was not the sole owner of the marks. Insofar as the Final Judgment was merely asking the USPTO to act on Edge Game's misguided voluntary surrender, this makes the Final Judgment no different in real terms from Edge Game's Section 7 Surrenders, one of which was already reversed by the Board as imperfect because Edge Games is not the sole owner of the registration in question. We would argue that there is no other reasonable

interpretation of the Final Judgment since it could not have been ordering the cancellation of the registrations based on either fraud or abandonment.

17. Further and in the alternate (while still maintaining the Judgment is void), the settlement agreement between Electronic Arts and Edge Games anticipates at paragraph 2.2 (see the exhibit to Future's Reply) that the USPTO may either fail or refuse to cancel the U.S. trademark registrations in question. In this event, the settlement states, Edge Games is to file in the USPTO a petition for voluntary cancellation. As the record shows, this is precisely what Edge Games did upon being requested to do so by Electronic Arts. Contrary to what Future say in their Reply, then, Edge Games complied fully with the settlement by taking the step it was required to take of filing the Section 7 Surrenders that it did file (although this is now moot given the settlement is clearly void on its face, too).

18. As Future also notes, the petitioner at first filed its Request For Entry Of Judgment (docket 32) arguing that it had a District Court Judgment in its favor and thus should have a judgment in its favor in the instant cancellation proceedings, too. As Future further noted, Petitioner then withdrew this Request For Entry Of Judgment because Edge Games reminded petitioner Electronic Arts that such a judgment would be entirely contrary to the settlement between the parties and the courts' stipulated order that stated there was no finding of fraud and no finding of abandonment. As the record shows (at docket 33), in withdrawing its Request for Entry of Judgment, petitioner Electronic Arts stated that the parties had agreed that Edge Games would file voluntary surrenders of the subject registrations instead of there being termination of the proceedings before the Board by execution of the Court Judgment. And as the Board is aware, in regard to this instant registration Edge Games duly filed the Section 7 Surrender and then correctly filed to withdraw the surrender because it did not have grounds to file a surrender of a registration it was not the sole owner of. The Board then correctly reversed the Section 7 Surrender and reactivated the instant cancellation proceedings.

19. Since the settlement and the court stipulation specifically anticipated that if the USPTO did not cancel the registrations based simply on receiving the Court judgment in October 2010 then Edge Games was to file voluntary surrenders, and since (at docket 33) it is clear that the parties specifically agreed not to terminate the proceedings before the Board by invoking the

Court's Final Judgment but instead agreed to have Edge Games file the voluntary surrenders, for this reason too Future's Motion should be denied.

20. Edge Games notes that Petitioners did not file a motion to cancel the instant registration based on compelling the Board to comply with the District Court Judgment, nor did Petitioners adjoin Future's motion nor did Petitioners file any paper supporting the motion. Clearly, Petitioners did not file such a motion, and did not support Future's motion, since they were well aware that the parties had agreed not to invoke the District Court Judgment to terminate the current proceedings, but rather had agreed that instead Edge Games would file voluntary surrenders, which it did.

21. Future also state in their Opposition that Reg. No. 2,219,837 is the parent of a divided registration that was owned entirely by "Mr. Langdell" at the time of the Judgment. This is untrue in that the registration is not nor was it ever owned by "Mr. Langdell." At the time the instant cancellation proceedings were commenced by Electronic Arts in September 2009 this registration was undivided and owned jointly by Edge Games Inc (not Mr. Langdell) and Future. While the record appears to show that it is true that Future applied to divide this registration and that presumably the relevant department in the USPTO processed that division in or about the November or December timeframe of 2009, the division should not have been processed while the instant proceedings were still pending before the Board. It is a general rule in the USPTO that no such action is to be processed while a registration is subject to a petition to cancel it. Thus the division of the registration into the parent and child registration that Future claim to have (3,713,604) should not have happened and the Board should request the relevant department reverse that division of the registration.

22. However, even if the division is not reversed, Future is wrong insofar as it suggests that the child registration 3,713,604 should not have been part of the current proceedings or the District Court case. In both the current proceedings and the District Court case Electronic Arts has alleged that the original undivided registration 2,219,837 was fraudulently obtained. While Edge Games denies that allegation, since the allegation is made it impacts both the parent and the child registrations. Were the original undivided registration to be found to have been fraudulently obtained, which Edge Games maintains it would not be, then both the parent registration and the

child registration would need to be cancelled – not just the parent registration. Similarly, the child registration was by implication part of the District Court case, too, and was subsumed under the reference of 2,219,837 which must also contain 3,713,604 insofar as there is any accusation of the original undivided registration being fraudulently obtained. And it is clear from both the instant proceedings and the District Court action that Electronic Arts was alleging that the original undivided registration was wrongfully obtained, not that the post-division parent registration was wrongfully obtained.

23. More important, at the time the instant proceedings were started the registration in question was undivided and it is clear that Electronic Arts was calling on the original undivided registration to be cancelled either on the basis of fraud on the USPTO or on the basis of non-use. Similarly, while the technical status as at the time of the court judgment may have been that the registration was divided, it is also clear that as part of the settlement Edge Games agreed to voluntarily surrender the entire original undivided registration since nowhere is there any mention in the District Court case or the settlement or the Judgment of registration 2,219,837 being divided. Since the original undivided registration should not have had a division processed while the current proceedings were ongoing, and since the division must thus be reversed at this time to recover the status quo as at the time of filing of the instant petition, in filing its Section 7 Surrender for the mark 2,219,837 Edge Games was seeking to surrender the entire original undivided registration, not the divided parent.

24. Contrary to what Future now argue in their Opposition, in previous paper filed with the USPTO and previously referenced in these proceedings, Future laid claim to owning the entirety of reg. no. 2,219,837² and asked the USPTO to transfer the entirety of the registration, the parent registration included, to Future (see Exhibit E attached to the declaration hereto). While this request by Future was denied, nonetheless Future are on record as having a claim to ownership of the divided parent registration 2,219,837 and since Future have laid this claim to ownership of the divided parent registration as well as to the divided child registration, clearly Edge Games lacked the authority to file a section 7 surrender either of the original undivided registration or even of the alleged divided parent registration. Regardless of which argument Future chooses to make as it

² See footnote 1 above on page 3: Future made the claim to own both of these instant registrations as part of their Response to Office Actions in the two applications for the mark Edge that they have pending before the USPTO.

flip-flops according to what it believes will get the result it desires from the Board, the fact remains that in all instances Edge Games lacked the authority and standing to file a section 7 surrender of reg. no. 2,219,837.

25. There is no such argument or confusion surrounding the second registration in this Motion, reg. no. 3,559,342, which was undisputedly not divided either at the time of filing the instant petition or at the time of the court judgment. Like the third registration (3,105,816) that Edge Games previously filed a successful motion to withdraw its section 7 surrender of, the Board should also grant Edge Game's motion to withdraw the section 7 surrender of 3,559,342 for the same reasons that the Board found compelling for reg. no. 3,105,816.

