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Filing date: **12/15/2023**

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

Proceeding no.	92075393
Party	Plaintiff Mobigame
Correspondence address	PATRICK J. CONCANNON NUTTER, MCCLENNEN & FISH, LLP SEAPORT WEST, 155 SEAPORT BOULEVARD BOSTON, MA 02210 UNITED STATES Primary email: docket@nutter.com Secondary email(s): pconcannon@nutter.com, mmiller@nutter.com, docket@nutter.com 617-439-2177
Submission	Motion to Extend
Filer's name	Patrick J. Concannon
Filer's email	pconcannon@nutter.com, docket@nutter.com
Signature	/PJC/
Date	12/15/2023
Attachments	Motion to Extend Petitioners Testimony Period and Compel Respondents Cooperation with Ex A-C.pdf(1635759 bytes ) Ex D-F.pdf(1978974 bytes )

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

MOBIGAME,	)	
	)	
Petitioner,	)	
v.	)	Cancellation No.: 92/075393
	)	Registration No. 5,934,761
EDGE GAMES, INC.,	)	
	)	
Respondent.	)	
	)	

**PETITIONER’S MOTION TO EXTEND PETITIONER’S TESTIMONY PERIOD  
AND COMPEL RESPONDENT TO WITHDRAW CHALLENGE TO APPLE’S  
COMPLIANCE WITH PETITIONER’S SUBPOENA**

Petitioner MOBIGAME hereby moves the Board for a further sixty (60) day extension of its testimony period in this proceeding for the limited purposes of allowing Petitioner to continue pursuing its subpoenas to obtain Apple Inc.’s (“Apple”), Google, Inc.’s (“Google”) and Amazon.com, Inc.’s (“Amazon”) testimony in this proceeding. Petitioner explains below, and demonstrates through evidence included with this motion, that it has good cause for the extension, and that Petitioner’s need for the requested extension is not due to Petitioner’s lack of diligence or unreasonable delay. Petitioner further moves the Board to compel Respondent to withdraw its bad faith challenge to Apple’s complying with Petitioner’s subpoena, or to sanction Respondent for its bad faith interference with Apple’s complying with Petitioner’s subpoena.

**FACTS**

On September 22, 2023, Petitioner filed a consented motion to extend its testimony period by 60 days for limited purposes, namely, for purposes of Petitioner’s pursuit of its

ongoing efforts to compel testimony from Apple, Google, and Amazon for submission as evidence in these proceedings. Respondent conditioned its consent to the motion on the extension being limited to those purposes. There was no agreement between the parties, tacit or otherwise, that such consent was subject to Petitioner's agreement that it would not seek another extension. The Board granted the consented motion, which extended Petitioner's testimony period deadline for such limited purposes to November 23, 2023.

On November 23, 2023, before the expiration of Petitioner's extended testimony period for the limited purposes, the Board suspended activity connection with these proceedings (except as to activity relating to certain motions that already were before the Board).

Petitioner summarizes its efforts to obtain the third-party testimony, and related interactions with Respondent, as follows:

Apple

On September 1, 2023, the District Court for the District of Massachusetts granted Petitioner's application for a Subpoena to Testify at a Deposition in Trademark Cancellation Proceeding for Apple. The proceeding is *Mobigame v. Edge Games, Inc.*, Misc. Business Docket No. 23-91491 (D. Mass.). The subpoena seeks to compel Apple Inc. to testify on certain topics related to Respondent and the mark at issue in these cancellation proceedings. The subpoena to Apple, including Schedule A testimony topics, is included as Ex. A. Petitioner's counsel has engaged in phone discussions with Apple's counsel on September 20, 2023, October 31, 2023, and November 29, 2023 about the subpoena.

In the initial September 20<sup>th</sup> phone discussion, Apple's counsel explained that Respondent had written a letter to Apple on September 5, 2023 objecting to the disclosure of any of Respondent's Apple account information. Respondent's letter to Apple is included at Exhibit B to this motion. As a result of Petitioner's discussions with Apple on September 20<sup>th</sup> and

October 31<sup>st</sup>, Petitioner and Apple reached a tentative understanding that Apple, in lieu of a deposition, would provide certain clarifying business records supported by an authenticating Apple declaration. However, Apple indicated that it could not provide the records until Respondent first withdraws its objection to the provision of the records/information relating to Respondent (it is Apple's general policy to give account holders the opportunity to object to the provision of their records/information in response to a subpoena and to honor such objections).

The account records sought are of little use to Petitioner if not authenticated properly for introduction as evidence before the Board, *e.g.*, as attached to a supporting Apple declaration. The preparation of such a declaration requires thought and would be negotiated by Petitioner and Apple as part of their concluding the subpoena process. Petitioner cannot prepare the required declaration, or comment on such a declaration prepared by Apple without having reviewed the records/information that Apple would make available. Nor can Petitioner be sure Apple has fully complied with the subpoena, as Petitioner and Apple have negotiated, without seeing the records/information.

In an effort to clear any remaining hurdles to Apple's providing the records/information, at the end of an October 31, 2023 meet and confer phone conference about unrelated issues (Petitioner's proposed Motions to Quash deposition notices), Petitioner asked Respondent whether it would withdraw its objection to Apple's provision of the records/information. Respondent refused to respond and hung up the phone. Thereafter, Petitioner sent emails to Respondent on November 2, 2023, November 8, 2023 and November 13, 2023 seeking the requested cooperation. See Exhibit C. Respondent never responded to those emails.

On November 20<sup>th</sup>, Respondent sent an email to Petitioner, copying Apple's counsel, indicating Respondent's agreement to Apple's providing certain sales information that Apple had

prepared, conditioned on the release occurring without the need for additional extensions.

