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

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|------------------------|--|
| 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, tim@edgegames.com |
| Signature | /Tim Langdell/ |
| Date | 03/25/2013 |
| Attachments | ResponseToTTABOrderOf08Mar13.pdf (78 pages)(3112205 bytes) |

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

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

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

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

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| EA DIGITAL ILLUSIONS CE AB, a Swedish Corporation; ELECTRONIC ARTS INC., a Delaware corporation, |) | |
| Petitioners, |) | CO-REGISTRANT EDGE'S |
| |) | RESPONSE TO THE BOARD'S |
| |) | ORDER OF MARCH 8, 2013 |
| |) | |
| |) | |
| v. |) | Cancellation No. 92051465 |
| |) | |
| EDGE GAMES, INC., a California corporation and FUTURE PUBLISHING LTD a UK corporation |) | |
| |) | |
| Co-Registrants/Co-Defendants. |) | |
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Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

1. Pursuant to the Board's Order of March 8, 2013 (Docket 84), Co-Defendant and Co-Registrant Edge Games, Inc. ("EDGE") hereby responds to the Order.
- To assist the Board, please find attached (as Exhibit A) a summary of EDGE's legal argument that the Board is obligated to confirm the District Court's Final Judgment and Orders of 10/8/10 to be void on their face. And attached (as Exhibit B) please find a summary of the depths to which Petitioners (EA) and Co-Defendant Future has stooped in order to try to steal the "Edge" trademark from EDGE, and the degree to which they have used deception, perjury and fraud to defame EDGE/Langdell, including:
 - Future insisted EDGE/Langdell had to take action against Mobigame (Papazian) and EA (Petitioners) and then when EDGE did what it was being forced by Future to do, Future and EA then turned around and falsely painted EDGE/Langdell as litigious and "trademark trolls" in order to justify depriving EDGE of its marks.
 - EA (Petitioners) deliberately mislead the District Court, adopting fraud and perjury to do so, to convince Judge Alsup that EDGE/Langdell had committed fraud on the USPTO and committed perjury, whereas in fact it was Petitioners who committed fraud, and their various writers of supporting witness statements (including Future and Marvel) who committed perjury, *not* EDGE *nor* Langdell.
 - EDGE/Langdell have never acted as "trademark trolls" – did *not* have a reputation for being litigious or asking other users of the mark Edge for money; issued virtually *no* "Cease and Desist" letters in 20 years that Future hadn't insisted upon; *never* sued *any* company (other than Future in 1994 and 2011, and EA – at Future's insistence – in 2010). The "trademark troll" label was a complete fiction invented by EA, Future and their supporters on the Internet to deliberately defame EDGE/ Langdell as part of Petitioners'/Future's goal to steal EDGE's mark "Edge" from it and deprive EDGE of its legitimate rights in the mark "(The)Edge." EDGE just won its latest fight against Future in the London High Court (a fact Future wants to hide from the Board).
2. It is clear that the Board has misunderstood the Court's striking of EDGE's Rule 60 motion for relief on the grounds EDGE is not permitted to represent itself as if it were a striking that denied relief from the Final Judgment – this did not happen, there was not such Order denying EDGE relief, and it is deeply troubling that the Board should misquote the Court record in this manner. Further, contrary to the Board's Order, this is a rare instance where the Board is not bound to follow the mandate of the District Court. On the contrary, this is that one exception where it is unlawful for the Board to follow the Court's rulings since they are all void.
3. **Certified copies of the Court's Judgment and Orders do not make that void judgment, or the void orders, valid** – they all remain void and submitting certified copies does not change that crucial and fundamental fact. Indeed, by law, **the**

Director is *obligated* to ignore the Court Judgment and both Court Orders and to give them no weight or credence whatsoever.¹

This is the one exception wherein the Director is obligated to NOT follow Trademark Act § 37, 15 U.S.C. § 1119, namely when the Court's rulings are void on their face.

4. The only exception to Trademark Act § 37, 15 U.S.C. § 1119 whereby the Director (USPTO) is not obligated to act on a Court Order is when that Order is void on its face. Indeed, it is not within the Director's discretion to rely on Act § 37, 15 U.S.C. § 1119 to act on a Court Order *when that Order is void* and, **it would be unlawful for the Director to act on a Court Order that the USPTO is fully aware is void on its face**. This is the case despite the wording of Act § 37, 15 U.S.C. § 1119 seeming to otherwise compel the action of the Director. The filing of certified copies of the Court Orders does not alter the fact they are void on their face, and does not change the situation to make it within the Director's discretion to act on the Orders to cancel any mark referenced in the Orders.

If the Director (USPTO) were to act on the void Order, and cancel any of the registrations, then the Appeals Court would be compelled to reverse the Director's (USPTO's) actions on Appeal.

5. As EDGE has drawn to the Board's attention in previous filings, the Supreme Court has consistently ruled that it is unlawful for any entity such as the USPTO to act on a Court Order that is void on its face (See Exhibit A). Further, where a Court or entity such as the PTO has unlawfully acted on a void Order, in all instances, with no exceptions, the Appeals Court has reversed the prior actions based on the void Order (See Exhibit A).
6. If the Director were to wrongly, contrary to legal obligation, rely on Act § 37, 15 U.S.C. § 1119 as the basis to cancel any of the instant registrations, further relying on the recently filed certified orders, then this would cause *irreparable* harm to all parties and would only lead to the Director's decision being reversed on Appeal *at*

¹ In its footnote to the recent Order the Board states that it is bound to follow the mandate of the District Court. Ordinarily this may be true, but the one time it is not true is when the mandate of the District Court is a Final Judgment and Court Orders that are all clearly and obviously void on their face. In this instance not only is the Board not bound to follow the mandate of the District Court, it is actually *unlawful* for the Board to follow the mandate of the District Court under these circumstances.

great cost to all parties. The Director (USPTO) should be mindful of the immense, and to a significant extent *irreversible*, harm that would be caused by the Director acting on a Court Order than is obviously void on its face (because a necessary and indispensable party – Future – was directly impacted by the Order but was not a party to the action). If the Director were to wrongly cancel the instant registrations, then even when the Appeals Court reverses that decision (as they would be compelled to do), the extreme harm caused to the parties by the Director’s action would not be reversed, or even reversible.

EDGE’s Rule 60 Motion did NOT result in an Order denying relief from Final Judgment

7. The Board has misquoted and/or misunderstood the Court’s ruling regarding the outcome EDGE’s Motion 60 filing. EDGE’s motion was struck out and removed from calendar without being considered by the Court at all. The reason for the motion being struck was solely that the Court determined EDGE was not permitted to bring the motion since a corporation may not represent itself before the Court and thus may not file a motion with the court. But the Court did not consider the motion at all, let alone consider it on its merits, did not hear from the parties, did not consider all evidence and arguments, and did not then make a ruling as a result of the issues being fully litigated. And the court did not make a ruling denying EDGE relief from the Final Judgment. None of these things happened.
8. By striking out EDGE’s motion on the grounds that EDGE was not permitted to act for itself, the Court did not in any way either deny relief not did the Court deny EDGE the right to re-file such a motion at any time in the future, so long as this time properly represented by counsel. And as EDGE has noted before in these proceedings (See Exhibit A) there is no time limit in the code whatsoever for a party to file a Rule 60 Motion, thus although the Court did not strike out EDGE’s Motion in the sense of denying relief from judgment, there could be no Order to strike that the Court could have issued that in any way prevents EDGE from filing repeat Motions for relief should it desire to do so. That is, while the Court’s Order was solely to strike the Motion on the basis of lack of standing to file it, and not a denial of relief, the Order

was not a final order and due to the nature of the law in question could not possibly be interpreted as a final order (that is, could not in any possible sense be interpreted as the Court giving a final order denying relief).

It is not possible to seek relief from a void Order nor can a void Order be appealed or modified (since both October 8, 2010 Orders, being void on their face, technically do not exist and never did exist).

9. As EDGE has confirmed in prior filings (See Exhibit A) both the Supreme Court and the Court of Appeals have confirmed you cannot seek relief from a void Order since by definition a void Order is one that is to be treated as if it never existed. Since Judge Alsup's October 8, 2010 Orders and related Final Judgment are all clearly void on their face, then according to authoritative Court rulings it is as if neither the Final Judgment nor either of the Orders had ever existed. Thus, with deep respect, it is nonsensical for the Board to suggest that the Court denied relief from the Final Judgment, or to imply such denial was any form of final ruling on the issue, since the Final Judgment and associated Orders are, according to law, are all to be considered to have never existed.
10. It is also nonsensical for the Board to comment that it has not been notified of any appeal or modification of the July 23, 2012 Order since that Order is not one that anyone would either appeal or seek to modify. The Order did not deny EDGE relief from the Final Judgment, and in real terms the Order merely stands as an invitation to re-file the order, this time with legal representation should EDGE wish to do so. Since EDGE is in no way barred by the court from re-filing the Rule 60 Motion, there would be no sense in either appealing the July 2012 Order or seeking a modification of it.

EDGE did not re-file its Rule 60 Motion because legal counsel advised that Rule 60 should not be used where an Order is entirely void on its face.

11. The Board mentions in the footnote to its recent Order that it did not require EDGE to file any motion or any other filing with the District Court. However, with deep respect, as the Board confirms it did give EDGE just 20 days to notify the Board if it had filed any motion with the District Court seeking reconsideration, review or

modification of the Final Judgment, or if EDGE had pursued any available form of relief from the Final Judgment. This certainly sounds to EDGE as if the Board were asking EDGE to file such with the Court if they had not already done so.

12. While EDGE did attempt to file such a motion (the Rule 60 Motion) in *Pro Se*, reacting to what it believed the Board was *requiring* it to do, EDGE later confirmed that there is no motion or any other filing that EDGE can file with the District Court, nor is there any other available form of relief of the Final Judgment, since in this case the Final Judgment (along with the two Orders) is void on its face. And as confirmed above and in prior filings, a void order (or void Final Judgment) by definition is as if it had never existed, and thus you cannot seek reconsideration of, review of, or modification of a void order that does not exist. Similarly, it makes no sense in law to even speak of “available form of relief” from a Final Judgment that by law is void, and hence does not exist. Worse, as the Supreme Court and Court of Appeals have both observed, by filing to seek relief from a void Order there is a legal absurdity that the very act of filing for relief suggests the Order is valid and can have relief, which is not the case. For the avoidance of doubt EDGE does not waive its right to claim the Court’s orders and judgment are indeed void and no action EDGE took believing the Board was requiring it to take it should be interpreted otherwise.
13. The appropriate use of a Rule 60 Motion, then, is only when a Court’s Final Judgment and Final Order are void in part – not when they are void in their entirety, and void on their face, as here.

Vacating of the Board’s prior granting of EDGE’s motion to reverse its voluntary surrender of Registration No. 3105816 is a gross miscarriage of justice and deeply unfair

14. In its footnote to the recent Order the Board has stated that it has vacated its prior order reversing EDGE’s surrender of Reg. No. 3104816. EDGE notes that the Board gives no reason at all for the astounding reversal of its prior just and proper order. EDGE also notes that there was no motion before the Board requesting that this Order be vacated and thus it is deeply disconcerting that the Board appears to have taken this highly questionable decision (as it were) on its own motion.

15. In granting EDGE's motion to reverse the surrender, the Board correctly determined that at the time EDGE filed its surrender it was not the sole owner of this registration. Since EDGE was not the sole owner, the Board correctly ruled that EDGE did not have the right to file a surrender. The Board wrote in its Order of July 1, 2011 (Docket #42):

*“With respect to Registration No. 3105816, respondent Edge Games, Inc.’s motion to withdraw its surrender thereof is hereby granted. **Inasmuch as respondent Edge Games, Inc. is not the sole owner of record of said registration, the Board cannot give effect to its surrender thereof.”***

(emphasis added)

This was an entirely correct decision, fully in compliance with Trademark Law. The Board cites no new law nor makes any new argument that could possibly support vacating this prior correct Order, and presumably for good reason since there is no law or fresh argument that could possibly support a decision to vacate the prior perfectly correct, fair and just Order to reverse the surrender.

