

ESTTA Tracking number: **ESTTA633773**

Filing date: **10/20/2014**

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

Proceeding	92058543
Party	Defendant Razer (Asia-Pacific) Pte Ltd.
Correspondence Address	KEITH A BARRITT FISH & RICHARDSON PC PO BOX 1022 MINNEAPOLIS, MN 55440 1022 UNITED STATES barritt@fr.com, tmdoctc@fr.com, erickson@fr.com
Submission	Other Motions/Papers
Filer's Name	Keith Barritt
Filer's e-mail	tmdoctc@fr.com, barritt@fr.com, erickson@fr.com
Signature	/Keith Barritt/
Date	10/20/2014
Attachments	reply brief.pdf(1833563 bytes)

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

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,
Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

**REGISTRANT'S REPLY BRIEF
IN SUPPORT OF ITS REQUEST FOR SANCTIONS**

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Petitioner’s Alleged Service of Initial Disclosures is Further Evidence of Untrustworthiness	1
III. Petitioner’s Defenses Against the Request for Sanctions Are Porous.....	3
IV. Additional Evidence Supporting Sanctions Against Petitioner	4

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Fort Howard Paper Co. v. C.V. Gambina Inc.</i> , 4 USPQ2d 1552 (TTAB 1987)	5
<i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597 (TTAB 2002).....	5

I. Introduction

Razer (Asia-Pacific) Pte Ltd. (“Razer”) hereby replies to Petitioner’s Reply Brief in Opposition to Registrant’s Request for Sanctions filed on October 1 and served by mail.¹ Razer notes that it has until October 21 to file its reply brief, pursuant to 37 CFR §2.119(c) and Section 502(b) of the Trademark Trial and Appeal Board Manual of Procedure, and therefore this brief is timely.

II. Petitioner’s Alleged Service of Initial Disclosures is Further Evidence of Untrustworthiness

Included as Exhibit F in Petitioner’s brief is its initial disclosures, which Petitioner has dated May 15 and included a certificate of service page of the same date. Razer never received the initial disclosures as allegedly served on May 15.²

It was likely Razer’s response to Petitioner’s discovery requests objecting to the requests as improper because Petitioner had not served any initial disclosures as required by the rules that made Petitioner aware of its initial disclosure obligation. Petitioner appears to have only now realized its mistake and included initial disclosures as an exhibit in its brief. While there is no way for a party to prove that a document was not placed in the U.S. mail, the history of Petitioner and indeed its own admissions in its brief cast very serious doubt as to the truthfulness of the certificate of service.

¹ Petitioner’s brief is more accurately described as being in opposition to Razer’s request for sanctions, and Razer’s brief is a proper reply brief thereto.

² See Declaration of Sergio Pantano enclosed as Exhibit 1.

Petitioner argues at length that Razer's counsel's proposal in its letter of March 24, 2014³ to dispense with initial disclosures -- which Petitioner expressly rejected in its letter of March 28, 2014⁴ -- somehow waived the parties' obligation to exchange initial disclosures. Of course, no one party may unilaterally modify the parties' obligations with respect to initial disclosures, and Petitioner's rejection of the proposal to dispense with initial disclosures left those obligations intact.

Petitioner states several times its erroneous belief that it was under no obligation to serve initial disclosures. For example, Petitioner argues that:

- correspondence between the parties left the matter that "Initial Disclosures will be dispensed with" (Petitioner's Brief at 4);
- Razer "waived the parties obligations to serve Initial Disclosures" (Petitioner's Brief at 5); and
- Razer "freed Petitioner from any requirement to serve Initial Disclosures" (Petitioner's Brief at 5)

The obvious conclusion is that Petitioner believed (and apparently still believes) that it was under no obligation to serve initial disclosures. Petitioner would have the Board now trust that Petitioner nonetheless served its initial disclosures on May 15, 2014, despite its oft-repeated belief that they were not required. In the context of Petitioner's history, the claim that Petitioner served its initial disclosures in May is simply not credible and further reinforces the need for sanctions against Petitioner.⁵

³ Exhibit C of Petitioner's Brief.

⁴ Exhibit D of Petitioner's Brief.

⁵ Razer notes that the parties have agreed to serve all future documents via U.S. certified mail. However, to avoid any misunderstandings and to bring the weight of the Board's authority to the issue, Razer requests that the Board include such a requirement in its order ruling on the motion for sanctions.

III. Petitioner's Defenses Against the Request for Sanctions Are Porous

Petitioner has utterly failed to rebut the evidence in Razer's brief that Petitioner is untrustworthy. Rather, Petitioner dodges the issue by stating that to respond "would take numerous pages of clarification and call for a very sizable number of attachments." Petitioner's Brief at 6. Even when discussing the Board's own ruling finding that Petitioner had invented legal quotes and citations, Petitioner claims – without any evidence or documentation – that its "legal cites were later found to be entirely valid." Petitioner's Brief at 7.

Petitioner also mischaracterizes the final order in its litigation with EA Sports (which it conveniently did not include as an exhibit to its brief). Petitioner claims that it was "found not to be guilty" of any misbehavior. Petitioner's Brief at 8. The truth is that the final order did not make any such finding, but rather merely approves the parties' stipulation, which simply says on page 4 that neither the stipulation nor settlement itself shall constitute admission or evidence of wrongdoing.⁶ This is a far cry from a court order specifically finding that no wrongdoing occurred. Moreover, the court did not rescind its prior findings with respect to Petitioner's specific misbehavior – which Petitioner has even admitted is "seemingly damning." Petitioner's Brief at 8.

Petitioner does not even make an effort to rebut the findings of its fabrication of evidence and other misbehavior in prior litigation with Future Publishing, seeking to dismiss the uncontested facts as "irrelevant" or "taken out of context." Petitioner's Brief at 9. Such prior acts in another legal proceeding are strong evidence that Petitioner is not to be trusted by the Board.

⁶ See Exhibit 2.

IV. Additional Evidence Supporting Sanctions Against Petitioner

In addition to the numerous examples of Petitioner's unethical and deceitful behavior already documented in Razer's main brief in support of its request for sanctions, additional egregious examples of such behavior have only now come to the attention of Razer, which Razer wishes to add to the record.

