

ESTTA Tracking number: **ESTTA313707**

Filing date: **10/27/2009**

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

Proceeding	92051465
Party	Defendant EDGE GAMES, INC.
Correspondence Address	EDGE GAMES, INC. 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com
Signature	/Tim Langdell/
Date	10/27/2009
Attachments	92051465_Motion for Failure to State a Claim.pdf (30 pages)(941170 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,)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED Cancellation No. 92051465
Petitioners,)	
v.)	
EDGE GAMES, INC., a California corporation)	
Registrant.)	
_____)	
)	
)	
)	
)	
)	
)	
)	

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

**MOTION TO DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

NOW COMES Respondent and Registrant, EDGE Games Inc. (“EGI”), and moves through this motion that the instant cancellations proceedings be dismissed on the grounds that the issues, facts and arguments alleged by Petitioner EA Digital Illusions CE AB and Electronic Arts Inc (collectively, “EA”) in the current proceedings have already been argued and ruled on in favor of Registrant Edge Games Inc in Federal Court in December 2008. As a result of this prior ruling EA’s Complaint fails to state a claim upon which relief can be granted in that it revisits issues that have already been fully litigated.

FACTS

1. In Velocity Micro Inc –v- The Edge Interactive Media, Inc before the United States District Court for the Eastern District of Virginia (Case No. 03:08CV135-JRS. Copy of Complaint attached hereto as Exhibit A), EGI was added as a Defendant to the matter. Velocity Micro Inc. (“VMI”) argued in their Complaint that EGI should have all of its US registered trademarks containing the word “EDGE” cancelled on the grounds that (a) that EGI had committed fraud on the USPTO in obtaining said registrations, and (b) EGI had abandoned said marks by failing to use them in US commerce.

2. The EGI trademark registrations at issue in the VMI case include all the EGI trademark registrations at issue in the instant proceedings, namely THE EDGE (Reg. No. 3,559,342), GAMER’S EDGE (Reg. No. 3,381,826), EDGE (Reg. No.s 3,105,816 and 2,219,837), and CUTTING EDGE (Reg. No. 2,251,584).

3. The Virginia Federal court ruled in favor of EGI on the merits for each mark, finding that EGI had not committed fraud on the USPTO in obtaining any of the trademark registrations subject of these cancellation proceedings and also finding that EGI had not abandoned its marks due to non-use (a copy of the December 2008 court order is attached as Exhibit B; see paragraph 4).

4. Further, on December 18, 2008, the TTAB dismissed with prejudice a cancellation proceeding for the GAMER'S EDGE mark (Reg. No. 3,381,826) filed by VMI on April 9, 2008 (Cancellation No. 92049162.)¹ A copy of the Dismissal is attached as Exhibit C). The Cancellation alleged that GAMER'S EDGE should be cancelled either because it was obtained by fraud on the USPTO or because EGI had abandoned the mark through non-use.

ARGUMENT

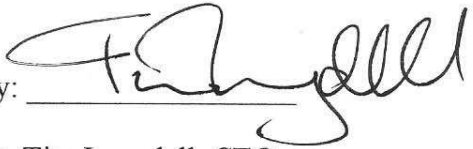
5. This cancellation proceeding should be dismissed because the issues and alleged facts raised by EA have already been decided by a Federal Court on the exact same grounds and of the exact same marks . Since the Federal Court has already ruled in favor of EGI on the merits in the Virginia Court case, the TTAB should not allow EA to disturb that ruling on the same issues. .

6. In addition, and/or in the alternative, EGI requests that the TTAB uphold its prior decision on the merits in Cancellation Proceeding No. 92049162 in respect to the GAMER'S EDGE mark

¹ While the cancellation proceeding was originally commenced against EIM, the TTAB granted a substitution of registrant by which order EGI became the registrant and defendant in those proceedings.