16. Insofar as the Board gives any hint of the reason it made this decision, the Board merely makes reference in the footnote to it being bound to follow the mandate of the District Court. However, that surely cannot be the basis that the Board is relying on to vacate its prior Order since nothing in what the Court ruled in any way impacted the fundamental fact that at the time EDGE filed the surrender it was not the sole owner of the registration and thus lacked standing to file the surrender. Indeed, since the District Court's Final Judgment and both of its October 8, 2010 Orders are void on their face, they cannot in law be a basis or justification for the Board vacating its prior Order regarding this surrender.
17. And it cannot be the basis for the Board to reverse their prior Order that they now believe Future wish the registration cancelled rather than Future retaining what they might call “their” part of the registration. For if this were what the Board were taking into account, then it would still not make EDGE's original surrender of this registration valid since it does not impact at all the core decision made by the Board,

namely that since EDGE is not the sole owner of record the Board cannot give effect to the surrender filed by only one of the two owners – not even if the other owner now claims they accept the cancellation. For such a surrender to be legal, there would have to be a surrender executed by both EDGE and Future, and for the record EDGE has withdrawn its surrender of this registration and would refuse to execute any new surrender that Future would seek to co-sign. There is thus no lawful surrender of this registration and any statement by Future cannot now make EDGE's surrender valid.

18. Further, EDGE reminds the Board (and the Director) at this point that Future's first statement on this issue (as an Intervener; see Docket #40) was that it was the co-owner of at least one of the registrations (Future overlooked that it was also co-owner of at least a second), and Future stated that it **strongly opposed the cancellation** of the registration unless it could split off and retain registration of what it termed "its" portion of the registration.
19. This was concrete proof that the Board (Director) must take note of that early in these proceedings Future effectively admitted that the Court Order was void, since this is the direct consequence of Future having protested the cancellation of the mark (and its statement that Future's opinion is that the settlement agreement with EA was not valid). The fact that Future have since tactically taken a different position in their conspiracy to attack EDGE's marks in collusion with the petitioners, cannot in real terms withdraw or nullify their acknowledgement in Docket #40 that proves they needed to be a party to the law suit for the Court Order to be valid. And EDGE notes, too, that in that same filing by Future, **Future confirmed that the settlement contract between EDGE and the Petitioners was not valid since for it to be valid Future would have had to be a party to it.**² This again proves the Court Orders and Final Judgment of October 8, 2010 are void on their face.
20. Further, and equally important, this Intervener filing by Future in Docket #40 also proves that EDGE lacked the standing to file the surrenders for the registrations that it

² **To be clear, Future has never changed its position stated in its Intervener Response (Docket #40) and now stated that Future did give EDGE either authority or right to either negotiate the settlement with Petitioners or agree to the Court Stipulated Judgment or Orders. Future has always maintained EDGE had no authority.**

co-owns with Future. Indeed, **in this Intervener filing Future specifically states that EDGE does not have the right to surrender a mark that Future is co-owner of** (or, that is, does not have the right to surrender “Future’s part” of the mark, which amounts to the same thing as the Board rightly observed in its Order approving EDGE’s motion to withdraw (reverse) this surrender in question).

21. EDGE thus respectfully requests that the Board re-instates its prior Order that EDGE’s surrender be deemed reversed (withdrawn) since that first Order by the Board was clearly the correct one in law.


The Board denied EDGE’s other motions without giving any justification or reasoning, and there is no valid basis for the Board denying EDGE’s motions

22. In the footnote to the recent Order, the Board also stated that it denied EDGE’s other motions. The Board states that it find no errors in its decision, but at the very least the Board was clearly in error in not granting EDGE’s motion to reverse (withdraw) its surrender of Registration No. 3559342, being the other mark that is co-owned by EDGE and Future Publishing. Just as the Board’s original Order to grant EDGE’s motion to reverse the surrender of Reg. No. 3104816 was entirely correct in law, similarly the exact same argument applies here and the Board is *obligated* to grant EDGE’s motion to reverse (withdraw) surrender of Reg. No. 3559342. EDGE was not the sole owner of this mark and in law EDGE had no standing to surrender it.
23. Again, as with the prior surrender, nothing in the District Court’s rulings in any way took away the simple fact that EDGE was not (and is not) the sole owner of Reg. No. 3559342, and nothing in the District Court’s rulings granted EDGE the right to surrender either of these co-owned registrations, nor did anything the Court sought to rule give any power to the Board to ignore the fact that EDGE is not the sole owner and thus accept EDGE’s unlawful surrenders. And as stated above, the Court Judgment and Orders are void in any event, so there is no possible sense in which they could give the Board the right to deny EDGE’s motion to reverse the surrender of Reg. No. 3559342.

24. EDGE thus respectfully requests that the Board reverse its decision and grants EDGE's motion to withdraw (reverse) the surrender of Reg. No. 3559342 since there is no basis in trademark law that could justify the Board (the PTO) accepting a surrender from one of two owners of a registration owned by more than one owner.
25. Following from the law that determines that the Board was obligated to grant EDGE's motions to withdraw (reverse) its prior surrenders, similarly the Board cannot act on the Court's Order to cancel either Reg. No. 310 or Reg. No. 3559342 since the Court Order is only against EDGE and yet Future is the co-owner of these two marks. This goes to the core of why the Court's Order is void on its face – just as the Board could not act on the Order even if it were valid, that is the same reason the Order is void. Trademark Law, and legal precedent in both the Supreme Court and the Court of Appeals dictates that where a Court orders the cancellation of a trademark registration when it is clear to the Board (Director) that the Court did not include the co-owner of that mark as a party to the proceedings that lead to the cancellation, then the Board (Director) cannot in law act on the Court Order. Nothing that Future Publishing can or has indicated since the Court Order was made can change the fact that it was not a party to the law suit. That is, Future stating it waives rights, or that it agrees to the cancellations, or otherwise, can take away from the fact that it was not a party to the law suit (or settlement) and hence the Judgment and Orders cannot be acted on even if they were valid, but for the same reason they are all clearly void.

Date: March 20, 2013

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 Co-Defendant Edge Games Inc's Motion Response To The Board's Order of March 8, 2013 was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 25th day of March, 2013:

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

Vineeta Gajwani
Electronic Arts, Inc.
209 Redwood Shores Parkway
Redwood City, CA 94065

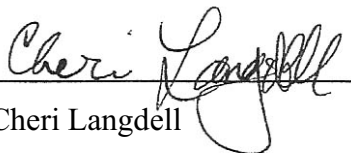

Cheri Langdell

EXHIBIT A

**SUMMARY OF THE BASIS ON WHICH EDGE JUSTIFIED ITS
MOTION TO CONFIRM THE DISTRICT COURT FINAL
JUDGMENT AND COURT ORDERS VOID ON THEIR FACE**

INTRODUCTION

1. **Contrary to the Board's recent Order of March 8, 2013, the Board and the Director are not bound to follow the mandate of the District Court in *this particular, highly unusual, instance*.** There is one time when, in law, the Board (Director) does not have to follow the mandate of the District Court; namely, when a Final Judgment or Order of the Court is *void on its face*. Indeed, this is the one time when the Board actually has no right to ask EDGE to revert to the Court to seek relief from the Judgment or Order, but instead the Board (Director) is *obligated* to accept the fact that the Judgment and Orders of October 8, 2010, *being void on their face, must be disregarded as if they had never been made*, as if they had never existed.

2. This is the one time when the Board (Director) is *obligated* to review the Court record and if the Board can determine (as it must here, based on the facts and the Court record before it) that there was a party that was either *necessary* or *indispensable* to the matter before the Court, but was not a party to the action in question, then the Board is *obligated to determine from its own observation/inspection* that the Court's Final Judgment and Orders were void. The Board (Director) has no discretion on this; it is obligated to determine the Judgment and Orders void if it can reasonably determine from inspection of the Court record that a Necessary Party or an Indispensable Party was not a party to the action. Here it is *inarguable* that Future Publishing were both an *indispensable* and a *necessary* party to the District Court case (indeed they have even stated this fact on the record in these proceedings in Docket #40), and consequently, since Future were not a party to the Court action it follows that all findings, orders or judgments arising from the Court action are by definition and by law void *on their face*. That is, by law they are all inherently void *without the Court being required to rule they are void*.

3. Reviewing the Board's Order of 8 March 2013, it is clear that the Board has misunderstood the Court's striking of EDGE's Rule 60 motion for relief *solely on the grounds EDGE is not permitted to represent itself* as if it were a striking that denied relief from the Final Judgment – this did not happen, there was not such Order denying EDGE relief, and it is deeply troubling that the Board should misquote the Court record in this manner.
4. The Court did not consider EDGE's motion at all, let alone consider it on its merits, did not hear from the parties, did not consider all evidence and arguments, and did not then make a ruling as a result of the issues being fully litigated. And the court did not make a ruling denying EDGE relief from the Final Judgment. None of these things happened.
5. By striking out EDGE's motion on the grounds that EDGE was not permitted to act for itself, the Court did not in any way either deny relief nor did the Court deny EDGE the right to re-file such a motion at any time in the future, so long as this time properly represented by counsel. As EDGE has proven by legal citations in prior filings in these proceedings, there is no time limit in which a party can question or attack a void order. Thus while the Court's Order was solely to strike the Motion on the basis of lack of standing to file it, and not a denial of relief, the Order was not a final order (or final decision of any kind) and due to the nature of the law in question could not possibly be interpreted as a final order (that is, could not in any possible sense be interpreted as the Court giving a final order denying relief). The implication, while not clearly stated, in the Board letter that there was some kind of final decision made as to whether EDGE would have relief from the Judgment is simply not true.

FACTS

6. Here it is abundantly obvious that Future Publishing Ltd, being the co-owner of at least two – and EDGE says three¹ – of the Trademark Registrations that the Court was being asked by Petitioners to cancel was clearly both a *Necessary Party* and an *Indispensable Party*. As the Supreme Court and Court of Appeals has ruled, where a Court’s judgment or order will impact a party that was not a party to the action, then all rulings arising out of the court’s case – all judgments, all findings and all orders – are *by law* to be deemed void on their face. That is, void *ab initio*, in their *entirety*, without the impacted party (here EDGE) being required to revert to the Court for relief, or for confirmation of the void nature, or being required to take any other action *other than to bring to the attention of the entity considering whether to rely on the Court’s ruling (here the Board/USPTO) that there was a necessary and indispensable party was not a party to the court action that gave rise to the judgment and orders.*

The power, the right and the obligation, to deem the District Court 10/8/10 Final Judgment and Orders void on their face lies with the Board (Director), not the Court.

7. Both the Supreme Court and The Court of Appeals have ruled that the power, the right and the obligation to determine whether a Court order is valid (whether it is void on its face) lies with the entity or legal forum that is considering whether to rely on or act upon said Judgment or Order. To be clear, the entity or forum tempted to rely on or act upon the Judgment or Order is obligated to consider whether the Judgment or Order is void on its face before relying on it or acting upon it. And if the entity or forum finds the Judgment or Order to be void on its face then it has a further obligation to disregard it as if the Judgment or Order had never been issued.

¹ EDGE says 3 registrations are co-owned between EDGE and Future since one of the registrations should not have been divided while Board proceedings were ongoing (and the other 2 registrations are co-owned as a matter of record, even to this day).

Future have confirmed on the record that it was not a party to the settlement agreement or the Court case, and that EDGE lacked the right or authority to agree a settlement or agree any Stipulated Judgments or Orders that in any way sought to impact or bind Future.

8. It cannot have escaped the Board's attention that this is a *highly* unusual case. It must be very rare indeed that a Co-Defendant, that is also the Co-Registrant (co-owner) of the marks seeking to be canceled, joins with the Petitioners to seek the cancellation of its own marks and does nothing to defend the action or to protect the marks that it co-owns.² Indeed, this unusual situation may be almost without precedent in the Board's history, since it arises from deeply dishonest acts by EA (Petitioners) and Future that all decent, honest companies would never contemplate. The Petitioner's and Future Publishing's hands are unclean; this is essentially commercial sabotage that the Board should refuse to be a party to.

9. Co-Registrant Future's first statement in these proceedings (as an Intervener; see Docket #40) was that it is the co-owner of at least one of the instant Registrations (at the time Future overlooked that it was also co-owner of at least a second). Future stated that it **strongly opposed the cancellation** of the registration unless it could split off and retain registration of what it termed "its" portion of the registration. Future stated in that submission:

*"Future hereby states for the record as a proper intervener in these proceedings that it objects to Registrant's original Motion on Consent to Surrender Registrations With Prejudice ... to the extent that **Registrant did not have the right or authority** to surrender that portion of the Subject Registration that had previously been duly assigned to Future."*

(Emphasis added)

² Future did of course at first file an Intervener Response (Docket #40) to defend what it would style as "its" portion of one of the instant Registrations. However, as soon as Future realized they could not achieve their nefarious goal of stealing EDGE Game's marks from EDGE while retaining their own Reg., they switched to the new strategy of siding entirely with Petitioners, throwing away any pretense that they intended to protect their own IP rights.