26. Petitioners' Opposition, insofar as it incorporates the contents of Future's Opposition, is also responded to by Edge Games above. Petitioners' Opposition claims that Edge Games arguments are without merit because the subject registrations were ordered cancelled by a judgment of the United States District Court. This, though, as is explained above, is without merit and ignores critical facts and relevant legal principals since it is indisputable that the District Court Judgment is void due to being invalid because the court sought to bind and/or impact a non-party. Similarly, contrary to what Petitioners argue in their Opposition, both the stipulation and the settlement between the parties were both also invalid, and hence both *void ab ignitio*, since they both sought to bind and/or impact a non-party, too. And again Petitioners make the same mistaken argument that the fact Edge Games stipulated to the judgment "with full knowledge of its prior dealings with Future which had been disclosed to the Court" somehow makes the judgment valid: it does not. The fact that Edge and the Court may have known that Future were co-owners of at least two, and probably three, of the five trademark registrations in question before the Court meant that the Court was well aware that Future should have been brought in as a party. By knowing about Future's co-ownership of three of the five registrations the court was seeking to order cancelled, the court was knowingly seeking to bind or impact a non-party which it may not do. And by knowingly seeking to bind or impact a non-party the judgment was indisputably invalid and consequently unquestionably *void ab initio*.

27. Future's Opposition also makes outlandish and deliberately misleading statements of the kind they and Electronic Arts made to the District Court that caused the court to gain a

completely false view of Edge Games, its business practices and its trademark registrations. While the ultimate void “final judgment” was stipulated, it was nonetheless obtained through fraud on the court by Electronic Arts Future. Contrary to what Future say, the District Court did not make any finding that Edge Games or Dr. Langdell personally were guilty of fraud, nor did the court make any finding that Dr. Langdell had made “numerous willful false statements under oath to the USPTO and to the Court.” On the contrary, while the District Court Judge expressed his *opinion* based on the false and deliberately misleading information supplied to him by Future and Electronic Arts, he did not make any such findings against Edge Games or Dr. Langdell and indeed made clear that at trial the jury might reach an entirely difference conclusion (see page 21, line 7 of the Court’s ruling on the Preliminary Injunction exhibited to docket 47).

28. Electronic Arts fraudulently elicited the negative opinion given by Judge Alsup by deliberately misleading the Judge and by Electronic Art’s witnesses giving knowingly false testimony that was deliberately intended to give a false very negative impression of Edge Games and its CEO Dr. Langdell. Indeed, Future’s representative Mr. Binns who gave a damning declaration in the District Court proceedings that contributed significantly to the Judge’s negative opinion of Edge Games and Langdell achieved this result by perjuring himself. For instance, in his declaration to the District Court Mr Binns falsely stated that in 2004 Future’s magazine had no presence in the United States market (Binns decl. ¶ 8) and that Future’s Edge magazine was not distributed in print or electronic form in the U.S. market between 1996 and late 2004 (Binns decl. ¶ 7). These statements were patently untrue: elsewhere in his declaration Binns admitted that the Future Edge magazine website had been operational since 2000 (Binns decl. ¶ 8) and thus its magazine had a presence in electronic form in the U.S. via that website for many years prior to 2004. But more pertinently, Future sold numerous copies of its UK magazine via subscription into the U.S. market and had done so since at least 1996 when it stated as much in the settlement reached with Edge Games at that time. Future also openly advertised overseas subscriptions for its magazine that, being England language only, were primarily to the U.S. market (see Exhibit F to the attached declaration). Further, Future distributed numerous copies (many of which free of charge, but which still caused a substantial ‘presence’ in the U.S.) to all leading participants in the computer and video game market in the U.S., with probably several hundred such copies going to Electronic Arts employees each month within the U.S. in the years prior to 2004. To state, as Binns did, that Future’s Edge magazine had no presence in the U.S. in 2004 was a blatant falsehood.

29. Binns also falsely stated in his declaration before the District Court that Future's agreement with Edge Games was non-assignable (Binns decl. ¶ 9, Exhibited to Future's Opposition), whereas that is patently not true. There is a paragraph in that agreement entitled "Assignment" as Binns knew very well when he made the false statement to Judge Alsup in order to turn the Judge against Edge Games (see Exhibit G to the attached declaration). Similarly Binns also falsely stated that there was no quality control in any of the agreements between Edge and Future. This was patently not true, as Binns was fully aware, since the 1996 settlement with Edge contained all the key elements for true quality control (Future assured quality of the magazine, they were contractually obliged to supply a sample of the magazine to Edge every month, and Edge had the contractual right to compel Future to change its magazine or terminate the agreement should Edge not be satisfied with the quality of Future's product).

30. In Binns paragraph 13, he deliberately seeks to mislead the District Court into believing that the specimen that Edge filed in 2004 to support the Combined Declaration of Use and Incontestability was not "genuine" – clearly wanting the Judge to believe he was saying the specimen was a fake. Binns was deliberately stating that the specimen was not of their own UK magazine called "Edge" and putting his statement in such a way as to mislead the Judge into thinking that there would have been only one such genuine item in 2004, and that would have solely been the Future UK magazine. What Binns omits to say, deliberately so as to mislead the Judge, is that Future did not have the right to print U.S. versions of its Edge magazine at that particular time in August 2004 (they gained that right a few months later in October 2004). He deliberately fails to mention that in August 2004 Edge Games had the sole right to publish such printed matter as is depicted in the specimen in question, and that the specimen was an entirely genuine copy of Edge's printed matter goods and not the "fake" that Binns (and Electronic Arts) clearly wanted the Judge to falsely believe.

31. Binns was not the only of Electronic Art's witnesses to deliberately make false statements under penalty of perjury to Judge Alsup with the aim of getting the Judge to form a unfounded negative opinion of Edge Games. The Marvel Comics representative Bard, too, made at least two false statements in his declaration in support of Electronic Art's counterclaim. He stated that Marvel Comics had no license with Edge Games yet that was not true. Through its subsidiary Malibu/Bravura Comics, Marvel had a license from Edge Games to publish comic books based on

the “Edge” comic book character via the creators of that character. Whether or not Marvel actually made use of that license and continued to publish such comic books is irrelevant: the fact remains that Marvel have that license from Edge Games to this day and thus the Marvel representative did not tell the truth when he stated that Marvel has no license with Edge. Similarly, the Marvel representative stated under penalty of perjury that the Edge related comics in question had not been printed and sold since 1995 when Marvel reach a settlement with Edge Games (Exhibit H to attached declaration). However, that too was a falsehood since in late 1997 Marvel Comics filed a Statement of Use with the USPTO for those same comic book title’s trademark registrations stating under penalty of perjury that the Edge marks in question were in current use on Marvel comic books at that time – two years after the Marvel Comics representative falsely stated to Judge Alsup in October 2010 that the sales had ceased (Exhibit I to the attached declaration). Clearly, like Future’s Binns, Marvel Comics’ Bard was colluding with Electronic Arts to present a fraudulent and deliberately misleading and false picture to the District Court Judge that Edge Games and its CEO Langdell did not tell the truth. In reality, it was Electronic Arts and its witnesses that were not telling the truth.

32. Future also sought other ways to impugn Edge Games’ reputation, for instance by putting Edge on notice under the joint agreement between the parties of the existence of a game called “Edge” published by a French company, Mobigame and thereby requiring Edge Games to take action against Mobigame to get the French game under license to Edge (see Exhibit J in the attached declaration). This lead to extensive defamation of Edge Games caused by Future’s requirement under the contract which Future then distanced itself from as if it had nothing to do with the actions against Mobigame that it had instigated via Edge.

