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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	Response to Board Order/Inquiry
Filer's Name	Keith Barritt
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Signature	/Keith Barritt/
Date	02/16/2016
Attachments	EDGE.pdf(758738 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
U.S. 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 RAZER (ASIA-PACIFIC) PTE LTD'S
BRIEF IN OPPOSITION TO PETITIONER EDGE GAMES, INC.'S
RESPONSE TO SHOW CAUSE ORDER**

Edge Games' response to the Board's January 11, 2016 order requiring it to show cause why judgment should not be entered against it is woefully inadequate on many grounds. Edge Games fails to address the relevant factors, demonstrates the same disregard for the Board's prior order of January 30, 2015, and continues the same pattern of presenting only half-truths in an effort to mislead the Board. Accordingly, final judgment with prejudice should be entered in this case.

1. Edge Games Has Failed To Show Cause Why Judgment Should Not Be Entered

The Board's January 11, 2016 order specifically referred to *Carrini Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000) as the relevant precedent in this situation. However, likely in recognition of its untenable position, Edge Games has not even attempted to discuss the factors therein that courts have considered in such cases. On its face, Edge Games' brief therefore fails to demonstrate that even a single factor tilts in its

favor. On this basis alone the Board should issue final judgment, as Edge Games has completely failed to show cause why judgment should not be entered against it.¹

Rather, Edge Games merely states that it “deeply regrets” not following the January 30, 2015 order and that its unauthorized December 8, 2015 request for sanctions was merely an “invitation” to the Board to consider issuing sanctions against Razer rather than a motion seeking sanctions.² Edge Games asks the Board to give no consideration to its request for sanctions, as if a party can file a motion in direct contravention of a prior Board order and then when caught simply say “please ignore our prior motion” as an excuse.³ Edge Games now also says that it was “confused” as to the restrictions on ex parte communications, and offers to withdraw any improper communications,⁴ again apparently taking the position that violating the Board’s orders and rules can be easily cured simply by withdrawing the offending motion or communication without any further consequences.

There is no doubt that the Board’s rules applied to Edge Games when it was appearing *pro se*. Indeed, Edge Games has been advised on many occasions by the Board to seek counsel.⁵ Any transgressions by Edge Games when representing itself should not be so easily wiped away by a statement of “regret” and “confusion.”

¹ Edge Games is not permitted to raise new arguments based on these factors in any reply brief, which should have been in its main brief, and any such arguments should be ignored by the Board.

² 46 TTABVUE at page 3.

³ 46 TTABVUE at page 3. This is essentially the same response filed by Edge Games on January 11, 2016. 43 TTABVUE at page 2.

⁴ 46 TTABVUE at page 4.

⁵ As documented on pages 15-16 of Razer’s November 17, 2015 Motion For Judgment, Or In The Alternative To Compel Discovery Responses To Interrogatories And Document Requests, And To Suspend Proceedings, Edge Games has been advised by the U.S. Trademark Office to seek trademark

2. Edge Games Continues To Flout The Board's January 30, 2015 Order

Beyond the complete failure to show cause why final judgment with prejudice should not be entered, Edge Games' response to the show cause order tellingly includes within it *yet another motion in contravention of the Board's January 30, 2015 order*. Specifically, Edge Games "requests an extension of time to respond to discovery requests and a resetting of the discovery schedule," citing to TBMP 403.04.⁶ That rule specifically states that such an extension may be made "by stipulation of the parties approved by the Board, or on motion . . . granted by the Board, or by order of the Board."

Clearly there is no stipulation as to this request, and the Board has not issued an order *sua sponte* to extend the time. The only way to interpret Edge Games' "request" is that it is a motion for such an extension of time – in further direct contravention of the Board's January 30, 2015 order. Thus, even in its response to the Board's show cause order, Edge Games flouts and disregards the Board's prior order, and it is clear that merely because Edge Games has hired counsel there is no reason to expect the Board's rules will be followed in the future.⁷

counsel in the Board's order of January 30, 2015 in this proceeding, the Board's order of December 30, 2014 in Opposition No. 91214673, and the Board's order of July 31, 2015 in Opposition No. 91212834. 31 TTABVUE at pages 16-17.

⁶ 46 TTABVUE at page 3.

⁷ Razer also notes that Edge Games' response to the show cause order is in violation of the Board's rules regarding formatting, as it not double-spaced as required by 37 C.F.R. 2.126(b) and TBMP Section 502.02. Indeed, on page 2 of Razer's January 14, 2016 Reply To Petitioner Edge Games, Inc.'s December 29, 2015 Brief, Razer had specifically flagged this rule, as Edge Games' December 29, 2015 brief was in clear violation. 44 TTABVUE at page 3. The Board has already admonished Edge Games in footnote one of its September 25, 2015 order to comply with brief formatting rules. 28 TTABVUE at page 1. Thus, this is at least the third time that Edge Games has failed to comply, providing further evidence that even with new counsel, essentially nothing has changed for Edge Games.

If the Board were to entertain such a motion, it should be summarily denied with respect to any extension of the close of discovery for Edge Games, as the discovery period for Edge Games expired prior to the filing on November 17, 2015 of Razer's Motion For Judgment, Or In The Alternative To Compel Discovery Responses To Interrogatories And Document Requests, And To Suspend Proceedings. Edge Games has presented no arguments for why the close of discovery should be extended for its benefit.