Respondent's email read in part, "We are informed that if Respondent does not object to Apple delivering the document to you at this time, then this will conclude Apple's obligations under the subpoena and thus remove Petitioner's need for an extension of time." Petitioner's testimony period was set to expire three days later, on November 23<sup>rd</sup>, which happened to be Thanksgiving Day, and the "document" that Respondent refers to (which Petitioner's counsel has yet to see as of this writing) could not have been submitted as evidence without an authenticating Apple declaration. Petitioner logistically could not have negotiated the declaration contents, arranged for its execution by an Apple witness, and filed the declaration by the deadline. Accordingly, Petitioner reached out to the Board to seek permission to file a motion for an extension of the deadline. An exchange of emails between Petitioner, Respondent and Apple Inc.'s counsel ensued concluding on the eve of the deadline, November 22<sup>nd</sup>, the Wednesday before Thanksgiving. Copies of those emails appear at Exhibit D.

*Google, Inc.*

On September 1, 2023, the District Court for the District of Massachusetts granted Petitioner's application for a Subpoena to Testify at a Deposition in Trademark Cancellation Proceeding for Google. The proceeding is *Mobigame v. Edge Games, Inc.*, Misc. Business Docket No. 23-91491 (D. Mass.). As with Apple Inc., the subpoena seeks to compel Google to testify on certain topics related to Respondent and the mark at issue in these cancellation proceedings. The subpoena to Google, including Schedule A testimony topics, is included as Ex. E. Petitioner's counsel has engaged in phone discussions with Google's counsel on September 15, 2023 and November 3, 2023 about the subpoena. Petitioner and Google's counsel have discussed a narrowed scope for the subpoena. To this end, Petitioner also provided information about the topics for the testimony sought. Google indicated it would investigate the possibility

of, in lieu of a deposition, its compiling and providing the documents/information supported by a declaration. Petitioner also sent emails seeking status updates on October 26, 2023, November 15, 2023 and December 1, 2023. Despite Petitioner's diligence, Google has not committed to provide the requested testimony. But it has not indicated that it will not comply with subpoena, making a motion to compel in the district court premature.

*Amazon.com, Inc.*

On October 5, 2023 the District Court for the District of Massachusetts granted Petitioner's application for a Subpoena to Testify at a Deposition in Trademark Cancellation Proceeding for Amazon.<sup>1</sup> The proceeding is *Mobigame v. Edge Games, Inc.*, Misc. Business Docket No. 23-91512 (D. Mass.). As with Apple and Google, the subpoena seeks to compel Amazon to testify on certain topics related to Respondent and the mark at issue in these cancellation proceedings. The subpoena to Amazon, including Schedule A testimony topics, is included as Ex. F.

Petitioner's counsel has engaged in phone discussions with Amazon's outside counsel on November 1, 2023 about the subpoena. Petitioner and Amazon's counsel have also discussed a narrowed scope for the subpoena. Petitioner also provided specific Amazon ASINs (Amazon Standard Identification Number) to focus Amazon's investigation. Amazon's outside counsel indicated she would need to confer with inside counsel to determine Amazon's position on the narrowed requests, including investigating the possibility of, in lieu of a deposition, its compiling and providing the documents/information supported by a declaration. Petitioner also sent emails seeking status updates on November 3, 2023 and December 1, 2023. On December 14, Amazon's outside counsel indicated that she had not heard back from inside counsel and would

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<sup>1</sup> Petitioner's first application for the Amazon subpoena was denied, resulting in the Petitioner obtaining the Amazon subpoena later than the Apple and Google subpoenas.

follow up. Despite Petitioner's diligence, Amazon has not committed to provide the requested testimony. But it has not indicated it will not comply with the subpoena, making a motion to compel in the district court premature.

### **LEGAL STANDARD**

37 C.F.R § 2.121(a) provides: "The deadlines for pretrial disclosures and the testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board."

### **ARGUMENT**

#### ***Extending Petitioner's Testimony Period is Warranted***

As the recitation of facts above and the evidence at the exhibits to this motion evidence, the requested extension does not result from Petitioner's undue delay or lack of diligence in initiating the subpoena process.

If Respondent had cooperated with Petitioner's requests beginning on October 31, 2023 that Respondent withdraw its objection to Apple's release of Respondent's account records, then this extension, as least with respect to Apple, probably would not be necessary. Instead, Respondent delayed until several days prior to the expiration of the testimony period and suggested willingness to withdraw its objection, but only subject to timing conditions that made the taking of testimony from Apple impossible.

#### ***The Board Should Compel Respondent to Withdraw its Challenge to Apple Producing Sales Information***

The Board has the power to manage its docket, to prevent undue delays, and to regulate the conduct of those who appear before it. *See Carrini Inc. v. Carla Carini S.R.L.*, 57 U.S.P.Q.2d 1067, 1069 (TTAB 2000); *The Coffee Studio LLC v. Reign LLC dba Coffee Studio*, 129 U.S.P.Q.2d 1480, 1482, n. 7 (T.T.A.B. 2019). The Board should exercise this authority to

compel Respondent to stop its bad faith interference with Apple's compliance with Petitioner's subpoena.