33. That all said, Electronic Arts’ and Future’s deliberate misrepresentations and misleading of the District Court Judge are ultimately moot since the Final Judgment is invalid because it sought to bind and/or impact the interests of a non-party and the court failed to include a party that should have had standing (an *indispensable/necessary party*) and should have been a party to the settlement, stipulation and consequent judgment for it to be valid. Since the judgment is invalid, and hence *void ab initio*, there is no valid argument that the Board should deny Edge Game’s Motion to withdraw its two section 7 surrenders on the basis that the Board should cancel both of the marks in question. On the contrary, the Board should not act on the District Court’s

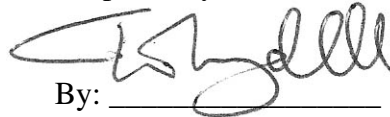
Judgment since it is void, and Edge Game's motion is valid since, as was the case with the other registration the Board already ruled in Edge Games' favor on, here too Edge Games lacked the authority or standing to surrender the registrations in question since it was not the sole owner of either of them (or, in the case of 2,219,837, will not be the sole owner once the mistaken division is reversed that should not have been processed while the instant proceedings were underway and before they were concluded).

34. In the alternate, Edge Games should be permitted to reverse both Section 7 Surrenders in any event since it filed them believing that it was compelled to do so by the court judgment and settlement with the Petitioners. Now Edge Games knows that both the judgment and settlement were invalid, and thus there was no requirement for Edge Games to file the Section 7 Surrenders and it should be permitted to reverse them.

For all the above additional reasons, Co-Defendant Edge Game's Motion to withdraw (reverse) its two section 7 surrenders should be granted. Or in the alternate, if the Board feels there is insufficient grounds other than co-ownership to reverse both Section 7 Surrenders at this time, then 3,559,342 should have its section 7 surrender reversed, and the matter should be stayed as to 2,219,837 until its division is reversed whereupon 2,219,837 should then have its section 7 surrender reversed. That said, Edge Games believes strongly that there are sufficient grounds for both Section 7 Surrenders to be reversed at this time.

Date: August 28, 2011

Respectfully submitted,

By: 

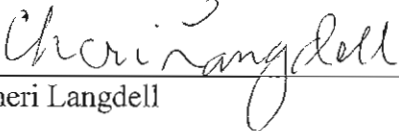
Dr. Tim Langdell, CEO
EDGE Games, Inc.
Registrant in *Pro Se*
530 South Lake Avenue, 171
Pasadena, CA 91101
Telephone: 626 449 4334
Facsimile: 626 844 4334
Email: ttab@edgegames.com

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Defendant Edge Games Inc's Reply to Co-Defendant Future's and Petitioners' Oppositions to Edge Games' Motion to Withdraw (Reverse) Section 7 Surrenders of Reg. Nos. 3,559,342 and 2,219,837 was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 28th day of September, 2011:

Robert N. Phillips
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

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


Cheri Langdell

called for Edge Game's common law rights to be deemed non existent (this Claim being the one that was not granted, and was ruled in Edge Game's favor).

6. Attached hereto as Exhibit E is a true copy of Future Publishing Ltd's response to Office Action in regard to its applications to register the mark "Edge" where Future claim ownership of both of the instant registrations subject of this motion by Future.

7. Attached hereto as Exhibit F are true and exact copies of that part of the 1996 settlement agreement between Edge and Future where there is specific reference to the well known existence of subscription copies of Future's Edge Magazine on sale in the U.S. market, the availability of Edge Magazine content online to U.S. consumers and a print out from archive.org of Future's Edge Magazine website from June 2004 showing their advertisement for overseas subscriptions of the magazine.

8. Attached hereto as Exhibit G is a true copy of that part of the 2004 "CTA" agreement between Future and Edge Games showing the clause clearly headed "Assignment."

9. Attached hereto as Exhibit H is a true and exact copy of the declaration by Bard in support of Electronic Arts in the District Court matter of October 2010 where Mr Bard states that there had been no sales of Marvel's Edge branded comics for "more than a year" prior to the assignments to Edge in September 1997(paragraph 10, lines 14-15).

10. Attached hereto as Exhibit I is a true and exact copy of Marvel's Statement of Use submitted to the USPTO in September 1997 in respect to the mark CUTTING EDGE for comic books showing that the Marvel Vice President Ms. Bradford who signed it under penalty of perjury stated that the mark was in current use at that time (in direct conflict with Mr. Bard's statement to the District Court). Since Marvel is on the USPTO record as currently using the Edge marks (e.g CUTTING EDGE) on its comic books as of late September 1997, it is hardly credible that Mr. Bard's statement is true either that Marvel did not use the Edge marks after the September 1997 assignment to Edge. It is not believable that all sales and use in U.S. commerce by Marvel happened to stop the precise instant Marvel's Vice President Ms. Bradford filed the Statement of Use with the USPTO on 9/25/97.

11. Attached hereto as Exhibit J are true and exact copies of an email of March 5, 2009 from Future's Head of Legal, Mark Millar, notifying Edge Games of the infringing use of the mark "Edge" by Mobigame, and the relevant part of Mr. Millar's declaration before the UK High Court where he confirms that it was he who notified Edge Games of the existence of Mobigame and its game "Edge" that Future believed should be under license from Edge Games.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 28th day of September 2011, at Pasadena, California.

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

By:

Dr. Timothy Langdell

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Declaration of Timothy Langdell in Support of Defendant Edge Games Inc's Reply to Co-Defendant Future's and Petitioners' Oppositions to Edge Games' Motion to Withdraw (Reverse) Section 7 Surrenders of Reg. Nos. 3,559,342 and 2,219,837 was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 28th day of September, 2011:

Robert N. Phillips
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

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


Cheri Langdell

EXHIBIT A

----- Original Message -----

From: [Mark Millar](#)

To: [Tim Langdell](#)

Cc: [Jo Clayton](#)

Sent: Friday, March 06, 2009 3:26 PM

Subject: RE: Your call re EA meeting - message truncated.

Hi Tim

Apologies for the cut off message. The call was cordial and fairly open. However, there are no conclusions at this stage - we discussed a number of options, and they are going to consider their position based on what we discussed.

In a nutshell they started by saying that the relationship with Future is very important to EA - and I do think that this is an important factor in trying to get a settlement. They went on to say that the brand is very important to them and they have partners in ancillary areas. They strongly believe that they would get both a US trademark and a UK trademark and mentioned that they have instructed the issue of a strong letter to you from the UK. They raise a concern that any such action could impact on us too given our strong partnership with you.

We said that we were partners with EIM and although we had not issued an opposition in the UK, we were partners with you and were side by side with you in protecting the brand, including in this matter.

We each raised options for considerations - the likes of which from each party you could guess. EA are going to consider its position and set up a follow up call

It is too early to say whether discussions will reach a proposal to discuss with you, but I do feel our relationship with them will be helpful.

We will obviously let you know as soon as they revert and not discuss anything leading to any possible settlement without speaking to you.

