

ESTTA Tracking number: **ESTTA529874**

Filing date: **04/01/2013**

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

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, 171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com, tim@edgegames.com
Signature	/Tim Langdell/
Date	04/01/2013
Attachments	NoticeOfGoverningDistrictCourtOrder01Apr2013.pdf (30 pages)(606874 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

EA DIGITAL ILLUSIONS CE AB, a Swedish Corporation; ELECTRONIC ARTS INC., a Delaware corporation, Petitioners,)	CO-REGISTRANT EDGE'S NOTICE OF GOVERNING ALTERNATE DISTRICT COURT ORDER REGARDING THE INSTANT PROCEEDINGS
v.)	
EDGE GAMES, INC., a California corporation and FUTURE PUBLISHING LTD a UK corporation)	Cancellation No. 92051465
Co-Registrants/Co-Defendants.)	

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

1. Co-Defendant and Co-Registrant Edge Games, Inc. (“EDGE”) brings to the Board’s attention the fact that there is an alternate, governing, District Court Order dated December 16, 2008 which supersedes and governs in the instant proceedings.

2. Attached as Exhibit A is the Final Order of the proceedings in Velocity Micro Inc vs. The Edge Interactive Media Inc and Edge Games Inc of December 16, 2008. This District Court action was cited in a previous cancellation action brought against some of the instant EDGE trademark registrations (Cancellation No. 92049162) and the outcome of this District Court action was determinative of that prior Cancellation proceeding (in EDGE’s favor). The 2008 District Court action and its final judgment and final order also impacted and specifically directly included, EDGE’s other registrations that are subject of the current proceedings EDGE, THE EDGE as well as GAMER’S EDGE.

3. This earlier District Court action concluded with a final order (see Exhibit A) that (unlike the more recent District Court action cited by Petitioners and Co-Defendant Future) is to be considered the result of a EDGE having defended the action on its merits and succeeding on all counts.

4. What this earlier District Court Final Order ruled, barely 9 months before Petitioners commenced the instant proceedings, is that (a) EDGE is deemed to have not committed fraud on the USPTO in obtaining any of its various “Edge” trademarks, (b) EDGE is deemed to be the true and rightful owner of the various “Edge” trademarks relating to computer and video games and related products and services, there being no evidence that EDGE ever abandoned its ownership of any of its “Edge” marks through lack of use (EDGE had never abandoned any of its trademarks), (c) EDGE is deemed to have never been guilty of infringing a third party’s common law rights in the mark “Edge” or related marks, (d) all use of the marks “Edge” and “Gamer’s Edge” by Velocity Micro were ruled by the Court to be infringements of EDGE’s trademark rights, and (e) EDGE was ruled to have acted correctly and properly in issuing a cease and desist letter to Velocity Micro asking Velocity to cease use of it’s “Edge” marks (see Exhibit B which is a copy of the Complaint followed by the Cross-Complaint the December 2008 order refers to, it being noted that the Final Order ruled that EDGE prevailed on all counts against Velocity in both defending the Complaint and in EDGE’s Cross-Complaint).

5. Whereas the 2010 District Court Order by Judge Alsup is void on its face (since Future would have needed to be a party to the action for any resulting judgment or order to be valid), additionally this 2010 judgment was also a *stipulated* one that did not claim to be as a result of any hearing of the case on its merits, with EDGE having failed to defend the action on its merits – on the contrary, the record is clear that Judge Alsup heard only a tiny fraction of the full arguments as to merit from either side in the 2010 case (and heard no rebuttals by EDGE).

6. The earlier 2008 District Court ruling, then, governs in these proceedings not only because it is valid (whereas the 2010 Judgment/Order is invalid/void), but also because it was the result of the issues being heard on their merits and ruled in EDGE's favor.

7. The 2008 Order is particularly germane to these proceedings in that it clearly rules that EDGE is the true and proper owner of its US Registered Trademarks, that EDGE did not commit fraud on the USPTO, and that EDGE did not abandon any of its US Registered Marks. While the 2010 Void Order does not claim to rule that EDGE should rightfully have any of its US Registered Trademarks cancelled for any of the usual valid reasons (abandonment, fraud on the USPTO), clearly Petitioners and Co-Defendant Future wish the Board to be prejudiced against EDGE, deliberately giving the impression that Judge Alsup ruled EDGE to have either abandoned its US marks, or had obtained them by fraud, or both (Judge Alsup did *not*).