10. Further, in that same “Intervener” filing by Future, **Future confirmed that both the Court Judgment/Orders and the settlement agreement between EDGE and the Petitioners were not valid since for them to be valid Future would have had to be a party to both of them.** This again proves beyond all reasonable doubt the Court Orders and Final Judgment of October 8, 2010 are void on their face. In their Intervener Filing (Docket #40) Future wrote:

*“... insofar as **Future was not named a party to the civil litigation and these proceedings and was not included in the settlement agreement that resulted in the attempted termination of these proceedings. As a result, Registrant had neither the right nor the authority to negotiate the surrender of Future’s interest in the Subject Registration.**”*

(Emphasis added).

11. Thus Future confirmed *on the record* in these proceedings that EDGE lacked both the *right* and *authority* to either enter into the settlement agreement with Petitioners, or to agree any Stipulated Judgment or Stipulated Final Order in the Court case on behalf of Future (which is what both the settlement and Stipulated Judgment/Orders are).³

ARGUMENT

12. Paragraph 9 above stands as concrete proof -- that the Board (Director) must take note of -- that the District Court’s Judgment and Orders are void. By Future confirming that EDGE lacked right and authority, Future are confirming they were a necessary and indispensable party – both in the Court action and in these instant cancellation proceedings. The fact that Future have since tactically taken a different position in their conspiracy to attack EDGE’s marks in collusion with the Petitioners, does not reverse or nullify their

³ Future also confirms again that EDGE lacked the right or authority to file the Surrenders in these proceedings, but for the purposes of this Motion we will stay focused on EDGE’s lack of right or authority to enter into any agreement with Petitioners to settle the dispute, agree a stipulated judgment/Order or etc in the Court action.

acknowledgement in Docket #40 that proves Future needed to be a party to the law suit for the Court Order to be valid since as they confirm on the record, EDGE alone lacked either the *right* or *authority* to take any action at all pertaining to the co-owned registrations.

13. In paragraph 10 above, there could not be a clearer statement by a key party (Future) that **EDGE lacked both *right* and *authority* to either enter into a settlement agreement with Petitioners in October 2010 or agree to (and effectively bind Future to) a Stipulated Final Judgment and Final Order in the Court action.** This is the very definition of a court case where a *Necessary and Indispensable Party* being not a party to the litigation thereby renders all orders and judgments that result as void on their face. Indeed, how could the October 2010 settlement agreement between EDGE and Petitioners be at all valid given that Future confirm that for it to be valid they would have had to be a party to it? And how could the Stipulated Judgment (and resulting Stipulated Final Order) of October 8, 2010 have any validity at all when Future confirm on the record that EDGE lacked either the right or authority to agree to the Court Stipulation on Future's behalf? *Clearly*, Future had to be a party to both the settlement agreement and the Court action for either the settlement or the Final Judgment/Orders to be valid.

Just because it was mentioned in the District Court case that Future was Co-Owner of one of marks does not mean Future did not have to be a party to the action for its outcome to be valid (for the Court to have jurisdiction to be able to make any valid orders).

14. Petitioners have argued earlier in this matter that the District Court was well aware at the sole hearing before the Court that at least one of the marks in question was Co-Owned by EDGE and Future. And they argued this to support the false proposition that since the Court knew about the co-ownership of at least one of the marks, therefore Future did not need to be a party to the action. This, of course, is sheer nonsense – both in law and in simple logic. But the point that Petitioners unwittingly made here is that Judge Alsop was given clear notice by the documents and statements filed by

Petitioners and Future (in support of Petitioners) that *Future was obviously both a Necessary Party and an Indispensable Party in the action.*

15. It was first and foremost the obligation of the Court to bring Future in as a Co-Plaintiff/Co-Defendant with EDGE the moment that the Court was made aware that Future Co-Owned at least one of the marks (just as the Board correctly acted to bring Future in as a Co-Defendant in the current action). Indeed, the very fact the Board acted to bring Future in as Co-Defendant in this action should show the Board clearly that the Court erred in not taking the same action to bring Future into the Court action, to. The Board is thus fully aware that it knows the Court erred in this just as the Board would have erred had it not brought Future in.
16. But the Court, having clear evidence before it that Future was a Necessary/Indispensable Party, nonetheless decided to move forward to give a Final Judgment and issue two Orders, in theory aware that these would be void on their face because the Court had failed to bring Future in as a party to the case. Since the Judge made no comment as to why he failed to bring Future in as a party and thus rendered his Judgment and Orders void, we can only speculate that it was an oversight on his part. But, most important, both the Petitioners and Future had a window of opportunity **at that time** – before the Court rendered its decisions and issued the Judgment and Orders – to intervene, indicate to the Court the error the Judge was making, and correct the error before allowing a situation in which all rulings or outcomes arising from the Court action would be rendered void on their face (see the legal argument below).
17. The moment this window closed – that is, the moment the Court issued the void judgment and void orders – all possible remedy by the Court or by Petitioners and Future expired. The law clearly states that once a court makes the mistake of issuing a Final Order (or Final Judgment) that is void on its face because of the absence of a Necessary/Indispensable Party, then the

Court cannot reverse that decision and retroactively make either the Final Order or the Final Judgment valid – neither on Appeal, or by way of modification to the Order or Judgment. When that window of opportunity for Petitioners or Future to intervene and point out the Court’s error had closed, all avenues of correcting the error were closed to Petitioners and Future. It is a well established fact of law and procedure that once a Final Judgment or Orders have been issued and are void on their face, neither the aggressor party (Petitioners here) nor the party that should have been a Co-Defendant (here Future) in the action can revert to the court, reopen the case, and correct the error. The Court process does not permit that, not even with a Rule 60 Motion, and thus the District Court’s Final Judgment and Orders of October 8, 2010 are forever indisputably void, and cannot now be made valid by any mechanism or avenue available to either Petitioners, Future or even the Court itself.

LEGAL GROUNDS FOR MOTION TO BE GRANTED

18. It is well established by Supreme Court rulings that if an interested party to a court action is not a party to that action, then **any Order resulting from that action is void on its face**. Here, Future Publishing Ltd by virtue of being the co-owner of several of the U.S. registered trademarks that EA sought to cancel, and which the Court’s Final Order called for the cancellation of, was not just an interested party, Future was an *essential* and *indispensable* party. In the absence of Future as a party to the court action (and indeed as a party to the settlement, either), the court lacked jurisdiction to make the Stipulated Judgment and Final Order that it made. Edge Games also thus lacked standing or authority to agree to the stipulated Judgment and Order, too.

The U.S. Supreme Court stated in *Valley*:

*“Courts are constituted by authority, and they cannot go beyond that authority, and certain in contravention of it, their judgments and orders are regarded as nullities. They **are not voidable, but 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 WayneMut. 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).

Similarly, in *Elliott*, the U.S. Supreme court ruled:

*“Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarding as binding in every other court. **But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law trespassers.**”*

(Emphasis added) *Elliott v. Lessee of Piersol*, 26 U.S. 1 Pet.328 (1828).

Further, since Judge Alsup’s Final Order of 8 October 2010 has no legal force or effect **there is no lawful authority to make a void order valid**⁴. *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 267 (1990) (a court “cannot confer jurisdiction where none existed and cannot make a void proceeding valid.”); *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E.2d 255 (1943). *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) (“if the order is void, it may be attacked at any time in any proceeding, ”); *Evans v. Corporate Services*, 207.

19. While the wording of the *Elliott v Lessee of Piersol* case may be somewhat unusual, the fact is that this legal ruling (and others since, all of which have confirmed the ruling), still stands with no more recent ruling superseding it. What this ruling clearly states is that no entity or forum must ever seek to enforce an Order that is void on its face since “*all persons concerned in executing such judgments or sentences are considered in law trespassers.*”

⁴ That is, one cannot revert to the original ordering court to seek relief of any kind as confirmed by this and numerous other Supreme Court rulings. Rule 60 Motions are only to be used where an Order is partially void and correctable by the issuing court (which is not the case here where the Order and Judgment are entirely void).

While unusual language, this clearly means that the Board (and the Director) are strictly forbidden from executing a Final Judgment or a Final Order if that Judgment or Order is clearly void on its face as defined by the Supreme Court rulings cited above.

20. Further, the Bates v. Board of Education ruling (above) confirms that no is no lawful authority that can make a void order valid. What this means is that EDGE Games cannot be asked to revert to the District Court (or to any Court) to gain relief from the Final Judgment or Final Order (as the Board sought apparently to do) since there is no avenue of any kind – certainly not a Rule 60 Motion – by which anyone can gain relief, modification, amendment or appeal of a void order (see Bates v. Board of Education *ibid*, and numerous other cites that support this position that a void order is to be deemed as if it never existed and therefore cannot be appealed, modified or amended).

Consequently, Edge Games respectfully requests that the Board confirms from its inspection of the District Court record that the October 8, 2010 Stipulated Judgment and Final Order be affirmed as void (on their face) for lack of the Court’s jurisdiction in the absence of Future as a *necessary* and *indispensable* party.

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END OF SUMMARY OF BASIS FOR EDGE’S MOTION TO CONFIRM THE
COURT JUDGMENT AND ORDERS OF 10/8/10 VOID ON THEIR FACE

EXHIBIT B

The Petitioners and Co-Defendant Future Publishing colluded to grossly mislead the Court, committing fraud and perjury to attain their goals; now they collude to grossly mislead the Board, with the outrageous goal of stealing EDGE Games' 25-plus-year-old marks from it. The Board should not condone or assist the outrageous actions of Petitioners and Future.

1. So outrageous has their behavior been, that it may be hard for the Board to appreciate the Machiavellian depths that both Petitioners and Future have been willing to go to in order to achieve their mutually advantageous goal of depriving EDGE of its trademarks that it has rightfully owned for over 25 years.
2. **In 1993, Future tried to steal EDGE Game's mark *Edge* and failed, settling the 1994 lawsuit in EDGE's favor in 1996 and confirming thereby that Future had tried to steal EDGE's IP rights. In 1996 Future promised to never try to steal EDGE's rights again, but thinking it is now free of that promise is once again descending to outright theft and dishonesty. Future thus has a documented history as a deeply dishonest company that tries to steal other company's trademarks.**
3. In 2004 Future approached EDGE Games insisting that they be allowed to purchase the class 16 rights in the mark EDGE solely for printed game magazines. EDGE Games reluctantly agreed to the sale on the following conditions: that Future re-affirm that they would never again try to steal the mark EDGE from us; that Future would henceforth actively promote EDGE's Games and its products; that Future would assist EDGE in protecting the Edge trademark; and that all use Future make of the mark Edge online or in electronic formats (such as iPads, tablet PCs, etc) would be under license from EDGE Games in perpetuity. Future accepted these conditions with the proviso that EDGE Games assure Future that EDGE would monitor and actively protect the mark Edge, too.
4. However, in 2004 EDGE warned Future that it predicted that within 4-5 years print media would decline and electronic and online media would increase appreciably. EDGE expressed concern that by 2008-9 Future might feel disappointed at paying \$250,000 to acquire class 16 rights that were hardly used any more, and feel regretful

that over 90% of Future's use of the mark Edge is still under the perpetual license from EDGE. Future responded that it did not believe print media would decline or that electronic media would increase to the extent EDGE predicated in 2004.

5. By 2009, however, Future realized that EDGE's predictions had been accurate: they suddenly realized they had paid \$250,000 for almost nothing, and that now well over 90% of all their use of the mark Edge was still under license from EDGE. While Future entered into this arrangement with eyes open, and indeed got into the arrangement as a result of attempting to steal the Edge mark from EDGE, nonetheless Future decided it was dissatisfied with the decision they made in 2004 and set about attempting to once again steal the Edge mark from EDGE Games.

In 2009 Future insisted that EDGE Games take action against Petitioners (EA) and against the French company Mobigame (David Papazian).