First, Petitioner now claims that it never served on Razer its premature Motion for Summary Judgment filed on August 15, 2014. Petitioner's Brief at 9. However, that motion includes a certificate of service page on which Tim Langdell certifies on behalf of Petitioner that the motion "was served" on that same date. This is further evidence that Petitioner's claims of service – in any context – cannot be trusted, and its willingness to say anything once caught in a violation of the rules, including that Petitioner allegedly did not expect Razer to respond to the premature motion or for the Board to rule on it. Petitioner's Brief at 9.

Second, it has now come to Razer's attention that the U.S. district court for the Eastern District of Virginia found as follows:

- Where the defendant The Edge Interactive Media, Inc. referred to itself as Edge Interactive a/k/a Edge Games, Inc., "conflicting statements were misrepresentations made on behalf of Edge Interactive as part of their concerted effort to mislead this Court and gain an unfair advantage in litigation," and denying Edge Games' ability to file a valid answer and counterclaim. Exhibit 3 at page 5.
- Misrepresentations regarding the relationship between Edge Interactive and Edge Games were part of a "deliberate strategy to obfuscate and mislead this Court in order to delay the Court's determination of default." Exhibit 3 at p. 11.
- Edge Interactive's "conscious strategy to mislead the Court and delay these proceedings" resulted in sanctions. Exhibit 3 at page 8.

- Representations that Mr. Langdell resigned from the company as an employee and agent for service of process and that he had not received any communications related to the case were “proven to be false.” Exhibit 3 at pp. 8-9.

Third, in a proceeding before the U.K. High Court of Justice, Chancery Division, the sworn testimony of Randall Copeland, the CEO of Velocity Micro, Inc. is that:

- The “alleged emails” between Mr. Copeland and Mr. Langdell that were submitted as evidence in court “are not the actual emails” that were exchanged and included numerous falsifications, which Mr. Copeland believes were amended “to misrepresent my reply.” Exhibit 4 at pp. 1-2.

Based on past documented history as set forth above and in Razer’s prior brief, Razer is particularly concerned that Petitioner will falsify documents of all types, falsify claims of service of documents, and submit false testimony from third parties. Razer repeats its request in its brief that the Board issue sanctions against Petitioner as follows:

1. Require Petitioner to serve all documents by U.S. certified mail, without which service shall be deemed ineffective and any such documents of no effect and treated as if never filed or served;
2. Require Petitioner to have all signatures notarized for every document served or filed, without which such document shall be deemed of no effect and treated as if never filed or served;
3. Prohibit Petitioner from filing any further motions in this case, consistent with the Board’s ruling in *Fort Howard Paper Co. v. C.V. Gambina Inc.*, 4 USPQ2d 1552 (TTAB 1987), or at the very least require that Petitioner obtain Board approval prior to filing any further motions, consistent with *International Finance Corp. v. Bravo Co.*, 64 USPQ2d 1597 (TTAB 2002); and
4. Prohibit Petitioner from objecting to any of Razer’s discovery requests

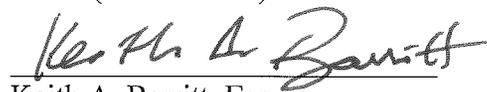
Razer also believes that, based on Petitioner’s past behavior in fabricating evidence, that any written testimony from Petitioner must be verified and notarized. The Board might also require Petitioner to hire an attorney, who must include his bar number to substantiate his identity, when submitting any evidence or any other documents on

Petitioner's behalf. Razer welcomes any other sanctions the Board deems appropriate, including prohibiting any further discovery requests from Petitioner and dismissal of this action with prejudice.

WHEREFORE, for the reasons set forth above, Razer respectfully requests the Board to issue such sanctions as requested and any others that it deems appropriate.

Respectfully submitted,

Razer (Asia-Pacific) Pte Ltd.



Keith A. Barritt, Esq.

Fish & Richardson P.C.

P.O. Box 1022

Minneapolis, MN 55440-1022

Oct. 20, 2014

Date

Attorneys for Registrant

41035073.doc

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

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,
Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

CERTIFICATE OF SERVICE

It is hereby certified that on October 20, 2014 a true copy of the foregoing REGISTRANT'S REPLY BRIEF was deposited in the U.S. certified mail, first-class, postage prepaid, addressed to:

Tim Langdell
Edge Games Inc.
530 South Lake Avenue 171
Pasadena, CA 91101



Signature

EXHIBIT 1

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

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,
Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

DECLARATION OF SERGIO PANTANO

I, Sergio Pantano, declare as follows:

1. I am Supervisor of APS Indexing & Scanning and a Senior Docketing Specialist at Fish & Richardson P.C., and I am over 18 years of age.
2. I have been employed by Fish & Richardson P.C. since 2003 and have held my current position since 2006.
3. Part of my duties at Fish & Richardson P.C. is to ensure that all incoming mail is appropriately routed for proper document management.
4. Mail that is sent to our P.O. Box 1022, Minneapolis, MN 55440 is processed the same day it is received. All incoming mail is opened, reviewed, indexed, and scanned into our electronic document management system, and the originals then stored or forwarded to the addressee.
5. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive the initial disclosures attached hereto allegedly served on May 15, 2014 by Edge Games Inc. in the above-captioned proceeding.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statements are true and correct to the best of my knowledge, information and belief.


