

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

Mailed: March 30, 2012

Cancellation No. 92051465

**EA Digital Illusions CE AB
and Electronic Arts Inc.**

v.

**Edge Games, Inc.
Future Publishing, Ltd.**

Jennifer Krisp, Interlocutory Attorney:

The Board has thoroughly reviewed this proceeding, which includes various motions and communications, as well as responses thereto, filed by the parties herein since the time the Board issued its July 11, 2011 order, including respondent Future Publishing Ltd.'s motion (filed July 28, 2011) for cancellation of Registration No. 3105816 pursuant to the District Court's final judgment;¹ respondent Edge Games, Inc.'s motion (filed August 3, 2011) to withdraw (reverse) its Section 7 surrender of Registration Nos. 3559342 and 2219837;² and Edge

¹ Edge Games, Inc.'s objections, as set forth in its October 27, 2011 filing, regarding service of said motion are unpersuasive. Future Publishing, Ltd.'s motion includes a proper certificate of service, indicating service, by email and by first class mail, on July 28, 2011, on Edge Games, Inc. at the correct address of record.

Edge Games, Inc.'s brief filed September 29, 2011 is an impermissible surreply to Future Publishing, Ltd.'s motion. See Trademark Rule 2.127(a); TBMP § 502.02(b) (3d ed. 2011).

² As noted in the Board's August 25, 2011 order, Edge Games, Inc.'s motion does not include the required proof of service.

Games, Inc.'s motion (filed October 4, 2011) to reverse division of Registration No. 2219837.³

As a preliminary matter, the Board notes that respondents Edge Games, Inc. and Future Publishing, Ltd. have both filed responses to the Board with regard to the issue of designation of lead counsel, and in particular notes their filings of September 25, 2011 and September 23, 2011, respectively.⁴ By way of said responses, the respondents point out that they have adverse positions, and that they do not find that their interests would be served by their appointment of one lead counsel. Furthermore, the same is evident from respondent's filings with respect to the various substantive matters. Moreover, it is acknowledged that Tim Langdell of Edge Games, Inc. is not an attorney, and thus is precluded from serving as legal counsel for any party in this proceeding. See TBMP § 117.08 (3d ed. 2011). Additionally, given the failure to include proof of service of several of its own filings, the Board unequivocally rejects Edge Games, Inc.'s offer (set forth

Petitioners served a brief in opposition to said motion on August 29, 2011; accordingly, Edge Games, Inc.'s reply brief, filed September 29, 2011, is untimely. See Trademark Rule 2.127(a). Moreover, as with its original motion, Edge Games, Inc.'s reply brief does not include the required proof of service. See Trademark Rule 2.119(a). Also, its brief exceeds the allowable ten-page limit. See Trademark Rule 2.127(a). Edge Games, Inc.'s subsequent filing on October 3, 2011, with a Certificate of Service dated September 28, 2011, is also untimely.

³ Future Publishing, Ltd.'s brief filed October 27, 2011 in opposition to the motion is untimely.

⁴ Edge Games, Inc.'s responses on this issue, filed on July 28, 2011, September 25, 2011 and October 3, 2011, all fail to include

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in its October 3, 2011 filing, which, itself, also fails to include proof of service) to carry out the role of sending and receiving correspondence on behalf of both respondents.

In view of these circumstances, respondents' own appointment of one lead counsel is not feasible, and the Board will not make such an appointment. In view of these circumstances, this issue, and the Board's instruction that respondents appoint lead counsel, are now moot.

Turning to the status of this cancellation proceeding, on October 8, 2010, the United States District Court for the Northern District of California ("District Court") issued a final judgment in Case No. 10-CV-2614-WHA, wherein it specifically ordered the USPTO "to cancel U.S. Trademark Registration Nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826" pursuant to Trademark Act § 37, 15 U.S.C. § 1119. The record before the Board does not include any court ruling which overturns, invalidates or voids said final judgment. The Board is clearly bound by the mandate issued by way of the final judgment, and has no power or authority to deviate therefrom. *See In re Wella A.G.*, 858 F.2d 725, 8 USPQ2d 1365, 1368 (Fed. Cir. 1988). *See also, e.g., Goya Foods Inc. v. Tropicana Products Inc.*, 846 F.2d 848, 6 USPQ2d 1950, 1954 (2nd Cir. 1988). In its filings herein, Edge Games, Inc. has asserted no valid authority

proof of service of a copy thereof on the other parties to this

under which the final judgment issued by the District Court is not valid and binding on the Board. Moreover, on November 14, 2010, Edge Games, Inc. filed with the Board a voluntary surrender with prejudice of each of the five registrations that are the subject of the final judgment of the District Court.

It is apparent from the record and prevailing authorities that any relief from the final judgment of the District Court that Edge Games, Inc. seeks, whether based on ownership of one or more of the involved registrations, based on alleged false or misleading statements made to the District Court, or based on other allegations or theories, lies solely in that court of law. In view thereof, Edge Games, Inc., is allowed until twenty (20) days from the mailing date of this order in which to file a paper herein notifying the Board as to whether Edge Games, Inc. has filed any motion in the District Court seeking reconsideration, review or modification of the final judgment rendered therein, or has pursued any available form of relief from judgment in the District Court. In the event that Edge Games, Inc. did file any such motion, it is directed to include in its response a copy of the decision issued by the District Court with respect to or in response to such motion.

In the event that Edge Games, Inc. fails to file with the Board as directed herein, or if its filing indicates that it

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has not prevailed on a post-judgment motion in the District Court, the Board will issue an order in fulfillment of the District Court's October 8, 2010 final judgment, directing the Commissioner of Patents and Trademarks and Assistant Commissioner for Trademarks to cancel U.S. Registration Nos. 2219837, 2251584, 3105816, 3559342 and 3381826.⁵

This cancellation proceeding otherwise remains suspended. See Trademark Rule 2.117(c).

A copy of this Board order has been sent to each of the following:

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⁵ Edge Games Inc.'s motion to withdraw (reverse) its surrender of Registration Nos. 3559342 and 2219837 is denied. Edge Games, Inc.'s motion to reverse division of Registration No. 2219837 is denied. The Board defers ruling on Future Publishing Ltd.'s motion for cancellation of Registration No. 3105816 pursuant to the District Court's final judgment.