6. Clearly in 2009 Future hatched a plan to steal the Edge mark from EDGE again, just as it had attempted in 1993. Their plan, in collusion with Petitioners (Electronic Arts, "EA") was to present EDGE Games with two choices, either of which Future intended to use to terminate the contract between the parties. By insisting that EDGE Games take action against Mobigame (David Papazian) for its use of the mark Edge for an iPhone game, and by insisting that EDGE Games take action against EA for their use of "Mirrors Edge," Future knew that if EDGE took such action Future could then use EDGE's actions to defame EDGE by pretending EDGE and its CEO Langdell were acting as so-called "trademark trolls." But if EDGE refused to take action against either Mobigame or EA, then Future would argue EDGE had repudiated the contract by failing to protect the mark Edge (*see Exhibit 1 for proof that Future insisted that EDGE take action against EA and Mobigame, and that it was in fact Future who first brought what Future described as "Mobigame's infringement" to the attention of EDGE as part of Future activating EDGE's obligations to protect the "Edge" mark under the 2004 contract*).
7. Faced with an impossible choice (damned if it does, damned if it doesn't), EDGE took the very minimum action it could to comply with Future's demands that EDGE

take action against Mobigame and EA – even so, EDGE refused to sue Mobigame despite Future Publishing’s insistence that EDGE needed to do so arguing that EDGE/Langdell was loath to ever sue a fellow independent game developer/publisher (See Exhibit 1).

8. As can be seen from Exhibit 1, it was Future Publishing’s Company Secretary, Mark Millar, who first brought the existence of Mobigame’s iPhone game named “Edge” to EDGE/Langdell’s attention in March 2009. Prior to this time EDGE/Langdell had no knowledge of Mobigame, its CEO Papazian or that company’s iPhone game. Future brought the existence of the Mobigame game “Edge” to EDGE/Langdell’s attention under the contract between EDGE and Future, insisting that EDGE had to take action against Mobigame. In the witness statements filed in the UK High Court action between Future and EDGE in 2010, EDGE pointed out that Future having insisted that EDGE/Langdell had to take action against Mobigame then did nothing itself and pretended to the world that it didn’t mind Mobigame using the mark Edge. In response Future’s Millar protested that of course Future was against Mobigame’s use of the mark Edge, why else, he said, did he bring the infringement to EDGE/Langdell’s attention in the first place in March 2009?

“...why would I have notified him [Langdell] at all?” stated Future’s Millar in his Fourth Witness statement of filed on October 15, 2010.

9. When EDGE/Langdell dared to suggest that it appeared to EDGE that at the same time Future was insisting it had to take action against Mobigame, Future seemed to be colluding with Mobigame to defame EDGE/Langdell with the mutual goal of stealing EDGE’s “Edge” trademark from EDGE to divide up between the parties (Future, Mobigame, EA), Millar of Future responded that EDGE/Langdell was exhibiting signs of being a sensational conspiracy theorist since there had been no contact between Future and Mobigame, and EDGE/Langdell must be delusional if it thinks Future obtained any documents directly from Mobigame:

Millar states in his Second Witness Statement of August 2010 that *“Dr. Langdell claims that documents ... ‘must have come into [Future’s]”*

possession through Mobigame and indicates collusion between [Future] and Mobigame to the detriment of Edge [Games] and its trademark portfolio.” Then Millar goes on to say “This is another example of Dr Langdell indulging in wild conspiracy theories. In fact, as I’m sure Dr Langdell is well aware, Mobigame posted its correspondence with Dr Langdell on the internet ... from where [Future] obtained the documents”

Unfortunately for Millar as he perjured himself in this Witness Statement, in response EDGE/Langdell pointed out that the correspondence between EDGE and Mobigame in question had *not* been posted on the Internet. Seemingly oblivious to the fact he was admitting perjury in this Second Witness Statement, Millar then completely changes his story in his Third Witness Statement, saying now:

“...copies of the correspondence between [Mobigame and EDGE/Langdell] [was] subsequently supplied to Future by Mr Papazian [of Mobigame].”

10. While Future was trying to force EDGE/Langdell to take greater and greater action against Mobigame, clearly Future was simultaneously colluding with Mobigame -- obviously not telling Mobigame that it was Future that was forcing EDGE/Langdell to take the action. And at the same time, even before a UK Court, Future was preferring perjury to admitting it had been working with Mobigame and EA/Petitioners to defame EDGE/Langdell and paint a knowingly false picture of EDGE not using the mark “Edge” itself but rather being litigious and engaging in aggressive actions against others using the mark “Edge” to try to get those other entities to give EDGE money – none of this happened, though. Unfortunately for Future and EA/Petitioners, Mr Papazian of Mobigame apparently did not get the message from Future and EA that he was supposed to pretend that they were not in collusion with him to defame EDGE/Langdell and steal EDGE’s “Edge” marks.

11. In the book titled “Buttonless” published in late 2011, the author of the chapter on iPhone games states the following having interviewed Papazian of Mobigame:

“Papazian told me that he worked with EA and Future Publishing after his case was made public, and that the eventual takedown of Langdell was something of a group effort. He calls the two companies his “most important allies”.” (Page 75, Buttonless)

Then the writer goes on to quote Papazian: “**For legal reasons I cannot explain exactly what we did,**” Papazian explains, “**but the result was that EA won a lawsuit against Tim Langdell in the United States and all his precious trademarks were cancelled.**”¹

12. But it was obvious of course what Papazian/Mobigame, EA and Future did – namely the committed wholesale perjury, fraud and deliberate misleading both the public on the Internet and the District Court, with the sole intention of defaming EDGE/Langdell, creating a *knowingly* false picture that EDGE had committed fraud in obtaining its US marks (when it had not committed fraud), that EDGE had not used its marks in US commerce (when it had used them continuously since the 1980s), and that EDGE/Langdell were “trademark trolls” (when the exact opposite was true of EDGE and its CEO Langdell).
13. As can also be seen from Exhibit 1, it was Future that insisted that EDGE had to take greater and greater action against EA/Petitioners. All the time during this period in 2009 when EA/Petitioners and Future were seeking to defame EDGE/Langdell, Future was giving written assurance to EDGE/Langdell that Future was 100% behind EDGE and on EDGE’s side against EA (and against Mobigame), while at the same time Future was in fact colluding with both EA/Petitioners (and Mobigame) against

¹ The law suit that Papazian is referring to here is of course the instant one referenced in these proceedings before the District Court. And as the Board is aware, it is false to style that law suit as having been “won” by EA – the Judgment and Orders are all void, and the settlement between EA and EDGE is invalid. But even had the Judgment and Orders been valid they do not represent a win by EA since one of the most important parts of the Final Order was that EDGE was deemed to still own all of its valid common law rights in the “Edge” marks. A final order that confirms EDGE still owns all of its US common law rights and that therefore they are valid is not a “win” for EA nor a “loss” for EDGE – it is a win for EDGE.

EDGE. As can be seen from the aggressive emails that Future was sending EDGE in June 2009, it was clearly trying to force EDGE to take more and more extreme action against EA/Petitioners with the ulterior motive that if EDGE actually did what Future insisted then EA/Petitioners and Future would simply turn around and accuse EDGE of being aggressive, of being “Trademark trolls”:

Millar states in his June 5, 2009 email to EDGE/Langdell, *“Our trademark could suffer collateral damage if you do not succeed in keeping the Edge brand ... on the register ... **what steps [have you taken] to ensure the EA applications [for the mark “Mirrors Edge”] will fail.**”*

And then in his further email also on June 5, 2009, Millar goes on to say: *“It is not an issue to delay any further and risk greater damage being done to our mutual brand. ... **get on with resolving the issues with EA before our shared brand is severely damaged ... I am getting seriously concerned that we are going to suffer damage as a result of your inactivity in the dispute with EA.**”*

The message from Future to EDGE was clear, under no circumstances can you lose the dispute with EA. EDGE must win and stop EA from being able to use the mark “Mirrors Edge” or (what Millar/Future calls “our mutual brand, Edge”) will suffer and having caused damage to our mutual brand you, EDGE, will be in breach of the contract between us and have to repay us the \$250,000 we paid you to keep the brand safe from infringing parties such as EA or Mobigame.

14. When EDGE took the action that Future had insisted EDGE take, Future then colluded with Petitioners/EA and Mobigame (and others) to launch a defamation attack on EDGE Games and its CEO Dr Langdell. While Future and Petitioners were well aware the defamation was entirely fabricated by them and without any foundation in truth, they clearly sought to convince Mobigame and others that there was truth in the accusations against EDGE/Langdell.
15. Future (and EA) were both well aware from a long association with EDGE Games that EDGE had at all times made commercial use of its Edge marks, had never made

a habit of threatening companies who used the mark Edge or demanded money from such companies, and that EDGE had also never taken money from *anyone* in exchange for trademark rights (other than Future, *and only then at Future's insistence*). Knowing the idea of EDGE/Langdell being “trademark trolls” to be the exact opposite of the truth about EDGE and its CEO Langdell, though, Future and EA (aided by others) set about defaming EDGE and Langdell with the completely fabricated story that EDGE did not publish games, that EDGE/Langdell acted as a “trade mark troll” by demanding money from others who use the mark EDGE, and falsely stating that EDGE/Langdell was generally litigious and aggressive about enforcing its rights in the mark Edge.

16. None of this was true but it was a fiction created by Future and EA (with assistance from others on the Internet) in order to create negative feeling in the industry against EDGE and against its CEO Langdell. The truth was that EDGE had used its mark at all times (both itself and through its various legitimate and amicable license arrangements), and that contrary to the false rumors perpetuated by Future, EA and others, EDGE had never sued anyone in over 20 years (other than Future in 1994 and 2011, and EA in 2010 – *but only at the insistence of Future*). The false rumor that EDGE (or Langdell) were ever litigious was thus a pure fiction invented by Future, EA and others (at Future's and EA's undoubted encouragement) in order to defame EDGE and Langdell.
17. Indeed, even the Cease and Desist communications EDGE had sent to parties using the Edge mark were sent at Future's insistence that EDGE comply with the contractual requirement that EDGE be seen to protect the Edge mark, a fact that Future carefully hid from the public in order to cast EDGE/Langdell in a dark light. Equally, the rumors they spread that EDGE had not been using the mark Edge itself were completely false, since EDGE had used its marks at all times (*see Exhibit 2, being a print out of EDGE's website showing that EDGE has consistently produced games using the “Edge” brand for over 25 years, as well as having other “Edge” branded products produced by licensees who entered into license agreements with*

EDGE amicably, and none of whom paid EDGE any money for said licenses contrary to the false rumors circulated by Petitioners/Future/Others to the contrary).

18. Future's goal was to sully EDGE and Langdell's reputation so that Future could then go to Court to argue that EDGE/Langdell had bought the mark Edge into disrepute and hence repudiated the contract that otherwise compelled Future to not attempt to steal EDGE's mark. The plan was clear: EA and Future were to steal the Edge mark from EDGE and divide the use of the mark between them. They convinced Mobigame to join in their collusion to steal the mark, probably convincing Mobigame that EDGE/Langdell had indeed acted badly when in fact there was no truth in this. It is also clear that **Future hid from Mobigame that it was Future that had insisted EDGE take action against Mobigame and that it was EDGE that had resisted taking any such action** (and indeed EDGE refused to sue Mobigame despite Future's insistence that EDGE do so. See Exhibit 1).
19. It is also worthy of note that while Petitioners, Future and Mobigame spread the false rumors that it was EDGE/Langdell that had demanded money from Mobigame, it was actually Mobigame that essentially demanded money from EDGE, not the other way round. In the proposed settlement that Mobigame sent to EDGE in May 2009, the key term that Mobigame was adamant had to be in the settlement stated:

“EDGE GAMES will ask the permission to (sic) MOBIGAME anytime it wants to use the trademark EDGE for a good (sic) or service which does not fit the description above. A fee of 5% should be paid to [Mobigame] if the trademark was used [by EDGE] without [MOBIGAME's] permission.” (See Exhibit 3).

Mobigame's proposed settlement – the only one Papazian ever offered – had no clause in it under which Mobigame would ever pay EDGE anything, only a clause that EDGE would pay Mobigame a sizable fee of 5% of revenues if EDGE were to merely continue to trade in Europe using its mark “Edge” in the way it had been using the mark since or about 1986.