Sergio Pantano

10-16-2014
Date

41039474.doc

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PETITIONER'S INITIAL DISCLOSURES in respect to Cancellation proceeding No. 92058543 was served on Registrant via first class mail, postage prepaid, this day May 15, 2014:

Keith A Barritt
Fish & Richardson PC
PO Box 1022
Minneapolis
MN 55440-1022


Cheri Langdell

EXHIBIT 2

1 THE LANIER LAW FIRM, P.C.
Christopher D. Banys (230038)
2 *cdb@lanierlawfirm.com*
Daniel M. Shafer (244839)
3 *dms@lanierlawfirm.com*
2200 Geng Road, Suite 200
4 Palo Alto, California 94303
Telephone: 650.322.9100
5 Facsimile: 650.322.9103

6 Attorneys for EDGE GAMES, INC. and
THE EDGE INTERACTIVE MEDIA, INC.

7
KENDALL BRILL & KLIEGER LLP
8 Robert N. Klieger (192962)
rklieger@kbfirm.com
9 Joshua M. Rodin (224523)
jrodin@kbfirm.com
10 10100 Santa Monica Blvd., Suite 1725
Los Angeles, California 90067
11 Telephone: 310.556.2700
Facsimile: 310.556.2705

12
HUSCH BLACKWELL SANDERS LLP
13 Alan S. Nemes (admitted *pro hac vice*)
alan.nemes@huschblackwell.com
14 190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
15 Telephone: 314.345.6461
Facsimile: 314.480.1505

16 Attorneys for ELECTRONIC ARTS INC.
17 and EA DIGITAL ILLUSIONS CE AB

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

20 EDGE GAMES, INC., a California
21 corporation,

22 Plaintiff,

23 v.

24 ELECTRONIC ARTS INC., a Delaware
25 corporation,

26 Defendant.

Case No. 10-CV-2614-WHA

~~PROPOSED~~ FINAL JUDGMENT

Hon. William Alsup

Complaint Filed: June 15, 2010

27 AND RELATED COUNTERCLAIMS AND
28 COUNTER-COUNTERCLAIMS

SCF DOCUMENT

I hereby certify and certify this is a printed copy of a
document which was electronically filed with the United States
District Court for the Northern District of California.

10/8/10

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

58971.1

~~PROPOSED~~ FINAL JUDGMENT

10-CV-2614-WHA

1 The parties having stipulated to the disposition of the claims in this action, **FINAL**
2 **JUDGMENT IS HEREBY ENTERED** in favor of Defendant and Counterclaimant Electronic
3 Arts Inc. ("EA") and Counterclaimant and Counter-Counterdefendant EA Digital Illusions CE AB
4 ("DICE"), and against Plaintiff, Counterdefendant, and Counter-Counterclaimant Edge Games,
5 Inc. and Counterdefendant The Edge Interactive Media, Inc., on all claims, counterclaims, and
6 counter-counterclaims, with the exception of the Sixth Claim for Relief (Declaratory Relief) in the
7 Counterclaim asserted by Counterclaimants EA and EA DICE, which is dismissed without
8 prejudice in accordance with the parties' stipulation.

9 Pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119, the Commissioner of Patents
10 and Trademarks and the Assistant Commissioner for Trademarks are hereby ordered to cancel
11 U.S. Trademark Registration Nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826.
12 The Clerk of the Court is further directed to certify a copy of this final judgment and a copy of the
13 order denying plaintiff's motion for a preliminary injunction to the Commissioner of the Patent
14 and Trademark Office. Each party shall bear its own costs and fees in this matter.

15 **THE CLERK SHALL CLOSE THE FILE.**

16
17 **IT IS SO ORDERED.**

18
19 Dated: October 8, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGE GAMES, INC., a California corporation,

No. C 10-02614 WHA

Plaintiff,

v.

ELECTRONIC ARTS, INC., a Delaware corporation,

ORDER APPROVING THE PARTIES' STIPULATION REGARDING THE DISPOSITION OF CLAIMS AND PROPOSED JUDGMENT SUBJECT TO STATED CONDITIONS

Defendant,

AND RELATED COUNTERCLAIMS
AND COUNTER-COUNTERCLAIMS.

The undersigned judge will approve the parties' stipulation regarding the disposition of all claims in this action and will enter the proposed judgment *subject to the following conditions*:

1. The Clerk of the Court shall send a copy of the order denying plaintiff's motion for a preliminary injunction along with a copy of the final judgment to the Commissioner of the Patent and Trademark Office.

2. Plaintiff shall notify all persons and entities with whom a licensing agreement has been obtained involving the trademarks asserted herein that the marks have been cancelled and provide these persons and entities with a copy of the order denying plaintiff's motion for a

10/8/10

1 preliminary injunction and the final judgment. Plaintiff shall certify to the Court in a sworn
2 declaration BY NOON ON FRIDAY, OCTOBER 15, 2010, that such notice has been provided to all
3 such licensees.

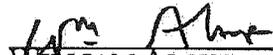
4 Subject to the stated conditions, the parties' stipulation regarding the disposition of all
5 claims, counterclaims, and counter-counterclaims in this action is APPROVED. Final judgment
6 will be entered accordingly.

7

8 IT IS SO ORDERED.

9

10 Dated: October 8, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE LANIER LAW FIRM, P.C.
Christopher D. Banys (230038)
2 *cdb@lanierlawfirm.com*
Daniel M. Shafer (244839)
3 *dms@lanierlawfirm.com*
2200 Geng Road, Suite 200
4 Palo Alto, California 94303
Telephone: 650.322.9100
5 Facsimile: 650.322.9103

6 Attorneys for EDGE GAMES, INC. and
THE EDGE INTERACTIVE MEDIA, INC.

7
KENDALL BRILL & KLIEGER LLP
8 Robert N. Klieger (192962)
rklieger@kbbfirm.com
9 Joshua M. Rodin (224523)
jrodin@kbbfirm.com
10 10100 Santa Monica Blvd., Suite 1725
Los Angeles, California 90067
11 Telephone: 310.556.2700
Facsimile: 310.556.2705

12
HUSCH BLACKWELL SANDERS LLP
13 Alan S. Nemes (admitted *pro hac vice*)
alan.nemes@huschblackwell.com
14 190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
15 Telephone: 314.345.6461
Facsimile: 314.480.1505

16
Attorneys for ELECTRONIC ARTS INC.
17 and EA DIGITAL ILLUSIONS CE AB

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

20 EDGE GAMES, INC., a California
21 corporation,

22 Plaintiff,

23 v.

