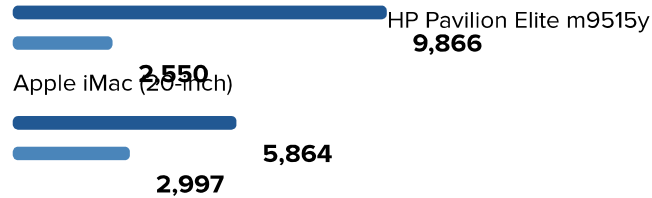


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Correspondence address	TIM LANGDELL EDGE GAMES INC. 35 NORTH LAKE AVENUE SUITE 710 PASADENA, CA 91101 UNITED STATES Primary email: Edgegames@gmail.com 626-824-0097
Submission	Testimony For Defendant
Filer's name	Tim Langdell
Filer's email	edgegames@gmail.com
Signature	/Tim Langdell/
Date	07/11/2024
Attachments	Langdell Declaration Exhibit Z part 6.pdf(5414115 bytes) Langdell Declaration Exhibit Z part 7.pdf(1788825 bytes) Langdell Declaration Exhibit Z part 8.pdf(1042622 bytes) Langdell Declaration Exhibit AA.pdf(3102105 bytes) Langdell Declaration Exhibits BB to DD.pdf(5657063 bytes) Langdell Declaration Exhibits EE and FF part 1.pdf(4260973 bytes) Langdell Declaration Exhibis FF part 2 and GG.pdf(2247757 bytes)

EXHIBIT Z

Part 6



The application scores provide an interesting side-by-side for the Velocity Micro and Dell systems, in particular in relation to their processors and memory architectures. Traditionally, Photoshop performance ties in closely with raw CPU speed and memory performance. The Edge Z5 has a faster CPU clock speed than the Dell, but that's only enough to bring it up to par with the Dell's faster, more advanced memory architecture on Photoshop. The Dell's memory can't make up for its slower CPU clock on iTunes, and in the long run, we suspect the Velocity Micro will deliver stronger single-core application performance. The Dell isn't far behind, though, and its better multitasking and Cinebench multicore scores suggest that if day-to-day productivity and digital media applications are your main concern, the Dell offers a better performance bet than the Velocity Micro.

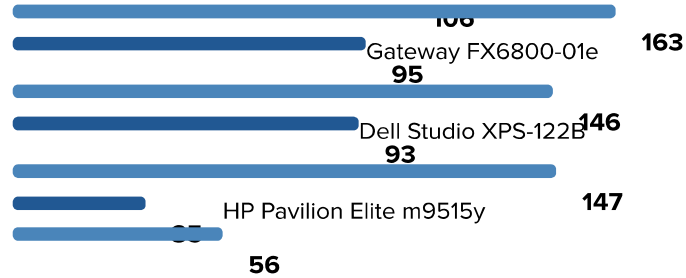
UNREAL TOURNAMENT 3 (IN FRAMES PER SECOND)

(Longer bars indicate better performance)



Velocity Micro Edge Z5





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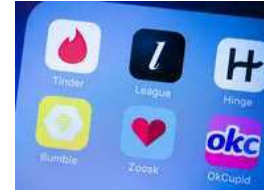
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VELOCITY MICRO GAMERS' EDGE PCX

The Velocity Micro Gamers' Edge PCX can give you an edge in an honest fight on the game grid.

By [PCMag Staff](#)
September 28, 2007

On the game grid, the bull's-eye is a moving target—and the Velocity Micro Gamers' Edge PCX (\$5,126 direct, \$5,495 with 22-inch widescreen LCD monitor) comes close enough to it to satisfy some gamers. But no matter how fine the system may be, our current Editors' Choice, the , outshines it. Nonetheless, the PCX is a fine bang-for-the-buck choice on the game grid, with performance to rival those of the systems that edged it out on both the benchmark-test and the price-ceiling drag races. This is a system for the well-heeled gamer who wants to pay for someone else's expertise, while keeping some cash in reserve for the electric bill or ISP charges.

Velocity Micro's new build philosophy is to forgo fancy liquid cooling for air cooling by taking great care in choosing the parts shipped with the systems. The company tests each component, like the CPU and memory, to make sure it will work at full stress while overclocked. Thus Velocity Micro can build computers that will see use on the game grid day after day without requiring exotic cooling—a departure brought on by the arrival of experts from Overdrive PC after Velocity Micro snapped up that gaming firm in mid-2007. Like its Overdrive cousin, the , the PCX is one of the few all-air-cooled and overclocked gaming rigs on the market today. It uses an enthusiast heat sink based on integrated heat tubes with internal cooling liquid. Unlike in other gaming systems here, there are no other pipes snaking through the case and no external radiator elsewhere in the case. This design reduces points of failure and theoretically increases the reliability of the

system. One of the drawbacks is more noise than some gaming systems, though the PCX is quieter than the loud, water-cooled .

Through a window on the side you can see a full complement of internal lights that show off the neatly organized wiring and the twin GeForce 8800 GTX graphics cards. The case is Velocity Micro's familiar "extended" Signature case, with a front-mounted cooling fan and other fans all over. The front fan cools the two speedy hard drives and any other drives you see fit to install later. (You should be able to fit two or three more drives in the drive cage.) There's an additional PCIe x16 slot for a future physics card and a PCIe x1 slot for other upgrades like a TV tuner. Since this system came with 2GB, not 4GB, of RAM, there are two DIMM slots for additional memory down the road.

The PCX's performance was admirable, if not class-leading. Though it didn't place first on any of the benchmark tests, it came quite close on many. It excelled at 3D tasks, with 109 frames per second on Prey and 137 fps on Company at Heroes (CoH), both at 2,560-by-1,600 resolution. In fact, at CoH, the PCX placed second, behind the Overdrive PC, which scored 156 fps. Likewise, the PCX was near the top on 3DMark06, with a score of 13,452 points at 2,560-by-1,600. (Keep in mind that few people can tell the difference between 137 fps and 156 fps.) It's notable that even though the PCX uses the "slower" GeForce 8800 GTX card, it beats or matches several gaming systems that have the top-of-the-line 8800 Ultra cards.

A multimedia powerhouse, the PCX finished the Windows Media Encoder test in 43 seconds 3 seconds behind the top PCs, and the Photoshop test in 28 seconds 6 seconds behind the leader, the . Although you may not be able to brag that you have a class-topping system, your multimedia projects will get done fast.

The PCX isn't quite as sexy as the HP Blackbird 002 or as imposing as the , but it certainly is attractive, with the largest window I've seen on a desktop lately. And you'll want to see what's inside, since every cable is cut to length and recrimped. The PCX is a lot cheaper than the , the , and the .

The Velocity Micro Gamers' Edge PCX makes its case as a high-performance system, offering excellent bang for the buck. It should be a contender for your gaming dollars, particularly if you have about \$5,000 to \$6,000 to spend.

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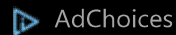
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GAMING


by Sarah Miller — Tuesday, November 18, 2008, 08:36 AM EDT



Velocity Micro Edge Z55 Intel Core i7 Gaming System

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Intel Core i7-11700K Desktop...	
Micro Center 	\$389.99

Introduction & Specifications



Whenever AMD or Intel release a new processor and chipset platform, you can bet there's going to be a good amount of excitement surrounding the release, along with anticipation as we eagerly await the arrival of systems that incorporate the new technologies. Velocity Micro's new Edge Z55 [Intel Core i7](#) Gaming System is out and we've had the chance to run it through our tests to see just how it stacks up. As you'll see, the new Intel Core i7 CPU and X58 chipset enables the Velocity Micro Edge Z55 Gaming System to hold its own against the elite PCs of just a few months ago.

The new Core i7 brings with it new chipsets, motherboards, and a new LGA1366 processor socket. What sets the Core i7 processor apart from the other processors is its QuickPath Interconnect, which replaces Intel's front side bus. This new 40-lane (20 each way), bi-directional serial link provides communication to

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Intel's I/O hub and then fans out to PCI Express. The [Core i7 also incorporates](#) an integrated, triple-channel memory controller that offers over three times the memory bandwidth of the previous dual-channel controller at DDR3-1066. Intel also brought back Hyper-Threading Technology with the Core i7, which provides two logical threads per processor core, for a total of eight available processing threads in a quad core CPU.

Like many enthusiast system manufacturers, Velocity Micro makes hand-built, high-end gaming rigs using the latest components, such as Intel's Core i7 processors. Velocity Micro claims that they pride themselves on their extensive customization options, meticulous assembly procedures, a technically trained staff, and in-house US-based support. Each system is hand-assembled by expert engineers and run through extensive testing to ensure complete functionality. As you'll see, Velocity Micro's engineers are also appear to be very careful about how they route and tie cables to ensure optimal airflow within the chassis.

Velocity Micro offers two series of gaming rigs—the Raptor and Edge series. The Raptor is “the best of the best” with more customization and tweaking options along with higher-end specs. The Raptor line offers two models: the Raptor Signature Edition (starting at \$5,499) and the Raptor Z90 (starting at \$3,599). The Edge series is also geared towards serious gaming enthusiasts, but strikes a balance between high-end specs and affordability. You'll find five models in the Edge series: the Edge Z5 (starting at \$859), Edge M10 (starting at \$1,099), Edge Z15 (starting at \$1,499), the Edge M40 (starting at \$1,699), and the Edge Z55 (starting at \$2,199).

Velocity Micro added a few options to our Edge Z55 test system, bringing the cost up to \$2,399. Read on to see how the Edge Z55 Intel Core i7 Gaming System fared as we put the system through the usual level of rigorous HotHardware testing and hands-on evaluation.



Velocity Micro Edge Z55 Intel Core i7 Gaming System

System Specifications - As Reviewed

Processor

Intel Core i7 920 (quad 2.66GHz cores, 8MB Cache, 4.8GT/sec)

Motherboard

Intel "Smackover" DX58SO, PCI Express, X58 Chipset

Case

GX2-W Silver – Velocity Micro Classic Aluminum Case – Full Sized chassis with side window

Power Supply

850-Watt Velocity Micro Power Supply - Nvidia SLI Certified

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Operating System

Microsoft Windows Vista Home Premium 64-bit

Memory

6GB Corsair DDR3-1333 Triple Channel Memory with Heat Spreader (3x2048)

Graphics Cards

2 x 512MB ATI Radeon HD 4850 GDDR3 in CrossFire

CPU Cooling

Intel Certified High Performance Heatsink

Audio

On-Board Integrated High Definition 7.1 Channel Sound

Hard Drive

750GB Hitachi 7200rpm 32MB Cache SATA 300 w/NCQ

Optical Drive 1

Lite-On 20x DVD+/RW- Dual Layer Burner with Lightscribe labeling Technology

Optical Drive 2

Lite-On 20x DVD+/RW- Dual Layer Burner with Lightscribe labeling Technology

Floppy Drive

8-in-1

Expansion Slots

2 x PCI Express x16 PEG

2 x PCI Express x1

1 x PCI slot

1 x PCI Express x4

External Ports

10 x USB 2.0 Ports (2 front, 8 rear)

2 x IEEE 1394 FireWire Ports (1 front, 1 rear)

1 x RJ45 Ethernet (10/100/1000) port

2 x eSATA ports

analog and digital audio outputs

Bundled/Installed Software

Acronis True Image 11 Home

CyberLink Live Premium

Diskeeper Home Edition

DivX Pro for Windows

Dolby Control Center

Norton 360

PLAYXPERT in-Game Platform

FutureMark 3DMark Vantage - Velocity Micro Basic Edition

Tom Clancy's Ghost Recon

Warranty and Support

1-year parts and labor, depot repair (upgradeable to 4 years, on-site repair)

1 year phone support, business hours (upgradeable to 4 years, 24/7 phone support)

Price: \$2,399 USD (as configured)

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Our test Velocity Micro Z55 was powered by an Intel Core i7 920 processor (2.66GHz), over clocked to 2.93GHz. The system had an Intel "Smackover" DX58SO motherboard with the new LGA1366 processor socket and X58 Chipset. As mentioned, this system trades in the outdated front-side bus for Intel's new QuickPath Interconnect technology. Our configuration's 6GB of Corsair DDR3 memory runs at 1333MHz. For graphics, the system uses two ATI Radeon HD 4850 with 512MB GDDR3 running in CrossFire. NVIDIA cards running in SLI are also available for an additional fee but that also likely means a motherboard change.

The system we tested had a 750GB Hitachi 7200rpm hard drive, but if you're looking for more storage, you can upgrade to up to 3TB of hard disk storage space or choose one of Velocity Micro's solid state drive offerings. Our system came with two identical Lite-On 20x DVD+/RW- Dual Layer burners with Lightscribe labeling Technology. The system's sound was powered by the 7.1-channel, integrated audio. Creative SoundBlaster X-Fi-based cards are available for an additional \$45 to \$75. To cool the CPU, Velocity Micro uses an Intel Certified High Performance Heatsink and air cooling. To cool the video cards, you can upgrade to a VideoCool positive-pressure airflow cooling system for an additional \$35.

The Warranty -

Velocity Micro's standard warranty includes one year of depot-based parts and labor warranty along with one year of regular business hour support from the company's US-based tech support. Two-, three-, and four-year warranty options are available for an additional cost. On-site support and 24/7 phone support are also available as upgrades. Velocity Micro's best warranty runs \$369 and includes a four-year parts and labor warranty with on-site service and 24/7 phone support.

For a bit of future-proofing, Velocity Micro offers a "Lifetime Upgrade Plan," which lets you return your system to the factory for basic interior cleaning, general maintenance, driver and BIOS updates, operating system updates, discounted component hardware upgrades, and standard performance tuning and benchmarking, regardless of if the system is under warranty or not. Prices for this service start at \$99, plus shipping and handling charges, hardware component upgrades and material used, additional labor required, and return packaging material. Should you choose to upgrade components, the original parts from your system will be returned for you to reuse or resell.

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Introduction & Specifications ▾



Tags: Intel, core i7, velocity, Gaming, Core, system, i7, Gaming System, Velocity Micro, Intel Core i7, EDGE, STEM, elocity, Gamin, MIC, Micro, AM

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by Daniel A. Begun — Thursday, August 07, 2008, 02:00 PM EDT



Velocity Micro Edge Z55 Gaming System

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Introduction & Specifications

Acer SB220Q bi 21.5 Inches...	
True Mart LLC 	\$139.99

Introduction & Specifications



Unlike the enthusiast system manufacturers, Alienware and VoodooPC, Richmond, Virginia-based Velocity Micro is still an independent, privately held company. In fact, Velocity Micro is doing well enough on its own to have even purchased the enthusiast, boutique system maker, Overdrive PC last year. On top of that, Velocity Micro is one of the few (if only) independently owned, U.S.-based, high-end gaming systems manufacturers that--in addition to selling direct--also sells its systems at Best Buy and Circuit City. That's a claim that even Velocity Micro's competitors, Oregon-based Falcon Northwest, New Jersey-based Maingear, and California-based Vigor Gaming, can't make.

As do most enthusiast system manufacturers, Velocity Micro makes hand-built, high-end gaming rigs using top-of-line components. What Velocity does not do,

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however, is outsource its support--all non-on-site support, including phone and e-mail-support are manned by Velocity Micro's own in-house techs (for sheer geographic practicalities, on-site support is handled by third-party companies).

Velocity Micro offers a well-rounded catalogue of systems, including notebooks, home theater PCs, as well as more traditional home PCs. But the company's bread and butter are its gaming rigs--its Raptor and Edge series desktops. The Raptor series is the higher-end of the two models, with more hardcore specs, customization, and tweaking. Velocity Micro currently offers two models in the Raptor line, the Raptor Signature Edition (starting at \$5,995) and the Raptor Z90 (starting at \$3,199). The Edge series is also geared toward enthusiasts, but is focused more on finding a balance between high-end components and affordability. As such, the Edge series doesn't receive the same level of customization and tweaking that that Raptor series does, and its component options might not be quite as bleeding edge. The Edge is available in five models, ranging from the Edge Z5 (starting at \$949), and up to the Edge Z55 (starting at \$2,099).

We received the highest end model in the Edge series, the Z55. Velocity Micro configured it with a few options, taking the system price up to \$2,664. We put the system through the usual level of rigorous HotHardware testing and hands-on evaluation. Read on to see how the Edge Z55 fared.



Velocity Micro Edge Z55 Gaming System

System Specifications - As Reviewed

Processor

Intel Core 2 Quad Q9450 (2.66GHz , 12MB L2, 1,333MHZ FSB) *

Motherboard

Asus P5N-D nForce 750i SLI, Socket 775

Power Supply

850-Watt Velocity Micro Power Supply - Nvidia SLI Certified

Expansion Slots

2 x PCIe 2.0 x16

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<https://hothardware.com/reviews/velocity-micro-edge-z55-gaming-system>

Operating System

Genuine Microsoft Windows Vista Home Premium 32-bit, with Service Pack 1

Memory

4096MB Corsair XMS2 DDR2-800 Low Latency Extreme Memory with Heat Spreader (2x2048)

Graphics Cards

Dual 512MB EVGA GeForce 9800 GTX in SLI, PCIe 2.0 *

CPU Cooling

Arctic Cooling Freezer 7 Pro Heatsink, Ultra Quiet Fan, Copper Heat Pipes

Audio

On-Board Integrated High Definition 7.1 Channel Sound

Hard Drive

500GB Hitachi 7200rpm 16MB Cache SATA 300 w/ NCQ

Optical Drive 1

Lite-On Blu-ray DVD-ROM Drive

Optical Drive 2

20x Lite On DVD+/-RW Dual Layer Burner with LightScribe Labeling Technology

Floppy Drive

1.44MB Floppy Drive

Case

2 x PCIe x1

2 x PCI 2.2

External Ports

6 x USB 2.0 ports (2 front, 4 rear)

2 x 1394a Firewire port (1 front, 1 rear)

1 x RJ45 Ethernet (10/100/1000) port

1 x S/PDIF Optical

1 x S/PDIF Coaxial

6x 1/8-inch programmable, jack-detecting audio ports (back)

1 x 1/8-inch headphone port (front)

1 x 1/8-inch stereo line-in (microphone) port

1 x PS/2 Mouse Port

1 x PS/2 Keyboard Port

1x Parallel

1x COM

Bundled/Installed Software

CyberLink PowerDVD 7.3 (BD edition)

FutureMark 3DMark Vantage - Velocity Micro Basic Edition

Norton Internet Security 2007

Corel Snapfire Plus SE 1.2

Intervideo DVD Copy 5 (trial)

Warranty and Support

1-year parts and labor, depot repair (upgradeable to 4 years, on-site repair)

1 year phone support, business hours (upgradeable to 4 tears, 24/7 phone support)

Price: \$2,664 USD (as configured) *

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LXe-W Black - Velocity Micro Signature Aluminum Case - removable front door,
side window

** **Note:** As we were about to publish this review, we discovered that Velocity Micro was no longer offering the Edge Z55 with either the 2.66GHz Intel Core 2 Quad Q9450 processor or Dual 512MB GeForce 9800 GTX graphics cards. Instead, the relative options for the Edge Z55 would be a 2.83GHz Intel Core 2 Quad Q9550 CPU and Dual 512MB GeForce 9800 GTX+ (Plus) graphics cards. Not only did the level of components improve, but the price even came down from what was originally \$2,954.*

The Velocity Micro Z55 we tested was powered by a 2.66GHz Intel Core 2 Quad Q9450 processor, which resides in the Socket 775 of an Nvidia nForce 750i SLI-based Asus P5N-D motherboard. The front-side bus runs at 1,333MHz, while the 4GB of Corsair XMS2 DDR2 low-latency memory runs at 800MHz. The system's graphics are powered by a pair of 512MB EVGA GeForce 9800 GTX cards in SLI mode. Our configuration includes a 500GB Hitachi 7200rpm hard drive, but for those looking to maximize their storage, you can order the system with up to 3TB of hard disk storage space (for an additional \$1,030). The system we tested came with two optical drives: a Blu-ray drive and a 20x Dual Layer DVD-/RW drive. Sound is powered by the 7.1-channel, integrated audio; but upgrade options are available for Creative SoundBlaster X-Fi-based cards (from \$45 to \$75). The CPU is cooled by a massive heat sink, with copper heat pipes, and air cooled; for another \$105 you can opt for liquid cooling the CPU. Also, an additional \$35 will add a positive-pressure airflow cooling system for the graphics cards.

The standard warranty covers depot-based, parts and labor for one year, plus tech support during business hours. Various warranty options are available, ranging from 2 to 4 years parts and labor. You can choose between depot-based service or on-site support, and business hours phone support or 24-hour phone support. A four-year warranty with depot service and business hours support costs \$299, or \$369 for on-site service and 24/7 phone support. Velocity Micro also offers what it calls a "Lifetime Upgrade Plan." Whether your system is under warranty or not, you can send it back to Velocity Micro for "*basic interior cleaning, general maintenance, driver and BIOS updates, operating system updates, discounted component hardware upgrades, and standard performance tuning and benchmarking.*" This service starts at \$99 and does not include shipping, out-of-warranty repairs or parts, or the cost of component upgrades.

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Introduction & Specifications



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VELOCITY MICRO EDGE Z55

The Velocity Micro Edge Z55 is a professional-grade gaming PC that bridges the difference between the cheap and the obscenely expensive.

By [PCMag Staff](#)
January 21, 2009

The Velocity Micro Edge Z55 (\$3,834 direct; \$4,133 with 22-inch widescreen LCD monitor) is a cross between a high-end multimedia system and a single-purpose gaming rig. It's got an overclocked Core i7 processor, twin graphics cards, and speedy 10,000-rpm hard drives. It has some of the oomph of its big brother, the , but it is a lot more affordable. That is, if almost \$4,000 is your idea of affordable. Predictably, it slots in between the highest-end, most-expensive systems and the cheaper \$1,200 gaming desktops, though at almost \$4,000 it leans toward expensive. That said, it has many redeeming qualities and may be worth a look for those looking for a bigger bang for the buck in their professional-grade gaming system.

The Z55 comes in VM's silver Classic case with a side window showing off the interior. Inside you'll find an Intel Core i7 940 processor, overclocked to 3.2 GHz (the same as a stock Core i7 965 CPU). You'll also find 6GB of 1,333-MHz DDR3 SDRAM (the fastest I've seen so far), which likewise goes a long way toward explaining the Z55's lightning-fast multimedia scores. The Core i7 has HyperThreading technology, which helps the CPU's four cores process eight threads when running multithreaded applications. What's more, the new Core i7 CPUs have Turbo Boost technology (yup, as on *Knight Rider*) that can dynamically overclock individual cores on single-threaded applications. Both technologies mean that Core i7 processors will

continue Intel's lead in performance (though we'll see if that stands when AMD comes out with its next processor sometime in 2009).

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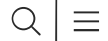
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VELOCITY MICRO EDGE Z55

The Velocity Micro Edge Z55 is a professional-grade gaming PC that bridges the difference between the cheap and the obscenely expensive.

By [PCMag Staff](#)
January 21, 2009

The Velocity Micro Edge Z55 (\$3,834 direct; \$4,133 with 22-inch widescreen LCD monitor) is a cross between a high-end multimedia system and a single-purpose gaming rig. It's got an overclocked Core i7 processor, twin graphics cards, and speedy 10,000-rpm hard drives. It has some of the oomph of its big brother, the , but it is a lot more affordable. That is, if almost \$4,000 is your idea of affordable. Predictably, it slots in between the highest-end, most-expensive systems and the cheaper \$1,200 gaming desktops, though at almost \$4,000 it leans toward expensive. That said, it has many redeeming qualities and may be worth a look for those looking for a bigger bang for the buck in their professional-grade gaming system.

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Velocity Micro Edge Z55 (Summer 2013) Review

●●●●○ 4.0 Excellent

By Brian Westover

August 12, 2013





THE BOTTOM LINE

The Velocity Micro Edge Z55 isn't the flashiest gaming desktop, but it combines top components, like a fourth-generation Intel Core i7 processor and Nvidia GeForce GTX 780 GPU, with a healthy feature set for excellent performance and value.

MSRP \$2,799.00

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PROS

- ✓ New Haswell processor and Nvidia graphics.
- ✓ Lots of room for maintenance and upgrades.

CONS

- Plain looking case.

When shopping for a serious gaming rig, it's easy to spend a lot of money on fancy designs and flashy features. But what really makes a difference on the gaming grid isn't an embellished tower case or funky internal design; it's hardware. The Velocity Micro Edge Z55 updates the single-card mid-tower with Intel's new fourth-generation Core i7-4470k quad-core processor and Nvidia's powerful new GeForce GTX 780 graphics card. It's not necessarily cheap, but it delivers exactly what gamers are looking for, performance that will lead them to victory.

Design and Features

The simple but stylish Edge Z55 dresses up the mid-tower PC with a sleek black plastic front panel that opens to reveal a tray-loading optical drive (an LG BD-ROM/DVD+-RW combo). The tower measures 18.2 by 9.2 by 20.7 inches (HWD)—just a little larger than the Digital Storm Virtue—but still small enough to tuck out of the way under a desk.

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On top of the front panel, easily accessible, are four USB ports (two USB 3.0, two USB 2.0) and jacks for headphone and microphone. On the rear of the tower, you'll find several more USB ports (six USB 3.0, four USB 2.0) along with two Ethernet ports, connections for audio, and several display outputs—HDMI

USB 2.0), along with two Ethernet ports, connections for audio, and several display outputs—HDMI, DisplayPort (both full size and mini DisplayPort), and DVI output.

A window on the left side gives you a view inside, letting you see the major components—like an Nvidia GeForce GTX780 graphics card, a 750-watt power supply, air cooling, and the Asus Z87-Deluxe motherboard. Built into the motherboard is integrated 802.11ac Wi-Fi, along with Bluetooth 4.0 and 3.0+HS, letting you connect all of your wireless headsets or peripherals. An external Wi-Fi antenna gives you excellent reception, and a magnetic mount means you can slap it on the side of the tower or to any metal on your desk. If you need to get into the tower for maintenance and upgrades, it's as easy as removing two thumbscrews at the back and sliding of the side panel.

SIMILAR PRODUCTS



HP Envy Phoenix h9-1320t

[Read HP Envy Phoenix h9-1320t Review](#)



V3 Gaming Traverse

[Read V3 Gaming Traverse Review](#)



Digital Storm Virtue

[Read Digital Storm Virtue Review](#)

Inside, you'll also find plenty of storage, with a 2TB, 7,200rpm hard drive providing storage for you game installs and media library, and two speedy 128GB solid-state drives (SSD) paired in RAID0 for 256GB of flash

memory, offering short boot times and zippy performance. Even with all that room, Velocity Micro leaves the drives alone—aside from preinstalling Windows 8 (64-bit) and drivers for the graphics card and other components, there's nothing on the drives. Velocity Micro covers the Edge Z55 with a one-year warranty on parts and labor, with lifetime phone support.

Performance

Armed with Intel's fourth-generation Core i7-4470K quad-core processor—the same processor found in the Digital Storm Virtue—with overclocking up to 4.4GHz (up from the 3.5GHz base) and paired with 16GB of RAM. With the new processor, the Edge Z55 offers strong performance, cranking through PCMark 7 with a score of 7,295 points, topping almost every comparable system from the previous generation, including the Editors' Choice HP Envy Phoenix h9-1320t(4,033 points) and Maingear Potenza Super Stock (5,356 points). A Cinebench score of 9.64 points also puts it at the head of the pack, with the closest competitor being the similarly equipped Digital Storm Virtue (9.59 points). The Edge Z55 also finished our processor intensive multimedia tests with leading scores, finishing Handbrake in 29 seconds and Photoshop in 2 minutes 49 seconds.

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The overclocked processor is joined by a potent Nvidia GeForce GTX780 GPU, with 3GB of dedicated memory. The results speak for themselves, with better than playable framerates in our gaming tests—83 frames per second in Aliens vs. Predator and 75 frames per second in Heaven, both at full resolution and high detail settings.

The Velocity Micro Edge Z55 offers a solid mid-range gaming desktop that packs in a lot of features—a Blu-ray drive, 2TB hard drive, Wi-Fi and Bluetooth—on top of the a fourth-generation Intel Core i7 processor and a shiny new Nvidia graphics card. It's a combination that should serve you well on the gaming grid now, and

a shiny new Nvidia graphics card. It s a combination that should serve you well on the gaming grid now, and will continue to feel fast in the future. It can't match the affordability of the Editors' Choice HP Phoenix h9-1320t, but it holds its own against other top performers, like the Digital Storm Virtue and the V3 Gaming Traverse.

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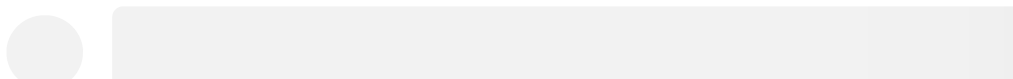
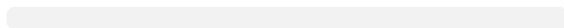
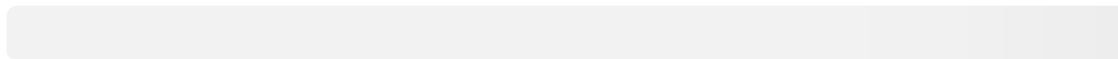
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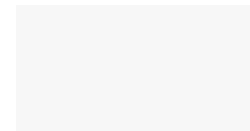
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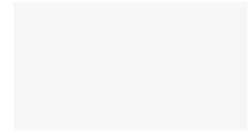
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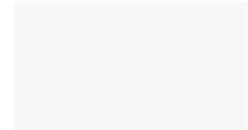
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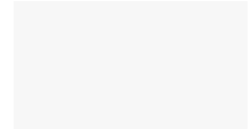
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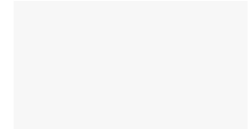
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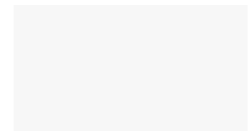
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BY WHITSON GORDON



About Brian Westover



Brian Westover is an Analyst for the Hardware Team, reviewing laptops, desktops, and storage devices. As a child, Brian was frequently asked "What do you want to be when you grow up?" His answer alternated between Superman and Batman. This was cute when he was five, but worrisome at seventeen. Naturally, he is now a journalist, writing about technology and gadgets. Brian has been writing professionally since 2007, and his work has appeared in business newsletters, websites, textbooks, and magazines. He earned his degree in Communications from Brigham Young University - Idaho. When not writing or fighting villainy, Brian enjoys sampling the culinary delights of New York, perusing obscure trivia, and spending time with his wife.

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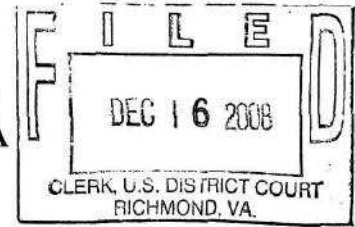
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EXHIBIT Z

Part 7



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

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

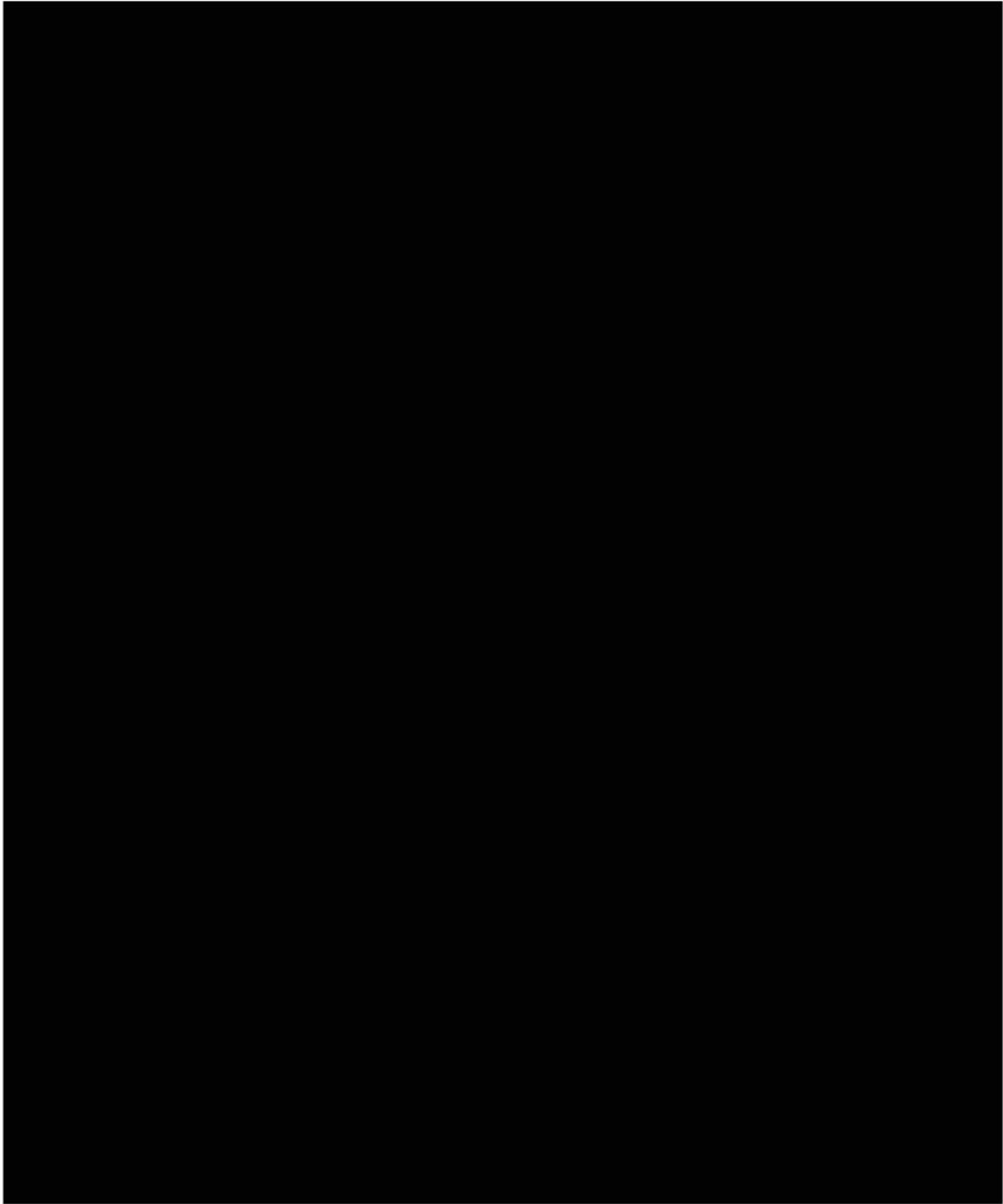
VELOCITY MICRO, INC.)
)
 Plaintiff,)
)
 v.) Civil Action No.: 03:08CV135 - JRS
)
 THE EDGE INTERACTIVE MEDIA, INC.)
)
 Defendant.)
)

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:



JURISDICTION AND VENUE



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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

VELOCITY MICRO, INC.)
)
 Plaintiff,)
v.) Civil Action No.:03:08cv135 - JRS
)
THE EDGE INTERACTIVE MEDIA, INC.,)
a/k/a EDGE GAMES, INC.,)
)
 Defendant/Cross Plaintiff)
 /Third Party Plaintiff)
v.)
)
BEST BUY, INC.)
)
 Third Party Defendant)
_____)

**ANSWER TO AMENDED COMPLAINT, COUNTERCLAIMS AND
THIRD PARTY COMPLAINT**

Comes Now Defendant The Edge Interactive Media, Inc., by and through its successor in interest, Edge Games, Inc., and Answers the Amended Complaint filed by Plaintiff Velocity Micro, Inc.

Edge Games, Inc. and The Edge Interactive Media, Inc. are hereinafter jointly referred to as Defendant or “EGI.” EGI answers the numbered paragraphs in the Plaintiff’s Amended Complaint as follows:

1. Admitted.
2. Defendant admits that The Edge Interactive Media Inc., is a California corporation with former business address located at 530 South Lake Avenue, Suite 171, Pasadena, California and clarified that The Edge Interactive Media assigned its rights to the trademarks at issue in this matter to Edge Games Inc., a valid and subsisting California corporation with an address the same as stated in this paragraph. Edge Interactive Media Inc., is also known as Edge Games.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendant submits to personal jurisdiction of this court but otherwise denies the allegations in paragraph 6.
7. Admitted.
8. Defendant has insufficient information to admit or deny the allegations in paragraph 8 and therefore denies same leaving Plaintiff to its proof.
9. Defendant admits the first allegation in the first sentence of paragraph 9 and has insufficient information to admit or deny the remaining allegations in paragraph 9 and therefore denies same leaving plaintiff to its proof.

10. Defendant admits that Plaintiff adopted use of the trademark GAMER'S EDGE on gaming computers but denies that Plaintiff is the owner of the trademark GAMERS EDGE.

11. Defendant has insufficient information to admit or deny the allegations in paragraph 11 and therefore denies same leaving Plaintiff to its proof.

12. Defendant has insufficient information to admit or deny the allegations in paragraph 12 and therefore denies same leaving Plaintiff to its proof.

13. Defendant has insufficient information to admit or deny the allegations in paragraph 13 and therefore denies same leaving Plaintiff to its proof.

14. Admitted.

15. Denied.

16. Admitted.

17. Denied and clarified that Defendant originally sold computer games and video games and via licensees sold and continues to sell video game magazines and comic books. Further clarified that Defendant also sells computer game hardware directly and through its licensees.

18. Denied and clarified that EGI commenced promoting its EDGE brand in connection with computer games, computer gaming software and computer hardware, long before 1998 and before the earliest date Plaintiff can rely on asserting priority of use of the mark EDGE or formative versions of EDGE

including GAMERS EDGE.

19. Denied and clarified that defendant licenses its EDGE brand for use on and in connection with gaming computers.

20. Denied.

21. Denied.

22. Denied.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Denied and clarified that on information and belief EGI directly and/or through its licensees is using its registered mark on or in connection with all the goods as listed in the registration.

33. Denied and clarified that on information and belief EGI directly and/or through its licensees is using its registered mark on or in connection with all

the goods as listed in the registration.

34. Denied.

35. Denied and clarified that on information and belief EGI directly and/or through its licensees is using its applied-for mark on or in connection with all the goods as listed in the application.

36. Denied and clarified that on information and belief EGI directly and/or through its licensees is using its applied-for mark on or in connection with all the goods as listed in the application.

37. Admitted.

38. Denied.

39. Admitted.

40. Admitted.

41. Defendant has insufficient information to admit or deny the allegations in paragraph 41 and therefore denies same leaving plaintiff to its burden of proof.

42. Denied.

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

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

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

53. Denied.

54. Admitted that 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 denies all the remaining allegations in paragraph 54.

55. Denied and clarified that EGI adopted use of its EDGE mark and EDGE formative marks long before Plaintiff existed and therefore Plaintiff's adoption and use of identical marks in the identical fields of use, later-in-time and junior to Defendant's trademark rights, rides on the good will in the EDGE brand which was built and sustained for many years prior to Plaintiff's adoption. Hence Plaintiff unfairly competes with Defendant not vice versa as Plaintiff alleges.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

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

61. Denied and clarified that to whatever respect Plaintiff has acquired good will or recognition by use of Defendant's EDGE brand in connection with Plaintiff's house-mark and trade-name Velocity Micro, such good will inures to the benefit of Defendant inasmuch as all use by Plaintiff of the brand EDGE and formative versions thereof have been unauthorized uses of Defendant's trademark rights.

62. Admitted that Defendant is using the identical and similar marks on related and confusing similar goods and/or services in the same or similar channels of trade as plaintiff and without plaintiff's consent or authorization but denied that such use is damaging to Plaintiff or Plaintiff's mark in view of Defendant's longstanding priority of use of the identical and similar marks and good will inuring to the benefit of the true trademark owner, namely the Defendant.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

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

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. The Answers of paragraphs 1 through 81 are incorporated herein by

reference.

83. Admitted.

84. Denied.

85. Denied.

86. Denied.

87. Admitted.

88. Admit that Plaintiff's allegation seeks a declaratory judgment of non-infringement, but otherwise denies that it should be granted.

WHEREFORE, Defendant prays this court deny Plaintiff all the relief it seeks in its Amended Complaint.

COUNTERCLAIM AND THIRD PARTY COMPLAINT

Parties

89. Counterclaim and Third Party Plaintiff Edge Games Inc., the successor in interest to Defendant The Edge Interactive Media Inc., is a California Corporation with a principal business address located at 530 South Lake Avenue, Suite 171, Pasadena, California. Edge Games Inc., and The Edge Interactive Media Inc., are hereinafter jointly referred to as "EGI" or Counterclaim Plaintiff or Third Party Plaintiff.

90. Dr. Tim Langdell acts in the capacity as president and CEO of Edge

Games Incorporated. Dr. Langdell has been affiliated with The Edge Interactive Media Incorporated at all times pertinent to this dispute and has overseen the day to day operations of both entities.

91. Counter Defendant Velocity Micro, Inc., is a Virginia corporation with a principal place of business located at 7510 Whitepine Road, Richmond, Virginia, 23237. Hereinafter Velocity Micro, Inc. is also referred to as "VMI."

92. On information and belief Third Party Defendant Best Buy Inc., is a Minnesota corporation with a principal business address located at 7601 Penn Avenue South Richfield Minnesota 55423. Hereinafter Best Buy Inc. is also referred to as "BBI."

Jurisdiction and Venue

93. This action arises under the United States Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. §§ 1051-1127, and Virginia common law. The Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, as well as supplemental subject matter jurisdiction under 28 U.S.C. § 1367.

94. The Court has personal jurisdiction over VMI and BBI based on VMI's and BBI's operation of its businesses and contacts within this jurisdiction.
95. Venue is proper in this District under 28 U.S.C. § 1391.

Facts Common to All Counts

96. Since at least as early as 1979 Dr. Tim Langdell commenced selling computer games under a company he formed called Softek Software which he later renamed EDGE GAMES and THE EDGE.
97. In the early 1980's EDGE brand games produced by Dr. Langdell's company, EDGE GAMES were offered for sale via mail and computer gaming stores.
98. During the 1980's EDGE brand computer games experienced wide commercial success selling millions of units.
99. In 1986 EDGE GAMES and Dr. Langdell took over publishing control of the European Division of a well-known computer game publisher Ariolasoft which had the exclusive right to sell Electronic Arts and Broderbund games and which also distributed game console systems for the well known video game brand SEGA.

100. The EDGE mark is registered as a trademark covering computer game related software and hardware in the United Kingdom and Germany and the EDGE mark is known internationally as distinctive brand in connection with the computer gaming field long before 1998.
101. In 1990 EDGE GAMES moved its headquarters from England to Los Angeles due in part to ongoing commercialization in the United States.
102. During the 1990's Edge Interactive Media embarked on an extensive licensing campaign experiencing commercial success licensing the EDGE brand.
103. The EDGE brand has been licensed to Future Publishing, Ltd. a United Kingdom corporation that uses the EDGE brand in connection with a very popular and industry leading computer gaming magazine called EDGE which is sold extensively worldwide and in particular in both Europe and the United States since at least 1993. See Exhibit A.
104. The EDGE brand has also been licensed and diversified as brand on series of comic books published by Marvel Comics and Malibu

comics and includes commercialization of a super hero called EDGE. See Exhibit B.

105. The EDGE brand was licensed to 20th Century Fox in connection with a movie called THE EDGE starring Anthony Hopkins and Alec Baldwin. See Exhibit C.

106. Stuart Hall, Inc., has licensed the EDGE brand in connection with commercializing the distinctive EDGE stylized logo owned by EGI as a brand on college notebooks sold to a target audience comprising computer gamers. Exhibit D.

107. The EDGE brand has consistently been used by EGI itself and licensed for use on and in connection with computer gaming hardware including but not limited as brand for personal gaming computers and peripherals and component parts of personal gaming computers.

108. The EDGE brand has been used from at least as early as July 29, 1997 in connection with a brand of high-speed gaming computers sold under the brands EDGE and GAMER'S EDGE under a non-exclusive sale and resale agreement covering the states of Washington, Oregon, Nevada, Idaho, Utah, Arizona, Montana,

Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, and California.

109. The EDGE brand has also been commercialized under license for use as computer gaming hardware 3D graphic accelerator component sold under the brand EDGE 3D by Diamond Multimedia. The EDGE brand has also been affixed as brand directly on computers, packaging for computer components and computer components themselves. Attached as Exhibit E are samples of the EDGE brand as used in connection with computer hardware in various formats.
110. Use of the mark EDGE by EGI on and in connection computer games and the mark EDGE 3D as a brand for computer hardware and EDGE and GAMER'S EDGE as brands for gaming computers all commenced prior to 1998, the formation date of Counter Plaintiff Velocity Micro.
111. Dr. Tim Langdell is considered to be pioneer in the field of computer gaming and is widely publicized on the internet and has been engaged as a legal expert in the field of computer gaming.
112. Dr. Langdell and his EDGE company has produced over 180 computer games including well-known brands such as United

Artists' Snoopy and Garfield character computer games. See Exhibit F.

113. Dr. Langdell is highly sought after speaker and lecturer in the field of computer games based largely in part due to his creation and diversification of the EDGE brand in the computer gaming field
114. Dr. Langdell currently holds the position of Chair of the Department of Media at National University where he is also lead faculty for an MFA Program in Videogame Production and Design. See Exhibit G. (MFA is the acronym for Master of Fine Arts)
115. EGI currently licenses and is commercializing its EDGE brand in connection with computer games sales to Verizon the well-known telecommunications company in connection with downloadable versions of the EDGE brand computer games.
116. EGI currently licenses and is commercializing its EDGE brand in connection with computer games sales to Nintendo the well-known computer game company in connection with Nintendo's very popular Wii video-game platform.
117. Commercialization and use of the EDGE brand in the form of EDGE, THE EDGE and GAMER'S EDGE on and in connection

with computer games, computer gaming software and computer gaming hardware has been continuous and uninterrupted since long before 1998.

118. Edge Games and Edge Interactive Media Inc., and the history of Dr. Langdell's involvement with EGI in connection with commercializing the EDGE brand in the field of computer games and computer gaming is widely publicized on the internet.
119. EGI is the owner of common law trademark rights in the brand EDGE and EDGE formative marks licensed in association with the brand EDGE used on and in connection with computer games, computer gaming software, and computer gaming hardware.
120. EGI is the owner of federal trademark rights in the mark EDGE based on its U.S. registration No. 2,219,837 covering the mark EDGE for entertainment and educational magazines in the field of computer games and computer gaming hardware and software. A true copy of the '837 registration and the current status of the '837 registration as obtained from the U.S. Patent and Trademark Office available on-line records is attached as Exhibit H.
121. The '837 federal registration is incontestable.

122. The '834 registration is prima facie evidence of Counter Plaintiff's exclusive rights with respect to the mark EDGE in the field of computer gaming.

Counter Defendant and Third Party Defendant Activities

123. Counter Defendant VM is a producer of computer gaming hardware which started in business no earlier than 1998.

124. VM commenced use of the brand name GAMERS EDGE in connection with and as brand on computer gaming hardware, namely gaming computers designed to run computer gaming software.

125. VM commenced use of the brand name EDGE in connection with and as brand on computer gaming hardware, namely gaming computers designed to run computer gaming software.

126. VM has sold and continues to sell computer game hardware under the brand EDGE and GAMER'S EDGE, namely gaming computers directed at consumers and users of gaming software. VM sells its EDGE-formative computers for sale on the internet. A

representative sample of VM's offerings on the internet showing its EDGE brand computers is attached as Exhibit I.

127. VM also sells its EDGE brand computer game hardware, namely gaming computers to Third Party Defendant, Best Buy Inc. (BBI).

128. BBI touts the Velocity Micro EDGE brand desktop computer on the BBI internet web pages. Attached as Exhibit J is a representative sample of BBI touting the EDGE brand on its web site offerings

129. The BBI web site offerings also include customer ratings and comments for the VMI EDGE brand computer gaming personal computer. Three out of four reviewers rated the VMI EDGE brand computer on a scale of one to five as a one, with poor recommendations including statements such as "This is the WORST system I have ever bought it crashes every day ..I can't get help from velocity micro they just don't know how to help." Attached as Exhibit K is a current printout showing the negative reviews appearing on the BBI web pages for the VMI EDGE brand computer.

COUNT I.

Federal Trademark Infringement 15 U.S.C. §1117

130. All prior allegations are incorporated herein by reference.

131. Customers familiar with EDGE brand used on gaming computers are publicly complaining about the poor performance of EDGE brand computers produced by VM and sold by BBI. Moreover customers of BBI are complaining that VM is no help in servicing the problems experienced with the EDGE brand.

132. Customers, vendors, licensees and potential licensees are likely to falsely associate VMI's and BBI's use of the brand EDGE with EGI's longstanding use of the identical mark EDGE in the identical field of computer games.

133. VMI and BBI have infringed EGI's federally registered trademark EDGE, by using a confusingly similar and identical or nearly identical mark on related goods in direct competition with EGI and in the same geographic regions, and using similar marketing channels as EGI.

134. VMI's and BBI's' use of EDGE and EDGE formative marks as a brand infringes EGI's federally registered trademark EDGE and creates direct confusion as to the affiliation, origin or source of the goods and services performed by the parties in violation of the Lanham Act.

135. VMI's and BBI's use complained of herein creates reverse confusion in that consumers falsely associated the EDGE brand as emanating from VMI and/or BBI when no such affiliation exists in violation of the Lanham Act.

136. VMI's and BBI's use of EGI's federally registered mark creates a likelihood of confusion.

137. VMI and BBI had *constructive* notice of EGI's federally registered trademark but willfully decided to use the mark EDGE in the United States without authorization.

138. Counter Defendant VMI had *actual* notice of EGIs federally registered trademark rights at least as early as February of 2008 but willfully

decided to continue use of the mark EDGE and EDGE formative marks in the United States without authorization.

139. VMI's and BBI's infringement is willful.

140 EGI is being irreparably harmed and will continue to be irreparably harmed unless VMI and BBI's infringement is not preliminarily and permanently enjoined.

141. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

142. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior rights in the EDGE mark and brand.

COUNT II.
Federal Unfair Competition 15 U.S.C. §1125(a)(1)(A)

143. All prior allegations are incorporated herein by reference.

144. VMI and BBI have willfully used common law trademarks that are confusingly similar to EGI's trademarks.

145. VMI and BBI use identical and/or nearly identical marks as a brand on identical and competing goods marketed in the identical channels of trade which EGI offers and sells its goods and services through licensees.

146. VMI and BBI's use of nearly identical EDGE and EDGE-formative marks creates a likelihood of confusion as to the affiliation, origin, or source of the goods and services performed by the parties by direct confusion and reverse confusion.

147. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

148. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior right in the EDGE mark and brand.

COUNT III.
Federal Unfair Competition 15 U.S.C. §1125(a)(1)(B)

149. All prior allegations are incorporated herein by reference.

150. VMI and BBI have willfully used common law trademarks in their respective advertising that is confusingly similar to EGI's common law trademarks.

151. VMI and BBI advertise the brand EDGE and EDGE-formative marks on identical and competing goods marketed in the identical channels of trade and to the same consumers which EGI offers and sells its goods and services and licensees of EGI offer and sell related and/or identical goods and services.

152. VMI and BBI advertise the brand EDGE and EDGE-formative marks on identical and competing goods marketed in the identical channels of trade which EGI offers and sells its goods and services.

153. VMI and BBI's adoption, use and advertising the mark EDGE and EDGE-formative marks create a likelihood of confusion as to the affiliation, origin, or source of the goods and services performed by the parties by direct confusion and reverse confusion in view of EGI's longstanding prior and continuous use of the brand EDGE.

154. As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

155. This is an exceptional case pursuant to Lanham Act 35(a), 15 U.S.C. §1117(a), in light of VMI and BBI's willful and reckless disregard of EGI's prior and superior right in the EDGE mark and brand.

COUNT IV.

UNFAIR COMPETITION IN VIOLATION OF
VIRGINIA COMMON LAW

156. All prior allegations are incorporated herein by reference.

157. On information and belief, VMI and BBI's acts complained of herein have been committed knowingly, intending to ride on the long established good will in the mark EDGE, have been in bad faith, and with intent to cause confusion, mistake, and deception among consumers.

158. VMI and BBI have willfully used the trademarks EDGE, GAMER'S EDGE and EDGE-formative marks in a manner is confusingly similar to EGI's longstanding common law trademarks and such conduct constitutes unfair competition in violation of Virginia common law.

159. VMI and BBI use the confusingly similar EDGE, GAMER'S EDGE, and EDGE-formative marks in the identical field of goods and services in direct competition with EGI and use similar marketing channels and direct advertising to the identical consumers.

160. VMI and BBI's use of the mark EDGE, GAMER'S EDGE, and EDGE-formative marks, creates direct confusion and reverse confusion as to the affiliation, origin or source of the services performed by the parties in violation of common law of the Commonwealth of Virginia.

161 As a direct and proximate result of VMI and BBI's conduct, EGI has been and is likely to continue to be substantially injured in its business, including harm to its good will and reputation and loss of revenues and profits.