20. Further, when EDGE launched its iPhone and iPad game in 2011, it was Mobigame that aggressively sent cease and desist communications to EDGE insisting EDGE stop using its own Edge brand, it was Mobigame that filed a formal complaint that EDGE be stopped by Apple from using its mark Edge on iTunes, taking precisely the action via Apple that Mobigame had accused EDGE of taking. On July 1, 2011 after EDGE had launched its new “Edge” brand game “Bobby Bearing 2” (aka Edge Bobby 2) for the iPhone, iPad and iPod, EDGE received a notice from Apple that Mobigame/Papazian had filed a formal complaint against EDGE for daring to use the mark “Edge” on a game:

On 7/1/2011, we received a notice from Mobigame that Mobigame believes your application named "EDGE Bobby2" infringes Mobigame's intellectual property rights. In particular, Mobigame believes you are infringing their trademark.

You can reach Mobigame through David Papazian ... Please exchange correspondence directly with Mobigame... We look forward to receiving written assurance that your application does not infringe Mobigame's rights, or that you are taking steps to promptly resolve the matter. Written assurance may include confirmation that your application does not infringe Mobigame's rights, an express authorization from Mobigame, or other evidence acceptable to Apple. (See Exhibit 3).

Then, in an email from Mobigame/Papazian EDGE then received on July 22, 2011, Papazian stated/demanded:

“You are infringing our trademark EDGE. [...] If you or Apple Inc. don’t remove the game “EDGE Bobby2” from the AppStore immediately, we will have to start legal action to repair the prejudice. You know we have a very strong case in this matter.” (See Exhibit 3)

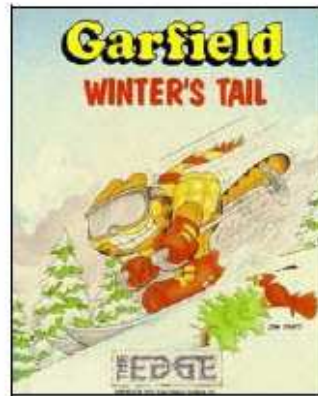
21. In short, it was Mobigame, urged on by Petitioners/EA and Future, who actually did all the bad faith and aggressive (trademark troll like actions) that they had all falsely accused EDGE/Langdell of. This, though, was not revealed to any of the Courts or to the press so that to this day the false impression that EDGE/Langdell acted badly (when in fact none of that was true) and that Petitioners, Future and Mobigame did not act badly (when in fact the opposite is true). That said, it does appear that Mobigame was encouraged to act badly by Petitioners/EA and Future who had convinced Mobigame they were in partnership with (EA/Future having convinced

- Mobigame, it seems, that EDGE/Langdell had acted badly when that was not true, EA/Future having hid from Mobigame that it was they who had insisted and manipulated EDGE/Langdell to take the actions EDGE/Langdell was seen to take).
22. In 2010 EDGE sued EA because Future was insisting that EDGE had to do so or be deemed to have repudiated the contract between them. But no sooner did EDGE sue EA as Future insisted it had to, then Future immediately refused to join EDGE in that lawsuit, but instead joined EA to support Petitioner's attack on EDGE. The Board will note that Future did the same deceitful act here in the current action.
 23. Petitioners (EA) and Future colluded to deliberately mislead the District Court with misrepresentations, fraudulent representations and perjurous statements.
 24. Petitioners (supported by witness statement support from Future) falsely stated to the District Court that EDGE had not used its Edge marks in US commerce and that EDGE had committed fraud on the USPTO in obtaining EDGE's trademark registrations. There was no truth to this, but EA and Future deliberately mislead the District Court into believing there was truth in it.
 25. At a preliminary injunction hearing in October 2010, EA falsely represented to the District Court that EDGE had presented fraudulent examples of EDGE's products to the USPTO. However, what EA (Petitioners) actually presented to the District Court were examples of genuine EDGE products (which Petitioners maliciously and falsely labeled as fabrications by EDGE) along side fraudulently fabricated false representations of EDGE's products that Petitioners deliberately falsely labeled as "genuine." In one instance EA presented a perfectly genuine box cover for a product called "Garfield" that EDGE had used to support a filing with the USPTO, and deliberately and maliciously labeled that box cover as being a fake. Along side that genuine box cover they set a completely fabricated fake box cover obtained from the Internet which they maliciously labeled as "genuine."

Here is what EA/Petitioners deliberately misleadingly submitted to the District Court (which Judge Alsup then cited in his Order not knowing he was being duped by EA):

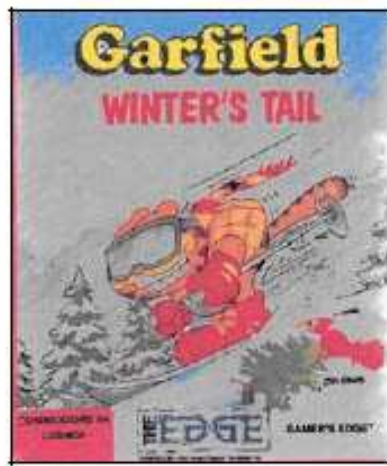


As Submitted to the USPTO

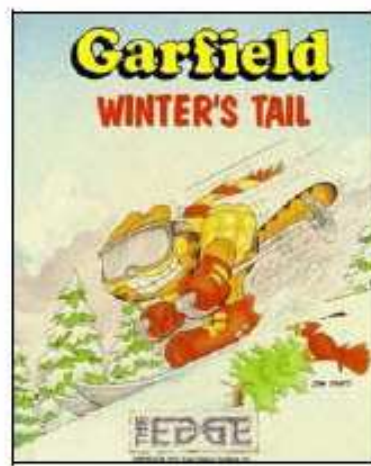


Actual Box Cover

But here is the truth about these two images that clarifies that EA/Petitioners committed fraud on the District Court, ironically in their attempt to falsely accuse EDGE of fraud:

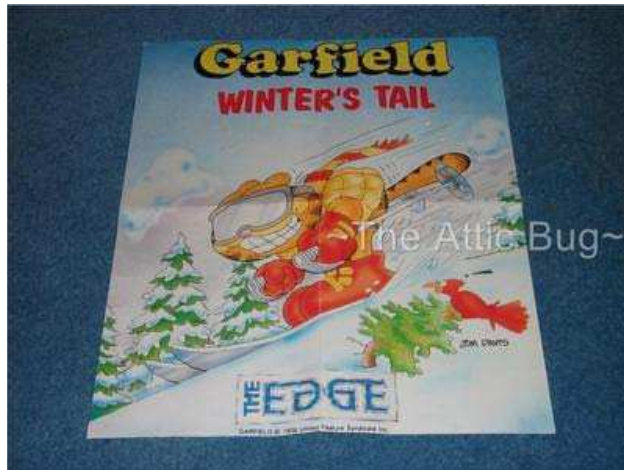


Genuine box cover of EDGE's U.S. Edition of its Garfield game



Fraudulent fake submitted by EA/Petitioners, portrayed as the "genuine" box cover, when in fact no genuine EDGE box cover was like this with no format sticker in the lower left corner. This is most likely a Photoshop manipulated cut-and-paste copy from EDGE's poster promoting this game.

And here is a picture of EDGE's poster of the Garfield game that clearly shows what EA/Petitioners falsely represented to the District Court was a picture of the "genuine" Garfield box cover, was in fact a deliberately cut-down copy of the poster image made to appear like a box cover of substantially small size than the poster actually was:



26. In another instance, EA presented the US version of an EDGE product called “Snoopy” to the Court and labeled it as a “fake” when it was perfectly genuine and had been used in a filing with the USPTO. And along side that they depicted a copy of EDGE’s UK (European) box cover of the same product falsely arguing to the Court that this second box cover was the true “genuine” box cover – but both were genuine, as Petitioners and Future knew well.

Here is what Petitioners/EA submitted to the court, deliberately intending to grossly mislead Judge Alsup, and which Judge Alsup cited in his Order not knowing he was being duped:



And here is the **truth** about these two images that reveals that Petitioners/EA knowingly and deliberately mislead the District Court in order to both defame EDGE/Langdell and also seek to present a false impression that EDGE had committed fraud on the USPTO when in fact no such thing had happened:



Genuine copy of EDGE's **U.S.** box cover used when re-launching the game through Edge Interactive Media Inc. (Petitioners/EA appear to have deliberately used a very poor quality copy in order to enhance the false impression this was a fake when it was entirely genuine).



Genuine copy of EDGE's **BRITISH** version of the same game launched through Softek -- but deliberately misleadingly presented to the Court by EA as if it was the genuine U.S. version of the game (falsely stating the other version to the left was a fake)

27. Petitioners/EA also deliberately mislead the District Court into thinking that EDGE had committed fraud on the USPTO when submitting an image of EDGE's "The Edge" comic book cover. As with the deliberately false and misleading "evidence" submitted to the court by Petitioners/EA this too was designed to be misleading:

This is what Petitioners/EA submitted to the District Court with these false descriptors:



As Submitted to the USPTO



Actual Comic Book

But here is the truth about these images that shows that yet again Petitioners/EA deliberately mislead the court into thinking fraud had been committed when it had not. EDGE had changed

the original comic book cover, but had done so legitimately as part of a specific 1990s campaign to promote the "The Edge" brand:

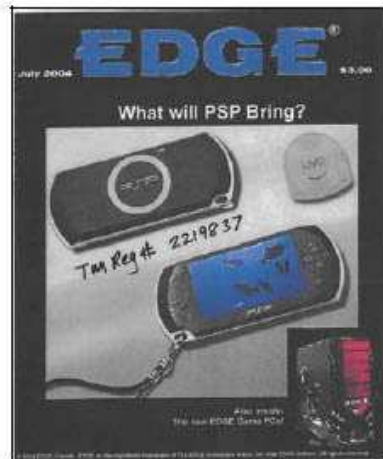


Actual, **genuine** cover of EDGE's Comic Book/Promotional material for "The Edge" promotion in 1990s



Malibu/Bravura Comic Cover re-purposed by EDGE in its 1990s "The Edge" promotional campaign

28. Lastly on this topic of examples of how Petitioners/EA committed fraud and deliberately mislead the District Court into thinking EDGE had committed fraud on the USPTO when EDGE had not, here is what Petitioners/EA presented to the Court regarding the 2004 Edge magazine images:

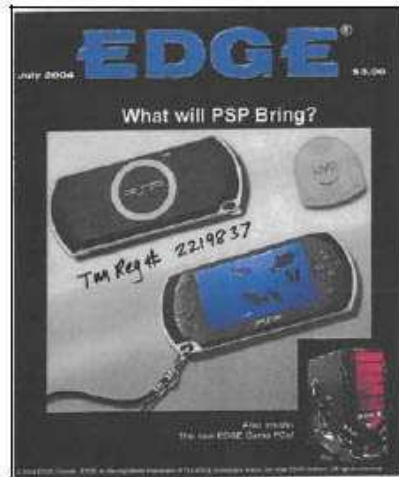


As Submitted to the USPTO



Actual Cover

But here is the **truth** about those two images that shows yet again that Petitioners/EA knowingly and deliberately mislead the District Court, with the deliberate intent of causing Judge Alsup to reach a false conclusion about EDGE/Langdell, and to defame EDGE/Langdell:



Genuine cover of EDGE's 2004 U.S. magazine/product catalog



Cover of Future's BRITISH magazine, which they misled the court by not revealing they were not permitted to publish in the U.S. until later in 2004 and deliberately misled the Court into thinking was the only "genuine" Edge magazine in the U.S. in July 2004.

29. Here both Petitioners/EA and Future Publishing (via its employee, Binn's, false and perjurious witness statement) colluded to give the false impression to the District Court that EDGE/Langdell had committed fraud when there was no such fraud committed – *and both Petitioners/EA and Future were fully aware there was no fraud committed* (by anyone other than Petitioners and Future, that is).
30. Their goal, in which they were successful, was to lie and fraudulently present fabricated evidence to the Court so that Judge Alsup would be confused into thinking EDGE/Langdell had acted badly, when in fact no such thing had ever happened (and Petitioners and Future knew no such thing had ever happened).
31. To compound their crimes before Judge Alsup, Petitioners also arranged for witness statements from Future and Marvel that contained known perjurious statements, all designed to convince Judge Alsup that EDGE/Langdell had not told the truth or had acted badly, when in fact no such thing had ever happened.