24 ELECTRONIC ARTS INC., a Delaware
25 corporation,

26 Defendant.

Case No. 10-CV-2614-WHA

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

Hon. William Alsup

Complaint Filed: June 15, 2010

27 AND RELATED COUNTERCLAIMS AND
28 COUNTER-COUNTERCLAIMS

1 WHEREAS, Plaintiff, Counterdefendant, and Counter-Counterclaimant Edge Games, Inc.
2 (“Edge Games”) filed its First Amended Complaint on July 2, 2010;

3 WHEREAS, Edge Games filed a Motion for Preliminary Injunction on August 20, 2010;

4 WHEREAS, Defendant and Counterclaimant Electronic Arts Inc. (“EA”) filed its Answer
5 to the First Amended Complaint on August 29, 2010;

6 WHEREAS, EA and Counterclaimant and Counter-Counterdefendant EA Digital Illusions
7 CE AB (“DICE”) filed their Counterclaim against Edge Games and Counterdefendant The Edge
8 Interactive Media, Inc. (“EIM”) on August 29, 2010;

9 WHEREAS, Edge Games filed its Counter-Counterclaims against DICE on September 23,
10 2010;

11 WHEREAS, the Court entered an Order Denying Motion for Preliminary Injunction on
12 October 10, 2010;

13 WHEREAS, Edge Games, EIM, EA, and DICE have negotiated and entered into a binding
14 settlement agreement (the “Settlement”);

15 WHEREAS, no party admits any wrongdoing nor stipulates to any finding of wrongdoing;

16 WHEREAS, the parties agree that each party shall bear its own costs and attorneys’ fees in
17 this matter; and

18 WHEREAS, the parties desire to have a final judgment entered in this matter in the form
19 attached hereto as Exhibit A;

20 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties as
21 follows:

22 Claims for Relief in First Amended Complaint

23 1. With respect to Edge Games’ First Claim for Relief in the First Amended
24 Complaint (Infringement of Federally Registered Trademarks), judgment will be entered in favor
25 of EA and against Edge Games.

26 2. With respect to Edge Games’ Second Claim for Relief in the First Amended
27 Complaint (False Designation of Origin), judgment will be entered in favor of EA and against
28 Edge Games.

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

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

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

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

11 **IT IS SO AGREED.**

12 Dated: October 6, 2010

THE LANIER LAW FIRM, P.C.

13

14

By: 

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

15

16

17 Dated: October 6, 2010

KENDALL BRILL & KLIEGER LLP

18

19

By: 

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

20

21

22

23

The stipulation is hereby **APPROVED.**

24

IT IS SO ORDERED.

25

Dated: _____

Hon. William Alsup
United States District Judge

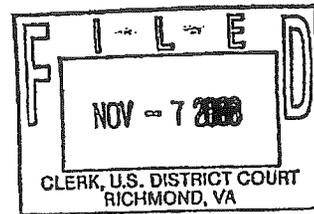
26

27

28

EXHIBIT 3

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 Number 3:08cv135

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff's three Motions: (1) Motion to Dismiss Defendant's Counterclaim (Doc. No. 19); (2) Motion for Reconsideration of the Court's Order Denying Default (Doc. No. 21); and (3) Motion for Sanctions (Doc. No. 24). For the reasons below, this Court DENIES Plaintiff's Motion to Dismiss and Motion for Reconsideration, and GRANTS the Plaintiff's Motion for Sanctions.

I. Background

On February 29, 2008, Plaintiff Velocity Micro, Inc. ("Velocity") filed a Complaint against The EDGE Interactive Media, Inc. ("Edge Interactive") alleging trademark infringement, false designation of origin and description of fact, false advertising, unfair competition, and fraud on the U.S. Patent and Trademark Office. At the time Plaintiff's Complaint was filed, Edge Interactive was listed as a suspended

California corporation.¹ On March 5, 2008, Plaintiff amended their Complaint. The Amended Complaint was served on Tim Langdell, Edge Interactive's Registered Agent, on April 12, 2008. In response to numerous communications made by Jack Phillips, Vice President of Edge Interactive, contesting service of process and seeking extensions of time to Answer, this Court granted Edge Interactive four extensions of time to file a responsive pleading.² The final extension was granted on July 31, 2008. Pursuant to the July 31st Order, Edge Interactive was to obtain local counsel and submit a responsive pleading by August 21, 2008, or risk default.

Within the Court's allotted time, Edge Interactive, referring to itself as Edge Interactive a/k/a Edge Games, Inc., filed an Answer, together with a Counterclaim, and a Third Party Complaint against Best Buy, Inc., a distributor of Velocity's computers ("August 21st Answer and Counterclaim"). Because Defendant filed a timely Answer, Velocity's Motion for Entry of Default was denied. On September 10, 2008, Velocity entered a Motion to Dismiss Defendant's Counterclaim and a Motion for Reconsideration of the Court's Order Denying the Entry of Default stating that "as a suspended California corporation, Edge Interactive a/k/a Edge Games cannot obtain counsel nor can it participate in [any] legal proceeding." (Pl.'s Mem. in Supp. of Mot. to Dismiss 2.) Unbeknownst to the Court, on September 17, 2008, Velocity sent a Rule 11

¹ Edge Interactive is a California corporation. (Answer ¶ 2.) According to the State of California's Franchise Tax Board, Edge Interactive was suspended effective April 2004. (Pl.'s Mem. in Supp. of Mot. to Dismiss, Ex. 8.) A Certificate of Revivor was not issued to the company prior to June 16, 2008. (*Id.*)

² In total, with the Court's four extensions, the Defendant was given an extra 150 days over the applicable rules to file a responsive pleading.

Safe-Harbor Notice to Edge Interactive, Edge Games, and their Counsel, Jeffrey H. Greger, demanding the withdraw of the August 21st Answer and Counterclaim, under threat of sanctions. Plaintiff's Safe-Harbor Notice alleged that both Defendant and their Counsel "made repeated misrepresentations to the Court to gain an improper advantage in this litigation." (Pl.'s Mem. in Opp. to Mot. to Withdraw and in Supp. of Mot. for Sanctions 10.)

