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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Velocity Micro, Inc.		
Entity	Corporation	Citizenship	Virginia
Address	7510 Whitepine Road Richmond, VA 23237 UNITED STATES		

Attorney information	Robert L. Brooke, Amy G. Marino Troutman Sanders LLP 600 Peachtree Street, NE Suite 5200 Atlanta, GA 30308-2216 UNITED STATES trademarks@troutmansanders.com Phone:804-697-1278
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Registration Subject to Cancellation

Registration No	3381826	Registration date	02/12/2008
Registrant	The EDGE Interactive Media Inc 530 South Lake Avenue Suite 171 Pasadena, CA 91101 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 009. First Use: 1986/06/01 First Use In Commerce: 1986/06/01 All goods and services in the class are cancelled, namely: Computers; computer hardware; computer peripherals; computer games software; plug-on computer interface boards; computer accessories, namely, keyboards, mice, player-operated electronic game controllers for computers and electronic video game machines, computer memories, headphones, augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, storage disc cases, video display and capture cards, sound cards, audio speakers, web-cameras, carrying cases and bags, all for carrying portable computers or computer accessories; video game software; video game consoles, namely, video game machines for use with televisions and video monitors; video game accessories, namely, joysticks made for video games, video game interactive control floor pads and mats, and video game interactive remote control units; video game peripherals, namely, external hard drives for computers and video game machines and other storage devices in the nature of plug-in memory devices that attach to the USB port which are commonly known as "flash drives" or "thumb drives" and video adapters in the nature of adapters which convert the video output of the computer or video game machine to the video input of a monitor or television; set top boxes, cable modems, dsl modems</p>
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	Velocity Micro Inc. v. The Edge Interactive Media, Inc., filed on 2/29/2008 in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No.03-08CV135
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	EDGE		
Goods/Services	Computers, computer hardware, computer peripherals, and computer accessories, namely for use with applications requiring high-speed performance, such as video games		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GAMER'S EDGE		
Goods/Services	Computers, computer hardware, computer peripherals, and computer accessories, namely for use with applications requiring high-speed performance, such as video games		

Attachments	Velocity Micro - Petition for Cancellation (Version 1).pdf (10 pages)(34668 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/
Name	Amy G. Marino
Date	04/09/2008

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

VELOCITY MICRO, INC.)	
)	
Petitioner,)	PETITION FOR CANCELLATION
)	
v.)	Cancellation No.____:
)	
THE EDGE INTERACTIVE MEDIA, INC.)	Registration No. 3,381,826,
)	Date of Issue: February 12, 2008
)	
Respondent.)	

Petitioner, Velocity Micro, Inc. (“Petitioner”) believes that it is or will be damaged by Registration No. 3,381,826, registered to Respondent, The Edge Interactive Media, Inc. (“Respondent”) and hereby petitions to cancel the same, stating its grounds as follows:

1.

Petitioner is a Virginia corporation with a principal business address of 7510 Whitepine Road, Richmond, Virginia, 23237.

2.

Respondent 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.

3.

Petitioner was incorporated in 1998, in Richmond, Virginia, to design, build and sell individualized, high-performance personal computers (“PCs”). Petitioner has experienced tremendous growth since its inception in 1998, progressing from annual sales of approximately \$50,000 in 1998 to approximately \$30,000,000 in 2007. Since its inception, Petitioner has won

over 30 major industry awards for its PC performance. Since 2005, Petitioner has also partnered with major retailers such as Best Buy and Circuit City to sell its PCs. Among its products, Petitioner designs, builds and sells PCs specifically for use with video game playing (“gaming PCs”), along with premium parts for a premium video game playing experience. Petitioner has been recognized for its specialty in the field of gaming PCs. Petitioner’s sales of gaming PCs accounts for approximately seventy-five percent of its annual sales.

4.

Petitioner has adopted the trademark “GAMER’S EDGE” (“Petitioner’s Mark”) for use on its various gaming PC models. Petitioner is the owner of the entire right, title, and interest in and to Petitioner’s Mark. Petitioner’s Mark has been the subject of major advertising and promotional efforts and has been advertised, promoted and otherwise used in commerce throughout the United States since at least as early as 1998.

5.

Petitioner has used Petitioner’s Mark on its gaming PCs since as early as 1998. Gaming PCs sold under Petitioner’s Mark have accounted for \$12 million in sales since 1998, which is a significant percentage of Petitioner’s sales of gaming PCs. Petitioner has sold gaming PCs under Petitioner’s Mark via Petitioner’s Internet website in all 50 states, Canada, and in many foreign countries. Petitioner’s recent partnership with Circuit City and Best Buy has increased Petitioner’s sales of gaming PCs under Petitioner’s Mark nationwide. Petitioner also sells a line of gaming PCs under the trademark “EDGE”.

6.

Petitioner’s Mark has acquired distinctiveness and secondary meaning signifying Petitioner and its products. The public and trade have come to rely on Petitioner’s Marks to

distinguish its products and services from those of others, and to serve as an indicator of source for such products.

7.

On February 5, 2006, Respondent filed for and received a federal registration on February 12, 2008 (the "Registration") for the mark GAMER'S EDGE, Registration Number 3,381,826, in International Class 009 for:

Computers; computer hardware; computer peripherals; computer games software; plug-on computer interface boards; computer accessories, namely, keyboards, mice, player-operated electronic game controllers for computers and electronic video game machines, computer memories, headphones, augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, storage disc cases, video display and capture cards, sound cards, audio speakers, web-cameras, carrying cases and bags, all for carrying portable computers or computer accessories; video game software; video game consoles, namely, video game machines for use with televisions and video monitors; video game accessories, namely, joysticks made for video games, video game interactive control floor pads and mats, and video game interactive remote control units; video game peripherals, namely, external hard drives for computers and video game machines and other storage devices in the nature of plug-in memory devices that attach to the USB port which are commonly known as "flash drives" or "thumb drives" and video adapters in the nature of adapters which convert the video output of the computer or video game machine to the video input of a monitor or television; set top boxes, cable modems, dsl modems

under Section 1(a) of the Trademark Act (“Respondent’s Mark”). The USPTO required, and Respondent agreed, to disclaim the word “GAMER’S” in connection with this registration because the word is “highly descriptive” of the goods sold by Respondent.