8. Further, this 2008 District Court Ruling puts an end to the outrageous and deliberately misleading allegations by Petitioners (repeated by Co-Defendant Future) that EDGE either committed fraud on the USPTO or that EDGE abandoned any of its marks. The simple fact is that if the 2010 case before Judge Alsup had continued (to a jury trial, as it was set for), then the jury would have had no option other than to accept the Final Order of the District Court in December 2008, which had already ruled that EDGE had not obtained any of its US Trademark Registrations by fraud on the PTO, nor had EDGE abandoned any of its US Trademarks.


9. As a result of the 2008 Court Action that EDGE won on all counts, a settlement was reached between EDGE and Velocity Micro in which all use that Velocity ever made historically of the marks "Edge" and "Gamer's Edge" were deemed to be under license from EDGE (with all historic and ongoing right, title interest and goodwill therein vesting in EDGE not Velocity). Thus while the Court Order of December 2008 gave a resounding ruling in EDGE's favor that

EDGE did not obtain any of its US Trademark Registrations by fraud on the PTO, nor did EDGE abandon any of its US Registrations, in addition EDGE's ownership of the "Edge" and "Gamer's Edge" marks in the US were further strengthened by the settlement with Velocity that granted all goodwill arising out of Velocity's use of these marks since January 1998 to EDGE – making it beyond dispute that EDGE has extremely well established, long standing, solid and genuine rights to the registrations "Edge," "The Edge," and "Gamer's Edge" and by extension to "Cutting Edge" too (see the confirmation of the EDGE/Velocity License in Exhibit C).

10. In sum, the December 2008 District Court Final Order trumps and governs over the 2010 District Court Order, not least because the latter is void on its face, but also because of the nature of the 2008 ruling and the fact it is deemed to be as a result of the case being fully heard and defended on its merits. As a result of the 2008 District Court Order, which the Board is compelled to act on and take notice of, EDGE is confirmed to be the true and rightful owner of all of the US "Edge" related Registered Trademarks referenced in this instant action by Petitioners. Further, the 2008 Final Court Order confirms that it is right and proper that EDGE be permitted to continue to own the instant registrations, and that there is no valid reason why any of EDGE's US Trademark Registrations should be cancelled given that the 2008 Order confirms EDGE did not obtain any of the registrations by fraud on the PTO, nor did EDGE ever abandon any of its registrations through non-use as Petitioners falsely alleged. The Board should thus not cancel any of EDGE's registrations nor permit them to be cancelled by the Director or otherwise.

Date: April 1, 2013

Respectfully submitted,

By: 

Dr. Tim Langdell, CEO
EDGE Games, Inc.
Co-Registrant in *Pro Se*
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Pasadena, CA 91101
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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 Notice of Alternate Governing District Court Order was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 1st day of April, 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

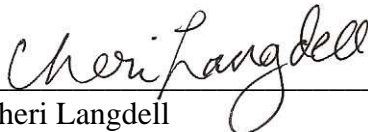
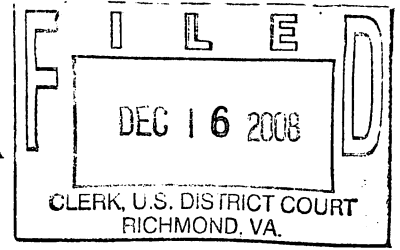

Cheri Langdell

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



VELOCITY MICRO, INC.)
)
 Plaintiff,)
)
 v.)
)
 THE EDGE INTERACTIVE MEDIA, INC.,)
)
 Defendant/Cross Plaintiff)
 /Third Party Plaintiff)
)
 v.)
)
 BEST BUY, INC.)
)
 Third Party Defendant.)