On September 18, 2008, six days before a Response was due to Plaintiff's Motion to Dismiss and only one day after receiving Velocity's Safe-Harbor Notice, Mr. Greger moved this Court for Leave to Withdraw and for an Extension of Time. Velocity countered with a Memorandum in Opposition to Withdrawal and a Request for Sanctions. While Mr. Greger's Motion was pending, the Court was informed that Edge Interactive was issued a Certificate of Revivor from the California Franchise Tax Board, which restored Edge Interactive's status as a valid California corporation and further retroactively validated prior legal transactions. After due consideration, this Court granted Mr. Greger's Motion to Withdraw and denied his Motion for an Extension of Time. Further, on September 24, 2008, after learning of Edge Interactive's Certificate of Revivor, Velocity moved to withdraw sanctions against Attorney Greger. However, Velocity has not withdrawn their Motion for Sanctions against Edge Interactive.

II. Motion to Dismiss Defendant's Counterclaim, and Motion for Reconsideration of Order Denying Default

As a procedural matter, a federal court may enter default against a defendant who has failed to plead or otherwise defend themselves, if that failure is shown by affidavit or otherwise. Fed. R. Civ. P. 55(a). Accordingly, failure to timely file an Answer to a

Complaint may subject the defendant to default. Under the federal rules, a defendant must file an Answer within 20 days of being served with a summons and complaint. Fed. R. Civ. P. 12(a)(1)(A). This filing period may be extended by the Court, with or without Motion. Fed. R. Civ. P. 6(b). However, a suspended California corporation may not participate in any litigation activities, including filing an Answer to a Complaint. See Fed. R. Civ. P. 17(b) (noting that the “[c]apacity to sue or be sued is determined . . . for a corporation, by the law under which it was organized”); Palm Valley Homeowners Ass’n v. Design Mtc., 85 Cal. App. 4th 553, 561 (Cal. App. 4th Dist. 2000) (stating that a suspended California corporation is unable to participate in litigation activities, and further noting that this rule is designed to advance California’s legitimate interest in “persuad[ing] its corporate citizens to pay their taxes. . . [and] comply with basic filing requirements, requirements that are fundamental to holding a corporation accountable for its actions”).

In the present matter, Velocity requests the Court notice that no valid Answer or Counterclaim has been made, and therefore grant their Motions for Default and Dismissal. In support of their Motions, Velocity offers two alternative arguments. First, Velocity argues that the August 21st Answer and Counterclaim was made by Edge Interactive, who at the time of filing was a suspended California corporation unable to participate in litigation, ergo, the filings were invalid and default and dismissal are proper. (Pl.’s Mem. in Supp. of Mot. to Dismiss and Mot. for Reconsideration 6–9.) Alternatively, Velocity argues that Edge Games, a purported separate legal entity, filed the August 21st Answer and Counterclaim and, as such, no Answer has been filed by Edge Interactive, therefore default is warranted. (Motions Hr’g, Oct. 27, 2008.)

As a threshold matter, this Court will address the substance of Velocity's second argument—who filed the August 21st Answer and Counterclaim? Clearly labeled in the filing's caption, Mr. Greger's signature block, and in various statements throughout the Answer and Counterclaim is the fact that the filing was made on behalf of "The Edge Interactive Media, Inc. a/k/a Edge Games, Inc." and that "Edge Interactive, Inc. is also known as Edge Games." (Def.'s Answer ¶¶ 1–3.) Based on these facts, Edge Interactive filed the Answer and Counterclaim.

While the Court is aware of contradictory statements made by Mr. Greger regarding the relationship between Edge Interactive and Edge Games, and ultimately regarding who actually filed the August 21st Answer and Counterclaim, this Court finds these conflicting statements were misrepresentations made on behalf of Edge Interactive as part of their concerted effort to mislead this Court and gain an unfair advantage in litigation. This Court further finds that Edge Games is not a party to this litigation, as it has never formally joined or intervened, and that Edge Games has no legal interest in the matter, as any assignment of interest made by Edge Interactive to Edge Games while the company was suspended is void *ab initio*.³ As such, Edge Games did not, and could not, file a valid Answer and Counterclaim in this matter.

³ Edge Interactive was suspended from April 2004 to September 2008 and knew or should have known that they had no capacity to assign their trademark interests to Edge Games during this time. See Blackathorne Publishing, Inc. v. Black, Nos. 97-55656, 97-56058, 2000 U.S. App. LEXIS 1401, at *5 (9th Cir. Jan. 28, 2000) (holding that Plaintiffs did not obtain ownership via assignment where the trademark holder was a suspended California corporation and therefore ineligible to conduct business); see also Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361, 1365–66 (Cal. App. 2d Dist. 1997) (stating a suspended corporation is disqualified from exercising any right, power, or privilege, including prosecuting or defending an action, or appealing a judgment).

In terms of Velocity's primary argument—that Edge Interactive was suspended at the time of the filing and therefore could not participate in litigation—the Court agrees in part. Plaintiff's Motions were valid on the date of their filing, and would have likely resulted in the Court granting default and dismissal. However, on September 22, 2008, Edge Interactive was granted a Certificate of Revivor. (Greger's Supp. Mem. in Support of Mot. to Withdraw 2.) Under California law, a Certificate of Revivor retroactively validates otherwise invalid proceedings undertaken by a suspended corporation. Benton v. County of Napa, 226 Cal. App. 3d 1485, 1490 (Cal. App. 1st Dist. 1991) (stating that a company who "pays its taxes and obtains a Certificate of Revivor during the pendency of an action . . . may be allowed to carry on litigation, even to the extent of validating otherwise invalid prior proceedings"). Because Edge Interactive's Certificate of Revivor retroactively validated the Defendant's August 21st Answer and Counterclaim, Plaintiff's arguments for default and dismissal are denied. Accordingly, Defendant's Motion to Dismiss Defendant's Counterclaim and Motion for Reconsideration are DENIED.⁴

⁴ Defendant's arguments in opposition to Plaintiff's Motions to Dismiss and Reconsider Default are not helpful. The Defendant argues that both Motions should be denied by citing inapplicable law.