Apple is ready to produce sales information in response to Petitioner's subpoena. The only thing preventing Apple from doing so is Respondent's baseless refusal to withdraw its challenge to the production. Although Respondent has acknowledged that "Petitioner has a right to receive a copy of [the sales information] in these proceedings," it refuses to consent to Apple providing that sales information to Petitioner. *See* Ex. D at Respondent's Mon, Nov 20, 2023, 7:00 email ("Accordingly, Respondent clarifies its position regarding the report Apple has created, and confirms that Respondent does not object to Apple providing Petitioner with a report containing sales information that Petitioner has a right to receive a copy of in these proceedings."); *see also Id.* at Respondent's Mon, Nov 20, 2023, 9:01 email ("The conditions set for us to withdraw our objections have not been met so our objection is not withdrawn."). Respondent has not provided any reason for its refusal to consent.<sup>2</sup>

Instead, Respondent seeks to impose unnecessary conditions on Apple's provision of the sales information. While these conditions have been shifting, in the most recent iteration the Respondent demanded (without any justification) that Petitioner, without seeing the sales information, (1) agree that the sales information fully satisfies Apple's obligations under the subpoena, and (2) work with Apple to complete a declaration without Petitioner being able to see the sales information that is the subject of the declaration. *See* Ex. D at Respondent's Tues, November 21, 2023, 10:48 email. Only after first receiving Apple's declaration would

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<sup>2</sup> At various times Respondent has tried to confuse matters by referring to its objection to Apple producing, e.g., social security numbers, personally identifiable information, or passwords. To be clear, Petitioner does not seek this information. What is actually at issue here is Respondent's refusal to allow Apple to provide to Petitioner sales information, which Respondent has already seen and knows does not concern social security numbers, personally identifiable information, or passwords.



Respondent allow Petitioner to see the sales information. *Id.* Petitioner rejected Respondent's demand because it is nonsensical, inefficient, and prejudicial to Petitioner—it requires petitioner to agree the sales information fully satisfies the subpoena and work on a declaration based on the sales information, all without seeing the sales information. It is clear Respondent's proposal serves no other purpose than to frustrate Petitioner and increase its costs.

Respondent's bad faith here is further demonstrated by its failure to follow the proper procedures to prevent Apple from providing the sales information. FRCP 45, under which the subpoena issued, sets out the actions one must take to lodge objections or quash it. If Respondent had grounds to challenge Apple's provision of this sales information, Respondent should have followed Rule 45. It did not because its challenge is meritless.

Given Respondent's evident bad faith, the Board should exercise its inherent authority by compelling Respondent to withdraw its current challenge to Apple's provision of the sales information. However, to the extent the Board is not inclined to affirmatively compel Respondent to withdraw its challenge, the Board should exercise its inherent authority to sanction Respondent for maintaining its baseless, bad faith challenge. *See Carrini Inc. v. Carla Carini S.R.L.*, 57 U.S.P.Q.2d 1067, 1071 (T.T.A.B. 2000) (“[t]he Board possesses the inherent authority to control the disposition of cases on its docket, which necessarily includes the inherent power to enter sanctions.”); *see also* TBMP § 527.03 (2023) (“Flowing from the Board's inherent authority to manage the cases on its docket is the inherent authority to enter sanctions against a party.”).

If Respondent will not stop improperly interfering with Apple complying with the subpoena, the Board should preclude Respondent from relying on Apple-related evidence (*e.g.*, evidence of use of the mark at issue on Apple's App Store (and other Apple platforms) and/or

sales therethrough) to show bona fide use of the mark at issue. Such a sanction is appropriate in view of Respondent's bad faith refusal to let Apple provide the sales information in response to the subpoena. The Board took a similar approach in *HighBeam Marketing, LLC v. HighBeam Research, LLC*, Opposition No. 91162372. In *HighBeam*, the Opposer's expert prepared a survey concerning, *e.g.*, actual confusion, relatedness of the services, and overlap of purchasers. See *HighBeam Marketing LLC v. HighBeam Research LLC*, 85 USPQ2d 1902, 1903 (TTAB 2008). Although the Applicant subpoenaed the expert, the Opposer interfered and placed unwarranted conditions on the expert's appearance in response to the subpoena. *Id.* at 1905-1906. As a sanction for the Opposer's role in the expert's failure to comply with the subpoena, the Board precluded Opposer from using as trial evidence the survey prepared by the expert, any report summarizing the results of that survey, or any testimony from the expert. *Id.* at 1907. Respondent's interference with Apple's efforts to comply with Petitioner's subpoena demands similar sanctions.

### **REQUEST FOR RELIEF**

**WHEREFORE**, for the reasons discussed above, Petitioner MOBIGAME respectfully requests that Board grant this Petitioner's Motion to Extend Petitioner's Testimony Period and enter an order:

- Extending for a further sixty days Petitioner's testimony period for the limited purposes of allowing Petitioner to continue pursuing its subpoenas to obtain Apple Inc.'s, Google, Inc.'s and Amazon.com, Inc.'s testimony in this proceeding;

- Compelling Respondent to withdraw its challenge to Apple providing sales information in response to Petitioner’s subpoena; and (alternatively or alternatively)
- Precluding Petitioner from relying on evidence related to Apple to show bona fide use of the mark at issue.

MOBIGAME

By its attorneys,

Nutter, McClennen & Fish, LLP

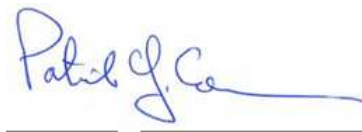


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Boston, MA 02210  
Tel: (617) 439-2000

Dated: December 15, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing “PETITIONER’S MOTION TO EXTEND PETITIONER’S TESTIMONY PERIOD” was served by email upon Respondent at edggames@gmail.com on this 15<sup>th</sup> day of December 2023.