Date: October 27, 2009

Respectfully submitted,

By: 

Dr. Tim Langdell, CEO
EDGE Games, Inc.
Registrant in *Pro Se*
530 South Lake Avenue, 171
Pasadena, CA 91101
Telephone: 626 449 4334
Facsimile: 626 844 4334
Email: ttab@edgegames.com

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

VELOCITY MICRO, INC.)
)
 Plaintiff,)
)
 v.) Civil Action No.: 03:08CV135 - JRS
)
 THE EDGE INTERACTIVE MEDIA, INC.)
)
 Defendant.)
)

AMENDED COMPLAINT

Plaintiff, Velocity Micro, Inc. (“Plaintiff”), by counsel, brings this action against Defendant The EDGE Interactive Media, Inc. (“Defendant”) for trademark infringement, false designation of origin and description of fact, false advertising, unfair competition, and fraud on the United States Patent and Trademark Office (“USPTO”). In support thereof, Plaintiff states the following:

PARTIES

1. Plaintiff is a corporation duly organized and existing under the laws of the Virginia, with a principal place of business at 7510 Whitepine Road, Richmond, Virginia 23237.
2. Defendant 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.

JURISDICTION AND VENUE

3. This action is for false advertising, false designation of origin and description of fact and unfair competition pursuant to the Lanham Act §43(a), 15 U.S.C. §1125(a), trademark infringement under the law of the Commonwealth of Virginia and common law, cancellation of a registered trademark pursuant to the Lanham Act § 37, 15 U.S.C. §1119, false or fraudulent trademark applications and registration pursuant to the Lanham Act § 38, 15 U.S.C. §1120, injunctive relief pursuant to 15 U.S.C. §1116 and recovery for damages for violation of the Lanham Act pursuant to 15 U.S.C. §1117.

4. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 as it involves claims presenting federal questions under 15 U.S.C. § 1121(a) and 15 U.S.C. §§ 1052, 1116, 1117, 1119, 1120 and 1125. This Court also has supplemental jurisdiction over the asserted claim of common law trademark infringement pursuant to 28 U.S.C. § 1367(a), because such claim is so related to those claims under which the Court has original jurisdiction that it forms part of the same case and controversy under Article III of the United States Constitution.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because it is a district in which a substantial part of the events or omissions giving rise to the claim occurred and in which Defendant is subject to personal jurisdiction.

6. This Court has personal jurisdiction over Defendant because it has committed, directed, authorized, endorsed and/or approved of acts of infringement, fraud and false advertising in the Eastern District of Virginia and caused tortious injury to Plaintiff in the Eastern District of Virginia, Richmond Division, has transacted business in the Commonwealth of Virginia by licensing, directing, authorizing, endorsing and/or approving the sale or

subscription of its products to customers under its trademarks in Virginia, by licensing, directing, authorizing, endorsing and/or approving the availability of an interactive website under its trademarks to Virginia residents 24 hours a day, and has sent a letter threatening legal action against Plaintiff to Plaintiff in Virginia.

FACTS

7. Plaintiff was incorporated in 1998, in Richmond, Virginia, to design, build and sell individualized, high-performance personal computers (“PCs”).

8. Plaintiff 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, Plaintiff has won over 30 major industry awards for its PC performance. Since 2005, Plaintiff has also partnered with major retailers such as Best Buy and Circuit City to sell its PCs.

9. Among its products, Plaintiff 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. Plaintiff has been recognized for its specialty in the field of gaming PCs. Plaintiff’s sales of gaming PCs accounts for approximately seventy-five percent of its annual sales.

10. Plaintiff has adopted the trademark “GAMER’S EDGE” (“Plaintiff’s Mark”) for use on its various gaming PC models. Plaintiff is the owner of the entire right, title, and interest in and to Plaintiff’s Mark.

11. Plaintiff’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, including this District, since at least as early as 1998.

12. Plaintiff has used Plaintiff's Mark on its gaming PCs since as early as 1998. Gaming PCs sold under Plaintiff's Mark have accounted for \$12 million in sales since 1998, which is a significant percentage of Plaintiff's sales of gaming PCs.

13. Plaintiff has sold gaming PCs under Plaintiff's Mark via Plaintiff's Internet website in all 50 states, Canada, and in many foreign countries. Plaintiff's recent partnership with Circuit City and Best Buy has increase Plaintiff's sales of gaming PCs under Plaintiff's Mark nationwide.

14. Plaintiff also sells a line of gaming PCs under the trademark "EDGE".

15. Plaintiff's Mark has acquired distinctiveness and secondary meaning signifying Plaintiff and its products. The public and trade have come to rely on Plaintiff's Mark to distinguish its products from those of others, and to serve as an indicator of source for such products. Plaintiff's Mark represents a valuable asset owned by Plaintiff.