Hope that helps - lets catch up early next week

Have a good weekend

Cheers

Mark

Mark Millar

Company Secretary and Head of Legal

Future plc

Beauford Court
30 Monmouth Street
Bath BA1 2BW

Tel 01225 822764 | Fax 01225 822836 | www.futureplc.com

EXHIBIT B

From: [Mark Millar](#)
To: [Tim Langdell](#)
Cc: [Jo Clayton](#)
Sent: Friday, June 05, 2009 3:37 PM
Subject: RE: Edge/Mirror's Edge

Tim

You have not updated on the legal position with EA - I asked about the applications for strike off. Our trademark could suffer collateral damage if you do not succeed in keeping the Edge brand (from which the trademark that we paid a significant sum for came) on the register - but you have never informed us of dates of that process and what steps you have taken to ensure the EA applications fail.

Please stop obsessing on the CTM issue - and focus on ensuring that we do not both suffer significant damage to our brand.

Mark
Mark Millar
Company Secretary and Head of Legal

Future plc
Beauford Court
30 Monmouth Street
Bath BA1 2BW

Tel 01225 822764 | Fax 01225 822836 | www.futureplc.com

Tim Langdell

From: "Mark Millar" <Mark.Millar@futurenet.com>
To: "Tim Langdell" <tim@edgegames.com>
Cc: "Jo Clayton" <Jo.Clayton@futurenet.com>
Sent: Friday, June 05, 2009 3:17 PM
Subject: RE: Edge/Mirror's Edge
Tim

You keep banging on with the same request of being on the CTM application before you can proceed when there is no reason to delay the main issue for this. I have not heard any reason why it is essential to add you to the CTM application before you talk to EA when EA have been told by us several times that the relevant part of the CTM is assignable to you - and we have offered to confirm the same in writing. It is not an issue to delay any further and risk greater damage being done to our mutual brand.

Can you please stop focussing on this side show and get on with resolving the issues with EA before our shared brand is severely damaged.

The point you also keep raising about [REDACTED] it is nothing to do with the fact that we are not 100% behind Edge. [REDACTED]

[REDACTED] Please stop questioning our commitment and focus on what you need to do to protect our brand.

I am getting seriously concerned that we are going to suffer damage as a result of your inactivity in the dispute with EA [REDACTED] I am trying to reassure our CEO UK who is receiving numerous calls from journalists and we have consistently confirmed our relationship with you.

Please answer my earlier question on what is going on with proceedings with EA [REDACTED]

[REDACTED] I will be updating our Board on Tuesday - please ensure that you let us have a full report by close of play Monday.

Mark

Mark Millar
Company Secretary and Head of Legal

Future plc
Beauford Court
30 Monmouth Street
Bath BA1 2BW

Tel 01225 822764 | Fax 01225 822836 | www.futureplc.com

EXHIBIT C

To: Electronic Arts Inc. (sgarfield@ea.com)
Subject: TRADEMARK APPLICATION NO. 77222986 - MIRROR'S EDGE - N/A
Sent: 9/18/2008 10:44:44 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/222986

MARK: MIRROR'S EDGE

77222986

CORRESPONDENT ADDRESS:

JAKE SCHATZ
ELECTRONIC ARTS INC.
209 REDWOOD SHORES PKWY
REDWOOD CITY, CA 94065-1175

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Electronic Arts Inc.

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

sgarfield@ea.com

NOTICE OF SUSPENSION

ISSUE/MAILING DATE: 9/18/2008

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **75077113 and 78807479**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **was sent previously**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The examining attorney acknowledges applicant's presentation of arguments against the refusal; however, responses to the arguments will be withheld until disposition of the earlier-filed pending application.

The following refusal(s)/requirement(s) is/are continued and maintained:

This application was published for Opposition on January 15, 2008. It has been determined, by the Commissioner for Trademarks, that a clear error has been made in allowing this mark to be published. Jurisdiction has been restored to the Examining Attorney to take appropriate action in accordance with the evidence contained herein. TMEP Section 1715.03.

Section 2(d) - Likelihood of Confusion Refusal

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2219837, 2251584, 3105816, and 3381826. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

The applicant's mark is MIRROR'S EDGE for the following:

Class 009: Pre-recorded audio tapes, video tapes, audio cassettes, video cassettes, CD-ROMs, DVDs, compact discs, and video discs, featuring entertainment related to films, games and music; computer game software; computer game software and manuals sold as a unit; computer video game software; computer video game software and manuals sold as a unit; interactive video game programs; interactive computer game programs, downloadable computer game software, downloadable interactive entertainment software for playing computer games, downloadable interactive entertainment software for playing video games; downloadable computer game software via wireless devices; computer game software for mobile phones; Downloadable ring tones, graphics and digital music files via the internet and wireless devices

Class 016: Paper goods and printed matter, namely, address books; comic books; notebooks; children's books; books containing screenplays or scripts of movies, shows or games; diaries; paper doorknob

hangers; invitation cards; personal organizers; paper table cloths; trading cards; wallet cards, posters; book plates; book marks; checkbook holders and covers; non-electronic personal planners and organizers; artist's materials, namely, pencils, pens; paper gift wrap; paper and fabric gift tags; gift bags; greeting cards, paper party decorations; paper napkins; paper party bags; paper party hats; postcards; stickers; sticker albums; calendars; cardboard figures, namely, temporary tattoos; school and office supplies, namely, erasers, pencils, pens, markers, pencil cases; pencil sharpeners; sheet music; novels; paper cake decorations; bank checks; series of fiction books; juvenile books; reference books in the field of science fiction; personalized books in the field of science, science fiction and computer games; comic magazines; books for role-playing, namely, role playing game equipment in the nature of game book manuals; art books in the field of science, science fiction and computer games; coffee table books in the field of science fiction and computer games; books in the field of science, science fiction and computer games; stationery type portfolios, calendars, children's activity books; magazines in the field of science, science fiction and computer games

Class 028: toys and sporting goods including games and playthings, namely, action figures and accessories therefore, plush toys, balloons, bathtub toys, ride-on toys, equipment sold as a unit for playing card games, toy vehicles, dolls, flying discs; electronic hand-held game unit; game equipment sold as a unit for playing a board game, a card game, a manipulative game, a parlor game and an action type target game; stand alone video output games machines, jigsaw and manipulative puzzles, paper face masks; playing cards; board games; toy candy dispensers and holders; card games; toy vehicles; dolls; hand held units for playing electronic games; hi bounce balls for games; costume masks; paper face masks; toy model vehicles and related accessories therefor sold as units; toy pedal cars; playsets for action figures; playsets for toy vehicles; skateboards; three-dimensional puzzles; toy banks; toy model hobby craft kits; toy model rockets and accessories therefor sold as unit; toy weapons; jigsaw puzzles; plush toys; roller skates; in-line skates; Christmas tree ornaments; amusement park rides; toy vehicles made of non-precious metals; beach toys, namely, inflatable toys; water squirting toys; construction toys; toy building blocks and connecting links for the same; athletic protective pads and padding for skateboarding, in-line skating, and roller skating; toy coin banks; pinball machines; inflatable swimming pools; inflatable pool toys; toy snow globes; toy foam weapons; equipment sold as a unit for playing arcade type electronic video games; kites

Class 038: providing an online bulletin board for transmission of messages among computer users concerning the field of entertainment relating to motion picture films and science fiction