# **Exhibit A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
MOBIGAME,	)	
	)	
Petitioner,	)	
	)	
v.	)	MISC. BUSINESS DOCKET NO.
	)	23-91491
EDGE GAMES, INC.,	)	
	)	
Respondent.	)	
_____	)	

RE: IN THE MATTER OF U.S. TRADEMARK REG. NO. 5,934,761  
CANCELLATION NO. 92075393

FILED IN: THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

**SUBPOENA TO TESTIFY AT A DEPOSITION**  
**IN TRADEMARK CANCELLATION PROCEEDING**

To: Keeper of the Records  
**Apple Inc.**  
c/o Registered Agent  
CT Corporation  
155 Federal Street, Suite 700  
Boston, MA 02210

YOU ARE COMMANDED to appear at Nutter McClennen & Fish LLP, 155 Seaport Blvd, Boston, MA 02210 on **September 15, 2023 at 10AM ET** to testify at a deposition to be taken in United States Patent and Trademark Office Trademark Trial and Appeal Board Cancellation No. 92075393. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters in attached **Schedule A**, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters.

The deposition will be recorded by stenographic means.

You, or your representatives, must also bring with you to the deposition the documents, electronically stored information, or objects identified in attached **Schedule A**, and must permit inspection, copying, testing, or sampling of the material.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/1/2023

/s/ Arnold Pacho  
DEPUTY CLERK

The name, address, e-mail address, and telephone number of the attorney representing Petitioner Mobigame, who requests this subpoena, are:

Patrick J. Concannon (BBO# 643673)  
pconcannon@nutter.com  
Micah W. Miller (BBO# 676189)  
mmiller@nutter.com  
Nutter, McClennen & Fish, LLP  
Seaport West, 155 Seaport Blvd.  
Boston, Massachusetts 02210  
Telephone: (617) 439-2000  
Facsimile: (617) 310-9000

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**PROOF OF SERVICE**

I received this subpoena for (name of individual and title, if any)  
\_\_\_\_\_ on (date)\_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows:

on (date) \_\_\_\_\_.

I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$\_\_\_\_\_ for travel and \$\_\_\_\_\_ for services, for a total of \$\_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address



**Schedule A**  
**Definitions and Instructions**

1. Unless otherwise specified, the terms used herein shall have the meanings set forth in the Federal Rules of Civil Procedure.
2. “Petitioner” means Mobigame, the Petitioner in the Cancellation No. 92075393.
3. “Respondent” or “Edge Games” means Edge Games, Inc. (or the brand “Edge Games”), as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Edge Games, Inc., including, but not limited to, The Edge Interactive Media, Inc.
4. “Apple” means Apple Inc., as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Apple Inc.
5. “Apple Platforms” means the App Store, the Mac App Store, the iTunes Store and/or any other software application download platform operated by Apple.
6. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.
7. “Mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.
8. “Disputed Mark” means standard word mark EDGE GAMES, the subject of TM Reg. No. 5,934,761.

9. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary.

10. The use of singular form includes plural, and vice versa.

11. The use of present tense includes past tense, and vice versa.

### **Testimony Topics**

1. Sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Apple Platforms from January 1, 2008 to the present.

2. Sales or distribution of software made or published by Edge Games via Apple Platforms from January 1, 2008 to the present.

3. Use of the Disputed Mark on Apple Platforms related to the sales or distribution of Testimony Topics 1 and 2.

### **Documents**

1. Documents sufficient to show sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Apple Platforms from January 1, 2008 to the present.

2. Documents sufficient to show sales or distribution of software made or published by Edge Games via Apple Platforms from January 1, 2008 to the present.

3. Documents sufficient to show all uses of the Disputed Mark on Apple Platforms related to the sales or distribution of Testimony Topics 1 and 2.

# **Exhibit B**



Publishers of "EDGE" brand games since 1984

Keeper of the Records  
Apple Inc.  
c/o Registered Agent  
CT Corporation  
155 Federal Street, Suite 700  
Boston, MA 02210

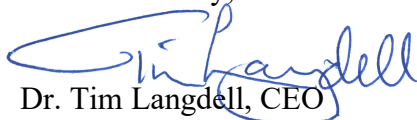
**IN RE: THE MATTER OF U.S. TRADEMARK REG. NO. 56,934,761  
CANCELLATION NO. 92075393  
FILED IN: THE UNITED STATES PATENT AND TRADEMARK  
OFFICE, TRADEMARK TRIAL AND APPEAL BOARD**

Dear Sir or Madam:

We refer to the "SUPOENA TO TESTIFY AT A DEPOSITION IN TRADEMARK CANCELLATION PROCEEDING" sent to Apple Inc. via its Boston agent for service on or about September 1, 2023 in regard to a requirement to attend a location in Boston for deposition on **September 15, 2023 at 10AM ET.**

We are the other party in this trademark matter and as Mobigame (Nutter et al) know, we have protested their attempt to undertake this deposition in Boston given that Apple Inc. is based here in California as are we (EDGE Games, Inc.). It is thus unreasonable to force Apple to be deposed in Boston or to require EDGE Games to travel to Boston for such a deposition. The deposition should take place, if at all, in California. We attach a copy of the subpoena for your reference. For avoid of doubt, insofar as Apple requires our permission to reveal our sales data to Mobigame (Nutter et al), we do not give that permission to give our confidential information.

Yours Sincerely,



Dr. Tim Langdell, CEO

Direct tel: 626 824 0097  
[edgegames@gmail.com](mailto:edgegames@gmail.com)  
[tim@edgegames.com](mailto:tim@edgegames.com)

cc. Nutter et al via email

**EDGE Games, Inc.**  
530 S. Lake Avenue, 171, Pasadena CA 91101  
Tel: 626 449 4334 F: 626 844 4334

# **Exhibit C**

## Patrick Concannon

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**From:** Patrick Concannon  
**Sent:** Monday, November 13, 2023 3:56 PM  
**To:** edgegames  
**Cc:** Micah Miller  
**Subject:** RE: Withdrawal of Edge Games' Objection to Apple Inc.'s Producing Sales Information  
**Attachments:** Apple letter 5Sep23.pdf

**Importance:** High

Dr. Langdell,

Last opportunity for you to send the requested email to the Apple representative at the email address below before we go to Mr. Stanley with a request for leave to file another motion (this time to compel your cooperation and to extend MOBIGAME's testimony period for purposes of obtaining and entering into evidence the Apple, Google and Amazon sales evidence).