16. Defendant was incorporated in California in 1990.

17. Defendant initially designed and sold video games and published a video game magazine and comic books.

18. Sometime after 2003, Defendant began to promote specific gaming PCs on its website, www.edgegames.com (the "Website"), under the trademark EDGE.

19. On information and belief, since 2003, Defendant has sold relatively few, if any, PCs under the trademark EDGE.

20. On information and belief, Defendant has never sold any PCs under the trademark GAMER'S EDGE.

21. On information and belief, Defendant currently has annual sales of \$140,000, and only three employees.

22. On information and belief, the majority of Defendant's sales have resulted from marketing and selling comic books, magazines and video game software.

23. Defendant represents on the Website that it has licensed the EDGE mark for magazines to a company called Future Publishing.

24. The Website contains a link to the "Official Site" of EDGE magazine, a website that is represented to be copyrighted and maintained by Future Network USA (the "EDGE Magazine Website," also available at <http://www.next-gen.biz/>).

25. The EDGE Magazine Website is accessible to Internet users throughout the United States, including users located in Virginia, 24 hours a day, seven days a week.

26. The EDGE Magazine Website provides interactive features and services to all Internet users, including news related to video gaming, blogs (postings by Internet users that other users may read and comment upon) and feature stories regarding video gaming. It also provides a means to subscribe to EDGE Magazine online, as well as by mail.

27. The EDGE Magazine Website also allows Internet users to exchange information with the website host and register for use of the Website. Internet users may register with the EDGE Magazine Website, for use of the forums, blogs, and other interactive features, by providing a username and password to the website host.

28. The EDGE Magazine Website provides Internet users with a means to subscribe to EDGE Magazine by clicking on a link to order the magazine online, as well as to order a subscription by sending a check to "Edge Magazine Subscriptions" in Virginia Beach, Virginia.

29. On information and belief, Defendant licenses, assigns, endorses, and/or approves of the use of the mark EDGE on EDGE Magazine.

30. Defendant recently sought and obtained registration of the trademark GAMER'S EDGE (the "Registered Mark") on the principal register of the USPTO, Registration Number 3,381,826, filed on February 5, 2006, and registered on February 12, 2008 in International Class 9 for the following goods:

- a. 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.

The USPTO required, and Defendant agreed, to disclaim the word “GAMER’S” in connection with this registration because the word is “highly descriptive” of the goods sold by Defendant.

31. Defendant has applied for, but not obtained, registration of the following trademarks with the USPTO (collectively referred to as Defendant’s “Pending Marks”):

a. THE EDGE, Serial Number 75/077,113, filed on March 22, 1996, in the following relevant class:

IC 9, for: Video game peripherals, namely, joysticks, wireless game controllers, steering wheel style game controllers; computers; computer accessories, namely, keyboards, mice; Player-operated electronic game controllers for electronic video game machines, plug- in memory devices and memory cards; headphones; augmented reality headsets; virtual reality headsets; storage disc cases in the nature of compact disc cases or DVD disc cases; video display and capture cards; audio cards; audio speakers; web cameras; backpacks designed for carrying portable computers, computer accessories and computer peripherals; carrying cases and bags, all for carrying portable computers computer accessories and computer peripherals; video game machines for use with television; video game software; computer game software for use in location based entertainment centers; and

b. EDGE, Serial Number 78/807,479, filed on February 5, 2006, in IC 9 for: computer game software, computer game programs, video game software, video game programs, computer game software that may be downloaded from a global computer network, video game software that may be

downloaded from a global computer network, computer game cartridges to be used in computer game machines adapted for use with television receivers, video game cartridges, computers, computer accessories, plug-in boards, peripheral devices, flash cards, set-top boxes, cable modems, mobile game devices, handheld game devices, video game consoles, video game assessories [sic], video game peripherals, augmented reality games, virtual reality games, games designed for use with mobile entertainment devices.

32. Defendant is not using its Registered Mark in connection with all of the goods listed in its registration.

33. Defendant 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.”

34. To the extent that Defendant has ever used the Registered Mark in connection with any of the foregoing goods, such use was *de minimus* and has been abandoned.

35. Defendant is not using the Pending Mark, THE EDGE, in connection with all of the goods listed in the application for that trademark.