Class 041: Entertainment services, namely, providing news, information and scheduling of programming about interactive computer game software, interactive video game software and interactive computer games and interactive video games, via electronic, wireless and computer networks; providing news, information and scheduling of programming in the field of entertainment relating to motion picture films and science fiction over an electronic network; entertainment services, namely, providing online computer and video games accessed and played via electronic, wireless and computer networks; entertainment services, namely, providing computer and video games accessed and played via mobile and cellular phones and other wireless devices; Entertainment services, namely, a continuing computer game and science fiction show broadcast over television, satellite, audio, and video media; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials in the fields of film and music; entertainment services in the field of film and television, namely, production of films, videos, animation, and computer generated images; film distribution; entertainment in the nature of arranging and conducting competitions in the field of entertainment trivia; fan club services; production and distribution of motion pictures; providing news and information in the field of entertainment relating to motion picture films via global computer networks

The registrant's marks are for the following:

2219837 EDGE for printed matter and publications, namely, magazines, newspapers, journals, and columns and sections within such magazines, newspapers, and journals, and pamphlets and booklets, all in the fields of business, entertainment, and education, relating to toys, games, computers, computer software, computer games, video games, board games, hand-held games, interactive media, television, interactive music, and video; stationery; posters; exterior packaging for software, namely, cardboard cartons; printed paperboard inserts for plastic packaging of software; paper bags; plastic bubble packs for packaging; envelopes; and paper pouches for packaging

2251584 CUTTING EDGE for publications, namely comic books and comic magazines and stories in illustrated form

3105816 EDGE 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

3381826 EDGE for Computers; computer hardware; computer peripherals; computer games software; plug-on computer interface boards; computer accessories, namely, keyboards, mice, player-operated electronic game controllers for computers and electronic video game machines, computer memories, headphones, augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, storage disc cases, video display and capture cards, sound cards, audio speakers, web-cameras, carrying cases and bags, all for carrying portable computers or computer accessories; video game software; video game consoles, namely, video game machines for use with televisions and video monitors; video game accessories, namely, joysticks made for video games, video game interactive control floor pads and mats, and video game interactive remote control units; video game peripherals, namely, external hard drives for computers and video game machines and other storage devices in the nature of plug-in memory devices that attach to the USB port which are commonly known as 'flash drives' or "thumb drives" and video adapters in the nature of adapters which convert the video output of the computer or video game machine to the video input of a monitor or television; set top boxes, cable modems, dsl modems.

The registered marks have a common owner.

Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

The applicant's mark, MIRROR'S EDGE, is similar to the registered mark as they all contain the word EDGE or use EDGE as the full mark. While applicant's mark adds the term MIRROR, the mere addition of a term to a registered mark does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Section 2(d). *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) ("GASPAR'S ALE and "JOSE GASPAR GOLD"); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) ("BENGAL" and "BENGAL LANCER"); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) ("THE LILLY" and "LILLI ANN"); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988) ("MACHO" and "MACHO COMBOS"); *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" and "CREST CAREER IMAGES"); *In re Corning Glass*

Works, 229 USPQ 65 (TTAB 1985) (“CONFIRM” and “CONFIRMCELLS”); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (“ACCUTUNE” and “RICHARD PETTY’S ACCU TUNE”); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) (“HEAD START” and “HEAD START COSVETIC”); TMEP §1207.01(b)(iii).

Comparison of the Goods and Services

The goods and services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int’l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant’s goods and services are closely related to the registrant’s goods and services as they all contain goods and services related to comic books, computer game programs, and other highly related goods likely to travel through the same channels of trade to the same classes of purchasers.

Accordingly, because confusion as to source is likely, registration is refused under Trademark Action Section 2(d) based on a likelihood of confusion.

Please see attached Internet website evidence showing goods similar to the parties sold through the similar channels of trade.

Since the identification of the applicant’s services is very broad, it is presumed that the application encompasses all services of the type described, including those in the registrant’s more specific identification, that they move in all normal channels of trade and that they are available to all potential customers. TMEP §1207.01(a)(iii).

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i). Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

/Kapil K. Bhanot/
Trademark Examining Attorney
Law Office 108
Phone - (571) 270-1516
Fax No. (571) 270-2516

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT D

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SIXTH CLAIM FOR RELIEF

Declaratory Relief

127. Counterclaimants incorporate the above allegations as if set forth in full herein.

128. An actual controversy exists as to whether Counterdefendants have any common law rights in the alleged “family” of marks set forth in the First Amended Complaint, including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826; 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294, including as a result of abandonment through non-use of each mark with the intent not to resume use and otherwise through a course of conduct that has caused each mark to lose all significance as a mark and/or as an indicator of source.

Kendall Brill & Klieger LLP
10100 Santa Monica Blvd.
Suite 1725
Los Angeles, CA 90067

56594.1

1 129. EA is entitled to a declaratory judgment that Counterdefendants have no common
2 law rights in and to the alleged “family” of marks set forth in the First Amended Complaint,
3 including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826;
4 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294.

EXHIBIT E

Serial No. 85/153,981
Examining Attorney: Julie A. Watson
Law Office 109

**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE**

In re Application of: Future Publishing Limited, LLC	
Serial Number: 85/153,981	Julie A. Watson Examining Attorney
Filed: October 15, 2010	Law Office 109
Mark: EDGE	
Commissioner For Trademarks	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

I. Trademark Act Section 2(d), Likelihood of Confusion (Class 35)

The Examining Attorney has refused registration of Applicant's EDGE trademark on the basis of alleged confusing similarity with prior registrations nos. 2,951,647, 3,097,321, 3,506,527 and 3,710,874. Applicant states that it has adequately distinguished itself from the prior registrations by removing the clause "Advertising, promotional and marketing services for others" and limiting the services in Class 35 as follows:

Class 35: computerised electronic on-line retail store services featuring computer games software and computer hardware.

Since the cited registrations are used in connection with very different subject matters, namely, (1) promoting Oklahoma's scientific and technological advantages for businesses, (2) market research services in the field of health care, (3) business and advertising services related to aviation, and (4) promoting the economic development of New York, Applicant respectfully requests that the refusal to register the mark EDGE on the Principal Register be withdrawn.

II. Claim of Ownership Statement

The Examining Attorney requested that Applicant submit a claim of ownership if it is the owner of U.S. Registration Nos. 2,219,837, 3,559,342, and 3,713,604. Applicant respectfully submits that it is the owner of U.S. Registration No. 3,713,604 pursuant to a partial assignment from Edge Interactive Media, Inc. and a subsequent renewal and division of the registration in Applicant's name alone. As for U.S. Registration Nos. 2,219,837 and 3,559,342, Applicant respectfully submits that it is the sole owner of such registrations as a result of (1) Edge Interactive Media, Inc.'s partial assignment of the registrations for certain of the goods to Applicant (see Assignments in Reel 2965, Frame 0742 recorded October 27, 2004 and Corrective Assignments in Reel 3159, Frame 0971 recorded September 15, 2005 and Reel 3186, Frame 0406 recorded November 2, 2005), and (2) Edge Games, Inc.'s (as the assignee of, and successor in interest to, Edge Interactive Media, Inc.) November 14, 2010 voluntary surrender with prejudice of its remaining partial interest in such registrations pursuant to a settlement reached with Electronic Arts, Inc. (See Exhibit A submitted herewith).

