

ESTTA Tracking number: **ESTTA433422**

Filing date: **10/03/2011**

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	ReplyToFuturesResponseReTheirMotionToCancel.092811pdf.pdf (28 pages) (608568 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

1. In its Reply¹, Co-Defendant Future Publishing Ltd (hereinafter “Future”) makes clear by its Motion and its Reply 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 clearly acts as a collaborator with the Petitioners, seeking to take away Edge Games’ lawful trademark rights and cause Edge Games and the jointly owned registration harm. This is a clear case of commercial sabotage, with Future acting in collusion with Petitioner Electronic Arts against Edge Games. The majority of Future’s current use of the trademark Edge in U.S. commerce is under a perpetual and irrevocable license from Edge Games and has been under license from Edge for almost 20 years. Future has a vested interest here since it stands to benefit greatly by forcing Edge Games to lose its registrations so that Future may register the marks in its own name and thus seek to circumvent the license. Indeed, indicating the depth of its collusion and deceit, Future specifically informed Edge Games that it was “side by side” with Edge Games against Electronic Arts in respect to the Mirror’s Edge issue (see Exhibit A to attached declaration). Indeed, Future was insistent that Edge Games take action against Electronic Arts over the matter (see Exhibit B to attached declaration). Then when Edge Games took the action that Future insisted on, Future blind-sided Edge Games by joining with Electronic Arts in attacking Edge Games and attacking the trademarks that Edge and Future jointly own (having first tried to take the registrations for itself and being denied²). Further, Future exhibited the highly confidential settlement document between Electronic Arts and Edge Games (which we note even Petitioners themselves did not exhibit), revealing that they are in close dealings with Electronic Arts from whom Future must have obtained the confidential document.

2. In its Reply, and in its Motion, 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 issues: first, neither the Board nor the Commissioner For Trademarks, is obliged to comply with a District Court Order that is clearly invalid. Indeed, neither the Board nor the Commissioner for

¹ While Future’s Reply and attached Declaration by Mr. Robert Phillips both indicate they have had service copies sent to Edge Games on August 23, 2011, Edge Games did not receive either document and only became aware of the Reply and attached Declaration when reviewing the TTAB docket online.

² In docket 40 as “Intervener” Future argues that the instant registration should be transferred to it and in its replies to PTO Office Actions denying its right to register the mark Edge in its name, Future claims to actually own Edge’s registrations (see exhibits to the other paper filed at this time by defendant Edge Games).

Trademarks should comply with a judgment or order that is void on its face. 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 and/or impact 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 (here Future) was not a party to the case. That being determined then the order (judgment) is automatically deemed *void ab initio*.

3. 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).

4. 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 then that judgment or order 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. Indeed Edge Games could not file a motion to modify or file an appeal since the judgment is void.

5. 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 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*.

6. The reason the judgment, settlement contract and court stipulation are all *void ab initio* is because in each case they sought to bind and/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 and/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 and/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 how they are referred to), and that indeed a void order is not an order at all. A void order has no legal force or effect. In the District Court case since Future was an *indispensable and necessary party* no final judgment could be made without Future being a party to the action. Future's not being a party to the court proceedings thus made it impossible for a valid final judgment to be reached. Since an *indispensable and necessary party* was absent from the court case, the resulting judgment is void and the Board do not have to comply with it and indeed should not comply with it.

7. Future's interests were impacted by the settlement (and it is *irrelevant* whether they minded that impact or even if they agreed with it), 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 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 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 on its face.

8. 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 (which Edge would not have done had it realized it was not the sole owner of the registrations), 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. This fact renders 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.

9. 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 five 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 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 adds to the invalidity of the judgment, it does not take away from it.

10. 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 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 possible grounds (and only three) 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. Electronic Arts only sought to have the court cancel the five registrations based either on allegations of fraud on the PTO or on the basis of 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 Future 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 its part of 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 Judgment.

11. 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 – see Exhibit D of the attached declaration) was not found in Electronic Arts favor but was found in Edge Games favor. This Sixth Claim for Declaratory Relief 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.

12. 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. Insofar as the Final Judgment was merely asking the USPTO to act on Edge Game’s voluntary surrender, this makes the Final Judgment no different in real terms from Edge Game’s Section 7 Surrender, which was rejected 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 and must thus have been calling for cancellation based on Edge Game’s voluntary surrender as part of the settlement and stipulation.

13. 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, upon Electronic Art’s

request 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 and thus Electronic Arts evoked paragraph 2.2 of the settlement. Contrary to what Future say in its 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. Electronic Arts and Edge also contractually moved forward from requiring the USPTO to cancel the marks based on the Judgment to Edge Games requesting the cancellations via Section 7 Surrenders.