Civil Action No.: 03:08CV135 - JRS

FINAL ORDER

THIS DAY came Plaintiff Velocity Micro, Inc., and Defendant The Edge Interactive Media, by counsel, and represented that the parties have resolved this matter and settled the dispute between them. Accordingly, it is hereby ORDERED that:

- (1) The third party complaint of The Edge Interactive Media, Inc. against Defendant Best Buy, Inc. is dismissed without prejudice, pursuant to Federal Rule of Civil Procedure 41;
- (2) The motion of Edge Games, Inc. to be joined as a party is granted;
- (3) The answer and counterclaim of Edge Games, Inc., previously identified as Exhibit D to Docket entry 32 is deemed filed herein (the third party complaint having been dismissed as stated herein is not included in this filing);

(4) The Complaint of Velocity Micro, Inc. against The Edge Interactive Media, Inc. is dismissed with prejudice; Edge Games, Inc. and The Edge Interactive Media, Inc. are deemed to have defended and succeeded on the merits with respect to the Complaint;

(5) The Order granting sanctions to Velocity Micro, Inc. is vacated and no sanctions shall issue against The Edge Interactive Media, Inc.

(6) Judgment on all Counts of the counterclaims of The Edge Interactive Media, Inc. and Edge Games, Inc. against Velocity Micro, Inc. is entered against Velocity Micro, Inc.

However, the parties having resolved, pursuant to a confidential settlement agreement, all remaining matters including, but not limited to, all damages and/or other forms of relief associated with remedying any liability, Velocity Micro, Inc. shall have no further liability to The Edge Interactive Media, Inc. or Edge Games, Inc., and The Edge Interactive Media, Inc. and Edge Games, Inc. may seek no further relief against Velocity Micro, Inc. related to the subject matter of this action.

Nothing further remaining to be done herein, this matter is stricken from the court's docket and placed among the ended causes.

Enter: 12/16/2008

James A. Spencer
Chief United States District Judge

WE ASK FOR THIS:

Thomas N. Roberts

Counsel for Edge Games, Inc

Paul John
Edge Interactive Media, Inc

Counsel for Velocity Micro, Inc

EXHIBIT B

ESTTA Tracking number: **ESTTA231019**

Filing date: **08/18/2008**

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

Proceeding	92049162
Party	Plaintiff Velocity Micro, Inc.
Correspondence Address	Robert L. Brooke Troutman Sanders LLP Post Office Box 1122 Richmond, VA 23218 UNITED STATES trademarks@troutmansanders.com
Submission	Other Motions/Papers
Filer's Name	Stephen C. Piepgrass
Filer's e-mail	stephen.piepgrass@troutmansanders.com, rob.brooke@troutmansanders.com
Signature	/Stephen C. Piepgrass/
Date	08/18/2008
Attachments	Amended_Complaint_2.pdf (20 pages)(48934 bytes) Amended_Complaint_Ex_1.pdf (1 page)(65195 bytes) Return_of_Service.pdf (2 pages)(76472 bytes)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

VELOCITY MICRO, INC.)
)
) Plaintiff,)
)
) Civil Action No.: 03:08CV135 - JRS
v.)
)
) THE EDGE INTERACTIVE MEDIA, INC.)
)
) Defendant.)
)

AMENDED COMPLAINT

Plaintiff, Velocity Micro, Inc. (“Plaintiff”), by counsel, brings this action against Defendant The EDGE Interactive Media, Inc. (“Defendant”) for trademark infringement, false designation of origin and description of fact, false advertising, unfair competition, and fraud on the United States Patent and Trademark Office (“USPTO”). In support thereof, Plaintiff states the following:

PARTIES

1. Plaintiff is a corporation duly organized and existing under the laws of the Virginia, with a principal place of business at 7510 Whitepine Road, Richmond, Virginia 23237.
2. Defendant is a corporation whose existence is currently suspended by the California Secretary of State, with a principal place of business at 530 South Lake Avenue, Suite 171, Pasadena, California 91101.

COUNT I

FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION OF FACT AND FALSE ADVERTISING UNDER THE LANHAM ACT

43. The allegations of paragraphs 1 through 42 above are incorporated herein by reference.

44. Defendant's affixation, annexation, or other uses of the marks EDGE, THE EDGE and GAMER'S EDGE in conjunction with computer-related goods constitute false designations of origin, or false or misleading descriptions or representations of fact, that are likely to cause confusion, to cause mistake, or to deceive others to believe that the products actually made or offered by Defendant are made by, sponsored by, approved by, originate with, or are affiliated with Plaintiff.