III. Filing / Registration Basis

The Examining Attorney requests whether applicant intends to reply upon both Trademark Act Section 1(b) and Section 44(e) as filing bases. Applicant submits that it intends to rely on both Section 1(b) and Section 44(e) as filing bases. However, the international applications remain pending and have not yet registered. Applicant further states that it may drop the Section 1(b) basis later in the examination process.

Conclusion

In view of the foregoing, and having responded to all issues raised in the Office Action, this application is believed to be in condition for publication, and reconsideration and favorable action are respectfully requested.

EXHIBIT F

5.2.1

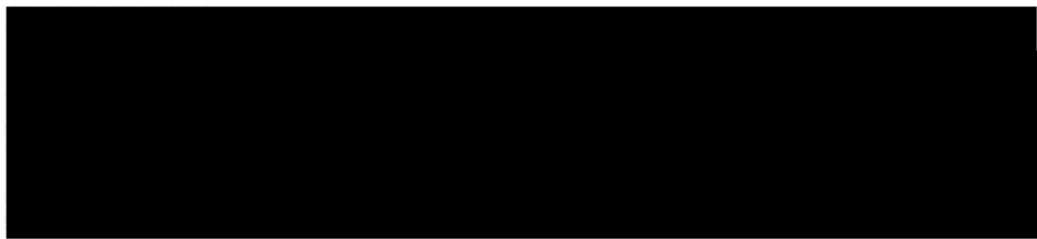
5.2.2

5.2.3



6 GENERAL

6.1



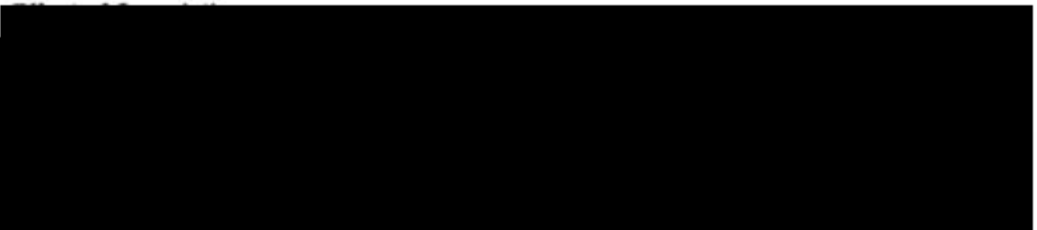
6.2 **Assignment**

This Agreement and Deed shall be binding upon and enure for the benefit of the successors of the parties and shall not be assignable by any party without the prior written consent of the others, such consent not to be unreasonably withheld.

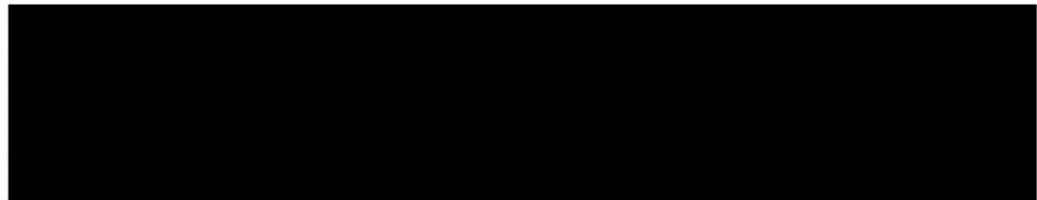
6.3



6.4



6.5



6.6

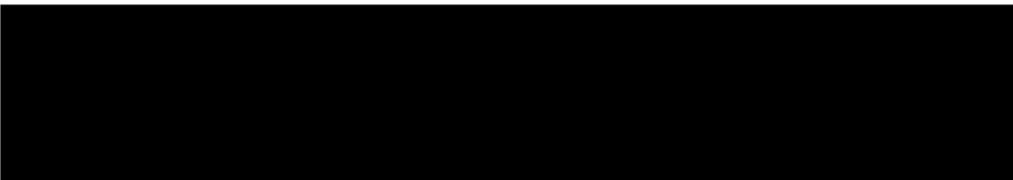
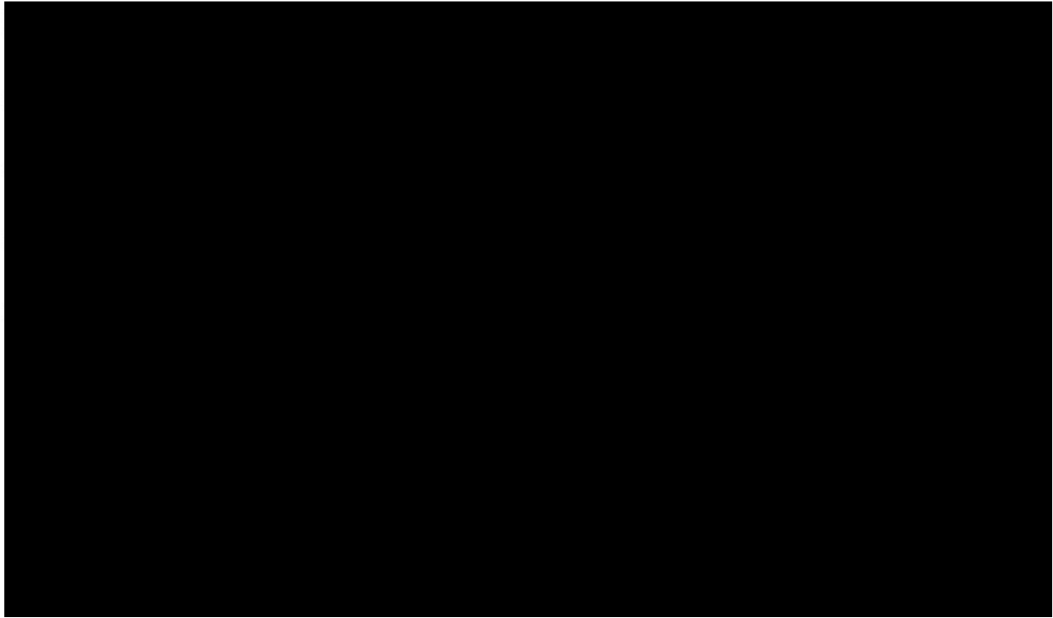
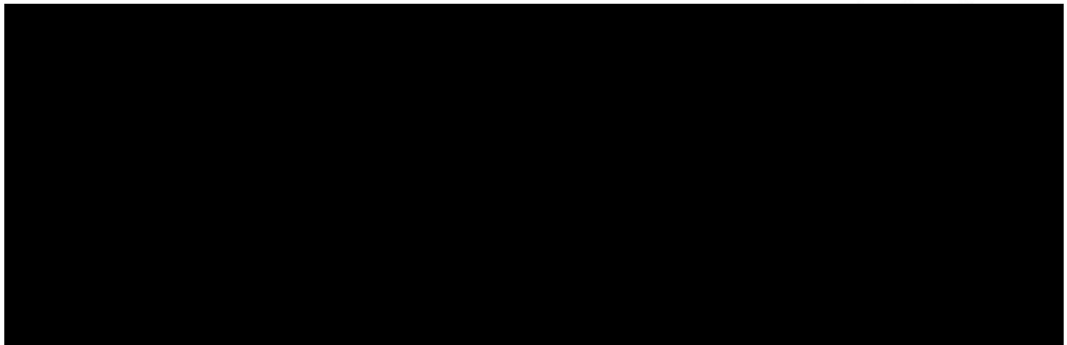