First, Defendant cites a California Court of Appeals case to state that a trial court has "abused its discretion where it either failed to grant a continuance to permit a suspended corporate defendant time to revive the corporation, or where it issued a default judgment even after the defendant had obtained a certificate of revivor." (Def.'s Opp. to Mot. for Reconsideration and Mot. to Dismiss 3.) While California law governs the effect of Edge Interactive's suspension, California law does not govern this Court's authority to enter a default judgment or grant a continuance. See Hanna v. Plummer, 380 U.S. 460, 465 (1965) (holding, consistent with Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), and the Rules Enabling Act, 28 U.S.C. § 2072, that federal courts are to apply federal procedural law and state substantive law); Oklahoma Natural Gas Co. v. Oklahoma, 273 U.S. 257, 259–60 (1929) (holding a corporation's capacity to sue is not procedural or "controlled by the rules of the court in which the litigation pends . . . [but] concerns the fundamental law of the corporation enacted by the State which brought the corporation into being"); Maternally Yours v. Your Maternity Shop, 234 F.2d 538, 540

IV. Sanctions Against Edge Interactive

This Court has both statutory and inherent authority to impose sanctions, including attorneys' fees, against attorneys who abuse the judicial process in bad faith. See 28 U.S.C. § 1927 ("Any attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously, may be required to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct."). This power is inherent in all courts and reaches conduct before the court and conduct beyond the court's confines, because the underlying concern that gives rise to the contempt power is not merely the disruption of court proceedings, but disobedience to the orders of the judiciary. Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991).

In the present case, Velocity contends that sanctions are warranted because Mr. Phillips, Vice President of Edge Interactive, has made untruthful statements to the Court regarding service of process and Mr. Langdell's relationship to Edge Interactive. Velocity's filings further request Rule 11 sanctions against Mr. Greger based on his misrepresentations of the relationship between Edge Interactive and Edge Games. While Velocity has withdrawn their request for sanctions against Mr. Greger, this Court

n.1 (2d Cir. 1956) (noting that the Erie doctrine applies regardless of the ground for federal jurisdiction).

Second, the Defendant argues that granting default judgment could result in inconsistent judgments among related parties, assumedly implying the related parties are Edge Interactive and Edge Games. (Def.'s Opp. to Mot. for Reconsideration and Mot. to Dismiss 4-5 (citing Jefferson v. Briner, Inc., 461 F. Supp. 2d 430, 434 (E.D. Va. 2006), which holds that where multiple defendants are jointly liable and the non-answering party's claims are related to the answering defendant's, default is improper as it would result in inconsistent judgments).) However, this case and argument is not applicable as the only party in issue is Edge Interactive, Edge Games has not been joined, and Edge Games and Edge Interactive cannot be jointly liable.

finds that Edge Interactive's conscious strategy to mislead the Court and delay these proceedings encompassed Mr. Phillips's and Mr. Greger's misrepresentations. This Court therefore holds Edge Interactive responsible for all misrepresentations made by Phillips and Greger; the company will be sanctioned accordingly.

The Court specifically finds three misrepresentations that necessitate sanctions. First, Mr. Phillips informed the Court that Edge Interactive had not been served in this matter and, as a result, requested additional time to file a responsive pleading. (See Phillips Decl. ¶¶ 7-8, June 19, 2008 (stating that neither he "nor anyone else employed by [Edge Interactive] has received a copy of the complaint in this matter"); Phillips Decl. ¶ 4, July 21, 2008 (noting that "Edge Interactive has never received any documents or papers in respect to this matter . . . and thus there is no way that Edge Interactive could file responsive pleadings in this matter even if it does retain local counsel as there has been nothing received by Edge Interactive").) These representations were made to the Court by phone and in two declarations, signed under penalty of perjury. (See Phillips Decl. ¶¶ 4, 7, July 21, 2008 (referencing a telephone conversation with the Court wherein Mr. Phillips states that Edge Interactive has never received any documents in this matter); see also Phillips Decl., June 19, 2008; Phillips Decl., July 21, 2008.) On the basis of these representations, the Court granted an additional extension of time to obtain local counsel and file a responsive pleading. (Ct's June 2, 2008 Order.)

In conjunction, Defendant represented that Mr. Langdell resigned from the company as its employee and agent for service of process prior to being served in this matter, and that Mr. Langdell has not received any communication related to this matter. (See Phillips Decl. ¶¶ 5-6, July 21, 2008 (stating that "Tim Langdell's

resignation pre-dated any action by Velocity Micro," that Velocity "was clearly notified of Tim Langdell's resignation from this corporation as its employee and as its agent for service," and that Mr. Langdell has "not received any communication relating to this matter"); Pl.'s Mem. in Supp. of Mot. to Dismiss and Entry of Default, Ex. 10.

(producing a copy of a returned Eastern District of Virginia envelope addressed to Tim Langdell at Edge Interactive with the handwritten words "Gone Away Return to Sender" printed on its face.) This, in part, was the reason for the Court's third and fourth extensions of time. (See Ct's July 14, 2008 Order; Aug. 1, 2008 Order.)

These representations were subsequently proven to be false. Edge Interactive stated in their August 21st Answer and Counterclaim that Mr. Langdell "has been affiliated with The Edge Interactive Media Incorporated at all times pertinent to this dispute and has overseen the day-to-day operations of . . . Edge Interactive;" thus contradicting the statement that Mr. Langdell resigned from the company prior to Velocity's filing of the Complaint. (Compare Countercl. ¶ 90 (confirming Mr. Langdell's ongoing affiliation with Edge Interactive), with Phillips Decl. ¶ 6, July 21, 2008 (declaring that Mr. Langdell resigned from the corporation prior to the lawsuit).)