PRAYER FOR RELIEF

WHEREFORE, Cross Plaintiff EGI respectfully requests that this Court grant the following relief against the VMI and BBI:

A. An order preliminarily enjoining and restraining VMI and BBI and all agents, servants, employees, and other persons in active concert or participation with VMI and BBI from the use, sale, and promotion of the mark EDGE, or formative versions of the mark EDGE, or contributing to or inducing the infringement of EGI's EDGE and EDGE-formative trademarks;

B. An order permanently enjoining and restraining VMI and BBI and all agents, servants, employees, and other persons in active concert or

participation with VMI and BBI from the use, sale, promotion of the mark EDGE, or contributing to or inducing the infringement of EGI's EDGE and EDGE-formative trademarks;

C. An order requiring VMI and BBI to offer up for destruction all molds, matrices and other means of branding products with the mark EDGE, obliterate the mark EDGE from products within VMI and BBI's ' control or otherwise destroy products branded with the mark EDGE, offer up for destruction all advertisement for the mark EDGE, and promotional materials within VMI and BBI's possession or control, pursuant to Lanham Act section 36, 15 U.S.C. §1118;

D. An order requiring VMI and BBI to file with Court and serve on EGI within (30) days after entry and service upon VMI and BBI of an injunction, a report in writing and under oath setting forth in detail the manner and form in which VMI and BBI have undertaken to comply and is complying with the Court's injunction, pursuant to Lanham Act Section 34(a), 15 U.S.C. §1116(a);

E. An award to EGI of its reasonable attorneys' fees, pursuant to Lanham Act section 35, 15 U.S.C. §1117;

F. An award to EGI of its costs in this action, pursuant to Lanham Act Section 35, 15 U.S.C. §1117;

G. An award to EGI of VMI and BBI's profits and damages sustained by EGI and that such amount be trebled in accordance with 15 U.S.C. §1117;

H. An award to EGI of VMI and BBI's ' advertising expenditures sufficient for EGI to institute corrective advertising to reeducate consumers due to reverse confusion; and

I. Such other and further relief as the Court deems to be just, reasonable and appropriate under the circumstances.

Respectfully submitted,

Attorneys for Defendant/Cross
Plaintiff/Third Party Plaintiff
Edge Interactive Media Inc. a/k/a Edge
Games Inc.

BY: ____/JeffreyHGreger/_____
Jeffrey H. Greger VSB No. 41500
Jeffrey H. Greger, PC
for Defendant/Cross Plaintiff/Third Party Plaintiff
The Edge Interactive Media Inc. a/k/a Edge Games Inc.
Lowe Hauptman Ham & Berner LLP
1700 Diagonal Road, Suite 300
Alexandria, VA 22314
Tel: 703-535-7069
Fax: 703-518-5499
Email: jhgreger@ipfirm.com

Certificate of Service

I hereby certify that on this 21th day of August 2008, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Robert L. Brooks
Troutman Sanders LLP
Post Office Box 1122
Richmond Virginia
Tel: 804-697-1200
Fax: 804-967-1339
Email – rob.brooke@troutmansanders.com
Counsel for Plaintiff

BY: _____/JeffreyHGreger/_____
Jeffrey H. Greger VSB No. 41500
Jeffrey H. Greger, PC
Attorney for Defendant/Cross Plaintiff/Third Party Plaintiff
The Edge Interactive Media Inc. a/k/a Edge Games Inc.
Lowe Hauptman Ham & Berner LLP
1700 Diagonal Road, Suite 300
Alexandria, VA 22314
Tel: 703-535-7069
Fax: 703-518-5499
Email: jhgreger@ipfirm.com

EXAMPLE OF PRODUCT SAMPLES OF THE “EDGE” BRAND GAMING COMPUTERS SUPPLIED TO EDGE GAMES INC BY VELOCITY MICRO AS PART OF THE QUALITY CONTROL PART OF THE LICENCE BETWEEN THE COMPANIES



EDGE004396



Model: **Edge** VIXE TS 800-303-
www.velocitymicro.com

Components

- Intel® Core™ 2 Quad processor Q8200, quad 2.33GHz
- 550W Velocity Micro® Power Supply
- MX2-W - Velocity Micro Classic Case - Pure Aluminum
- 630i mATX Motherboard, PCI-E, DDR2
- 4GB DDR2 PC6400 DDR2-800 High Speed Memory
- 512MB ATI Radeon™ 4850 HD DVI HDCP DirectX10™
- 750GB 7200rpm SATA2 Hard Drive, 18MB Cache
- Integrated Audio, 5.1 Channel Sound
- 20x LiteOn™ DVD±/-RW Dual Layer Burner with LightScribe™
- 20x DVD/48x CD-RW LiteOn™ Combo Drive



EDGE004398

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- E**
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- Games
- Licensees
- About
- Help



Electronic & On-Line Publication of
Future Publishing's

EDGE

magazine

Electronic and On-line publication of Future Publishing's **EDGE magazine** from 1993 to date is under license from EDGE/THE EDGE through a perpetual and irrevocable license entered into between EDGE and Future in 2004.

(NO AFFILIATION - please note, this version of our website is intended for USA and other viewers worldwide, but not intended to be viewed from the United Kingdom. If you have accessed this website from the United Kingdom, then we are obliged to point out for your benefit that the above does not stand as a claim of relationship between EDGE Games and Future Publishing).

Velocity Micro's award-winning EDGE game PCs were manufactured and sold under license from EDGE/THE EDGE as a result of an amicable arrangement between Velocity and EDGE.

Velocity Micro's PCs were available online from various top retailers such as Fry's Electronics, Best Buy, Sears, Target, Staples, Amazon, and Costco.

Velocity have been continuously selling EDGE brand PCs since 1998, both EDGE Gaming PCs and EDGE PC workstations..

EDGE PC^s®

EDGE GAMING PC^s®

FOR NINTENDO, Wii

THE EDGE

A BETTER GRIP FOR YOUR GAME

Datel (U.S) sold their "The EDGE" Nintendo Wii controller under license from EDGE/THE EDGE as a result of an amicable arrangement between Datel and EDGE. The controller is available from various sources online. As of July 2011 it was still available from Datel Gaming themselves, alternatively there are various sources via Amazon:



The movie "The Edge" from 20th Century Fox was released under license from EDGE/THE EDGE as a result of an amicable arrangement between Fox and EDGE. It is likely still available on BluRay and can also be viewed online.

[Buy on BluRay now online at Amazon.com](#)

[View online at Amazon.com](#)



EDGEGAMERS(TM) is the trademark of EDGE/EDGE GAMES and is used by EdgeGamers Organization under license from EDGE /EDGE GAMES as a result of an amicable arrangement between the owners of EdgeGamers Organization and EDGE.

Visit this organization:
www.edge-gamers.org

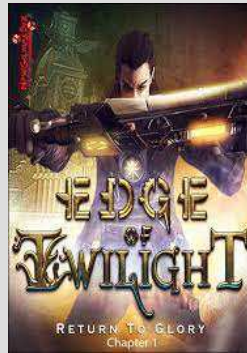


EDGE/THE EDGE acquired rights to **EDGE** from Steven Grant and Gil Kane in the mid 1990s. Copies of the EDGE comic published by Bravura/ Malibu (Marvel Comics) are available from various sources..

LICENSED GAMES

As a result of amicable arrangements made with various other software publishers over the years, several 'EDGE' games have been published all of which under license with EDGE/EDGE GAMES, with all rights arising from use of the game title vesting in EDGE/EDGE GAMES.

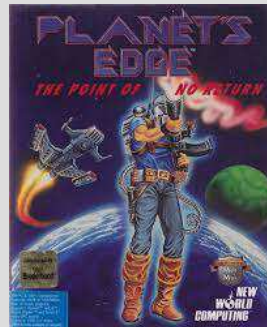
These include: **EDGE OF TWILIGHT** through a license with FuzzyEyes, **CROSS EDGE** through a license with NIS, **PLANET'S EDGE** through a license with New World Computing, and **KOALA LUMPUR: JOURNEY TO THE EDGE** under a license agreement with Broderbund Software. All these game titles are the trademarks of EDGE Games, Inc.



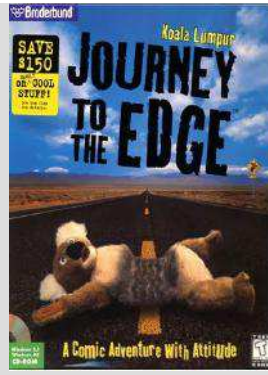
Available on [STEAM](#)



Available on [AMAZON](#)



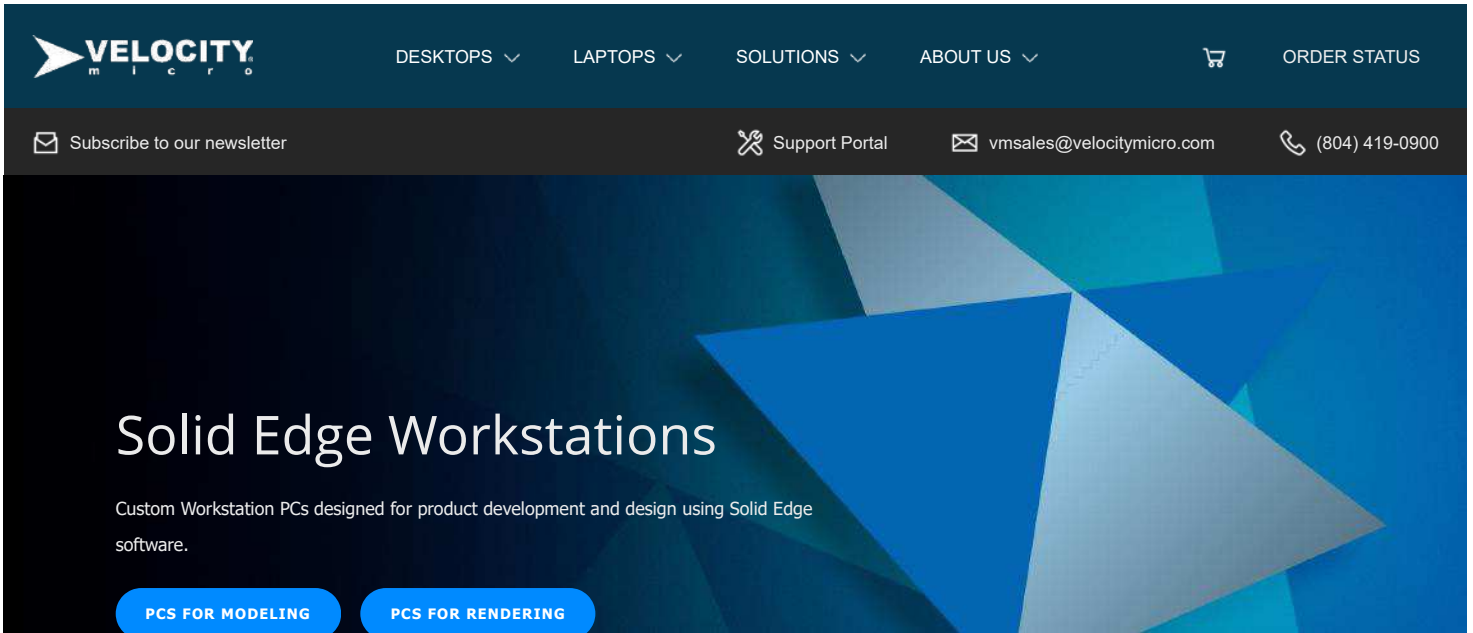
Available on [STEAM](#)



"Children are our future." EDGE/THE EDGE donates 10% of its profits to charities and institutions for the benefit of children in need, at-risk children and sick & dying children.

EDGE™/THE EDGE™/EDGE GAMES™
(c) 1984, 2022

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The image shows the top portion of a website. At the top left is the Velocity Micro logo, which consists of a stylized 'V' followed by the word 'VELOCITY' in a bold, sans-serif font, with 'm i c r o' in smaller letters underneath. To the right of the logo are four navigation links: 'DESKTOPS', 'LAPTOPS', 'SOLUTIONS', and 'ABOUT US', each with a downward-pointing chevron. Further right is a shopping cart icon and the text 'ORDER STATUS'. Below the navigation bar is a dark grey bar containing four items: an envelope icon with the text 'Subscribe to our newsletter', a wrench icon with 'Support Portal', an envelope icon with the email address 'vmsales@velocitymicro.com', and a telephone icon with the phone number '(804) 419-0900'. The main hero section has a dark blue background with abstract, overlapping geometric shapes in various shades of blue. The text 'Solid Edge Workstations' is prominently displayed in white. Below it, a smaller line of text reads 'Custom Workstation PCs designed for product development and design using Solid Edge software.' At the bottom of the hero section are two blue buttons with white text: 'PCS FOR MODELING' and 'PCS FOR RENDERING'.

Performance Optimized

Our Solid Edge workstations are specifically designed for high demand, CPU intensive workflows to maximize performance without wasted resources. You won't find a faster PC for Solid Edge anywhere else.

Expert B

Home & Office

Workstation

Gaming



Raptor™ Signature Edition

Our founder's vision for ultimate gaming, this system is designed to be the fastest, most powerful PC anywhere.

Starting at \$4549

Configure Now



Edge™ Z55

Packed with features and assembled with our trademarked expertise, this system goes beyond casual gaming.

Starting at \$1599

Configure Now



Edge™ Z40

This system powered by Intel's new Sandybridge processors packs launch technology and our expert engineering for amazing bang for the buck.

Starting at \$1199

Configure Now

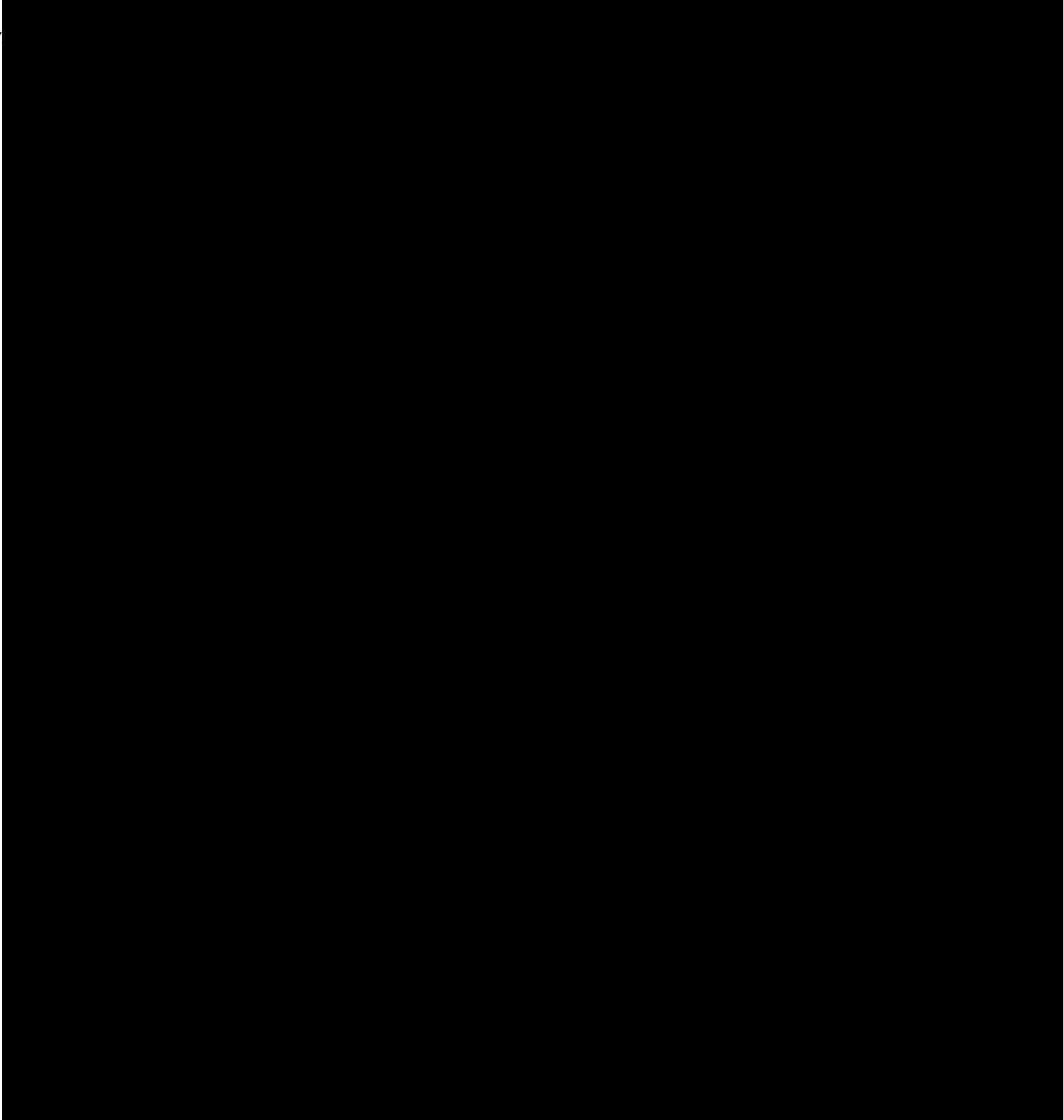
The Velocity Micro Difference

At Velocity Micro, we set our own standards. Then we surpass them. Designed and assembled by master craftsmen obsessed with perfection, Velocity Micro PCs are the things of dreams. We use nothing less than the finest parts. Every wire is clipped and tucked with care. No detail goes untouched or untested. That's how we're able to build PCs that raise our own bar for excellence again and again. The end result is a PC that's truly awe-inspiring. A PC that exceeds expectations

With faster, intelligent multi-core technology that automatically applies processing power where it's needed most, the new Intel Core i7 processor delivers an incredible breakthrough in PC performance.

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 Ends 7/9.

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7/12/2024

BUY NOW

EMAIL ME THIS CONFIGURATION

FINANCE THIS PC

Customize Your Raptor™ ES40

The **Raptor™ eS40i** is built in our Small Form Factor NX2 chassis using premium components and our meticulous craftsmanship to create a desktop that's small and mighty. It's lean, mean, and portable enough to go wherever the next match takes you. Perfect for pro, collegiate, amateur level eSports, and portable gaming at home. Each system includes 14th Gen Intel Core processors, powerful graphics options including the NVIDIA RTX 30 and 40-Series, integrated onboard 802.11ax wifi + Bluetooth, 100% US based support, and ZERO Bloatware.


Just as with every Velocity Micro PC, this custom system ships from and is supported by our Richmond, VA headquarters.








"The Raptor's portability and power make it a deceptively versatile rig for professionals and gamers."
- PC Gamer

Core Components

Case



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 Subscribe to our newsletter  Support Portal  vmsales@velocitymicro.com  (804) 419-0900

FOURTH OF JULY SALES EVENT
Instant coupons, discounted shipping, and more on select systems.
 Ends 7/9.

Click case image to open gallery



Your Instant Price Update

\$2149

Estimated Ship Date

7/15/2024

BUY NOW

EMAIL ME THIS CONFIGURATION

FINANCE THIS PC

Customize Your Raptor™ Z55

A PC Magazine Editors' Choice built in our mATX chassis and powered by 14th Gen Intel Core processors and RTX 40-series graphics. This system is assembled with our trademarked extreme care and precision engineering, tuned by our engineers to give you the fastest framerates and best overall performance at 4K and beyond. We offer only the very best retail-grade component options in the Z55 for easier upgrades and better longevity, meaning this is a PC that will be with you for years to come. Our all-time most popular! Also includes our award-winning lifetime tech support and ZERO bloatware.

Just as with every Velocity Micro PC, this custom system ships from and is supported by our Richmond, VA headquarters.



"The attention to detail and tuning pays off in the performance...Velocity Micro knows how to build a fast computer"
- PC Magazine

Core Components

EDGE GAMING PC, EDGE PC, and EDGE are the trademarks of [Edge Games, Inc.](#) Used under license by Velocity Micro Inc., all rights reserved.



IT'S NOT WHETHER
YOU WIN OR LOSE,
BUT HOW YOU PLAY
THE GAME.

YEAH RIGHT! With NVIDIA graphics processors you CAN have it all with ultra-realistic NVIDIA PhysX technology, lifelike environments, hard-core graphics, and amazing stereoscopic 3D effects. Winning is everything.



Edge Z30

For the mainstream gamer, this multi award winning system is built with our trademarked tuning in a compact size.

Starting at \$1169

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Edge Z55

This system harnesses the power of Intel Core i7 processors to provide a lush and immersive gaming world.

Starting at \$1799

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Raptor Signature Edition

Our founder's vision for luxury gaming, this system is the absolute ultimate in personal computing, hands down.

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Ready-to-Ship systems available online at these top retailers:



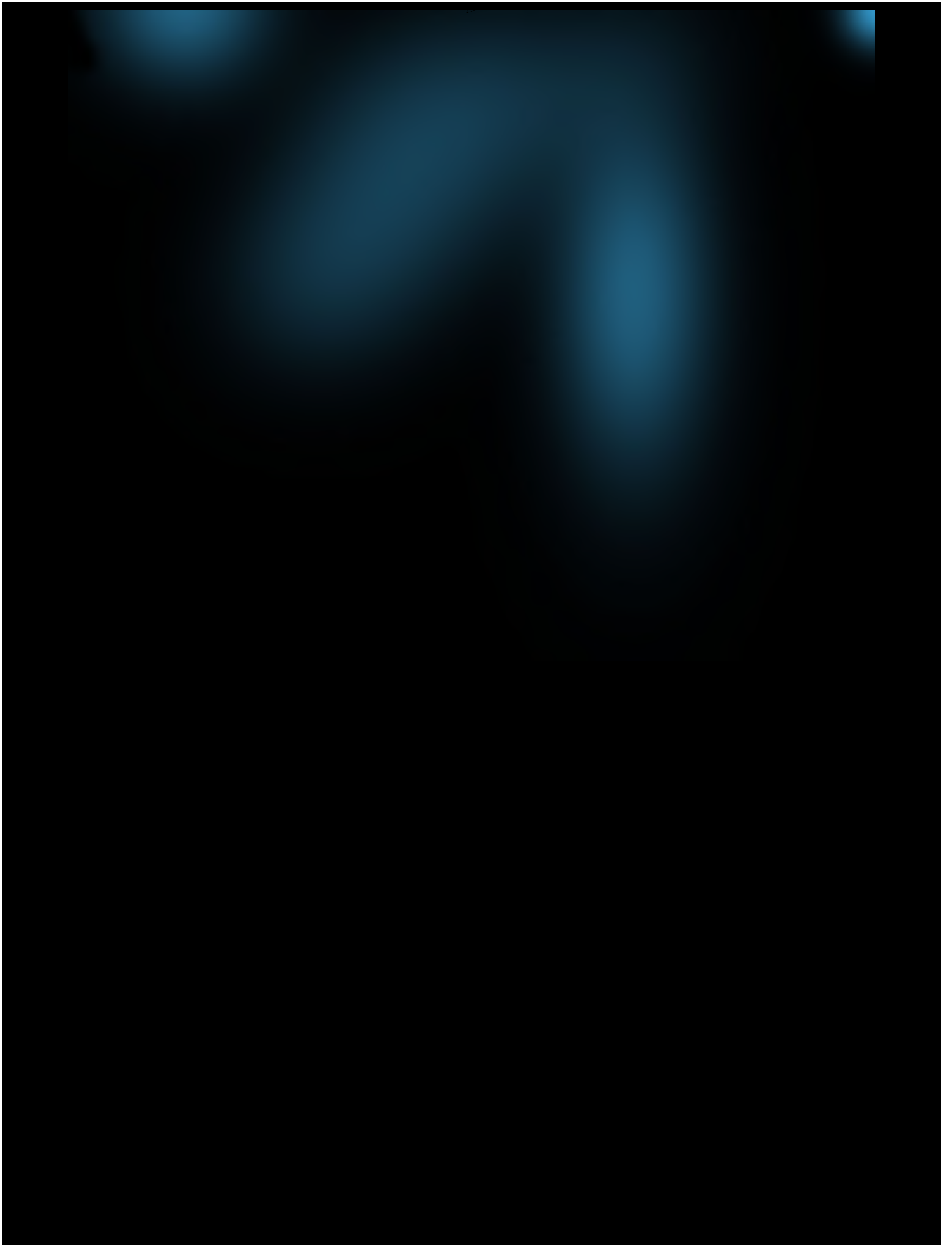


EXHIBIT Z

Part 8



(https://velocitymicro.com)

DESKTOPS

LAPTOPS

SOLUTIONS

ABOUT US

(/MY-CART.PHP)

ORDER STATUS (/ORDER-STATUS.PHP)

Subscribe to our newsletter (/Newsletter.php)

Support Portal (/pc-support-hub.php)

vmsales@velocitymicro.com(mailto:vmsales@velocitymicro.com)

(804) 419-0900 (/contact-page.php)

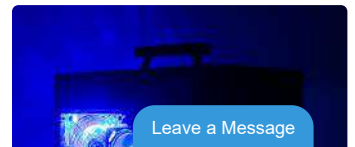
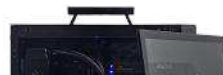


Raptor eS40

Designed for gaming and pro-level eSports in our new portable small form factor chassis. Powered by AMD or Intel and next gen discrete graphics.

CHOOSE YOUR PROCESSOR

LEARN MORE





2012 Holiday Buying Guide

WELCOME	HOLIDAY EDITION	EDGE Z40	RAPTOR Z90	VMULTRA DRIVE
-------------------------	---------------------------------	--------------------------	----------------------------	-------------------------------

EDGE Z40

Designed for lighter gaming, media editing and creation, and enthusiast activities, the lean and mean Edge™ Z40 makes the perfect gift. The very latest bleeding edge components along with our trademarked care and craftsmanship.

Starting at \$999 + Free Shipping

About Velocity Micro PCs

Building remarkable, finely crafted gaming PCs is our passion. Since our first review, no one has been able to match Velocity Micro's PCs in value, performance, and quality. Our expert engineers obsess over each and every detail to ensure that every system that leaves our warehouse will blow the doors off of the competition. It's this ongoing pursuit of perfection that has made our desktops famous with enthusiasts all over the world.



Velocity Micro Edge™ Z40

[LEARN MORE](#)

Edge™ Z40 Key Features

- » A multiple Editors' Choice Award winner
- » 3rd Gen Intel Core Processor Options
- » Powerful discrete graphics options from AMD and NVIDIA
- » 1600MHz memory for lightning fast performance
- » USB 3.0 and SATA 6 Gb/s support
- » Choice of Windows® 7 or Windows® 8
- » 1 Year US-based warranty
- » Lifetime in-house phone support, 100% based in the USA

3rd Gen Intel Processors

Striking performance. Stunning visuals.

Amazing performance and stunning visuals start with the first level of Intel's latest processor family. Thanks to Intel® Hyper-Threading technology, you'll see just how effortless smart multitasking can be.

VM Difference

- Value Performance, Quality
- 50+ Editors Choice Awards
- 100% US-Based Tech Support
- Owned and Operated in the USA

Recent Awards

- PC MAG EDITORS' CHOICE
Vector™ Campus Edition, July 2012
- CNET EDITORS' CHOICE
Edge™ Z55, April 2012
- PC MAG HIGHLY RATED
Vector™ Holiday Edition, Jan 2012
- PC MAG EDITORS' CHOICE
Edge™ Z40, June 2011



Post-Holiday Sales Event

SHRRE



It's time to get what you really wanted. Turn that Christmas cash into an Ultra-performance PC with these amazing specials on our most popular systems through December 31st. All Velocity Micro PCs are designed, built and supported in the USA.



Vector™ Holiday Edition

Boutique power, craftsmanship, and support finally come at a mainstream price! Why buy anything else this holiday season?

Starting at **\$599**

Free Upgrade to Quad Core AMD® A8-5600K
Free Shipping
Choice of Windows® 7 or 8

Until Midnight, Dec. 31st

[Configure Yours Now](#)



Edge™ AIO

Designed with the same ideals that have made us famous, the Edge AIO combines the craftsmanship and support of an award-winning Velocity Micro PC with the convenience of an All-in-One.

Starting at **\$799**

Free Shipping
Choice of Windows® 7 or 8

Until Midnight, Dec. 31st

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VMUltra™ Drive

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Edge™ Z55

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Raptor™ Z90

Representing everything we know about performance computing, this gaming system is designed and assembled by master craftsmen.

Starting at ~~\$2999~~ **\$2699**

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Choice of Windows® 7 or 8
Free Gaming Bundles

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**Raptor™ Signature Edition**

Designed by our founder to be the absolute fastest, most envy inducing system available. Even Santa's elves couldn't build one faster.

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Choice of Windows® 7 or 8
Free Gaming Bundles

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**CineMagix™ Grand Theater**

The perfect convergence device between traditional entertainment and digital multimedia. A great gift for the whole family.

Starting at ~~\$1599~~ **\$1549**

\$50 Off Instantly + Free Shipping
Choice of Windows® 7 or 8

Until Midnight, Dec. 31st

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**Vector™ Z35**

For home and office users in need of a little more muscle, the Z35 packs a punch. An amazing all-around system.

Starting at ~~\$1699~~ **\$1549**

\$150 Off Instantly + Free Shipping
Choice of Windows® 7 or 8

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**Overdrive PC™**

If you've been searching for the most extreme, most refined, most powerful PC on the planet, you've found it. The very best of the best.

Starting at ~~\$7999~~ **\$7499**

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Choice of Windows® 7 or 8

Until Midnight, Dec. 31st

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**Edge™ Z40**

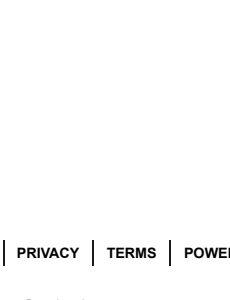
Lean and mean, this multi-award winning, highly configurable PC is our best seller. Highly configurable to knock your stockings off.

Starting at **\$999**

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Choice of Windows® 7 or 8
Free Gaming Bundles

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**Vector™ Z25**

The award winning Vector Z25 toes the line between stunning performance and remarkable value. A great family or Home Office PC.

Starting at **\$749**

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Free Gaming Bundles

Until Midnight, Dec. 31st

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This 14" Ultrabook™ features Intel® Core® i7 processor and 240GB Intel® 520 Series SSD in a sleek aluminum chassis weighing in at just 4 pounds!

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Raising the Bar

Velocity Micro has long been recognized for its reliable high-performance PCs. The quotes below, taken from reviews of actual systems, show that the company's reputation for premium quality is common knowledge in the major PC industry press.

Recent Reviews

PC Magazine
January 2009

> [Edge Z55](#)

"the type of system you use to climb up the ranks in the gaming world. It's the kind of PC you use when you're done playing casually and want more power. It's a professional-grade gaming for pro (professional-amateur) gamers."



Excellent, 88%
January 2009

> [Edge Z55](#)

"If you want to get an early start on the Core i7 train, the Edge Z55 is a smart boxcar to jump in."

"The GX2-W is dreamy: spare, utilitarian, and a breeze to work in. And the wiring is *genius*."



8.2/10
December 2008

> [Edge Z55](#)

"Justly lauded for the quality and cleanness of its builds, [Velocity Micro] always adheres to a philosophy of functional minimalism that shows up in its PCs' outward design and performance."

"If beauty and functionality are as important to you as power, the Edge Z55 is tough to beat."



November 2008

> [ProMagixT W160 High Performance Workstation PC](#)



November 2008

> [Edge™ Z55](#)

"We'd recommend the Z55 for anyone who is looking for a fast gaming desktop, especially if a pricier system is out of reach or outside the realm of budgetary sanity."

PC Magazine
November 2008

Best of 2008

> [Raptor Signature Edition](#)

"The best gaming system we've seen. Its blazing, top-of-the-class performance coupled with middle-of-the-pack pricing makes the Raptor a hands-down winner."



November 2008

> [Raptor Z90](#)

"Blazingly fast, aesthetically pleasing, and well made. The Raptor Z90 blew through our benchmarks."



Featured Systems

Raptor™ Z90

This tricked out, custom assembled gaming rig represents everything we know about extreme gaming, powered by Core i7.

Starting at:
\$2899



[CONFIGURE NOW](#)

Edge™ Z55

This system harnesses the power of the latest Intel processors to provide a lush and immersive gaming world.

Starting at:
\$1799



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Raptor™ Signature Edition

Our founder's vision for luxury gaming, this system represents the absolute ultimate in personal computing, hands down.

Starting at:
\$4999



[CONFIGURE NOW](#)



Editors' Choice Winner

[> Edge Z55](#)

"Velocity Micro's Edge Z55 provides a powerful example of the leap ahead in performance afforded by Intel's new Core i7 CPUs. Velocity Micro's own overclocking efforts don't hurt either. Any PC gamer would love to make this upper midrange desktop their own."

WIRED



Test Best 2008

[> Raptor Signature Edition](#)

"We're not arguing with the benchmark scores - or the price tag, which is half that of its closest competitor in the bunch."

●●●●●●●●●● 9/10

October 2008



Editors' Choice Winner

[> Edge Z15](#)

"Velocity Micro's Edge Z15 represents one of the best deals we've seen this year in midrange gaming PCs... We recommend this system to any PC gamer looking for a sub-\$2,000 desktop."

PC Magazine
4.5/5
August 2008

2008 Editors' Choice Winner

[> Raptor Signature Edition](#)

"The Raptor with its midrange price and blowout performance is the unequivocal gaming champ. This is the one you'll want to brag about to your friends."

HOT HARDWARE



[> Edge™ Z55](#)

"It's not often that you hear the word "value" applied to an enthusiast system, but that is exactly what the Edge Z55 represents."

August 2008

PC Magazine
4/5
July 2008

2008 Editors' Choice Winner

[> Vector™ Campus Edition](#)

"The Velocity Micro Vector Campus Edition's balance between all-out performance, features, and price keep it in the sweet spot among this esteemed gathering of PCs. Get this one for the demanding young adult or late teen in your life."



[> Raptor™ Signature Edition](#)

"Multimedia enthusiasts with deep pockets (but not Skulltrail-deep) should give the Raptor Signature Edition a close look."

PC Magazine
4/5
July 2008

[> Edge™ E2250](#)

"This is a well-equipped system with a bang for the buck that will give you and your family years of high-powered computing."

COMPUTER SHOPPER

8/10
July 2008

[> VectorT Campus Edition](#)

"This ... system is loaded with extras you probably wouldn't expect, but will undoubtedly appreciate..."




May 2008

> [ProMagixT W160 High Performance Workstation PC](#)

"With its good performance and moderate price, the Velocity Micro ProMagix W160 reaps some of the benefits of its acquisition of Overdrive PC. Highly Recommended."



May/June 2008

> [Velocity Micro CineMagix™ Grand Theater](#)

"...goes a step further and accepts a Cable Card provided by your local cable provider, allowing it to record all your subscribed channels, including premium channels in, in high definition. This model also has more than enough oomph for gaming."



April 2008

> [Velocity Micro Edge™ Z55](#)

"If you don't feel like coughing up \$4,000 or more for an über-expensive 3D performance rig but require more horsepower than a budget gaming PC has to offer, the Velocity Micro Edge Z55 is for you."



February 2008

> [Velocity Micro Raptor™ Signature Edition](#)

"The Velocity Raptor is for users...who absolutely must have the best graphics and processors at hand."

PC Magazine
November 2007

Blazing Quad-Core Rigs

> [ProMagix™ HD Custom Digital Media PC](#)

8.0/10
November 2007

> [Velocity Micro ProMagix™ E2240](#)

"Velocity Micro's ProMagix E2240 is perhaps the fastest preconfigured gaming desktop you can find on store shelves."


8/10
October 2007

> [Cinemagix™ Grand Theater Entertainment System](#)

"The Windows-powered CineMagix...for TV junkies, the hunt is over."

"Elegant case looks at home in the living room. Stocked to the gills..."


8/10
October 2007

> [Velocity Raptor™ DCX Custom Gaming Computer System](#)

"The Velocity Raptor is a graphics powerhouse... We dig the classic mod look of the case, as well as its side window for peeking at the primo components."



October 2007

> [NoteMagix™ C90 Ultra](#)

"With a notebook like the C90 Ultra, you can take advantage of the pervasive workplace and get some real work done. And when you are done with the serious stuff, you can crank up a serious game requiring serious hardware and frag your friends."



September 2007

2007 Reader's Choice Award Winner for Service and Reliability

Velocity Micro received an overall service & reliability score of 8.6 out of 10, the highest among Windows PC manufacturers.

The average score for a Windows-Based PC was 7.8 out of 10.

Velocity Micro also received the highest reliability rating in the survey with a score of 8.6 out of 10, and the best "likelihood of recommending" score of 8.3 out of 10.

PC Magazine
September 2007

> [Gamers' Edge™ PCX Custom Gaming PC](#)

PC Magazine
September 2007

> [ProMagix™ HD Custom Digital Media PC](#)



2007 Editors' Choice Winner
Vector™ GX Campus Edition

8.3/10
August 2007



August 2007

> Cinemagix™ Grand Theater

"A near-perfect balance of beauty and beast."

"...the Grand Theater will be not only a fantastic home-theater PC but also a rig that's adept at gaming."

"Velocity Micro seems determined to keep us addicted to muscle PC's."

"Ok, we'll admit it: We succumbed to Velocity's 'Come on, you know you want it' approach."

PC Magazine
July 2007

2007 Editor's Choice Winner
VectorT GX Campus Edition



4/5
May 2007

Velocity Micro ProMagixT E2230

"You will really "wow" your friends with this desktop as well as "wow" yourself with the speed and brilliance of this desktop computer. If you are looking to purchase a new, or secondary computer, than I highly suggest taking a look at this one."



7.8/10
May 2007

Velocity Micro ProMagixT E2230

"Its competition's prices range in all directions, but Velocity Micro's E2230 strikes the right balance of performance, expandability and features.."



8.7/10
May 2007

> Velocity Raptor™ DCX

"We've given Velocity Micro plenty of good reviews in the past, but this might be the best PC we've ever seen from the midsize vendor. True to its speciality of building powerful, smartly configured gaming desktops, this Raptor DCX comes in at \$3,995, but it feels like you're getting a remarkable deal given the performance you get for that price."



March 2007

> Gamers Edge™ DualX™

"you get what you pay for with this system. Some places charge you a ton extra for custom built systems: Velocity Micro has very reasonable prices... Your custom PC will be built perfectly and look better than a lot of other systems out there."



8.2/10
February 2007

> CineMagix™ Grand Theater Entertainment System

"For the CineMagix Grand Theater's overall PC performance, we're glad to see that Velocity Micro stays true to its high-end PC roots."

"Velocity Micro has as complete a home theater PC as we've seen."

"more bang for the buck than the home theater PC competition"



8.4/10
January 2007

> Raptor™ Signature Edition

"One of the fastest PCs we've tested"

"one of the most feature-complete high-end desktops we've reviewed. Its performance is media-creation and game-minded, and anyone buying it for those or almost any other purposes won't be disappointed."



NoteMagix™ L80 Ultra

Core 2 Duo Hits the Road

"The L80 Ultra packs a lot of features and one of the fastest processors on the planet, so it's a fairly good deal for gamers"

Excellent
January 2007



December 2006

Best Overall Value OEM System Builder

"[Velocity Micro] offers some of the most competitively priced builds in the landscape, and it packages its systems around one of the best consumer experiences that can be found. The systems always have high build quality, and VM's technical support staff has demonstrated that they are willing to stand by their products."



December 2006

> Gamers' Edge™ PCX

Best Specialty Model (Desktop PCs)
"It's a very good to excellent performer"



November 2006

NoteMagix™ L80 Ultra

Six Notebooks That Don't Burn

"Velocity Micro's NoteMagix L80 Ultra notebook computer was the fastest of all units"



November 2006

> Gamers' Edge™ PCX

"[The Gamers' Edge PCX] did well in our benchmarks, ran all of our games at high resolution, and the company's tech support was on the ball every time we called."



October 2006

NoteMagix™ L80 Ultra

"The Velocity Micro NoteMagix L80 Ultra's graphics performance makes it a good choice for handling Windows Vista and playing 3D games. Plus, it's relatively portable compared with full-fledged desktop replacement systems."

PC Magazine
October 2006

> Velocity Raptor™ DCX

PC Magazine
September 2006

NoteMagix™ L80 Ultra



September 2006

> Vision 64™

"Velocity Micro is one computer manufacturer you can trust with your most precious data."



7.9/10
August 2006

ProMagix™ E2200

"The E2200 is a great machine, as both our general usage tests and gaming tests indicate. It's very likely the best machine that can be bought in a brick-and-mortar establishment."



7.0/10

ProMagix™ E2200

"the ProMagix E2200 brings a strong combination of design and capability you won't find from any other in-store PC."



7.1/10
August 2006

ProMagix™ E2010

"Velocity Micro's ProMagix E2010 is an impressive machine for a fixed-config retail PC"



5 Stars
August 2006

> Vector™ GX

"Velocity Micro's Vector GX is probably the best customizable Intel Core 2 Duo system currently available."



7.9/10
July 2006

> [Velocity Raptor™ DCX](#)

"The Velocity Micro Raptor DCX delivers the fastest performance we've ever seen, thanks to an aggressively overclocked Core 2 Extreme CPU."



8/10
July 2006

> [Vector™ GX Campus Edition](#)

"the Velocity Micro Vector GX Campus Edition is a strong opening volley. There's not much we'd change about this back-to-school package; it's as capable as it is attractive."



PC World "Best Buy"
Score: 87
July 2006

> [Vector™ GX](#)

"it provides excellent value for the money and would be a good pick if you were looking for a fairly powerful system on a budget."

PC Magazine
Editors' Choice
July 2006

> [Vector™ GX Campus Edition](#)



Quality: 4.5/5
Geekness: 4.5/5
July 2006

> [Velocity Micro ProMagix™ A/V/D™](#)

"It's an audio/video workstation that's packed with features and certainly should have a place in your project studio. I recommend this product to anyone who is interested in getting started with PC-based audio and video entertainment applications...A Geek.com Pick for sure."



8/10
June 2006

> [Velocity Micro Raptor™ 64 DualX™](#)

PC Magazine
April 2006

> [NoteMagix™ M57 Ultra](#)



3.5/5
April 2006

> [Velocity Micro Raptor™ 64 DualX™](#)

"The Raptor is powerful but still extremely quiet."



Quality: 4.5/5
Geekness: 5/5
March 2006

> [Velocity Micro Raptor™ 64 DualX™](#)

"Velocity Micro has a top-shelf winner on its hands with this gamer's dream system. I experienced gaming the way it should be experienced, with ultra high resolutions and maxed-out configuration settings, truly immersing me in the game environment. As a result of my gaming nirvana, I proudly award the Raptor 64 DualX system a Geek.com Pick."



March 2006

> [NoteMagixT Z71 Ultra](#)

"the NoteMagix Z71 Ultra is definitely worth a look. This machine doesn't disappoint with its raw speed, combined with great battery life"

PC Magazine
February 2006

> [Budget Friendly, But Not Boring](#)
> [Vision™ GX](#)

PC Magazine
February 2006

> [Vision™ GX](#)



9.4/10
February 2006

> [Gamers' Edge™ 1500](#)

"We enthusiastically and exuberantly recommend this computer for great performance in a midrange computer and we would easily recommend this to friends and family."



> [Velocity Micro Raptor™ 64 DualX™](#)

"Velocity Micro's Raptor line of gaming systems are proven performers, and the new Raptor 64 DualX is no exception."

7.6/10
February 2006



> Gamers' Edge™ DualX™ T1300

7.2/10
February 2006

"A serious gaming machine"
"A smart configuration and good value for a gaming PC"



> Vision 64™

84/100
Top Power Systems
February 2006

"Fast, SLI-ready dual-core system suits advanced gamers and graphics enthusiasts."

PC Magazine
Editors' Choice
January 2006

> Velocity Raptor™ 64 DualX™

PC Magazine
World's First Dolby PC
January 2006

> ProMagix™ MSX with Dolby® Master Studio™

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Custom Gaming & Workstation PC Blog | Velocity Micro



Posts

Introducing the Edge AIO

🕒 December 3, 2012 👤 Josh Covington

Introducing the Edge AIO from Velocity Micro.

Designed with the same ideals that have made us famous with enthusiasts around the world, the Edge AIO combines the craftsmanship, performance, and support of an award-winning Velocity Micro PC with the convenience and efficiency of an All-in-One. Crystal clear 23.6" screen in full 1080p, thin design, clean lines. The best part: the Edge AIO is fully configurable to meet your needs.

This is the solution to those low powered, low expectation All-in-Ones you've been looking for. Supported by 100% US-based experts. And it starts at just \$799. [Get yours now.](#)



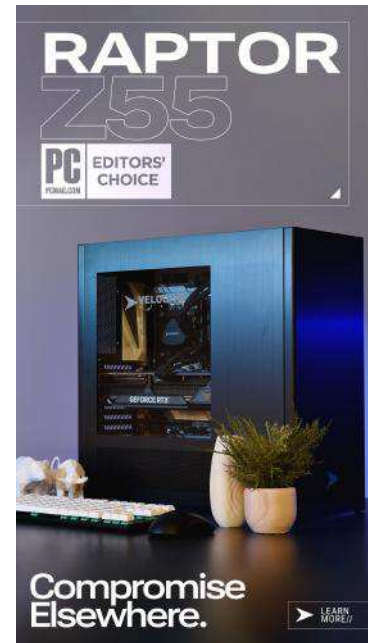
Bio Latest Posts



Josh Covington

Josh has been with Velocity Micro since 2007 in various Marketing, PR, and Sales related roles. As the Director of Sales & Marketing, he is responsible for all Direct and Retail sales as well as Marketing activities. He enjoys Seinfeld reruns, the Atlanta Braves, and Beatles songs written by John, Paul, or George. Sorry, Ringo.

Posted in: [Export, PC News](#)



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[Editors' Choice for the NoteMagix U450 →](#)

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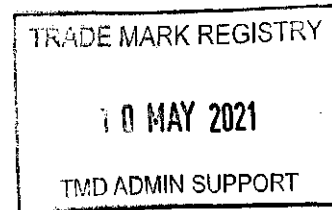
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Form TM26(I)

Application to declare invalid a registration
or a protected international trade mark (UK)



Fee £200

Do not use this form:

- To apply to revoke a trade mark on grounds of non-use. Use Form **TM26(N)**.
- To apply to revoke a trade mark on grounds other than non-use. Use Form **TM26(O)**.

<p>1 Trade mark number Number of the trade mark you are applying to cancel. If the application concerns an International Registration, help us identify the correct trade mark by adding "IR".</p>	<p>UK00801515050</p>
<p>2 Full name of the registered owner or holder Whose trade mark you are applying to invalidate.</p>	<p>Edge Games, Inc.</p>
<p>3 Full name of applicant for cancellation</p> <p>Address If the address is not within the United Kingdom, Gibraltar or the Channel Islands you must also complete section 4 below. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i></p> <p>NOTE: It will no longer be possible for two (or more) parties to jointly invalidate a trade mark based on earlier marks/ rights that they each own, unless the parties jointly own the relevant earlier marks/rights. Separate invalidations will now be required. See section 47(5)(a) of the Act.</p> <p>Email address Complete if you have no representative and would like us to correspond with you by email.</p>	<p>MOBIGAME SAS</p> <p>25 rue Titon</p> <p>Paris</p> <p>France</p> <p>Postcode 75011</p>
<p>4 Representative name If you have no representative, go to section 5.</p> <p>Address The address provided in this section must be within the United Kingdom, Gibraltar or the Channel Islands. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i></p> <p>NOTE: We will communicate with the representative if this section has been completed.</p> <p>Email address Complete if you would like us to correspond with you by email.</p>	<p>Sheridans</p> <p>76 Wardour Street</p> <p>London</p> <p>United Kingdom</p> <p>Postcode W1F 0UR</p> <p>trademarks@sheridans.co.uk</p>

5 Related proceedings • If applicable, tell us the opposition or cancellation number	IPO Registry	UK Courts	EU IPO
	Number		

6 **Invalidation notification date**
If you have informed the registered owner /holder of your intention to seek invalidation of the registration of their trade mark – enter the date you notified them.
[**See Note]

****Note:** Starting invalidation proceedings without giving the registered holder or the registered owner a reasonable opportunity to surrender the registration may result, (if the application for invalidation is undefended), in a successful applicant not being awarded costs.

7 **Declaration**

I believe that the facts stated in this form and the attached statement of grounds are true.

Signature

Name
(BLOCK CAPITALS)

Date

Number of sheets attached to this form

DAN HEAD FOR SHERIDANS
DAN HEAD FOR SHERIDANS
05.05.2021
<input type="text"/>

8 **Your reference**
Complete if you would like us to quote this in communications with you, otherwise leave blank.

Contact details
Name, daytime telephone number of the person to contact in case of query.

023195-20
Dan Head 07515 797 339

Checklist

Please make sure you have remembered to:

Sign the form

Email your form to us:

Send your form, saved as a PDF to:
forms@ipo.gov.uk
For help saving your form as a PDF see:
<https://www.gov.uk/government/publications/how-to-file-documents-with-the-intellectual-property-office/how-to-file-documents-with-the-intellectual-property-office>

If you cannot email your form, post to:

Intellectual Property Office
Trade Marks Registry
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Please tick on what grounds you are basing your application for invalidation of the trade mark and continue to the relevant section(s)

Invalidation is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

> **COMPLETE SECTION A**

Invalidation is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

> **COMPLETE SECTION B**

Invalidation is based on Section 5(4)(a): Where the use of the registered owner's trade mark would be contrary to law, in particular, the law of passing off.

> **COMPLETE SECTION C**

Invalidation is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade or the application has been made in bad faith.

> **COMPLETE SECTION D**

Invalidation is based on other grounds.

> **COMPLETE SECTION E**

SECTION A: The application for invalidation is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after 1 October 2007, then only the registered owner or licensee of that earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published prior to 1 October 2007, then anyone can rely on these grounds to support the application for invalidation.

Please tick the relevant section(s) that apply.

<input type="checkbox"/>	5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark
<input type="checkbox"/>	5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.
<input type="checkbox"/>	5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/> UK	<input type="checkbox"/> International UK
------------------------------------	-----------------------------	---

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

--

Q1. Which goods or services covered by the earlier trade mark, are relied upon for the invalidation grounds for the sections indicated?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q4

Q2a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q2c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q2b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2c. Please state any proper reasons for non-use.

--

Q3. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q4

Q3a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q3c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q3b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3c. Please state any proper reasons for non-use.

--

DETAILS OF THE TRADE MARK YOU ARE SEEKING TO HAVE DECLARED INVALID

Q4 Which goods or services in the registration that you are seeking to be declared invalid do you claim are identical or similar to those covered by the earlier mark and listed at Q1?
Please use a continuation sheet if necessary

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q5 Use this space to supply any further information about why you consider there is a likelihood of confusion and for example why you consider the respective marks or goods and/or services to be similar?
Please use a continuation sheet if necessary

--

SECTION B: The application for Invalidation is based on Section 5(3) of the Trade Marks Act: The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after 1 October 2007, then only the proprietor or licensee of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was prior to 1 October 2007, then anyone can rely on these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need

ABOUT THE EARLIER TRADE MARK

Trade mark number
Your trade mark

--

Type of mark
Please tick

<input type="checkbox"/>	UK	<input type="checkbox"/>	International UK
--------------------------	----	--------------------------	------------------

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

--

Q1 For which goods or services covered by your earlier trade mark did it have a reputation when the later trade mark was applied for?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2 For which goods or services of the later mark would use of that mark take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier trade mark?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3 Is it claimed that the similarity between the reputed earlier trade mark and the later trade mark is such that the relevant public will believe that they are used by the same undertaking or think that there is an economic connection between the users of the trade marks?

Yes

No

Use this space to supply any further information

--

QUESTIONS 4 TO 6 SHOULD BE ANSWERED IF THERE IS ANY OTHER BASIS FOR YOUR CLAIM OTHER THAN FOR YOUR ANSWER TO Q.3

Q4. Is there any other basis for your claim of unfair advantage? If so, please explain what the advantage would be to the holder of the later mark, and why it is unfair.

Q5. Is there any other basis for your claim of detriment to the reputation of the earlier mark? If so, please explain what the detriment would be and how it would occur.

Q6. Is there any other basis for your claim of detriment to the distinctive character of the earlier mark? If so, please explain what the detriment would be and how it would affect the economic behaviour of the relevant public.

Q7. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q9

Q7a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q7c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q7b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services (please specify below, use a continuation sheet if necessary)

Q7c. Please state any proper reasons for non-use.

--

Q8. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q9

Q8a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q8c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q8b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q8c. Please state any proper reasons for non-use.

--

Q9. Use this space to supply any further information to explain why you are seeking to have the registered trade mark declared invalid on this ground.

--

SECTION C: The application for invalidation is based on Section 5(4)(a) of the Trade Marks Act, where the use of the registered owner or holder's trade mark would be contrary to law, in particular, the law of passing off.

Note: If the trade mark registration you wish to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after **1 October 2007**, then only the proprietor of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published before **1 October 2007**, then anyone can use these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER UNREGISTERED TRADE MARK

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

EDGE

Q1. When and where was the earlier right first used in the UK?

Date used:

Enter date of first use

Jan 2009

Where used:

Enter name of city/region or specify 'throughout UK' if used nationally

Throughout the UK

SECTION D: An application for invalidation is based on section 3 of the Trade Marks Act on the basis that the trade mark fails to satisfy certain requirements of a trade mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Please tick and complete the relevant section(s) that apply. (Use a continuation sheet if necessary)

3(1)(a) It is a sign that does not does not satisfy the requirements of section1(1) because:

3(1)(b) It is a trade mark which is devoid of any distinctive character because:

3(1)(c) It is a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services because:

3(1)(d) It is a trade mark which consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade because:



3(6) It is a trade mark which should not have been registered (for some or all of the goods and services in the application) as the application was made in bad faith:

The Cancellation Applicant and the Registrant are engaged in proceedings in the US and are known to one another. The Cancellation Applicant had earlier registered rights for EDGE by way of IR number 998834 which were allowed to lapse due to an administrative oversight by the Cancellation Applicant. However despite the Cancellation Applicant having earlier unregistered rights in the EDGE sign, the Registrant filed the trade mark Registration to prevent the Cancellation Applicant from selling its EDGE computer game which if successful would deprive the Cancellation Applicant of revenue.

These are standards which fall short of the standards of acceptable commercial behaviour.



Other State any other part of section 3 you rely on and give your grounds:

State which of the registered owner's goods or services you want the registration to be invalidated under Section 3 grounds

<input checked="" type="checkbox"/>	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

SECTION E: The application for invalidation is based on any other grounds

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Use this sheet if you are basing your opposition on any other grounds and tick the appropriate box.