We will go to Mr. Stanley tomorrow if we are not copied on the requested email today.

Sincerely,  
Pat Concannon



**Patrick Concannon**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2177

---

**From:** Patrick Concannon  
**Sent:** Wednesday, November 8, 2023 7:02 PM  
**To:** edgegames <edgegames@gmail.com>  
**Cc:** Micah Miller <MMiller@nutter.com>  
**Subject:** FW: Withdrawal of Edge Games' Objection to Apple Inc.'s Producing Sales Information  
**Importance:** High

Dr. Langdell:

We did not hear from you in response to my email below by November 6<sup>th</sup>, as requested.

I ask that you send an email to Apple withdrawing your objection to Apple producing Edge Games' sales information. Please send the email to Apple's counsel, Hannah Cannom ([hcannom@wscllp.com](mailto:hcannom@wscllp.com)), by tomorrow.

If you are not willing to do so, would you please let me know your availability tomorrow, Thursday, November 9<sup>th</sup>, to confer about the matter? I look forward to hearing from you.

Sincerely,  
Pat Concannon



**Patrick Concannon**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2177

---

**From:** Patrick Concannon  
**Sent:** Thursday, November 2, 2023 4:08 PM  
**To:** edgegames <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>  
**Subject:** Withdrawal of Edge Games' Objection to Apple Inc.'s Producing Sales Information

Dr. Langdell,

Following Mobigame's subpoena to Apple Inc., you sent a September 5, 2023 letter to Apple stating: "For avoid [sic] of doubt, insofar as Apple requires our permission to reveal our sales data to Mobigame (Nutter et al), we do not give that permission to give our confidential information." I have attached a copy of your letter for reference. After you sent that letter, and during a September 21 call with Attorney Lawrence Stanley, you represented that Edge Games would not object to Apple providing sales information, provided that it is designated "Confidential – For Attorneys' Eyes Only" under the Protective Order.

During our October 31<sup>st</sup> call, I asked you whether Edge Games would withdraw its objection to Apple producing sales information related to Edge Games' alleged sales, provided that the sales information is designated "Confidential – For Attorneys' Eyes Only" under the Protective Order. You did not answer my question.

Please confirm by November 6, 2023 that Edge Games will withdraw its objection to Apple producing the sales information. We also ask that you send an email withdrawing your objection to Apple's counsel, Hannah Cannom ([hcannom@wscllp.com](mailto:hcannom@wscllp.com)) by the same date.

If we do not receive your confirmation by that date, we will consider this issue ripe to raise with the Board.

Sincerely,  
Pat Concannon



**Patrick Concannon**  
Nutter McClennen & Fish LLP  
155 Seaport Blvd / Boston, MA 02210  
Direct / 617-439-2177  
[PConcannon@nutter.com](mailto:PConcannon@nutter.com)

# **Exhibit D**



## Patrick Concannon

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**From:** Tim@Edge <edgegames@gmail.com>  
**Sent:** Wednesday, November 22, 2023 1:22 PM  
**To:** Hannah Cannom  
**Cc:** Patrick Concannon; Micah Miller; Docket; EDGE Games  
**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Dear Ms. Cannom,

I frankly do not understand what the issue is here. Two months ago Mobigame told the USPTO that it had advanced talks with Apple through its legal counsel to the effect that rather than deposing a representative of Apple, instead Apple would be producing a sales report along with a declaration in lieu of deposition and transcript. And that the 60-day extension to November 23 was more than sufficient time for Apple to generate the sales report and sign a simple covering declaration to attach it to.

We do not understand why, since the declaration is a simple formality to state effectively that the exhibited sales report is authentic, why you as Apple's legal counsel can't swear that simple declaration stating that fact and why Mr. Concannon refuses to accept that solution? Why does he seem to be insisting that an Apple (senior?) employee must make the declaration rather than you as an Apple representative?

This should have easily been concluded this week before the Thanksgiving Holiday and ahead of the deadline for this submission set by the USPTO of tomorrow.

Kind regards,  
Dr Tim Langdell CEO  
EDGE Games Inc  
Registrant in pro se

On Wed, Nov 22, 2023 at 9:13 AM Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)> wrote:

Can the parties please agree to stipulate to the authenticity and admissibility of the Apple production such that a declaration is not needed? I understand that Respondents may need to see the production first, but perhaps this could avoid some of this posturing.

Thanks,

Hannah

---

**From:** EDGE <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Date:** Wednesday, November 22, 2023 at 8:02 AM  
**To:** Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>  
**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>, Docket <[docket@nutter.com](mailto:docket@nutter.com)>, Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>  
**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Sirs,

You are being unreasonable. It is Apple that has designated the report 'confidential for attorneys eyes only,' although we agree with that designation. Since they have the report ready to attach to their declaration and only now need to draft a declaration that you say meets USPTO requirements, our proposal is not in the least restrictive. Frankly, we are surprised you didn't use the past three months of speaking with Apple to discuss the acceptable wording of a covering declaration much earlier. Or that you didn't use the over two years of discovery to do a discovery deposition with them. There is inexcusable neglect here by Petitioner.

Be reasonable and accept the offer of the 30-day extension.

Sincerely,

Dr Tim Langdell CEO

EDGE Games Inc

Registrant in pro se

Sent from my iPhone with apologies for any errors due to Apple's auto-correct or my mis-typing.