32. In Future's perjurious statement (by their Mr Binns) to the District Court they knowingly falsely stated such things as that their UK Edge Magazine had had no online presence (or print presence) in the United States prior to 2004 (which was an outright lie), that the 2004 contract between Future and EDGE had no provision for assignment in it (when the contract clearly has a paragraph entitled *Assignment*), together with other outright lies by Binns that were solely intended to cast EDGE/Langdell in a bad light by falsely and deliberately giving the impression to the Court that it was EDGE/Langdell that had not told the truth, *whereas it was Future (Binns) that had not told the truth*. (See Exhibit 4 which shows that Future's Edge Magazine was well known to be available in print form via subscription from at least the date of the 1996 Settlement exhibited here onwards, and it is common knowledge – and common sense – that Future's www.edge-online.com website launched well before 2004 was viewable in the US just as it was in the UK, thus giving their Edge Magazine a US presence well before Binns tried to convince the Court it first had it in 2006).
33. Similarly, Petitioners had Marvel perjure themselves by falsely stating that they had not published a certain comic book for more than a year before 1997 (when in fact there was hard evidence Marvel had represented to the USPTO in 1997 that it was still currently publishing that same comic), and falsely stating that Marvel had no direct or indirect license with EDGE (whereas evidence showed Marvel did have such a license). All this was also said to deliberately turn Judge Alsup against EDGE/Langdell, which objective Petitioners, Future and Marvel achieved, but only by deliberately committing fraud and perjury (see Exhibit 4).
34. To further deliberately give Judge Alsup a false impression of EDGE and its business practices, Petitioners also represented to the Court that when they clicked on part of EDGE's website they were unable to buy EDGE's products. In doing this Petitioners knew well they were deliberately misleading the Court, since while they had found some links that were mal-functioning on EDGE's website at that time, the truth (which Petitioners were well aware of) was that all of the correct buttons to click to buy EDGE's products were in full working order.

35. To be clear, though, **the District Court action was a jury trial** case, and thus it was not ultimately important what false impression – or false findings and opinions – Petitioners and Future managed to trick Judge Alsup into gaining, since ultimately the action would be heard by a jury. Indeed, in his ruling on EDGE’s motion for preliminary injunction (the only ruling that was not by Stipulation by the parties) ***Judge Alsup commented that the jury at trial might reach entirely different conclusions than he had reached once the jury had heard all the argument and viewed all the evidence including counter-evidence from EDGE.*** That would certainly have been true had the matter gone to trial, since the jury would have been informed that what Petitioners, Future and Marvel had represented to Judge Alsup was a mixture of deliberate false information, deliberately misleading comments, fraud by Petitioners and perjury by various parties supporting Petitioners.

EDGE still has all of its Licensees since before October 2010:

36. The District Court ordered EDGE to write to all of its licensees, copying each of them with the Court’s Order regarding the denial of EDGE’s motion for preliminary injunction. Presumably the Court ordered this because Judge Alsup had been duped into believing (by Petitioners’ false and misleading statements supported by fraud and perjury) that EDGE had entered into those license agreements based on fraud and a lack of true ownership of the “Edge” mark. EDGE fully complied with the Court’s Order (not realizing at the time that the Court’s Order was void on its face), and duly notified and copied all of its licensees. **However, none of EDGE’s licensees took any action as a result of this, and none of them responded indicating that they believed EDGE’s ownership of the “Edge” mark (and hence the licenses) were anything other than entirely genuine².** To this day EDGE still has all of its license agreements with its licensees (including the license with Future for all electronic copies of its “Edge” magazine, which license no court has ruled invalid and which license is thus in still full force and effect), and each were arrived at amicably without

² In some of the amicable settlements EDGE reached with parties they entered into stipulated judgments that it would be contempt of court for them to now go against, and which stipulations confirmed that the parties fully accepted EDGE as the true owner of the mark “Edge.”

EDGE taking money completely contrary to the false image Petitioners and Future sought to convey of EDGE/Langdell being “trademark trolls”).

37. In short, the October 2010 settlement agreement and stipulated Final Judgment and Orders were not only void on their face, but they were also arrived at by serious bad faith action involving Petitioners and Future perpetrating fraud, perjury and outright deliberate acts of misleading of the Court. The Board should bear all this in mind before being tempted to act on the District Court “mandate,” that is in any event void and not valid, and before becoming complicit in the bad faith and illegal acts perpetrated by Petitioners and Future.

Why, then, did EDGE not rebut Petitioner/EA’s false statements to the District Court at the time in October 2010?

38. The hearing before Judge Alsup in October 2010 was solely to hear EDGE’s motion for preliminary injunction. The Court gave each side only 10 minutes to present its case; EDGE’s attorneys chose to focus on the trademark law issues pertaining to the potential confusion between the mark “Edge” and the mark “Mirror’s Edge.” EA/Petitioners, by contrast, chose to use their 10 minutes defaming EDGE/Langdell, presenting fraudulent and perjurious information and witness statements, and generally deliberately misleading the Court. EDGE was not given the opportunity to rebut what EA/Petitioners presented to the Court, else Judge Alsup would never have gained the completely false view of EDGE/Langdell and EDGE’s business practices that he did.
39. Finally, to touch briefly on the UK disputes between Future and EDGE insofar as they directly relate to these USPTO proceedings. First, in the High Court Trial between EDGE and Future in December 2010, Future falsely represented to the UK Court that EDGE/Langdell are well known trademark trolls – quoting and relying upon the Order written by Judge Alsup, despite Future being fully aware that Order was written as a direct result of fraud, perjury and deliberate misleading of the Court by EA/Petitioners, Future and Marvel.

40. Second, EDGE was not legally represented at the UK proceedings, and thus did not gain a fair trial. For this reason, lacking proper representation, the UK Judge, like Judge Alsup, formed entirely false impressions of EDGE/Langdell based once again on the falsehoods stated by Future, and yet further perjurious statements made to the UK court just as they had been made to the US Court, by Future and by those that Future convinced to give false statements on their behalf.
41. Third, in July 2011 EDGE filed a new action against Future in the London High Court (See Exhibit 5), one of the claims in which is that Future deliberately mislead the US District Court, the USPTO/Board, committed perjury in the US venues in pursuit of their goal of defaming EDGE/Langdell and stealing EDGE's rightful trademark rights, and further that Future committed both slander and libel. Evidence is still being collected in this UK case, and EDGE remains confident that Future will undeniably be found guilty, which in turn will produce a Court Order that will directly impact the current proceedings, leading to the Board being required to disregard what Future has presented here (other than its Intervener Response at Docket #40, which contains true statements about EDGE not having the right or authority to agree a stipulated judgment with the District Court or to agree a settlement with EA/Petitioners).
42. Last, Future sought to go back to the UK High Court in January 2013, once again making false representations to the UK Court to the effect that EDGE/Langdell does not tell the truth, and so forth. This time, though, the Court saw through Future's falsehoods and ruled in EDGE's favor (See Exhibit 6) granting costs in EDGE's favor, too. Here Future was hoist on its own petard, almost entirely undoing the entire case they thought they had won against EDGE before the UK High Court. While Future succeeded in deceiving the UK High Court into believing that EDGE had not made use of its "Edge" marks in the UK, when in fact EDGE had made extensive such use, Future now faces having to transfer to EDGE all of Future's "Edge" registrations in the UK that are not specifically for printed game magazines. Future failed to think through their deceit fully, and breached the contract between EDGE and itself in July 2010 when Future applied to register the mark "Edge" in its own

name for all the goods and services that EDGE uses its mark for. Believing it had successfully stolen the “Edge” mark from EDGE, Future was celebrating its success until EDGE pointed out that the UK Court had ruled that the contract was still valid in July 2010, hence Future has to transfer all the marks to EDGE. In desperation, Future went to the High Court in January 2013 to beg the Judge to undo her 2011 Court Order and Final Judgment, so as to make the contract no valid at the time they breached it in July 2010. But their ruse failed, despite their trying again to defame EDGE/Langdell. The Court roundly criticized Future for daring to come back to court two years after the fact to get a Final Order changed so as to cover up their deceit and bad behavior.

EXHIBIT 1

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

Claimant
Mark Millar
Second
Exhibit "MM2"
17 August 2010

CLAIM NO HC09CO2265

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

SECOND WITNESS STATEMENT OF MARK FALCON MILLAR

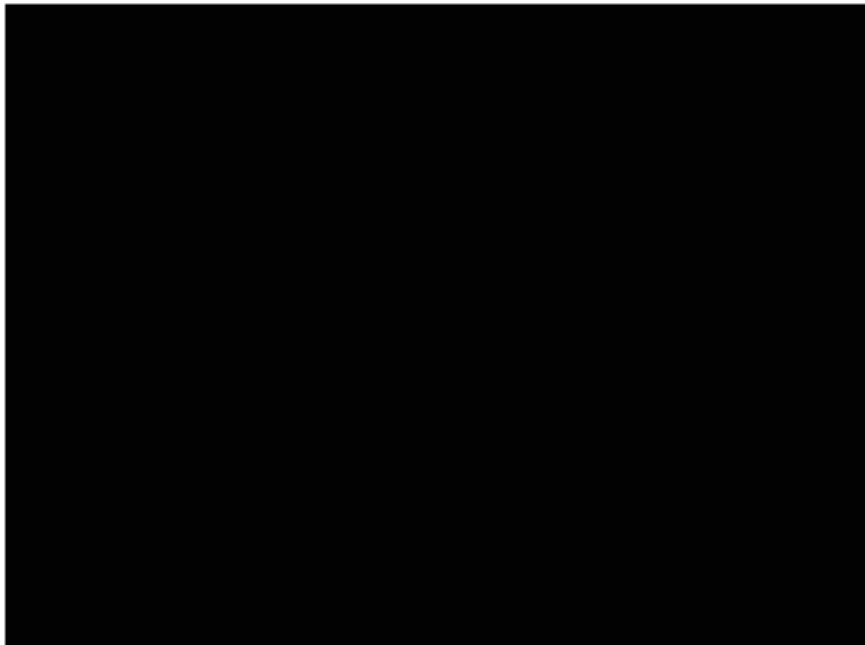
I, MARK FALCON MILLAR, of Beauford Court, 30 Monmouth Street, Bath, BA1 2BW,
WILL SAY as follows:

1

2

3

4



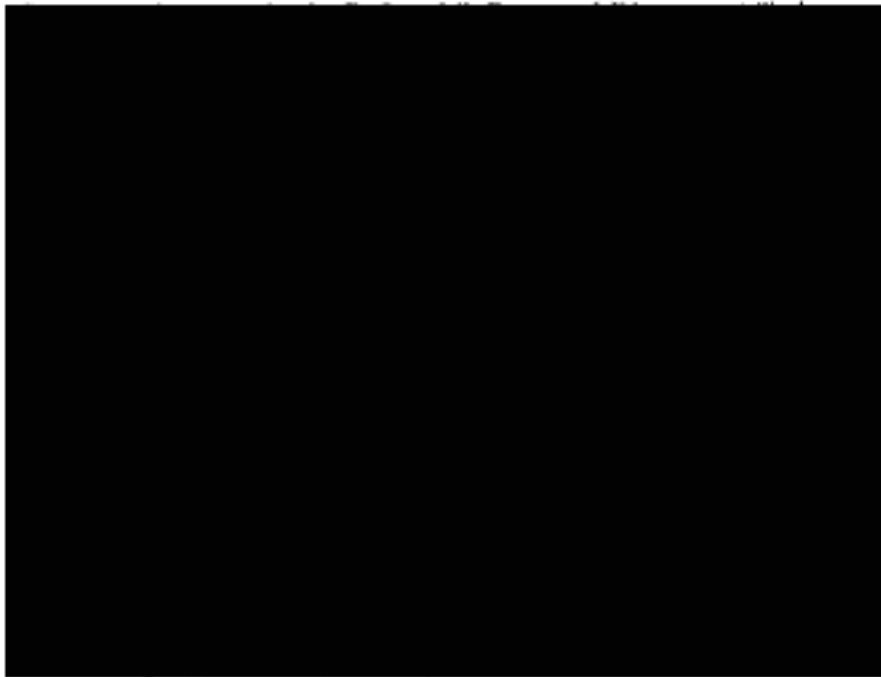
Paragraph 5

5

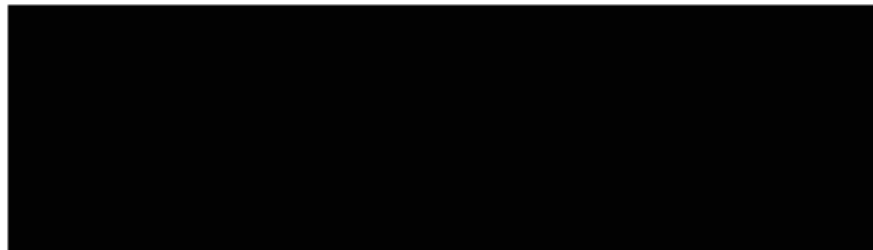


Paragraph 6

6



7



Paragraph 7

8

Dr Langdell claims that documents 32 and 43 *“must have come into the Claimant’s possession through Mobigame and indicates collusion between the Claimant and Mobigame to the detriment of Edge and its trade mark portfolio”*.