3. Edge Games Continues To Misrepresent Facts To The Board

Edge Games continues its pattern of misleading the Board when it discusses the current state of the discovery dispute between the parties. Specifically, Edge Games strongly implies on page one of its brief that in response to an inquiry from Edge Games' new counsel requesting a list of all outstanding discovery issues, the undersigned counsel for Razer allegedly identified only Interrogatories 8(e) and 12(d)-(f).⁸ As shown in Exhibit 1 hereto, Razer's actual response to Edge Games makes abundantly clear that there are also many documents to which Razer believes it is entitled (which Edge Games apparently has no intention of producing). For Edge Games to simply refer on page one of its brief to the interrogatories at issues is an attempt to mislead the Board that no dispute exists regarding numerous documents, such as license agreements, settlement agreements, and assignment agreements.⁹

⁸ 46 TTABVUE at page 2.

⁹ With respect to the license with Velocity Micro in particular and whether parties may privately agree not to produce documents in a Board proceeding without a court order, Razer is at a loss to see the relevance of the *Amazon Technologies Inc. v. Wax* case cited by Edge Games, which seems to obfuscate rather than inform. 46 TTABVUE at pages 2 to 3.

Likewise, Razer strongly disagrees that if final judgement is not entered that its motion to compel is “moot” as suggested by Edge Games.¹⁰ In fact, no new discovery responses have been served since Razer’s January 14, 2016 Reply To Petitioner Edge Games, Inc.’s December 29, 2015 Brief, and Razer stands by its prior request for Board intervention in the event final judgment is not entered.

4. Conclusion

Edge Games has completely failed to show cause why final judgment with prejudice should not be entered against it. Moreover, in its response it has “piled on” yet another violation of the Board’s January 30, 2015 order by making another unauthorized motion. Edge Games also continues its pattern of attempting to misrepresent facts to the Board by presenting only partial truths. The Board should exercise its discretion and grant final judgment with prejudice dismissing the cancellation action to ensure the orderly conduct of business before it.

Respectfully submitted,

Razer (Asia-Pacific) Pte Ltd

By: Keith A. Barritt

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February 16, 2016
Date

¹⁰ 46 TTABVUE at page 5.

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RAZER (ASIA-PACIFIC) PTE LTD,

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CERTIFICATE OF SERVICE

In accordance with 37 CFR 2.111(b), the undersigned hereby certifies that on February 16, 2016, a true copy of the foregoing Registrant Razer (Asia-Pacific) Pte Ltd's Brief In Opposition To Petitioner Edge Games, Inc.'s Response To Show Cause Order was sent via U.S. certified mail, postage prepaid, addressed to the following correspondent of record for Edge Games, Inc.:

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

And to

Gregory Richardson, Esq.
3380 La Sierra Avenue
Suite 104 - 640
Riverside, CA 92503



Signature

41164499.doc

EXHIBIT 1

Keith Barritt

From: Keith Barritt
Sent: Thursday, January 28, 2016 10:30 AM
To: gregoryrichardsonesq@gmail.com
Subject: discovery requirements from Edge Games in EDGE trademark cancellation (F&R File 39771-0019PP1)



Dear Mr. Richardson:

This is to follow-up our correspondence below regarding Edge Games' discovery responses in the EDGE trademark cancellation matter.

As stated in Razer's most recent filing with the Board on January 14, 2016, at a minimum Edge Games should provide: (1) complete responses to Interrogatory 8(e), Interrogatory 12(d) as it pertains to settlement agreements with Electronic Arts and Velocity Micro, and Interrogatories 12(e)-(f); and (2) any additional documents in response to all of Razer's Document Requests or state no such documents exist, and in particular all licenses, assignments, and settlement agreements including but not limited to those with Electronic Arts and Velocity Micro.

As also noted in Razer's January 14 brief, while Edge Games may choose to rely upon use by certain licensees to try to demonstrate its rights as a licensor, it may not deny Razer documents and information that may demonstrate uncontrolled naked licensing in other license relationships, which is directly relevant to Razer's defense. Likewise, Edge Games may not deny Razer documents and information regarding settlement agreements related to litigation, including settlements that terminated litigation pursuant to Section 414(10) of the TBMP. *See Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 197 (TTAB 1976) (settlement agreements that have avoided litigation may show limitations on party's rights in mark or reveal inconsistent statements). Settlement agreements that terminate litigation are discoverable for the same reason.

Sincerely,

Keith Barritt :: Principal :: Fish & Richardson P.C.
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fr.com :: FishTMCopyrightblog.com :: [Bio](#)

From: Keith Barritt
Sent: Thursday, January 21, 2016 9:29 PM
To: gregoryrichardsonesq@gmail.com
Subject: RE: discovery requirements

Dear Mr. Richardson:

Thank you for your email below.

We are expecting a blizzard with two feet of snow tomorrow and into the weekend, and thus it may be a few days

before I can respond in substance.

Sincerely,

Keith Barritt

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

From: Gregory Richardson [gregoryrichardsonesq@gmail.com]

Received: Thursday, 21 Jan 2016, 4:45pm

To: Keith Barritt [barritt@fr.com]

Subject: discovery requirements

Dear Mr. Barritt:

I propose receiving a list from you of what your discovery requirements are so that I can address them as soon as possible. I have reviewed the correspondence, but would nonetheless appreciate something like a check list that could be modified as we go along. All legitimate discovery demands will be met.

Thank you for your cooperation.

--

/GregoryRichardsonEsq/ <https://www.linkedin.com/in/gregoryrichardsonesq>

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