On Nov 22, 2023, at 6:34 AM, Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)> wrote:

Dr. Langdell,

We cannot agree to your overly restrictive proposal. Due to your objection, Petitioner has not been able to see the sales report to which you refer. You have already designated the sales report as "Confidential – For Attorneys' Eyes Only," and, in your own words, "Petitioner has a right to receive a copy" of it. Will you withdraw your objection to Apple producing the sales information at this time or not?

Sincerely,

Pat Concannon

**Patrick Concannon**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2177

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**From:** Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Sent:** Tuesday, November 21, 2023 10:48 PM  
**To:** Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>  
**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>; Docket <[Docket@nutter.com](mailto:Docket@nutter.com)>; EDGE Games <[edgegames@gmail.com](mailto:edgegames@gmail.com)>; Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>  
**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Dear Mr. Concannon,

Given this feedback from Ms. Cannom on behalf of Apple, since the existing extension of time to conclude the Apple subpoena runs out on November 23, 2023, we make the following proposal for a further extension of time by mutual consent of the parties. We trust this proposal is acceptable to Petitioner since we believe it is most fair. It is also timely since it is right that we reach mutual consent before the expiry of the current extension if possible.

We are informed that Apple prepared its sales report responsive to the subpoena by last week, and that portion of the subpoena was thus completed by this current deadline. We thus propose a mutually agreed extension of a further 30-days for the sole purpose of Apple and Petitioner resolving the wording of the covering declaration to which the existing sales report will be exhibited, and the execution of that declaration. If this proposal is acceptable to you, then when Apple informs Respondent EDGE Games that the declaration is complete and ready to be executed and delivered to you, we will then confirm our withdrawal of objection in accord with our email as worded dated November 20, 2023 at 7am (in the thread below). At that time the report already prepared by Apple as of last week will be attached to the signed declaration and delivered to Petitioner for it to then file with the USPTO. The timing of this is thus to be as soon as possible but not later than 30-days from November 23, 2023.

We trust this proposal for an inter partes consented extension of time is acceptable since it meets the timing estimated by Apple to conclude the declaration portion of the subpoena, and will avoid the need for the parties to resolve this by a motion for extension of time as is otherwise currently envisaged.

Sincerely,

Dr Tim Langdell CEO

EDGE Games Inc

Registrant in pro se

On Tue, Nov 21, 2023 at 3:46 PM Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)> wrote:

I would expect that we can get it done before the holiday shut down over Christmas/New Years.

---

**From:** EDGE <[edgegames@gmail.com](mailto:edgegames@gmail.com)>

**Date:** Tuesday, November 21, 2023 at 9:00 AM

**To:** Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>

**Cc:** Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>, Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>, Docket <[Docket@nutter.com](mailto:Docket@nutter.com)>

**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Understood. Can you estimate how much further time your client would require, please?

Sent from my iPhone with apologies for any errors due to Apple's auto-correct or my mis-typing.

On Nov 21, 2023, at 7:54 AM, Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)> wrote:

My client is shut down this week and we will not be able to get a declaration produced in that short of an order.

---

**From:** Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)>

**Date:** Tuesday, November 21, 2023 at 8:52 AM

**To:** Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>

**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>, Docket <[Docket@nutter.com](mailto:Docket@nutter.com)>, Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>, EDGE Games

[<edgegames@gmail.com>](mailto:edgegames@gmail.com)

**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393;  
Apple Subpoena

Mr Concannon, Ms Cannon,

Might one of you please confirm you have now completed the covering declaration to which the sales report is to be exhibited and can confirm it will be possible to conclude this matter before Thursday so that an extension of time will not be required? Needless to say, if the covering declaration makes reference to sales figures or sales performance, then it too must be designated as 'confidential for attorneys eyes only,' not just the exhibited sales report.

Kind regards,

Dr Tim Langdell CEO

EDGE Games Inc

Registrant in pro se

On Mon, Nov 20, 2023 at 10:06 AM Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)> wrote:

Dr. Langdell:

I hope you are feeling better.

We intend to work towards finalizing and filing the testimony soon.

Sincerely,

Pat Concannon

**Patrick Concannon**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2177

---

**From:** Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Sent:** Monday, November 20, 2023 12:59 PM  
**To:** Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>  
**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>; Docket <[Docket@nutter.com](mailto:Docket@nutter.com)>; Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>; EDGE Games <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Mr. Concannon,

I am sure Ms. Cannom and Apple are experienced with presenting sales reports to you in a format acceptable to the USPTO. And that this could be easily done today. Why don't you and Ms. Cannom spend the next few hours discussing the testimony document in question and its format, and perhaps by this afternoon you will then be able to clarify that you accept our proposal to remove the objection so you can file without an extension?

Thank you,

Sincerely

Dr Tim Langdell CEO

EDGE Games Inc

Registrant in pro se

On Mon, Nov 20, 2023 at 9:53 AM Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)> wrote:

Dr. Langdell:

We have a few things to work out with Apple for purposes of preparing the testimony for submission in a manner acceptable to the USPTO. I suppose that it is possible that we can/will finalize the submission this week, but given the holiday-shortened week we cannot absolutely commit to it. That is why we are seeking extensions of the testimony period with respect to all three of the third parties in question.