9

This is another example of Dr Langdell indulging in wild conspiracy theories. In fact, as I’m sure Dr Langdell is well aware, Mobigame posted its correspondence

with Dr Langdell on the internet, and it was picked up by the specialist websites and bulletin boards covering the dispute between Dr Langdell and Mobigame, from where Future obtained the documents in question.

Paragraph 8

10

[REDACTED]

Paragraph 9

11

[REDACTED]

12

Paragraphs 10-13

13

[REDACTED]

Paragraph 14

14

[REDACTED]

Paragraph 15

15

[REDACTED]

Statement of Truth

I believe that the facts stated in this witness statement are true.


.....

Mark Falcon Millar

Dated this 17th day of August 2010

----- 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

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

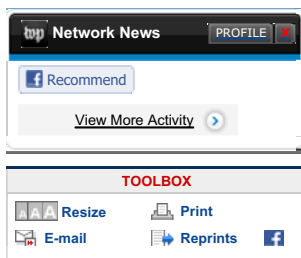
Steve Horton
PC World
Monday, March 2, 2009; 12:19 AM

[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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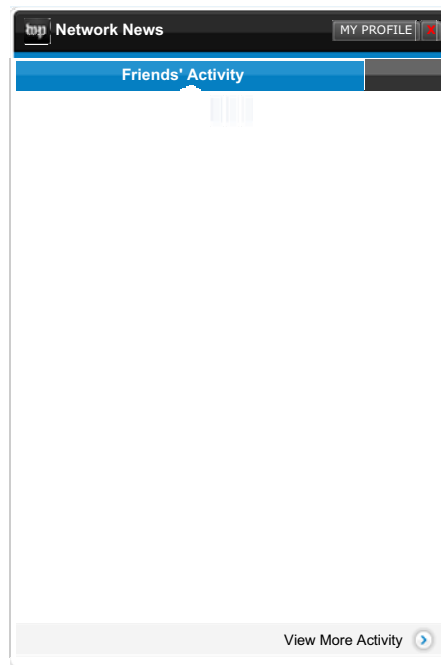
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Claimant
Mark Millar
Fourth
EXHIBIT MM4
15 October 2010

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

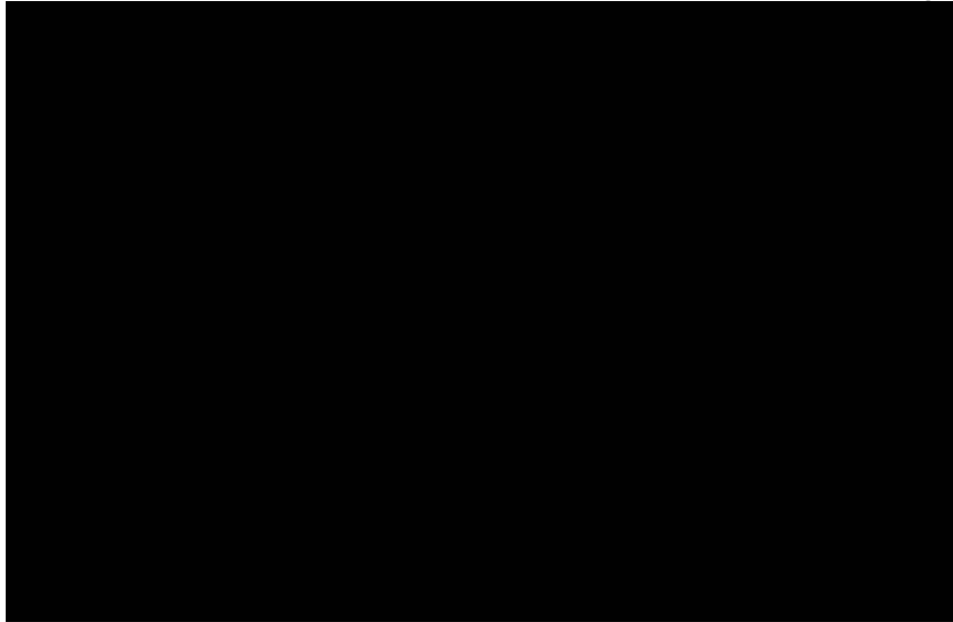
[REDACTED]

[REDACTED]

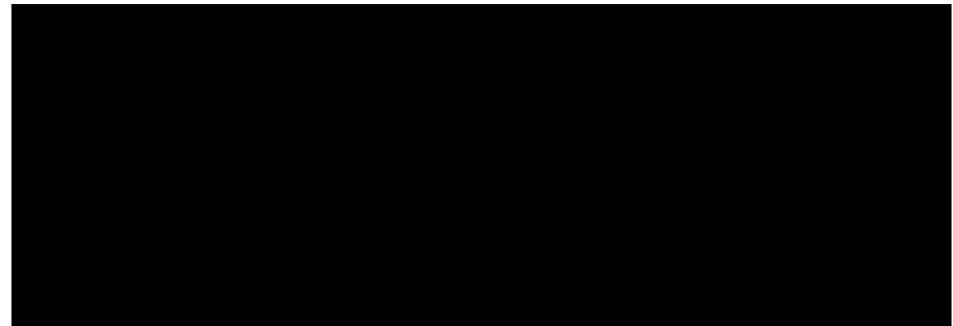
5

[REDACTED]

29

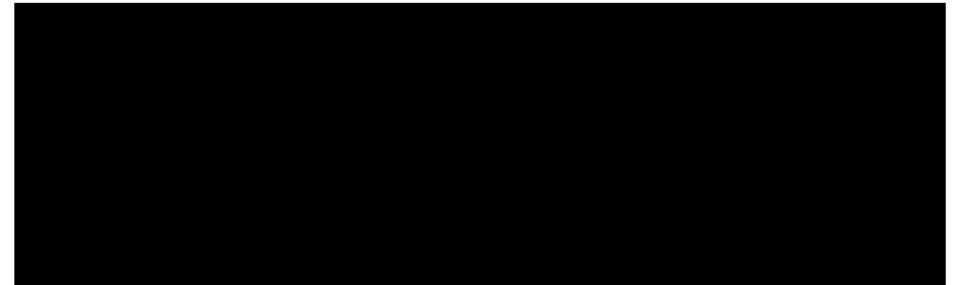


30 At paragraph 39, Dr Langdell asserts that Future must have known about Mobigame

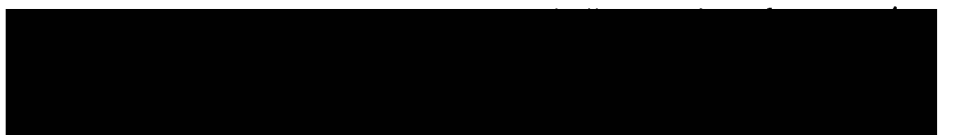


31 Further, and in any event, if Future had wanted to “conceal” Mobigame from Dr Langdell, why would I have notified him at all?

32



33



34



EXHIBIT 2

[Home](#)[Games](#)[Licensees](#)[About](#)[Help](#)**EDGE**TM
G A M E S

EDGE Games ("EDGE" / "THE EDGE") is a veteran independent game developer and publisher. With its origins as one of Britain's longest established computer game publishers, EDGE now operates jointly between Pasadena, California and London, England. EDGE's games are available everywhere worldwide that games are sold. EDGE is a registered developer for PS3®, XBOX360®, Wii® and Apple® iOS platforms in addition to a number of other computer, videogame and mobile device platforms.

EDGE Games was formed in 1980; first named "Softtek Software," the EDGE/THE EDGE and EDGE Games brands were adopted in 1984. Also in 1984, EDGE opened its first offices in California. During the 1980s EDGE/THE EDGE was run primarily out of its Covent Garden, London offices. From 1990 onwards operations have been split between the Pasadena, California and London offices. Worldwide rights ownership and operations are split between The Edge Interactive Media, Inc., Edge Games, Inc. and Edge Europe, Ltd.

From 1980 to the early 1990s, Softtek/(The) Edge published over 100 games on various formats including Sinclair Spectrum, Commodore 64, Amstrad, Dragon 32, Oric, Atari ST, Amiga and IBM PC. Since the mid 1990s EDGE has continuously continued to publish games on a variety of formats, from the CDTV games of the 90s right through to our latest game "Bobby Bearing 2: Rerolled" for Apple iPhone®, iPod® Touch and iPad® released summer 2011:

EDGE Timeline
mid-90s to 2011

1990s, CDTV games, continuing sales of earlier EDGE titles.

1990s
SNOOPY
RAFFLES

2003
BOBBY BEARING

2004
BOBBY BEARING

2004-2008
PENGU
BATTLEPODS

2009
RACERS

2011
BOBBY BEARING 2 "REROLLED"

"Bobby Bearing" Brew, 2003

"Mythora" Win PC, 2004

"Bobby Bearing" Java, "Pengu" Java, "Battlepods" Java, 2004-2008

"Racers" Win PC, Sept 2009

"Bobby Bearing 2: Rerolled" iOS, 2011



1980s

early 90s

EDGE U.S.A

530 South Lake Avenue, 171
 Pasadena, CA 91101
 T: 626 449 4EDGE (449 4334)
 F: 626 844 4EDGE (844 4334)
corp@edgegames.com

EDGE Europe

1 Fetter Lane
 London, EC4A 1BR
 T: 08703-120-379
 F: 08703-120-479
corp@edgegames.co.uk

"Children are our future." EDGE/THE EDGE donates 10% of its profits to charities and institutions for the benefit of children in need,

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Trademarks belong to their respective owners. All rights reserved. [Contact EDGE/THE EDGE](#)

EXHIBIT 3

SETTLEMENT BETWEEN PARTIES

THIS SETTLEMENT is made as of May 27, 2009 (the "Effective Date")

PARTIES

Mobigame SARL, A french company, with office at 85 boulevard Pasteur, 75015 Paris, FRANCE ("MOBIGAME")

and

Edge Games Inc. An American corporation, with office at 530 South Lake Avenue, Suite 171, Pasadena, California 91101, United States ("EDGE GAMES")

WHEREAS

EDGE GAMES own the trademark THE EDGE in the United States for international class 9, including video games (serial number 3559342)

MOBIGAME own the trademark EDGE in Europe for international class 9, including video games (serial number 0998834)

MOBIGAME wants to use its trademark in the United States as the title of its video game, and EDGE GAMES wants to use its trademark in Europe for different goods and services related to video games

For these reasons, concerning their respective trademarks registered for international class 9, both parties reach this settlement

NOW THEREFORE IT IS AGREED as follows:

1. EDGE GAMES will use freely its registered trademark in the United States
2. EDGE GAMES will use the trademark EDGE in Europe for computers, magazine, publisher name of its games, and for other good and services which are not similar to good or services of the trademark owns by MOBIGAME in this territory
3. EDGE GAMES will ask the permission to MOBIGAME anytime it wants to use the trademark EDGE for a good or service which does not fit the description above. A fee of 5% should be paid to other party if the trademark was used without permission.
4. EDGE GAMES will never release a game named simply EDGE
5. MOBIGAME will use freely its registered trademark in Europe

From: App Store Notices
To: tim@edgegames.com
Sent: Friday, July 01, 2011 12:29 PM
Subject: Apple Inc. (our ref# APP14117)

Dear Tim,

****Please include APP14117 in the subject line of any future correspondence on this matter.****

On 7/1/2011, we received a notice from Mobigame that Mobigame believes your application named "EDGEBobby2" infringes Mobigame's intellectual property rights. **In particular, Mobigame believes you are infringing their trademark.**

You can reach Mobigame through David Papazian (email: david@mobigame.net). Please exchange correspondence directly with Mobigame.

We look forward to receiving written assurance that your application does not infringe Mobigame's rights, or that you are taking steps to promptly resolve the matter. Written assurance may include confirmation that your application does not infringe Mobigame's rights, an express authorization from Mobigame, or other evidence acceptable to Apple.