36. Defendant is not using its Pending Mark, EDGE, in connection with all of the goods listed in the application for that trademark.

37. Defendant continues to refer to computer-related goods in connection with the marks EDGE, THE EDGE, and GAMER’S EDGE in its advertising. On its Website, for

example, Defendant currently advertises personal computers and accessories under the mark EDGE, calling them “The World’s Fastest Games Computers.”

38. Defendant’s advertising is not only false, but it is likely to confuse consumers of computers and computer accessories with regard to the source or origin of the goods, since use of the marks EDGE, THE EDGE, and GAMER’S EDGE on computers and computer accessories is confusingly similar to Plaintiff’s use of Plaintiff’s Mark on Plaintiff’s goods.

39. On or about February 15, 2008, Defendant sent Plaintiff a letter demanding that Plaintiff cease all use of the trademarks EDGE and GAMER’S EDGE on Plaintiff’s products (the “Demand Letter”). The Demand Letter is attached hereto as Exhibit A and incorporated herein by reference.

40. In the Demand Letter, Defendant threatened to take action to compel Plaintiff to cease use of these marks, should it fail to make an alternate acceptable proposal in settlement of the alleged infringement.

41. Until Plaintiff received the Demand Letter, it was unaware of Defendant’s use of the marks EDGE, THE EDGE, and GAMER’S EDGE.

42. Since 1998, Plaintiff has established significant distinctive, secondary meaning in the use of Plaintiff’s Mark on its products. Since Plaintiff has been using Plaintiff’s Mark 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 Defendant’s use of the marks EDGE and GAMER’S EDGE on computers and computer accessories.

COUNT I

FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION OF FACT AND FALSE ADVERTISING UNDER THE LANHAM ACT

43. The allegations of paragraphs 1 through 42 above are incorporated herein by reference.

44. Defendant's affixation, annexation, or other uses of the marks EDGE, THE EDGE and GAMER'S EDGE in conjunction with computer-related goods constitute false designations of origin, or false or misleading descriptions or representations of fact, that are likely to cause confusion, to cause mistake, or to deceive others to believe that the products actually made or offered by Defendant are made by, sponsored by, approved by, originate with, or are affiliated with Plaintiff.

45. Defendant's use of the marks, EDGE, THE EDGE and GAMER'S EDGE in conjunction with computer-related goods constitutes false advertising that is likely to lead consumers to believe that Defendant's goods originate from the Plaintiff when they do not.

46. Defendant's actions constitute false advertising, false designation of origin, and false description of fact in violation of 15 U.S.C. § 1125(a).

47. Defendant's actions have damaged Plaintiff and its business.

48. Unless temporarily, preliminarily and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

49. Because Plaintiff's use of Plaintiff's Mark is prior to Defendant's use of its Registered Mark, and Defendant's Registered Mark is not yet incontestable under 15 U.S.C. § 1065, Plaintiff is entitled to cancellation of Defendant's Registered Mark pursuant to 15 U.S.C. § 1052.

50. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct, as well as Defendant's profits obtained from its infringing conduct, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

51. On information and belief, Defendant's actions are willful and deliberate, and they amount to exceptional circumstances, justifying an award of attorneys' fees to Plaintiff pursuant to 16 U.S.C. § 1117.

COUNT II

UNFAIR COMPETITION UNDER THE LANHAM ACT

52. The allegations of paragraphs 1 through 51 above are incorporated herein by reference.

53. Plaintiff and Plaintiff's Mark have become uniquely associated with Plaintiff's products, namely its gaming PCs, and the public identifies Plaintiff as the source for its gaming PCs.

54. Defendant has marketed and continues to use the marks EDGE, THE EDGE and GAMER'S EDGE for computer-related products without Plaintiff's consent, and in doing so has deceived, misled, and confused consumers and enabled Defendant to unfairly capitalize on and trade off of Plaintiff's reputation and goodwill associated with Plaintiff's Mark.

55. By adopting marks that are identical or so similar to Plaintiff's Mark in connection with nearly identical goods, Defendant is unfairly competing with Plaintiff by conducting business on the goodwill built by Plaintiff and diluting the distinctive value of Plaintiff's Mark, one of Plaintiff's core assets, in violation of 15 U.S.C. § 1125(a).