EXHIBIT G

2.3



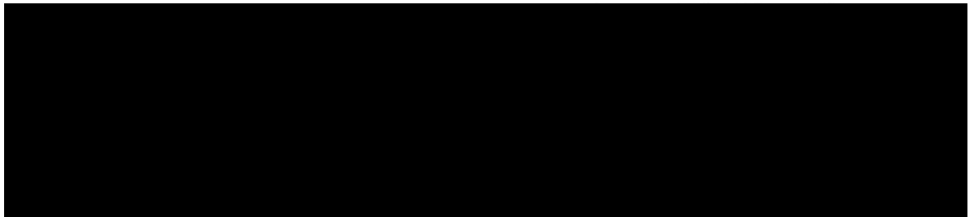
2.4



2.5 The Licence does not extend to North America, save that:

2.5.1 for the avoidance of doubt, the availability of on-line access to Edge Magazine from North America and/or the provision of incidental copies of Edge Magazine to North America (for example on subscription) shall not constitute a breach of this Agreement.

2.5.2





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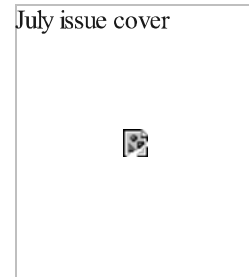
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EXHIBIT H

1 KENDALL BRILL & KLIEGER LLP
Robert N. Klieger (192962)
2 *rklieger@kbbfirm.com*
Joshua M. Rodin (224523)
3 *jrodin@kbbfirm.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 WALTER ELIOT
BARD IN OPPOSITION TO PLAINTIFF
EDGE GAMES, INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

[Memorandum of Points and Authorities;
Declarations of James Binns, 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 WALTER ELIOT BARD

I, Walter Eliot Bard, declare as follows:

1. I am Vice President and Deputy General Counsel of Marvel Entertainment, LLC (collectively with its affiliated companies, "Marvel"). The matters set forth below are based upon my review of Marvel's business records and information known to me in my capacity as Deputy General Counsel.

2. On December 7, 1994, in anticipation of launching a line of comic books under the name MARVEL EDGE, Marvel filed an application in the United States Patent and Trademark Office ("USPTO") to register MARVEL EDGE for "publications, namely comic books and comic magazines." The application was assigned Serial No. 74/607,899. In July 1995, the first comic books with the Marvel Edge logo were shipped to consumers and retailers.

3. On or about April 17, 1995, Marvel filed applications in the USPTO to register the marks DOUBLE EDGE, OVER THE EDGE, and CUTTING EDGE, which Marvel intended to use as the titles of comic books published as part of the MARVEL EDGE line. Each of the applications was for "publications, namely comic books and comic magazines and stories in illustrated form." The applications were assigned Serial Nos. 74/662,337, 74/662,338, and 74/662,343, respectively.

4. Marvel published *Double Edge Alpha*, a comic book featuring the Marvel character "The Punisher," in or about July 1995. Marvel published *Double Edge Omega*, also featuring The Punisher, in or about October 1995. Both of these titles were released as part of the MARVEL EDGE line. Both titles have been out-of-print for nearly fifteen years. Marvel has not published any other title using the DOUBLE EDGE name or mark.

5. Between November 1995 and August 1996, Marvel published a ten-book miniseries under the title *Over The Edge*, the first five issues of which were published under the MARVEL EDGE line. The other five issues were published after Marvel discontinued the MARVEL EDGE line in early 1996. All of the titles have been out-of-print for more than fourteen years. Marvel has not published any other title using the OVER THE EDGE name or mark.

6. Marvel published *Cutting Edge*, a comic book featuring the Marvel character "The Hulk," in or about December 1995. This title was released as part of the MARVEL EDGE line.

1 The title has been out of print for nearly fifteen years. Marvel has not published any other title
2 using the CUTTING EDGE name or mark.

3 7. None of The Edge Interactive Media, Inc., Edge Games, Inc., or Tim Langdell
4 (collectively, "Edge Games") had any involvement in Marvel's publication of any of the above
5 referenced comic books, nor were any of the titles, names, or marks licensed from Edge Games.

6 8. Marvel discontinued its MARVEL EDGE line in early 1996. Marvel's application
7 to register the MARVEL EDGE mark was officially abandoned in June 1997.

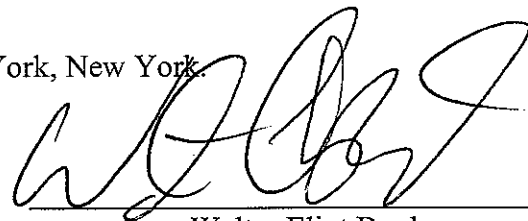
8 9. In or about December 1996, more than three months after the last of the above titles
9 had been published, Edge Games filed a Notice of Opposition to Marvel's registration of the marks
10 DOUBLE EDGE, OVER THE EDGE, and CUTTING EDGE. Edge Games claimed that it had
11 made "extensive use" of those marks since October 1984.

12 10. In or about September 1997, Marvel assigned its rights in the marks DOUBLE
13 EDGE, OVER THE EDGE, and CUTTING EDGE, including the then-pending applications to
14 register those marks, to Edge Games. Marvel had not made any use of those marks for more than
15 a year prior to the assignment, nor has it made any use of those marks at any time since the
16 assignment. Marvel is not a licensee of Edge Games with respect to any of the marks.

17 11. In or about November 1994, Marvel acquired a company named Malibu Comics.
18 Malibu Comics published a three-book miniseries under the name EDGE, the last installment of
19 which was published no later than spring 1995. Marvel has not published any further books in the
20 EDGE series, whether as part of the Malibu Comics imprint or otherwise, nor does Marvel have
21 any plans to publish additional books in the series.

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

24 Executed September ⁸7, 2010, at New York, New York.



Walter Eliot Bard

EXHIBIT I

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

STATEMENT OF USE UNDER 37 C.F.R. 2.88

Mark: **CUTTING EDGE**

Class: **16**

Serial No. : **74/662,343**

TO THE ASSISTANT SECRETARY AND
COMMISSIONER OF PATENTS & TRADEMARKS:

APPLICANT: **Marvel Characters, Inc.**

NOTICE OF ALLOWANCE ISSUE DATE: **August 12, 1997**

Applicant requests registration of the above-identified trademark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended). Three (3) specimens showing the mark as used in commerce are submitted with this Statement.

Applicant is using the mark in commerce on or in connection with the following goods:

**PUBLICATIONS, NAMELY COMIC BOOKS AND COMIC MAGAZINES AND
STORIES IN ILLUSTRATED FORM**

-Date of first use of the mark anywhere: **At least as early as December 1, 1995**

-Date of first use of the mark in commerce which U.S. Congress may regulate: At least as early as December 1, 1995

-Specify the type of commerce: Interstate Commerce

-Specify manner or mode of use of mark on or in connection with the goods: The mark is used by applying it directly to the goods and/or packaging or labels for the goods.