Further, Mr. Langdell was publicly listed as Edge Interactive's Registered Agent for Service of Process with California's Secretary of State as late as June 11, 2008. (Pl.'s Mem. in Supp. of Request for Entry of Default, Ex. 2.) While Edge Interactive claims that Mr. Langdell resigned as Registered Agent on February 21, 2008, prior to being served in this matter,⁵ the proffered resignation form (RA-100) clearly states that the

⁵ Mr. Robert Brooke, attorney for Velocity, declares that "on April 12, 2008, legal service was made in person upon Tim Langdell . . . a copy of the Affidavit of Service was filed with the Court on May 14, 2008." (Brooke's Decl. ¶ 3, July 1, 2008.)

document was not filed with California's Secretary of State until May 30, 2008, after Mr. Langdell was served with a summons and Complaint. (Pl.'s Mem. in Supp. of Mot. to Dismiss and Entry of Default, Ex. 10.; see also Executed Summons, May 14, 2008.) Moreover, as the RA-100 form states, Mr. Langdell's resignation became effective after the document was filed, not merely after signing. See State of California Secretary of State Resignation of Agent Form RA-100, Instructions (stating that "upon filing Form RA-100, the authority of the agent for service of process to act in that capacity will cease and the Secretary of State will give written notice of the resignation to the entity"). Therefore, because Mr. Langdell was Edge Interactive's Registered Agent for Service of Process on April 12, 2008, the date he was served with a summons and Complaint, the Defendant's claims regarding lack of service of process, resignation of Mr. Langdell from Edge Interactive, and further claims that the Defendant has not received any communication related to this matter were clearly false.⁶

Edge Interactive's final misrepresentation was regarding the relationship between Edge Games and Edge Interactive, and was made by the company's previous counsel, Mr. Greger. In his Motion to Withdraw as Counsel, Mr. Greger states that his August 21st Answer and Counterclaim was "made on behalf of Edge Games, Inc. and not Edge

⁶ Mr. Phillips further stated in his July 21st Declaration that Edge Interactive's failure to open the Complaint or any Order of the Court places this matter "beyond dispute that Edge Interactive has yet to be served with this matter." (Phillips Decl. ¶¶ 6-7, July 21, 2008.) This argument further illustrates Mr. Phillips's and Edge Interactive's flagrant disregard of the rules of court and concerted effort to mock procedural safeguards in order to avoid default and obtain an unfair advantage in the litigation. Moreover, this narrow view fails to comport with the obligations undertaken by a corporation's Registered Agent for Service of Process whereby they agree that delivery to their Agent constitutes service, and further fails to explain why Edge Interactive did not ultimately challenge service of process when it made its August 21st Answer and Counterclaim.

Interactive Media, Inc., notwithstanding a lack of clarity between the two distinct legal entities.” (Greger’s Mot. to Withdraw 4.) These statements directly contradict the filing. (See Answer ¶¶ 1–3 (averring that the filing was made on behalf of “The Edge Interactive Media, Inc. a/k/a Edge Games, Inc.” and that Edge Interactive and Edge Games were the same company.”) These misrepresentations regarding the relationship of the two companies, made under penalty of perjury, served to further delay these proceedings, mislead the Court, and detract from the Court’s ultimate aim of allowing the parties to resolve the matter on its merits. The Court finds that these misrepresentations, while made by Counsel, are directly attributable to Edge Interactive as part of their deliberate strategy to obfuscate and mislead this Court in order to delay the Court’s determination of default. In their defense against sanctions, Edge Interactive focuses exclusively on this misrepresentation.

Edge Interactive asserts that Velocity contributed to the confusion in this case by asserting claims as to Edge Interactive when they knew that Edge Games had lawfully been assigned the underlying trademarks. (Def.’s Mem. in Opp. to Pl’s Mot. for Sanctions 2.) Further, the Defendant asserts that Velocity did not consent to Edge Interactive’s request to correct its erroneous Answer and Counterclaim,⁷ an act the company claims is contrary to the purpose of the Rule 11 Safe-Harbor provision. (*Id.* at 3–4.) However, these contentions are misplaced because Edge Interactive, as a suspended corporation, could not lawfully assign the trademarks in interest to Edge

⁷ In Defendant’s most recent Motion for an Extension of Time to File a Response, Edge Interactive asked this Court to allow them to file a Motion to Substitute, Intervene, and/or Join Edge Games, Inc. into this litigation. (Def.’s Mem. in Supp. of Mot. for Extension of Time 1.) This Court summarily denied Defendant’s Motion.

Games. Further, even though the Rule 11 Safe-Harbor provision allows 21 days for a party to correct their erroneous filings, Edge Interactive contacted Velocity over 30 days after the Safe-Harbor Notice was given. As such, Edge Interactive's defense is no defense and the company will be sanctioned accordingly.

IV. Conclusion

The Defendant's deliberate efforts to mislead this Court and obtain an advantage in litigation has resulted in unnecessary procedural delays. Nevertheless, this Court granted Defendant Edge Interactive four extensions of time to file a responsive pleading in this matter. For the reasons set forth above, this Court holds that Edge Interactive filed a valid Answer within the allotted time, and therefore Plaintiff's Motion for Reconsideration of the Court's Order Denying Default is DENIED. Similarly, Plaintiff's Motion to Dismiss the Counterclaim is DENIED, as Plaintiff's only contention is that the Counterclaim was not valid because Edge Interactive was a suspended company, unable to participate in litigation.

This Court further holds that Edge Interactive's numerous misrepresentations were part of the company's conscious strategy to mislead the Court and unfairly delay these proceedings until they obtained a Certificate of Revivor. Accordingly, the Court GRANTS Plaintiff's Motion for Sanctions. Further, Plaintiff is hereby ORDERED to file affidavits outlining, with specificity, any attorneys' fees or other relevant costs and fees incurred as a result of Defendant's misrepresentations and the Court's granting of multiple extensions. This information should be submitted to the Court within ten (10) days of the date of this Order.

It is SO ORDERED.

/s/
James R. Spencer
Chief United States District Judge

Entered this th7 day of November 2008

EXHIBIT 4

Claimant
Randall Copeland
First
Exhibit RC1-RC2
3 December 2010

CLAIM NO
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BETWEEN

FUTURE PUBLISHING LIMITED
Claimant

and

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

FIRST WITNESS STATEMENT OF
RANDALL COPELAND

Stevens & Bolton LLP
Wey House
GUILDFORD
GU1 4XS

DX 2423 GUILDFORD 1

Tel: 01483 302 264
Fax: 01483 302 254

Ref: DCW.EMO.FU0899.27

Solicitors for the Claimant

Claimant
Randall Copeland
First
Exhibit RC1 - RC2
3 December 2010

CLAIM NO HC09 CO2265

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BETWEEN

FUTURE PUBLISHING LIMITED

Claimant

and

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

Defendants

FIRST WITNESS STATEMENT OF
RANDALL COPELAND

I, RANDALL COPELAND, of 7510 Whitepine Road, Richmond, Virginia, 23237 USA
WILL SAY as follows:

- 1 I am president and CEO of Velocity Micro, Inc.
- 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 I understand that in support of his case in these proceedings, the Third Defendant, Dr Timothy Langdell has put before the Court:
 - (a) an email that he allegedly sent to me on 11 June 2010 at 10.26am; and
 - (b) my alleged response, sent on 14 June 2010 at 6.34am(together the "Alleged Emails"). Copies of the Alleged Emails are at Exhibit RC1 to this statement.
- 4 The Alleged Emails are not the actual emails that I exchanged with Dr Langdell. True and accurate copies of the actual emails are reproduced (in relevant part) at Exhibit RC2 to this statement (the "Genuine Emails").