14. 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 invoking 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.

15. Since the settlement and the court stipulation specifically anticipated that if the USPTO did not cancel the registrations based simply on receiving the Courts 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.

16. 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 Future's 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.

17. Further and in the alternate just as the court judgment was rendered void because it attempted to bind or impact a non-party, similarly Future's instant motion is invalid for similar reasons. A motion is invalid if it seeks to compel a non-party to be bound by an order or judgment. Here the issue is complicated by the fact that Future itself is the non-party that the District Court Judgment wrongly sought to bind. But simply because Future is that non-party (to the court action) does not mean they have standing here to retroactively make the court judgment valid. As we have argued before, no action that Future can take now can make the court judgment valid – they cannot seek to waive their right to object to the court judgment, or seek to affirm their agreement with the court judgment and by so doing make the judgment valid. Future would have had to be a party to the court action itself and a party to the settlement and the stipulation for the District Court Final Judgment to be valid. For the same reason, then, Future's motion seeking to compel the Board to comply with the invalid judgment (the void judgment) is itself therefore invalid.

18. While complicated by the most unusual circumstances where the co-owner of a registration (and co-defendant in the instant proceedings) is seeking cancellation of the very registration it co-owns, greater insight can be gained by considering the consequence of Future trying to file its own Section 7 Surrender. Were Future to file a Section 7 Surrender of this registration in the instant proceedings it would have the same result as when Edge Games tried to file a voluntary surrender – namely, the Board would correctly deny the surrender on the grounds that Future is not the sole owner of the registration in question and therefore lacks the standing and authority to surrender the entirety of a registration it only owns part of. By filing this motion to compel the Board to comply with the District Court's Judgment what Future is effectively doing is either filing a Section 7 Surrender with the Board for its part of the instant Reg. No. 3,105,816 or it is seeking to wrongfully file a Section 7 Surrender on behalf of Edge Games, which it has no standing to do. Since the court judgment cannot be a cancellation based on either

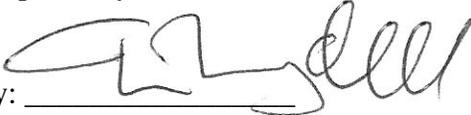
fraud or abandonment, it can only be an order to cancel based on voluntary surrender as stipulated by the parties (see above), then Future may not unilaterally compel the Board to cancel a registration that it is not the sole owner of, even via the mechanism of seeking to compel the Board to comply with a fraudulently obtained, faulty and invalid (and consequently, by definition, *void ab initio*) court judgment.

19. Edge Games also incorporates its Reply to Future's and Petitioner's Oppositions to Edge Game's Motion to Withdraw (Reverse) the Section 7 Surrenders of registrations Nos. 3559342 and 2219837 in so far as that Reply also pertains to the issues and legal points relevant to Edge Games opposition to Future's instant motion.

For all the above additional reasons, Co-Defendant Future's Motion should be denied.

Date: August 28, 2011

Respectfully submitted,

By: 

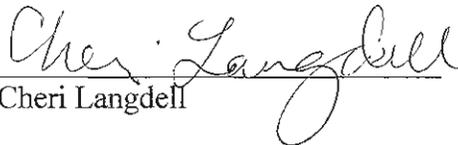
Dr. Tim Langdell, CEO
EDGE Games, Inc.
Registrant in *Pro Se*
530 South Lake Avenue, 171
Pasadena, CA 91101
Telephone: 626 449 4334
Facsimile: 626 844 4334
Email: ttab@edgegames.com

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 Response to Co-Defendant Future's Motion to Cancel Reg. No. 3,105,816 Pursuant to District Court Judgment 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

4. Attached hereto as Exhibit C is a true and exact copy of the USPTO Letter of Suspension sent to Petitioner Electronic Arts in August 2008 in respect to their attempt to register the mark "MIRROR'S EDGE."

5. Attached hereto as Exhibit D is a true and exact copy of that part of the Electronic Art's Counterclaim in the October 2010 District Court matter showing their Claim 6 for Declaratory Relief called for Edge Game's common law rights in all of the five referenced Edge trademark registrations be deemed non existent (this Claim being the one that was not granted, and was ruled in Edge Game's favor).

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.

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 Response to Co-Defendant Future's Motion to Cancel Reg. No. 3,105,816 Pursuant to District Court Judgment 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

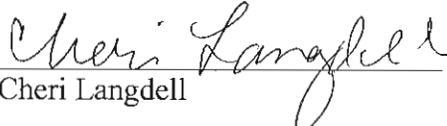

Cheri Langdell

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.

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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.

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COUNTERCLAIM

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129. EA is entitled to a declaratory judgment that Counterdefendants have no common law rights in and to 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.