45. Defendant's use of the marks, EDGE, THE EDGE and GAMER'S EDGE in conjunction with computer-related goods constitutes false advertising that is likely to lead consumers to believe that Defendant's goods originate from the Plaintiff when they do not.

46. Defendant's actions constitute false advertising, false designation of origin, and false description of fact in violation of 15 U.S.C. § 1125(a).

47. Defendant's actions have damaged Plaintiff and its business.

48. Unless temporarily, preliminarily and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

49. Because Plaintiff's use of Plaintiff's Mark is prior to Defendant's use of its Registered Mark, and Defendant's Registered Mark is not yet incontestable under 15 U.S.C. § 1065, Plaintiff is entitled to cancellation of Defendant's Registered Mark pursuant to 15 U.S.C. § 1052.

50. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct, as well as Defendant's profits obtained from its infringing conduct, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

51. On information and belief, Defendant's actions are willful and deliberate, and they amount to exceptional circumstances, justifying an award of attorneys' fees to Plaintiff pursuant to 16 U.S.C. § 1117.

COUNT II

UNFAIR COMPETITION UNDER THE LANHAM ACT

52. The allegations of paragraphs 1 through 51 above are incorporated herein by reference.

53. Plaintiff and Plaintiff's Mark have become uniquely associated with Plaintiff's products, namely its gaming PCs, and the public identifies Plaintiff as the source for its gaming PCs.

54. Defendant has marketed and continues to use the marks EDGE, THE EDGE and GAMER'S EDGE for computer-related products without Plaintiff's consent, and in doing so has deceived, misled, and confused consumers and enabled Defendant to unfairly capitalize on and trade off of Plaintiff's reputation and goodwill associated with Plaintiff's Mark.

55. By adopting marks that are identical or so similar to Plaintiff's Mark in connection with nearly identical goods, Defendant is unfairly competing with Plaintiff by conducting business on the goodwill built by Plaintiff and diluting the distinctive value of Plaintiff's Mark, one of Plaintiff's core assets, in violation of 15 U.S.C. § 1125(a).

56. Defendant's actions have damaged Plaintiff and its business.

57. Unless temporarily, preliminary, and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

58. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct, as well as Defendant's profits on sales of computer-related goods, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

59. On information and belief, Defendant's actions are willful and deliberate, and they amount to exceptional circumstances, justifying an award of attorneys' fees to Plaintiff pursuant to 16 U.S.C. § 1117.

COUNT III

COMMON LAW INFRINGEMENT

60. The allegations of paragraphs 1 through 59 above are incorporated herein by reference.

61. Plaintiff has used Plaintiff's Mark and has acquired considerable goodwill, distinctiveness, and wide-scale recognition with regard to its Mark. Plaintiff has invested heavily in advertising, promotion and use of Plaintiff's Mark in commerce throughout the United States, including this District, since at least as early as a date preceding Defendant's adoption and use of the marks EDGE, THE EDGE and GAMER'S EDGE in connection with computers and computer accessories. The public has come to associate Plaintiff's Mark with Plaintiff and Plaintiff's goods and services.

62. Defendant is using an identical mark, GAMER'S EDGE, and similar marks, THE EDGE and EDGE, on related and confusingly similar goods and/or services, in the

same or similar channels of trade as Plaintiff's, without Plaintiff's consent or authorization, and such use is highly damaging to the Plaintiff and Plaintiff's Mark.

63. Defendant's use of the marks EDGE, THE EDGE and GAMER'S EDGE for its computer-related products has created a likelihood of confusion, mistake, or deception, and therefore infringes on Plaintiff's Mark in violation of the common law of the Commonwealth of Virginia.

64. Defendant's actions damage and threaten to further damage the value of Plaintiff's Mark, the goodwill and the business associated with Plaintiff's Mark.