Section 5(1),(2),(3)	If the applicant for invalidation is claiming protection for an earlier trade mark under Section 6(1)(c) which is a well known trade mark as defined in Section 56(1).
Section 5(4)(b)	An earlier right by virtue of the law of copyright, or the law relating to industrial property rights.
Section 5(6)	If the applicant for invalidation is claiming that the registration of the trade mark is in the name of a person who is an agent or representative of a person who is the proprietor of the mark in a convention country.

Give details to support the application under these grounds *(Use a continuation sheet if necessary)*

Kevin Dando

From: Ellis Smart <ellis.smart@sheridans.co.uk>
Sent: 06 May 2021 16:50
To: Forms
Cc: Dan Head
Subject: Form TM26(I) - Application to declare invalid a registration - against UK Trade Mark Registration No. UK00801515050 in the name of Edge Games, Inc. [SHER=023195-20]
Attachments: Invalidation Request 2.pdf

Dear Sirs,

Re: Form TM26(I) - Application to declare invalid a registration - against UK Trade Mark Registration No. UK00801515050 in the name of Edge Games, Inc

Please refer to the attached form TM26(I).

If you have any questions then please do let us know.

Best regards,

Ellis

ELLIS SMART

Telephone +44 (0)20 7079 0184
Mobile +44 (0)7387 411 832
Email Ellis.Smart@sheridans.co.uk

We have prepared some information setting out the Government support available to individuals and businesses affected by COVID-19 which we hope you will find useful - see <https://www.sheridans.co.uk/>

<https://www.linkedin.com/feed/update/urn:li:activity:6696303695463768064/>

Here are some top tips for businesses to consider now so that they are in good shape after Covid 19



This communication and any files transmitted with it are confidential and may be subject to legal privilege and protected by copyright. It is intended solely for the named addressee. If you have received this e-mail (and its attachments) by mistake please notify us immediately by replying to this email (or by notifying enquiries@sheridans.co.uk) and then delete it. You should not copy it or disclose its contents to anyone and are hereby notified that any dissemination copying or distribution of this email and the attachments is strictly prohibited.

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Fees and payment

We will only process the form with this section completed (one form per payment)

To check the correct fee for this form, search on GOV.UK for 'trade mark forms and fees'

Total Fee Paying (£)

200

Your own reference (Optional)

[SHER=023195-20]

Your contact details should we have a query

Name

Ellis Smart

Email

trademarks@sheridans.co.uk

Phone

07387 411 832

How would you like to pay?

Tick one

Using a debit or credit card – you will need the internet to pay by card

- 1 Go to our secure website – <https://fees.ipo.gov.uk/pay>
- 2 Enter your name, email address and total amount to pay from above
- 3 As proof of payment, write below the 16-digit reference number displayed from the online payment screen.
DO NOT write your debit/credit card number

Deduct from IPO deposit account

IPO deposit account number

D05153

Cheque – make payable to 'Intellectual Property Office'

Bank transfer

Reference – use your IPO deposit account number if you have one or an application number or your name if you don't.

Use the following bank account details

Sort code	20-18-23
Account number	80531766
Account name	Intellectual Property Office
SWIFT code	BARCGB22
IBAN number	GB92 BARC 2018 2380 5317 66



Sheridans Solicitors
Seventy Six Wardour Street
London
W1F 0UR

Your Reference: 023195-20
Cancellation No: CA000503821
Examiner: Daniel Burrige
Direct Telephone: +44(0)1633814203
Date: 13 May 2021

Trade Mark No: UK00801515050

Proprietor: Edge Games, Inc.

Cancellation No: CA000503821

Cancellation Applicant: Mobigame

Please quote your Cancellation ID Number in all correspondence

***If you wish to correspond by email please reply to
Tribunalsection@ipo.gov.uk and ensure your email is copied to the other
party.***

Dear Sirs,

I refer to the TM26(I) and statement of grounds filed against the above trade mark on **06 May 2021**. Please refer to this letter which contains the correct information regarding the above proceedings. Please accept our apologies for duplicate letters that were sent.

The statement of grounds has now been considered and it is the registry's preliminary view (please see Glossary) that more information is required before any further action can be taken.

This is in line with the Tribunal Practice Notice 4/2000 which is available on the IPO website at:

<http://webarchive.nationalarchives.gov.uk/tna/20140603093547/http://www.ipo.gov.uk/pro-types/pro-tm/t-law/t-tpn/t-tpn-2000/t-tpn-42000.htm>.

Section 3(6)

The opponent is asked to supply further information to support the claim made under Section 3(6) of the Trade Marks Act 1994.

In *Royal Enfield* BL 0/363/01 Mr Simon Thorley QC, sitting as Appointed Person, held:

"An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of commercial fraud. A plea of fraud should not be lightly made (see Lord Denning M.R. in *Associated Leisure v. Associated Newspapers* (1970) 2 QB 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the

facts (see *Davy v. Garrett* (1878) 7 Ch. D. 473 at 489). In my judgement precisely the same considerations apply to an allegation of lack of bad faith made under section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference. Further I do not believe that it is right that an attack based upon section 3(6) should be relied on as adjunct to a case raised under another section of the Act. If bad faith is being alleged, it should be alleged up front as a primary argument or not at all".

The registry would ask that a detailed allegation be made out in respect of the claim that the application was filed in bad faith.

Please file an amended statement of grounds, on or before 03 June 2021.

If you choose not to amend the statement of grounds the registry may decide to strike out any grounds which are not adequately explained.

A copy of this letter together with the statement of grounds has been sent to the registered proprietor but the period for the registered proprietor to file its counter-statement has not yet been set.

A Glossary of terms is available from the IPO website at <https://www.gov.uk/government/publications/trade-marks-tribunal-glossary-of-terms>

Further information on the cancellation process and a scale of costs are available at <https://www.gov.uk/government/publications/trade-marks-invalidations>

Yours faithfully,

Daniel Burridge

Trade Marks Registry



Intellectual Property Office

Form TM26(I) Application to declare invalid a registration or a protected international trade mark (UK)

Fee £200

Do not use this form:

- To apply to revoke a trade mark on grounds of non-use. Use Form **TM26(N)**.
- To apply to revoke a trade mark on grounds other than non-use. Use Form **TM26(O)**.

1 Trade mark number Number of the trade mark you are applying to cancel. If the application concerns an International Registration, help us identify the correct trade mark by adding "IR".	UK00801515050
2 Full name of the registered owner or holder Whose trade mark you are applying to invalidate.	Edge Games, Inc.
3 Full name of applicant for cancellation Address If the address is not within the United Kingdom, Gibraltar or the Channel Islands you must also complete section 4 below. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i> NOTE: It will no longer be possible for two (or more) parties to jointly invalidate a trade mark based on earlier marks/ rights that they each own, unless the parties jointly own the relevant earlier marks/rights. Separate invalidations will now be required. See section 47(5)(a) of the Act.	MOBIGAME SAS 25 rue Titon Paris France Postcode 75011
Email address Complete if you have no representative and would like us to correspond with you by email.	
4 Representative name If you have no representative, go to section 5.	Sheridans
Address The address provided in this section must be within the United Kingdom, Gibraltar or the Channel Islands. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i> NOTE: We will communicate with the representative if this section has been completed.	76 Wardour Street London United Kingdom Postcode W1F 0UR
Email address Complete if you would like us to correspond with you by email.	trademarks@sheridans.co.uk

5 Related proceedings If applicable, tell us the opposition or cancellation number	IPO Registry	UK Courts	EUIPO
	Number		

6 **Invalidation notification date**
If you have informed the registered owner /holder of your intention to seek invalidation of the registration of their trade mark – enter the date you notified them.
[**See Note]

****Note:** Starting invalidation proceedings without giving the registered holder or the registered owner a reasonable opportunity to surrender the registration may result, (if the application for invalidation is undefended), in a successful applicant not being awarded costs.

7 **Declaration** I believe that the facts stated in this form and the attached statement of grounds are true.

Signature

DAN HEAD FOR SHERIDANS

Name

(BLOCK CAPITALS)

DAN HEAD FOR SHERIDANS

Date

18.05.2021

Number of sheets attached to this form

8 **Your reference**
Complete if you would like us to quote this in communications with you, otherwise leave blank.

023195-20

Contact details

Name, daytime telephone number of the person to contact in case of query.

Dan Head
07515 797 339

Checklist

Please make sure you have remembered to:

Sign the form

Email your form to us:

Send your form, saved as a PDF to:

forms@ipo.gov.uk

For help saving your form as a PDF see:

<https://www.gov.uk/government/publications/how-to-file-documents-with-the-intellectual-property-office/how-to-file-documents-with-the-intellectual-property-office>

If you cannot email your form, post to:

Intellectual Property Office
Trade Marks Registry
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Please tick on what grounds you are basing your application for invalidation of the trade mark and continue to the relevant section(s)

Invalidation is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

> **COMPLETE SECTION A**

Invalidation is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

> **COMPLETE SECTION B**

Invalidation is based on Section 5(4)(a): Where the use of the registered owner's trade mark would be contrary to law, in particular, the law of passing off.

> **COMPLETE SECTION C**

Invalidation is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade or the application has been made in bad faith.

> **COMPLETE SECTION D**

Invalidation is based on other grounds.

> **COMPLETE SECTION E**

SECTION A: The application for invalidation is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal **on or after 1 October 2007**, then only the registered owner or licensee of that earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published prior to **1 October 2007**, then anyone can rely on these grounds to support the application for invalidation.

Please tick the relevant section(s) that apply.

	5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark
	5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.
	5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/> UK	<input type="checkbox"/>	<input type="checkbox"/> International UK
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Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

Q1. Which goods or services covered by the earlier trade mark, are relied upon for the invalidation grounds for the sections indicated?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q4

Q2a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q2c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q2b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2c. Please state any proper reasons for non-use.

--

Q3. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q4

Q3a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q3c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q3b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3c. Please state any proper reasons for non-use.

--

DETAILS OF THE TRADE MARK YOU ARE SEEKING TO HAVE DECLARED INVALID

Q4 Which goods or services in the registration that you are seeking to be declared invalid do you claim are identical or similar to those covered by the earlier mark and listed at Q1?

Please use a continuation sheet if necessary

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q5 Use this space to supply any further information about why you consider there is a likelihood of confusion and for example why you consider the respective marks or goods and/or services to be similar?

Please use a continuation sheet if necessary

--

SECTION B: The application for Invalidation is based on Section 5(3) of the Trade Marks Act: The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal **on or after 1 October 2007**, then only the proprietor or licensee of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was **prior to 1 October 2007**, then anyone can rely on these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/>	UK	<input type="checkbox"/>	International UK
------------------------------------	--------------------------	----	--------------------------	------------------

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

Q1 For which goods or services covered by your earlier trade mark did it have a reputation when the later trade mark was applied for?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2 For which goods or services of the later mark would use of that mark take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier trade mark?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3 Is it claimed that the similarity between the reputed earlier trade mark and the later trade mark is such that the relevant public will believe that they are used by the same undertaking or think that there is an economic connection between the users of the trade marks?

Yes

No

Use this space to supply any further information

--

QUESTIONS 4 TO 6 SHOULD BE ANSWERED IF THERE IS ANY OTHER BASIS FOR YOUR CLAIM OTHER THAN FOR YOUR ANSWER TO Q.3

Q4. Is there any other basis for your claim of unfair advantage? If so, please explain what the advantage would be to the holder of the later mark, and why it is unfair.

Q5. Is there any other basis for your claim of detriment to the reputation of the earlier mark? If so, please explain what the detriment would be and how it would occur.

Q6. Is there any other basis for your claim of detriment to the distinctive character of the earlier mark? If so, please explain what the detriment would be and how it would affect the economic behaviour of the relevant public.

Q7. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q9

Q7a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q7c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q7b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q7c. Please state any proper reasons for non-use.

--

Q8. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q9

Q8a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q8c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q8b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q8c. Please state any proper reasons for non-use.

--

Q9. Use this space to supply any further information to explain why you are seeking to have the registered trade mark declared invalid on this ground.

--

SECTION C: The application for invalidation is based on Section 5(4)(a) of the Trade Marks Act, where the use of the registered owner or holder's trade mark would be contrary to law, in particular, the law of passing off.

Note: If the trade mark registration you wish to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after **1 October 2007**, then only the proprietor of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published before **1 October 2007**, then anyone can use these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER UNREGISTERED TRADE MARK

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

EDGE

Q1. When and where was the earlier right first used in the UK?

Date used:

Enter date of first use

Jan 2009

Where used:

Enter name of city/region or specify 'throughout UK' if used nationally

Throughout the UK

SECTION D: An application for invalidation is based on section 3 of the Trade Marks Act on the basis that the trade mark fails to satisfy certain requirements of a trade mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Please tick and complete the relevant section(s) that apply. *(Use a continuation sheet if necessary)*

3(1)(a) It is a sign that does not does not satisfy the requirements of section1(1) because:

3(1)(b) It is a trade mark which is devoid of any distinctive character because:

3(1)(c) It is a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services because:

3(1)(d) It is a trade mark which consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade because:

3(6) It is a trade mark which should not have been registered (for some or all of the goods and services in the application) as the application was made in bad faith:

Other State any other part of section 3 you rely on and give your grounds:

State which of the registered owner's goods or services you want the registration to be invalidated under Section 3 grounds

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

SECTION E: The application for invalidation is based on any other grounds

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Use this sheet if you are basing your opposition on any other grounds and tick the appropriate box.

	Section 5(1),(2),(3)	If the applicant for invalidation is claiming protection for an earlier trade mark under Section 6(1)(c) which is a well known trade mark as defined in Section 56(1).
	Section 5(4)(b)	An earlier right by virtue of the law of copyright, or the law relating to industrial property rights.
	Section 5(6)	If the applicant for invalidation is claiming that the registration of the trade mark is in the name of a person who is an agent or representative of a person who is the proprietor of the mark in a convention country.

Give details to support the application under these grounds *(Use a continuation sheet if necessary)*

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Page

Fees and payment

We will only process the form with this section completed (one form per payment)

To check the correct fee for this form, search on [GOV.UK](https://www.gov.uk/guidance/trade-mark-forms-and-fees) for 'trade mark forms and fees'

Total Fee Paying (£)

Your own reference (Optional)

Your contact details should we have a query

Name

Email

Phone

How would you like to pay?

Tick one

Using a debit or credit card – you will need the internet to pay by card

- 1 Go to our secure website – <https://fees.ipo.gov.uk/pay>
- 2 Enter your name, email address and total amount to pay from above
- 3 As proof of payment, write below the 16-digit reference number displayed from the online payment screen.
DO NOT write your debit/credit card number

Deduct from IPO deposit account

IPO deposit account number

Cheque – make payable to 'Intellectual Property Office'

Bank transfer

Reference – use your IPO deposit account number if you have one or an application number or your name if you don't.

Use the following bank account details

Sort code	20-18-23
Account number	80531766
Account name	Intellectual Property Office
SWIFT code	BARCGB22
IBAN number	GB92 BARC 2018 2380 5317 66



Intellectual
Property
Office

FD 6.5.21
CA000503822

IP0024547

IPO
06 MAY 2021
NEWPORT

TRADE MARK REGISTRY
10 MAY 2021
TMD ADMIN SUPPORT

Form TM26(I)
Application to declare invalid a registration
or a protected international trade mark (UK)

Fee £200

Do not use this form:

- To apply to revoke a trade mark on grounds of non-use. Use Form **TM26(N)**.
- To apply to revoke a trade mark on grounds other than non-use. Use Form **TM26(O)**.

1 Trade mark number Number of the trade mark you are applying to cancel. If the application concerns an International Registration, help us identify the correct trade mark by adding "IR".	UK00003073101
---	---------------

2 Full name of the registered owner or holder Whose trade mark you are applying to invalidate.	Edge Games, Inc.
--	------------------

3 Full name of applicant for cancellation	MOBIGAME SAS
Address If the address is not within the United Kingdom, Gibraltar or the Channel Islands you must also complete section 4 below. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i>	25 rue Titon Paris France
NOTE: It will no longer be possible for two (or more) parties to jointly invalidate a trade mark based on earlier marks/ rights that they each own, unless the parties jointly own the relevant earlier marks/rights. Separate invalidations will now be required. See section 47(5)(a) of the Act.	Postcode 75011
Email address Complete if you have no representative and would like us to correspond with you by email.	

4 Representative name If you have no representative, go to section 5.	Sheridans
Address The address provided in this section must be within the United Kingdom, Gibraltar or the Channel Islands. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i>	76 Wardour Street London United Kingdom
NOTE: We will communicate with the representative if this section has been completed.	Postcode W1F 0UR
Email address Complete if you would like us to correspond with you by email.	trademarks@sheridans.co.uk

5 Related proceedings If applicable, tell us the opposition or cancellation number	IPO Registry	UK Courts	EUIPO
	Number		

6 **Invalidation notification date**
If you have informed the registered owner /holder of your intention to seek invalidation of the registration of their trade mark – enter the date you notified them.
[**See Note]

****Note:** Starting invalidation proceedings without giving the registered holder or the registered owner a reasonable opportunity to surrender the registration may result, (if the application for invalidation is undefended), in a successful applicant not being awarded costs.

7 **Declaration**

I believe that the facts stated in this form and the attached statement of grounds are true.

Signature

Name
(BLOCK CAPITALS)

Date

Number of sheets attached to this form

DAN HEAD FOR SHERIDANS
DAN HEAD FOR SHERIDANS
05.05.2021
<input type="text"/>

8 **Your reference**
Complete if you would like us to quote this in communications with you, otherwise leave blank.

Contact details
Name, daytime telephone number of the person to contact in case of query.

023195-20
Dan Head 07515 797 339

Checklist

Please make sure you have remembered to:

Sign the form

Email your form to us:

Send your form, saved as a PDF to:
forms@ipo.gov.uk
For help saving your form as a PDF see:
<https://www.gov.uk/government/publications/how-to-file-documents-with-the-intellectual-property-office/how-to-file-documents-with-the-intellectual-property-office>

If you cannot email your form, post to:

Intellectual Property Office
Trade Marks Registry
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Please tick on what grounds you are basing your application for invalidation of the trade mark and continue to the relevant section(s)

Invalidation is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

> **COMPLETE SECTION A**

Invalidation is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

> **COMPLETE SECTION B**

Invalidation is based on Section 5(4)(a): Where the use of the registered owner's trade mark would be contrary to law, in particular, the law of passing off.

> **COMPLETE SECTION C**

Invalidation is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade or the application has been made in bad faith.

> **COMPLETE SECTION D**

Invalidation is based on other grounds.

> **COMPLETE SECTION E**

SECTION A: The application for invalidation is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after 1 October 2007, then only the registered owner or licensee of that earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published prior to 1 October 2007, then anyone can rely on these grounds to support the application for invalidation.

Please tick the relevant section(s) that apply.

<input type="checkbox"/>	5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark
<input type="checkbox"/>	5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.
<input type="checkbox"/>	5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/> UK	<input type="checkbox"/> International UK
------------------------------------	-----------------------------	---

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

--

Q1. Which goods or services covered by the earlier trade mark, are relied upon for the invalidation grounds for the sections indicated?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q4

Q2a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q2c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q2b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2c. Please state any proper reasons for non-use.

--

Q3. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q4

Q3a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q3c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q3b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3c. Please state any proper reasons for non-use.

--

DETAILS OF THE TRADE MARK YOU ARE SEEKING TO HAVE DECLARED INVALID

Q4 Which goods or services in the registration that you are seeking to be declared invalid do you claim are identical or similar to those covered by the earlier mark and listed at Q1?
Please use a continuation sheet if necessary

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q5 Use this space to supply any further information about why you consider there is a likelihood of confusion and for example why you consider the respective marks or goods and/or services to be similar?
Please use a continuation sheet if necessary

--

SECTION B: The application for Invalidation is based on Section 5(3) of the Trade Marks Act: The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after 1 October 2007, then only the proprietor or licensee of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was prior to 1 October 2007, then anyone can rely on these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/> UK	<input type="checkbox"/> International UK
------------------------------------	-----------------------------	---

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

QUESTIONS 4 TO 6 SHOULD BE ANSWERED IF THERE IS ANY OTHER BASIS FOR YOUR CLAIM OTHER THAN FOR YOUR ANSWER TO Q.3

Q4. Is there any other basis for your claim of unfair advantage? If so, please explain what the advantage would be to the holder of the later mark, and why it is unfair.

Q5. Is there any other basis for your claim of detriment to the reputation of the earlier mark? If so, please explain what the detriment would be and how it would occur.

Q6. Is there any other basis for your claim of detriment to the distinctive character of the earlier mark? If so, please explain what the detriment would be and how it would affect the economic behaviour of the relevant public.

Q7. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q9

Q7a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q7c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q7b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q7c. Please state any proper reasons for non-use.

--

Q8. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q9

Q8a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q8c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q8b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q8c. Please state any proper reasons for non-use.

--

Q9. Use this space to supply any further information to explain why you are seeking to have the registered trade mark declared invalid on this ground.

--

SECTION C: The application for invalidation is based on Section 5(4)(a) of the Trade Marks Act, where the use of the registered owner or holder's trade mark would be contrary to law, in particular, the law of passing off.

Note: If the trade mark registration you wish to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after **1 October 2007**, then only the proprietor of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published before **1 October 2007**, then anyone can use these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER UNREGISTERED TRADE MARK

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

EDGE



Q1. When and where was the earlier right first used in the UK?

Date used:
Enter date of first use

Jan 2009

Where used:
Enter name of city/region or specify
'throughout UK' if used nationally

Throughout the UK

SECTION D: An application for invalidation is based on section 3 of the Trade Marks Act on the basis that the trade mark fails to satisfy certain requirements of a trade mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Please tick and complete the relevant section(s) that apply. (Use a continuation sheet if necessary)

3(1)(a) It is a sign that does not does not satisfy the requirements of section 1(1) because:

3(1)(b) It is a trade mark which is devoid of any distinctive character because:

3(1)(c) It is a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services because:

3(1)(d) It is a trade mark which consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade because:



3(6) It is a trade mark which should not have been registered (for some or all of the goods and services in the application) as the application was made in bad faith:

The Cancellation Applicant and the Registrant are engaged in proceedings in the US and are known to one another. The Cancellation Applicant had earlier registered rights for EDGE by way of IR number 998834 which were allowed to lapse due to an administrative oversight by the Cancellation Applicant. However despite the Cancellation Applicant having earlier unregistered rights in the EDGE sign, the Registrant filed the trade mark Registration to prevent the Cancellation Applicant from selling its EDGE computer game which if successful would deprive the Cancellation Applicant of revenue.

These are standards which fall short of the standards of acceptable commercial behaviour.



Other State any other part of section 3 you rely on and give your grounds:

State which of the registered owner's goods or services you want the registration to be invalidated under Section 3 grounds

<input checked="" type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

SECTION E: The application for invalidation is based on any other grounds

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Use this sheet if you are basing your opposition on any other grounds and tick the appropriate box.

Section 5(1),(2),(3)	If the applicant for invalidation is claiming protection for an earlier trade mark under Section 6(1)(c) which is a well known trade mark as defined in Section 56(1).
Section 5(4)(b)	An earlier right by virtue of the law of copyright, or the law relating to industrial property rights.
Section 5(6)	If the applicant for invalidation is claiming that the registration of the trade mark is in the name of a person who is an agent or representative of a person who is the proprietor of the mark in a convention country.

Give details to support the application under these grounds *(Use a continuation sheet if necessary)*

Fees and payment

We will only process the form with this section completed (one form per payment)

To check the correct fee for this form, search on GOV.UK for 'trade mark forms and fees'

Total Fee Paying (£)

Your own reference (Optional)

Your contact details should we have a query

Name

Email

Phone

How would you like to pay?

Tick one

Using a debit or credit card – you will need the internet to pay by card

- 1 Go to our secure website – <https://fees.ipo.gov.uk/pay>
- 2 Enter your name, email address and total amount to pay from above
- 3 As proof of payment, write below the 16-digit reference number displayed from the online payment screen.
DO NOT write your debit/credit card number

Deduct from IPO deposit account

IPO deposit account number

Cheque – make payable to 'Intellectual Property Office'

Bank transfer

Reference – use your IPO deposit account number if you have one or an application number or your name if you don't.

Use the following bank account details

Sort code	20-18-23
Account number	80531766
Account name	Intellectual Property Office
SWIFT code	BARCGB22
IBAN number	GB92 BARC 2018 2380 5317 66

Kevin Dando

From: Ellis Smart <ellis.smart@sheridans.co.uk>
Sent: 06 May 2021 16:50
To: Forms
Cc: Dan Head
Subject: Form TM26(I) - Application to declare invalid a registration - against UK Trade Mark Registration No. UK00003073101 in the name of Edge Games, Inc. [SHER=023195-20]
Attachments: Invalidation Request.pdf

Dear Sirs,

Re: Form TM26(I) - Application to declare invalid a registration - against UK Trade Mark Registration No. UK00003073101 in the name of Edge Games, Inc

Please refer to the attached form TM26(I).

If you have any questions then please do let us know.

Best regards,

Ellis

ELLIS SMART

Telephone +44 (0)20 7079 0184
Mobile +44 (0)7387 411 832
Email Ellis.Smart@sheridans.co.uk

We have prepared some information setting out the Government support available to individuals and businesses affected by COVID-19 which we hope you will find useful – see <https://www.sheridans.co.uk/>

<https://www.linkedin.com/feed/update/urn:li:activity:6696303695463768064/>

Here are some top tips for businesses to consider now so that they are in good shape after Covid 19



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Sheridans reserves all rights and remedies against any person or entity making any unauthorised use of this communication. Emails are not secure and cannot be guaranteed to be error free as they can be intercepted, amended, lost or destroyed, or contain viruses. Anyone who communicates with us by email is taken to have accepted these risks.

Sheridans is authorised and regulated by the Solicitors Regulation Authority. Registration Number: 55137. A full list of partners is open for inspection at our offices.



Sheridans Solicitors
Seventy Six Wardour Street
London
W1F 0UR

Your Reference: 023195-20
Cancellation No: CA000503822
Examiner: Daniel Burrige
Direct Telephone: +44(0)1633814203
Date: 13 May 2021

Trade Mark No: UK00003073101

Proprietor: Edge Games, Inc.

Cancellation No: CA000503822

Cancellation Applicant: Mobigame

Please quote your Cancellation ID Number in all correspondence

***If you wish to correspond by email please reply to
Tribunalsection@ipo.gov.uk and ensure your email is copied to the other
party.***

Dear Sirs,

I refer to the TM26(I) and statement of grounds filed against the above trade mark on **06 May 2021**.

The statement of grounds has now been considered and it is the registry's preliminary view (please see Glossary) that more information is required before any further action can be taken.

This is in line with the Tribunal Practice Notice 4/2000 which is available on the IPO website at:

<http://webarchive.nationalarchives.gov.uk/tna/20140603093547/http://www.ipo.gov.uk/pro-types/pro-tm/t-law/t-tpn/t-tpn-2000/t-tpn-42000.htm>.

Section 3(6)

The opponent is asked to supply further information to support the claim made under Section 3(6) of the Trade Marks Act 1994.

In *Royal Enfield* BL 0/363/01 Mr Simon Thorley QC, sitting as Appointed Person, held:

"An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of commercial fraud. A plea of fraud should not be lightly made (see Lord Denning M.R. in *Associated Leisure v. Associated Newspapers* (1970) 2 QB 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see *Davy v. Garrett* (1878) 7 Ch. D. 473 at 489). In my judgement precisely the same considerations apply to an allegation of lack of bad faith made

under section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference. Further I do not believe that it is right that an attack based upon section 3(6) should be relied on as adjunct to a case raised under another section of the Act. If bad faith is being alleged, it should be alleged up front as a primary argument or not at all".

The registry would ask that a detailed allegation be made out in respect of the claim that the application was filed in bad faith.

Please file an amended statement of grounds, on or before 03 June 2021.

If you choose not to amend the statement of grounds the registry may decide to strike out any grounds which are not adequately explained.

A copy of this letter together with the statement of grounds has been sent to the registered proprietor but the period for the registered proprietor to file its counter-statement has not yet been set.

A Glossary of terms is available from the IPO website at <https://www.gov.uk/government/publications/trade-marks-tribunal-glossary-of-terms>

Further information on the cancellation process and a scale of costs are available at <https://www.gov.uk/government/publications/trade-marks-invalidations>

Yours faithfully,

Daniel Burridge

Trade Marks Registry



Intellectual Property Office

Form TM26(I) Application to declare invalid a registration or a protected international trade mark (UK)

Fee £200

Do not use this form:

- To apply to revoke a trade mark on grounds of non-use. Use Form **TM26(N)**.
- To apply to revoke a trade mark on grounds other than non-use. Use Form **TM26(O)**.

1 Trade mark number Number of the trade mark you are applying to cancel. If the application concerns an International Registration, help us identify the correct trade mark by adding "IR".	UK00003073101
2 Full name of the registered owner or holder Whose trade mark you are applying to invalidate.	Edge Games, Inc.
3 Full name of applicant for cancellation Address If the address is not within the United Kingdom, Gibraltar or the Channel Islands you must also complete section 4 below. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i> NOTE: It will no longer be possible for two (or more) parties to jointly invalidate a trade mark based on earlier marks/ rights that they each own, unless the parties jointly own the relevant earlier marks/rights. Separate invalidations will now be required. See section 47(5)(a) of the Act.	MOBIGAME SAS 25 rue Titon Paris France Postcode 75011
Email address Complete if you have no representative and would like us to correspond with you by email.	
4 Representative name If you have no representative, go to section 5.	Sheridans
Address The address provided in this section must be within the United Kingdom, Gibraltar or the Channel Islands. <i>If you are seeking to cancel this registration on the basis of a comparable mark, please refer to TPN 2/2020 for information about the address for service that will apply to you.</i> NOTE: We will communicate with the representative if this section has been completed.	76 Wardour Street London United Kingdom Postcode W1F 0UR
Email address Complete if you would like us to correspond with you by email.	trademarks@sheridans.co.uk

5 Related proceedings If applicable, tell us the opposition or cancellation number	IPO Registry	UK Courts	EUIPO
	Number		

6 **Invalidation notification date**
If you have informed the registered owner /holder of your intention to seek invalidation of the registration of their trade mark – enter the date you notified them.
[**See Note]

****Note:** Starting invalidation proceedings without giving the registered holder or the registered owner a reasonable opportunity to surrender the registration may result, (if the application for invalidation is undefended), in a successful applicant not being awarded costs.

7 **Declaration** I believe that the facts stated in this form and the attached statement of grounds are true.

Signature

DAN HEAD FOR SHERIDANS

Name
(BLOCK CAPITALS)

DAN HEAD FOR SHERIDANS

Date

18.05.2021

Number of sheets attached to this form

8 **Your reference**
Complete if you would like us to quote this in communications with you, otherwise leave blank.

023195-20

Contact details

Name, daytime telephone number of the person to contact in case of query.

Dan Head
07515 797 339

Checklist

Please make sure you have remembered to:

Sign the form

Email your form to us:

Send your form, saved as a PDF to:

forms@ipo.gov.uk

For help saving your form as a PDF see:

<https://www.gov.uk/government/publications/how-to-file-documents-with-the-intellectual-property-office/how-to-file-documents-with-the-intellectual-property-office>

If you cannot email your form, post to:

Intellectual Property Office
Trade Marks Registry
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Please tick on what grounds you are basing your application for invalidation of the trade mark and continue to the relevant section(s)

Invalidation is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

> **COMPLETE SECTION A**

Invalidation is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

> **COMPLETE SECTION B**

Invalidation is based on Section 5(4)(a): Where the use of the registered owner's trade mark would be contrary to law, in particular, the law of passing off.

> **COMPLETE SECTION C**

Invalidation is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade or the application has been made in bad faith.

> **COMPLETE SECTION D**

Invalidation is based on other grounds.

> **COMPLETE SECTION E**

SECTION A: The application for invalidation is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal **on or after 1 October 2007**, then only the registered owner or licensee of that earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published prior to **1 October 2007**, then anyone can rely on these grounds to support the application for invalidation.

Please tick the relevant section(s) that apply.

	5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark
	5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.
	5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/> UK	<input type="checkbox"/> International UK
------------------------------------	-----------------------------	---

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

Q1. Which goods or services covered by the earlier trade mark, are relied upon for the invalidation grounds for the sections indicated?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q4

Q2a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q2c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q2b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2c. Please state any proper reasons for non-use.

--

Q3. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q4

Q3a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q3c

Please note, if you are relying on a comparable mark please see TPN2/2020 when it may be permissible to rely on use in the EU rather than solely in the UK.

Q3b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3c. Please state any proper reasons for non-use.

--

DETAILS OF THE TRADE MARK YOU ARE SEEKING TO HAVE DECLARED INVALID

Q4 Which goods or services in the registration that you are seeking to be declared invalid do you claim are identical or similar to those covered by the earlier mark and listed at Q1?

Please use a continuation sheet if necessary

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q5 Use this space to supply any further information about why you consider there is a likelihood of confusion and for example why you consider the respective marks or goods and/or services to be similar?

Please use a continuation sheet if necessary

--

SECTION B: The application for Invalidation is based on Section 5(3) of the Trade Marks Act: The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

Note: If the trade mark registration you seek to have declared invalid was published for opposition purposes in the Trade Marks Journal **on or after 1 October 2007**, then only the proprietor or licensee of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was **prior to 1 October 2007**, then anyone can rely on these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	
---	--

Type of mark Please tick	<input type="checkbox"/>	UK	<input type="checkbox"/>	International UK
------------------------------------	--------------------------	----	--------------------------	------------------

Please note, tick the "UK" box above if your mark is a national UK mark, a comparable mark deriving from a registered EUTM or IR(EU), or a national UK mark which constitutes a re-filing of a pending EUTM. Please see TPN 2/2020 for further information.

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

Q1 For which goods or services covered by your earlier trade mark did it have a reputation when the later trade mark was applied for?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q2 For which goods or services of the later mark would use of that mark take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier trade mark?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q3 Is it claimed that the similarity between the reputed earlier trade mark and the later trade mark is such that the relevant public will believe that they are used by the same undertaking or think that there is an economic connection between the users of the trade marks?

Yes

No

Use this space to supply any further information

--

QUESTIONS 4 TO 6 SHOULD BE ANSWERED IF THERE IS ANY OTHER BASIS FOR YOUR CLAIM OTHER THAN FOR YOUR ANSWER TO Q.3

Q4. Is there any other basis for your claim of unfair advantage? If so, please explain what the advantage would be to the holder of the later mark, and why it is unfair.

Q5. Is there any other basis for your claim of detriment to the reputation of the earlier mark? If so, please explain what the detriment would be and how it would occur.

Q6. Is there any other basis for your claim of detriment to the distinctive character of the earlier mark? If so, please explain what the detriment would be and how it would affect the economic behaviour of the relevant public.

Q7. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the date of the application for invalidity?

Yes

No > GO TO Q9

Q7a. Has the trade mark been used within the 5 years prior to the date of the application for invalidity?

Yes

No > GO TO Q7c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q7b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

<input type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q7c. Please state any proper reasons for non-use.

--

Q8. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q9

Q8a. Has the trade mark been used within the 5 years prior to the application date (or priority date, if applicable) of the trade mark or international registration you wish to cancel?

Yes

No > GO TO Q8c

Please note, if you are relying on a comparable mark please see TPN 2/2020 for when it may be permissible to rely on use in the EU rather than solely in the UK.

Q8b. For which of the goods and services listed at Q1 is trade mark use being claimed in the relevant period?

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q8c. Please state any proper reasons for non-use.

--

Q9. Use this space to supply any further information to explain why you are seeking to have the registered trade mark declared invalid on this ground.

--

SECTION C: The application for invalidation is based on Section 5(4)(a) of the Trade Marks Act, where the use of the registered owner or holder's trade mark would be contrary to law, in particular, the law of passing off.

Note: If the trade mark registration you wish to have declared invalid was published for opposition purposes in the Trade Marks Journal on or after **1 October 2007**, then only the proprietor of the earlier trade mark can rely on these grounds to support the application for invalidation.

If the trade mark was published before **1 October 2007**, then anyone can use these grounds to support the application for invalidation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER UNREGISTERED TRADE MARK

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

EDGE

Q1. When and where was the earlier right first used in the UK?

Date used:

Enter date of first use

Jan 2009

Where used:

Enter name of city/region or specify 'throughout UK' if used nationally

Throughout the UK

Q2. Which goods or services has the earlier right been used for?

Computer game software

DETAILS OF THE TRADE MARK YOU ARE SEEKING TO HAVE DECLARED INVALID

Q3. For which goods or services, of the trade mark that you are applying to be declared invalid, do you consider that use of the registered owner's mark would amount to passing off?

<input checked="" type="checkbox"/>	All goods and services
<input type="checkbox"/>	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

Q4. Why would use of the registered owner's trade mark be contrary to law, particularly the law of passing off?

The Cancellation Applicant has been using the EDGE sign in respect of a computer game since 2009 and has acquired a significant reputation and goodwill. Accordingly use of the trade mark is likely to misrepresent a connection in the course of trade with the Cancellation Applicant and cause financial damage and / or damage to the Cancellation Applicant's reputation, which would be contrary to the law of Passing Off.

SECTION D: An application for invalidation is based on section 3 of the Trade Marks Act on the basis that the trade mark fails to satisfy certain requirements of a trade mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Please tick and complete the relevant section(s) that apply. *(Use a continuation sheet if necessary)*

3(1)(a) It is a sign that does not does not satisfy the requirements of section1(1) because:

3(1)(b) It is a trade mark which is devoid of any distinctive character because:

3(1)(c) It is a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services because:

3(1)(d) It is a trade mark which consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade because:

3(6) It is a trade mark which should not have been registered (for some or all of the goods and services in the application) as the application was made in bad faith:

Other State any other part of section 3 you rely on and give your grounds:

State which of the registered owner's goods or services you want the registration to be invalidated under Section 3 grounds

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

SECTION E: The application for invalidation is based on any other grounds

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Use this sheet if you are basing your opposition on any other grounds and tick the appropriate box.

	Section 5(1),(2),(3)	If the applicant for invalidation is claiming protection for an earlier trade mark under Section 6(1)(c) which is a well known trade mark as defined in Section 56(1).
	Section 5(4)(b)	An earlier right by virtue of the law of copyright, or the law relating to industrial property rights.
	Section 5(6)	If the applicant for invalidation is claiming that the registration of the trade mark is in the name of a person who is an agent or representative of a person who is the proprietor of the mark in a convention country.

Give details to support the application under these grounds *(Use a continuation sheet if necessary)*

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Page

Fees and payment

We will only process the form with this section completed (one form per payment)

To check the correct fee for this form, search on [GOV.UK](https://www.gov.uk/trade-mark-forms-and-fees) for 'trade mark forms and fees'

Total Fee Paying (£)

£200

Your own reference (Optional)

[SHER=023195-20]

Your contact details should we have a query

Name

Ellis Smart

Email

trademarks@sheridans.co.uk

Phone

07387 411 832

How would you like to pay?

Tick one

Using a debit or credit card – you will need the internet to pay by card

- 1 Go to our secure website – <https://fees.ipo.gov.uk/pay>
- 2 Enter your name, email address and total amount to pay from above
- 3 As proof of payment, write below the 16-digit reference number displayed from the online payment screen.
DO NOT write your debit/credit card number

Deduct from IPO deposit account

IPO deposit account number

D05153

Cheque – make payable to 'Intellectual Property Office'

Bank transfer

Reference – use your IPO deposit account number if you have one or an application number or your name if you don't.

Use the following bank account details

Sort code	20-18-23
Account number	80531766
Account name	Intellectual Property Office
SWIFT code	BARCGB22
IBAN number	GB92 BARC 2018 2380 5317 66

O/743/22

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF UK REGISTRATION NUMBERS 801515050 AND 3073101

IN THE NAME OF EDGE GAMES, INC.

IN RESPECT OF THE FOLLOWING TRADE MARKS

EDGE GAMES

IN CLASS 9

AND

EDGE

IN CLASSES 9, 16, 35, 38 AND 41

AND

APPLICATIONS FOR A DECLARATION OF INVALIDITY THERETO

UNDER NUMBERS 503821 AND 503822 BY MOBIGAME

EDGE004409

BACKGROUND AND PLEADINGS

1. Trade mark number 801515050 (“the first contested mark”), **EDGE GAMES**, stands registered in the name of Edge Games, Inc. (“the proprietor”). It was filed on 26 December 2019 and completed its registration process on 17 August 2020. The mark is registered for the following goods:

Class 9 *Computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for use on mobile and cellular phones.*

2. Trade mark number 3073101 (“the second contested mark”), **EDGE**, also stands registered in the name of the proprietor. It was filed on 5 July 2010 and completed its registration process on 11 November 2011. The mark is registered for the following goods and services:

Class 9 *Downloadable electronic publications; downloadable electronic publications relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; printed publications in electronically readable form; printed publications in electronically readable form relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; recorded media containing pre-recorded electronic publications; recorded media containing pre-recorded electronic publications relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; computer console games; video game programs; computer games software, computer hardware; computer games software downloadable from the Internet; sound, music, image, video and game data files obtainable by stream access for computers, communications apparatus, and mobile telephones; software applications for use on games equipment or devices, mobile telephones, personal digital assistants (PDAs), or mobile computing devices; downloadable audio and video files; downloadable audio and video files featuring gaming-related content, computer games software, computer hardware and related accessories; parts, fitting and accessories in class 9 for the aforementioned goods.*

Class 16 *Printed matter; printed matter relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; except printed publications and magazines.*

Class 35 *Advertising, promotional and marketing services for others; providing business and marketing information; computerised electronic on-line retail store services connected with the sale of on-computer, on-console and online gaming goods, computer games software, computer hardware, and related accessories; business advice and information relating to on-line retail store services.*

Class 38 *Telecommunications services; network transmission of sound, data or images; broadcasting services; audio and video broadcasting services over the Internet, audio and video broadcasting services via electronic communications networks; broadcasting of media, sound, data or images relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; broadcasting of audiovisual content via stream, download, or other means to wired or wireless devices; podcasting services; enhanced transmission of audio and/or visual content and transmission of really simple syndication (RSS) feeds via a global computer network or other electronic or digital communications network or device; transmission of audio and/or visual content and transmission of really simple syndication (RSS) feeds concerning on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; providing on-line chat room services for transmission of messages among computer users; providing on-line chat room services for transmission of information concerning on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; providing access to on-line electronic bulletin boards; providing access to on-line electronic bulletin boards for transmission of messages among computer users concerning on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; providing Internet access to online blogs, discussion groups, chat rooms and electronic bulletin boards; providing access to an internet discussion website; transmission of news and information via the Internet; transmission of news and information via the Internet relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories.*

Class 41 *Organising, arranging and conducting shows, conferences, seminars, awards ceremonies and competitions all relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; entertainment services; information relating to entertainment, provided on-line from a computer database or the Internet; information relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories, provided on-line from a computer database or the Internet; providing on-line electronic publications (non-downloadable); publication of magazines, books and journals on-line; publication of magazines; publication of printed matter relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; on-line gaming services; video game services; electronic games services or on-line gaming services provided on-line from a computer database or the Internet; providing a website featuring an array of video gaming-themed merchandise, video recordings, video stream recordings, interactive video highlight selections, on-line computer games, video games, interactive video games, action skill games, trivia games, and video gaming news; streaming audio and video content relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; entertainment in the form of television programmes; production of television programmes and other audio-visual media; television entertainment services relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; production of television programmes relating to on-computer, on-console and online gaming, computer games software, computer hardware and related accessories; information and advisory services relating to the aforesaid services.*

3. On 6 May 2021, Mobigame (“the applicant”) applied to have both contested marks declared invalid under section 47(2) of the Trade Marks Act 1994 (“the Act”); both applications are based upon section 5(4)(a) of the Act. The applicant relies upon the sign **EDGE** which it claims to have used throughout the UK since January 2009 in relation to *computer game software*.

4. According to the applicant, use of the proprietor's marks would constitute a misrepresentation to the public that would damage the reputation in its business. Therefore, use of the proprietor's marks would be contrary to the law of passing off pursuant to section 5(4)(a) of the Act.

5. The proprietor filed a defence and counterstatement to both applications for invalidity denying the claims made and claiming that its **EDGE** and **EDGE GAMES** marks have been in use since 1984. Following the filing of the defence in both invalidation cases, the two sets of proceedings were subsequently consolidated.

6. The applicant is represented by Sheridans Solicitors whereas the proprietor represents itself. Both parties filed evidence and submissions during the evidence rounds. Neither party requested a hearing, but both parties filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

The applicant's evidence

7. The applicant filed evidence in the form of the witness statement of David Papazian dated 17 November 2021 and its corresponding seven exhibits (DP1 – DP7). Mr Papazian is Managing Director of the applicant company, a position he has held since January 2004. The applicant also filed written submissions dated 22 November 2021. I will not be summarising the submissions but will refer to them where necessary throughout this decision.

8. Mr Papazian states that the sign EDGE was first used in 2008 (I note, however, that the date of first use in the UK was stated as January 2009 on the applicant's form TM26(l)) when the EDGE computer game was released. It is described as first being sold on iTunes and on a number of websites and platforms since.

9. Sales figures for the EDGE computer game in the UK have been provided as follows:¹

Year Ending	Territory	Turnover in US\$
2009	UK	34,682.53
2010	UK	20,225.23
2011	UK	16,986.42
2012	UK	18,588.02
2013	UK	8,371.04
2014	UK	3,804.95
2015	UK	1,979.53
2016	UK	1,208.90
2017	UK	655.74
2018	UK	576.24
2019	UK	376.26
Total (2009 – 31 December 2019)	UK	107,454.86

10. The above sales figures are said to have been provided by AppFigures, an independent software management platform that allows software owners to track sales. A screen print from AppFigures showing the sales figures is provided within exhibit DP3.

11. Total downloads of the EDGE computer game in the UK have been provided as follows:²

Year Ending	Territory	Total Downloads
2009	UK	20,930
2010	UK	21,248
2011	UK	51,164
2012	UK	34,876

¹ Paragraph 13 of the witness statement of David Papazian.

² Paragraph 15 of the witness statement of David Papazian.

2013	UK	169,617
2014	UK	8,850
2015	UK	7,944
2016	UK	4,174
2017	UK	1,779
2018	UK	1,329
2019	UK	1,240
Total (2009 – 31 December 2019)	UK	323,151

12. As with the sales figures, the download figures are said to have been provided by AppFigures, a screen print of which is provided within exhibit DP4.

13. The remaining exhibits contain the following evidence:

Exhibit DP1 Extracts of the mobigame website taken from ‘WayBackMachine’ dated between 12 November 2008 and 30 September 2019. The capture from 12 November 2008 shows the word EDGE but does not evidence anything being available to purchase. From 29 March 2009, however, (and until 30 September 2019) the EDGE game is available to purchase and download as an application.

Exhibit DP2 Extracts of the iTunes store taken from ‘WayBackMachine’ showing the application ‘Edge By Mobigame’ available to purchase and download between 13 May 2010 and 3 January 2019.

Exhibit DP5 Extracts taken from AppFigures showing a selection of reviews of the ‘Edge’ game between 1 January 2009 and 27 July 2017.

Exhibit DP6 A capture of the International Mobile Gaming Awards website taken from ‘WayBackMachine’ on 24 December 2008 showing

EDGE BY MOBIGAME listed under the Excellence in Gameplay award.

Exhibit DP7 A screen print of the 'toucharcade' website listing 'Edge (Mobigame)' as a finalist in the Best Game category in the Independent Games Festival Mobile awards 2009.

The proprietor's evidence

14. The proprietor filed evidence in the form of the witness statement of Timothy Langdell dated 17 January 2022 and its corresponding 24 exhibits (TL1 – TL24). Dr Langdell has been Chief Executive Officer ("CEO") of the proprietor company (and Managing Director of its sister UK company, EDGE Games, Limited) since July 2005; he was CEO of The Edge Interactive Media ("EIM") from November 2009 and Managing Director of Softek International Limited ("Softek") from September 1983, both of which are the proprietor's predecessors in rights. The proprietor also filed written submissions dated 8 January 2022 (re-filed on 21 January 2022). I do not intend to summarise the entirety of the proprietor's evidence: some of the evidence is either undated, unexplained or not useful to the decision I am required to make. I have, however, captured below what I consider to be most relevant to the main issues of these proceedings.

15. In his witness statement, Dr Langdell explains the history of the companies referred to in the previous paragraph and their relationship with EDGE/EDGE GAMES. Softek was incorporated as a UK company in 1983. The EDGE/EDGE GAMES brand was developed by Softek in 1984 and used on computer games from the same year. In 1990, Dr Langdell executed the assignment document transferring all rights in EDGE/EDGE GAMES from Softek to EIM, founded that year. Softek continued to operate in the UK with Dr Langdell as the Managing Director until 2002 when the company was wound down. In 2005, EIM's business practices were divided up and the computer games business was assigned to EDGE Games, Inc. (the proprietor) with the bulk of rights, including EDGE/EDGE GAMES computer games, being assigned by 2008.

16. Exhibit TL3 contains what Dr Langdell describes as UK computer game press in 1984. Pages 16 and 17 of the proprietor's evidence (part 1) contains an article from Your Spectrum dated 1984 ('Issue 8'); the article explains that 'The Edge' formed an independent division from its parent company, Softek, and goes on to refer to The Edge's four new computer games, two of which "are due for launch sometime in September". Given the article is dated October 1984, it seems reasonable to conclude that the launch date referred to is September 1985.

17. Exhibit TL4 is an extract taken from the website 'gamesdb.launchbox-app.com' and lists 36 computer games, which clearly show stylised versions of EDGE/THE EDGE (see Figures 1-7 below for examples of the presentation) on their covers, released between 1984 and 1991. The pages that follow in exhibit TL4 include extracts from the website of Spectrum Computing: they list some of the aforementioned 36 computer games, showing 'The Edge (UK)' games are owned by 'Edge Games Inc', founded by 'Softek International Ltd (UK)' and published by 'The Edge (UK)'.

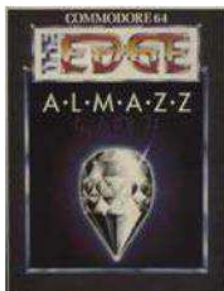


Figure 1

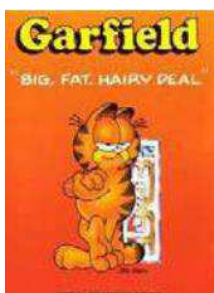


Figure 2

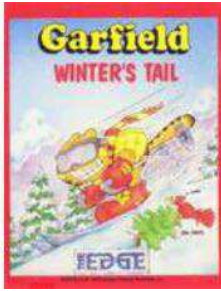


Figure 3

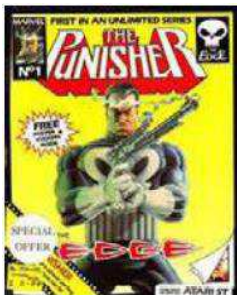


Figure 4

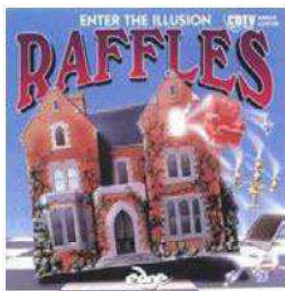


Figure 5



Figure 6

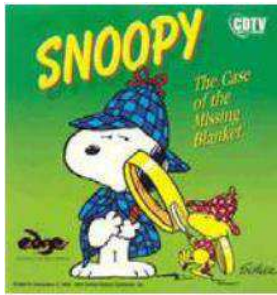


Figure 7

18. Dr Langdell states that turnover for EDGE games in the UK from 1984 to 1990 was in the millions of pounds and was partly due to sales agreements with W.H. Smith, F.W. Woolworth and Boots.³ He goes on to explain that sales in the 1990s did not match the high volume of sales in the 1980s but that EDGE games have been offered for sale in the UK at all times since their release.⁴

19. Dr Langdell refers to exhibit TL8 and sales of EDGE 3D hardware sold through its licensee Diamond Multimedia totalling over \$187million in one quarter of 1996, though the figures related to US and UK sales and a breakdown by territory is not available. I also note that the report at exhibit TL8 explains the \$187million net sales as follows:

“NET SALES

Net sales for the first quarter of 1996 increased by 134% to \$187.6 million from \$80.3 million for the first quarter of 1995. The increase in net sales over the prior year’s first fiscal quarter was primarily attributable to the revenues generated by the growth in demand for the Stealth series of graphics accelerator cards, sales of the Edge 3D graphics accelerator cards, which were first sold in significant quantity in the fourth quarter of 1995, and the revenues generated by the recently acquired subsidiaries of Supra and Spea, which together amounted to approximately \$60.8 million for the first quarter of fiscal 1996. [...]”

³ Paragraph 24 of the witness statement of Timothy Langdell.

⁴ Paragraph 27 of the witness statement of Timothy Langdell.

20. Given the above information, it is impossible to determine the proportion of the net sales attributable to UK sales and the proportion attributable to the EDGE 3D hardware referred to.

21. Further examples of earlier use of EDGE and EDGE GAMES for computer games in the UK between 1984 and 1991 are referred to at paragraph 21 of Dr Langdell's witness statement and shown at TL4, including instruction leaflets, advertisements, reviews and the Bobby Bearing game featuring in the 'Official Top 100' games of all time by *Your Sinclair*, a UK Magazine.