From: David Papazian
To: 'Tim Langdell'
Cc: appstorenotices@apple.com
Sent: Friday, July 22, 2011 2:23 PM
Subject: RE: EDGE #ref APP14117

Mister Langdell,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If you or Apple Inc. don't remove the game "EDGE Bobby2" from the AppStore immediately, we will have to start legal action to repair the prejudice. You know we have a very strong case in this matter.

[REDACTED]

Sincerely,

David Papazian
CEO at Mobigame

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. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 8. [REDACTED]
7 [REDACTED]

8 9. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

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. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

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.

25 
26 _____
27 Walter Eliot Bard
28

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 4

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
19 corporation,
20 Defendant.

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

23 Counterclaimants,

24 v.

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

27 Counterdefendants.
28

Case No. 10-CV-2614-WHA

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

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

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

Hon. William H. Alsup

Complaint Filed: June 15, 2010

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6.

7.

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

9. Future has not entered into any agreement with Edge Games, Inc. ("Edge Games") and has no relationship with Edge Games. The CTA is personal to EIM and non-assignable.

10.

5.2.1

5.2.2

5.2.3



6 GENERAL

6.1



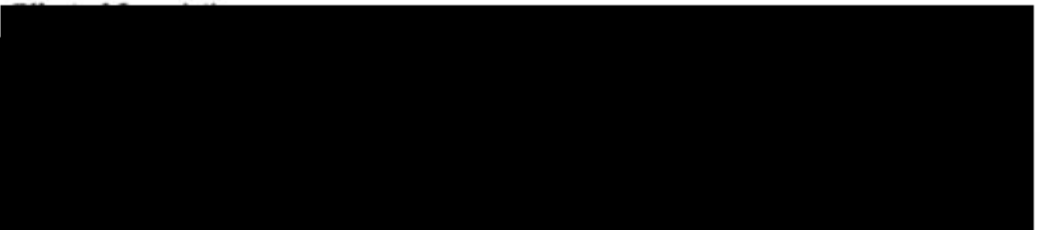
6.2 **Assignment**

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.

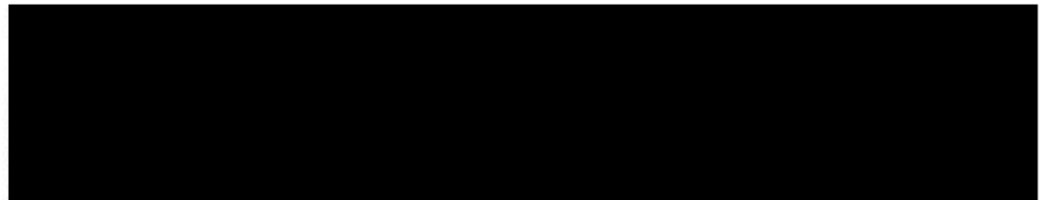
6.3



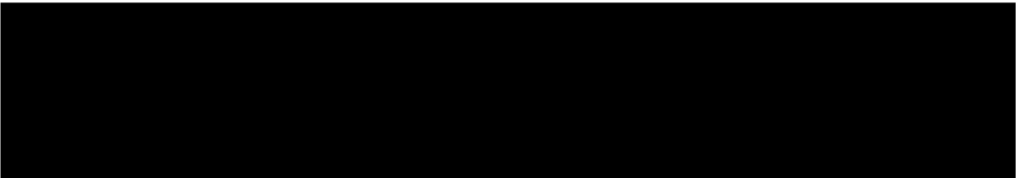
6.4



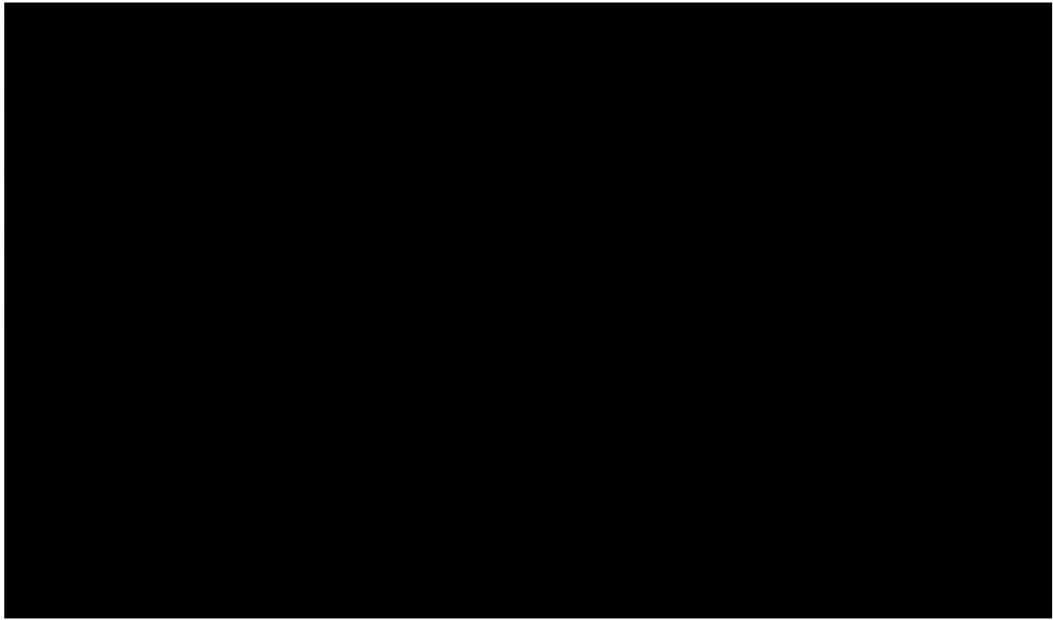
6.5



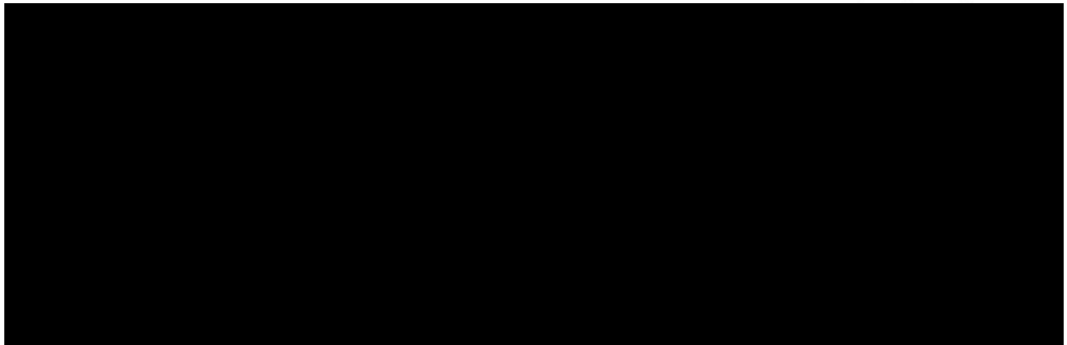
6.6



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

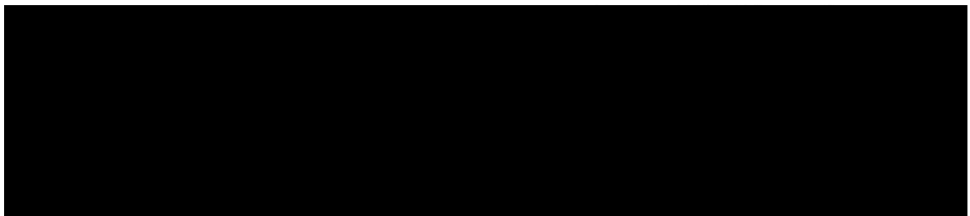


EXHIBIT 5

Claim Form

In the HIGH COURT OF JUSTICE
CHANCERY DIVISION

| | |
|------------|---------------------------|
| | <i>for court use only</i> |
| Claim No. | HC 11 02256 |
| Issue date | 06 JUL 2011 |

Claimant

- (1) EDGE EUROPE LIMITED whose registered office is at 271 Regent Street, London W1B 2ES.
- (2) THE EDGE INTERACTIVE MEDIA INC. whose registered office is at 530 South Lake Avenue, #171, Pasadena CA 91101 USA
- (3) EDGE GAMES, INC. whose registered office is at 530 South Lake Avenue, #171, Pasadena, CA 91101
- (4) DR TIMOTHY LANGDELL of 271 Regent Street, London, W1B 2ES



Defendant(s)

FUTURE PUBLISHING LIMITED whose registered address is at Beauford Court, 30 Monmouth Street, Bath BA1 2BW

Brief details of claim

The claim against the Defendant is for: (i) Fraud in the inducement in relation to a Concurrent Trading Agreement between the Second Claimant and Defendant dated 15 October 2004; (ii) breach of contract in relation to the same 2004 agreement; (iii) copyright infringement; (iv) trademark infringement; (v) passing off; (vi) defamation; (vii) abandonment of UK registered trade marks. The Claimants seek: (1) An order for rescission of the 2004 Concurrent Trading Agreement; (2) An order for damages for infringement of copyright; (3) An order for damages for trademark infringement; (4) An order for damages for passing off; (5) An order for damages for breach of contract; (6) An Order regarding defamation; (7) An order for an enquiry as to damages or an account of profits; (8) An order to pay all sums found due upon taking such enquiry or account, together with interest thereon pursuant to s.35A Supreme Court Act 1981 or under the equitable jurisdiction of the Court; (9) An order revoking trademarks 2147008B, 2147013B, 2147022B, 2147035B, 2147040B; (10) Costs; (11) Further or other relief

Value

The Claimants' claim is not limited.

Defendant's name and address

FUTURE PUBLISHING LIMITED
Beauford Court, 30 Monmouth Street,
Bath BA1 2BW

| | £ |
|-------------------|----------------|
| Amount claimed | Unknown |
| Court fee | £1,670 |
| Solicitor's costs | To be assessed |
| Total amount | To be assessed |

The court office at

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998?

Yes

No

Particulars of Claim (attached)(to follow)

Statement of Truth

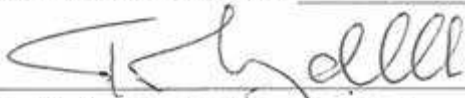
*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement

Full name DR TIMOTHY LANGDELL

Name of claimant's solicitor's firm _____

signed



position or office held _____

*(Claimant)(Litigation friend)(Claimant's solicitor)-

(if signing on behalf of firm or company)

**delete as appropriate*

Dr Timothy Langdell
EDGE Europe
271 Regent Street
London W1B 2ES
tim@edgegames.com

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

EXHIBIT 6

I hereby certify that this is a true copy of the original.

Paul A Harris
Partner
Gowlings

Claim No: HC09 CO2265

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

Pursuant to the Order of Mrs Justice Proudman on 15 January 2013



B E T W E E N:

FUTURE PUBLISHING LIMITED

Claimant

-and-

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

Defendants

ORDER

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

AND UPON the Final Order of Mrs Justice Proudman dated 7 July 2011

AND UPON hearing the Solicitor-Advocate for the Claimant and Counsel for the Defendants

IT IS ORDERED THAT:

1. The Claimant's application to vary the Final Order of Mrs Justice Proudman, dated 7 July 2011, is refused.
2. The Claimant pay the Defendants' costs of and occasioned by this application.

Paul A Harris
Partner
Gowlings

3. The Defendants' costs are to be subject to detailed assessment, such assessment to be undertaken at the same time as the assessment of the costs in the underlying action.
4. The assessed costs awarded pursuant to paragraphs 2 and 3 of this Order are to be set-off against any costs awarded to the Claimant at the assessment of the costs in the underlying action.

David Wilkinson

David Wilkinson
Solicitor-Advocate for the Claimant

Jonathan Moss

Jonathan Moss
Counsel for the Defendants

Claim No: HC09 C02265

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Persuant to the Order of

Mrs Justice Proudman on 15 January 2013

BETWEEN:

FUTURE PUBLISHING LIMITED

Claimant

And

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

Defendants

ORDER

Stevens and Bolton LLP

Wey House, Farnham Road
Guildford
Surrey, GU1 4YD
DX 2423 Guildford 1

Ref: Mr David Wilkinson
Solicitor-Advocate for the Claimant

Gowlings LLP

15th Floor
125 Old Broad Street
London, EC2N 1AR

Ref: Mr Paul Harris
Solicitor for the Defendant