65. Unless temporarily, preliminary, and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

66. Plaintiff is entitled to recover its damages and attorney's fees from Defendant an amount to be proved at trial.

67. Plaintiff is further entitled to recover its attorneys' fees from Defendant.

COUNT IV

FRAUD ON THE UNITED STATES PATENT AND TRADEMARK OFFICE

68. The allegations of paragraphs 1 through 67 above are incorporated herein by reference.

69. Defendant has applied for and obtained its Registered Mark by making false representations regarding the goods associated with that trademark on its application for registration.

70. Defendant has applied for the Pending Marks by making false representations regarding the goods associated with such marks on its applications for registration.

71. Defendant knew or should have known that the representations made by it with respect to the goods set forth on its applications for registration for the Registered Mark and the Pending Marks were false.

72. Defendant knowingly made such false representations with respect to the Registered Mark and the Pending Marks with the intent to induce the USPTO to grant Defendant the registration of such marks in connection with goods that the Defendant does not sell, creating an unreasonable restraint on trade in those goods.

73. Defendant's false representations are material, as they directly affect the scope of the goods covered by its Registered Mark and its Pending Marks.

74. The USPTO relied on the false representations of Defendant when it granted registration of the Registered Mark for use with the foregoing goods.

75. The USPTO has relied and continues to rely on the false representations of Defendant when considering the applications of the Pending Marks for use with the goods listed in Defendant's applications for the Pending Marks.

76. Plaintiff has been damaged by Defendant's false representations, because the Registered Mark and Pending Marks encompass goods that are likely to be confused with Plaintiff's goods.

77. Defendant's false description of goods on its applications for its Registered Mark and Pending Marks renders the respective registration and applications void *ab initio*, pursuant to 15 U.S.C. §1051.

78. Defendant's false representations on its application for the Registered Mark constitute false or fraudulent procurement of a trademark registration in violation of 15 U.S.C. §1120.

79. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct in an amount to be proved at trial.

80. As a result of Defendant's improper conduct, Defendant's Registered Mark should be cancelled by the Court, pursuant to 15 U.S.C. § 1119.

81. As a result of Defendant's improper conduct, Defendant's Pending Marks should be declared by the Court to be void *ab initio*.

COUNT V

DECLARATORY JUDGMENT

82. The allegations of paragraphs 1 through 81 above are incorporated herein by reference.

83. In its Demand Letter, Defendant alleged that Plaintiff is infringing on Defendant's marks, EDGE and GAMER'S EDGE, by using them on Plaintiff's products and demanded that Plaintiff cease using those marks on its products.

84. However, Plaintiff used the mark GAMER'S EDGE exclusively on its gaming PCs prior to Defendant's use of the marks GAMER'S EDGE, EDGE or any other mark, if ever, on gaming PCs.

85. Defendant did not use any mark on gaming PCs until after Plaintiff's first use.

86. Defendant's use of the marks EDGE and GAMER'S EDGE prior to Plaintiff's use of the mark EDGE, if ever, was in conjunction with products that are not likely to be confused with Plaintiff's products and/or had not developed the necessary secondary meaning or distinctiveness likely to cause confusion among consumers as to the source of Defendant's products.

87. As a result of the foregoing, there is an actual controversy between the parties concerning ownership and/or the right to use the marks EDGE and GAMER's EDGE on various products.

88. Plaintiff seeks a declaration from the Court, pursuant to 28 U.S.C. § 2201, that Plaintiff's use of Plaintiff's Mark and the mark EDGE on its products does not infringe Defendant's prior use of the marks EDGE or GAMER'S EDGE.

DEMAND FOR JURY TRIAL

89. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by a Jury.