22. EDGE GAMES are said to have begun selling mobile phone games in the UK to O2, Orange, Virgin Mobile and Vodafone customers in 2003, starting with Bobby Bearing and then Pengu and Battlepods.⁵

23. A timeline of EDGE games launched by the proprietor is shown within exhibit TL7: a screenshot of the "About" section on the website www.edgegames.com. Numerous games are listed in the 1980s and 90s; following those are Bobby Bearing in 2003, Mythora in 2004, Bobby Bearing, Pengu and Battlepods in 2004-2005, Racers in 2009, Bobby Bearing iOS in 2011 and 2020, and EDGE 40th anniversary in November 2021.

24. There is some evidence, taken from 'Wayback Machine', of computer and mobile phone games available to purchase on UK websites between 2007 and 2009, namely the Bobby Bearing game in November 2007, March 2008 and May 2009.⁶

25. Sales figures of computer and mobile phone games sold under EDGE/EDGE GAMES in the UK (not including sales by the proprietor's licensees) have been provided as follows:⁷

Year Ending	Turnover (£)
2003	29,564.72
2004	39,441.09

⁵ Paragraph 34 of the witness statement of Timothy Langdell.

⁶ Exhibit TL10.

⁷ Paragraph 41 of the witness statement of Timothy Langdell.

2005	26,319.45
2006	17,399.32
2007	5,002.79
2008	3,265.26
2009	6,326.92
2010	4,331.68

26. Exhibits TL10 and TL11 show some use of EDGE GAMES: on the 'BOBBY BEARING' computer game cover in 2010 from the website 'nexva.com' (see Figure 8) and in 2003 (see Figure 9). The same presentation of EDGE GAMES on the BOBBY BEARING mobile phone game was used in a 2007 review on the website 'midlet-review.com' (within exhibit TL11).



Figure 8

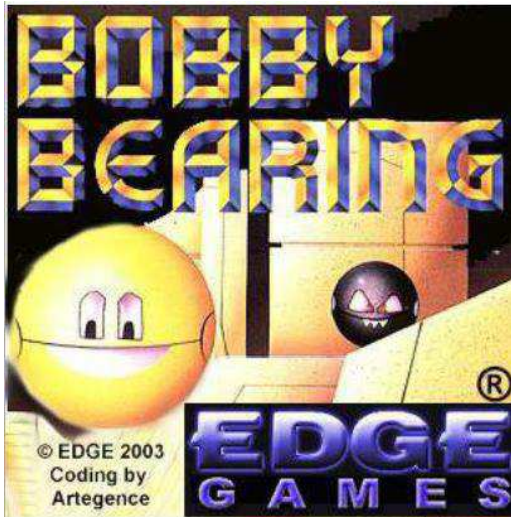


Figure 9

27. Dr Langdell claims to have kept mobile phone games and Windows PC computer games on sale in the UK since 2010. The relevant parts of the witness statement read as follows:

“56. During the period from July 2010 to the present day, Registrant has also continued to offer for sale in the UK market all of its JAVA (J2ME) mobile phone games such as “Bobby Bearing”, “Battlepods” and “Pengu” as well as continuing to offer its Windows PC computer games for sale in the UK, “RACERS” and “Mythora”. Further, Registrant has been selling its older titles originally published in the 1980s on various so-called “emulator” systems that run on devices such as the Apple iPhone. These emulators enable older games to be played on modern devices such as iPhones and iPads, and through one of these in particular (the ZX Spectrum Recreated) Registrant as sold in the UK market numerous copies of its games “Fairlight”, “Brian Bloodaxe” and “Bobby Bearing” (see **Exhibit TL-16**). In this exhibit I also include some sample sales reports by Elite Systems.

57. Sales of these older games for the Apple iPhone and iPad have occurred in the UK between 2015 and 2021. In each case, the games have been sold using both the EDGE and EDGE GAMES Signs/Trade Marks in UK commerce. While the turnover for such games has not been high (some tens to at most some hundreds of pounds), these games have helped keep the EDGE and EDGE GAMES brands in prominence in the minds of UK consumers ever since these games were first launched in the UK in the mid-1980s, right to the current day.” (Original emphasis)

28. This narrative evidence is partly supported by some of the pages within TL16: RACERS and MYTHORA PC games on page 283 and Bobby Bearing, Battlepods and Pengu on page 284. Bobby Bearing, Fairlight and Brian Bloodaxe appear on page 285, which correlates with the screenshots of the Apple App Store at pages 286-287 and is supported by the sales records from 2018/19 at pages 288-290. TL13 shows some evidence of UK sales of EDGE computer games in 2010 from the UK website of Amazon. TL15 contains a screenshot of edgeworks.com taken from ‘Wayback Machine’ on 26 September 2010 showing US and UK flags, where customers can

switch between the US and UK versions of the site and, according to Dr Langdell, purchase EDGE games directly from each website.

29. Dr Langdell explains that EDGE released the game Bobby Bearing 2: 2020 ReRoll in the UK in January 2020 on the Apple App Store. TL16 shows that just over 32.7K units of the game were purchased or downloaded in Europe between 1 April and 30 June 2020.

30. This concludes my summary of the proprietor's evidence, insofar as I consider it necessary to deal with the main issues of these proceedings.

PRELIMINARY ISSUE

31. In the applicant's submissions in lieu, it submits as follows:

"14. The Cancellation Applicant submits that the Registrant has failed to prove its case as it has provided no evidence that any goodwill that may have been generated by these "predecessors in rights" were ever assigned over to the Registrant. The Cancellation Applicant therefore submits that any use of the Registration Marks by anyone other than the Registrant should be disregarded for the purposes of these proceedings. It is therefore important to distinguish between (i) use of the Registration Marks by the Registrant and (ii) use by its alleged "predecessors in rights" and "licensees". The Cancellation Applicant notes that the Registrant has attempted to blur this distinction by using the term "registrant" as a reference to itself, these "predecessors in right" and/or any "licensee"."

32. In the proprietor's submissions in lieu, it submits as follows:⁸

"Registrant notes that Cancellation Applicant asks the Office to disregard a sizeable portion of Registrant's evidence and submissions on the basis that Registrant failed to supply support for its statements that Registrant's lawful

⁸ Page 1 of the submissions in lieu dated 12 April 2022.

predecessors in rights to the marks “EDGE” and “EDGE GAMES” (Softtek and Edge Interactive Media/EIM) has all the relevant intellectual property rights assigned to Registrant.

Registrant draws the Office’s attention to paragraphs 30, 35, 36 and elsewhere in Dr. Langdell’s Witness Statement where it is clearly stated, under oath, that Dr Langdell personally ensured that all the historic rights in the signs were lawfully assigned first to EIM and then from EIM to Registrant, this included of course all of EIM’s rights in all licence agreements such as the one with Future Publishing.”

33. In my view, Dr Langdell’s statement amply outlines the position. It is supported by the article within TL3 which refers to Softtek as the parent company of The Edge, and by the extracts within exhibit TL4 which detail the relevant games as being owned by ‘Edge Games Inc’, founded by ‘Softtek International Ltd (UK)’ and published by ‘The Edge (UK)’. As for who may own any goodwill, Dr Langdell’s evidence is that the business has been conducted by the proprietor since 2005 with the bulk of the rights in the EDGE games being transferred by 2008. No request was made to cross-examine Dr Langdell on this evidence. He does not specifically mention the transfer of goodwill, however, as the case law to which I will refer in this decision supports, an assignment of goodwill will usually be inferred, even without a specific agreement, where a new business takes over the business of an older concern as a going concern. Overall, I am satisfied with the chain of title and so evidence of use shown by the proprietor’s predecessors in title, Softtek and EIM, is sufficient. Even if I am wrong on this, the post-2005 trade in the UK appears to have been conducted by the proprietor, which, as will become apparent, is key to the issues in this case.

DECISION

Legislation

34. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

35. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

36. The relevant parts of section 47 state:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Relevant law

37. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Relevant date

38. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act. He explained that:

“41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom’s TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user’s mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: “date of commencement of the conduct complained of”. If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

39. In *Smart Planet Technologies, Inc. v Rajinda Sharma* [BL O/304/20], Mr Thomas Mitcheson QC, as the Appointed Person, pointed out that “*the start of the behaviour complained about*” is not the same as the date that the user of the applied-for mark acquired the right to protect it under the law of passing off. Rather, it is the date that the user of that mark committed the first external act about which the other party could have complained (if it knew about it) as an act of actual or threatened passing off. Typically, this will be the date when the first offer was made to market relevant goods or services under the mark. However, it could also be the date the first public-facing indication was made that sales were proposed to be made under the mark in future. If the user of the applied-for mark was not passing off at the time such use commenced (usually because no one else had acquired a protectable goodwill under a conflicting mark at that time), he or she will not normally be passing off by continuing to use the mark.

40. As outlined by the above authorities, the date for assessing a passing off claim in invalidation proceedings is typically the date the marks in suit were applied for, in this case, 5 July 2010 and 26 December 2019. However, both parties claim to be the senior user. Who the senior user is and applying the correct legal approach are the central issues to this dispute.

41. The proprietor, in its written submissions dated 8 January 2022 (re-filed on 21 January 2022) submits as follows:

“27. Registrant acknowledges that its rights previously protected by various UK Trade Mark Registrations in the years 1984 to 2009 reverted to being un-

registered rights when the registrations lapsed due to not being timely renewed. But Registrant still has all those decades of those accrued un-registered rights that pre-date its 2010 filing date, and these unregistered rights substantially pre-date any claimed rights by Cancellation Applicant of the mark EDGE in UK commerce.”

42. The applicant’s submissions in lieu state as follows:

“42. In order for the Cancellation Applicant to success (*sic*) in its claim, in brief, it must demonstrate the following:

a. it owned passing off rights in the Unregistered Sign as of 5 July 2010 and 26 December 2019 (being the filing dates claimed in the Registration Marks) **and** those passing off rights pre-date any passing off rights that the Registrant may have in the Registration Marks;

[...]” [Original emphasis]

And

“43. [...]

a. The Cancellation Applicant has shown that it owned goodwill in the Unregistered Signs as of 5 July 2010 and 26 December 2019 (see Exhibits DP-1 to DP-4 of Mr Papazian’s witness statement) and that its unregistered rights pre-date that of the Registrant;

[...]”

43. In the Court of Appeal’s decision of *Roger Maier and Assos of Switzerland SA v ASOS plc and ASOS.com Limited* [2015] EWCA Civ 220, Kitchin LJ stated:

“There is a further complication, however. Under the English law of passing off, the relevant date for determining whether a claimant has established the

necessary reputation or goodwill is the date of the commencement of the conduct complained of (see, for example, *Cadbury-Schweppes Ply Ltd v The Pub Squash So Ltd* [1981] RPC 429). The jurisprudence of the General Court and that of OHIM is not entirely clear as to how this should be taken into consideration under Article 8(4) (compare, for example, T-I 14/07 and T-115/07 *Last Minute Network* and Case R 784/2010-2 *Sun Capital Partners Inc.*). In my judgment the matter should be addressed in the following way. The party opposing the application or the registration must show that, as at the date of application (or the priority date, if earlier), a normal and fair use of the Community trade mark would have amounted to passing off. But if the Community trade mark has in fact been used from an earlier date then that is a matter which must be taken into account, for the opponent must show that he had the necessary goodwill and reputation to render that use actionable on the date that it began.”

44. In *CASABLANCA* Trade Mark O/349/16, Mr Thomas Mitcheson QC, sitting as the Appointed Person, concluded:

“34. I consider that adequate guidance to determine the present case can be obtained from the authorities before the Hearing Officer and further discussed before me at the hearing. The guidance in §165 of the *Assos* case emphasises that the party opposing the application or the registration must show that, as at the date of application, a normal and fair use of the Community trade mark would have amounted to passing off. It goes on to say that if the Community trade mark has in fact been used from an earlier date then that is a matter which must be taken into account. The Hearing Officer clearly sought to apply this in §50 of her decision. The question raised by the Opponent is whether she did so correctly and how should the earlier use be taken into account. In particular, does such use, as the Opponent submitted, have to be sufficient to generate its own goodwill?

35. I think it is clear from the remainder of §165 of the judgment of Kitchin LJ that generation of goodwill *by the applicant* is not required. This is because he goes on to explain that it is *the opponent* who must show that he had the

necessary goodwill and reputation to render that use actionable *on the date that it* (i.e. the applicant's use) *began*.

36. This is entirely consistent with the more lengthy discussion of the topic in the decision of Daniel Alexander QC in the *Multisys* case (*Advanced Perimeter Systems Ltd v Keycorp Ltd* [2012] R.P.C. 14). See the passage at §§35-45 which reviews many of the authorities which were cited to me, including the 21 earlier *Croom* decision of Geoffrey Hobbs QC. It is correct that, as the Opponent pointed out, §49 of *Croom* refers to the build up of goodwill (rather than mere use) as justifying the designation of senior user, but it does not appear that the precise point in issue in *Multisys* or the present case was in issue there, and in any event I consider that I am bound by *Assos* and I would have followed the later *Multisys* case anyway.

37. Accordingly the relevance of the activities of the applicant is limited to establishment of the date that the actionable use began. Once that date is established, the only question of goodwill arises in respect of the opponent's activities. As the Applicant in the present case pointed out, self-evidently it would only be in very exceptional circumstances that a party would have established goodwill at the point in time at which it commenced the use complained of. The establishment of goodwill would take much longer. But the authorities recognise that it is the date that the activity commenced which is the crucial one, and so in my judgment it cannot be necessary for goodwill to have been accrued at that time." [Original emphasis]

45. The guidance set out in the above cases is clear. I must firstly establish the date the proprietor's potentially actionable use began. It is not the date that the proprietor acquired goodwill of its own. In other words, the relevance of the proprietor's use is limited to establishing the date that potentially actionable use began. Once this date has been established, it is for the applicant to show that it had protectable goodwill by this time.

When did the proprietor's actionable use begin?

46. The proprietor claims that its predecessor in title, Softek, commenced use of the marks in 1984 on computer games. Referring to my summary of the proprietor's evidence, above, it builds a clear and consistent picture that EDGE was in use from 1984 and EDGE GAMES was in use from 2003. Sales figures for computer and mobile phone games sold under EDGE/EDGE GAMES in the UK have also been provided for the years 2003 to 2010.

47. In view of the above, I find the first use by the proprietor of EDGE to be in 1984 and of EDGE GAMES to be 2003, with the proprietor's own use commencing in 2005. Whether the proprietor had acquired goodwill at this point is not yet relevant since it is clear from *Assos* and *Casablanca* that this is not required.

Is the applicant the senior user?

48. Having established the date that the proprietor's actionable use began, is the applicant the senior user? In order to be the senior user, the applicant must demonstrate that it had a protectable goodwill prior to the date that the actionable use began, as set out above. The applicant has not filed any evidence of use either prior to 1984 in relation to the EDGE mark or prior to 2003 for the EDGE GAMES mark. In fact, there is no evidence of use prior to 2009. It is therefore impossible for me to conclude that the applicant had a protectable goodwill prior to the date that the actionable use began.

49. However, in accordance with the case law set out above, I must assess whether the position would have been any different at the date the applications were made. For the second contested mark, EDGE, there is evidence of use up until the filing date and so the position would not have been any different at that date from the date the use began. As such the application for invalidity under number 503822 against registration number 3073101 fails.

50. The position in relation to the first contested mark, EDGE GAMES, is different and requires further consideration. EDGE GAMES was not filed until 2019, meaning there

is approximately a nine-year gap between the evidence of use in 2010 and the filing date. The circumstances had changed by the relevant date and, as such, the proprietor's goodwill becomes relevant. The question is whether, at the application date, the mark had become distinctive of the applicant and no longer distinctive of the proprietor. This depends on a number of factors, which I address below.

(a) How long before the relevant date did the proprietor cease to use the mark?

51. Despite claims in Dr Langdell's witness statement that the proprietor used the marks "from July 2010 to the present day", the evidence demonstrates that it was very small-scale use. It appears that use by the proprietor was suspended in 2010 until 2015 when sales of older games resumed, albeit on a small scale.

(b) How much goodwill was attached to the mark at the cessation of use?

52. This is the first point in this decision that an assessment of goodwill belonging to either party becomes necessary. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

53. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] R.P.C. 19 (HC), Pumfrey J. stated:

"27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends

to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97* as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

54. However, in *Minimax GmbH & Co KG v Chubb Fire Limited [2008] EWHC 1960 (Pat)* Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

55. For this assessment, the relevant mark is **EDGE GAMES** and the relevant goods are *computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for use on mobile and cellular phones*, which can broadly be described as computer game programs and software. The relevant territory for assessing the 5(4)(a) ground is the

UK: see *Starbucks (HK) Limited & Anor v British Sky Broadcasting Group Plc & Ors*, [2015] UKSC 31, paragraph 47.

56. There is clear evidence of sales of computer games sold under EDGE GAMES between 2003 and 2010, and the sales figures for the same period substantiate that. Whilst I do not accept the use claimed under licence in relation to computer magazines and computer hardware, I do accept the use in relation to Softek and EIM, as explained in paragraph 33, above. However, the evidence is light in some areas. The pre-2010 sales figures drop significantly from 2006 to 2007 and the sales figures post-2010 are minimal. There are also no figures relating to the amount invested in promoting the marks by the proprietor. That said, deciding whether there is goodwill is a multifactorial assessment. Given the number of different games sold under EDGE GAMES, generating tens of thousands of pounds in the UK over a period of several years, as well as games clearly having been on the market since the early 2000s, I consider it likely that the proprietor will have generated some goodwill in the sign EDGE GAMES for computer game programs and software during that period of time. By the time the use appears to have been suspended in 2010, I find that the proprietor had a fair degree of goodwill in the sign EDGE GAMES for the goods relied upon.

(c) Did the proprietor do anything to keep the mark in the public's mind after the cessation of use?

57. The proprietor's narrative evidence is that it kept the mark in the public eye after 2010 by continued sales of older games, which, to a certain extent, the evidence corroborates, as per my evidence summary, above.

(d) In light of (b) and (c), did the proprietor retain a residual goodwill at the application date?

58. The evidence shows that the proprietor suspended use of the mark in 2010, at which point it owned goodwill in that mark for computer game programs and software. However, the next question is whether, at the date of filing the mark approximately nine years later, the proprietor retained a residual goodwill from the business

conducted prior to 2010. Residual goodwill was explained by Vice Chancellor Pennycuick in *Ad Lib Club Limited v Granville* [1971] FSR 1 (HC):

“It seems to me clear on principle and on authority that where a trader ceases to carry on his business he may nonetheless retain for at any rate some period of time the goodwill attached to that business. Indeed it is obvious. He may wish to reopen the business or he may wish to sell it. It further seems to me clear in principle and on authority that so long as he does retain the goodwill in connection with his business he must also be able to enforce his rights in respect of any name which is attached to that goodwill. It must be a question of fact and degree at what point in time a trader who has either temporarily or permanently closed down his business should be treated as no longer having any goodwill in that business or in any name attached to it which he is entitled to have protected by law.

In the present case, it is quite true that the plaintiff company has no longer carried on the business of a club, so far as I know, for five years. On the other hand, it is said that the plaintiff company on the evidence continues to be regarded as still possessing goodwill to which this name AD-LIB CLUB is attached. It does, indeed, appear firstly that the defendant must have chosen the name AD-LIB CLUB by reason of the reputation which the plaintiff company's AD-LIB acquired. He has not filed any evidence giving any other reason for the selection of that name and the inference is overwhelming that he has only selected that name because it has a reputation. In the second place, it appears from the newspaper cuttings which have been exhibited that members of the public are likely to regard the new club as a continuation of the plaintiff company's club. The two things are linked up. That is no doubt the reason why the defendant has selected this name”.

59. Support for *Ad Lib* came from Mr Justice Laddie in *Sutherland & Ors v V2 Music Ltd* [2002] EMLR 28 (HC) where he stated that:

“17. In my view Mr Speck's attack on the Ad-Lib decision is mis-placed. Not only has it been accepted as good authority for more than 30 years, it is, with

respect, clearly right. As long as a claimant has not chosen to abandon his goodwill, it remains as an asset protectable from damage by passing-off proceedings. Destroying the goodwill so it no longer is an attractive force which will help the claimant's business is but one form of damage of which the court can take notice. If Mr Speck were correct, Ad-Lib must have been wrongly decided: the plaintiff no longer had any members; he has no immediate prospect of opening a new club; he therefore lost no membership fees or any other readily identifiable sums of money or business. But what he was at risk of losing was the very thing the action was intended to protect – his goodwill, something which would be utilised to support and facilitate his future business. As I say, Ad-Lib has been treated as good law for over 30 years. To the best of my knowledge, it has never been disapproved of.

18. Another case where the same approach was adopted as in the Ad-Lib is **Thermawear Ltd v Vedonis Ltd [1982] RPC 44**. There, a quasi-descriptive trade mark, 'Thermawear', had been used by the plaintiff up to 1974. As Whitford J held:

"Thereafter, except for a few isolated incidents, the plaintiffs up to the issue of a writ were only using Thermawear as part of, and for a very brief period, as the company name." (p67)

19. Five years after the plaintiff has ceased using the mark on its goods the defendant started to use it on its goods. The learned judge summed up the case as follows:

"The plaintiffs' case is based on their assertion that there is a residual and persisting reputation in this word as a word distinctive of their goods. Now a reputation may persist, and relief has not infrequently been given in passing-off proceedings, in cases where only a residual reputation could be relied upon."

20. The learned judge found for the plaintiffs.

21. In my view there is nothing exceptional or unusual in Ad-Lib or Thermawear. They represent a normal and logical application of passing-off principles. They do not seek to avoid the need to show damage: rather they make it clear that damage to goodwill itself will invoke the protection of the court. Goodwill is of value, not only in respect of current business, but also because of future business opportunities it will nurture. It is its power to support and improve future business which gives it its valuable and make it saleable. It is acquired by trading and advertising in the past but its value is in the way it promotes future business.” [Original emphasis]

60. The case law seems to me clear that goodwill remains an asset as long as the owner of that goodwill has not chosen to abandon it and provided it has not dissolved over time.

61. Therefore, I turn now to whether the proprietor has at any time since the suspension of its use of EDGE GAMES in 2010 abandoned the goodwill in that mark. As per the decision of Iain Purvis QC, sitting as a Deputy Judge, in *W.S. Foster & Son Limited v Brooks Brothers UK Limited*, [2013] EWPC 18 (PCC) the abandonment of goodwill usually requires a positive act, such as making a statement that the goods or services will not be sold again. Alternatively, it can be inferred from the owner’s actions, like moving the business to another country specifically to trade in a different market. For example, in *Star Industrial v Yap Kwee Kor* [1980] RPC 31, Lord Diplock stated that:

“Goodwill, as the subject of proprietary rights, is incapable of subsisting by itself. It has no independent existence apart from the business to which it is attached. It is local in character and indivisible; if the business is carried on in several countries a separate goodwill attached to it in each. So when the business is abandoned in one country in which it has acquired a goodwill the goodwill in that country perishes with it although the business may continue to be carried on in other countries...Once the Hong Kong Company had abandoned that part of its former business that consisted of manufacturing toothbrushes for export to and sale in Singapore it ceased to have any proprietary right in Singapore

which was entitled to protection in any action for passing-off brought in the courts of that country.”

62. In the case of the proprietor’s business, there is no positive evidence of abandonment on the part of the proprietor. Whilst the business’s main offices moved from London to California between 1990 and 1995, the evidence and sales figures show that sales in the UK continued long after that time. Dr Langdell’s narrative evidence is that the business has maintained offices in the UK, which I have no reason not to accept, and has kept its older computer games available to purchase on UK websites since 2010: the documentary evidence supports this from 2015. Added to this is that the proprietor appears from the evidence to have launched new EDGE games after the relevant date, which is not in keeping with an abandonment of its goodwill. I am not satisfied in these circumstances that the passage of time alone amounts to abandonment of the proprietor’s goodwill. I am however satisfied that the proprietor owned a residual goodwill from its pre-2010 UK trade at the time of filing its application on 26 December 2019, which would have been maintained and supplemented by the small trade in older EDGE games resumed in 2015. Accordingly, my finding in regard to the proprietor being the senior user prevails and the applicant had no common law right at the application date to support a claim of passing off.

CONCLUSION

63. In view of the above, the applications for invalidity fail.

COSTS

64. The proprietor has been successful in defending its registrations in the applications for invalidity under numbers 503821 and 503822. Therefore, it is entitled to a contribution towards its costs in line with the scale published in Tribunal Practice Notice 2/2016. As the proprietor is unrepresented, on 12 April 2022 it filed a costs pro-forma, claiming it has spent the following amount of time on these proceedings:

Considering forms filed by the other party

19 hours 12 minutes

Considering Party A's evidence and written submissions	29 hours 44 minutes
<u>Searching 34 archive boxes of documents, product samples, marketing materials and sales documents dating from 1984 to 2022 to prepare a response</u>	297 hours 31 minutes
<u>Researching the internet for supporting evidence and documentation regarding Party A's 38 years of use of the pertinent marks in UK commerce, product reviews, advertising, etc. to prepare a response</u>	141 hours 19 minutes
<u>Preparing Party B's responding Evidence and Submissions and their Written Submission prior to decision on the papers</u>	14 hours 27 minutes
Total	502 hours 13 minutes⁹

65. In calculating a suitable award, I take note of the following statutory provisions.

66. Section 68 of the Act and Rule 67 of the Trade Marks Rules 2008 read as follows:

“68. (1) Provision may be made by rules empowering the registrar, in any proceedings before him under this Act –

- (a) to award any party such costs as he may consider reasonable, and
- (b) to direct how and by what parties they are to be paid.”

And

“67. The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable and direct how and by what parties they are to be paid.”

⁹ This total is my own calculation.

67. TPN 2/2016, at Annex A, sets out the scale of costs applicable:

Annex A

Scale of costs applicable in proceedings commenced on or after 1st July 2016

Task	Cost
Preparing a statement and considering the other side's statement	From £200 to £650 depending on the nature of the statements, for example their complexity and relevance.
Preparing evidence and considering and commenting on the other side's evidence	From £500 if the evidence is light to £2200 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence.
Preparing for and attending a hearing	Up to £1600 per day of hearing, capped at £3300 for the full hearing unless one side has behaved unreasonably. From £300 to £550 for preparation of submissions, depending on their substance, if there is no oral hearing.
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time). (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination.

68. Section (3) of TPN 2/2016 explains that the updates made to the scale of costs maintain an underlying contribution-not-compensation approach, as below:

The new scale

(3) Annex A to [TPN 4/2007](#) puts figures to the scale of costs in respect of an award in proceedings commenced on or after 03 December 2007. This scale has not been revised since November 2007 and it now needs updating to take better account of the real costs currently involved in litigation before the Comptroller whilst still maintaining the underlying contribution-not-compensation approach. The new scale at Annex A to this Notice will be applicable in respect of awards of costs in proceedings commenced on or after 1 July 2016. For proceedings commenced before that date, the scale, published as Annex A to [TPN 4/2007](#), will continue to apply. The new scale does not affect the £500 cap on costs in fast track trade mark opposition proceedings.

69. Section 5.2 of the Trade Marks Manual refers to costs for unrepresented parties and reads as follows:

“Any cost awards made in favour of an unrepresented party will include the full cost of any official fees, but will only cover 50% of the amount from the published scale. This ensures that the unrepresented party is now overcompensated for the cost of the proceedings.”

70. Section 5.2 goes on to refer to the Litigants in Person (Costs and Expenses) Act 1975, which sets the level of compensation for litigants in person in Court proceedings at £19 per hour.

71. In calculating an appropriate costs award I will use the headings set out in Annex A as follows.

Preparing a statement and considering the other side’s statement

72. I consider the time claimed for “considering forms filed by the other party” (19 hours and 12 minutes) to be high. The content of the TM26 is minimal, as is the TM8. However, I accept that despite the only ground being 5(4)(a) the issues were not simple and the forms will have taken some consideration. That being said, the proprietor’s time claimed would amount to over £360. Considering awards to litigants in person should not exceed 50% of the award on the scale, I find a sum of £150 to be more appropriate.

Preparing evidence and considering and commenting on the other side’s evidence

73. The activities underlined at paragraph 63 above would all constitute the preparing and considering of evidence. The time claimed totals 483 hours and 1 minute which, at a rate of £19 per hour, would equate to just over £9,177; this is excessive and far above the published scale without even deducting 50%. I appreciate the issues in this case were not of a simple nature and would have required the proprietor to collate historical evidence of use as well as considering the evidence and submissions of the applicant. However, I also bear in mind that some of the evidence filed by the proprietor

was not helpful to the matter before me either because it was unexplained or because it was not dated. Taking everything into consideration, if I were to be making an award to a represented party for these activities, it would likely be somewhere in the region of £1,200. Deducting 50% results in an award for these activities of £600.

Preparing for and attending a hearing (or preparing written submissions in lieu)

74. Both parties filed written submissions in lieu of a hearing. These activities were not separately claimed for by the proprietor. Based on the statutory provisions I have referred to, I consider a suitable award to be £225, calculated as 50% of the upper limit of the scale.

75. To conclude, I consider a costs award of £975 to be reasonable.

76. I therefore order Mobigame to pay Edge Games, Inc. the sum of £975. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 31st day of August 2022

E Fisher

E FISHER (née VENABLES)

For the Registrar

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBERS 801515050 AND 3073101

IN THE NAME OF EDGE GAMES, INC.

IN RESPECT OF EDGE GAMES IN CLASS 9

AND EDGE IN CLASSES 9, 16, 35, 38 AND 41

**AND APPLICATIONS FOR A DECLARATION OF INVALIDITY THERETO UNDER NUMBERS
503821 AND 503822**

BY MOBIGAME

ORDER

THE APPOINTED PERSON having on 17 March 2023 heard an appeal from the Decision of Hearing Officer Emily Fisher, dated 31 August 2022 acting for the Registrar of Trade Marks

DOES HEREBY ORDER THAT:

- (1) The appeal be dismissed and the declarations for invalidity be refused.
- (2) The Applicant Mobigame do pay £1200 in contribution to the Proprietor's costs of this appeal, to be added to the £975 previously ordered by the Hearing Officer, the total of £2175 to be paid by 4pm on 21 April 2023.

DATED this 31st day of March 2022


.....

**MR THOMAS MITCHESON KC
THE APPOINTED PERSON**

EDGE 004687

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBERS 801515050 AND 3073101

IN THE NAME OF EDGE GAMES, INC.

IN RESPECT OF EDGE GAMES IN CLASS 9

AND EDGE IN CLASSES 9, 16, 35, 38 AND 41

**AND APPLICATIONS FOR A DECLARATION OF INVALIDITY THERETO UNDER
NUMBERS 503821 AND 503822**

BY MOBIGAME

DECISION

INTRODUCTION

1. This is an appeal against the decision of Hearing Officer Emily Fisher dated 31 August 2022 in which she refused two applications for invalidity brought by the Applicant/Appellant, Mobigame (“the Decision”).
2. The Proprietor/Respondent is Edge Games Inc. and the marks in issue are Edge registered in Classes 9, 16, 35, 38 and 41 filed on 5 July 2010 and Edge Games registered in Class 9 filed on 26 December 2019 (“the Registered Marks”).
3. The basis for the applications for invalidity was under s.5(4) and the common law tort of passing off. The Applicant relied on its alleged use of the sign EDGE from January 2009 in respect of computer games software. The applications were consolidated.
4. The Hearing Officer rejected the applications on the grounds that as at the earliest date relied on by the Applicant, the Proprietor had already commenced use of the marks complained of and/or was the senior user of the marks, so any passing off action would be bound to fail. There is no dispute as to that legal principle on this appeal. The issue is whether the Hearing Officer was entitled to come to the view she did on the facts.

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5. The Appellant was represented by Jamie Muir Wood of Counsel, instructed by Sheridans Solicitors. The Respondent was represented by Guy Tritton of Counsel, instructed directly under the Bar Public Access Scheme. I am grateful to both of them for their helpful submissions.
6. There was no dispute as to the standard of appeal, recently summarised by Joanna Smith J. in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch), [24] to [25].
7. Mr Muir Wood also helpfully referred me to the following, which are of particular relevance to the present appeal. First, the Court of Appeal in *Volpi v. Volpi* [2022] EWCA Civ 464, at §2 on appeals as to questions of fact:

The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

- (i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
- (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
- (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
- (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

8. Second, on the meaning of 'wrong', *Re Sprintroom Ltd* [2019] EWCA Civ 932, at §76:

So, on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, "such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion".

THE APPEAL

9. The Appellant put its case as follows. It contended that the Hearing Officer erred in four ways:

Ground 1: she erred in finding that any goodwill arising from use of the signs which became the Registered Marks by the Respondent's alleged predecessors in title, Softek and/or EIM, had been transferred to the Respondent;

Ground 2: she erred in finding that the evidence showed continuous use of the Edge sign up to the date of the application for the Edge Registered Mark on 5 July 2010;

Ground 3: she erred in finding that the evidence supported a finding that goodwill subsisted as at 2010; and

Ground 4: even if she was not wrong to find that goodwill subsisted as at 2010, she erred in failing to analyse whether the goodwill had dissolved by 2019.

10. The Respondent relied upon a Respondent's Notice, amended shortly before the Hearing. It was common ground that I only need deal with the Respondent's Notice if I allowed the appeal, and I return to this issue below.

Ground 1

11. In his admirably succinct skeleton argument, Mr Muir Wood argued as follows:

The Hearing Officer deals with the transfer of goodwill from Softek and EIM to the Respondent at §33. She correctly notes that the Respondent neither refers to the transfer of goodwill from Softek or EIM to the Respondent nor provides any documentary evidence to prove such a transfer.

She correctly notes that, where one company takes over the business of another as a going concern, goodwill may be deemed to move from the former to the latter. The evidence of the Respondent does not, however, show that EIM took over the business of Softek as a going concern or that the Respondent took over the business of EIM as a going concern. Instead, it shows divvying up of assets between the various parties and all three entities trading in parallel.

In the circumstances, she should not have found that any goodwill was transferred from Softek or EIM to the Respondent. Accordingly, any evidence of use/goodwill should have been limited to the acts of the Respondent itself.

12. In his oral submissions Mr Muir Wood took me to §14 of the Decision, where the Hearing Officer stated *“I do not intend to summarise the entirety of the proprietor’s evidence: some of the evidence is either undated, unexplained or not useful to the decision I am required to make. I have, however, captured below what I consider to be most relevant to the main issues of these proceedings.”* The evidence was given in the form of a witness statement of a Dr Timothy Langdell. As the Hearing Officer also recorded in §14, Dr Langdell has been Chief Executive Officer (“CEO”) of the proprietor company (and Managing Director of its sister UK company, EDGE Games, Limited) since July 2005; he was CEO of The Edge Interactive Media (“EIM”) from November 2009 and Managing Director of Softek International Limited (“Softek”) from September 1983. She recorded that both these companies were *“the proprietor’s predecessors in rights”*.
13. In §15 the Hearing Officer held:
 15. In his witness statement, Dr Langdell explains the history of the companies referred to in the previous paragraph and their relationship with EDGE/EDGE GAMES. Softek was incorporated as a UK company in 1983. The EDGE/EDGE GAMES brand was developed by Softek in 1984 and used on computer games from the same year. In 1990, Dr Langdell executed the assignment document transferring all rights in EDGE/EDGE GAMES from Softek to EIM, founded that year. Softek continued to operate in the UK with Dr Langdell as the Managing Director until 2002 when the company was wound down. In 2005, EIM’s business practices were divided up and the computer games business was assigned to EDGE Games, Inc. (the proprietor) with the bulk of rights, including EDGE/EDGE GAMES computer games, being assigned by 2008.
14. She then went to record the various uses of EDGE/EDGE GAMES by Softek and EIM referred to in the evidence. There was no dispute that goodwill was generated as a result of such uses. The question before me was whether the evidence established that the goodwill was validly assigned to the Proprietor. This was

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referred to as a “preliminary issue” by the Appellant in its submissions to the Hearing Officer.

15. As noted above, the Hearing Officer dealt with this issue in her §33. She recorded:

33. In my view, Dr Langdell’s statement amply outlines the position. It is supported by the article within TL3 which refers to Softek as the parent company of The Edge, and by the extracts within exhibit TL4 which detail the relevant games as being owned by ‘Edge Games Inc’, founded by ‘Softek International Ltd (UK)’ and published by ‘The Edge (UK)’. As for who may own any goodwill, Dr Langdell’s evidence is that the business has been conducted by the proprietor since 2005 with the bulk of the rights in the EDGE games being transferred by 2008. No request was made to cross-examine Dr Langdell on this evidence. He does not specifically mention the transfer of goodwill, however, as the case law to which I will refer in this decision supports, an assignment of goodwill will usually be inferred, even without a specific agreement, where a new business takes over the business of an older concern as a going concern. Overall, I am satisfied with the chain of title and so evidence of use shown by the proprietor’s predecessors in title, Softek and EIM, is sufficient. Even if I am wrong on this, the post-2005 trade in the UK appears to have been conducted by the proprietor, which, as will become apparent, is key to the issues in this case.

16. These findings were criticised by the Appellant on the basis that the Respondent had simply failed to establish its case. It was not good enough, the Appellant submitted, to infer transfer of the relevant goodwill where the entirety of the business was not taken over on each occasion, but where the businesses continued to trade side by side for some of the relevant period.

17. On the other hand I was referred to §§29, 35 and 36 of Dr Langdell’s statement, where he explained (emphasis added):

As part of a commercial decision I made at that time, a California corporation (The Edge Interactive Media Inc, “EIM”), founded in 1990, **became the lawful owner of all rights accrued to-date for the use of the Signs / Trade Marks EDGE, THE EDGE and EDGE GAMES** (and the right to all the earlier Softek games, too), and I **personally executed the assignment document in 1990 transferring all core Trade Mark rights in the EDGE Marks from Softek International Limited to EIM.**

...

Registrant EDGE Games, Inc. was formed in 2005 **when a commercial decision was made to divide up EIM’s business practices into computer games, which business was assigned to Registrant, and business oriented and other non-game interactive media opportunities, that remained with EIM.**

...

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Certainly, by early 2008 rights in the EDGE / EDGE GAMES computer games had been assigned to Registrant and thus all sales activity in the UK from 2003 onwards can be said to be UK sales activity in regard to the Sign / Mark EDGE by Registrant, **either directly or as a result of assigned rights from EIM.**

18. In the light of this evidence I think the Hearing Officer was plainly entitled to conclude as she did. Indeed, I think the Appellant's position that the Respondent did not benefit from assignment of the goodwill created by Softek/EIM is unrealistic. There is no dispute that the marks were in use prior to 2009, and that the Respondent had taken over the relevant parts of the businesses of Softek and EIM, even if the entirety of the businesses were not subsumed. On this point I consider that the Hearing Officer was entitled to conclude, consistently with the evidence Dr Langdell, that transfer of part of the business prior to 2005, specifically the computer games business, carried with it a transfer of the goodwill generated by that part of the business.
19. Although Dr Langdell was not able to exhibit the actual assignments showing transfer of the goodwill on each occasion, he was plainly an appropriate person to be giving evidence of the history of the relevant companies. He gave evidence that the marks, "all rights" and the businesses were assigned and I think the Hearing Officer was entitled to find that the goodwill was also transferred. The overall tenor of Dr Langdell's evidence was consistent with this and there was no suggestion (and could be no such suggestion given the Appellant's decision not to cross-examine Dr Langdell) that he was not being truthful in his evidence.
20. It is correct that although the Hearing Officer referred to "case law" in her §33, she did not go on to identify it. The Respondent suggested she was referring to Jacob LJ's remarks in *I N Newman Ltd v Adlem* [2006] FSR 161 at [21]: "*Overall the terms of the contract are no different from many another contract whereby there is a sale of a business as a going concern. It would be strikingly unusual for such a sale to reserve the goodwill attached to the name of the business.*" The Appellant accepted that this was likely to have been the authority she had in mind, and it was not suggested that the practice referred to by Jacob LJ was not the normal way businesses proceed. Even if this was not the case she was referring to, I am satisfied that she was entitled to consider that the principle she alluded to represented business common sense.
21. I also bear in mind the relative informality of proceedings in the Registry. Whilst it is still necessary for the party bearing the evidential burden to satisfy it on the balance of probabilities, this must be balanced against the desirability of allowing litigants to

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conduct oppositions and invalidity proceedings without having to instruct attorneys, solicitors and counsel. The Hearing Officer considered the evidence of Dr Langdell, which was extensive and supported by documentary material, and found that it supported the Respondent's arguments. There was no evidence to the contrary. I can find no error in her conclusion.

Ground 2

22. Mr Muir Wood summarised the arguments under Ground 2 as follows:

Since no evidence before 2005 can be said to be use by the Respondent, the finding at §48 that there had been continuous use since 1984 is unsustainable.

In terms of use from 2005 to 2010, this is summarised at §§24 to 26. As set out in the grounds of appeal, it is thin, does not distinguish between the Sign and the Second Sign and does not attribute any use to the Respondent itself, as against Softek or EIM. It amounts to use on three websites on three dates and very low turnover figures. Since the turnover figures start in 2003, before the Respondent was incorporated, it is to be inferred that these figures relate to entities other than the Respondent and the Hearing Officer should have so found.

In the circumstances, the Hearing Officer should not have found that the Respondent itself had shown use of the Sign or the Second Sign in the period 2005 to 2010.

23. As to this, it is right that the use in 2003 cannot be use by the Respondent, which was not formed until 2005. But that does not necessarily undermine the conclusions of the Hearing Officer that the later use was by the Respondent.

24. I was taken to the exhibits referred to in §24 of the Decision which show, via the WayBack Machine internet archive, the use of the relevant marks on websites between 2005 and 2010 which were shown to be owned by the Respondent. Those exhibits support the findings of the Hearing Officer. The fact that the use may not be extensive or the turnover low is irrelevant to the issue before the Hearing Officer – when did use commence which could be the subject of complaint in an action for passing off. I am satisfied that there was evidence before the Hearing Officer showing use by the Respondent before the earliest use claimed by the Appellant. She reviewed the evidence in §§23-26 of the Decision and made findings in §§46-47 as follows:

46. The proprietor claims that its predecessor in title, Softek, commenced use of the marks in 1984 on computer games. Referring to my summary of the proprietor's evidence, above, it builds a clear and consistent picture that EDGE was in use from

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1984 and EDGE GAMES was in use from 2003. Sales figures for computer and mobile phone games sold under EDGE/EDGE GAMES in the UK have also been provided for the years 2003 to 2010.

47. In view of the above, I find the first use by the proprietor of EDGE to be in 1984 and of EDGE GAMES to be 2003, with the proprietor's own use commencing in 2005. Whether the proprietor had acquired goodwill at this point is not yet relevant since it is clear from *Assos* and *Casablanca* that this is not required.

25. Accordingly, I consider that the Hearing Officer was entitled to find the Respondent was the senior user of the Edge mark.

Grounds 3 & 4

26. Ground 3 relates to the later mark for Edge Games and the finding by the Hearing Officer that the Respondent possessed goodwill in such a mark as a result of activities carried out between 2005 and 2010. Ground 4 challenged the finding that the Respondent was entitled to rely on such goodwill in 2019 because the goodwill did not dissolve. It is convenient to deal with them together.

27. Mr Muir Wood's skeleton summarised the point as follows for Ground 3:

As noted above, under ground 2, it is not accepted that the evidence filed by the Respondent shows use, by it, of the Sign or the Second Sign in the period from 2005 to 2010.

Even if that is not accepted, it plainly does not demonstrate goodwill owned by the Respondent. Whilst the Appellant accepts that this is an evaluative exercise, three screenshots and tiny turnover figures, apparently achieved by entities other than the Respondent, cannot lead to a finding that goodwill, owned by the Respondent, existed.

28. For Ground 4 he submitted:

Even if goodwill existed in 2010, which is not admitted, whilst the Hearing Officer acknowledged that such goodwill could dissolve through the effluxion of time, she failed to analyse whether it had dissolved on the facts before her.

Plainly the goodwill, if any, was miniscule. In the circumstances where the Hearing Officer found that it suspended use of the Second Sign in 2010, she should have found that, by 2019 (or 2015, if it is accepted that use resumed then), any goodwill had dissipated.

Accordingly, as at 26 December 2019, the Hearing Officer should have found that the Second Sign was not distinctive of the Respondent. She should have found on

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to find that the Sign was, by then, distinctive of the Appellant and have invalidated the Second Mark.

29. The Hearing Officer dealt with the point in her §§50 onwards.
30. She found that that use by the Respondent was suspended in 2010 until 2015 (although this point was the subject of the Respondent's Notice) but then sales of older games resumed, albeit on a small scale. She then turned to the question of what goodwill might have been retained by the Respondent as a result of earlier use. She held in §56 as follows:
 56. There is clear evidence of sales of computer games sold under EDGE GAMES between 2003 and 2010, and the sales figures for the same period substantiate that. Whilst I do not accept the use claimed under licence in relation to computer magazines and computer hardware, I do accept the use in relation to Softek and EIM, as explained in paragraph 33, above. However, the evidence is light in some areas. The pre-2010 sales figures drop significantly from 2006 to 2007 and the sales figures post-2010 are minimal. There are also no figures relating to the amount invested in promoting the marks by the proprietor. That said, deciding whether there is goodwill is a multifactorial assessment. Given the number of different games sold under EDGE GAMES, generating tens of thousands of pounds in the UK over a period of several years, as well as games clearly having been on the market since the early 2000s, I consider it likely that the proprietor will have generated some goodwill in the sign EDGE GAMES for computer game programs and software during that period of time. By the time the use appears to have been suspended in 2010, I find that the proprietor had a fair degree of goodwill in the sign EDGE GAMES for the goods relied upon.
31. For the reasons already given above, I consider the Hearing Officer was entitled to come to this conclusion, and made no error of principle in so doing. This deals with Ground 3.
32. The outstanding issue for the Hearing Officer was whether this goodwill accrued by the Respondent had been abandoned by 2019, or whether it had been maintained. The Hearing Officer referred to various authorities on abandonment, including the decision of Iain Purvis QC, sitting as a Deputy Judge, in *W.S. Foster & Son Limited v Brooks Brothers UK Limited*, [2013] EWPC 18 (PCC) and the finding that the abandonment of goodwill usually requires a positive act, such as making a statement that the goods or services will not be sold again. Alternatively, she held, it can be inferred from the owner's actions, like moving the business to another country specifically to trade in a different market.

33. There was no dispute before me as to these principles, only to their application to the facts.
34. As to this, the Hearing Officer summarised as follows:
62. In the case of the proprietor's business, there is no positive evidence of abandonment on the part of the proprietor. Whilst the business's main offices moved from London to California between 1990 and 1995, the evidence and sales figures show that sales in the UK continued long after that time. Dr Langdell's narrative evidence is that the business has maintained offices in the UK, which I have no reason not to accept, and has kept its older computer games available to purchase on UK websites since 2010: the documentary evidence supports this from 2015. Added to this is that the proprietor appears from the evidence to have launched new EDGE games after the relevant date, which is not in keeping with an abandonment of its goodwill. I am not satisfied in these circumstances that the passage of time alone amounts to abandonment of the proprietor's goodwill. I am however satisfied that the proprietor owned a residual goodwill from its pre-2010 UK trade at the time of filing its application on 26 December 2019, which would have been maintained and supplemented by the small trade in older EDGE games resumed in 2015. Accordingly, my finding in regard to the proprietor being the senior user prevails and the applicant had no common law right at the application date to support a claim of passing off.
35. Once again, I can see no reason to interfere with her findings, especially bearing in the mind the principles on appeals of this nature set out above. None of the six *Volpi* factors were engaged and the Hearing Officer was not "wrong" in the sense that there was a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.
36. Indeed, there was material before her in relation to the Respondent's trading activities up to 2019. No positive case was put forward by the Appellant as to abandonment; like Grounds 1 and 2 it just put the Respondent to proof. I was shown some of the evidence upon which the Hearing Officer relied and I could find no error of principle in her analysis of it. In all the circumstances I am satisfied that the Hearing Officer's conclusions found basis in the evidence and I also dismiss these grounds of appeal.
37. In the circumstances I have outlined, it is unnecessary for me to consider the Respondent's Notice.
38. I therefore dismiss the appeal and uphold the findings of the Hearing Officer.

COSTS

39. In the usual way costs should follow the event. Bearing in mind the steps taken by the parties on this appeal, I award the sum of £1200 to the Respondent. This should be added to the sum of £975 awarded below.
40. The sum of £2175 should be paid by the Appellant to the Respondent within 21 days of the date of this decision.

30th March 2023
Thomas Mitcheson KC
The Appointed Person

Direction de la propriété industrielle

MARQUES

N° national et réf : NL22-0042

(à rappeler dans toute correspondance

- art. R.712-6 du code de la propriété intellectuelle)

N° national de la marque contestée :1515050

ATOUT PI LAPLACE

MME GUILLERMARD AUDE

ATOUT PI LAPLACE 22 AVENUE ARISTIDE

IMMEUBLE « VISIUM »

94117 ARCUEIL CEDEX

V/Ref : EDGE

Affaire suivie par : Stéphane HIDALGO-FRIAZ

Téléphone : 01.56.65.81.18

Courbevoie, le 15/03/2023

OBJET : Procédure en nullité ou en déchéance - Notification de la décision statuant sur la nullité (R.716-12 du code de la propriété intellectuelle)

P.J.

J'ai l'honneur de vous notifier la décision établie au vu de la procédure en nullité ci-dessus référencée.

Cette décision, jointe à la présente, est également accessible et téléchargeable sur le site internet de l'INPI au moyen du téléservice dédié, selon les modalités indiquées sur la fiche jointe.

J'appelle votre attention sur le fait que vous disposez, à l'encontre de cette décision, des voies de recours devant la Cour d'Appel compétente, dans les conditions et délais exposés en annexe.

Je vous informe des noms et adresses des parties à la procédure :

- **Demandeur** : Mobigame - 25-27 rue Titon - 75011 Paris - FRANCE

- **Titulaire de la marque contestée** : Edge Games, Inc.- 530 South Lake Avenue, #171 - Pasadena CA 91101 - Etats-Unis d'Amérique

Je vous rappelle que tous les échanges relatifs à la procédure en nullité ou en déchéance doivent être effectués sous forme électronique sur le site internet de l'INPI au moyen du téléservice dédié (rubrique « Accéder au portail de l'opposition, de la nullité et de la déchéance ») selon les modalités indiquées sur la fiche jointe.

Veillez agréer l'assurance de ma considération distinguée

Pour le Directeur général
de l'Institut national de la propriété industrielle

Stéphane HIDALGO-FRIAZ

A handwritten signature in black ink, appearing to be 'H. H. H.', written in a cursive style.

Juriste

EDGE 004700

**RECOURS EXERCES DEVANT LA COUR D'APPEL CONTRE LES DECISIONS DU DIRECTEUR GENERAL DE L'INPI
(art. R. 411-19 à R. 411-43 du code de la propriété intellectuelle)**

**DELAI DU RECOURS
(art. R. 411-21)**

. Le délai pour former un recours devant la cour d'appel est d'**un mois** à compter de la notification de la décision, ou, le cas échéant, de la date à laquelle le projet vaut décision.

. Ce délai est **augmenté** :

- d'un mois si le requérant demeure en Guadeloupe, en Guyane, à la Martinique, à La Réunion, à Mayotte, à Saint-Barthélemy, à Saint-Martin, à Saint-Pierre-et-Miquelon, en Polynésie française, dans les îles Wallis et Futuna, en Nouvelle-Calédonie et dans les Terres australes et antarctiques françaises ;
- de deux mois si le requérant demeure à l'étranger.

**PRESENTATION DU RECOURS
(art. R. 411-24 à R. 422-30)**

. **Le requérant est tenu de constituer avocat** et le recours est remis à la cour d'appel compétente **par voie électronique**, à peine d'irrecevabilité.

. **L'acte de recours** doit comporter, à peine de nullité, **les mentions suivantes** :

- a) *Si le requérant est une personne physique* : ses nom, prénoms, profession, domicile, nationalité, date et lieu de naissance ;
b) *Si le requérant est une personne morale* : sa forme, sa dénomination, son siège social et l'organe qui la représente légalement ;
2. Le cas échéant, les nom, prénoms et domicile de la personne contre laquelle la demande est formée, ou, s'il s'agit d'une personne morale, de sa dénomination et de son siège social ;
3. Le numéro unique d'identification de l'entreprise requérante ou tout document équivalent à l'extrait d'immatriculation au registre du commerce et des sociétés pour les opérateurs situés hors de France ;
4. L'objet du recours ;
5. Le nom et l'adresse du titulaire du titre si le requérant n'a pas cette qualité ;
6. La constitution de l'avocat du requérant. Une **copie de la décision attaquée** doit être jointe à l'acte de recours, sauf en cas de décision implicite de rejet.

. **A peine de caducité de l'acte de recours, le requérant dispose d'un délai de trois mois à compter de cet acte pour remettre ses conclusions au greffe. Sous la même sanction et dans le même délai, il doit adresser à l'INPI (à l'attention du service contentieux) ses conclusions par lettre recommandée avec demande d'avis de réception.**

**COURS D'APPEL COMPETENTES
(art. R. 411-19-1 et D 411-19-2)**

. Le recours formé contre une décision relative à **une marque, un dessin et modèle, ou une indication géographique**, doit être porté devant la cour d'appel territorialement compétente, à déterminer en fonction **du lieu où demeure la personne qui forme le recours**. Le tableau ci-dessous indique, pour chacune des **dix cours d'appel compétentes**, les départements concernés :

Cour d'appel compétente	Départements concernés
Aix-en-Provence	2A, 2B, 04, 06, 07, 11, 12, 13, 30, 34, 48, 66, 83, 84
Bordeaux	09, 16, 19, 23, 24, 31, 32, 33, 40, 46, 47, 64, 65, 81, 82, 87
Colmar	67,68
Douai	02, 08, 10, 27, 51, 59, 60, 62, 76, 80
Lyon	01, 03, 05, 15, 26, 38,42, 43, 63, 69, 73, 74
Nancy	21, 25, 39, 52, 54, 55, 57, 70, 71, 88, 90
Paris	18, 36, 37, 41, 45, 58, 75, 77, 89, 91, 93, 94, 974, 975, 976, Nouvelle-Calédonie, Polynésie Française, Wallis et Futuna, terres australes et antarctiques françaises
Rennes	14, 17, 22, 29, 35, 44, 49, 50, 53, 56, 61, 72, 79, 85, 86
Versailles	28, 78, 92, 95
Fort-de-France	971, 972, 973

EDGE 004701

. **Lorsque le requérant demeure à l'étranger**, la cour d'appel de Paris est compétente. Il doit être fait élection de domicile dans le ressort de cette cour.