8.

Respondent’s Mark is identical to Petitioner’s Mark, GAMER’S EDGE, and similar to the trademark EDGE, also used by Petitioner, and it is registered with goods that are nearly identical to Petitioner’s goods, causing likelihood of confusion among the consuming public. Thus, Petitioner and Petitioner’s right to continue using Petitioner’s Marks are likely to be damaged by the continued registration of the Respondent’s Mark, and Petitioner has standing to bring the instant action pursuant to 15 U.S.C. § 1064.

9.

Respondent is not using Respondent’s Mark with all of the goods and services listed in its registration.

10.

Respondent is not using its Registered Mark in connection with the following goods listed in the description of goods: “[] plug-on computer interface boards; . . . computer memories, . . . augmented reality headsets for use with computers and video game machines, virtual reality headsets for use with computers and video game machines, . . . set top boxes, cable modems, [or] dsl modems.”

11.

On information and belief, Respondent is not using Respondent’s Mark in connection with other goods listed in its application for registration.

12.

On information and belief, at the time of filing of the application for registration of Respondent's Mark, Respondent was not using Respondent's Mark with all of the goods listed in its application.

13.

On information and belief, at the time of issuance of the Registration, Respondent was not using Respondent's Mark in connection with all of the goods listed in the Registration.

14.

On information and belief, Respondent did not use Respondent's Mark on all of the goods listed in the Registration as of the date of first use asserted in same, namely 1986.

15.

On information and belief, Respondent has not used Respondent's Mark in connection with all of the goods listed in the Registration for at least three years.

COUNT I

(Abandonment)

16.

Petitioner hereby incorporates by reference paragraphs 1 through 15 above.

17.

Respondent's intent not to resume and/or begin use of Respondent's Mark in connection with all of the goods listed in the Registration may be inferred by non-use of the Respondent's Mark for three consecutive years.

18.

The Registration should be canceled as it pertains to goods for which Respondent's Mark has been abandoned pursuant to 15 U.S.C. § 1064(3).

COUNT II

(Fraud)

19.

Petitioner hereby incorporates by reference paragraphs 1-18 above.

20.

At the time of filing of the application for registration of Respondent's Mark, Respondent knew or should have known that Respondent's Mark was not in use on all of the goods listed in its application for registration, but it knowingly and willfully misstated the same in the application.

21.

At the time of filing of the application for registration of Respondent's Mark, Respondent knew or should have known that Respondent's Mark was not in use on all of the goods listed in the application as of 1986, but it knowingly and willfully misstated the same in the application.

22.

Respondent knowingly made such false representations with the intent to induce the USPTO to grant Respondent the Registration for goods that the Respondent does not sell.

23.

Respondent's false representations are material, as they directly affect the scope of the goods covered by the Registration.

24.

The USPTO relied on the false representations of Respondent when it granted the Registration.

25.

Petitioner has been damaged by Respondent's false representations, because the Registration will impact Petitioner's right to continue using Petitioner's Marks on nearly identical goods and cause confusion with regard to the source of the goods in the Registration.

26.

Respondent's false description of goods on its applications for its Registered Mark renders the Registration *void ab initio*, pursuant to 15 U.S.C. §1051.

27.

The Registration for Respondent's Mark was obtained by fraud and should be cancelled pursuant to 15 U.S.C. § 1064(3).

COUNT III

(Prior Use)

28.

Petitioner hereby incorporates by reference paragraphs 1-27 above.

29.

Petitioner has established significant distinctive, secondary meaning in the use of Petitioner's Mark on its products, and Petitioner's Mark is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion.

30.

Because Petitioner has been using the mark GAMER'S EDGE validly, continuously, and exclusively on its gaming PCs since at least 1998, it is the senior user of the mark GAMER'S EDGE, and its use is prior to Respondent's use of the mark GAMER'S EDGE on computers and computer accessories.

31.

Respondent's use of Respondent's Mark in conjunction with computer-related goods is likely to confuse consumers of computers and computer accessories with regard to the source or origin of the goods, because it is nearly identical and confusingly similar to Petitioner's use of Petitioner's Mark on Petitioner's goods.

32.

Respondent's Mark is not yet incontestable under 15 U.S.C. §1065.

33.

Petitioner is entitled to cancellation of Respondent's Mark pursuant to 15 U.S.C. § 1064(1) and 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner respectfully prays that the Board:

- (a) sustain this Petition for Cancellation in favor of Petitioner;
- (b) cancel Registration No. 3,381,826 in its entirety; and
- (c) grant Petitioner such other and further relief as the Board deems just and proper.

This 9th day of April, 2008.

Respectfully submitted,

TROUTMAN SANDERS LLP

By: _____/s/_____
Robert L. Brooke, Esquire (VSB # 23744)
Amy G. Marino, Esquire (VSB # 71236)
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Counsel for Petitioner, Velocity Micro, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was sent by first class mail, postage prepaid to Attorney for THE EDGE INTERACTIVE MEDIA, INC. as follows:

Jack Phillips
Legal Department
The EDGE Interactive Media, Inc.
530 South Lake Avenue, Suite 171
Pasadena, California 91101

This the 9th day of April, 2008.

_____/s/_____
Amy G. Marino