WHEREFORE, Plaintiff prays that the Court enter an order:

1. preliminarily and permanently enjoining Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, pursuant to 15 USC § 1116 and the equity jurisdiction of this Court, from using the trademarks EDGE, THE EDGE or GAMER'S EDGE, or any other trademark in combination with other words or symbols, or any other marks or symbols which are confusingly or deceptively similar to, or colorably imitative of Plaintiff's Mark, on or in connection with the importation, sale, offering for sale, distribution, exhibition, display or advertising of any computer-related goods;

2. preliminarily and permanently enjoining Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, from directly or indirectly falsely advertising

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

VELOCITY MICRO, INC.)
)
 Plaintiff,)
v.) Civil Action No.:03:08cv135 - JRS
)
THE EDGE INTERACTIVE MEDIA, INC.,)
a/k/a EDGE GAMES, INC.,)
)
 Defendant/Cross Plaintiff)
 /Third Party Plaintiff)
v.)
)
BEST BUY, INC.)
)
 Third Party Defendant)
_____)

**ANSWER TO AMENDED COMPLAINT, COUNTERCLAIMS AND
THIRD PARTY COMPLAINT**

Comes Now Defendant The Edge Interactive Media, Inc., by and through its successor in interest, Edge Games, Inc., and Answers the Amended Complaint filed by Plaintiff Velocity Micro, Inc.

Edge Games, Inc. and The Edge Interactive Media, Inc. are hereinafter jointly referred to as Defendant or “EGI.” EGI answers the numbered paragraphs in the Plaintiff's Amended Complaint as follows:

COUNT I.

Federal Trademark Infringement 15 U.S.C. §1117

130. All prior allegations are incorporated herein by reference.

131. Customers familiar with EDGE brand used on gaming computers are publicly complaining about the poor performance of EDGE brand computers produced by VM and sold by BBI. Moreover customers of BBI are complaining that VM is no help in servicing the problems experienced with the EDGE brand.

132. Customers, vendors, licensees and potential licensees are likely to falsely associate VMI's and BBI's use of the brand EDGE with EGI's longstanding use of the identical mark EDGE in the identical field of computer games.

133. VMI and BBI have infringed EGI's federally registered trademark EDGE, by using a confusingly similar and identical or nearly identical mark on related goods in direct competition with EGI and in the same geographic regions, and using similar marketing channels as EGI.

134. VMI's and BBI's' use of EDGE and EDGE formative marks as a brand infringes EGI's federally registered trademark EDGE and creates direct confusion as to the affiliation, origin or source of the goods and services performed by the parties in violation of the Lanham Act.

135. VMI's and BBI's use complained of herein creates reverse confusion in that consumers falsely associated the EDGE brand as emanating from VMI and/or BBI when no such affiliation exists in violation of the Lanham Act.

136. VMI's and BBI's use of EGI's federally registered mark creates a likelihood of confusion.

137. VMI and BBI had *constructive* notice of EGI's federally registered trademark but willfully decided to use the mark EDGE in the United States without authorization.

138. Counter Defendant VMI had *actual* notice of EGIs federally registered trademark rights at least as early as February of 2008 but willfully

decided to continue use of the mark EDGE and EDGE formative marks in the United States without authorization.

139. VMI's and BBI's infringement is willful.

140 EGI is being irreparably harmed and will continue to be irreparably harmed unless VMI and BBI's infringement is not preliminarily and permanently enjoined.

141. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

142. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior rights in the EDGE mark and brand.

COUNT II.
Federal Unfair Competition 15 U.S.C. §1125(a)(1)(A)

143. All prior allegations are incorporated herein by reference.

144. VMI and BBI have willfully used common law trademarks that are confusingly similar to EGI's trademarks.

145. VMI and BBI use identical and/or nearly identical marks as a brand on identical and competing goods marketed in the identical channels of trade which EGI offers and sells its goods and services through licensees.

146. VMI and BBI's use of nearly identical EDGE and EDGE-formative marks creates a likelihood of confusion as to the affiliation, origin, or source of the goods and services performed by the parties by direct confusion and reverse confusion.

147. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

148. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior right in the EDGE mark and brand.

COUNT III.

Federal Unfair Competition 15 U.S.C. §1125(a)(1)(B)

149. All prior allegations are incorporated herein by reference.

150. VMI and BBI have willfully used common law trademarks in their respective advertising that is confusingly similar to EGI's common law trademarks.

151. VMI and BBI advertise the brand EDGE and EDGE-formative marks on identical and competing goods marketed in the identical channels of trade and to the same consumers which EGI offers and sells its goods and services and licensees of EGI offer and sell related and/or identical goods and services.