L'ensemble des correspondances avec l'Institut relative à la procédure doit être **exclusivement** adressé sous forme électronique sur le site internet de l'INPI.

1. Comment se rendre sur le portail de l'opposition, de la nullité et de la déchéance ?

Vous devez vous rendre sur le site <https://procedures.inpi.fr/>, sur lequel vous devez vous connecter :

- si vous avez déjà un compte, en entrant vos identifiants (adresse électronique et mot de passe que vous aurez choisi);
- si vous n'avez pas de compte, en créant un compte e-Procédures.

Vous accédez alors au portail e-Procédures. Cliquez, dans la rubrique « MARQUES ».

Vous avez alors accès à toutes les procédures marques dans lesquelles vous vous êtes identifié comme déposant, partie à une procédure ou mandataire.

Si vous souhaitez visualiser uniquement les procédures en nullité ou en déchéance, cliquez sur l'onglet « *opposition, nullité, déchéance* ».

2. Se rattacher à une procédure en nullité ou en déchéance

2.1. Vous êtes le titulaire de la marque contestée dans une procédure en nullité ou en déchéance

Pour vous rattacher, vous devez vous rendre sur le portail des marques tel qu'indiqué au point 1. ci-dessus, puis cliquer sur l'onglet « DEMANDER OU MODIFIER UN ACCES » et choisir « *Je suis le titulaire d'une marque contestée* ». Vous devez alors remplir les champs requis puis soumettre votre demande de rattachement.

A ce stade, vous pourrez d'ores et déjà transmettre un document, avant même la validation de votre demande de rattachement par le juriste.

2.2. Vous souhaitez vous rattacher en tant que mandataire dans une procédure en nullité et déchéance

Les parties peuvent être représentées par un mandataire habilité.

Pour se rattacher en tant que mandataire dans une procédure, vous devez vous rendre sur le portail des marques tel qu'indiqué au point 1. ci-dessus, puis cliquer sur l'onglet « DEMANDER OU MODIFIER UN ACCES » et choisir « *Je suis nouveau mandataire* ». Vous devez alors remplir les champs requis puis soumettre votre demande de rattachement.

A ce stade, vous pourrez d'ores et déjà transmettre un document, avant même la validation de votre demande de rattachement par le juriste.

3. Consulter un dossier ou transmettre un document dans une procédure en nullité ou en déchéance

Sur le portail l'opposition, de la nullité et de la déchéance, vous avez accès à l'ensemble des procédures dans lesquelles vous vous êtes identifié comme partie à la procédure. L'ensemble de vos dossiers en cours se trouvent au sein de la corbeille « *Dossiers en cours d'examen (y compris marques internationales désignant la France)* ».

Vous pouvez retrouver un dossier en utilisant le champ « RECHERCHE ». Vous pouvez également filtrer les dossiers par « TYPE DE PROCEDURE ».

Pour transmettre à l'Institut tout document relatif à la procédure, vous devez sélectionner la procédure concernée et cliquer sur le bouton « AJOUTER DES DOCUMENTS ». Une fois le document téléchargé, vous devez choisir un type pour le document, puis cliquer sur le bouton « VALIDER ». Le juriste en charge de la procédure sera alors averti de la réception d'un nouveau document.

DECISION

STATUANT SUR UNE DEMANDE EN NULLITE

LE DIRECTEUR GENERAL DE L'INSTITUT NATIONAL DE LA PROPRIETE INDUSTRIELLE,

Vu l'arrangement de Madrid concernant l'enregistrement international des marques révisé du 14 avril 1891, le Protocole relatif à cet Arrangement adopté le 27 juin 1989 et le règlement d'exécution du 1^{er} avril 1996 ;

Vu le Code de la propriété intellectuelle dans sa version issue de l'ordonnance n° 2019-1169 du 13 novembre 2019 et notamment ses articles L.411-1, L. 411-4, L. 411-5, L. 711-1 à L.711-3, L. 714-3, L. 716-1, L.716-1-1, L.716-2 à L. 716-2-8, L.716-5, R. 411-17, R.714-1 à R.714-6, R. 716-1 à R.716-13, et R. 718-1 à R. 718-5 ;

Vu le Code de la propriété intellectuelle dans sa version issue de la loi n° 92-597 du 1er juillet 1992 et notamment ses articles L.711-1 à L.711-4, L. 713-2, L.713-3 et L.714-3 ;

Vu l'arrêté du 24 avril 2008 modifié par l'arrêté du 9 décembre 2019 relatif aux redevances de procédure perçues par l'Institut national de la propriété industrielle ;

Vu l'arrêté du 4 décembre 2020 relatif à la répartition des frais exposés au cours d'une procédure d'opposition à un brevet d'invention ou de nullité ou déchéance de marque ;

Vu la décision modifiée n° 2020-35 du Directeur Général de l'Institut National de la Propriété Industrielle relative aux modalités de la procédure en nullité ou en déchéance d'une marque.

Siège

15 rue des Minimes - CS 50001
92677 COURBEVOIE Cedex
Téléphone : +33 (0)1 56 65 89 98
Télécopie : +33 (0)1 56 65 86 00
www.inpi.fr – contact@inpi.fr

Établissement public national
créé par la loi n° 51-444 du 19 avril 1951

EDGE 004703

I.- FAITS ET PROCEDURE

1. Le 24 février 2022, la société par actions simplifiée MOBIGAME (le demandeur) a formé une demande en nullité enregistrée sous la référence NL 22- 0042 contre la partie française de l'enregistrement international n° 1515050, ci-dessous reproduit :

EDGE GAMES

Cet enregistrement international désignant la France en date du 26 décembre 2019, dont la société EDGE GAMES, INC. est titulaire (le titulaire de la marque contestée), a été publié à la Gazette 2020/6 du 20 février 2020 et a fait l'objet d'une déclaration d'octroi de protection publiée à la Gazette 2020/37 du 24 septembre 2020.

2. La demande en nullité a été formée à l'encontre de l'ensemble des produits pour lesquels la marque contestée est enregistrée, à savoir :

« **Classe 09** : Programmes de jeux informatiques; ludiciels informatiques; ludiciels téléchargeables depuis un réseau informatique mondial; ludiciels informatiques à utiliser sur des téléphones cellulaires et mobiles ».

3. Le demandeur invoque un motif relatif à savoir, l'atteinte à la marque notoire au sens de l'article 6bis de la Convention de Paris EDGE en raison de l'existence d'un risque de confusion.
4. Un exposé des moyens a été versé à l'appui de cette demande en nullité.
5. L'Institut a informé le titulaire de la marque contestée de la demande en nullité et l'a invité à se rattacher au dossier électronique, par courrier simple envoyé à l'adresse indiquée lors de l'enregistrement de la marque internationale contestée.
6. La demande en nullité a été notifiée au mandataire du titulaire de la marque contestée à l'adresse indiquée lors de son rattachement, par courrier recommandé en date du 15 avril 2022, reçu le 20 avril 2022. Cette notification l'invitait à présenter des observations en réponse et produire toute pièce qu'il estimerait utile dans un délai de deux mois à compter de sa réception.
7. Au cours de la phase d'instruction, le titulaire de la marque contestée a présenté trois jeux d'observations en réponse auxquels le demandeur a répondu deux fois dans les délais impartis.
8. Conformément aux dispositions des articles R.716-6 et R.716-8 du Code de la propriété intellectuelle, les parties ont été informées de la date de fin de la phase d'instruction à savoir le 21 décembre 2022.

Prétentions du demandeur

9. Dans son exposé des moyens, le demandeur soutient que :
- Sa demande est recevable en ce qu'elle est formée devant l'Institut en application de l'article L716-2, qu'elle est fondée sur l'atteinte à une marque notoire au sens de l'article 6 bis de la Convention de Paris et qu'elle n'est ni prescrite, ni forclosée ;
 - La marque non enregistrée « EDGE » est connue d'une large fraction du public pertinent en France pour désigner des jeux vidéo ;
Il produit des pièces aux fins de justifier de la notoriété invoquée, lesquelles seront listées et analysées au point 20 ;
 - Il existe un risque de confusion entre les marques en cause « *du fait des ressemblances visuelles, phonétiques et conceptuelles entre les signes et de l'identité des produits visés* ».
10. Dans ses premières observations, le demandeur :
- Contesté l'argument du titulaire de la marque contestée selon lequel le signe EDGE ne fait pas l'objet d'un usage à titre de marque arguant que la protection du titre d'une œuvre par le droit d'auteur n'est toutefois pas incompatible avec une protection à titre de marque ;
 - Contesté l'argument tenant à la différence entre les signes « Edge » et « Edge Extended » au motif que le terme « *Extended* » est générique et le caractère distinctif du signe repose principalement sur le terme « *EDGE* », lequel figure par ailleurs en position d'attaque » ;
 - Répond aux arguments du titulaire de la marque contestée relatifs à l'absence de notoriété et produit de nouvelles pièces lesquelles seront listées et analysées au point 20 ;
 - Répond aux arguments du titulaire de la marque contestée sur la « *prétendue antériorité de la marque « EDGE GAMES* » ».
11. Dans ses secondes et dernières observations, le demandeur réitère ses arguments et les complète en :
- Soulignant que si le terme Edge devait être considéré comme dépourvu de caractère distinctif per se, il devrait lui être reconnu un caractère distinctif acquis par l'usage ;
 - Insistant sur l'absence de caractère distinctif des termes « Extended » et « Demo » ;
 - Insistant sur le caractère notoire de la marque non-enregistrée « EDGE » et en produisant de nouvelles pièces lesquelles seront listées et analysées au point 20 ;
 - Développe ses arguments visant à contester l'antériorité du signe « Edge Game » du titulaire de la marque contestée et produit des pièces à cet égard.

Prétentions du titulaire de la marque contestée

12. Dans ses premières observations, le titulaire de la marque contestée soutient que :
- Les signes « Edge » et « Edge Extended » sont différents de sorte que les éléments soumis par le Demandeur portant sur le signe « EDGE Extended » ne valent pas usage du signe « EDGE » ;
 - Le signe EDGE ne fait pas l'objet d'un usage à titre de marque pour désigner des « jeux vidéo », « *mais à tout le plus comme le titre d'une oeuvre de l'esprit* » ;
 - Les quelques éléments soumis par le demandeur « *sont clairement insuffisants pour en déduire un caractère notoire du signe « EDGE » au sens de l'article 6bis de la Convention de Paris* » au motif que :
 - Le public pertinent n'est pas composé uniquement du « *public spécialisé, connaisseur, en quête de nostalgie, sans pour autant laisser la plus jeune génération indifférente* », mais « *à tout le moins de tous les utilisateurs de smartphones et appareils mobiles, consommateurs réguliers ou occasionnels de jeux vidéo sur smartphones* » ;
 - Les « *informations et chiffres fournis par le Demandeur ne permettent pas de refléter la prétendue notoriété invoquée* » ;
 - Il existe des incohérences entre « *le chiffre d'affaires et le nombre de téléchargements* » ;
 - Le demandeur a procédé plusieurs fois à la modification du nom du jeu depuis 2009 ;
 - Les récompenses ou nominations ne sauraient refléter la moindre notoriété auprès du public français ;
 - Le demandeur ne produit aucune facture ni aucun document comptable relatif aux ventes du jeu.
 - La marque EDGE GAMES faisait déjà l'objet d'un usage en France depuis plusieurs années par le Titulaire et ses prédécesseurs avant l'antériorité revendiquée par le demandeur, ce dont ce dernier avait connaissance.
13. Dans ses deuxièmes observations, le titulaire de la marque contestée réitère ses arguments et réponds aux nouveaux arguments développés par le demandeur en produisant de nouvelles pièces.
- Par ailleurs, il sollicite de l'Institut « *la mise à la charge de MOBIGAME de l'ensemble des frais du Titulaire relatif à la présente procédure, conformément à l'article L. 716-1-1 CPI* ».
14. Dans ses troisièmes et dernières observations, le titulaire de la marque contestée :
- Réitère ses arguments relatifs à l'absence de notoriété de la marque invoquée et sollicite de l'Institut « *le rejet des documents et arguments afférents aux chiffres de vente et de téléchargement déposés par Mobigame comme étant suspects* » ;
 - Réitère ses arguments selon lesquels « *Seul l'usage de la marque "Edge" par Mobigame doit être considéré, et non l'usage revendiqué de déclinaisons de "Edge"* » ;
 - Soutient que « *"EDGE" ne renvoie pas au demandeur, ni à son produit* » au motif que « *la marque "EDGE", seule ou associée à un autre mot, est utilisée par de nombreuses entreprises du secteur de l'informatique et des jeux vidéo* » ;

- Insiste sur « la pertinence de la décision de l'UKIPO et des enregistrements de la marque "EDGE" d'EDGE Games dans les pays de l'Union Européenne » laquelle a « conclu que EDGE Games, Inc. a la priorité des droits et a utilisé les marques "EDGE" et "EDGE GAMES" pour des jeux informatiques sur la période de 1984 à 2019 » ;
- Soutient que « les données YouTube [Pièce 14 du demandeur] sont délibérément trompeuses et doivent être ignorées » au motif « qu'aucune des vidéos ne concerne un jeu simplement appelé " Edge " et qu'ainsi, aucune des données ne se rapporte spécifiquement à un quelconque usage revendiqué de la marque " Edge " en tant que telle » et que « YouTube est accessible aux spectateurs du monde entier, et le fait de présenter une image du site web en français ne signifie pas que les données relatives aux spectateurs se rapportent aux vues effectivement attachées à des consommateurs français » ;
- Insiste sur l'ancienneté de EDGE Games, Inc. sur les deux signes "EDGE" et "EDGE GAMES" au motif :
 - Qu'elle est reconnue sur le territoire de l'Union Européenne par une décision de l'UKIPO avant le Brexit ;
 - Que les déclarations du demandeur sur le titulaire de la marque contestée et son PDG sont fausses ;
 - Que l'utilisation par EDGE Games Inc des marques EDGE et EDGE GAMES comme "marques " a débuté en 1984 et jusqu'en 2019.

Enfin dans ses dernières observations le titulaire de la marque contestée produit de nouvelles pièces.

II.- DECISION

A- Sur le droit applicable

15. Conformément à l'article L.714-3 du code la propriété intellectuelle, dans sa version applicable au jour du dépôt, est déclaré nul « l'enregistrement d'une marque qui n'est pas conforme aux dispositions des articles L. 711-1 à L. 711-4 ».
16. A cet égard, l'article L. 711-4 du même code dispose notamment que « Ne peut être adopté comme marque un signe portant atteinte à des droits antérieurs, et notamment : a) A une marque antérieure enregistrée ou notoirement connue au sens de l'article 6 bis de la convention de Paris pour la protection de la propriété industrielle ».

Lequel article 6 bis 1) de la Convention d'Union de Paris dispose que « 1) Les pays de l'Union s'engagent, soit d'office si la législation du pays le permet, soit à la requête de l'intéressé, à refuser ou à invalider l'enregistrement et à interdire l'usage d'une marque de fabrique ou de commerce qui constitue la reproduction, l'imitation ou la traduction, susceptibles de créer une confusion, d'une marque que l'autorité compétente du pays de l'enregistrement ou de l'usage estimera y être notoirement connue comme étant déjà la marque d'une personne admise à bénéficier de la présente Convention et utilisée pour des produits identiques ou similaires. Il en sera de même lorsque la partie essentielle de la marque constitue la reproduction d'une telle marque notoirement connue ou une imitation susceptible de créer une confusion avec celle-ci ».

Par ailleurs, en vertu de l'article 4 I. de la décision modifiée n° 2020-35 du Directeur Général de l'Institut National de la Propriété Industrielle relative aux modalités de la procédure en nullité ou en déchéance d'une marque, le demandeur fournit :

« c) si la demande en nullité est fondée sur une atteinte à une marque notoirement connue au sens de l'article 6 bis de la convention de Paris pour la protection de la propriété industrielle :

(...) les pièces de nature à établir son existence et sa notoriété pour les produits et services invoqués à l'appui de la demande en nullité ».

17. La présente demande en nullité doit être appréciée au regard de ces dispositions.

B- Sur le fond

18. En l'espèce, la demande en nullité fondée sur ce motif est formée contre les services suivants de la marque contestée : « Programmes de jeux informatiques; ludiciels informatiques; ludiciels téléchargeables depuis un réseau informatique mondial; ludiciels informatiques à utiliser sur des téléphones cellulaires et mobiles ».

19. Au regard de ces produits, le demandeur invoque une atteinte à sa marque antérieure non déposée, portant sur le signe verbal « EDGE », en ce que celle-ci serait notoirement connue pour des jeux vidéo.

20. Il produit, à cet égard, les pièces suivantes :

Lors de ses premières observations en réponse :

- **Pièce 1** : Copie de la marque contestée
- **Pièce 2** : Un extrait du site afjv.com présentant la société Mobigame comme suit « Mobigame est un studio indépendant qui développe et édite des jeux Mobigame jeux vidéo pour les plateformes digitales. Mobigame a remporté de nombreux vidéo nombreux prix IGF, IMGA, Milthon, etc. grâce à ses jeux innovants: Edge, Crossprix CrossFingers, Truckers Delight, et dernièrement Perfect Cell »
Un extrait de site internet comportant une liste de jeux proposés par le demandeur.
Les pages Facebook, Tweeter et You Tube du demandeur.
- **Pièce 3** : Un extrait d'un site comportant l'indication « International Mobil Gaming Awards Global » « Winners and nominees », « Excellence in gameplay » EDGE et la date 2008 ; un extrait du site gamesindustry.biz comportant l'indication selon laquelle la version mobile du jeu mobile Edge « lauréate de cette année des International Mobile Gaming Awards Excellence in Gameplay » daté du 18 février 2009 ; Un extrait du site wikipedia sur « les milthons du jeu vidéo » ; Un extrait d'un site internet comportant l'indication « Independent Games Festival », portant sur le jeu Edge et comportant l'indication « Entrant 2009 ».
- **Pièce 4** : Une « déclaration de témoin » de M. David Papazian, Directeur Général de la société Mobigame comportant notamment l'indication « Signe Non Enregistré est utilisé depuis le lancement du jeu EDGE en 2008 », un tableau sur les « Chiffres de vente des jeux EDGE » et sur les « Téléchargements du jeu EDGE » et en annexes :
 - DP1 : des captures d'écran du site internet www.mobilegame.net via l'outil Wayback machine et portant sur les années 2008 à 2019.

- DP2 : des captures d'écran du site internet www.itune.apple.com via l'outil Wayback machine et portant sur les années 2010 à 2016.
- DP3, DP4 et DP5 : des Captures d'écran d'AppFigures – des données chiffrée sur la vente, le téléchargement des jeux EDGE en France entre 2009 à 2019 ainsi que sur des commentaires utilisateurs.
- DP6 : une capture d'écran du site internet www.imgawards.com via l'outil Wayback machine
- DP7 : une capture d'écran du site internet Toucharcade comportant la date de 2009.
- **Pièce 5** : Présentation du jeu EDGE consistant en un extrait du site frandroid.com portant sur le jeu Edge du 2 février 2012; un extrait du site www.guim.com portant sur le jeu Edge ; un extrait de Google Play portant sur le jeu Edge comportant des commentaires entre 2014 et 2018;
- **Pièce 6** : Présentation du jeu EDGE Extended consistant en un extrait du site formidapps.com portant sur le jeu Edge Extended ; un extrait du site blogosquare.com portant sur le jeu Edge Extended en date du 2 février 2013 ; un extrait de Google Play portant sur le jeu Edge Extended comportant des commentaires entre 2015 et 2021 ;
- **Pièce 7** : Les résultats Google sur une recherche portant sur les mots clés « EDGE MOBIGAME », « EDGE GAME » et « EDGE GAMES » ;
- **Pièce 8** : extrait du site de EdgeGames.com.

Lors de ses deuxièmes observations en réponse :

- **Pièces n°9** : données chiffrées relatives aux téléchargements du jeu « EDGE » et de ses déclinaisons et au revenu généré entre juillet 2008 et juillet 2022 ;
- **Pièce 10** : Chiffres relatifs aux téléchargements des principaux jeux de la société Mobigame
- **Pièce 11** : Document consistant en un classement de l'Apple TV plaçant le jeu « EDGE » en 18ème position des jeux payants les plus téléchargés en France, le 25 juillet 2022
- **Pièce 12** : Extrait du site <https://apps.apple.com> portant sur les commentaires du jeu « EDGE » via l'App Store et comportant des commentaires entre 2015 et 2021

Lors de ses troisièmes et dernières observations en réponse :

- **Pièce 13** : Extrait du site www.jeuxvideo.com ayant pour objet une recherche de l'utilisation du terme « Extended » dans les jeux vidéo
- **Pièce 14** : Copie écran de la chaîne YouTube de Mobigame portant sur des vidéos datées entre 10 et 13 ans
- **Pièce 15** : Article du site <https://www.gamesindustry.biz/the-thing-about-trolls-is-they-regenerate-10-years-ago-this-month> daté du 1 octobre 2020
- **Pièce 16** : Décision de la United States Districts Court - Edge Games, Inc. v. Electronic Arts, Inc., Décision No. C10-02614 WHA du 1er octobre 2010
- **Pièce 17** : Article du site <https://www.escapistmagazine.com/mobigame-langdell-legal-battle-just-getting-started/> daté du 7 octobre 2010
- **Pièce 18** : Article du site <https://www.gamesindustry.biz/court-rules-in-favour-of-ea-over-trolling-langdell> daté du 5 octobre 2010
- **Pièce 19** : Article du site <https://kotaku.com/after-four-years-an-industry-scourge-loses-his-edge-476590339> daté du 20 avril 2013

- **Pièce 20** : Décision de la Royal Courts of Justice Future Publishing Limited v. The Edge Interactive Media Inc., Edge Games Inc. et Timothy Langdell, Décision No. 2011 EWHC 1489 en date du 13 juin 2011
- **Pièce 21** : Article du site <https://www.rockpapershotgun.com/tim-langdell-loses-in-future-edge-trial> en date du 16 juin 2011
- **Pièce 22** : Article du site <https://www.escapistmagazine.com/u-k-judge-crushes-tim-langdell/> en date du 17 juin 2011
- **Pièce 23** : Données relatives à l'enregistrement et à l'usage du nom de domaine <mythora.com>

1. Sur l'existence, la portée et la notoriété de la marque antérieure invoquée

21. Il est constant qu'une marque est considérée comme notoire lorsqu'elle est connue d'une large fraction du public français concerné, sur tout le territoire ou une partie substantielle de celui-ci.

Les critères à prendre en considération sont notamment son ancienneté, l'étendue et l'intensité de son usage ou l'importance du soutien publicitaire dont elle bénéficie ou encore la part de marché détenue par le demandeur.

- a) A titre liminaire, sur la demande visant à écarter certaines pièces produites par le demandeur
22. Dans ses dernières observations le titulaire de la marque contestée sollicite de l'Institut qu'il rejette les documents et arguments afférents aux chiffres de vente et de téléchargement déposés par Mobigame comme étant suspects au motif qu'il « est fort probable que le Demandeur ait additionné l'ensemble des chiffres de ventes d'autres produits dans le rapport qu'ils ont appelé "Edge", ce qui rend impossible une évaluation précise de leur utilisation de la marque "Edge" seule dans le commerce français ».
23. Toutefois, outre que le caractère « suspect » des pièces produites n'est pas corroboré par des éléments concrets et repose sur de simples suppositions, ces simples affirmations ne sauraient en aucun cas permettre, en soi, d'écarter des débats les pièces produites mais nécessite une analyse sur le fond.
24. Ainsi, la demande d'irrecevabilité de certaines pièces formulées par le demandeur est rejetée.

b) sur l'usage à titre de marque

25. Dans ses observations en réponse, le titulaire de la marque contestée soutient que le signe EDGE ne fait pas l'objet d'un usage à titre de marque pour désigner des « jeux vidéo », « mais à tout le plus comme le titre d'une oeuvre de l'esprit ».

Il relève à cet égard qu'« en l'espèce, seule la dénomination de l'éditeur et du développeur du jeu vidéo « EDGE », à savoir « MOBIGAME », peut agir en tant que garantie d'origine des jeux vidéo en cause (Pièces MOBIGAME n° 2, 3, 4, 5, 6 et 7), le signe invoqué « EDGE » ne faisant que désigner l'oeuvre multimédia qu'est le jeu vidéo mobile concerné et ne donnant aucune information au consommateur au regard de son origine commerciale ». Il en conclut que « le signe « EDGE » n'a

pas une fonction d'identification et n'agit pas comme un signe commercial indiquant l'origine commerciale des produits ».

26. *Le demandeur conteste ces arguments soutenant que « si le signe « EDGE » désigne effectivement l'oeuvre multimédia qu'est le jeu vidéo mobile concerné, il a été largement associé à son développeur et éditeur, la société Mobigame, permettant ainsi de remplir le critère de distinctivité imposé par le code de la propriété intellectuelle et de distinguer les produits de la Requérante de ceux d'autres personnes physiques ou morales ».*
27. *A cet égard, il y a lieu de relever qu'il ressort de la décision T-435/05 du Tribunal de l'UE du 30 juin 2009 invoquée par les parties, qu'« un même signe peut être protégé en tant qu'oeuvre de l'esprit originale par le droit d'auteur et en tant qu'indication d'origine commerciale par le droit des marques » mais également que le titre d'une oeuvre « ne peut pas bénéficier d'une façon automatique de la protection reconnue aux indicateurs d'origine commerciale, car seuls les signes qui développent les fonctions caractéristiques des marques peuvent bénéficier de cette protection ».*
28. *Il en résulte que si le titre d'une oeuvre de l'esprit peut être protégé tant au titre du droit d'auteur que du droit des marques, cette double protection n'est pas automatique et doit être démontrée.*
29. *En l'espèce, il y a dès lors lieu de déterminer si le terme EDGE, invoqué par le demandeur comme faisant l'objet d'une notoriété, est utilisé à titre de marque.*
30. *A cet égard, il ressort des pièces produites que le demandeur développe et édite des jeux vidéo parmi lesquels le jeu ayant pour titre « Edge », « Edge Extended » et « Edge Demo ».*

Or, force est de constater que ce jeu vidéo est clairement identifié par son titre – tant sur les plateformes de téléchargement que dans les revues et sites spécialisés - lequel, indépendamment de sa potentielle protection par le droit d'auteur, permet d'identifier l'origine commerciale du produit pour lequel la notoriété de la marque antérieure est revendiquée.

A cet égard, si le nom MOBIGAME est susceptible d'identifier l'éditeur/développeur du jeu vidéo, le terme EDGE, quant à lui, permet aux consommateurs des produits en cause de distinguer le jeu vidéo EDGE de ceux qui ont une autre provenance.

31. **Ainsi, le terme EDGE fait bien l'objet d'un usage à titre de marque contrairement à ce que soutient le titulaire de la marque contestée.**

c) Sur la notoriété de la marque EDGE

Sur le public pertinent

32. Le demandeur considère que les produits invoqués s'adressent à « **un public spécialisé, connaisseur, en quête de nostalgie, sans pour autant laisser la plus jeune génération indifférente** ».
33. Le titulaire de la marque contestée évoque quant à lui un public pertinent constitué « *à tout le moins de tous les utilisateurs de smartphones et appareils mobiles, consommateurs réguliers ou occasionnels de jeux vidéo sur smartphones* ».
34. Il ressort des pièces produites que les produits dont la notoriété est revendiquée consistent en des jeux vidéo téléchargeables sur des plateformes en ligne tel que « Windows Phone Store », « Google Play » ou « App Store » ainsi que sur des sites de téléchargement en ligne et destiné à être joué sur des appareils mobiles tels que des smartphones et des tablettes.
35. Ainsi, le public pertinent est le grand public français joueur occasionnel ou régulier de jeux vidéo, accessibles sur des plateformes digitales.

Sur l'analyse de la notoriété

36. Le demandeur produit les pièces visées au point 20 auxquelles il convient de se référer.
37. Il convient de relever en premier lieu que les pièces produites doivent porter sur la période antérieure à l'enregistrement de la marque contestée, soit antérieurement au 26 décembre 2019, de sorte que les informations comprises dans la pièce numéro 11, datée du 25 juillet 2022 ne sauraient être prise en compte dans l'appréciation de la notoriété du signe EDGE.
38. En outre, il ressort de l'ensemble des documents produits que la plupart des pièces ne portent que sur la description du jeu (Pièces n°2, 5 et 6), les prix décernés dans les années 2008 et 2009 (Pièces n°2 et 3), ou encore des vidéos Youtube datées de plus de 10 ans et dont le nombre de vue ne permet pas de déterminer le territoire pertinent, **de sorte que ces éléments ne sauraient suffire à caractériser la notoriété de la marque antérieure.**
39. De plus, le demandeur invoque les chiffres suivants issus de l'attestation produite par le Directeur Général de la société Mobigame :

ANNEE	TERRITOIRE	CHIFFRE D'AFFAIRES EN DOLLARS (US\$)
2009	France	36,339.53
2010	France	16,035.35
2011	France	15,273.38
2012	France	12,027.64
2013	France	6,768.56
2014	France	4,151.92
2015	France	1,948.71
2016	France	947.89
2017	France	589.86

2018	France	555.82
2019	France	398.89

ANNEE	TERRITOIRE	NOMBRE TOTAL DE TELECHARMENTS
2009	France	131,832
2010	France	15,141
2011	France	128,558
2012	France	78,972
2013	France	169,815
2014	France	27,141
2015	France	28,895
2016	France	13,683
2017	France	8,578
2018	France	6,872
2019	France	3,098
Total (2009 – 31 Décembre 2019)	France	612,585

A l'appui de cette attestation, il produit un document intitulé « Appfigures » dont ressortent les chiffres suivants :



40. Toutefois, s'il ressort de ces documents que le jeu EDGE a connu un certain succès à sa sortie en 2009, le nombre de téléchargement et le chiffre d'affaires n'ont cessé de baisser depuis cette date. A cet égard, il convient de relever que les cinq années précédant l'enregistrement de la marque contestée, celui-ci à générer entre 1 948,71 dollars en 2015 et 398,89 dollars en 2019 pour le territoire français.
41. De même, il ressort des informations contenues dans la pièce n°10 (consistant en des chiffres relatifs aux téléchargements des principaux jeux de la société Mobigame), que le jeu EDGE et ses déclinaisons **ne représente que 0,9% des jeux proposés par le demandeur lui-même** de sorte que pris sur le marché global des jeux vidéo destinés au public pertinent précédemment défini, le nombre de téléchargement ne saurait permettre de caractériser un usage intensif de la marque antérieure et ce, malgré la durée de son exploitation débutée dans les années 2008, 2009.
42. **Ainsi, force est de constater que la notoriété du signe EDGE n'a pas été démontrée par le demandeur.**

2. Sur l'existence d'un risque de confusion

43. Compte tenu de l'absence de démonstration de la notoriété de la marque antérieure au sens de l'article 6 bis de la convention de Paris, il n'y a pas lieu de statuer sur l'existence d'un risque de confusion.
44. **Par conséquent, le motif de nullité de la marque contestée fondé sur l'existence d'un risque de confusion avec la marque notoire EDGE est rejeté.**

C- Sur la répartition des frais

45. L'article L.716-1-1 du code de la propriété intellectuelle dispose que : « *Sur demande de la partie gagnante, le directeur général de l'Institut national de la propriété industrielle met à la charge de la partie perdante tout ou partie des frais exposés par l'autre partie dans la limite d'un barème fixé par arrêté du ministre chargé de la propriété industrielle* ».
46. L'arrêté du 4 décembre 2020, prévoit dans son article 2.II. qu' « *Au sens de l'article L. 716-1-1, est considéré comme partie gagnante : ...
b) Le titulaire de la marque contestée dont l'enregistrement n'a pas été modifié par la décision de nullité ou de déchéance* »(...) *c) le demandeur quand il est fait droit à sa demande pour l'intégralité des produits ou services visés initialement dans sa demande en nullité ou déchéance* ».
Il précise enfin à l'article 2.III que « *Pour l'application de l'article L. 716-1-1, les montants maximaux des frais mis à la charge des parties sont déterminés conformément au barème en annexe* ».
47. Le titulaire de la marque contestée a sollicité « *la mise à la charge de MOBIGAME de l'ensemble des frais du Titulaire relatif à la présente procédure, conformément à l'article L. 716-1-1 CPI*».
48. Il doit être considéré comme partie gagnante, dès lors que la demande en nullité est rejetée pour l'intégralité des produits et services attaqués par le demandeur, en sorte que l'enregistrement de la marque contestée n'est pas modifié.

49. Par ailleurs, la procédure d'instruction a donné lieu à des échanges entre les parties. Le titulaire de la marque contestée, représenté par un mandataire, a présenté trois jeux d'observations en réponse à la demande en nullité du demandeur, qui relève de la catégorie des petites et moyennes entreprises.
50. Au regard de ces considérations propres à la présente procédure, il convient de mettre la somme de 550 euros à la charge du demandeur (partie perdante à la présente procédure), correspondant à une partie des frais exposés par le titulaire de la marque contestée au titre de la phase écrite (300 euros) et au titre des frais de représentation (250 euros).

PAR CES MOTIFS

DECIDE

Article 1 : La demande en nullité NL22-0042 est rejetée.

Article 2 : La somme de 550 euros est mise à la charge de la société par action simplifiée MOBIGAME au titre des frais exposés.

Stéphane HIDALGO FRIAZ
Juriste



Christine LESAUVAGE
Responsable Cellule annulation



Directorate of Industrial Property

MRS. GUILLERMARD AUDE
ATOUT PI LAPLACE 22 AVENUE ARISTIDE
"VISIUM" BUILDING
94117 ARCUEIL CEDEX

BRANDS

National number and ref: NL22-0042

(to be recalled in all correspondence

-art. R.712-6 of the Intellectual Property Code)

National number of the contested trademark:

1515050 V/Ref: EDGE

Case followed by: Stéphane HIDALGO-FRIAZ

Phone : 01.56.65.81.18

TRUMP CARD PILAPLACE

Courbevoie, 15/03/2023

SUBJECT : Proceedings for nullity or revocation - Notification of the decision ruling on nullity (R.716-12 of the Intellectual Property Code) **P.J.**

I have the honour to notify you of the decision established in the light of the annulment procedure referred to above.

This decision, attached hereto, is also accessible and downloadable on the INPI website by means of the dedicated teleservice, according to the modalities indicated on the attached sheet.

I would like to draw your attention to the fact that you have the means of appeal against this decision before the competent Court of Appeal, under the conditions and within the time limits set out in the annex.

I inform you of the names and addresses of the parties to the proceedings:

- **Applicant** : Mobigame - 25-27 rue Titon - 75011 Paris - FRANCE

- **Owner of the disputed** trademark: Edge Games, Inc.- 530 South Lake Avenue, #171 - Pasadena CA 91101 - United States of America

I remind you that all exchanges relating to the nullity or revocation procedure must be carried out in electronic form on the INPI website by means of the dedicated teleservice (section "Access the portal of opposition, nullity and revocation") according to the modalities indicated on the attached form. Please accept the assurance of my distinguished consideration

For the Director-General

of the National Institute of Industrial Property

Stéphane HIDALGO-FRIAZ



Jurist

EDGE 004716

APPEALS BEFORE THE COURT OF APPEAL AGAINST THE DECISIONS OF THE DIRECTOR GENERAL OF THE INPI
(art. R. 411-19 to R. 411-43 of the Intellectual Property Code)

TIME LIMIT FOR BRINGING PROCEEDINGS

(Art. R. 411-21)

- . The time limit for lodging an appeal with the Court of Appeal is **one month** from the notification of the decision, or, where appropriate, from the date on which the project is equivalent to a decision.
- . This period is **extended** :
 - of one month if the applicant remains in Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint-Barthélemy, in Saint-Martin, Saint-Pierre-et-Miquelon, in French Polynesia, in the Wallis and Futuna Islands, in New York Caledonia and the French Southern and Antarctic Territories ;
 - two months if the applicant remains abroad.

PRESENTATION OF THE ACTION

(art. R. 411-24 to R. 422-30)

- . **The applicant is required to appoint a lawyer** and the appeal is submitted to the competent Court of Appeal **by electronic means**, failing which it will be inadmissible.
- . **The notice of appeal** must contain, on pain of nullity, **the following particulars**:
 1. (a) *If the applicant is a natural person* : surname, first names, profession, domicile, nationality, date and place of birth;
 (b) *If the applicant is a legal person* : its form, name, registered office and the body legally representing it;
 2. Where applicable, the surname, first names and domicile of the person against whom the application is made, or, in the case of a legal person, its name and registered office ;
 3. The unique identification number of the applicant company or any document equivalent to the extract of registration in the Trade and Companies Register for operators located outside France;
 4. The subject matter of the appeal;
 5. The name and address of the holder of the title if the applicant does not have this status;
 6. The appointment of the applicant's lawyer. A **copy of the contested decision** must be attached to the notice of appeal, except in the case of an implied decision rejecting the appeal.
- . **On pain of lapse of the notice of appeal, the applicant has a period of three months from that act to submit his conclusions to the registry. Under the same sanction and within the same period, he must send his conclusions to the INPI (for the attention of the litigation department) by registered letter with acknowledgment of receipt.**

COMPETENT COURTS OF APPEAL

(art. R. 411-19-1 and D 411-19-2)

- . An appeal against a decision relating to a **trade mark, design or geographical indication** must be brought before the court of appeal with territorial jurisdiction, **to be determined** according to the **place where the person lodging the appeal resides**. The table below indicates, for each of the **ten competent courts of appeal**, the departments concerned:

<i>Competent Court of Appeal</i>	<i>Departments concerned</i>
Aix	2A, 2B, 04, 06, 07, 11, 12, 13, 30, 34, 48, 66, 83, 84
Bordeaux	09, 16, 19, 23, 24, 31, 32, 33, 40, 46, 47, 64, 65, 81, 82, 87

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Colmar	67,68
Douai	02, 08, 10, 27, 51, 59, 60, 62, 76, 80
Lyon	01, 03, 05, 15, 26, 38,42, 43, 63, 69, 73, 74
Nancy	21, 25, 39, 52, 54, 55, 57, 70, 71, 88, 90
Paris	18, 36, 37, 41, 45, 58, 75, 77, 89, 91, 93, 94, 974, 975, 976, New Caledonia, French Polynesia, Wallis and Futuna, French Southern and Antarctic Lands
Rennes	14, 17, 22, 29, 35, 44, 49, 50, 53, 56, 61, 72, 79, 85, 86
Versailles	28, 78, 92, 95
Fort-de-France	971, 972, 973

. **When the applicant remains abroad**, the Paris Court of Appeal has jurisdiction. An address for service must be made within the jurisdiction of that court.

OPPOSITION, NULLITY AND DEPLETION PORTAL

All correspondence with the Institute relating to the procedure must be sent **exclusively** in electronic form on the INPI website.

1. How do I go to the opposition, nullity and revocation portal?

You must go to the <https://procedures.inpi.fr/> site, where you must log in:

- if you already have an account, by entering your login details (email address and password you have chosen);
- if you do not have an account, by creating an e-Procedures account.

You will then access the e-Procedures portal. Click in the "BRANDS" section.

You then have access to all trademark proceedings in which you have identified yourself as an applicant, party to proceedings or representative.

If you want to view only nullity or revocation proceedings, click on the "*opposition, nullity, revocation*" tab .

2. Attaching oneself to invalidity or revocation proceedings

2.1. You are the owner of the contested trade mark in invalidity or revocation proceedings

To join in, you must go to the trademark portal as indicated in point 1. above, then click on the "REQUEST OR MODIFY ACCESS" tab and choose "*I am the owner of a contested trademark*". You must then fill in the required fields and submit your application for attachment.

At this stage, you can already send a document, even before the validation of your request for attachment by the lawyer.

2.2. You wish to join as a shareholder in invalidity and revocation proceedings

The parties may be represented by an authorised representative.

To register as a representative in a procedure, you must go to the trademark portal as indicated in section 1. above, then click on the tab "REQUEST OR MODIFY ACCESS" and choose "*I am a new representative*". You must then fill in the required fields and submit your application for attachment.

At this stage, you will already be able to transfer a document, even before the validation of your request for attachment by the lawyer.

3. Consult a file or send a document in invalidity or revocation proceedings

On the opposition, nullity and revocation portal, you have access to all the procedures in which you have identified yourself as a party to the proceedings. All of your current cases are located in the "*Folders under review (including international trademarks designating the France)*" trash.

You can find a folder using the "SEARCH" field. You can also filter folders by "PROCEDURE TYPE".

To send the Institute any document relating to the procedure, you must select the procedure concerned and click on the "ADD DOCUMENTS" button. Once the document is uploaded, you must choose a typing for **the** document, then click on the "VALIDATE" button. The lawyer in charge of the procedure will then be notified of the receipt of a new document.

If you have any questions, please contact Inpi Direct at +33 (0)1 56 65 89 98.

DECISION

RULING ON AN APPLICATION FOR A DECLARATION OF INVALIDITY

THE DIRECTOR GENERAL OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY,

Having regard to the Madrid Agreement Concerning the International Registration of Marks, as revised on April 14, 1891, the Protocol Relating to that Agreement adopted on June 27, 1989, and the Regulations under April 1, 1996;

Having regard to the Intellectual Property Code in its version resulting from Ordinance No. 2019-1169 of 13 November 2019 and in particular Articles L.411-1, L. 411-4, L. 411-5, L. 711-1 to L.711-3, L. 714-3, L. 716-1, L.716-1-1, L.716-2 to L. 716-2-8, L.716-5, R. 411-17, R.714-1 to R.714-6, R. 716-1 to R.716-13, and R. 718-1 to R. 718-5;

Having regard to the Intellectual Property Code in its version resulting from Law No. 92-597 of 1 July 1992 and in particular Articles L.711-1 to L.711-4, L. 713-2, L.713-3 and L.714-3;

Having regard to the decree of 24 April 2008 amended by the decree of 9 December 2019 relating to the procedural fees collected by the National Institute of Industrial Property;

Having regard to the decree of 4 December 2020 on the distribution of costs incurred during a procedure for opposition to a brand invention or invalidity or revocation of trademark;

Having regard to the amended decision n ° 2020-35 of the Director General of the National Institute of Industrial Property relating to the modalities of the procedure for invalidity or revocation of a trademark.

Seat

15 rue des Minimes - CS 50001 92677
COURBEVOIE Cedex
Phone : +33 (0)1 56 65 89 98 Fax : +33
(0)1 56 65 86 00 www.inpi.fr –
contact@inpi.fr
National public establishment created by
Law No. 51-444 of 19 April 1951

I.- FACTS AND PROCEDURE

1. On 24 February 2022, the simplified joint-stock company MOBIGAME (the applicant) filed an application for invalidity registered under reference NL 22-0042 against the French part of international registration No 1515050, reproduced below :

EDGE GAMES

This international registration designating the France dated December 26, 2019, of which EDGE GAMES, INC. is the owner (the owner of the contested mark), was published in Gazette 2020/6 of February 20, 2020 and was the subject of a statement of grant of protection published in Gazette 2020/37 of September 24, 2020.

2. The application for a declaration of invalidity was brought against all the goods for which the contested mark is registered, namely :

" Class 09: Computer game programs; computer games; downloadable games from a global computer network; computer games for use on cell phones and mobile phones".

3. The plaintiff invokes a ground relating to the infringement of the well-known mark within the meaning of Article 6bis of the Paris EDGE Convention because of the existence of a likelihood of confusion.
4. A statement of the pleas in law was submitted in support of that application for a declaration of invalidity.
5. The Institute informed the proprietor of the contested mark of the application for a declaration of invalidity and invited him to refer to the electronic file, by simple mail sent to the address indicated when registering the contested international mark.
6. The application for a declaration of invalidity was notified to the proprietor of the contested trade mark at the address indicated at the time of its attachment, by registered letter dated 15 April 2022, received on 20 April 2022. That notification invited him to submit observations in response and to produce any document he considered useful within two months of its receipt.
7. During the investigation phase, the proprietor of the contested mark submitted three sets of observations in response, to which the applicant replied twice within the prescribed period.
8. In accordance with the provisions of Articles R.716-6 and R.716-8 of the Intellectual Property Code, the parties have been informed of the end date of the investigation phase, namely December 21, 2022.

Applicant's claims

9. In its statement of case, the applicant submits that:

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- His application is admissible in so far as it is brought before the Institute pursuant to Article L716-2, that it is based on the infringement of a well-known mark within the meaning of Article 6a of the Paris Convention and that it is neither time-barred nor time-barred ;
- The unregistered trademark "EDGE" is known to a large fraction of the relevant public in France to designate video games;
It produces documents for the purpose of justifying the reputation invoked, which will be listed and analysed in point 20;
- There is a likelihood of confusion between the marks at issue 'because of the *visual, phonetic and conceptual similarities between the signs and the identity of the goods concerned*'.

10. In its initial observations, the applicant:

- Disputes the argument of the owner of the challenged trademark that the sign EDGE is not used as a trademark, arguing that copyright protection of the title of a work is not incompatible with trademark protection ;
- Disputes the argument relating to the difference between the signs 'Edge' and 'Edge Extended' on the ground that the term '*Extended*' is *generic and the distinctive character of the sign is based primarily on the term 'EDGE', which is otherwise in a position of attack*' ;
- Responds to the arguments of the proprietor of the contested mark relating to the lack of reputation and produces new documents which will be listed and analysed in paragraph 20;
- Responds to the arguments of the proprietor of the contested mark on the '*alleged prior art of the trade mark 'EDGE GAMES'*' .

11. In his second and final observations, the demandeur reiterates his arguments and completes them by:

- Emphasizing that if the term Edge were to be considered devoid of distinctive character per se, it should be recognized as having a distinctive character acquired through usage;
- Insisting on the absence of a distinctive characteristic of the terms "Extended" and "Demo" ;
- Insisting on the well-known nature of the unregistered mark "EDGE" and producing new documents which will be listed and analysed in point 20;
- Develops its arguments challenging the anteriority of the sign 'Edge Game' of the proprietor of the contested mark and produces documents in that regard.

Claims of the owner of the contested mark

12. In its preliminary observations, the proprietor of the contested mark submits that:

- The signs "Edge" and "Edge Extended" are different so that the elements submitted by the Applicant relating to the sign "EDGE Extended" do not constitute use of the sign "EDGE ";
- The sign EDGE is not used as a trademark to designate "video games", "*but at most as the title of a work of the mind*";
- The few elements submitted by the applicant "*are clearly insufficient to infer a well-known character of the sign 'EDGE' within the meaning of Article 6bis of the Paris Convention*" on the ground that:
 - The relevant audience is not only composed of "*the specialized public, connoisseur, in search of nostalgia, without leaving the younger generation indifferent*", but "*at least all users of smartphones and mobile devices, regular or occasional consumers of video games on smartphones*";

- The " *information and figures provided by the Applicant do not reflect the alleged notoriety invoked* ";
 - There are inconsistencies between " *revenue and number of downloads* ";
 - The applicant has changed the name of the game several times since 2009;
 - Awards or nominations may not reflect any notoriety among the French public;
 - The applicant does not produce any invoices or accounting documents relating to the sales of the game.
- The EDGE GAMES mark had already been in use in France for several years by the proprietor and his predecessors before the prior art claimed by the applicant, of which the latter was aware.
13. In its second observations, the proprietor of the contested mark reiterates its arguments and responds to the new arguments put forward by the applicant by producing new documents.

In addition, he requests from the Institute " *the payment by MOBIGAME of all the costs of the Account Holder relating to this procedure, in accordance with Article L. 716-1-1 CPI* ".

14. In its third and final observations, the proprietor of the contested mark :
- Reiterates its arguments relating to the lack of reputation of the mark invoked and requests the Institute " *to reject the documents and arguments relating to the sales and download figures filed by Mobigame as suspect* ";
 - Reiterates its arguments that " *Only the use of the trademark "Edge" by Mobigame must be considered, and not the claimed use of variations of "Edge"* " ;
 - Maintains that " *'EDGE' does not refer to the applicant or its product* " on the grounds that " *the trademark 'EDGE', alone or in combination with another word, is used by many companies in the computer and video game industry* ";
 - Insists on " *the relevance of the UKIPO's decision and the registrations of EDGE Games' trademark in the countries of the European Union* " which " *concluded that EDGE Games, Inc. has priority rights and used the trademarks 'EDGE' and 'EDGE GAMES' for computer games over the period from 1984 to 2019* ";
 - Argues that " *the YouTube data [Exhibit 14 applicant] is deliberately misleading and should be ignored* " on the ground that " *none of the videos relate to a game simply referred to as 'Edge' and thus none of the data relates specifically to any claimed use of the 'Edge' mark as such* " and that " *YouTube is accessible to viewers worldwide, and the fact of presenting an image of the website in French does not mean that the viewer data relates to views actually attached to French consumers* ";
 - Emphasizes the seniority of EDGE Games, Inc. on the two signs "EDGE" and "EDGE GAMES" on the ground:
 - That it is recognised on the territory of the European Union by a decision of the UKIPO before Brexit;
 - That the applicant's statements about the owner of the contested trademark and its CEO are false;
 - That EDGE Games Inc.'s use of the EDGE and EDGE GAMES marks as "trademarks" began in 1984 and ran until 2019.

Finally, in his last observations, the proprietor of the contested mark produces new parts.

II.- DECISION

A- The applicable law

15. In accordance with Article L.714-3 of the Intellectual Property Code, in the version applicable on the day of filing, is declared null and void " *the registration of a trademark that does not comply with the provisions of Articles L. 711-1 to L. 711-4* ".
16. In that regard, Article L. 711-4 of that code provides, inter alia, that 'a sign which may *infringe earlier rights, and in particular: (a) An earlier trade mark registered or well known within the meaning of Article 6a of the Paris Convention for the Protection of Industrial Property*' may *not be adopted as a trade mark*".

Article 6a (1) of the Paris Union Convention provides that ' (1) *The countries of the Union undertake, either ex officio if the laws of the country so permit, or at the request of the person concerned, to refuse or invalidate registration and to prohibit the use of a trade mark or trade mark which constitutes reproduction, the imitation or translation, liable to create confusion, of a mark which the competent authority of the country of registration or use considers to be well known there as already being the mark of a person entitled to benefit from this Convention and used in respect of identical or similar goods. The same shall apply where the essential part of the mark constitutes the reproduction of such a well-known mark or an imitation liable to create confusion with it* '.

In addition, pursuant to Article 4 I. of the amended decision No. 2020-35 of the Director General of the National Institute of Industrial Property relating to the modalities of the procedure for the invalidity or revocation of a trademark, the applicant provides:

' (c) *if the application for a declaration of invalidity is based on an infringement of a mark which is well known within the meaning of Article 6a of the Paris Convention for the Protection of Industrial Property :*

(...) documents capable of establishing its existence and reputation for the goods and services relied on in support of the application for finality '.

17. The present application for a declaration of invalidity must be assessed in the light of those provisions.

B- Substance

18. In the present case, the invalidity claim on that ground is brought against the following departments of the contested mark : '*Computer game programs; computer games; downloadable games from a global computer network; computer games for use on cell phones and mobile phones*".
19. With regard to those goods, the applicant alleges an infringement of his earlier unregistered mark, relating to the word sign 'EDGE', in that it is well known for video games.
20. In that regard, it produces the following documents :

T his first observations in response:

- **Exhibit 1** : Copy of the contested mark
- **Exhibit 2**: An excerpt from the afjv.com site presenting Mobigame as follows " *Mobigame is an independent studio that develops and publishes Mobigame video games for digital platforms. Mobigame has won many video awards IGF, IMGA, Milthon, etc. thanks to its innovative games: Edge, Crossprix CrossFingers, Truckers Delight, and lately Perfect Cell* »

An extract from the website includes a list of games proposed by the applicant.

The applicant's Facebook, Tweeter and You Tube pages.

- **Exhibit 3:** An excerpt from a site with the words "*International Mobil Gaming Awards Global*", "*Winners and nominees*", "*Excellence in gameplay*" EDGE and the date 2008; an excerpt from the gamesindustry.biz site stating that the mobile version of the mobile game Edge "*winner of this year's International Mobile Gaming Awards Excellence in Gameplay*" dated February 18, 2009; An excerpt from the wikipedia site on "*the milthons of video games*"; An excerpt from a website with the indication "*Independent Games Festival*", relating to the game Edge and including the indication "*Entering 2009*".
- **Exhibit 4:** A "witness statement" by Mr. David Papazian, Managing Director of Mobigame including the statement "*Unregistered sign has been used since the launch of the EDGE game in 2008* ", a table on the "*Sales figures of EDGE games*" and on the "*Downloads of the EDGE game*" and in annexes:
 - DP1: screenshots of the website www.mobilegame.net via the Wayback machine tool and covering the years 2008 to 2019.
 - DP2: screenshots of the website www.itune.apple.com via the Wayback machine tool and covering the years 2010 to 2016.
 - DP3, DP4 and DP5: Screenshots from AppFigures – figures on the sale, download of EDGE games in France between 2009 and 2019 as well as user reviews.
 - DP6: a screenshot of the website www.imgawards.com via the Wayback machine tool
 - DP7: a screenshot of the Toucharcade website with the date 2009.
- **Exhibit 5:** Presentation of the EDGE game consisting of an excerpt from the French droid.com site on the game Edge of February 2, 2012; an excerpt from the www.guim.com site about the game Edge; an excerpt from Google Play about the game Edge with comments between 2014 and 2018;
- **Exhibit 6:** Presentation of the game EDGE Extended consistant in an excerpt from the formidapps.com site on the game Edge Extended; an excerpt from the blogosquare.com site relating to the game Edge Extended dated February 2, 2013; an excerpt from Google Play relating to the game Edge Extended with entries between 2015and 2021;
- **Exhibit 7:** Google results on a search for the keywords "EDGE MOBIGAME", "EDGE GAME" and "EDGE GAMES"; - **Exhibit 8:** Excerpt from EdgeGames.com's website.