Please address all correspondence in this matter to the attention of Pamela G. Bradford, Esq., c/o Marvel Entertainment Group, Inc., 387 Park Avenue South, New York, NY 10016.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that she is properly authorized to execute this Statement of Use on behalf of the applicant; she believes the applicant to be the owner of the trademark sought to be registered; the trademark is now in use in commerce; and all statements made of her own knowledge are true and all statements made on information and belief are believed to be true.

Marvel Characters, Inc.

By: 

Name: Pamela G. Bradford

Title: Vice President

Dated: 9/25/97

EXHIBIT J

Tim Langdell

From: "Mark Millar" <Mark.Millar@futurenet.com>
To: "Tim Langdell" <tim@edgegames.com>
Cc: "Jo Clayton" <Jo.Clayton@futurenet.com>
Sent: Thursday, March 05, 2009 9:47 AM
Subject: <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022703494.html>
Tim

I came across this the other day - are you licensing them the Edge name for the game?

Kind regards
Mark

Mark Millar
Company Secretary and Head of Legal

Future plc
Beauford Court
30 Monmouth Street
Bath BA1 2BW

Tel 01225 822764 | Fax 01225 822836 | www.futureplc.com

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Puzzle Yourself With the Edge Game on Your iPhone

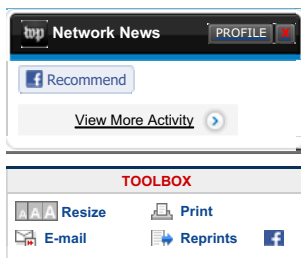
Steve Horton
PC World
Monday, March 2, 2009; 12:19 AM

[Edge](#) is a somewhat nondescript name for a spellbinding iPhone/iPod Touch game. The object is to maneuver a 3D block around a level using either the touch screen or accelerometer, your choice, picking up glowing cubes and pressing various switches to navigate around. If anyone is old enough to remember the classic game Marble Madness, Edge is a lot like that, but much easier to control.

The cube moves itself one face at a time, can speed up or slow down based on how you gesture, and can even climb itself up one level. It only takes a level or two to get the trick, and then the game really throws the hazards at you.

Finishing each level gets you a grade, that's based on how many glowing cubes you found and how few times you died.

Edge is an addictive puzzler with a stylish high-res interface and presentation that will also recall the Sony puzzle game Lumines. Finally, it seems as if most iPhone software contains bugs in the 1.0 version, so it's refreshing to see this one on its first version and apparently bug-free. Definitely recommended.



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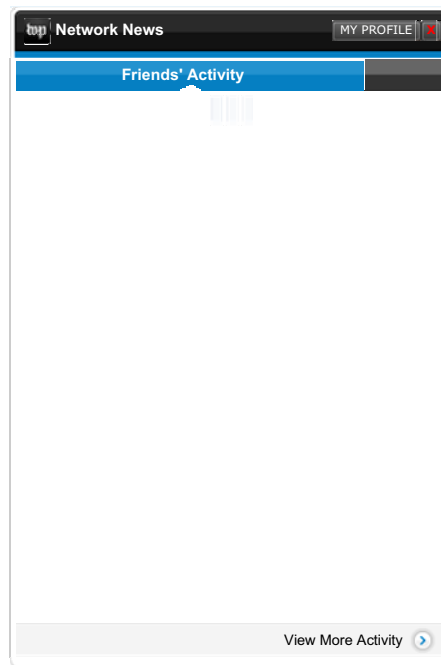
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Claimant
Mark Millar
Fourth
EXHIBIT MM4
15 October 2010

CLAIM NO HC09C02265

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) TIMOTHY LANGDELL

Defendants

FOURTH WITNESS STATEMENT OF MARK FALCON MILLAR

I, MARK FALCON MILLAR, of Beauford Court, 30 Monmouth Street, Bath, BA1 2BW,
WILL SAY as follows:

1 I am a solicitor and General Counsel and Company Secretary of the Claimant
Future Publishing Limited ("Future").

2 The matters stated in this witness statement are either within my own knowledge or
belief or they are based on information and belief in which case I state the source of
the information and believe it to be true.

3

[REDACTED]

4

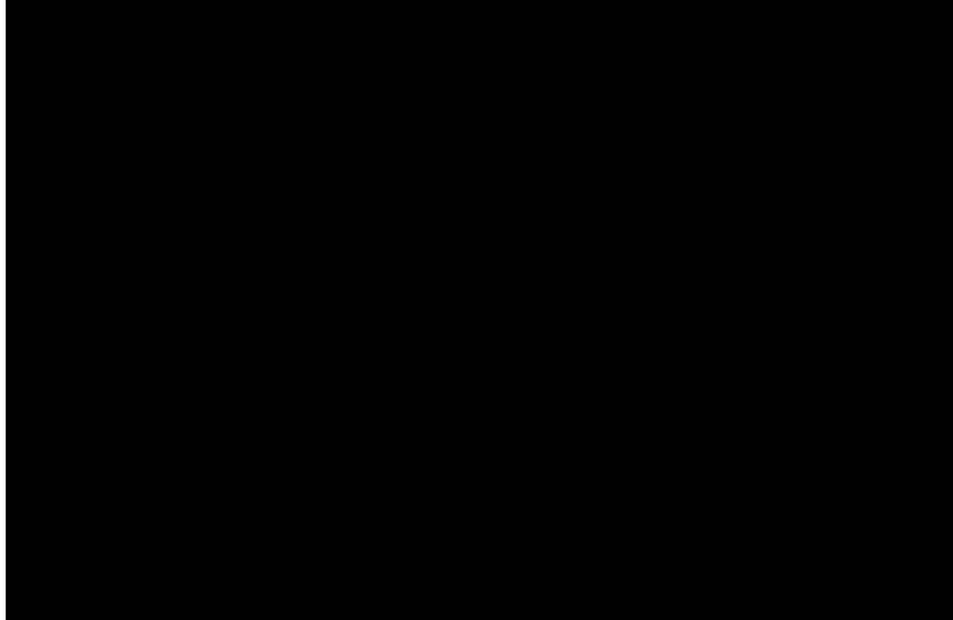
[REDACTED]

[REDACTED]

5

[REDACTED]

29

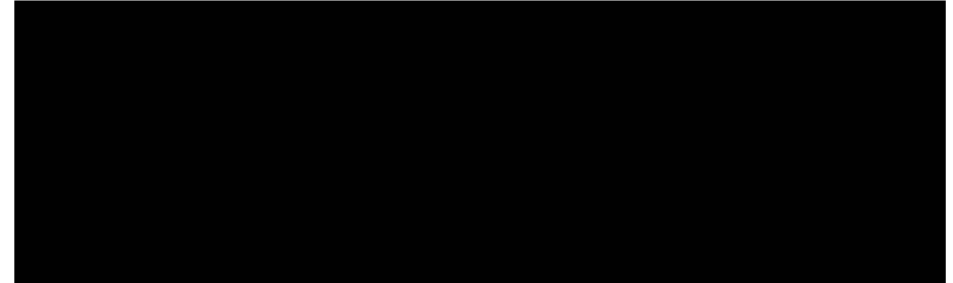


30 At paragraph 39, Dr Langdell asserts that Future must have known about Mobigame



31 Further, and in any event, if Future had wanted to “conceal” Mobigame from Dr Langdell, why would I have notified him at all?

32



33



34