152. VMI and BBI advertise the brand EDGE and EDGE-formative marks on identical and competing goods marketed in the identical channels of trade which EGI offers and sells its goods and services.

153. VMI and BBI's adoption, use and advertising the mark EDGE and EDGE-formative marks create a likelihood of confusion as to the affiliation, origin, or source of the goods and services performed by the parties by direct confusion and reverse confusion in view of EGI's longstanding prior and continuous use of the brand EDGE.

154. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

155. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior right in the EDGE mark and brand.

COUNT IV.

UNFAIR COMPETITION IN VIOLATION OF
VIRGINIA COMMON LAW

156. All prior allegations are incorporated herein by reference.

157. On information and belief, VMI and BBI's acts complained of herein have been committed knowingly, intending to ride on the long established good will in the mark EDGE, have been in bad faith, and with intent to cause confusion, mistake, and deception among consumers.

158. VMI and BBI have willfully used the trademarks EDGE, GAMER'S EDGE and EDGE-formative marks in a manner is confusingly similar to EGI's longstanding common law trademarks and such conduct constitutes unfair competition in violation of Virginia common law.

159. VMI and BBI use the confusingly similar EDGE, GAMER'S EDGE, and EDGE-formative marks in the identical field of goods and services in direct competition with EGI and use similar marketing channels and direct advertising to the identical consumers.

160. VMI and BBI's use of the mark EDGE, GAMER'S EDGE, and EDGE-formative marks, creates direct confusion and reverse confusion as to the affiliation, origin or source of the services performed by the parties in violation of common law of the Commonwealth of Virginia.

161 As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

PRAYER FOR RELIEF

WHEREFORE, Cross Plaintiff EGI respectfully requests that this Court grant the following relief against the VMI and BBI:

A. An order preliminarily enjoining and restraining VMI and BBI and all agents, servants, employees, and other persons in active concert or participation with VMI and BBI from the use, sale, and promotion of the mark EDGE, or formative versions of the mark EDGE, or contributing to or inducing the infringement of EGI's EDGE and EDGE-formative trademarks;

B. An order permanently enjoining and restraining VMI and BBI and all agents, servants, employees, and other persons in active concert or

participation with VMI and BBI from the use, sale, promotion of the mark EDGE, or contributing to or inducing the infringement of EGI's EDGE and EDGE-formative trademarks;

C. An order requiring VMI and BBI to offer up for destruction all molds, matrices and other means of branding products with the mark EDGE, obliterate the mark EDGE from products within VMI and BBI's ' control or otherwise destroy products branded with the mark EDGE, offer up for destruction all advertisement for the mark EDGE, and promotional materials within VMI and BBI's possession or control, pursuant to Lanham Act section 36, 15 U.S.C. §1118;

D. An order requiring VMI and BBI to file with Court and serve on EGI within (30) days after entry and service upon VMI and BBI of an injunction, a report in writing and under oath setting forth in detail the manner and form in which VMI and BBI have undertaken to comply and is complying with the Court's injunction, pursuant to Lanham Act Section 34(a), 15 U.S.C. §1116(a);

E. An award to EGI of its reasonable attorneys' fees, pursuant to Lanham Act section 35, 15 U.S.C. §1117;

F. An award to EGI of its costs in this action, pursuant to Lanham Act Section 35, 15 U.S.C. §1117;

EXHIBIT C

TRADEMARK LICENSE CONFIRMATION

This is to confirm that on November 26, 2008 Edge Games, Inc. ("Edge") granted Velocity Micro, Inc. ("Velocity") a Trademark License Agreement permitting Velocity to use Edge's registered trademark "GAMER'S EDGE" in respect to its historic use of that mark for computers, and to use Edge's trademark "EDGE" in respect to both Velocity's historic and on-going use of the mark for computers. As a licensee of Edge, Velocity acknowledges and recognizes the valid and sustaining rights of Edge in connection with all of its "EDGE" marks worldwide.

EDGE GAMES, INC.

By: 
Dr. Tim Langdell,
CEO

VELOCITY MICRO, INC.

By: 
Randall P. Copeland,
President & CEO