In its second comments in response:

- **Case documents n°9 :** figures relating to downloads of the game "EDGE" and its variations and the revenue generated between July 2008 and July 2022;
- **Exhibit 10 :** Download figures for Mobigame's main games
- **Exhibit 11 :** Apple TV ranking "EDGE" as the 18th most downloaded paid game in France, July 25, 2022
- **Exhibit 12 :** Excerpt from <https://apps.apple.com> site about comments for the game "EDGE" via the App Store and including comments between 2015 and 2021

In his third and final comments in response:

- **Exhibit 13:** Excerpt from the www.jeuxvideo.com site for a search for the use of the term "Extended" in video games
- **Exhibit 14:** Screenshot of Mobigame's YouTube channel of videos between 10 and 13 years old
- **Exhibit 15 :** S-is-theyregenerate-10-years-ago-this-month <https://www.gamesindustry.biz/the-thing-about-troll> website article dated October 1, 2020
- **Exhibit 16 :** Decision of the United States Districts Court - Edge Games, Inc. v. Electronic Arts, Inc., Decision No. C10-02614 WHA, October 1, 2010
- **Exhibit 17:** <https://www.escapistmagazine.com/mobigame-langdell-legalbattle-just-getting-started/> dated October 7, 2010

- **Exhibit 18** : Site article <https://www.gamesindustry.biz/court-rules-in-favour-of-eaover-trolling-langdell> dated October 5, 2010
- **Exhibit 19** : Site article <https://kotaku.com/after-four-years-an-industry-scourgeloses-his-edge-476590339> dated April 20, 2013
- **Exhibit 20**: Decision of the Royal Courts of Justice Future Publishing Limited v. The Edge Interactive Media Inc., Edge Games Inc. and Timothy Langdell, Decision No. 2011 EWHC 1489 dated June 13, 2011
- **Exhibit 21** : Site article <https://www.rockpapershotgun.com/tim-langdell-loses-infuture-edge-trial> dated June 16, 2011
- **Exhibit 22** : Site article <https://www.escapistmagazine.com/u-k-judge-crushes-timlangdell/> dated June 17, 2011
- **Exhibit 23** : Data relating to the registration and use of the domain name <mythora.com>

1. The existence, scope and reputation of the earlier mark relied on

21. It is common ground that a mark is regarded as well known when it is known to a large proportion of the French public concerned, throughout the territory or a substantial part of it.

The criteria to be taken into consideration include its age, the extent and intensity of its use or the importance of the advertising support it receives or the market share held by the applicant.

(a) As a preliminary point, on the request to exclude certain documents submitted by the applicant

22. In his last observations, the proprietor of the contested mark asks the Institute to reject the documents and arguments relating to the sales and download figures filed by Mobigame as suspicious on the ground that "it is very likely that the Applicant has added up all the sales figures of other products in the report. which they called 'Edge', which makes it impossible to accurately assess their use of the 'Edge' trademark alone in French commerce."
23. However, apart from the fact that the 'suspect' nature of the documents produced is not corroborated by concrete evidence and is based on mere assumptions, these mere assertions can in no way in themselves make it possible to exclude the presumed documents from the proceedings, but require an analysis of the merits.
24. Thus, the applicant's request for the inadmissibility of certain documents is rejected.

(b) Use as a trade mark

25. In its observations in reply, the proprietor of the contested mark submits that the sign EDGE is not used as a trade mark to designate 'video games', *'but at most as the title of a work of the mind'*.

It observes in that regard that *'in the present case, only the name of the publisher and developer of the video game 'EDGE', namely 'MOBIGAME', can act as a guarantee of origin of the video games at issue (MOBIGAME Exhibits Nos 2, 3, 4, 5, 6 and 7), the sign relied on as 'EDGE' merely designating the multimedia work that is the mobile game concerned and giving no information to the consumer with regard to its commercial origin'*. It concludes that *" the sign 'EDGE' does not have an identifying function and does not act as a trade sign indicating the commercial origin of goods"*.

26. The plaintiff disputes these arguments, arguing that '*although the sign 'EDGE' does indeed designate the multimedia work that is the mobile video game concerned, it has been largely associated with its developer and publisher, Mobigame, thus making it possible to fulfil the criterion of distinctiveness imposed by the Intellectual Property Code and to distinguish the applicant's products from those of other natural or legal persons*'.
27. In that regard, it should be noted that it is apparent from Decision T-435/05 of the General Court of the EU of 30 June 2009, relied on by the parties, that '*the same sign may be protected as a work of the original mind by copyright and as an indication of commercial origin by trademark law*' but also that the title of a work '*cannot benefit automatically from from recognized protection to indicators of commercial origin, because only signs that develop the characteristic functions of trademarks can benefit from this protection*".
28. It follows that although the title of an intellectual work may be protected under both copyright and trademark law, this dual protection is not automatic and must be demonstrated.
29. In the present case, it is therefore necessary to determine whether the term EDGE, relied on by the applicant as having a reputation, is used as a trade mark.
30. In that regard, it is apparent from the documents produced that the applicant develops and publishes video games, including the game entitled 'Edge', 'Edge Extended' and 'Edge Demo'.

However, it must be noted that that video game is clearly identified by its title – both on download platforms and in specialised magazines and sites – which, independently of its potential protection by copyright, makes it possible to identify the commercial origin of the product for which the reputation of the earlier trade mark is claimed.

In that regard, although the name MOBIGAME is capable of identifying the publisher/developer of the video game, the term EDGE, for its part, allows consumers of the goods in question to distinguish the EDGE video game from those which have another origin.

31. **Thus, the term EDGE is indeed used as a trade mark contrary to what the owner of the contested mark maintains.**

c) Reputation for the EDGE trade mark

About the relevant audience

32. The applicant considers that the products are aimed at '***a specialised public, connoisseur, in search of nostalgia, without leaving the younger generation indifferent***'.
33. The owner of the contested mark refers to a relevant public consisting of "*at least all users of smartphones and mobile devices, regular or occasional consumers of video games on smartphones*".
34. It is apparent from the documents produced that the goods claimed to be famous consist of video games downloadable on online platforms such as 'Windows Phone Store', 'Google Play' or 'App Store' and on online download sites and intended to be played on mobile devices such as smartphones and tablets.
35. Thus, the relevant audience is the general French public casual or regular video game players, accessible on digital platforms.

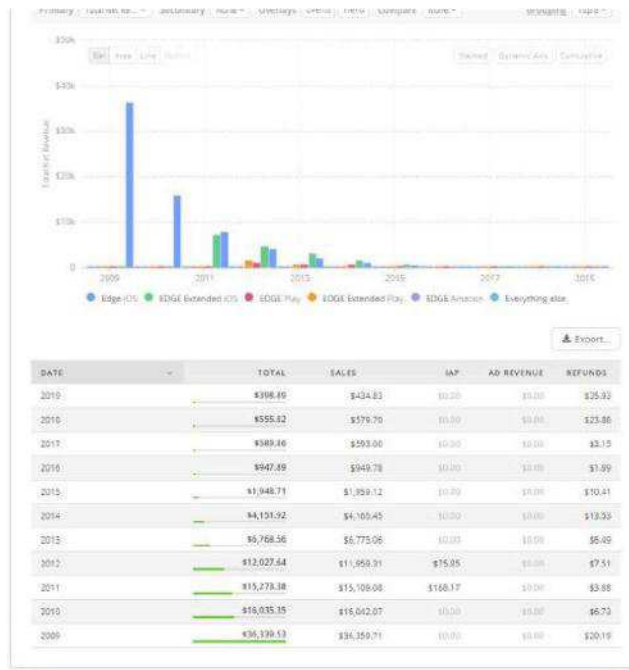
Analysis of notoriety

36. The applicant shall produce the documents referred to in point 20 to which reference should be made.
37. It should be noted in the first place that the documents produced must relate to the period prior to the registration of the contested mark, that is to say, before 26 December 2019, so that the information contained in Exhibit No 11, dated 25 July 2022, cannot be taken into account in the assessment of the reputation of the sign EDGE.
38. In addition, it appears from all the documents produced that most of the documents relate only to the description of the game (Exhibits n°2, 5 and 6), the prizes awarded in the years 2008 and 2009 (Exhibits n°2 and 3), or Youtube videos dated more than 10 years and whose number of views does not make it possible to determine the relevant territory, **so that those factors are not sufficient to characterise the reputation of the earlier mark.**
39. In addition, the applicant invokes the following figures from the certificate produced by the Managing Director of Mobigame:

YEAR	TERRITORY	SALES IN DOLLARS
		(US\$)
2009	France	36,339.53
2010	France	16,035.35
2011	France	15,273.38
2012	France	12,027.64
2013	France	6,768.56
2014	France	4,151.92
2015	France	1,948.71
2016	France	947.89
2017	France	589.86
2018	France	555.82
2019	France	398.89

YEAR	TERRITORY	TOTAL NUMBER OF DOWNLOADS
2009	France	131,832
2010	France	15,141
2011	France	128,558
2012	France	78,972
2013	France	169,815
2014	France	27,141
2015	France	28,895
2016	France	13,683
2017	France	8,578
2018	France	6,872
2019	France	3,098
Total (2009 – December 31, 2019)	France	612,585

In support of this certificate, he produces a document entitled "Appfigures" from which the following figures emerge:



40. However, while it appears from these documents that the EDGE game was somewhat successful when it was released in 2009, the number of downloads and turnover have steadily declined since that date. In this regard, it should be noted that the five years preceding the registration of the contested mark, it generated between USD 1 948.71 in 2015 and USD 398.89 in 2019 for the French trademark.
41. Similarly, it is apparent from the information contained in Exhibit 10 (consisting of figures relating to downloads of Mobigame's main games) that the EDGE game and its variations **represent only 0.9% of the projects offered by the applicant himself**, so that taken from the overall market for video games intended for the relevant public previously defined, The number of downloads cannot make it possible to characterise intensive use of the earlier mark, despite the duration of its exploitation which began in 2008 and 2009.
42. **Thus, it must be held that the reputation of the EDGE sign has not been demonstrated by the applicant.**

2. The existence of a likelihood of confusion

43. In view of the lack of demonstration of the reputation of the earlier mark within the meaning of Article 6a of the Paris Convention, there is no need to rule on the existence of a likelihood of confusion.
44. **Consequently, the ground for invalidity of the contested mark based on the existence of a likelihood of confusion with the well-known mark EDGE is rejected.**

C- Apportionment of costs

45. Article L.716-1-1 of the Intellectual Property Code provides that: " At the request of the *winning party*, the *Director General of the National Institute of Industrial Property* shall charge the *losing party* all or part of the costs incurred by the other party within the limit of a scale fixed by order of the *Minister responsible for industrial property*".

46. The decree of 4 December 2020, provides in its article 2.II. that "*Within the meaning of Article L. 716-1-1, the following shall be considered as a winning party: ...*
b) *The proprietor of the contested trade mark whose registration has not been altered by the decision of invalidity or revocation*" (...)
c) *the applicant when his application is granted in respect of all the goods or services initially referred to in his application for invalidity or revocation*".
Finally, it specifies in Article 2.III that "*For the application of Article L. 716-1-1, the maximum amounts of the costs charged to the parties shall be determined in accordance with the schedule in the annex*".
47. The proprietor of the contested trade mark requested '*MOBIGAME charging all the costs of the proprietor relating to the present proceedings, in accordance with Article L. 716-1-1 CPI*'.
48. He must be regarded as a successful party if the application for a declaration of invalidity is rejected in respect of all the goods and services challenged by the applicant, so that the registration of the mark in question is not altered.
49. In addition, the investigation procedure gave rise to exchanges between the parties. The proprietor of the contested mark, represented by a representative, submitted three sets of observations in response to the applicant's application for a declaration of invalidity, which falls within the category of small and medium-sized enterprises.
50. In the light of those considerations specific to the present proceedings, the sum of EUR 550 should be charged to the applicant (losing party to the present proceedings), corresponding to part of the costs incurred by the proprietor of the contested trade mark in respect of the written part (EUR 300) and in respect of representation costs (EUR 250).

FOR THESE REASONS

DECIDES

Article 1: The application for nullity NL22-0042 is rejected.

Article 2 : The sum of 550 euros is charged to the simplified joint stock company MOBIGAME for the costs incurred.



Stéphane HIDALGO FRIAZ
Jurist



Christine LESAUVAGE Head
of Cancellation Unit



German
Patent and Trademark Office

**KUHNEN
WACKLÅ**
Patent and Attorney-at-Law
Office;-o

DATE

25. 2024

Period... v.o..... •

Empfangsbekanntnis
**KUHNEN & WACKER Patent- und
POSTAL ADDRESS 80297 Munich**

EDITED BY Mr. Fleischmann
PHONE

POSTANSCHRIFT 80297 München
Confession of Reception

KUHNEN & WACKER Patent and Trademark Agreements+49
(0)89 2195-3784

Rechtsanwaltsbüro PartG mbB
Prinz-Ludwig-Str. 40 A

INTERNAT. REGISTRIERUNG IR 1 515 — 0404/21 Lösch

INHABER Edge Games, Inc., 530 South
Lake

Avenue, #171, Pasadena CA 91101, US

IHR ZEICHEN 37/EG21 KOI LODE
85354 Freising 22.04.2024

FAX +49 (0)89 2195-4000

Deprivation proceedings concerning the international registration IR 1 515 050 "EDGE
GAMES"

Dear Ladies and Gentlemen,

The enclosed decision will be sent to you for the purpose of service.

Sincerely, Trademark Department 3.4



i. A. Fleischmann
Employees covered by collective agreements

Grounds:

- Decision nullity withdrawal of protection

- Payment instructions



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DECISION

In the proceedings for the withdrawal of protection

the

Mobigame SAS, 75011 Paris, France

— Applicant —

— Agents:

BRP Renaud und Partner mbB Attorneys at Law Patent Attorneys Tax Advisors,
60325 Frankfurt

against

the Edge Games, Inc., 530 South Lake Avenue, #171, Pasadena CA 91101 , US

—Respondent and trade mark proprietor —

— Agents:

Kuhnen & Wacker Patent- und Rechtsanwaltsbüro PartG mbB, 85319 Freising

concerning the internationally registered trademark IR 1 515 050

EDGE GAMES

the Trademark Division 3.4 of the German Patent and Trade Mark Office was represented by the Chief Government Director Portmann as Chairman, the Government Director Wckenhöfer and the Government Director Frosch

decided.

1. The application for a declaration of nullity and withdrawal of protection of IR 1 515 050 of 12.05.2021 is rejected.
2. The trademark proprietor's application for costs is dismissed.
3. The value of the subject matter of the proceedings is set at 50,000.00 euros.

Reasons

1.

The respondent is the owner of the goods

- Class 09: Computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for use on mobile and cellular phones.

internationally registered trademark IR 1 515 050

EDGE GAMES

In a written submission received by the German Patent and Trade Mark Office on 12.05.2021, the applicant, while paying the fee, requested that the internationally registered trademark be IR 1 515 050 and withdraw its protection in the Federal Republic of Germany on the ground of conflicting earlier rights.

In support of its application for annulment, it relies on

the title of the work

"EDGE"

The applicant claimed 01.11.2008 as the seniority of the work title and stated that the subject of the work title

"Computer games"

are

In support of its application, the applicant argues that since 2008 it has been offering the multi-award-winning computer game 'EDGE', which is available in Germany via the Apple AppStore and can be used for iPhone and iPad.

The applicant is of the opinion that it is entitled to a work title right to the sign "EDGE". In field 2 of the annex to the application for nullity, it names 01.11.2008 as seniority and in the grounds for the application (written submission of 27.10.2022) the year 2009, which is specified in the affidavit of Mr. David Papzian, Managing Director of Mobigame SAS, submitted as Annex BRP 3, to 04.01.2009. It is of the opinion that there is a likelihood of confusion between the contested mark and its right to the title, because there is identity of the sign and the work, because the contested mark claims protection for computer games.

The applicant claims that the Court should:

declare the challenged mark invalid and withdraw its protection in the Federal Republic of Germany.

The respondent and trademark proprietor objected to the application for invalidity served on it by official letter on 06.09.2021 against posting by registered delivery in a written submission dated 08.11.2021, received on 08.11.2021.

It claims that the Court should:

1. dismiss the application for annulment
2. order the applicant to pay the costs of the proceedings.

The respondent is of the opinion that the application is already inadmissible because the applicant did not submit any evidence of the existence of the right to title the work when filing the application, but merely asserted its existence in a blanket manner.

In any event, however, the application was unfounded, because the designation "Edge" for computer games was not distinctive and many computer games with the designation "Edge" were on the market. The applicant was not entitled to a right to title the work, since it only offered a computer game under the name "EDGE", which did not constitute a use relevant to trademark law. The designation "EDGE" only refers to the work itself, but not to its origin.

For further details of the state of the facts and the state of the dispute, reference is made to the pleadings of the parties to the proceedings and the other contents of the file.

II.

1 . The application for a declaration of invalidity and withdrawal of protection of the internationally registered trademark IR 1 515 050, which was objected to within the time limit, is admissible pursuant to SS 107, 115, S 53 (1) and (3), S 51 of the Trade Mark Act in conjunction with Art. 5 PMMA, Art. 6^{quinquies} B of the Paris Convention.

In particular, the application is still to be regarded as sufficiently well-founded within the meaning of S 53 (1) sentence 2 of the Trademark Act, since the subject-matter of the nullity proceedings can be determined from the applicant's submissions in any case, even without any evidence submitted (see on this Miosga in Ströbele/Hacker/Thiering, MarkenG, 14th edition, p. 53 marginal no. 9). Thus, the applicant supports its application in field 6 of the application for invalidity expressly refers to the work title "EDGE" and leads to the

R

the right to title the work to the computer game "EDGE". In box 2 of the annex to the application for annulment, 01 . 11 .2008.

Since the respondent objected to the application in good time, the nullity proceedings must be carried out in accordance with S 53 (5) of the Trade Mark Act.

2. However, the admissible application is unsuccessful on the merits. It cannot be established that the applicant is entitled to a claim for cancellation against the proprietor of the challenged trademark pursuant to S 51 (1) in conjunction with SS 5 (3), 12, 13 (2) no. 3 of the Trade Mark Act.

2.1. In the annex to the application, the applicant states 01.11.2008 as the seniority of the work title. In the grounds for the application of 27.10.2022, it refers to the work title right to the sign "EDGE" since 2009 and specifies this in the affidavit, submitted as Annex BRP 3, to 04.01.2009. Strictly speaking, therefore, the evidence submitted does not refer to the originally asserted right to title the work with time rank 01 . 11.2008, even if a work title protection with a seniority of 04.01.2009 would have an earlier priority than the challenged trademark.

2.2. But the application for nullity is unfounded for lack of risk of encroachment even if the applicant were entitled to a work title right with an earlier priority:

In principle, action can only be taken against the use of the title on the basis of a work title, i.e. against the use of the name in question to distinguish a work from other works (BGH GRUR 2010, 642, 644 (No. 37) WM-Marken; GRUR 2000, 70, 72 SCENE; GRUR 1994, 908, 910 WIR IM SÜDWESTEN; GRUR 1980, 227, 232 Monumenta Germaniae Historica), and not against younger stamps. This is because the function of a work title is to name specific intellectual achievements, insofar as they appear to be describable according to the public perception, and thus to make them distinguishable from other achievements of an intellectual nature. On the other hand, it is not part of the original function of the title of the work to indicate the commercial origin of the goods in which the work may be embodied. For this reason, work titles are usually only protected against an immediate likelihood of confusion in the narrower sense of a work combination.

Such a direct likelihood of confusion is excluded in the present case, since the challenged trademark "Edge Games" is not used as a title, but as an indication of origin. Although the goods of the challenged trademark may be eligible for title protection, the applicant also does not claim that the trademark owner uses its trademark in title. According to the uncontradicted submissions of the trademark proprietor, it published and marketed a large number of computer games under various names. In each case, "Edge Games" refers to the origin of the trademark owner's company and not to the title of a game "Edge", as the games "Snoopy", "Bobby bearing", "Mythora" or "Racers" listed as "EDGE Timeline" in the trademark owner's written submission of 02.01.2023 (page 6 ff) make clear.

Nor is the earlier sign 'EDGE' such a title of a work which, exceptionally, is associated with the undertaking behind it in the same way as a trade mark, which is recognised for well-known series titles, such as newspapers, magazines, regularly updated standard works and for titles of television and radio broadcasts. This is because it is an individual work in which even its fame could not justify the assumption of a special conception of the origin of the public (BGH GRUR 2005, 264, 266 Das TelefonSparbuch; GRUR 2003, 342, 343 Winnetou; GRUR 2002, 1083, 1085 1, 2, 3 im Sauseschritt; cf. also EGG GRUR Int 2010, 50, 52 (No. 25) No).

The application to declare the internationally registered trade mark IR 1 515 050 invalid and to withdraw its protection in the Federal Republic of Germany was therefore to be rejected.

The trademark proprietor's application for costs is unfounded.

Pursuant to S 63 (1) sentence 3 of the Trade Mark Act, each party is to bear the costs incurred by it itself. A deviation from this principle always requires special circumstances, which are particularly the case if there is conduct by a party that is incompatible with the procedural diligence required in the protection of rights. This is not the case here, in particular, contrary to the opinion of the trademark proprietor, the application for invalidity was not already inadmissible (see above under 11.1.).

IV.

Pursuant to S 63 (2) sentence 1 of the Trade Mark Act in conjunction with S 23 (3) sentence 2 and S 33 (1) RVG, the value of the subject matter of the proceedings is to be determined at equitable discretion. According to the more recent case law of the Federal Court of Justice, the economic interest of the trademark owner in maintaining his trademark is decisive for determining the amount of the value of the object in proceedings aimed at canceling a trademark (BGH, I ZB 39/19 v. 17.02.2020 — VENOM; I ZB 17/17 of 29.03.2018 - H 15; I ZB 105/16 of 18.10.2017 - Square chocolate bar packaging; I ZB 52/15 of 24.11.2016 - Sparkassen-Rot; I ZB 61/13 of 30.07.2015 - LangenscheidtGelb). This interest is usually assessed by the Federal Court of Justice and several trademark senates of the Federal Patent Court at 50,000.00 euros in the case of unused trademarks and in the case of trademarks for which no determinations can be made as to the nature and extent of use (cf. e.g. Federal Court of Justice, ZB 25/18 of 28.05.2020 - Determination of the amount in dispute; I ZB 39/19 of 17.02.2020 - VENOM; BPatG, 27 W (pat) 45/17 v. 14.10.2019 — Caught in The Act). Indications that would cause a deviation from this standard object value in the present case are neither submitted nor apparent.

Appeal ru ng

Pursuant to S 66 of the Trademark Act (MarkenG), an appeal can be lodged against this decision. The parties to the proceedings before the German Patent and Trade Mark Office are entitled to appeal. It has suspensive effect. The appeal must be filed in writing with the German Patent and Trade Mark Office within one month of service of the decision. The letter must be received by the DPMA by post or fax. Submission by e-mail is not permitted. The addresses are:

German Patent and Trademark Office, 80297 Munich
 German Patent and Trademark Office, Jena Office, 07738 Jena
 German Patent and Trademark Office Information and Service Center, 10958 Berlin

Instead, the appeal can also be filed in electronic form via the DPMA's electronic filing office (not by e-mail) (S 95a (1), (3) no. 1 of the Trade Mark Act in conjunction with S 130a (1), (2) sentence 1, (5) and (6) of the Code of Civil Procedure (ZPO), page 12 of the Ordinance on the German Patent and Trade Mark Office (DPMAV), S 1 et seq. of the Ordinance on Electronic Legal Transactions at the German Patent and Trade Mark Office (ERVDPMAV)). The more detailed (technical) requirements are set out in the ERVDPMAV.

Within the appeal period, the appeal fee (Schedule of Fees for the Patent Costs Act (PatKostG) No. 401 100 = EUR 500.00) is to be paid into the account of the Federal Treasury Halle/DPMA for the German Patent and Trade Mark Office. The appeal fee is to be paid separately for each complainant. If the appeal fee is not paid, not paid in full or not paid in due respect, the appeal is deemed not to have been filed (S 6 para. 2 PatKostG).

Notes:

In the case of delivery by post by registered mail, this is deemed to have been delivered on the 3rd day after posting to the post office, unless the document to be served has not been received or has been received at a later date (S 94 (1) of the Trade Mark Act in conjunction with S 4 (2) sentence 2 of the Administrative Delivery Act (VwZG)). In the case of delivery by registered mail with acknowledgement of receipt, this is deemed to have been effected on the day indicated in the acknowledgement of receipt (S 94 (1)

of the Trade Mark Act in conjunction with S 4 (2) sentence 1 of the Administrative Delivery Act (Verwaltungszustellungsgesetz – VwZG)).

In the case of delivery by post with a certificate of delivery, the date of service shall be noted on the copy of the certificate of service handed over or on the consignment handed over.

In the case of delivery abroad by registered letter by posting to the post office, it is deemed to have been served two weeks after it has been posted (S 94 para. 1 no. 1 of the Trade Mark Act in conjunction with S 184 para. 2 sentence 1 of the Code of Civil Procedure).

Copies for the other parties are to be attached to the appeal and all pleadings.

Government Director

INTERNET

<https://www.dpma.de>

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DATE

Leitender Regierungsdirektor

Regierungsdirektor

Regierungsdirektorin

This document has been electronically signed.



Transcript of 22.04.2024

File number: IR 1 515 050

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Decision nullity withdrawal of protection of
17.04.2024

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22.04.2024 by a qualified by:

Frog	17.04.2024
Wickenhöfer	19.04.2024
Palmer	22.04.2024

IR1515050

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On the basis of the booking data, the Federal Treasury cannot determine whether a credit note due to a transfer of

or a cash payment. If you have paid the fees by cash payment, please submit the payment receipt issued by the financial institution to the German Patent and Trademark Office without delay so that the day of payment can be granted as a payment date.

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Wichtiger Hinweis zur Übermittlung eines SEPA-Mandats per Telefax:

If you are sending the SEPA Basic Document by fax, please submit the original within one month of receipt of the fax.

4. The application fee and any class fees for the national trademark registration are application fees that are forfeited upon the filing of the application and payment, regardless of the outcome of the trademark registration procedure. This means that the application fees cannot be refunded, e.g. if the trademark application is withdrawn. This applies mutatis mutandis to the national fees to be paid for the application of an international trademark or for the subsequent designation as an international registration.



Deutsches
Patent- und Markenamt

KUHNEN & WACKER
Patent- und Rechtsanwaltsbüro

Eing. 25. April 2024

Frist

Deutsches Patent- und Markenamt • 80297 München

Empfangsbekanntnis

**KUHNEN & WACKER Patent- und
Rechtsanwaltsbüro PartG mbB**
Prinz-Ludwig-Str. 40 A
85354 Freising

HAUSANSCHRIFT Zweibrückenstraße 12, 80331 München

POSTANSCHRIFT 80297 München

BEARBEITET VON Herr Fleischmann

TEL +49 (0)89 2195-3784

FAX +49 (0)89 2195-4000

INTERNET <https://www.dpma.de>

INTERNAT. REGISTRIERUNG IR 1 515 050 — 0404/21 Lösch ✓

INHABER Edge Games, Inc., 530 South Lake
Avenue, #171, Pasadena CA 91101, US

IHR ZEICHEN 37/EG21K01LÖ/DE

DATUM 22.04.2024

Bitte Internationale Registrierung und Inhaber bei allen Eingaben und Zahlungen angeben!

Schutzentziehungsverfahren betreffend die internationale Registrierung IR 1 515 050 „EDGE GAMES“

Sehr geehrte Damen und Herren,

anliegender Beschluss wird Ihnen zum Zwecke der Zustellung übersandt.

Mit freundlichen Grüßen
Markenabteilung 3.4



i. A. Fleischmann
Tarifbeschäftigter

Anlagen:

- Beschluss Nichtigkeit Schutzentziehung
- Zahlungshinweise



IR1515050



4170168



BESCHLUSS

In dem Schutzziehungsverfahren

der

Mobigame SAS; 75011 Paris, Frankreich

– Antragstellerin –

– Verfahrensbevollmächtigte:

BRP Renaud und Partner mbB Rechtsanwälte Patentanwälte Steuerberater,
60325 Frankfurt

gegen

die

Edge Games, Inc., 530 South Lake Avenue, #171, Pasadena CA 91101, US

– Antragsgegnerin und Markeninhaberin –

– Verfahrensbevollmächtigte:

Kuhnen & Wacker Patent- und Rechtsanwaltsbüro PartG mbB, 85319 Freising

betreffend die international registrierte Marke IR 1 515 050

EDGE GAMES

hat die Markenabteilung 3.4 des Deutschen Patent- und Markenamtes durch den Leitenden Regierungsdirektor Portmann als Vorsitzenden, den Regierungsdirektor Wickenhöfer und die Regierungsdirektorin Frosch

beschlossen:



IR1515050

1. Der Antrag auf Erklärung der Nichtigkeit und Schutzentziehung der IR 1 515 050 vom 12.05.2021 wird zurückgewiesen.
2. Der Kostenantrag der Markeninhaberin wird zurückgewiesen.
3. Der Gegenstandswert des Verfahrens wird auf 50.000,00 Euro festgesetzt.

Gründe

I.

Die Antragsgegnerin ist Inhaberin der am 26.12.2019 für die Waren

Klasse 09: Computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for use on mobile and cellular phones.

international registrierten Marke IR 1 515 050

EDGE GAMES

Mit am 12.05.2021 beim Deutschen Patent- und Markenamt eingegangenem Schriftsatz hat die Antragstellerin unter Zahlung der Gebühr beantragt, die international registrierte Marke IR 1 515 050 für nichtig zu erklären und ihr den Schutz in der Bundesrepublik Deutschland wegen entgegenstehender älterer Rechte zu entziehen.

Sie stützt ihren Nichtigkeitsantrag auf

den Werktitel

„EDGE“

Die Antragstellerin hat als Zeitrang des Werktitels den 01.11.2008 geltend gemacht und mitgeteilt, dass Gegenstand des Werktitels

„Computerspiele“

sind.

Zur Begründung führt die Antragstellerin an, sie biete seit 2008 das mehrfach ausgezeichnete Computerspiel "EDGE" an, welches im Inland über den Apple AppStore verfügbar und für iPhone und iPad benutzbar sei.

Die Antragstellerin ist der Ansicht, ihr stehe an dem Zeichen "EDGE" ein Werktitelrecht zu. Als Zeitrang benennt sie in Feld 2 der Anlage zum Nichtigkeitsantrag den 01.11.2008 und in der Antragsbegründung (Schriftsatz vom 27.10.2022) das Jahr 2009, das in der als Anlage BRP 3 vorgelegten eidesstattlichen Versicherung des Herrn David Papzian, Geschäftsführer der Mobigame SAS auf den 04.01.2009 konkretisiert wird. Sie ist der Auffassung, zwischen der angegriffenen Marke und ihrem Titelrecht bestehe Verwechslungsgefahr, denn es liege Zeichen- und Werkidentität vor, weil die angegriffene Marke Schutz für Computerspiele beanspruche.

Die Antragstellerin beantragt,

die angegriffene Marke für nichtig zu erklären und ihr den Schutz in der Bundesrepublik Deutschland zu entziehen.

Die Antragsgegnerin und Markeninhaberin hat dem ihr mit amtlichem Schreiben am 06.09.2021 gegen Aufgabe zur Post mit Übergabeeinschreiben zugestellten Nichtigkeitsantrag mit Schriftsatz vom 08.11.2021, eingegangen am 08.11.2021, widersprochen.

Sie beantragt,

1. den Nichtigkeitsantrag zurückzuweisen
2. der Antragstellerin die Kosten des Verfahrens aufzuerlegen.

Die Antragsgegnerin ist der Ansicht, der Antrag sei bereits unzulässig, weil die Antragstellerin mit Antragstellung keine Nachweise für das Bestehen des Werktitelrechts vorgelegt habe, sondern dessen Existenz lediglich pauschal behauptet habe.

Jedenfalls aber sei der Antrag unbegründet, weil die Bezeichnung „Edge“ für Computerspiele nicht unterscheidungskräftig sei und viele Computerspiele mit der Bezeichnung „Edge“ auf dem Markt seien. Der Antragstellerin stehe kein Werktitelrecht zu, da sie lediglich ein Computerspiel unter der Bezeichnung „EDGE“ anbiete, was keine kennzeichenrechtlich relevante Benutzung darstelle. Die Bezeichnung „EDGE“ weise dabei lediglich auf das Werk selbst, nicht aber auf dessen Herkunft hin.

Wegen der weiteren Einzelheiten des Sach- und Streitstandes wird auf die Schriftsätze der Verfahrensbeteiligten sowie den übrigen Akteninhalt Bezug genommen.

II.

1. Der Antrag auf Erklärung der Nichtigkeit und Schutzentziehung der international registrierten Marke IR 1 515 050, dem fristgerecht widersprochen wurde, ist gemäß §§ 107, 115, § 53 Abs. 1 und 3, § 51 MarkenG i. V. m. Art. 5 PMMA, Art. 6^{quinquies} B PVÜ zulässig.

Insbesondere ist der Antrag noch als hinreichend begründet im Sinne von § 53 Abs. 1 S. 2 MarkenG anzusehen, da sich aus dem Vortrag der Antragstellerin auch ohne vorgelegte Nachweise jedenfalls der Streitgegenstand des Nichtigkeitsverfahrens bestimmen lässt (vgl. dazu Miosga in Ströbele/Hacker/Thiering, MarkenG, 14. Auflage, § 53 Rdn 9). So stützt die Antragstellerin ihren Antrag in Feld 6 des Nichtigkeitsantrags ausdrücklich auf den Werktitel „EDGE“ und führt zur Ent-

stehung des Werktitelrechts an dem Computerspiel „EDGE“ aus. In Feld 2 der Anlage zum Nichtigkeitsantrag ist der 01.11.2008 als Zeitrang angegeben.

Da die Antragsgegnerin dem Antrag rechtzeitig widersprochen hat, ist gemäß § 53 Abs. 5 MarkenG das Nichtigkeitsverfahren durchzuführen.

2. In der Sache hat der zulässige Antrag jedoch keinen Erfolg. Es kann nicht festgestellt werden, dass der Antragstellerin gegen die Inhaberin der angegriffenen Marke ein Löschungsanspruch nach § 51 Abs. 1 i.V.m §§ 5 Abs. 3, 12, 13 Abs. 2 Nr. 3 MarkenG zusteht.

2.1. Die Antragstellerin gibt in der Anlage zum Antrag als Zeitrang des Werktitels den 01.11.2008 an. In der Antragsbegründung vom 27.10.2022 bezieht sie sich auf das Werktitelrecht an dem Zeichen „EDGE“ seit dem Jahr 2009 und konkretisiert dies in der eidesstattlichen Versicherung, vorgelegt als Anlage BRP 3, auf den 04.01.2009. Die vorgelegten Nachweise beziehen sich also streng genommen nicht auf das ursprünglich geltend gemachte Werktitelrecht mit Zeitrang 01.11.2008, auch wenn ein Werktitelschutz mit Zeitrang 04.01.2009 gegenüber der angegriffenen Marke prioritätsälter wäre.

2.2. Aber der Nichtigkeitsantrag ist selbst dann mangels Verwechslungsgefahr unbegründet, wenn der Antragstellerin ein prioritätsälteres Werktitelrecht zustünde:

Grundsätzlich kann aus einem Werktitel nur gegen die titelmäßige Benutzungen vorgegangen werden, also gegen die Benutzung der betreffenden Bezeichnung zur Unterscheidung eines Werkes von anderen Werken (BGH GRUR 2010, 642, 644 (Nr 37) WM-Marken; GRUR 2000, 70, 72 SZENE; GRUR 1994, 908, 910 WIR IM SÜDWESTEN; GRUR 1980, 227, 232 Monumenta Germaniae Historica), und nicht gegen jüngere Marken. Denn die Funktion eines Werktitels besteht darin, konkrete geistige Leistungen, soweit sie nach der Verkehrsauffassung bezeichnungsfähig erscheinen, namensmäßig zu benennen und so von anderen Leistungen geistiger Art unterscheidbar zu machen. Dagegen gehört es nicht zur originären Funktion des Werktitels, auf die betriebliche Herkunft der Ware, in der das Werk gegebenenfalls verkörpert ist, hinzuweisen. Aus diesem Grund sind Werktitel in der Regel nur gegen eine unmittelbare Verwechslungsgefahr im engeren Sinne einer Werkverwechslung geschützt.

Eine solche unmittelbare Verwechslungsgefahr scheidet vorliegend aus, da die angegriffene Marke „Edge Games“ nicht titelmäßig, sondern herkunftshinweisend verwendet wird. Zwar können die Waren der angegriffenen Marke titelschutzfähig sein, aber auch die Antragstellerin behauptet nicht, dass die Markeninhaberin ihre Marke titelmäßig verwendet. Nach dem unwidersprochenen Vortrag der Markeninhaberin hat diese eine Vielzahl von Computerspielen unter diversen Bezeichnungen veröffentlicht und vermarktet. Dabei weist „Edge Games“ jeweils auf die Herkunft aus dem Unternehmen der Markeninhaberin hin und nicht auf den Titel eines Spiels „Edge“, wie die im Schriftsatz der Markeninhaberin vom 02.01.2023 (dort Seite 6 ff) als „EDGE Timeline“ aufgeführten Spiele „Snoopy“, „Bobby bearing“, „Mythora“ oder „Racers“ verdeutlichen.

Bei dem älteren Zeichen „EDGE“ handelt es sich auch nicht um einen solchen Werktitel, der ausnahmsweise wie eine Marke mit dem dahinterstehenden Unternehmen in Verbindung gebracht wird, was für bekannte Reihentitel, wie Zeitungen, Zeitschriften, regelmäßig aktualisierte Standardwerke sowie für Titel von Fernseh- und Hörfunksendungen anerkannt ist. Denn es handelt sich um ein Einzelwerk, bei dem selbst dessen Bekanntheit nicht die Annahme einer besonderen Herkunftsvorstellung des Verkehrs rechtfertigen könnte (BGH GRUR 2005, 264, 266 Das Telefon-

Sparbuch; GRUR 2003, 342, 343 Winnetou; GRUR 2002, 1083, 1085 1, 2, 3 im Sauseschritt; vgl auch EuG GRUR Int 2010, 50, 52 (Nr 25) Dr. No).

Der Antrag, die international registrierte Marke IR 1 515 050 für nichtig zu erklären und ihr den Schutz in der Bundesrepublik Deutschland zu entziehen war daher zurückzuweisen.

III.

Der Kostenantrag der Markeninhaberin ist unbegründet.

Gemäß § 63 Abs. 1 Satz 3 MarkenG trägt jeder Beteiligte die ihm erwachsenen Kosten selbst. Für ein Abweichen von diesem Grundsatz bedarf es stets besonderer Umstände, welche insbesondere dann gegeben sind, wenn ein Verhalten eines Beteiligten vorliegt, das mit der bei der Wahrung von Rechten zu fordernden prozessualen Sorgfalt nicht zu vereinbaren ist. Dies ist hier nicht der Fall, insbesondere war der Nichtigkeitsantrag, anders als die Markeninhaberin meint, nicht schon unzulässig (vgl. dazu oben unter II.1.).

IV.

Der Gegenstandswert des Verfahrens ist gemäß § 63 Abs. 2 Satz 1 MarkenG i. V. m. § 23 Abs. 3 Satz 2 und § 33 Abs. 1 RVG nach billigem Ermessen zu bestimmen. Maßgeblich für die Bestimmung der Höhe des Gegenstandswertes in einem auf Löschung einer Marke gerichteten Verfahren ist nach der neueren Rechtsprechung des Bundesgerichtshofs das wirtschaftliche Interesse des Markeninhabers an der Aufrechterhaltung seiner Marke (BGH, I ZB 39/19 v. 17.02.2020 – VENOM; I ZB 17/17 v. 29.03.2018 – H 15; I ZB 105/16 v. 18.10.2017 – Quadratische Tafelschokoladenverpackung; I ZB 52/15 v. 24.11.2016 – Sparkassen-Rot; I ZB 61/13 v. 30.07.2015 – Langenscheidt-Gelb). Dieses Interesse wird vom Bundesgerichtshof und mehreren Markensenaten des Bundespatentgerichts bei unbenutzten Marken und bei Marken, bei denen sich zu Art und Umfang der Benutzung keine Feststellungen treffen lassen, in der Regel mit 50.000,00 Euro beziffert (vgl. z.B. BGH, ZB 25/18 v. 28.05.2020 – Streitwertfestsetzung; I ZB 39/19 v. 17.02.2020 – VENOM; BPatG, 27 W (pat) 45/17 v. 14.10.2019 – Caught in The Act). Anhaltspunkte, die vorliegend ein Abweichen von diesem Regelgegenstandswert veranlassen würden, sind weder vorgetragen noch ersichtlich.

Rechtsmittelbelehrung

Gegen diesen Beschluss kann gemäß § 66 Markengesetz (MarkenG) das Rechtsmittel der **Beschwerde** eingelegt werden. Die Beschwerde steht den am Verfahren vor dem Deutschen Patent- und Markenamt Beteiligten zu. Sie hat aufschiebende Wirkung. Die Beschwerde ist **innerhalb eines Monats nach Zustellung des Beschlusses schriftlich** beim Deutschen Patent- und Markenamt einzu-legen. Das Schreiben muss per Post oder als Telefax im DPMA eingehen. Eine Einreichung per E-Mail ist unzulässig. Die Anschriften lauten:

Deutsches Patent- und Markenamt, 80297 München

Deutsches Patent- und Markenamt, Dienststelle Jena, 07738 Jena

Deutsches Patent- und Markenamt, Informations- und Dienstleistungszentrum, 10958 Berlin

Die **Beschwerde** kann stattdessen auch in **elektronischer Form** über die elektronische Annahmestelle des DPMA (nicht per E-Mail) eingereicht werden (§ 95a Abs. 1, Abs. 3 Nr. 1 MarkenG i. V. m. § 130a Abs. 1, 2 Satz 1, Abs. 5 und 6 Zivilprozessordnung (ZPO), § 12 der Verordnung über das Deutsche Patent- und Markenamt (DPMAV), §§ 1 ff. der Verordnung über den elektronischen Rechtsverkehr beim Deutschen Patent- und Markenamt (ERVDPMAV)). Die näheren (technischen) Voraussetzungen sind in der ERVDPMAV aufgeführt.

Innerhalb der Beschwerdefrist ist die **Beschwerdegebühr (Gebührenverzeichnis zum Patentkostengesetz (PatKostG) Nr. 401 100 = EUR 500,00)** auf das Konto der Bundeskasse Halle/DPMA für das Deutsche Patent- und Markenamt zu entrichten. Die Beschwerdegebühr ist für jeden Beschwerdeführer gesondert zu zahlen. Wird die Beschwerdegebühr **nicht, nicht vollständig oder nicht rechtzeitig gezahlt, so gilt die Beschwerde als nicht eingelegt (§ 6 Abs. 2 PatKostG)**.

Hinweise:

Bei der Zustellung durch die Post mittels Einschreiben durch Übergabe gilt dieses am 3. Tag nach der Aufgabe zur Post als zugestellt, es sei denn, dass das zuzustellende Dokument nicht oder zu einem späteren Zeitpunkt zugeworfen ist (§ 94 Abs. 1 MarkenG i. V. m. § 4 Abs. 2 Satz 2 Verwaltungszustellungsgesetz (VwZG)). Bei der Zustellung mittels Einschreiben mit Rückschein gilt diese an dem Tag als bewirkt, den der Rückschein angibt (§ 94 Abs. 1 MarkenG i. V. m. § 4 Abs. 2 Satz 1 Verwaltungszustellungsgesetz (VwZG)).

Bei der Zustellung durch die Post mit Zustellungsurkunde ist der Tag der Zustellung auf der übergebenen Abschrift der Zustellungsurkunde oder auf der übergebenen Sendung vermerkt.

Bei Zustellung ins Ausland mittels eingeschriebenen Briefs durch Aufgabe zur Post gilt dieser zwei Wochen nach Aufgabe zur Post als zugestellt (§ 94 Abs. 1 Nr. 1 MarkenG i. V. m. § 184 Abs. 2 Satz 1 ZPO).

Der Beschwerde und allen Schriftsätzen sollen Abschriften für die übrigen Beteiligten beigefügt werden.

Markenabteilung 3.4

Portmann
Leitender Regierungsdirektor

Wickenhöfer
Regierungsdirektor

Frosch
Regierungsdirektorin

Dieses Dokument wurde elektronisch signiert.



Abschrift vom **22.04.2024**

Aktenzeichen: **IR 1 515 050**

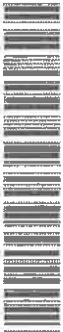
Diese Abschrift wurde als Ausdruck des folgenden elektronischen Dokuments erzeugt:

Beschluss Nichtigkeit Schutzentziehung
vom 17.04.2024

Das elektronische Dokument wurde gemäß der am **22.04.2024** durchgeführten Signaturprüfung qualifiziert signiert von:

Frosch	17.04.2024
Wickenhöfer	19.04.2024
Portmann	22.04.2024

Diese Abschrift wurde maschinell erstellt.



IR1515050

Zahlungshinweise Marken (nationale und internationale Markenregistrierung)

1. Geben Sie bitte bei allen Zahlungen das Aktenzeichen, den Namen des Anmelders bzw. des Inhabers und die Gebührennummer in deutlicher Schrift an.
2. Die Zahlung der Gebühr bestimmt sich nach der Patentkostenzahlungsverordnung (PatKostZV). Danach können Gebühren entrichtet werden durch

- a) Barzahlung bei den Geldstellen des Deutschen Patent- und Markenamtes in München, Jena und im Informations- und Dienstleistungszentrum in Berlin,
- b) Überweisung oder (Bar-)Einzahlung bei einem inländischen oder ausländischen Geldinstitut

Zahlungsempfänger:

Bundeskasse/DPMA
IBAN: DE84 7000 0000 0070 0010 54
BIC (SWIFT-Code): MARKDEF1700

Anschrift der Bank:

Bundesbankfiliale München
Leopoldstraße 234
80807 München

oder

- c) Erteilung eines gültigen SEPA-Basis-Lastschriftmandats mit Angaben zum Verwendungszweck. Bitte benutzen Sie hierfür die auf unserer Internetseite www.dpma.de bereitgestellten Formulare (A 9530 und A 9532) und beachten Sie die dort zur Verfügung stehenden Hinweise zum SEPA-Verfahren.

3. Als Einzahlungstag gilt gemäß § 2 PatKostZV

- bei Barzahlung → Tag der Einzahlung
- bei Überweisung → Tag der Gutschrift auf das Konto der Bundeskasse für das DPMA
- bei (Bar-)Einzahlung → Tag der Einzahlung

Wichtiger Hinweis zur Bareinzahlung:

Anhand der Buchungsdaten kann die Bundeskasse nicht erkennen, ob eine Gutschrift aufgrund einer Überweisung oder einer Bareinzahlung vorgenommen wurde. Wenn Sie die Gebühren mittels Bareinzahlung entrichtet haben, reichen Sie daher bitte unverzüglich den vom Geldinstitut ausgestellten **Einzahlungsbeleg** beim Deutschen Patent- und Markenamt ein, damit der Tag der Einzahlung als Zahlungstag gewährt werden kann.

- bei SEPA-Basis-Lastschriftverfahren → Tag des Eingangs eines gültigen SEPA-Mandats mit Angaben zum Verwendungszweck, der die Kosten umfasst, bei **zukünftig fällig** werdenden Kosten der Tag der Fälligkeit, sofern die Einziehung zugunsten der Bundeskasse für das DPMA erfolgt

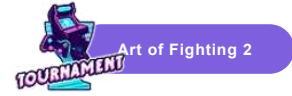
Wichtiger Hinweis zur Übermittlung eines SEPA-Mandats per Telefax:

Wenn Sie das SEPA-Basis-Lastschriftmandat durch Telefax übermitteln, reichen Sie bitte das Original innerhalb einer **Frist von einem Monat** nach Eingang des Telefax nach. Andernfalls gilt als Zahlungstag der Tag des Eingangs des Originals.

4. Die Anmeldegebühr und eventuelle Klassengebühren für die nationale Markenregistrierung sind Antragsgebühren, die mit der Antragstellung und Zahlung unabhängig vom Ausgang des Markeneintragungsverfahrens verfallen. Das heißt, die Anmeldegebühren können z. B. bei Rücknahme der Markenmeldung nicht zurückgezahlt werden. Dies gilt entsprechend für die nationalen Gebühren, die für die Anmeldung einer internationalen Marke bzw. für die nachträgliche Benennung zu einer internationalen Registrierung zu zahlen sind.

EXHIBIT BB

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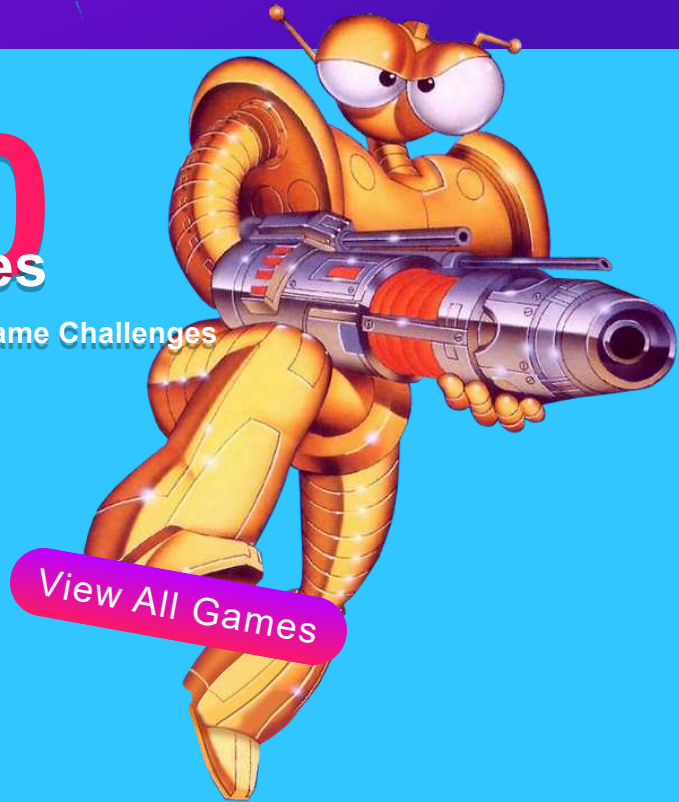
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Sent: Tuesday, June 25, 2024 00:51:31 EDT
To: XXXX
Subject: Official USPTO Notification: U.S. Trademark Application SN 98286262 -- Docket/Reference No. JOTTOEDGE

NOTICE OF ALLOWANCE (NOA)

ISSUE DATE: June 25, 2024

U.S. Serial Number: 98286262
Mark: JOTTO
Docket/Reference Number:

No opposition was filed for this published application. The issue date of this NOA establishes the due date for the filing of a Statement of Use (SOU) or a Request for Extension of Time to file a Statement of Use (Extension Request). WARNING: An SOU that meets all legal requirements must be filed before a registration certificate can issue. Please read below for important information regarding the applicant's pending six (6) month deadline.

SIX (6)-MONTH DEADLINE: Applicant has six (6) MONTHS from the NOA issue date to file either:

- An SOU, if the applicant is using the mark in commerce (required even if the applicant was using the mark at the time of filing the application, if use basis was not specified originally); **OR**
- An Extension Request, if the applicant is not yet using the mark in commerce. If an Extension Request is filed, a new request must be filed every six (6) months until the SOU is filed. The applicant may file a total of five (5) extension requests. **WARNING: An SOU may not be filed more than thirty-six (36) months from when the NOA issued. The deadline for filing is always calculated from the issue date of the NOA.**

How to file SOU and/or Extension Request:

Use the Trademark Electronic Application System (TEAS). Do **NOT** reply to this e-mail, as e-mailed filings will **NOT** be processed. Both the SOU and Extension Request have many legal requirements, including fees and verified statements; therefore, please use the USPTO forms available online at <https://www.uspto.gov/trademarks-application-process/filing-online> (under the "INTENT-TO-USE (ITU) FORMS" category) to avoid the possible omission of required information. If you have questions about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

For information on how to (1) divide an application; (2) delete goods/services (or entire class) with a Section 1(b) basis; or (3) change filing basis, see <https://www.uspto.gov/trademarks-getting-started/process-overview/additional-information-post-notice-allowance-process>.

FAILURE TO FILE A REQUIRED DOCUMENT OUTLINED ABOVE DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF THIS APPLICATION.