Sincerely,

Pat Concannon

==

**Patrick Concannon**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2177

---

**From:** Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Sent:** Monday, November 20, 2023 12:13 PM  
**Cc:** Micah Miller <[MMiller@nutter.com](mailto:MMiller@nutter.com)>; Docket <[Docket@nutter.com](mailto:Docket@nutter.com)>; Patrick Concannon <[PConcannon@nutter.com](mailto:PConcannon@nutter.com)>; Hannah Cannom <[hcannom@wscllp.com](mailto:hcannom@wscllp.com)>; EDGE Games <[edgegames@gmail.com](mailto:edgegames@gmail.com)>  
**Subject:** Re: Mobigame v. EDGE Games Inc. TTAB Cancellation No 92075393; Apple Subpoena

Dear Mr. Concannon,

At your request, last week we communicated with Ms. Cannom for Apple, and agreed per your request to remove our objection on the understanding that the Apple report be designated 'confidential for attorneys eyes only,' and that the handover happen before November 23rd so that this can conclude the subpoena of Apple and remove your need to ask for an extension of time to deal with the Apple subpoena beyond the current deadline of November 23rd. No sooner did we confirm that in writing and you immediately wrote to the TTAB saying you still wish a further 60-day extension of time to deal with the Apple subpoena, and that you will not be filing any evidence - not even that by Apple -- by the current deadline.

This seems unreasonable and frankly difficult to understand. Please explain yourself since I am assuming both Ms. Cannom and I are equally perplexed.

Sincerely,

Dr Tim Langdell CEO

EDGE Games Inc

Registrant in pro se

On Mon, Nov 20, 2023 at 9:01 AM Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)> wrote:

Ms. Cannom,

The conditions we set for us to withdraw our objections have not been met so our objection is not withdrawn. Please note this.

We simply asked that Mr. Concannon consider this closure on the Apple subpoena and that he not ask for a further extension. He just wrote to the TTAB asking for a further 60-day extension of time relating to the Apple subpoena. Thus he rejected the terms of our withdrawal of objection.

We trust you will abide by our persisting objection and thus ignore our last email suggesting you could handover to Mr Concannon. We are not sure what game Mr Concannon is playing, but it is clear now he is playing games.

Sincerely,

Dr Tim Langdell CEO

EDGE Games Inc



On Mon, Nov 20, 2023 at 7:00 AM Tim@Edge <[edgegames@gmail.com](mailto:edgegames@gmail.com)> wrote:

Dear Mr. Concannon,

Respondent is informed by Ms. Cannom acting for Apple Inc., that Apple has prepared a sales report responsive to Petitioner's subpoena and is ready to produce that document at this time. Respondent has been assured by Ms, Cannom that the report is clearly designated as 'confidential for attorneys eyes only' and will be produced to Petitioner so designated. We are informed that if Respondent does not object to Apple delivering the document to you at this time, then this will conclude Apple's obligations under the subpoena and thus remove Petitioner's need for an extension of time.

Accordingly, Respondent clarifies its position regarding the report Apple has created, and confirms that Respondent does not object to Apple providing Petitioner with a report containing sales information that Petitioner has a right to receive a copy of in these proceedings. Save that Respondent still maintains its objection to Apple producing confidential information that Petitioner does not have a right to, such as but not limited to, Respondent's passwords, social security numbers, EDGE Games Apple account access details, and etc.

This confirmation of no objection is provided on the understanding that Ms.Cannom will now produce the sales report to Petitioner, that this will conclude Apples obligations under the subpoena and this also removes the need for Petitioner to have an extension of time relating to the Apple subpoena. Thus, we expect that Petitioner will contact Mr. Stanley and withdraw the request for extension relating to Apple. Last, in closing we remind Petitioner that the Apple sales report, as is true for any and all EDGE sales reports that Petitioner may obtain by any means, must be, and at all times continue to be, designated as 'confidential for attorneys eyes only.'

Thank you,

Dr Tim Langdell CEO

EDGE Games, Inc.

Registrant in *pro se*

cc. Ms. Hannah Cannom, for Apple, Inc.

This Electronic Message contains information from the law firm of Nutter, McClennen & Fish, LLP, which may be privileged and confidential. The information is intended to be for the use of the addressee only. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected. Thank you.

# **Exhibit E**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MOBIGAME,	)	
	)	
Petitioner,	)	
	)	
v.	)	MISC. BUSINESS DOCKET NO.
	)	23-91491
EDGE GAMES, INC.,	)	
	)	
Respondent.	)	
	)	

RE: IN THE MATTER OF U.S. TRADEMARK REG. NO. 5,934,761  
CANCELLATION NO. 92075393

FILED IN: THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

**SUBPOENA TO TESTIFY AT A DEPOSITION  
IN TRADEMARK CANCELLATION PROCEEDING**

To: Keeper of the Records  
**Google, LLC**  
c/o Registered Agent  
Corporation Service Company  
84 State Street  
Boston MA 02109

YOU ARE COMMANDED to appear at Nutter McClennen & Fish LLP, 155 Seaport Blvd, Boston, MA 02210 on **September 15, 2023 at 2:00PM ET** to testify at a deposition to be taken in United States Patent and Trademark Office Trademark Trial and Appeal Board Cancellation No. 92075393. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters in attached **Schedule A**, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters.

The deposition will be recorded by stenographic means.

You, or your representatives, must also bring with you to the deposition the documents, electronically stored information, or objects identified in attached **Schedule A**, and must permit inspection, copying, testing, or sampling of the material.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/1/2023

/s/ Arnold Pacho  
DEPUTY CLERK

The name, address, e-mail address, and telephone number of the attorney representing Petitioner Mobigame, who requests this subpoena, are:

Patrick J. Concannon (BBO# 643673)  
pconcannon@nutter.com  
Micah W. Miller (BBO# 676189)  
mmiller@nutter.com  
Nutter, McClennen & Fish, LLP  
Seaport West, 155 Seaport Blvd.  
Boston, Massachusetts 02210  
Telephone: (617) 439-2000  
Facsimile: (617) 310-9000

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**PROOF OF SERVICE**

I received this subpoena for (name of individual and title, if any)  
\_\_\_\_\_ on (date)\_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows:

on (date) \_\_\_\_\_.