56. Defendant's actions have damaged Plaintiff and its business.

57. Unless temporarily, preliminary, and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

58. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct, as well as Defendant's profits on sales of computer-related goods, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117.

59. On information and belief, Defendant's actions are willful and deliberate, and they amount to exceptional circumstances, justifying an award of attorneys' fees to Plaintiff pursuant to 16 U.S.C. § 1117.

COUNT III

COMMON LAW INFRINGEMENT

60. The allegations of paragraphs 1 through 59 above are incorporated herein by reference.

61. Plaintiff has used Plaintiff's Mark and has acquired considerable goodwill, distinctiveness, and wide-scale recognition with regard to its Mark. Plaintiff has invested heavily in advertising, promotion and use of Plaintiff's Mark in commerce throughout the United States, including this District, since at least as early as a date preceding Defendant's adoption and use of the marks EDGE, THE EDGE and GAMER'S EDGE in connection with computers and computer accessories. The public has come to associate Plaintiff's Mark with Plaintiff and Plaintiff's goods and services.

62. Defendant is using an identical mark, GAMER'S EDGE, and similar marks, THE EDGE and EDGE, on related and confusingly similar goods and/or services, in the

same or similar channels of trade as Plaintiff's, without Plaintiff's consent or authorization, and such use is highly damaging to the Plaintiff and Plaintiff's Mark.

63. Defendant's use of the marks EDGE, THE EDGE and GAMER'S EDGE for its computer-related products has created a likelihood of confusion, mistake, or deception, and therefore infringes on Plaintiff's Mark in violation of the common law of the Commonwealth of Virginia.

64. Defendant's actions damage and threaten to further damage the value of Plaintiff's Mark, the goodwill and the business associated with Plaintiff's Mark.

65. Unless temporarily, preliminary, and permanently enjoined, Defendant's conduct will cause Plaintiff irreparable harm for which there exists no adequate remedy at law.

66. Plaintiff is entitled to recover its damages and attorney's fees from Defendant an amount to be proved at trial.

67. Plaintiff is further entitled to recover its attorneys' fees from Defendant.

COUNT IV

FRAUD ON THE UNITED STATES PATENT AND TRADEMARK OFFICE

68. The allegations of paragraphs 1 through 67 above are incorporated herein by reference.

69. Defendant has applied for and obtained its Registered Mark by making false representations regarding the goods associated with that trademark on its application for registration.

70. Defendant has applied for the Pending Marks by making false representations regarding the goods associated with such marks on its applications for registration.

71. Defendant knew or should have known that the representations made by it with respect to the goods set forth on its applications for registration for the Registered Mark and the Pending Marks were false.

72. Defendant knowingly made such false representations with respect to the Registered Mark and the Pending Marks with the intent to induce the USPTO to grant Defendant the registration of such marks in connection with goods that the Defendant does not sell, creating an unreasonable restraint on trade in those goods.

73. Defendant's false representations are material, as they directly affect the scope of the goods covered by its Registered Mark and its Pending Marks.

74. The USPTO relied on the false representations of Defendant when it granted registration of the Registered Mark for use with the foregoing goods.

75. The USPTO has relied and continues to rely on the false representations of Defendant when considering the applications of the Pending Marks for use with the goods listed in Defendant's applications for the Pending Marks.

76. Plaintiff has been damaged by Defendant's false representations, because the Registered Mark and Pending Marks encompass goods that are likely to be confused with Plaintiff's goods.

77. Defendant's false description of goods on its applications for its Registered Mark and Pending Marks renders the respective registration and applications void *ab initio*, pursuant to 15 U.S.C. §1051.

78. Defendant's false representations on its application for the Registered Mark constitute false or fraudulent procurement of a trademark registration in violation of 15 U.S.C. §1120.

79. Plaintiff is entitled to recover from Defendant all damages Plaintiff has sustained because of Defendant's improper conduct in an amount to be proved at trial.

80. As a result of Defendant's improper conduct, Defendant's Registered Mark should be cancelled by the Court, pursuant to 15 U.S.C. § 1119.

81. As a result of Defendant's improper conduct, Defendant's Pending Marks should be declared by the Court to be void *ab initio*.