REVIEW APPLICATION INFORMATION FOR ACCURACY

If you believe this NOA should not have issued or correction of the information shown below is needed, you must submit a request to the Intent-to-Use Unit. Please use the "Post-Publication Amendment" form under the "POST-APPROVAL/PUBLICATION/POST NOTICE OF ALLOWANCE (NOA) AMENDMENT FORMS" category, available at <https://www.uspto.gov/trademarks-application-process/filing-online/post-approval/publication/post-notice-allowance-noa>. Do **NOT** reply to this e-mail, as e-mailed filings will **NOT** be processed.

Serial Number: 98286262
Mark: JOTTO
Docket/Reference Number:
Owner: EDGE Games Inc
 35 North Lake Avenue, Suite 710
 Pasadena, California 91101
Correspondence Address: EDGE Games Inc
 35 North Lake Avenue, Suite 710
 Pasadena, California 91101

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

028 Electronic interactive board games for use with external monitor; Puzzle board games -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED.


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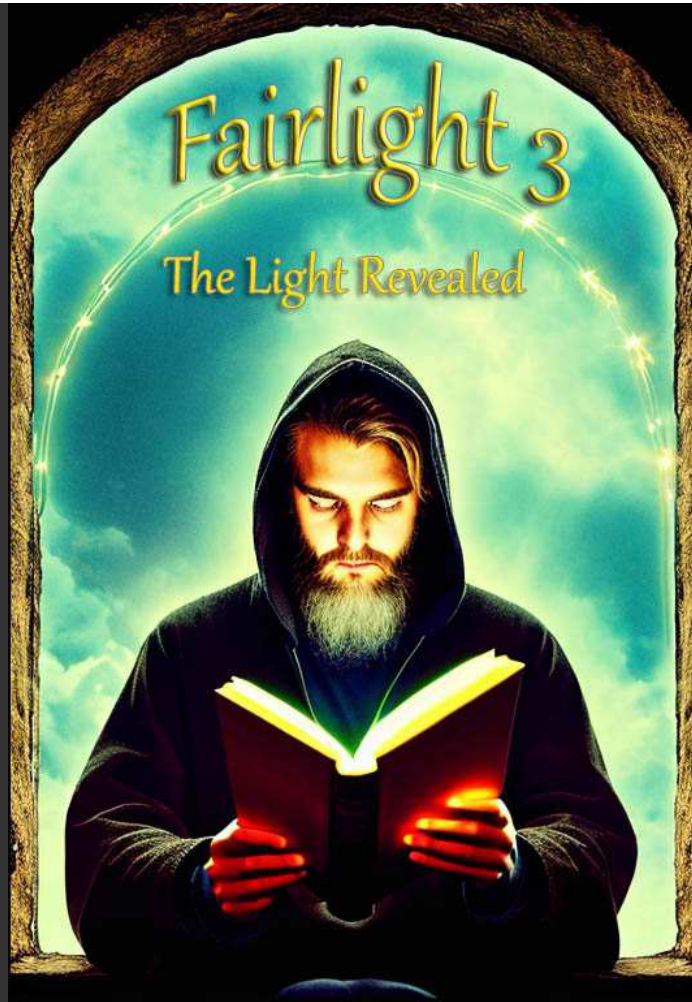
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4/29/2021

Cross Edge for PlayStation 3 (2009) - MobyGames

(<https://www.mobygames.com/search/quick?company=Capcom>), Nippon Ichi (<https://www.mobygames.com/search/quick?company=Nippon+Ichi>), Namco Bandai (<https://www.mobygames.com/search/quick?company=Namco+Bandai>) and Idea Factory. As players set about freeing the trapped souls supporting the nightmare world that they are stuck in, they engage in turn-based team battles. This is where the characters from previous games come in. Players must enlist them to join in party-based battles. Success in these battles is based on the ability to string together specific moves into chain attack sequences, which in turn unlock even stronger combinations when successful. Players can also increase their characters' stats and abilities by acquiring additional costumes called "forms" and redressing their characters in them. Female characters physical appearances can also be changed based on the form they're wearing.

The goal of the game is to release souls. You can find and collect souls by searching around area maps. Exposure to souls can grant players items or unlock events. Along with soul related events, maps will also point players to other helpful locations such as event points, points at which other events may occur, and save points, where you can save your game as well as buy, sell and trade items.

[edit description (<https://www.mobygames.com/contrib/revisions/at,10/oid,78540/>)]

Screenshots

There are no PlayStation 3 user screenshots for this game.

[add screenshots (<https://www.mobygames.com/game/sheet/contribute/screenshot/cross-edge/ps3/>)]

Promo Images

There are no promo images for this game

[add promo images (https://www.mobygames.com/game/sheet/contribute/game_promo/cross-edge/ps3/)]

Alternate Titles

- "クロスエッジ" -- *Japanese spelling*

[add alternate title (https://www.mobygames.com/game/sheet/contribute/alt_title/cross-edge/)]

Part of the Following Group

- Franchise crossovers (<https://www.mobygames.com/game-group/franchise-crossovers>)

User Reviews

There are no reviews for this game.

[review game (https://www.mobygames.com/game/sheet/review_game/cross-edge/)]

Critic Reviews

Eurogamer.net (UK) (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Sep 09, 2009	7 out of 10	70
Gaming Nexus (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Sep 28, 2009	6.5 out of 10	65
ZTGameDomain (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Jan 20, 2011	6 out of 10	60
Cheat Code Central (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	2009	2.8 out of 5	56
Extreme Gamer (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Aug 12, 2009	55 out of 100	55
Play.tm (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Sep 22, 2009	55 out of 100	55
RPGFan (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	May 28, 2009	53 out of 100	53
Worth Playing (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Jun 22, 2009	5.2 out of 10	52
IGN (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	May 29, 2009	3.5 out of 10	35
RPG Site (https://www.mobygames.com/game/ps3/cross-edge/mobyrank)	Sep 17, 2009	3 out of 10	30

[see more rankings (<https://www.mobygames.com/game/cross-edge/mobyrank>) | add review (<https://www.mobygames.com/game/cross-edge/contribute/mobyrank/>)]

Forums

There are currently no topics for this game.

[new thread (<https://www.mobygames.com/game/ps3/cross-edge/forums/dga,1/dgm,-1/>)]

Trivia

There is no trivia on file for this game.

[add trivia (<https://www.mobygames.com/game/sheet/contribute/trivia/cross-edge/ps3/>)]

Gladius_25s (<https://www.mobygames.com/user/sheet/userSheetId,279694/>) (22) added **Cross Edge** (PlayStation 3) on Jan 17, 2017



(<https://www.antstream.com>)

Credits (159 people)

Cast

Mika:

Rina Sato (<https://www.mobygames.com/developer/sheet/view/developerId,625632/>)

Anesha:

Amika Takahashi (<https://www.mobygames.com/developer/sheet/view/developerId,363592/>)

Troy:

Takahiro Mizushima (<https://www.mobygames.com/developer/sheet/view/developerId,294835/>)

Cece:

Chihiro Aikawa (<https://www.mobygames.com/developer/sheet/view/developerId,632080/>)

Vivi:

Mai Kadowaki (<https://www.mobygames.com/developer/sheet/view/developerId,524338/>)

Mimi:

Jun Miruno (<https://www.mobygames.com/developer/sheet/view/developerId,525097/>)

York:

Satoshi Hino (<https://www.mobygames.com/developer/sheet/view/developerId,533938/>)

May:

Sakura Nogawa (<https://www.mobygames.com/developer/sheet/view/developerId,524776/>)

Raizen:

Hiroshi Shirokuma (<https://www.mobygames.com/developer/sheet/view/developerId,213545/>)

Augustine:

Shigeru Shibuya (<https://www.mobygames.com/developer/sheet/view/developerId,201172/>)

Judas:

Takayuki Sakazume (<https://www.mobygames.com/developer/sheet/view/developerId,437804/>)

Lazarus:

Masayuki Kato (<https://www.mobygames.com/developer/sheet/view/developerId,68947/>)

Lyner:

Masahide Fuse (<https://www.mobygames.com/developer/sheet/view/developerId,525092/>)

Aurica:

Ui Miyazaki (<https://www.mobygames.com/developer/sheet/view/developerId,524341/>)

Misha:

Sakura Nogawa (<https://www.mobygames.com/developer/sheet/view/developerId,524776/>)

Shurelia:

Kanako Sakai (<https://www.mobygames.com/developer/sheet/view/developerId,525093/>)

Ayatane:

Shota Kibe (<https://www.mobygames.com/developer/sheet/view/developerId,525096/>)

Bound:

Tomoya Kawai (<https://www.mobygames.com/developer/sheet/view/developerId,455464/>)

Demitri:

Nobuyuki Hiyama (<https://www.mobygames.com/developer/sheet/view/developerId,114149/>)

Felicia:

Kae Araki (<https://www.mobygames.com/developer/sheet/view/developerId,101425/>)

Morrigan:

Yayoi Jingūji (<https://www.mobygames.com/developer/sheet/view/developerId,453946/>)

Lilith:

Yuka Imai (<https://www.mobygames.com/developer/sheet/view/developerId,123817/>)

Jedah:

Isshin Chiba (<https://www.mobygames.com/developer/sheet/view/developerId,57296/>)

Etna:

Tomoe Hanba (<https://www.mobygames.com/developer/sheet/view/developerId,481691/>)

Prinny:

Junji Majima (<https://www.mobygames.com/developer/sheet/view/developerId,280821/>)

[complete credits (<https://www.mobygames.com/game/ps3/cross-edge/credits>)]

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Cross Edge (PS3)

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 🇪🇺 09/25/09 NIS Europe

0.14m

Weekly sales history for Cross Edge (PS3)

Summary of weekly unit sales from launch broken down by region (for first 20 weeks of sale) (limited to top 20 for non-members)

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Week	Americas	Japan	EMEA	Worldwide	Running Total
1	21,520	26,882	N/A	48,402	48,402
2	7,338	6,435	N/A	13,773	62,175
3	4,114	3,204	N/A	7,318	69,493
4	2,735	2,230	N/A	4,965	74,458
5	2,967	1,606	N/A	4,573	79,031
6	3,587	1,429	N/A	5,016	84,047
7	3,984	1,187	N/A	5,171	89,218
8	4,087	981	N/A	5,068	94,286
9	4,009	859	N/A	4,868	99,154
10	3,672	638	N/A	4,310	103,464
11	3,305	467	N/A	3,772	107,236
12	3,179	328	N/A	3,507	110,743
13	2,826	342	N/A	3,168	113,911
14	2,301	488	N/A	2,789	116,700
15	1,570	577	N/A	2,147	118,847
16	1,195	322	N/A	1,517	120,364
17	1,118	243	N/A	1,361	121,725
18	899	226	N/A	1,125	122,850
19	547	234	N/A	781	123,631
20	331	215	N/A	546	124,177
Totals:	91,077	49,803	0	140,880	

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VGChartz is internationally recognised as the number one free online source for the latest videogame industry figures and trends. Our numbers have been cited and featured by a number of leading worldwide publications such as Reuters TV, The BBC, CNN Money, The New York Times, Fortune, Business 2.0, Forbes, The New York Post, The Telegraph, The Guardian, The Times, Süddeutsche Zeitung, The Birmingham News, The Toronto Star, The Indianapolis Star, The Inquirer, NU.nl, CNet, Seeking Alpha, O'Reilly Radar, Yahoo Games and The Guinness Book of World Records.

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Cross Edge

Written by Matt Mirkovich (/StaffMember/13/MattMirkovich/) on 9/28/2009 for PS3

More On: [Cross Edge \(/ContentByProduct/4040/Cross-Edge\)](/ContentByProduct/4040/Cross-Edge)

I'll be the first to champion the works of NIS America, they are responsible for bringing some great titles to gamers in America, and they usually pick some great titles to bring over and do an excellent job on localization. Cross Edge is the latest in their efforts at trying to get a J-RPG to do well in America on the PS3. Unfortunately they happened to pick this rather sad title to bring out. If it's not the boring character development, or the incredibly slow to start story, or worst of all the crummy battle system marring the experience, it will probably be the insane difficulty and the terrible menu navigation keeping you from making any forward progress. Sad to say that the development team Compile Heart managed to muck up a number of good franchises with this crossover title, and really it could have all been so much better with just a few small changes.



First lets talk about the story. It takes forever to get rolling. The main characters York (York, seriously?) and Miko, find themselves in a land where souls are lost, like a forgotten memory (yeah they say that in game), and they need some help getting home. Along the way you run in to a number of characters from various Japanese stables, including Capcom, Idea Factory, NIS, and Gust. Peppered in between these events is the actual story which revolves around three 'children' who like to devour souls but don't look like they could be bothered to pick up a heavy weapon, so they send the bad guys of the various stables off to get rid of you meddling kids. Though really the story is so weakly put together it's just a matter of running into good characters who will join you at a moments notice, and then the bad guys all team up together and we can have one massive brouhaha of good versus evil. Good can win and we can all go celebrate with cake and ice cream while the evil team heads back to their respective home worlds to plot dastardly deeds and poison water supplies for their mirth and merriment. And along the way we can have a few people switch sides at unexpected (not really) intervals and we can act like we didn't see it coming when the foreshadowing happened back in the first few hours of the game.

If you can somehow get past the lacking story you'll have a hell of time even getting in to the game thanks to the insane difficulty. I had to use healing items in the first battle I fought, and it wasn't part of a tutorial, it was the game handing me monsters that were far beyond my abilities from the outset of the game. Granted I can swap out fallen comrades with fresh team members but it doesn't get any easier either once you start reaching some of the other worlds, where monsters that look harmless can wipe out the party in just one turn, negating the ability to swap people. Make sure you're saving often, otherwise expect a lot of repetition. NIS has posted some DLC for the title that I had hoped would be a help, but even at the outset with these slightly more powerful items battles were no easier.



The battle system itself is a contributing factor to this difficulty. You are allowed four party members in to a party and you can swap them in and out as you see fit and in a battle there are twelve positions on the field for the player and the enemies. Now here is where things get a bit dicey and stupid. Characters are incredibly limited to the areas where they can hit. Where Suikoden kept it simple with the short, mid, and long range attacks, Cross Edge has a proprietary assignment scheme determining where character attacks go. Why the hell can't my main character, who is wielding guns, target any enemy on the field? Same goes for characters who throw things, or cast magic. So rather than make it so your character can attack anywhere instead you have to move them on the field which will cost them extremely valuable Action Points that go toward attacks. Yes there is an AP system involved and it's somewhat close to that of Valkyrie Profile, but rather than have one character mapped to each face button instead you have each character's attacks mapped to the face button and you rotate between characters using the shoulder buttons. And while this all works in theory, you have the problem of accruing AP between rounds at a random pace. Seriously I never understood how much AP I was going to gain back on a turn, or even

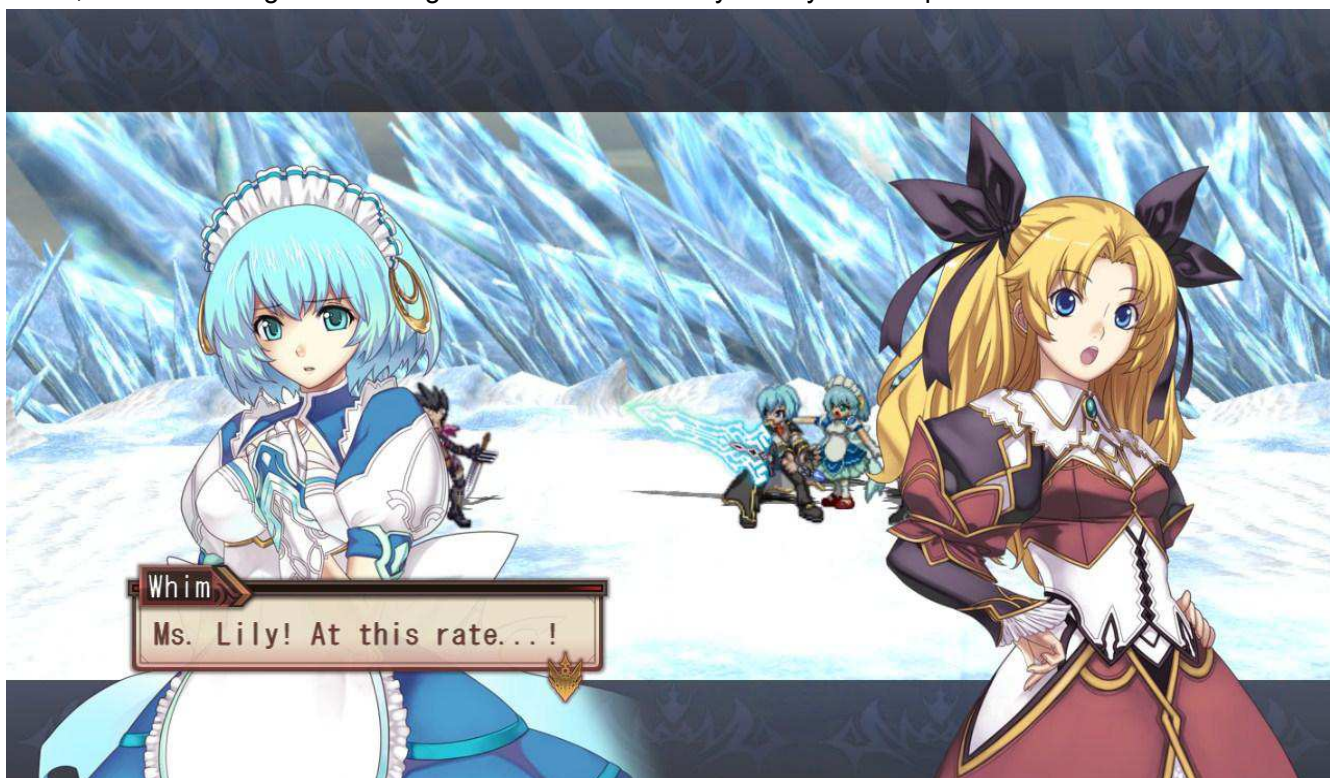
determined by the agility of your characters and their never gives you a clear idea when your turn is going to come. Also I find it strange that it is somehow beneficial to me to skip my first turn only to get a second turn immediately with more AP. If that were the case couldn't the computer do the same thing? There is a static way to increase your AP, and that is accomplished by draining one of the myriad of bars associated with an enemies health, and you do that by launching combo attacks by sequencing attacks with specific team members. These combos need to be discovered and aren't always obvious, but once you get them down your combo list will start to fill out and eventually you'll have staggering attacks involving your entire team.



Outside of battle the frustration only grows, especially when it comes to character growth. Let's say you have saved up some cash and you want some awesome new armor. Guess what, you can't just outright buy it. No, you need to do the following: buy the recipe for the item (the recipes themselves don't even tell you what items they make), collect the materials for the item (one of the materials being the item you want to make!), then pay a fairly large sum of money for the creation of the item (again paid to a member of your party), pray that the process is over while watching a cut scene (you can skip these thankfully), and then yes you have your shiny new piece of equipment, and it can be purchased outright. Now, this process of item creation is not a regular occurrence and this is because the items can be leveled up to hold you over longer. This is accomplished via spending another set of points earned during battle. These points can be used to level an item up to level five, and from there the item can be transmuted to an item used in future item creation. And then there is a whole other system that allows you to increase individual stats for an item by using other components to strengthen it. It's a mish-mash of ideas and it is really confusing. Let me just find a shop and shell out cash for items. If I have the items to create a new one let me do that, and make them reasonably powerful rather than constantly have to spend points to increase

having done all this nonsense, and then getting in to a fight, and losing, whoops there went a half hour of your time.

NIS has a habit of bringing titles out that really aren't up to snuff graphically for PS3 games, and Cross Edge is no exception. This game is incredibly poor looking, which is kind of hard considering that Disgaea 3 was pretty weak graphically as well and you'd think people would take lessons from that experience. Characters are simple 2-D affair with a decent amount of animation, but overall don't look like they would tax the PS3 any more than they would a PS2. Some monsters are a different matter though, with decent looking beasts that are in 3-D, but at the cost of massive slowdown, why this happens at all is perplexing. A lot of enemies also have a very generic attack animation that is used for each of their attacks, be they close or long range. Audio is also a very forgettable affair, the voice acting is decent, and the music is nothing spectacular. I like that time was spent to get the teams to speak under specific conditions in battle, like when things are looking bleak someone will try to rally the troops.



I went in to Cross Edge being very excited about the prospect of having a game with characters from a bunch of my favorite games all wrapped up in to a combo-centric battle system and epic story, and then I put the game in to my PS3, and all hope was lost. The game's insane difficulty and terrible treatment to the end user is completely off-putting. I've been waiting for a PS3 RPG to take down some of the great RPGs on the 360 and even the PS2, and unfortunately Cross Edge will just dig the hole deeper for Valkyria Chronicles to climb out of. Don't be fooled by the substandard price of Cross Edge, because you're really getting a sub-standard game.

the characters and their respective franchises.

Rating: 6.5 Below Average

* The product in this article was sent to us by the developer/company.



(<https://www.gamingnexus.com/Images/Article/xynohm2367/1.jpg>)



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(<https://www.gamingnexus.com/Images/Article/xynohm2367/9.jpg>)



About Author

In a past life I worked with Interplay, EA, Harmonix, Konami, and a number of other developers. Now I'm working for a record label, a small arm of casual games in a media company along with Gaming Nexus, and anywhere else that sees fit to employ me.

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Gameplay Graphics Sound Value Summary
Screenshots

PS3 Review

A B C D E F G H I J K L



OVERVIEW

Reviewed: June 15, 2009
Reviewed by: Jason Flick

Publisher
NIS

Developer
Idea Factory

Released: May 26, 2009

Genre: RPG
Players: 1

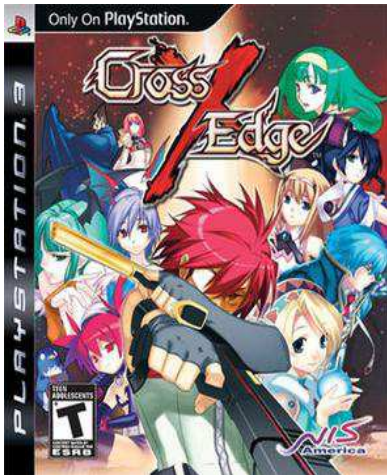
Gameplay: 7
Graphics: 5
Sound: 7



Video game mash-ups are more and more inevitable as the years go by. Square and Disney gave us Kingdom Hearts, Capcom and Marvel have their own fighter, and Nintendo has their widely popular Smash Bros franchise. All of these titles speak for themselves by the truckload. So when **Cross Edge**, a PS3 RPG title featuring characters from Capcom, Gust Co., Namco Bandai Games, Idea Factory and Nippon Ichi Software landed on my desk I rather had high hopes. All of these companies have good games, some even bordering on fantastic, so I couldn't wait to give Cross Edge a try.

Now if you're wondering who over half of the developers are in Cross Edge you're probably not alone. Only two will likely be familiar to most of North America, Capcom and Namco Bandai. The other three companies will probably only be known if you are a reviewer like me or play games niche RPG titles like Mana Khemia 2: The Fall of Alchemy, Altier Marie, Spectral Souls and Ar tonelico: Melody of Elemia. So without further wait I give you my review of Cross Edge for the PlayStation 3.

Cross Edge is a tactical Japanese RPG like most of the works that get published by NIS. The main story revolves around the main characters York Neely, and Miko Aiba as they are yanked into a world created by forgotten and banished ideas of five different worlds. That's where the different developers come in. The rulers of



EDGE004194

Cross Edge

Cross Edge (クロスエッジ, *Kurosu Ejji*) is a role-playing video game for the PlayStation 3 and Xbox 360. The game was developed by Idea Factory with characters from games by Capcom, Nippon Ichi Software, Bandai Namco, and Gust Corporation. Released on September 25, 2008 in Japan, the game features turn-based battles, a plot that involves rescuing souls, and the ability to dress the female characters of the player's party in a wide variety of outfits.

Cross Edge features characters from *Darkstalkers*, *Disgaea*, *Ar Tonelico: Melody of Elemia*, *Spectral Souls: Resurrection of the Ethereal Empires*, *Blazing Souls*, *Atelier Marie* and *Mana Khemia 2: Fall of Alchemy*.^[1] NIS America published the game in North America, and it was released for that region on May 26, 2009. The Korean version of the PlayStation 3 release lacked PlayStation trophies support.

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Music

Reception

References

External links

Plot

Gameplay

Cross Edge	
	
Developer(s)	<u>Idea Factory</u> ^[1]
Publisher(s)	PlayStation 3 JP: <u>Compile Heart</u> ^[3] NA: <u>NIS America</u> ^[2] EU: <u>NIS America</u> AU: <u>Koei</u> ^[4] Xbox 360 JP: <u>Compile Heart</u> ^[5]
Platform(s)	<u>PlayStation 3</u> , <u>Xbox 360</u>
Release	PlayStation 3 JP: September 25, 2008 NA: May 26, 2009 ^[2] EU: September 18, 2009 ^[4] AU: September 28, 2009 Xbox 360 JP: October 1, 2009
Genre(s)	<u>Tactical role-playing game</u>

Cross Edge is a traditional Japanese role-playing game complete with world map, random battles, level grinding, item combining/creation using alchemy, etc. It also features heroes and villains from game franchises published by Gust, Capcom, Nippon Ichi, Namco Bandai and Idea Factory. As players set about freeing the trapped souls supporting the nightmare world that they are stuck in, they engage in turn-based team battles. This is where the characters from previous games come in. Players must enlist them to join in party-based battles. Success in these battles is based on the ability to string together specific moves into chain attack sequences, which in turn unlock even stronger combinations when successful. Players can also increase their characters' stats and abilities by acquiring additional costumes called "forms" and redressing their characters in them. Female characters physical appearances can also be changed based on the form they're wearing.

The goal of the game is to release souls. You can find and collect souls by searching around area maps. Exposure to souls can grant players items or unlock events. Along with soul related events, maps will also point players to other helpful locations such as event points, points at which other events may occur, and save points, where you can save your game as well as buy, sell and trade items.

Characters

Original characters

- **Yōto Kannagi** (遥太 勘敷, *Kannagi Yōto*)

Voiced by: Satoshi Hino

The main hero. His name in the North American version was changed to York Neely. He is a childhood friend with Troy and Miko and, thanks to Miko, is a straight A student. His father is renowned fighter and York is a master of jujitsu. However, he began to tire of "obsolete" fighting styles and got into gunplay instead.

- **Mikoto Aiba** (遥太 愛, *Aiba Mikoto*)

Voiced by: Rina Satō

The main heroine; her first name is shortened to Miko in the North American version. A friend of Yōto and Tōya. She lives with York since her parents died and had the ability to "see spirits" but it faded and she became a normal girl. She fights with a naginata and likes to clean Yōto's room.

- **May** (メイ, *Mei*)

Voiced by: Sakura Nogawa

A character that Yōto met in the world. She is a NPC that frees souls from the various realms that are explored. Despite her childish demeanor, she surprises the group with her maturity and open-mindedness.

- **Vivi** (遥太 遥太, *Vivi*)

Voiced by: Mai Kadowaki

One of the caretakers of the world. He is the oldest among the triplets, yet his shy and weak personality leads to him being bullied and pushed around by his younger siblings. Vivi is also the only one who can hear the "will" of the Emprereal One.

- **Iruma** (イルマ, *Iruma*)

Voiced by: Chihiro Aikawa

One of the caretakers of the world. She, Vivi, and Eruma are triplets. In the North American version, her name is Cece. She tries to hide her true doubts and feelings behind a strong-willed personality, and often described as the voice of rationality between the triplets. Iruma also acts the most maturely among them, and designates orders to the Twelve Knights according to the Empyreal One's will.

- **Eruma** (エルマ, *Eruma*)

Voiced by: Jun Miruno

The youngest of the triplets. In the North American version, her name is Mimi. She is quite impish and playfully cruel, thinking of others around her except Iruma as toys and the chain of events happening is only a game in her eyes. The one thing Vivi fears more than anything is when Eruma starts to get bored.

- **Anesha** (アネーシャ, *Anesha*)

Voiced by: Amika Takahashi

- **Judas** (ジューダス, *Judasu*)

Voiced by: Takayuki Sakakuma

- **Troy Ijin** (イジン トロイ, *Ijin Troy*)

Voiced by: Takahiro Miushima

Yuto's best friend. In the North American version, his name is Troy.

- **Raijin**

Voiced by: Hiroshi Shimukuma

- **Lazarus**

Voiced by (English): Keith Silverstein^[6]

Voiced by (Japanese): Masayuki Kato

One of the Twelve Knights. He's a carefree, eternally optimistic gunman. He often appears bored and lazy, but his ability with a gun is amazing. He's always excited to find a challenger willing to fight to the death. But until now, he never really took fighting seriously. If his enemy is weakened, he will refuse the killing blow even if given a direct order. Surprisingly, his strength can nearly match Judas's, which may explain why he often seems uninterested in his surroundings.

- **Augustine**

Voiced by: Shigeru Shibuya

The most cruel, merciless, and brutal of the Twelve Knights. He's obsessed with hunting down those who are brought into his world, and will achieve his goals by any means necessary. This bloodlust causes him to often butt heads with Raijin. He's not happy that certain outsiders have been accepted as part of the Twelve Knights, despite the facade he puts on in front of his superiors. In his eyes, these newcomers are simply stealing his rightful kills.

In the post game, he is called Augee or Augustink.

Atelier Marie characters

- **Marlone** (マルローネ, *Marurone*)

Voiced by: Haruna Ikegawa

She is the main character and only representative of *Atelier Marie* and is known for having the lowest GPA in the academy. Her nickname is Marie. This is Marie's second appearance in North America, after her costume cameo in Ar tonelico: Melody of Elemia, but technically her first physical appearance as a character.

Mana-Khemia 2 characters

- **Liliane Vehlendorf** (リリアーナ・ヴェーレンドルフ, *Ririonu Vrendorufu*)

Voiced by: Rina Satō

In the North American version, her nickname is Lily.

- **Roeluxe Meiten** (ロゼリュクス・マイツェン, *Roeryukusu Maitsen*)

Voiced by: Daisuke Ono

In the North American version, his name is changed to Raie.

- **Whim** (ウィム, *Wimu*)

Voiced by: Mai Kadowaki

Liliane's maid who has to put up with her temper tantrums from time to time. She is actually a water mana.

- **Rewrich Wallach** (ルウリッヒ・バラハ, *Rrihhi Baraha*)

Voiced by: Ikuji Nose

In the North American version, his name is changed to Reicher.

Darkstalkers characters

- **Demitri Maximoff** (デミトリ・マキシモフ, *Demitori Makishimofu*)

Voiced by: Nobuyuki Hiyama

One of the main characters of the *Darkstalkers* series alongside Morrigan. He is a vampire that can shape-shift into a bat-like monster and lives as a noble of the Makai.

- **Morrigan Aensland** (モリガーン・アーランド, *Morigan Ansurando*)

Voiced by (English): Erin Fitzgerald^[7]

Voiced by (Japanese): Yayoi Jinguji

One of the main characters of the *Darkstalkers* series alongside Demitri. Morrigan is a succubus who fights for her desires and pleasure. She is the first recruited character that joins York and Miko, and also the first to figure out how the Cross Edge world works.

- **Felicia** (フェリシア, *Ferishia*)

Voiced by: Kae Araki

A cheerful and kind-hearted catgirl who never wants to hurt anyone.

- **Lilith** (リリス, *Ririsu*)

Voiced by: Yuka Imai

A younger succubus who is exceedingly cruel. She is part of Morrigan's soul which was split in two years ago in the Makai.

- **Jedah Dohma** (ジェダ・ドーマ, *Jeda Dōma*)

Voiced by: Isshin Chiba

The head of the Dohma clan of the Makai. He constantly views existence as a stage on which everyone must perform, and has a habit of making eloquent if not longwinded speeches.

Disgaea characters

- **Etna** (エトナ, *Etona*)

Voiced by: Tomoe Hanba

- **Prinny** (プリニー, *Purinī*)

Voiced by: Junji Majima

Ar Tonelico characters

- **Lynér Barsett** (ライナー・バルセルト, *Rainō Baruseruto*)

Voiced by: Masahide Fuse

- **Aurica Nestmile** (オリカ・ネストミール, *Orika Nesutomīru*)

Voiced by: Ui Miyaaki

- **Misha Arsellec Lune** (ミシャ・アルトセルク・リューン, *Misha Arutoseruku Ryūn*)

Voiced by: Sakura Nogawa

- **Shurelia** (シュレリア, *Shureria*)

Voiced by: Kanako Sakai

- **Ayatane Michitaka** (アヤタネ ミチタカ (アヤタネ・ミチタカ), *Ayatane Michitaka*)

Voiced by: Shota Kibe

- **Bourd Rade** (ボルド・レード, *Borudo Rado*)

Voiced by: Tomoya Kawai

Spectral Souls characters

- **Meu** (ミュウ, *Myu*)

Voiced by: Ai Nonaka

Meu is quite energetic and very outspoken, as she is stubborn and can be silly at times. She strives to become a great hero like her grandfather and has much potential, certain she will become one.

Blazing Souls characters

- **Zelos** (ゼロス, *Zerosu*)

Voiced by: Masayuki Kato

Music

The opening theme for the game is *Blade of Tears* by Haruka Shimotsuki.^[8]

Reception

Reception	
Aggregate score	
Aggregator	Score
<u>Metacritic</u>	PS3: 52/100 ^[9]
Review scores	
Publication	Score
<u>Famitsu</u>	23 out of 40
<u>GameZone</u>	4.5/10
<u>IGN</u>	3.5/10
<u>OPM (US)</u>	3/5
<u>Tech-Gaming</u>	B ^[10]
<u>Diehard GameFAN</u>	Very Good ^[11]
<u>GameShark</u>	D- ^[12]

Cross Edge received mixed reviews. *PlayStation Official Magazine US* gave it a 3/5 citing technical issues: "From dialogue that loads one line at a time to the lack of PS3-level graphics (high-res static art aside), everything seems like a remnant from the early 2000s."^[13] *IGN* gave a score of 3.5 out of 10, stating "A game that could have been an entertaining compilation of iconic Japanese characters turned out to be a frustrating, awkward mess of menus, gameplay imbalances and annoying dialogue scenes." GameZone's review also gave a low score of 4.5 out of 10.^[14] Sales of the game totalled just 44,246 units in the region by the end of 2008 according to *Famitsu*.^[15]

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External links

- [Official website \(https://web.archive.org/web/20080728093844/http://www.compileheart.com/xedge/\)](https://web.archive.org/web/20080728093844/http://www.compileheart.com/xedge/) (in Japanese)
 - [Cross Edge \(https://www.mobygames.com/game/cross-edge\)](https://www.mobygames.com/game/cross-edge) at [MobyGames](#)
-

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The Loss of a Friend - Rogue Sniper
June 14, 2019

TWITCH TEAM
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UPCOMING CSGO EVENT
Gun Game June 12, 2019
June 11, 2019



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June 15, 2019 David

Continuing on with the success of our Nameless Podcast series, we are proud to announce that Episode 5 of the

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eGO News

The Loss of a Friend - Rogue Sniper

June 14, 2019 Austin

These posts are never fun to make. The few we have had to make are a few too many. June





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EdgeGamers Stream Team Returns
June 12, 2019

Gun Game - June 12, 2019
June 11, 2019

Edifice Night - June 11, 2019
June 10, 2019

June Community Spotlight Voting
June 9, 2019

eGO News
EdgeGamers Stream Team Returns
June 12, 2019 | Aaron
EdgeGamers introduces our Twitch Stream Team. We are looking for dedicated, hard working content creators who enjoy streaming their gaming.

Counter-Strike **eGO News**
Gun Game - June 12, 2019
June 11, 2019 | David
Calling Counter-Strike: Global Offensive players! Join us Wednesday, June 12, 2019 for our next event, Gun Game.
Event Date: June

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Insurgency: Sandstorm Updates and Highlights



eGO News
Insurgency: Sandstorm Updates and Highlights
December 18, 2018 David
When we launched our Insurgency: Sandstorm Server, our expectations were of course high, but filling FIVE 32 slot servers was



Counter-Strike eGO News
CSGO: Danger Zone

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Community Spotlight Archive	Threads: 8	Messages: 8	[February 2020] kaZZ Later today at 12:58 AM - xValence
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Suggestions Completed	Threads: 1.1K	Messages: 12.6K	kiss ❤️ reaction Later today at 4:06 AM - ghost

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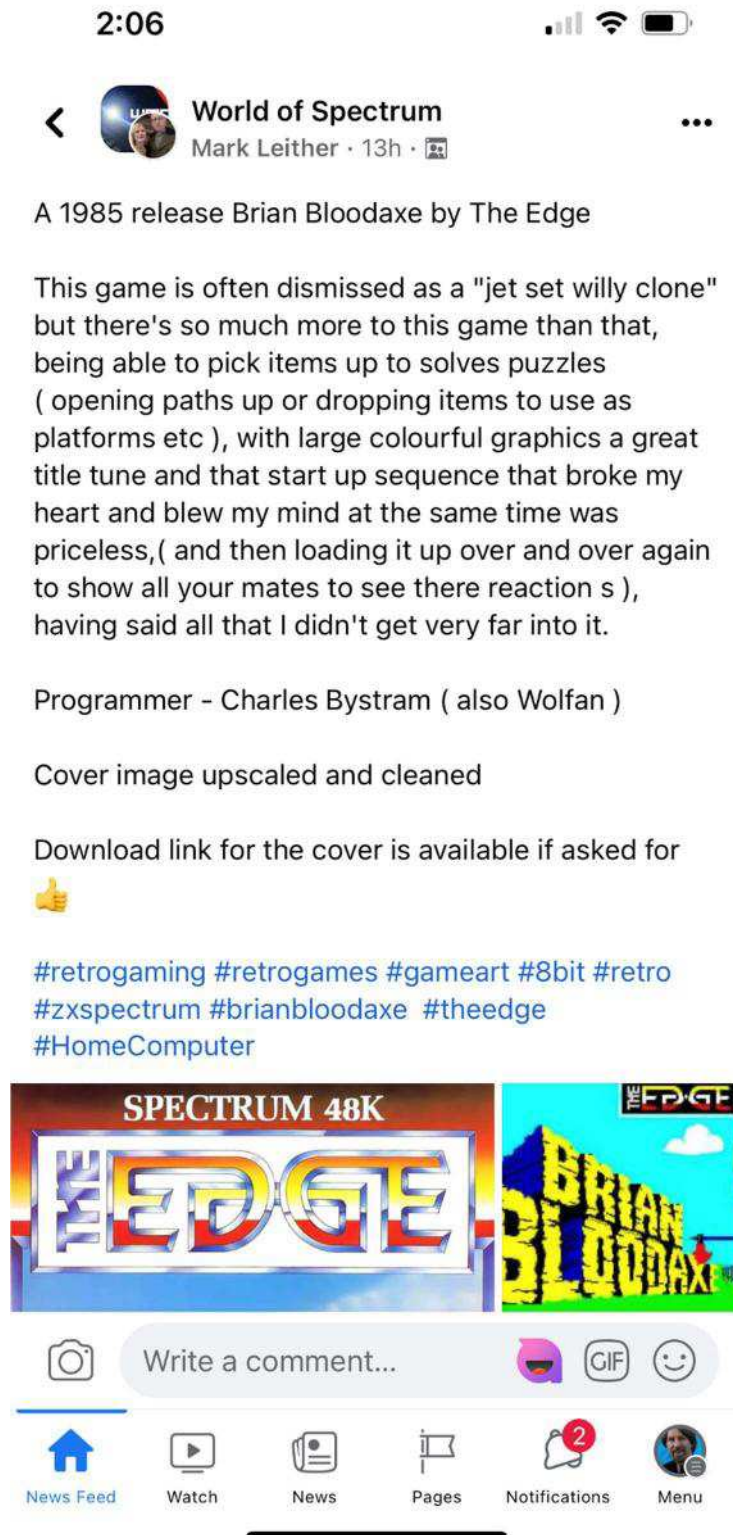
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Introductions	Threads: 903	Messages: 11.2K	What's up Later today at 3:39 AM - ghost
General Chatter	Threads: 14K	Messages: 216.6K	I Folded and Made a TikTok Later today at 6:16 AM - Smoke
General Gaming	Threads: 13.5K	Messages: 133K	scary games Later today at 3:36 AM - ben71380
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World of Spectrum

Mark Leither · 13h · 📷



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Tim Langdell

If I recall correctly, Charles started designing BBA before Jet Set Willy came out. But at the time I was a huge Monty Python fan, which shows in the artwork I designed m, the advertising and some of the game design itself. Fun game!

Just now Like Reply



David Burman

Loved this game, one of my all time fave platformers. Loved how you could use bombs to create ways to other screens

49m Like Reply



John Hold

Another game that Mark has reminded me about, completely forgot about this one!

1h Like Reply



Mark Leither

[John Hold](#) so many quality games on the spectrum and so many years have passed to forget about them



Write a comment...



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World of Spectrum

Mark Leither · 13h ·



Robin Higgs

I remember falling off my seat when I realised that the bomb could be used to remove walls and floors (and ceilings).
Woah, the worlds first sandbox game?

10h Like Reply



Martin Horsfield

Thanks to its culty humour, this is my favourite of the less-celebrated Spectrum games. This and Everyone's a Wally really showed some innovation.

10h Like Reply



Robert Hazelby

One of my favourite games on the Spectrum. My brother and I played this for hours. I managed to complete the first part by getting the Crown Jewels, but didn't find the holy grail.

My brother used to try and make the game crash by blowing up the hand of God. Sometimes it worked and sometimes not.

Amazing game.

11h Like Reply



Paul Johnson



Write a comment...



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News



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2:07



World of Spectrum

Mark Leither · 13h · 📷



I fell for that fake crash at the beginning. Funny looking back. If only I was patient and waited and then I would have realised

A great game and loved the way you could jump and your helmet would get stuck in the roof due to the horns

A great speccy memory

11h Like Reply



Esko Tarkka

A bit of influence from Monty Python crew? Life of Brian logo, the name Brian... even Gilliam-style cartoon hand etc 😂 But I suppose Pythons would've been fine with this one 😊

12h Like Reply



Igor Serraino

absolute legend. I never finished it

12h Like Reply



Jonathan Reichelt

[James Reichelt](#) here we go. Didn't you wear the tape out?



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EDGE004480

2:07



World of Spectrum

Mark Leither · 13h · 📷



Jonathan Reichelt

[James Reichelt](#) here we go. Didn't you wear the tape out?

12h Like Reply



Dave Cook

Quite difficult to load sometimes due to the really high baud rate but a game that I remember fondly. Used to play this a lot.

13h Like Reply



Mark Leither

[Dave Cook](#) the irony of the fake crashing was real 😂😂

11h Like Reply



Write a reply...



Paul Tweedlie

This game was fantastic. Loved the part when I get the axe. Wasted many hours on this.

13h Like Reply



Chris Green

I don't remember playing it at the time so I'm gonna give this a spin tonight!



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2:07




  **World of Spectrum**
Mark Leither · 13h · 

 **Mark Leither**
Dave Cook the irony of the fake crashing was real 😂😂
11h Like Reply 1 😂





 Write a reply...

 **Paul Tweedlie**
This game was fantastic. Loved the part when I get the axe. Wasted many hours on this.
13h Like Reply 1 ❤️

 **Chris Green**
I don't remember playing it at the time so I'm gonna give this a spin tonight!
1h Like Reply

 **John Camp**
Cracking game. Never got very far but loved it. Must try again, maybe I'll be better after a 37 year break !!!
9h Like Reply 1 😂

 **Denny Menato**
Very nice, another gem never played that I have to do!
11h Like Reply

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EDGE004482

1986 FAIRLIGHT by EDGE GAMES remembered on FaceBook in 2022
Downloaded by Dr Tim Langdell, October 10, 2022

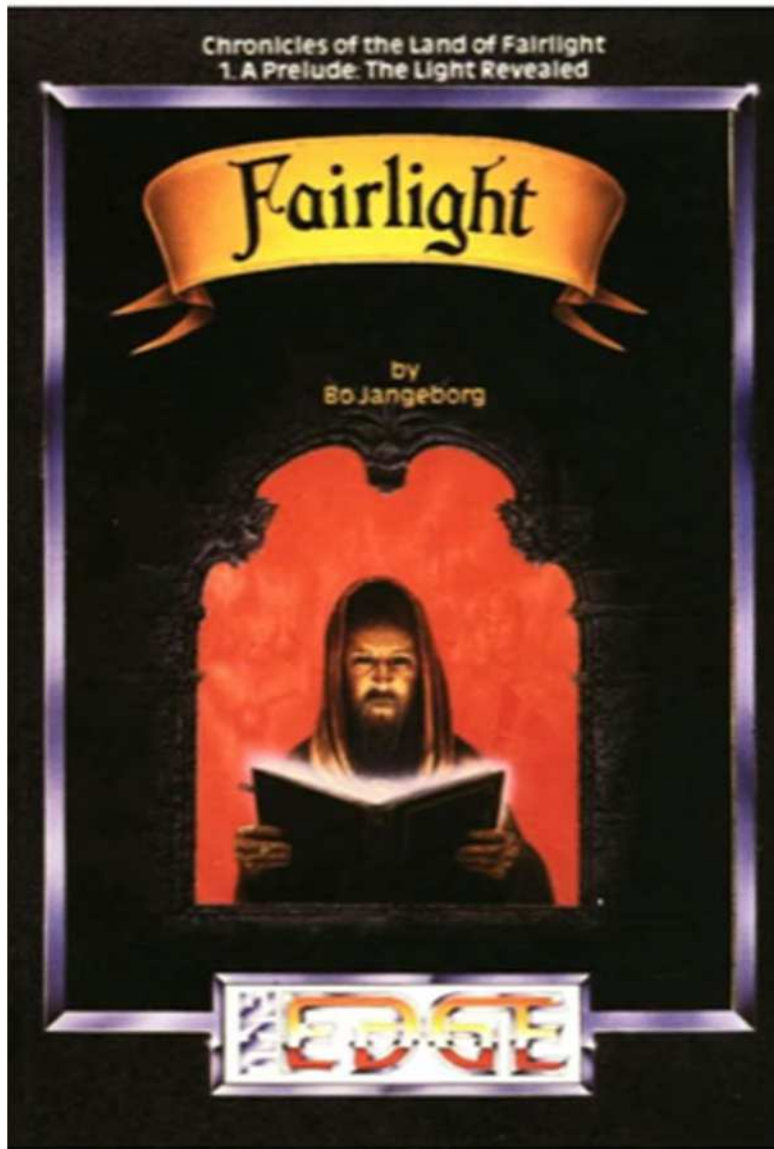


EDGE004483

7:10



Of course on Christmas day, I had to look happy and surprised when I opened Fairlight - even though I obviously knew that I was getting it, and had been playing a copy of it for weeks. 🤪🎄🎁👶



👍🤔❤️ 212

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EDGE004484


<  **World of Spectrum**
Gavin Worby · 22h · 

8h Like Reply 1 

 **Ian Rae**
[John Bennett](#)
Mind blowing stuff 🤯

7h Like Reply

 Write a reply...

 **Nick Hart**
Didn't Fairlight have a tune that played during loading? I just remember a really nice tune with that game.


22h Like Reply 1 



 **Gavin Worby**
[Nick Hart](#) No, the tune played once it had loaded.

22h Like Reply 4 

 **Simone Bernacchia**
One of the first two channel tunes so that made it more special

7h Like Reply 1 

 **Nicola Spectrum**
An amazing tune!

 Write a comment...   

7:11



World of Spectrum

Gavin Worby · 22h · 📷



20h Like Reply

3 😄



Jason Woodcock
That class story

20h Like Reply

1 👍



Emiliano Buttarelli
the game [Nicola Spectrum](#) worships beyond human comprehension

20h Like Reply

2 👍



Nicola Spectrum
Yes, I think this is an amazing game, a wonderful adventure! Superb graphics and deep atmosphere. It even had clues and hints in the loading screen... letting aside beautiful title music, a true gem for the humble Speccy's beeper. One of my fav games.

1h Like Reply

1 👍



Write a reply...



Wyn James
Ooh naughty you!! Hehe!!
I have to say, I absolutely loved this game so very much. It oozes atmosphere and the graphics are top



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EDGE004486

7:11



World of Spectrum

Gavin Worby · 22h · 📷



 write a reply...



Michiel Bijlsma

Someone went and did this

<https://www.youtube.com/watch?v=ybwcPRUw-5U>



ZX Spectrum 128k: "Fairlight Theme" AY Music (1999)

youtube.com

20h Like Reply



Christos Anthis

The Great Speccy Spirit absolves you of your sin, child.

19h Like Reply



Gavin Morton

A typical Gavin type sneaky trick, [Gavin](#). Well done for not letting the clan down!



18h Like Reply



Phil Wheatley

Naughty but ingenious 🤖

17h Like Reply



Mark Alan Smith

I did exactly the same thing Gavin. Way



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EDGE004487

7:11



World of Spectrum

Gavin Worby · 22h · 📷



14h Like Reply



Tim Langdell

I LOVE this story! Thank you so much for writing it. (P.S. Yes, it is me in the cover art reading a book)

9h Like Reply



Xander Grant

I loved this game, still one of my favourites today

6h Like Reply



Memories of a Spectrum gamer · [Follow](#)

Great story!

5h Like Reply



Ian Rae

I have to confess, I don't remember this one.

5h Like Reply



E Mark Moore

I "found" my Munchman console in the secret pile, weeks before Christmas. I didn't have the nerve to insert batteries or plug it in, but I did get it out of the box a couple of times to practise my finger



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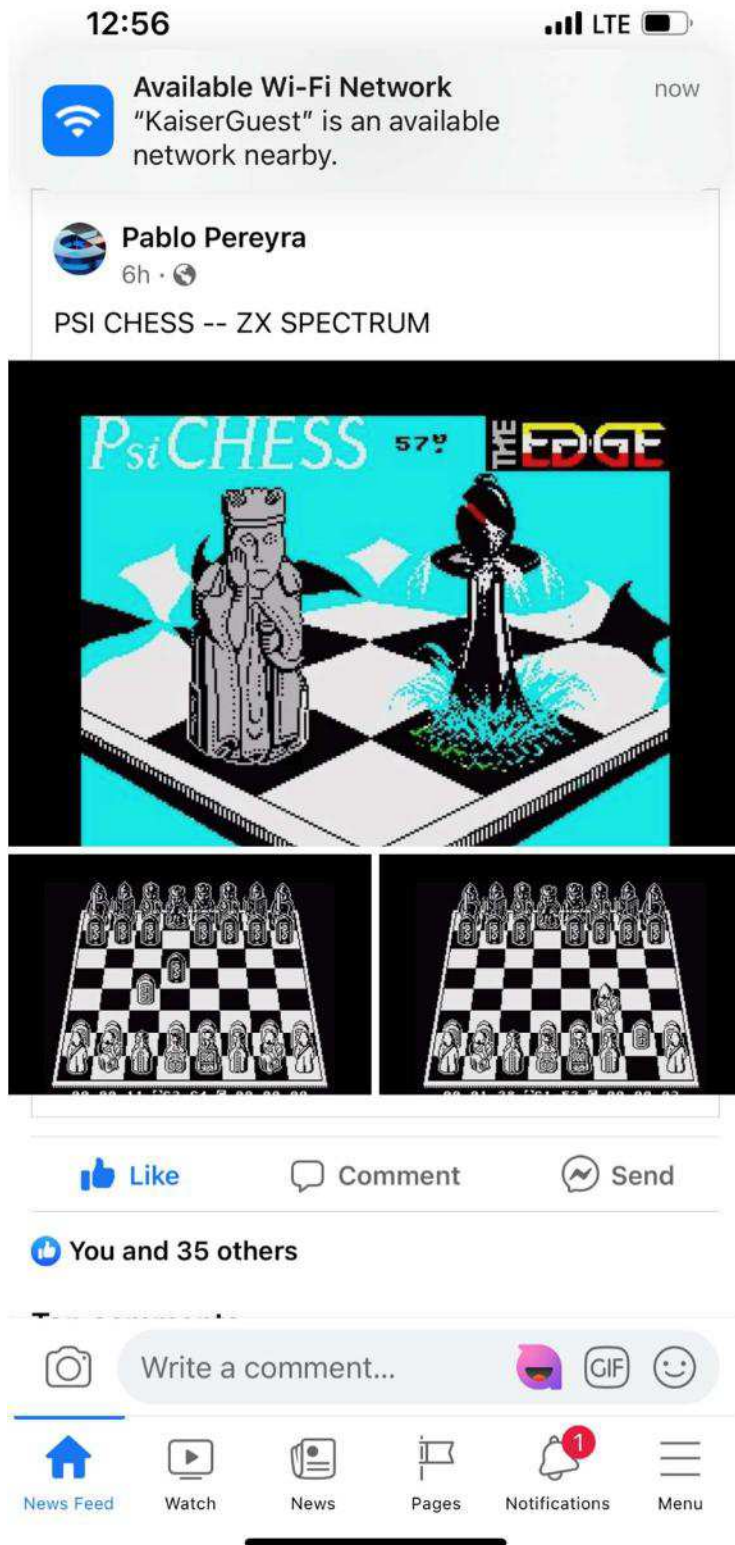
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EDGE004488

1987 EDGE GAMES game PSI CHESS remembered in 2022 on FaceBook?
Downloaded by Dr Tim Langdell August 7, 2022



EDGE004489

12:56

LTE



Pablo's Post



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Comment

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Tim Langdell

Thanks for showing this. Yes, it wasn't the toughest chess game but it was good for beginners and those of moderate skill. I'd just got one of those chess sets and wanted to release this game to showcase the graphics. Been thinking of rereleasing it for Steam and perhaps iOS/Android

Just now Like Reply



Luca Bordoni

Awesome graphics, both 2D and 3D modes, even if it cannot reach a professional chess player level (which 48K program could?), it's a fun release for our favourite computer.

3h Like Reply

2



Stephen Cotterell

Perhaps, but not the best chess player. Whipped this on hardest level regularly.