5 The differences between the Alleged Emails and Genuine Emails are self-evident, but I note in particular that:

- (a) the title of Dr Langdell's Alleged Email has been changed from "Entourage Systems, Inc." to "Edge PC UK sales";
- (b) my Alleged Email in response has no title at all. The title has been amended to removed "Entourage Systems, Inc." which is the matter I believed to be providing information for;
- (c) the date and time of the Alleged Email from Dr Langdell to me has been changed. The time difference is not such that it could be explained by the different time zones;
- (d) Dr Langdell's Alleged Email to me contains significant amounts of text which were not present in the Genuine Email, in particular wording that suggests the request relates only to "UK sales";
- (e) my comment "Not sure why this helps" has been deleted in my Alleged Email in response;
- (f) the time of my Alleged Email in response is different to that in the Genuine Email;
- (g) the footer of my Alleged Email in response has been amended to remove my telephone number, email address and company website, even though the disclaimer below is still there.

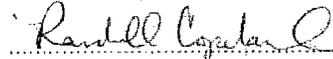
6 I believe that the Alleged Emails have been amended to misrepresent my reply.

7 I should make clear that Dr Langdell's enquiry as to sales figures (as set out in the Genuine Emails) did not relate to UK sales as the Alleged Emails suggest. His request actually related to sales of our EDGE game PCs generally and the figure of over \$1 million for each year related to total sales of such products.

8 Having checked the figures for the purposes of this statement I can confirm that Velocity's actual sales to the UK for each of the years mentioned by Dr Langdell (i.e. 2006, 2007, 2008 and 2009) were in fact \$0. Indeed, no sales relating to our "EDGE" branded products have been made to the UK for the last 5 years.

Statement of Truth

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



Randall Copeland

Dated this 3 day of December 2010

Claimant
Randall Copeland
First
Exhibit RCI
3 December 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

EXHIBIT "RCI" TO THE
FIRST WITNESS STATEMENT OF RANDALL COPELAND

From: Tim Langdell
To: Randy Copeland
Sent: Fri, June 11, 2010 10:26:14 AM
Subject: Re: Edge PC UK sales

Randy,

Our agreement does not require you to account to us separately for sales to the UK, but we rather urgently need some idea of UK sales for the past few years for a trademark case we are embroiled in there. We don't need specific figures since the issue is whether or not there has been only token use (which we of course know is not true), so if you could please give us an idea of sales along the lines of "not less than \$x for each of the years in question," that would suffice. The years we are interested in are 2006, 2007, 2008, and 2009. 2006-2007 would have been sales of "Gamer's Edge" brand PCs, of course, and then sales of "Edge" Brand PCs since then.

Thanks,

Tim

Dr. Tim Langdell
CEO, Edge Games.

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

From: Randy Copeland

To: Tim Langdell

Sent: Monday, June 14, 2010 6:34 AM

Subject: Re:

Tim,

The figure is way over \$1 million for each year.

Randy

Randall P Copeland, president & CEO

Velocity Micro, Inc. | 7510 Whitepine Rd, Richmond, VA 23237

THIS MESSAGE AND ANY FILES TRANSMITTED WITH IT ARE UNCLASSIFIED AND INTENDED FOR THE USE OF THE ADDRESSEES ONLY. IF YOU ARE NOT AN ADDRESSEE, YOU SHOULD NOT DISSEMINATE, COPY, REPRODUCE, OR TAKE ANY ACTION IN RELIANCE ON THE INFORMATION CONTAINED HEREIN. If you have received this e-mail in error, please notify the sender immediately by e-mail. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake.

Claimant
Randall Copeland
First
Exhibit RC2
3 December 2010

CLAIM NO HC09CO2265

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BETWEEN

FUTURE PUBLISHING LIMITED

Claimant

and

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

Defendants

EXHIBIT "RC2" TO THE
FIRST WITNESS STATEMENT OF RANDALL COPELAND

From: Tim Langdell
To: Randy Copeland
Sent: Monday, June 14, 2010 11:09 AM
Subject: Re: Entourage Systems, Inc.

Thanks Randy. It goes to showing so-called "non-token" use of the mark for PCs, which both you and I know is the case but stating some figure for each year just knocks that issue out of the ball park. "Over \$1 million" for each of these years achieves that fine. Thanks.

Tim

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

From: [Randy Copeland](mailto:Randy.Copeland)
To: [Tim Langdell](mailto:Tim.Langdell)
Sent: Monday, June 14, 2010 7:34 AM
Subject: Re: Entourage Systems, Inc.

Tim,

The figure is way over \$1 million for each year, but I have no desire to be more specific than that.

Not sure why this helps,

Randy

Randall P Copeland, president & CEO

Velocity Micro, Inc. | 7510 Whitepine Rd, Richmond, VA 23237
phone: 804.897.6166 x208 | e-mail: randyc@velocitymicro.com | web:
www.velocitymicro.com

From: Tim Langdell <tim@edgegames.com>
To: Randy Copeland <randyc@velocitymicro.com>
Sent: Mon, June 14, 2010 9:45:23 AM
Subject: Re: Entourage Systems, Inc.

Randy,

Our attorneys have made progress on this matter. To get a conclusion on it, though, they need to know the approximate revenues on EDGE game PCs for each of the past four years 2009, 2008, 2007, 2006. Can you rush those annual figures to me please? They don't need to be precise, a solid ball-park for each year would suffice.

Nearly have a resolution here, just need this data.

Thanks,

Tim