COUNT V

DECLARATORY JUDGMENT

82. The allegations of paragraphs 1 through 81 above are incorporated herein by reference.

83. In its Demand Letter, Defendant alleged that Plaintiff is infringing on Defendant's marks, EDGE and GAMER'S EDGE, by using them on Plaintiff's products and demanded that Plaintiff cease using those marks on its products.

84. However, Plaintiff used the mark GAMER'S EDGE exclusively on its gaming PCs prior to Defendant's use of the marks GAMER'S EDGE, EDGE or any other mark, if ever, on gaming PCs.

85. Defendant did not use any mark on gaming PCs until after Plaintiff's first use.

86. Defendant's use of the marks EDGE and GAMER'S EDGE prior to Plaintiff's use of the mark EDGE, if ever, was in conjunction with products that are not likely to be confused with Plaintiff's products and/or had not developed the necessary secondary meaning or distinctiveness likely to cause confusion among consumers as to the source of Defendant's products.

87. As a result of the foregoing, there is an actual controversy between the parties concerning ownership and/or the right to use the marks EDGE and GAMER's EDGE on various products.

88. Plaintiff seeks a declaration from the Court, pursuant to 28 U.S.C. § 2201, that Plaintiff's use of Plaintiff's Mark and the mark EDGE on its products does not infringe Defendant's prior use of the marks EDGE or GAMER'S EDGE.

DEMAND FOR JURY TRIAL

89. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by a Jury.

WHEREFORE, Plaintiff prays that the Court enter an order:

1. preliminarily and permanently enjoining Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, pursuant to 15 USC § 1116 and the equity jurisdiction of this Court, from using the trademarks EDGE, THE EDGE or GAMER'S EDGE, or any other trademark in combination with other words or symbols, or any other marks or symbols which are confusingly or deceptively similar to, or colorably imitative of Plaintiff's Mark, on or in connection with the importation, sale, offering for sale, distribution, exhibition, display or advertising of any computer-related goods;

2. preliminarily and permanently enjoining Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, from directly or indirectly falsely advertising

or promoting the trademarks EDGE, THE EDGE or GAMER'S EDGE, or any other trademark in combination with other words or symbols, or any other marks or symbols which are confusingly or deceptively similar to, or colorably imitative of Plaintiff's Mark, on or in connection with the importation, sale, offering for sale, distribution, exhibition, display or advertising of any computer-related goods;

3. preliminarily and permanently enjoining Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, from making or inducing others to make any false, misleading or deceptive statement of fact, or representation of fact in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of the trademarks EDGE, THE EDGE or GAMER'S EDGE, or any other trademark in combination with other words or symbols, or any other marks or symbols which are confusingly or deceptively similar to, or colorably imitative of Plaintiff's Mark, on or in connection with the importation, sale, offering for sale, distribution, exhibition, display or advertising of any computer-related goods;

4. requiring Defendant to pay damages to Plaintiff in the amount of Plaintiff's actual and consequential damages and any profits of Defendant resulting from Defendant's false and misleading advertisements and marketing, trademark infringement, unfair competition, and false representations to the USPTO pursuant to 15 U.S.C. § 1117(a), 15 U.S.C. § 1120, and the common law of the Commonwealth of Virginia;

5. requiring Defendant and its officers, agents, servants, employees, representatives, attorneys, successors, licensees and assigns, and all others in active concert or participation with them, to not destroy but deliver up to this Court, pursuant to 15 USC § 1118,

all of the following: dies, molds, letterheads, advertising materials, computer programs in any language or format (including HTML, Java or other formats for use in Internet web pages), labels, packages, containers, name plates, and any other printed or electronic matter of any nature, and any products in their possession bearing or using the marks, EDGE, THE EDGE GAMER'S EDGE or any other similar trademark either alone or in combination with other words or symbols, or any colorable imitation of the Plaintiff's Mark, as such marks are used on computer-related products for the purposes of destruction thereof;

6. finding this an exceptional case and requiring Defendant to pay Plaintiff additional damages equal to three times the actual damages awarded Plaintiff pursuant to 15 U.S.C. § 1117(a).