I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address

**Schedule A**  
**Definitions and Instructions**

1. Unless otherwise specified, the terms used herein shall have the meanings set forth in the Federal Rules of Civil Procedure.

2. “Petitioner” means Mobigame, the Petitioner in the Cancellation No. 92075393.

3. “Respondent” or “Edge Games” means Edge Games, Inc. (or the brand “Edge Games”), as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Edge Games, Inc., including, but not limited to, The Edge Interactive Media, Inc.

4. “Google” means Google, Inc., as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Google, Inc.

5. “Google Platforms” means the Android Store, Google Play and/or any other software application download platform operated by Google.

6. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

7. “Mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

8. “Disputed Mark” means standard word mark EDGE GAMES, the subject of TM Reg. No. 5,934,761.



9. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary.

10. The use of singular form includes plural, and vice versa.

11. The use of present tense includes past tense, and vice versa.

### **Testimony Topics**

1. Sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Google Platforms from January 1, 2008 to the present.

2. Sales or distribution of software made or published by Edge Games via Google Platforms from January 1, 2008 to the present.

3. Use of the Disputed Mark on Google Platforms related to the sales or distribution of Testimony Topics 1 and 2.

### **Documents**

1. Documents sufficient to show sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Google Platforms from January 1, 2008 to the present.

2. Documents sufficient to show sales or distribution of software made or published by Edge Games via Google Platforms from January 1, 2008 to the present.

3. Documents sufficient to show all uses of the Disputed Mark on Google Platforms related to the sales or distribution of Testimony Topics 1 and 2.

# **Exhibit F**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MOBIGAME,	)	
	)	
Petitioner,	)	
	)	
v.	)	MISC. BUSINESS DOCKET
	)	No#23-mc-91512 -PBS
EDGE GAMES, INC.,	)	
	)	
Respondent.	)	

RE: IN THE MATTER OF U.S. TRADEMARK REG. NO. 5,934,761  
CANCELLATION NO. 92075393

FILED IN: THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

**SUBPOENA TO TESTIFY AT A DEPOSITION  
IN TRADEMARK CANCELLATION PROCEEDING**

To: Keeper of the Records  
**Amazon.com. Inc.**  
c/o Registered Agent  
300 Deschutes Way SW  
Suite, 208 MC-CSC1  
Tumwater, WA 98501

YOU ARE COMMANDED to appear at Veritext Court Reporting, 1200 Sixth Avenue, Suite 610, Seattle, WA 98101 on **October 26, 2023 at 10:00AM ET** to testify at a deposition to be taken in United States Patent and Trademark Office Trademark Trial and Appeal Board Cancellation No. 92075393. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters in attached **Schedule A**, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters.

The deposition will be recorded by stenographic means and may be conducted using remote deposition technology if agreed to by the parties.

You, or your representatives, must also bring with you to the deposition the documents, electronically stored information, or objects identified in attached **Schedule A**, and must permit inspection, copying, testing, or sampling of the material.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/05/2023

/s/Francis Castilla  
CLERK OF COURT



The name, address, e-mail address, and telephone number of the attorney representing Petitioner Mobigame, who requests this subpoena, are:

Patrick J. Concannon (BBO# 643673)  
pconcannon@nutter.com  
Micah W. Miller (BBO# 676189)  
mmiller@nutter.com  
Nutter, McClennen & Fish, LLP  
Seaport West, 155 Seaport Blvd.  
Boston, Massachusetts 02210  
Telephone: (617) 439-2000  
Facsimile: (617) 310-9000

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
- (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**PROOF OF SERVICE**

I received this subpoena for (name of individual and title, if any)  
\_\_\_\_\_ on (date) \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows:

on (date) \_\_\_\_\_.

I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address

**Schedule A**  
**Definitions and Instructions**

1. Unless otherwise specified, the terms used herein shall have the meanings set forth in the Federal Rules of Civil Procedure.
2. “Petitioner” means Mobigame, the Petitioner in the Cancellation No. 92075393.
3. “Respondent” or “Edge Games” means Edge Games, Inc. (or the brand “Edge Games”), as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Edge Games, Inc., including, but not limited to, The Edge Interactive Media, Inc.
4. “Amazon” means Amazon.com, Inc., as well as any and all predecessors, successors, divisions or subsidiaries thereof, together with any and all controlling or affiliated companies, and all officers, directors, employees, agents, representatives and all other persons acting, purporting to act, who have acted, or who purported to have acted, on behalf of Amazon.com, Inc.
5. “Amazon Platforms” means the Amazon.com, Amazon Appstore, and/or any other software application download platform or sales platform operated by Amazon.
6. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.
7. “Mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

8. "Disputed Mark" means standard word mark EDGE GAMES, the subject of TM Reg. No. 5,934,761.

9. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary.

10. The use of singular form includes plural, and vice versa.

11. The use of present tense includes past tense, and vice versa.

#### Testimony Topics

1. Sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Amazon Platforms from January 1, 2008 to the present.
2. Sales or distribution of software made or published by Edge Games via Amazon Platforms from January 1, 2008 to the present.

#### Documents

1. Documents sufficient to show sales or distribution of computer games entitled EDGEBobby2, EDGEBobby2Free, EdgeBobby2, BobbyBearing2, BobbyBearing2Lite or RACERS via Amazon Platforms from January 1, 2008 to the present.
2. Documents sufficient to show sales or distribution of software made or published by Edge Games via Amazon Platforms from January 1, 2008 to the present, including the manner of use of the Disputed Mark on the software.

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