

ESTTA Tracking number: **ESTTA758638**

Filing date: **07/15/2016**

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

Proceeding	92062034
Party	Plaintiff Edge Games Inc.
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Submission	Other Motions/Papers
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Date	07/15/2016
Attachments	AmendedRedacted2004CTAForOpenFiling.pdf(685028 bytes)

Further and in support of Opposer/Petitioner's position that full redaction of the main document is proper, Opposer/Petitioner refers to TBMP 412.04. This section deals with the filing of confidential materials, and gives guidance as to how they should be redacted. In particular, Opposer/Petitioner draws the Board's attention to the excerpt from the Board's Standard Protective Order given at the foot of this section of the TBMP (Paragraph 12 of the Order), in pertinent part:

12) Redaction; Filing Material with Board

"... if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of nonconfidential material is then withheld from the public record. ... if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal" (our emphasis).

Here it seems clear that the Board intends that where appropriate either an entire page that "mostly" contains confidential material, or an entire document that contains *mostly* confidential material, the document should both be filed under seal with the entire page or the entire document thus being not visible to the public. This is the only logical interpretation of the Board's protective order as cited above, since otherwise if having filed an "entire page" under seal the party was then still required to file publicly the same page with parts of it left unredacted, then the Board would not have stated *"even if some small quantity of nonconfidential material is then withheld from the public record."*

It is thus Opposer/Petitioner's understanding that where a document is largely confidential, then the entirety of the document is acceptable to be filed under seal, which -- by reference to the Board's own Standard Protection Order guidelines -- means that no part of that document which is "under seal" is then made visible to the public.

This agrees with Opposer/Petitioner's experience of matters before the Board: in other instances where a party has filed a document designated as confidential and trade secret, then the entire document is under seal, and it is entirely redacted in the public record filing version. Usual practice in the other cases before the Board has been that often such a document is exhibited to a declaration, and in the publicly viewable version of the declaration that exhibit merely has a

cover sheet stating that its contents are filed under seal (and there is then nothing at all in that exhibit on the public view -- not even a fully redacted document).

Indeed, this particular document in question has been entered into evidence in other matters before the Board, and in each instance it has been marked as confidential and trade secret, and where filed under seal it would have been fully redacted in the public view. Opposer/Petitioner has been very diligent since 2004 to always designate the document as confidential and never permit it to be publicly viewable. And in all cases the document has been fully redacted (or, more usually, simply not present in the public version of the filing in question).

Respondent has suggested *inter alia* that the document has already been made public elsewhere: but this is not true. While the document has been entered into evidence in proceedings in the UK Courts, the documents and all evidence in those cases are not publicly viewable. Hence this document while exhibited in such UK proceedings was never viewable by the public. To the best of Opposer/Petitioner's knowledge, at all times since 2004 the Agreement in question has been carefully, and correctly, sealed from public view.

Opposer/Petitioner thus submits that it believes the attached publicly viewable redacted copy meets the Board's rules and orders and the guidelines for redaction in TMBP 412.04.

Last, attached is a copy of the Proof of Service on Respondent of the document(s) filed under seal on July 7, 2016, and Opposer/Petitioner apologizes for not attaching same to its prior filing.

Dated: July 15, 2016

Respectfully submitted:

By: /s/ Tim Langdell
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing RESPONSE TO BOARD ORDER DATED 7/14/16 AND AMENDED REDACTED COPY OF CONFIDENTIAL DOCUMENT(S) FILED AT DOCKET #59 of 91214673 AND AT DOCKET #14 of 92062034 was served on Applicant via First Class U.S. Mail, postage prepaid on July 15, 2016

Robert N Phillips
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco
CA 94105

/s/Tim Langdell
Tim Langdell

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing DOCUMENT(S) FILED AS CONFIDENTIAL UNDER SEAL OF THE BOARD'S STANDARD PROTECTION ORDER ON JULY 7, 2016 was served on Applicant via First Class U.S. Mail, postage prepaid on July 7, 2016

Robert N Phillips
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CA 94105

/s/Tim Langdell

Tim Langdell

WITNESSETH

Dated

THIS DEED

October 15, 2004

2004

THE EDGE INTERACTIVE MEDIA, INC. OF THE STATE OF CALIFORNIA

THE EDGE INTERACTIVE MEDIA, INC.

- and -

FUTURE PUBLISHING LIMITED

**CONCURRENT TRADING AGREEMENT
AND
DEED OF TRADEMARK ASSIGNMENT**

NOW IT IS HEREBY AGREED

1. DEFINITIONS

1.1 In this Agreement, the Deed and the Trademark Assignment shall be read together and shall be construed as if they formed one instrument.

Agreed Part

That part of the Trademark Assignment and the Deed of Assignment in Schedule 2.

Assigned Rights

All rights, title and interest in the Agreed Part of the Trademark Assignment (including any application for registration) and any other rights in or to the Agreed Part of the Trademark Assignment.





