7. requiring Defendant to pay all of Plaintiff's reasonable attorneys' fees, costs and expenses, including those available under 15 U.S.C. § 1117(a), and any other applicable law;

8. awarding Plaintiff prejudgment and post-judgment interest on any monetary award in this action;

9. canceling Defendant's Registered Mark on the principal register of the USPTO, pursuant to 15 U.S.C. § 1119 and 15 U.S.C. § 1052;

10. declaring Defendant's applications for the Pending Marks to be void *ab initio*;

11. declaring that Plaintiff's use of Plaintiff's Mark and the mark EDGE does not infringe on Defendant's use of the marks EDGE and GAMER'S EDGE, pursuant to 28 U.S.C. § 2201; and

12. awarding Plaintiff such other and further relief as the Court deems just and equitable.

Respectfully submitted,

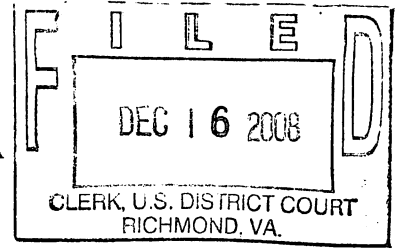
VELOCITY MICRO, INC.

By: _____ /s/ _____
Of Counsel

Robert L. Brooke (VSB # 23744)
Email: rob.brooke@troutmansanders.com
Amy G. Marino (VSB # 71236)
Email: amy.marino@troutmansanders.com
Stephen C. Piepgrass (VSB # 71361)
Email: stephen.piepgrass@troutmansanders.com
TROUTMAN SANDERS LLP
Post Office Box 1122
Richmond, Virginia 23218
(804) 697-1200 (voice)
(804) 697-1339 (facsimile)
Counsel for Plaintiff Velocity Micro, Inc.

EXHIBIT B

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 No.: 03:08CV135 - JRS

FINAL ORDER

THIS DAY came Plaintiff Velocity Micro, Inc., and Defendant The Edge Interactive Media, by counsel, and represented that the parties have resolved this matter and settled the dispute between them. Accordingly, it is hereby ORDERED that:

- (1) The third party complaint of The Edge Interactive Media, Inc. against Defendant Best Buy, Inc. is dismissed without prejudice, pursuant to Federal Rule of Civil Procedure 41;
- (2) The motion of Edge Games, Inc. to be joined as a party is granted;
- (3) The answer and counterclaim of Edge Games, Inc., previously identified as Exhibit D to Docket entry 32 is deemed filed herein (the third party complaint having been dismissed as stated herein is not included in this filing);

(4) The Complaint of Velocity Micro, Inc. against The Edge Interactive Media, Inc. is dismissed with prejudice; Edge Games, Inc. and The Edge Interactive Media, Inc. are deemed to have defended and succeeded on the merits with respect to the Complaint;

(5) The Order granting sanctions to Velocity Micro, Inc. is vacated and no sanctions shall issue against The Edge Interactive Media, Inc.

(6) Judgment on all Counts of the counterclaims of The Edge Interactive Media, Inc. and Edge Games, Inc. against Velocity Micro, Inc. is entered against Velocity Micro, Inc. However, the parties having resolved, pursuant to a confidential settlement agreement, all remaining matters including, but not limited to, all damages and/or other forms of relief associated with remedying any liability, Velocity Micro, Inc. shall have no further liability to The Edge Interactive Media, Inc. or Edge Games, Inc., and The Edge Interactive Media, Inc. and Edge Games, Inc. may seek no further relief against Velocity Micro, Inc. related to the subject matter of this action.

Nothing further remaining to be done herein, this matter is stricken from the court's docket and placed among the ended causes.

Enter: 12/16/2008

James A. Spencer
Chief United States District Judge

WE ASK FOR THIS:

William N. Roberts
Counsel for Edge Games, Inc.
Edge Interactive Media, Inc.
Paul John
Counsel for Velocity Micro, Inc.

EXHIBIT C

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Pologeorgis

Mailed: December 18, 2008

Cancellation No. 92049162

Velocity Micro, Inc.

v.

EDGE Games, Inc.

Petitioner, without the written consent of respondent, filed a withdrawal of the petition for cancellation on December 16, 2008.

Trademark Rule 2.114(c) provides that after an answer is filed, the petition for cancellation may not be withdrawn without prejudice except with the written consent of respondent.

In view thereof, and because the withdrawal was filed after answer, the petition for cancellation is dismissed with prejudice.

***By the Trademark Trial
and Appeal Board***