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

Proceeding	92051465
Party	Plaintiff EA Digital Illusions CE AB and Electronic Arts Inc.
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Attachments	SF- #1168466-v3-March_2010_- EDGE_Cancellation_-_Opposition_to_Motion_for_Reconsideration.pdf (4 pages)(31180 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,)
)
v.)
)
EDGE GAMES, INC., a California corporation,)
)
Registrant.)
)
_____)

Cancellation No. 92051465

**PETITIONERS' OPPOSITION
TO REGISTRANT'S MOTION
FOR RECONSIDERATION**

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

I. INTRODUCTION

Registrant seeks reconsideration of the Board's denial of its motion to dismiss on the theory that the Board erred in construing its motion as based on *res judicata* rather than *stare decisis*, and that voluntary settlements of two proceedings, *Velocity Micro, Inc. v. The Edge Interactive Media, Inc.* (E.D. Va., Case No. 03:08CV135-JRS), and *Velocity Micro, Inc. v. Edge Games, Inc.* (TTAB, Cancellation No. 92049162) (the "Velocity/Edge Proceedings"), bar Petitioners' claims. Registrant also challenges Petitioners' standing. Registrant's arguments are without merit, and its motion for reconsideration must be denied.¹

II. ARGUMENT

Stare decisis is "[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation." Black's Law Dictionary at 1537 (9th ed. 2009). The doctrine "rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is so declared by court of competent jurisdiction authorized to construe it, such declaration . . . is itself evidence of the law until changed by competent authority." *In re Multivox Corp. of Am.*, 209 U.S.P.Q. 627, 630 (TTAB 1981) (quoting Black's Law Dictionary (3d ed.)). It applies to *decisions of law*, so a court's precedents bind itself and lower courts in the same jurisdiction. It does not apply here.

Registrant again misrepresents the nature of the Velocity/Edge Proceedings as having been "fully litigated," falsely claiming, without referencing any judicial decisions, that "the District Court determined that there was sufficient evidence that EGI had not abandoned any of its registered marks." It again ignores that the Velocity/Edge Proceedings were settled and voluntarily dismissed prior to any discovery, dispositive motions, or judicial determinations of

¹ Petitioners also note that they have not received a service copy of the Motion for Reconsideration, notwithstanding Respondent's proof of service.

the claims on the merits. *See* Petitioner's Opposition to Motion to Dismiss and Request for Judicial Notice, filed November 6, 2009. As such, there is no basis for the application of *stare decisis* here, and the authorities cited by Registrant in support of its arguments are inapposite.

Registrant's challenge to Petitioners' standing is similarly without merit. Petitioners plead common law rights in the MIRROR'S EDGE mark and assert that the continued registration of Registrant's marks is likely to damage Petitioners' rights or interests in its marks, satisfying the standing requirement under 15 U.S.C. § 1064. Amended Petition to Cancel, ¶¶ 3–9. The express abandonment of Petitioners' 2007 application for MIRROR'S EDGE has no bearing on Petitioners or their claim of rights in the MIRROR'S EDGE mark, and in no way amounts, as Registrant claims, to "EA's acceptance of EGI's superior rights in its marks." *See* TMEP § 718.01; 37 C.F.R. § 2.68 ("[T]he fact that an application has been expressly abandoned shall not, in any proceeding in the Patent and Trademark Office, affect any rights that the applicant may have in the mark which is the subject of the abandoned application."). Petitioners' allegations of standing are sufficient to permit this proceeding to move forward to discovery.

III. CONCLUSION

Registrant's arguments have no basis in law or fact. The Motion for Reconsideration should be denied and Registrant should be ordered to answer the consolidated petition promptly.

Date: March 31, 2010

Respectfully submitted,

COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN
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CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that Petitioners' Opposition to Registrant's Motion for Reconsideration is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below.

I hereby further certify that on the date indicated below, a true and correct copy of Petitioners' Opposition to Registrant's Motion for Reconsideration was placed in the United States Mail, postage prepaid, addressed to the correspondent for Respondent in this proceeding (as identified in the TTAB database) as follows:

EDGE GAMES, INC.
530 SOUTH LAKE AVENUE #171
PASADENA, CA 91101

Date: March 31, 2010


Gavin L. Charlston