4h Like Reply

1



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Education

Entertainment

Finance

Games

Healthcare & Fitness

Lifestyle

Medical

Music

Navigation

News

Photography

Productivity

Reference

Social Networking

Sports

Travel

Utilities

Weather

MORE IN APPS

App Store FAQs

Edge Games

TappyTunes™ Music

BP Buddy - Blood Pressure Helper Healthcare & Fitness

Light Photography

Merriam-Webster's Medical Dictionary® Education

Speed Fiend Games

Snowball Runner Games

Zephyr Social Networking

abc NEWS

Keynote Remote

Crazy Tanks

MILLIONAIRE

mint.com

BONSAI BLAST

WHAT'S HOT See All

WordsWorth Games

FlipBook Entertainment

The Price is Right™ Games

Orions: Legend Of Wizards Games

Touchgrind Games

The Weather Channel® Weather

7 Cities TD Games

SimCity™ Games

1. iShoot Games

2. Mood Touch Entertainment

3. MONOPOLY Here & Now: The World Edition Games

4. SlotZ Racer Games

5. Free Memory 1.4 Utilities

6. Crazy Tanks Games

7. Brothers In Arms® Hour of Heroes Games

8. Crash Bandicoot Nitro Kart 3D Games

9. TETRIS® Games

10. iFart Mobile - Fart Machine for all ages Entertainment

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“Tim Langdell: Vindicated after 10+ years” (The Funky Spectrum Website; 25 June 2023)

<https://www.funkyspectrum.com/?p=13473>

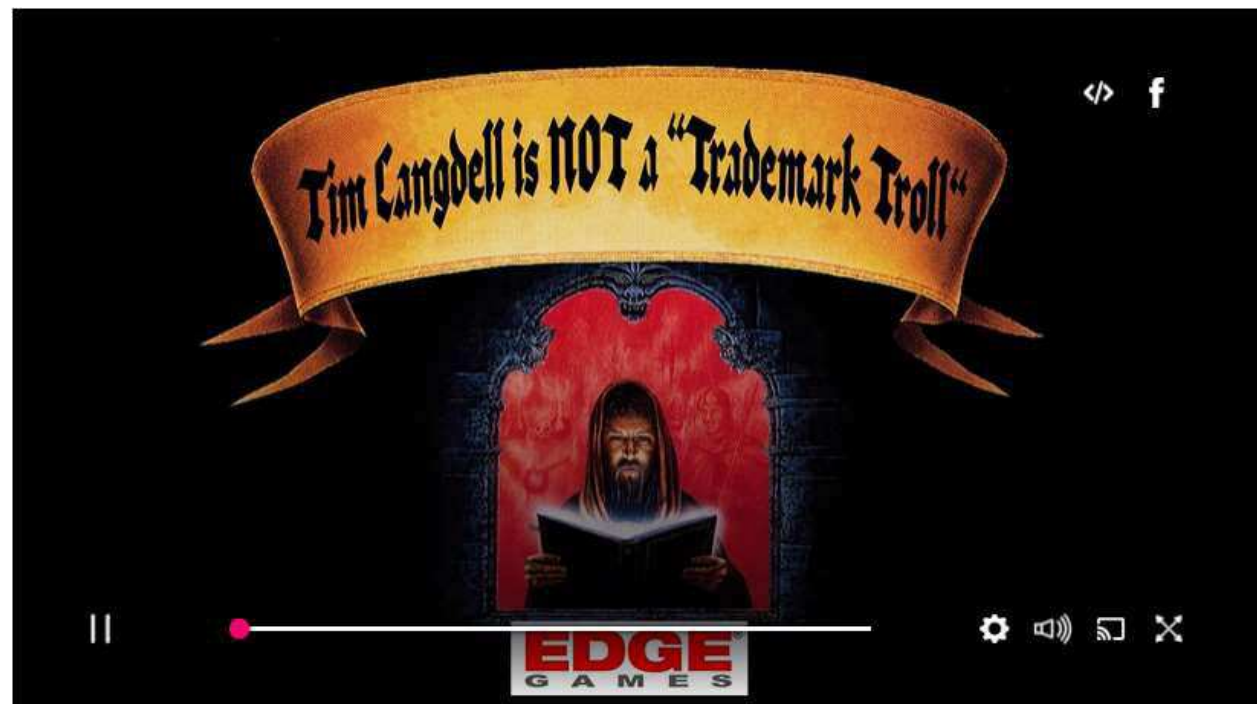


THE Funky Spectrum WEBSITE


**Tim Langdell:
Vindicated after
10+ years!**



EDGE GAMES



Tim Langdell is NOT a “Trademark Troll”



EDGE GAMES

EDGE004784

Transcript

(performed using audio to text transcription in Microsoft Word)

Hello, it's George again. And for today's video, I have something that's been kicking around in my head for some time and it's something I think really does warrant a decent bit of coverage in order to hopefully set the record straight on a few things. Now, my regular viewers will know that I'm no stranger to controversy. I'm no stranger to sticking up for people when they've been maligned online and in the gaming media, and now that we're very much in the digital era, it's never unfortunately been easier to create a false image of someone. And to trash their reputation simply by dropping a few buzzwords into the mix, even if what is being said is completely untrue. Also, there often comes a point where the narrative has been shaped by so many and to such a degree that to tear down the untruths and to expose actual facts beneath is tantamount to torpedoing your own content. And this seems to be something that online pundits and news outlets are basically loathe to do. Many of them will set up their shack on their square of land, serve whatever it is that they're serving, and they will never move. The menu will never change, even if it starts to make people ill. As long as. The clicks keep coming. The narrative remains the. In point of fact. We now live in a time where to attempt to change this narrative. From within can often lead to a quick and unceremonious termination of working relations with the company or individuals in question who've put out the original story.

Now this goes doubly for Youtubers and other online iconoclasts to seek to break stories and provide scurrilous gossip to their fans solely for the aforementioned clicks. And if the cap fits on a certain day, they'll keep wearing it as they sink into the mire. Often such individuals will seek to curry favor from certain others, paying it forward with toxic and incorrect content. They can at some point in the future obtain some kind of freebie or recoup DOS boost from shouting from their position on the most popular side of the fence. Now this situation, both with Youtubers online news portals and physical magazines and journals, has fundamentally fractured journalism to the point where it's now extremely difficult to take anything at face value. We live in a time where the divided underdog is now often the only place from where one can take facts as into their wide white washers, curated ably by the barometer of online opinion, seek to dog our mental walls with a narrative that is not so much correct as it is simply something. That has been agreed upon as a general consensus. A general consensus, sadly. That need have no basis in fact and simply serves to farm more cliques. For those only really interested in their own popularity and their own bottom line. Many people over the years have been caught in these types of tumultuous situations.

I myself have covered a lot of them, for example, and more and more of these are relating to IP infringements and the chaos that spirals off from such interactions. Often they can be as simple as a reasonable person trying to guard their own IP from misappropriation or profiteering by unrelated online vampires. Online vampires, who then choose to subvert the narrative using their viewers and readers, or other content creators to paint the IP holder in a bad light to attack them, and to attempt to trash their reputation. Now this will take place regardless of these people's actual rights to use the IP that they're knowingly infringing upon. For example, this happened with Martin McNeil. We all remember the situation with Martin MacNeil. Martin McNeil, I would cast him as a friend. He's a good man. He's someone who's done a lot to protect the rights of artists and creators over the years, and he was dragged through the fire and had his home and

EDGE004785

family threatened with repeated and thankfully thwarted by myself and others, calculated attempts to ruin his reputation and his livelihood. Now this all took place because someone knowingly stole from him. Then she immediately fabricated the narrative replete of crocodile tears and photos of the children who were being deprived of their 89th holiday of the year. Because they were being asked to pay the going market rate for using a copyrighted photograph completely without authorization, in one of their idea cookie cutter videos made solely for absolute morons. The unfortunate thing about morons is that they're extremely easy to mobilize. You can sit your corpulent baboon breasted over the hill self on a mound of your own self importance, bang on an empty butter tub, and you shall have your army if you lie to them, they will come.

And so, ladies and gentlemen, this brings us to the topic of today as. From what I've been able to piece together from a deep dive into the actual facts of the situation, what we're going to hear about now is a textbook example of the Internet fabricating a reality that is completely incorrect at odds with the actual reality of things. And is being sold to people as gospel now the end result is that someone who's contributed a lot to gaming over the years and clearly has a lot of love for it as an art form has been labeled a copyright troll and cast into the yawning maw of Digital Hades to burn for all eternity in a bottomless chasm of white-hot ones and zeroes. The person I'm going to talk about today is Tim Langdell. Now, there may be several of you listening who immediately think who? So allow me to give you a little background into Mr. Langdell's life. Tim has been an active indie game developer and publisher since 1981 where he began Softek before changing the company name in 1984 to the Edge Games, moniker. Since those very early days, he and his co-workers created many titles that are still much beloved by players today, Titles such as Brian Bloodaxe, Bobby bearing Garfield's Big Fat Hairy Deal and more, and also for the Fantasy fans listening, Edge Games, as you all know, also created Fairlight.

The main character on the front of the box of Fairlight is actually wearing Tim's face, and I don't mean in a Texas Chainsaw massacre sort of style. I mean that the wizard was actually painted as an homage to Tim, and as such bears his likeness. Now, aside from gaming and work with Edge, Tim has also participated in many other ventures that have helped grow and legitimized the gaming industry from executive producing. The first televised video game awards show Cyber Mania '94 to co-founding The Academy of Interactive Arts and Sciences. He was also involved with the meagre as well as being one of the few software companies to agree to support Trip Hawkins 3DO System and. After a relatively unremarkable decade producing PC games in the 90s, the early 2000s saw Edge pushing a lot of their older content to modern mobile devices. And as that decade rumbled on, Tim found himself a highly regarded figure in the gaming industry. In no small measure down to the fact that he'd managed to steer his company for almost 30 years through an increasingly cutthroat and ever-changing commercial landscape and continued to do so. He found himself invited to many events as the keynote speaker. He took up positions on bodies such as the Board of Independent Game Developers Association and the new media divisions of both the Hollywood Writer's and Producer's Guilds. He also worked on a small title known as World of Warcraft in 2004 and helped with the production of a similarly unknown little title known simply as God of War, which was a tiny game that no one heard of to this day and was actually created by a former student. So all in, Tim has done more than most over the years when it comes to advancing gaming as both entertainment and art, and for pushing it greatly into the public consciousness where it's now thought of as a very lucrative and

legitimate business, drawing in more revenue than all other forms of entertainment on the planet combined.

Now of course this is not all of Tim's work single handedly and there were, and still are many other irons keeping the fire hot, but it's also incorrect to claim that Tim has not had some part in shaping the so-called industry we see before us around us in 2023. Now at this point I could imagine some of you are listening and thinking this is like some kind of f*****g infomercial. Why is George doing the puff piece? But fear not ladies and gentlemen, for this is where the tale begins to catch fire and lurches back towards the precipitous lip of that awful chasm incandescent white. With the fire of an infinite number of ones and zeros and into which reputations are routinely cast, often with zero regard for the facts of the situation, and this is the problem. Tim's reputation is on the brink of ruin, or, according to some, resides in ruins because he's one of those awful, awful individuals who have had the temerity, the gall to actually defend and protect their own IP from those who seek to take it from them, and to shackle it beleaguered and battered to their own projects for their own gains.

So, let's go back a few years and as stated, Tim and his company have been operating in the gaming sphere with varying degrees of success peaking and troughing, as the industry itself has done until around 2009. Now, unfortunately, in 2009, a malicious and unknown blip appeared on their radar and it would not be long before this simple glow on the metaphorical bridge monitor became barrage after full blown barrage of legal attacks against him, his company Edge. So, in 2009, the attempted bullying began, coupled with an attempt to deliberately and maliciously destroy Tim's reputation in the gaming sphere completely. How did all this happen? I hear you cry.

Well, ladies and gentlemen, in 2009 a French chap called David Papazian or Papazian [*makes two attempts to pronounce it*]. And I'm not sure how that's pronounced. Because of this, I'm going to refer to hereafter, as Mr. Marzipan decided he was going to burn Tim's reputation from the ground up. The key to Mr. Marzipan's attack was to push the narrative that Tim was and is a copyright troll, and to relentlessly pursue this, a false narrative. Relentlessly and from all possible angles. Now it seemed at first that the gaming press and those he thought he could count on for support were very much in Tim's corner, but one by one they found their think tanks polluted by the disinformation pushed relentlessly by Mr. Marzipan. As an unfortunate result of this, opinions changed very quickly. Tim found himself cast into the lake of burning binary, relegated to troll status and to all intents and purposes, his legacy burned to ashes, which were conveniently arranged by Mr. Marzipan so as to form several letters which would go on to forever spell out the word troll in the minds of the gaming press and pundits.

And what started this? Well Mr. Marzipan was the head of a tiny French company by the name of Mobigame and contacted him in early 2009 with the request to use his trademark Edge as the title of an upcoming iPhone game that they were working on. Tim refused to immediately grant the use of rights and was perfectly within his rights to do so. And the game was thus retitled as Edgy on Tim's suggestion. Despite accepting the outcome of the trademark request and changing the title of this game, Mr. Marzipan could not sleep at night for thoughts fizzing in his head relating to how he'd been denied the use of someone else's copyrighted content in a commercial endeavor that had nothing to do with them. He was, to put it simply, f*****g livid.

EDGE004787

Marzipan then went on to hatch a plot to tie Tim up in endless legal shenanigans relating to his request and to attack him as an individual and his handling of the affair, which in the eyes of any sane trademark lawyer on the planet was a cut and dry case that no matter how it was looked at, always featured Tim as being in the right as he himself was the right holder. He simply refused to allow his trademark to be used by something completely unrelated to his company. This, ladies and gentlemen, as I'm sure you can agree, is a completely acceptable stance to take. Any one of us could boil some sugary water in a pan, dye it brown and bottle it. We could do that easily. What would be just a soupcon more difficult would be to then label that bottled liquid as Coca-Cola and expect that we'd be met with zero resistance. Now this is not a case of a rampant capitalist juggernaut crushing the little man. It's simply common f*****g sense.

If an IP holder denies you the rights to an IP, you are denied the rights to that IP. You can't use an IP without seeking permission from the IP holder without basically preparing for legal war. There's just no way around it and to seek to circumvent such a situation is to seek to sail through very choppy legal waters indeed. Marzipan chose to set. He not only chose to set sail, but he invited along other crew members too. Who were more than happy to row towards creative and intellectual oblivion with a bitter madmen charting their course into the realms of the ridiculous. Now, one of these crew members was a Blogger by the name of Simon Carless who lived up to his almost name when he carelessly allowed his brain and fingers to work on a hit piece for Gamasutra that basically cast Tim in the role of the gaming industry Satan simply for choosing to defend a trademark that had been his for decades. This hit piece by Simon was actually removed from Gamasutra as a result of pressure from industry heavyweights and legal experts. But as with all things on the Internet, the touch paper was lit, and once the cat is out of the bag, you can't put it back in. Also, as we've seen many times, this sort of situation enables those who have willingly manufactured it to further cast themselves in the role of being picked on by the corporate machine, which seeks nothing but to squash all creativity out of the bones of a plucky small developer simply trying to eke out an income in a nightmarish capitalist warren of legal blades all conspiring together to slice them to bits. Despite this piece being removed, the groundswell had already begun to build gaming forums sites and ghoulish think tanks began to bubble, with dissent aimed squarely towards a man who had simply dared to protect his company name from misappropriation. And that is indeed all that he had done.

In fact, top gaming attorney Tom Buscaglia said at the time, "If you do not enforce your trademark, you may lose it." And this, folks, this is the crux of the matter. This is always the crux of the matter when it comes to dealing with an IP that you hold, and this, and often this alone is why IP holders choose to defend their IP. If you wish to keep hold of such an IP in perpetuity, you cannot allow it to fall into the hands of others lest you find it removed from your own. There's such a thing as abandonment. That's the simple fact. So by choosing not to allow his IP to be used by Mr. Marzipan, he was simply reaffirming to all involved that it was his IP, would remain his IP and would continue to be used solely as his IP within the sphere in which he was entitled to use it, and that's also a very important point. Now if I went out and started Edge Sandwich Bar tomorrow Tim would have no legal grounds for action against me. Trademark law is very well wrought and tight with regards to the application and usage of any one trademarked IP, and the sphere in which the trademark persists.

EDGE004788

If I were to write a book called Edge of Darkness, that's a philosophical musing on mankind's impending slide into centuries of shadow, again Tim could do nothing about this. The fact is that someone was making a computer game called Edge in a marketplace where there is already an existing company with an existing profile using the trademark and the name edge. Marzipan didn't get this memo, and in his pig-headed boorish way he doubled down on his attacks on Tim, spreading a swathe of new rumors, the most preposterous of these being that Tim hadn't actually done any work on games since the 1980s and had simply been living off of suing people for using the word edge in anything gaming related. Does that sound familiar? Ladies and gentlemen, does that sound familiar? Of course it f*****g does, as this is the tried and tested tactic used by bitter cretins in so many situations nowadays online that it's frankly staggering. Does anyone remember an orb shaped crying mother with two young children to support sitting in front of a wall of valuable games bemoaning a career copyright troll who's dared to ask for the regulation, remuneration for her unauthorized usage of a piece of his work? I'm sure we all do and I'm sure we can all think of 101 similar. They're everywhere nowadays.

Needless to say, such allegations are almost always invariably false, and a cursory Google search will confirm that no such trolling on Tim's part has ever taken place. But that doesn't seem to matter in the mind of the aggrieved party, who will happily just make things up as the waters begin to get more and more choppy around. And as we've seen so many times, once you push a narrative and frame it in a certain way, it's easy to get bright lights for hire on board to spread such nonsense as they are happy for the drama clicks, and they're all seeking to be seen on the right side of the fence, which is. Invariably, framed as a David and Goliath situation taking place wherein a complete f***up with no understanding of legalities or even the basics of right and wrong, has chosen to cast themselves as the hero of the peace. Even a lone hero sometimes needs an ally. Every Punisher has their micro[word?]. Every Bond has his Q. And so it was that Mister Marzipan found an unlikely ally to hitch himself to in the even more bizarre case of Tim Langdell versus Electronic Arts.

And so, ladies and gentlemen, enter the game in behemoth that is EA and enter Mirrors Edge. It is, as they say in the game. So in 2010, EA offered Edge games \$50,000 to use the title for their upcoming futuristic parkour package delivery simulator, and things rapidly went downhill from there. Now, unfortunately for Tim, a contingency firm known as the Lanier Law Firm came out of the woodwork fresh from billion dollar victories against companies like Toyota, and they offered to take on Tim's side of the case against Electronic Arts in a no win no fee agreement that would see them take a percentage of the winnings off the top when EA were finally toppled, resulting in what the Lanier firm claimed to Tim would be a multi-million-dollar payout in their favor. And it's worth noting that Tim now looks back on this and believes that taking on the Lanier firm was one of the biggest mistakes he's ever made in his entire life. So sadly for Tim, it became apparent very quickly that the Lanier lawyers didn't really know much about trademark law. And as things went on, it became apparent quite quickly that they actually knew nothing about it. They filed an injunction against Electronic Arts without Tim's approval and things fell apart in the case very quickly from then on. EA's Specialist trademark lawyers annihilated the Lanier lawyers in court, as well as regaling the judge with tales of Edge versus Mr. Marzipan, which unfortunately the judge took at face value, perceiving him to be the copyright troll he was painted as. And as a result, he refused to even let the Lanier attorneys make their case, refusing

their injunction and basing his opinions and statements on incorrect statements relating to the situation with the aforementioned Mr. Marzipan.

Now, shortly after this the Lanier lawyers abandoned the case, leaving Tim to work out a settlement with the EA. It is, as they say “in the game.” The game that was to play out was actually a fair one and didn't go badly for Tim at all. See, the deal Tim struck with EA actually worked out reasonably well for him as he was found not guilty of any wrongdoing with regards to trademark fraud and edge games were still affirmed to retain their common law rights to their trademark. More importantly, and this relates to the point I touched on earlier relating to losing. IP due to non-commission of action, it was ruled that Edge would not lose any trademark by abandonment. Indeed, as part of the deal with EA, Edge games were permitted to file the registration of its Mark ‘Edge Games.’ This way the deal cut with EA ensures Edge would still have continuity of trademark registration coverage in the US for its edge marks right back to 1994. And of course, as part of the deal, Edge still retains all of its trademarks in the UK, Europe and elsewhere. The ins and outs of this deal were deliberately misunderstood by all who actually reported on it. Seizing on the opportunity to once again vilify the career copyright criminal Tim in the press and to skew the narrative and the fact of the situation in favor of salacious falsehoods once more, Marzipan, of course, also emerged once again in the press, even going as far as to claim that Tim is going to be put in jail for trademark misbehavior and once more doubling down on his trademark troll. He also continued to tell anyone who'd listen that Tim and Edge hadn't actually been responsible for any games since they had a short run at them in the 1980s. Now, well, that's untrue. It's ironic because it's actually Mobigame who didn't produce many games producing as they did only a handful of now forgotten titles between the years 2009 and 2012. Now, as I'm writing this in 2023, Mobigame have not actually produced any new games whatsoever in over a decade.

Edge, however, have continued producing games since the 1980s and have in point of fact published six games in the last few years. As Edge had been producing content, Mr. Marzipan has simply been churning the black waters of bitterness and inviting the increasingly more deluded in for a swim on his dime. As he sits on the side, regaling them with tales of Tim, the Master IP manipulator, troll and wannabe jailbird now. Sadly, the fact that Mister Marzipan was clearly a bitter individual talking absolute b*****it by this point was never something that's been reported in the press. Not once, not at all. No one who took against him in the past has gone on in any way to attempt to clear his name. The narrative was in place and it seems, according to these people, they wanted it to remain there. Tim Langdell is a copyright troll who produces nothing save for ill feeling and spends his days and nights basically camping out under the various bridges in order to make his ill-gotten living from suing innocent underdog after innocent underdog. That was interesting then. But in 2023, we finally got the final verdict in the case of Mobigame versus Tim Langdell. It's even more interesting that none of the news outlets, bloggers, Youtubers and the rest who vilified and sought to destroy Tim's reputation have said a f*****g thing regarding this verdict and why, ladies and gentlemen, might that be? Well, it's obvious they would have to admit they're wrong. They'd have to admit that they willfully took part in a manufactured endeavor to ruin the reputation of a man who simply sought to do what trademark law implicitly states one should do when overseeing the use of your own trademark.

So let's take it back to the beginnings of these rumblings and the beginnings of this eventual verdict. In 2020, the United States Trademark Office made a final ruling that Mobigame, and by extension Mr. Marzipan, are not entitled to register the mark Edge as a name and ruled completely in favor of Edge Games who also went on to receive registration of the mark Edge Games. As well as still holding the EU and UK registrations for the same. Now one might think at that point, well, it's kind of cut and dry, isn't it? That seems to be the end of it. But did this stop Mr. Marzipan? No. Did this stop people from reporting it as more manipulation by Mr. Marzipan, by now famous for doubling down, doubled down? He started another battle, this time seeking to get Edge games, trademarks completely canceled and ripped up by the roots. However, finally, rationality prevails, and in the summer of 2022 the UK Trademark Office came to a decision regarding the ownership of the Edge trademark. Did Edge indeed own the trademark they've been working under since the early 1980s, or did fly by night mobile game cowboy Mr. Marzipan and his company Mobigame, in fact, now own the rights to the trademark?

They dug into all aspects of the trademark and found overwhelmingly in favor of Tim. Tim was stated as the rightful owner of the Edge and Edge Games marks and, much like Mr. Gravy, Tim had always been the caretaker of the Edge and Edge Games marks. But thankfully the only thing being killed with an axe, albeit metaphorically, were Mr. Marzipan's designs on the name as the Trademark Office's ruling stated that Mobigame had failed to generate any interest whatsoever in the trademark Edge from their side of the situation, and thus were deemed to be existing solely on goodwill generated and built up by Mr. Langdell's company of the same name. Now we're getting into repetitive territory, but can you guess what Mr. Marzipan did next? If you think he quietly accepted the ruling, gave up his career of trolling and maligning an innocent man, and disappeared quietly back to low key software development in France, then to page 312. If you think he chose to once again stick the dummy and double down unable to believe that the reality in which he cast himself couldn't be spliced with the reality in which sane, rational human beings conduct their business and chose to mount a frankly insane and hope for supper against the verdict, please turn to page 400.

Now, let's be honest, folks, for those familiar with fighting fantasy books, we all want to turn to page 400. We always want to turn to page 400 as 400 is synonymous with victory. So without further ado, let me tell you what happens on page 400 in another stunning and total defeat for Mobigame. The result of the UK appeal went completely against them, with the UK Trademark Office upholding their decision of August 2022 that Edge Game and, by extension, Tim Langdell are the rightful owners of the trademark. Tim had at no point been acting as a trademark troll, as his accusers claimed on occasions too numerous to mention, Tim always had the right to claim that his company owns the trademark on the word edge, as they have always held the mark in perpetuity since the early 1980s. And so, ladies and gentlemen that means to oppose this initial coverage of a situation that has been growing in the background, like a painful cyst on the gaming industry for many years and one which I believe I am the first to lance and to report upon with any degree of recognition of the actual facts involved. Now I am hoping to get him on for

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an interview so we can go a bit more in depth about all of this now. Now that I've put you all in the picture, and ideally I'd also like my friend Martin McNeil himself, now qualified expert on copyright law, to join us too. But I will have to see if that can be arranged since both of these folks are very busy people. But I like to think I've done my job here and someone needed to actually put out the facts on this situation. And as usual, it often takes an outsider. Someone at the very edge of the community, if you will, to speak the truth in the hope that it percolates down through the heads of those who have wished nothing. Their ill will against this innocent man over the years for the most manufactured and incorrect of reasons. Now, for those who wish to continue to paint a narrative against them in the face of a body of facts that refute your beliefs, that every step, there's a white, hot, hungry, more filled with ones and zeroes, waiting for more fuel. Feel free to dive in at any time.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

MOBIGAME,)
)
) Petitioner,)
)
) v.)
) Cancellation No. 92075393
)
)
) EDGE GAMES, INC.) Registration No. 5,934,761
)
) Respondent.)

PETITIONER’S RESPONSES TO FIRST SET OF INTERROGATORIES TO
PETITIONER

MOBIGAME (“Petitioner”), in accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark Office, hereby serves the following Responses to Edge Games, Inc.’s (“Respondent”) “First Set of Interrogatories to Petitioner” (the “Interrogatories”).

GENERAL OBJECTIONS

The following General Objections are made with respect to each and every one of the Interrogatories:

Petitioner objects to each of the Interrogatories to the extent that they seek information in excess of Petitioner’s obligations under the Federal Rules of Civil Procedure or are otherwise overly broad, unduly burdensome, oppressive, redundant, duplicative, vague, ambiguous, cumulative, and/or harassing.

Petitioner objects to Respondent’s definitions of “Petitioner” on the ground that it results in requests for information that is not in the possession, custody or control of Petitioner. Petitioner will not search for or provide information that is not within its possession, custody, or control.

Petitioner objects to Respondent's definitions of "identify" and "state the identity of" on the ground that the definitions are overbroad and result in requests for information that is not in the possession, custody or control of Petitioner. Petitioner will not search for or provide information that is not within its possession, custody, or control.

Petitioner objects to each of the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Petitioner objects to the scope of the Interrogatories on the grounds that they are overbroad and seek irrelevant information because they are unlimited in time.

Petitioner objects to the scope of the Interrogatories on the grounds that they are overbroad and seek irrelevant information because they are unlimited geographically. Unless otherwise indicated, Petitioner will provide responses relating only to matters occurring in the United States.

Petitioner objects to the Interrogatories to the extent they seek trade secrets or other confidential or proprietary research, development, commercial, or business information. Petitioner will produce such information, if requested and not otherwise objectionable, only pursuant to a Protective Order.

Petitioner has conducted a reasonable search for responsive information by identifying the persons it believes are most knowledgeable concerning the Interrogatories and has interviewed those persons to gather information responsive to the non-objectionable categories or portions of categories in each Interrogatory. Petitioner bases its responses to the Interrogatories on this search and objects to the Interrogatories as overly broad and unduly burdensome to the extent that they purport to require Petitioner to perform any additional search for information beyond this search. Should Petitioner

discover additional information regarding its responses to the Interrogatories, Petitioner reserves the right to supplement or amend its responses accordingly.

Petitioner's responses to the Interrogatories are hereby made without in any way waiving or intending to waive, but rather, to the contrary, by preserving and intending to preserve:

- i. All questions as to the competence, relevance, materiality, and admissibility as evidence for any purpose of the information or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation;
- ii. The right to object on any ground to the use of any such information, or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation;
- iii. The right to object at any time for any further response to this or any other request for information or production of documents; and
- iv. The right at any time to supplement this response.

Petitioner objects to the Interrogatories to the extent that they purport to require immediate production of any documents. Petitioner will produce any necessary documents at such time and place as agreed upon by counsel.

Subject to the foregoing General Objections, all of which are specifically incorporated as if set forth fully verbatim in response to each of the individual Interrogatories set forth in the Interrogatories, Petitioner responds further to each individually numbered Interrogatory as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Identify all owners and principals of Petitioner.

RESPONSE: David Papazian and Matthieu Malot.

INTERROGATORY NO. 2: State the date when Petitioner first selected the term “Edge” for possible use as a trademark within the United States and explain the reasons for the selection of that term, and indicate all alternative terms considered before deciding on the term that was used by Petitioner.

RESPONSE: Subject to the foregoing General Objections, Petitioner state that the idea came in early 2008. Petitioner applied to register the trademark EDGE in France on July 11, 2008, obtained an International Registration based upon that home country filings, and then filed a request to extend rights under the resulting International Registration to the United States within six months of the French filing to benefit from the French application's earlier application date.

INTERROGATORY NO. 3: Identify the person(s) acting on behalf of Petitioner who was primarily responsible for the selection of the term “Edge.”

RESPONSE: David Papazian and Matthieu Malot.

INTERROGATORY NO. 4: Identify any opinion sought or obtained relating to the registrability and legitimate use by Petitioner of the term “Edge” within the United States for games (including mobile phone games).

RESPONSE: Subject to the foregoing General Objections, Petitioner states that no such opinion was sought or obtained. Petitioner did some trademark database searching on its own.

INTERROGATORY NO. 5: Describe in detail all products or services that have been offered by Petitioner in conjunction with Mobigame's use of the mark “Edge,” and for each, identify the actual date of first use and the geographic area of such first use within the United States for commerce.

RESPONSE: Subject to the foregoing General Objections, Petitioner indicates the products, dates of first use and geographic area of use as: Computer games, which first were sold into the U.S. on January 4, 2009, and the soundtrack for the games, which first was sold into the U.S. on March 11, 2009. In each case the sales were from France into the U.S.

INTERROGATORY NO. 6: Identify all geographic locations within the United States where products or services using the mark “Edge” were sold in the period from Petitioner’s first use in U.S. commerce to 7 October 2010.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner’s EDGE mobile application game was downloaded by purchasers in each of the fifty United States by at least as early as October 7, 2020.

INTERROGATORY NO. 7: Identify all office and warehouse locations you owned or had the use of in the United States in the period 1 December 2008 to 7 October 2010.

RESPONSE: Petitioner objects that this interrogatory is irrelevant. Subject to that objection and to the foregoing General Objections, Petitioner states that Petitioner did not own or use any warehouse locations in the U.S. during the specified date range.

INTERROGATORY NO. 8: Identify all interstate sales you made of any your products using the mark “Edge” between 1 December 2008 and 7 October 2010, where an interstate sale is here defined as being a sale by you based in one US state to a customer based in another US state.

RESPONSE: Petitioner objects that this interrogatory is irrelevant. Subject to that objection and to the foregoing General Objections, Petitioner state that it did not make any such sales.

INTERROGATORY NO. 9(a): Describe in detail the manner in which Petitioner's products and services that use the mark “Edge” were advertised by Petitioner within the

United States during the period from Petitioner's first use in US commerce to 7 October 2010.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that it bought ads on Google Adwords, and banners on videogame websites in the U.S. like SlideToPlay, TouchArcade, PocketGamer, 148Apps and CreativeApplications.net. Petitioner paid to submit the game to the IMGA (International Mobile Game Awards, we won 2 awards) and to the IGF (Independent Game Festival), we received 3 nominations, and had a booth at the IGF pavilion during the GDC (Game Developer Conference) 2009 in San Francisco. Petitioner also had numerous reviews in the press, and EDGE magazine nominated Petitioner for inclusion in the Top 50 best iPhone games sin 2009. Petitioner also promoted its computer games through YouTube and other social media platforms.

INTERROGATORY NO. 10(a): Identify all media in which any advertising or promotion including the term "Edge" was used in the United States by Petitioner during the period from Petitioner's first ever such use in the US to 7 October 2010, giving detailed specifics of such use.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner first promoted and sold its EDGE game on the Apple iTunes platform on January 4, 2009. Petitioner placed advertisements on the Pocket Gamer website in March 2009. Petitioner established a Twitter account, first promoted its EDGE game through that channel in March 2009 and continued to do so during the specified time period. Petitioner also promoted its EDGE computer game through Google AdWords beginning in January 2009, pausing in March 2009 when Petitioner's game was removed from the AppStore, and resuming in September 2009 when Petitioner's EDGE game was again accessible via the AppStore.

INTERROGATORY NO. 9(b): Identify all of the different types of consumers of Petitioner's products and services utilizing the term “Edge” that were offered or sold in the United States between Petitioner’s first such use of the term in US commerce to 7 October 2010.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner’s EDGE game software is and was that the specified time intended for use by consumers of all types.

INTERROGATORY NO. 10(b): Identify any and all of Petitioner's affiliates or licensees that have offered products or services utilizing the mark “Edge” in the United States from the date of Petitioner’s first such use in the US to 7 October 2010, and for each identify the commencement date of such affiliation or license arrangement.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that on and that on February 18, 2009 entered into an agreement with Connect 2 Media to publish its EDGE game on Java phones (worldwide, including the U.S.) and that on November 4, 2009 Petitioner licensed its EDGE mark for use by Two Tribes Publishing B.V., a Dutch software development firm that adapted the EDGE game for use on Nintendo systems and platforms.

INTERROGATORY NO. 11: Identify any and all wholesalers, distributors, retailers and sales services that sold Petitioner’s products or services branded with the mark “Edge” in the US in the period from the date of Petitioner’s use in the US to 7 October 2010.

Identification includes but is not limited to the name of each entity, the address, email contact details, telephone number, and name of Petitioner’s main contact with contact details (email and telephone number) of that main contact.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner’s EDGE game first was sold and distributed through the Apple iTunes platform on

January 4, 2009. Apple, Inc., One Infinite Loop, Cupertino, CA 95014, phone: (408) 606-5775. There was no main contact. Petitioner signed an agreement effective February 18, 2009 with now defunct Connect2Media to publish its EDGE game on Java phones (worldwide, including the U.S.). 101 Princess Street, Manchester, M1 6DD, United Kingdom. The main contact was Mr. Volker Hirsch. As a result of the Connect2Media agreement Petitioner's EDGE game was made available through the Sony Ericsson portal by at least as early as December 2009.

INTERROGATORY NO. 12: Identify all channels of trade where Petitioner sold its products and services using the mark "Edge" during the period from the date of Petitioner's claimed first such use in the US to 7 October 2010, clarifying which of those channels of trade were interstate in nature.

RESPONSE: Petitioner refers Respondent to its answer to Interrogatory 11 above. Subject to the foregoing General Objections, Petitioner states that Petitioner's direct sales in U.S. commerce were from France into the U.S., and not between any of the United States. Sales effected through Apple probably were sales between U.S. states in the sense that the software resided on Apple servers (presumably but not necessarily in the State of California) when downloaded to devices located in other states.

INTERROGATORY NO. 13: Describe in detail how you were able to engage in United States interstate commerce during the period December 2008 to 7 October 2010 given you only had an office (or other physical business location) in Paris, France, during this period and did not own, rent or otherwise have to use of an office, or warehouse space, or any other physical business location, in the United States during that time.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner did not directly sell its software between U.S. states but instead sold its software into the

various United States from its business location in Paris, France. As described above in the response to Interrogatory 12, sales via distributors likely occurred on an interstate basis.

INTERROGATORY NO. 14: Describe in detail when you decided to stop defaming Dr. Tim Langdell by calling him a “trademark troll,” or a “trademark bully,” or alleging he committed fraud when he did not, or falsely alleging he is a “crook,” or similar false characterizations of Dr Langdell.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 15: Describe in detail every occasion when you stated that Dr Tim Langdell is a “trademark troll” (or similar description of Dr Langdell), indicating whether your statement was made orally or in writing, and to whom. The detail should include the date, and where applicable, time of your statement.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 16: Describe in detail every occasion when you stated that Dr Tim Langdell was guilty of fraud, indicating whether your statement was made orally or in writing, and to whom. The detail should include the date, and where applicable, time of your statement.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 17: Describe in detail every occasion when you stated that Respondent or its predecessors in rights had not made use of the marks EDGE or EDGE GAMES in US commerce prior to 7 October 2010. The detail should include whether the statement was made orally or in writing, to whom, with the date, and where applicable, time of your statement.

RESPONSE: Petitioner objects to this interrogatory. The information sought by this question is not relevant to this cancellation proceeding. Subject to those objections and to the foregoing General Objections, Petitioner states that Petitioner does point out, however, that it is alleges in the Petition to Cancel that neither Respondent nor its predecessors in rights made use of the marks EDGE or EDGE GAMES in US commerce prior to October 7, 2010.

INTERROGATORY NO. 18: Describe in detail every occasion when you stated that Respondent or its predecessors in rights had not made use of the marks EDGE or EDGE GAMES in US interstate commerce after Respondent had provide proof to you of such use in the first half of 2009. The detail should include whether the statement was made orally or in writing, to whom, with the date, and where applicable, time of your statement, and with clarification as to why you continued to make such statements when you knew them to be untrue.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 19: Identify all legal actions, in U.S. Federal or State Courts, or in the United States Patent and Trademark Office, or disputes with entities such as Apple Legal, involving any of Mobigame's Marks and/or any variants thereof.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner and Respondent were parties to USPTO Trademark Opposition No. 91212834. As Respondent well knows, Petitioner was involved in a dispute with Apple Legal and Respondent concerning the removal of its EDGE mobile game from the AppStore in 2009 and 2010. Other than challenges by Edge Games, Inc., Petitioner has not been involved with legal actions or disputed concerning its EDGE mark.

INTERROGATORY NO. 20: Identify all actions you took., legal or otherwise, to protest Respondent's use of the EDGE mark, contest Respondent's use of the EDGE mark, or otherwise attempt to stop Respondent from using the marks EDGE or EDGE GAMES during the period from when you first allege you used the mark EDGE in US commerce to 7 October 2010, including but not limited to details of each and every "Cease and Desist" notice you served on Respondent marking your protest of Respondent's use of the marks.

RESPONSE: Subject to Petitioner's objection that this request is excessively broad in that it relates to activities outside the United States, and to the foregoing General Objections, Petitioner states that Petitioner did not protest Respondent's use of the EDGE mark in the U.S. during the relevant timeframe. Petitioner and Respondent exchanged many letters in an effort to settle their dispute and find a basis for coexistence, as Respondent knows.

INTERROGATORY NO. 21: Describe in detail any and all non-attorney-client-privileged communications Petitioner has received that in any manner mention or refer to Respondent or any of Respondent's employees or directors, including but not limited to Dr Tim Langdell.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 22: Describe in detail any complaints Petitioner has received that in any manner relate to Respondent's use in connection with any Respondent's products or services involving the marks "Edge" or "Edge Games" in the U.S. including but not limited to notifications of any confusion in the mind of U.S. consumers as to the true source of said products or services.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner has not received any such communications.

INTERROGATORY NO. 23: Describe in detail each and every one of your communications and conversations with Future Publishing Ltd or any agent or representative of any kind of Future Publishing Ltd.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes that the information sought by this question is not relevant to this cancellation proceeding. Moreover, this interrogatory is excessively vague and burdensome.

INTERROGATORY NO. 24: Describe in detail each and every one of your communications and conversations with Electronic Arts Inc. or any agent or representative of any kind of Electronic Arts Inc.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes that the information sought by this question is not relevant to this cancellation proceeding. Moreover, this interrogatory is excessively vague and burdensome.

INTERROGATORY NO. 25: Describe in detail how and when you came to discover The Edge Interactive Media Inc.'s French registration of the mark "EDGE" had been cancelled or abandoned.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 26: Describe in detail your knowledge of Respondent's and Respondent's processors in rights (The Edge Interactive Media Inc and Softek International Ltd) use prior to 7 October 2010 of the marks EDGE, THE EDGE and other EDGE formative marks including your awareness of or knowledge of EDGE related trademark registrations owned by Respondent or Respondent's predecessors in rights.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner did not know of Respondent before Petitioner was made aware of Respondent's objection to Petitioner's sale of its EDGE game on iTunes on April 7, 2009. Petitioner does not have knowledge of Respondent's predecessors apart from allegations that Respondent made in the prior USPTO proceeding.

INTERROGATORY NO. 27: Describe in detail your agreement with Respondent to change the name of your game from "Edge" to "Edgy" in 2009 and how that agreement came about (if you contend the agreement was not finalized then describe the state it reached).

RESPONSE: Subject to the foregoing General Objections, Petitioner states that there never was such an agreement.

INTERROGATORY NO. 28: Describe in detail your decision to apply to own, or to take ownership of, the trademark "Edgy" in the United States as part of the settlement reached with Respondent, or otherwise.

RESPONSE: In addition to the foregoing General Objections, Petitioner observes that this question is not relevant to the present proceedings, which solely relate to ownership of the mark EDGE in the United States. Petitioner objects to this interrogatory as irrelevant.

INTERROGATORY NO. 29: Describe in detail your decision to remove your iOS (i.e. iPhone and/or iPad) game titled "Edge" from Apple's AppStore (iTunes), indicating each time you took this decision and the circumstances surrounding your taking this decision.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner removed the game from the U.S., U.K. and German AppStore stores because Respondent sent a cease and desist letter to Apple asserting allegedly valid trademark registrations. This was before those asserted registrations were cancelled as a result of the legal proceedings between Respondent and Electronic Arts. Until the lawsuit with EA and the cancellation of those marks, Apple took Edge Games' allegations seriously. If petitioner did not remove its EDGE game from certain stores, Apple would have removed the game worldwide because of the extortion Petitioner was suffering. Petitioner felt it had not choice. Here is the chronology of AppStore removals:

- Petitioner removed its EDGE game from the U.S, and U.K stores AppStores from April 27, 2009 to June 16, 2009 (51 days).
- Apple removed Petitioner's EDGE game from all AppStores from July 14, 2009 to July 16, 2009 (2 days).
- Petitioner took Petitioner's EDGE game down from the U.S, U.K and German AppStores from July 14, 2009 to October 6, 2009 (83 days).
- Apple removed Petitioner's EDGE game from all AppStores from November 25, 2009 to December 16, 2010 (22 days). Petitioner's sales of its EDGE game continued without interruption during this time through other channels.

- Petitioner convinced Apple to put back the game worldwide except for US/UK.
- The game has been taken down from the U.S, U.K stores from November 25th 2009 to May 6th 2010 (162 days) (the highest sales ever when it came back, we did a promo at \$1) I We put it there just a few days to show it still exists, then we tried to rename to "Mobigame's EDGE" because "Mirror's Edge" by EA was ok, but Langdell pushed so much that Apple asked us to remove it from the U.S. U.K store. It was hard because the game was in the top 10, huge lost sales.
- We removed it again until October 2010 when Langdell lost against EA and his marks had been revoked.

INTERROGATORY NO. 30: Describe in detail your decision to remove your iOS (i.e. iPhone and/or iPad) game titled "Edgy" from Apple's AppStore (iTunes), indicating each time you took this decision and the circumstances surrounding your taking this decision.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner temporarily sold its game as EDGY in December 2009 as part of its effort to settle the dispute with Respondent, but soon thereafter learned new information that suggested that the rights that Respondent had asserted against Petitioner were not valid.

INTERROGATORY NO. 31: Describe in detail your decision to rename your iOS game "Edge" again and put it back up on the Apple AppStore (iTunes) in the U.S. having previously removed the same game which you had recently renamed "Edgy," including details of your motivation and the circumstances that surrounded your changing the name of your game in the United States back from Edgy to Edge again.

RESPONSE: Petitioner refers Respondent to the response to Interrogatory 30 above.

INTERROGATORY NO. 32: Describe in detail what you meant when you stated to the author of the book titled *Buttonless: Incredible iPhone and iPad Games and the Stories*

Behind Them, "Tim Langdell is crazy." And clarify why you believe, if you do, this was not defamation.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 33: Describe in detail what you meant when you stated to the author of the book titled *Buttonless: Incredible iPhone and iPad Games and the Stories Behind Them*, "Papazian told me that he worked with EA and Future Publishing (owners of Edge Magazine and former victims of Langdell) after his case was made public, and that the eventual takedown of Langdell was something of a group effort. He calls the two companies his "*most important allies.*" Indicating in your reply precisely what you meant by Future Publishing being former victims of Langdell given that it is well documented that Langdell's company prevailed against Future Publishing whereby Future admitted to infringing on Langdell's company's trademark rights and passing off on Langdell's company's goodwill. And also clarifying in your reply, in detail, in what way you worked with either EA and/or Future Publishing in a "group effort" to "takedown" Langdell, and making clear exactly what you meant by it being a "group effort." And also provide full detail as to what you meant by "the two companies were [your] most important allies."

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 34: Describe in detail what you meant when you stated to the author of the book titled *Buttonless: Incredible iPhone and iPad Games and the Stories Behind Them*, "For legal reasons I cannot explain exactly what we did," Papazian explains,

"but the result was that EA won a lawsuit against Tim Langdell in the United States and all his precious trademarks were cancelled." In your response, give full detail as to what it was that you did, whether with EA (Electronic Arts) or Future Publishing, or both, or otherwise, that you were referring to when you stated *"For legal reasons I cannot explain exactly what we did"* and then explain in precise detail what you were referring to including stating exactly, in detail, what you did that is referred to in this extract from the book but which you declined to explain at the time.

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 35: Describe in detail the circumstances that lead to you filing a complaint with Apple against Respondent, and your justification for sending to Apple Inc a request to take down Respondent's game "Bobby Bearing 2" (EdgeBobby2) from Apple's AppStore/iTunes; in particular, describe in detail why you alleged that Respondent's iPhone game Bobby Bearing 2 infringed on your alleged rights in the mark EDGE in United States commerce; and in particular describe in detail what you meant when you stated to eurogamer.net " *"This game [Edge's Bobby Bearing 2] also infringes [...] our trademark EDGE, and confuses our fans."*

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner filed the described Apple complaint because it realized that Respondent released EDGE Bobby 2 only to create the appearance that it was using the mark EDGE and because Petitioner was concerned that consumers would assume a connection between Respondent's dated EDGE Bobby 2 game (in fact the game "Bobby Bearing 1" made authored by Robert

Figgins in the 1980's.) and Petitioner. Because the EDGE Bobby 2 did not sell, however, Petitioner ultimately did not follow through and insist that it be taken down.

INTERROGATORY NO. 36: Describe in detail your settlement and agreement reached with Respondent in May 2009 to rename your game from "Edge" to "Edgy" in the US territory.

RESPONSE: This question is not relevant to the present proceedings, which solely relate to the ownership of the mark EDGE in the United States. Petitioner objects to this interrogatory as irrelevant. Without waiving those objections, and subject to the foregoing General Objections, Petitioner insists that there never was such an agreement.

INTERROGATORY NO. 37: Describe in detail your statement to Escapist Magazine (escapistmagazine.com) in which, as a result what you stated to them and as a result of copies of emails you sent to them, they stated on August 17, 2009 in discussing your director David Papazian: "*... at one point by admitting he'd reneged on the agreement to use the "Edgy" name, and by later claiming he'd hidden his intentions from Langdell because of "his company's history in these matters."*" In particular, describe in detail what you said to Escapist Magazine, and what was said in the emails you provided them with (including who they were to and from, and the date of each email) that caused them to clearly conclude that you had a firm settlement agreement with Respondent to change the name of your game to "Edgy" but which agreement you admitted to them you had reneged on and what you meant when you stated that you had "*hidden [your] intentions from Langdell.*"

RESPONSE: Objection. The information sought by this question is not relevant to this cancellation proceeding. Without waiving that objection, and subject to the foregoing General Objections, Petitioner insists that there never was such an agreement.

INTERROGATORY NO. 38: Describe in detail your statements made to The Escapist, and describe in detail the content of the emails you supplied to them, that lead them to write the following on August 17, 2009: "*... emails between Papazian and his attorney, sent by Mr. Papazian to The Escapist, confirm that he was aware not only of the existence of the Edge trademarks but also the "serious" risks involved in challenging them, particularly in the U.S.*"

RESPONSE: Objection. In addition to the foregoing General Objections, Petitioner observes the information sought by this question is not relevant to this cancellation proceeding.

INTERROGATORY NO. 39: Describe in detail how you became the owner of the registered trademark "Edgy" for computer games in the United States.

RESPONSE: In addition to the foregoing General Objections, Petitioner observes that this question is not relevant to the present proceedings, which solely relate to the ownership of the mark EDGE in the United States. Petitioner objects to this interrogatory as irrelevant.

INTERROGATORY NO. 40: Describe in detail how you came to reverse your decision to renege on the May 2009 agreement, and in particular your re-release in December 2009 of your game previously titled "Edge" with the new name "Edgy" on Apple Inc's AppStore (iTunes) in accord with the settlement you reached with Respondent in May 2009.

RESPONSE: In addition to the foregoing General Objections, Petitioner observes that this question is not relevant to the present proceedings, which solely relate to the ownership of the mark EDGE in the United States. Petitioner objects to this interrogatory as irrelevant. Without waiving those objections, and subject to the foregoing General Objections, Petitioner insists that there never was such an agreement.

INTERROGATORY NO. 41: Describe in detail how you came to renege a second time on the settlement agreement with Respondent, and came to change the name of your game back from "Edgy" to "Edge" again, and in particular describe in detail what lead Develop (develop-online.net) to report the following on its website on December 4, 2009: "*But though Langdell has sent to Mobigame what had seemed like an amicable settlement agreement, Mobigame has decided it will take the game down again, because the developer fears Langdell will use the legal precedent in his assault against EA.*

According to an extensive email correspondence between various parties – which Develop has seen a copy of – Mobigame’s co-founder David Papazian fears that Langdell is trying to retroactively claim ownership on Mobigame’s Edge before it was rebranded Edgy.

“We believe [Langdell] is trying to use us against EA and other companies to claim that he sold an iPhone game,” read one email. “In these conditions [Mobigame has] no other choice than pulling the version of the game named Edgy for the US/UK.”

Mobigame see that changing the name of their game to Edgy “is sending the wrong signal, and gives the wrong impression that Tim Langdell has won the battle against independent developers.””

In particular, state in detail what you meant when you said to Develop that you thought by changing the name of your game to "Edgy" you feared "*that Langdell is trying to retroactively claim ownership on Mobigame’s Edge before it was rebranded Edgy.*"

RESPONSE: This question is not relevant to the present proceedings, which solely relate to the ownership of the mark ownership EDGE in the United States. Petitioner objects to this interrogatory as irrelevant. Without waiving those objections, and subject to the foregoing General Objections, Petitioner insists that there never was such an agreement.

INTERROGATORY NO. 42: Describe in detail how many times your game, either titled "Edge" or "Edgy," has been taken down from Apple Inc.'s AppStore (iTunes) in the United States territory, stating the date each time it was taken down, and in each instance state clearly whether it was your decision to take it down (remove it from sale) or whether it was done by Apple over your protest. In particular, state in detail why you decided of your own volition to remove your game from sale on the US Apple AppStore (iTunes), and in particular state in detail why having removed your own game voluntarily, you then deliberately sought to give the public impression that each such removal by you of your game from sale had been done by, or at the behest of, Respondent when you knew this not to be true.

RESPONSE: Objection. The information sought by this question is not relevant to this cancellation proceeding. Without waiving that objection, and subject to the foregoing General Objections, Petitioner refers Respondent to the answer to Interrogatory 29 above.

INTERROGATORY NO. 43: Describe in detail the research you undertook prior to making first use of the mark EDGE in United States commerce for a mobile phone game, to first determine whether any other company had been using the marks EDGE or THE EDGE, and whether any other company already owned various EDGE trademark registrations on the U.S. trademark register for games.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner conducted some trademark searching using the French trademark registry database. Petitioner was not aware of Respondent or its purported rights in EDGE or EDGE GAMES. Petitioner was not aware of any game actively being sold under the mark EDGE.

INTERROGATORY NO. 44: Describe in detail your knowledge of Respondent's extensive use of the mark EDGE in United States inter-state commerce dating back to at

least the mid-1980s, and in particular detail your knowledge of Respondent's historic use of the mark EDGE, and its U.S. EDGE trademark registrations and applications, prior to your first use of the mark EDGE in United States Commerce.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Petitioner was not aware of Respondent until Respondent took steps to remove Petitioner's EDGE mobile app game from the AppStore in April 2009.

INTERROGATORY NO. 45: Describe in detail if you allege you were not aware of Respondent's ownership of the mark EDGE, and extensive use of the mark EDGE, in United States commerce prior to your first use of the mark EDGE in United States commerce, then why when you were made fully aware of such continuous current and historic use by Respondent of the mark EDGE, and of Respondent's trademarks and trademark claims to EDGE, at least as early as March 2009, did you still persist in falsely stating publicly that Respondent had no such current or recent use of the mark EDGE, and why you persisted in knowingly infringing Respondent's registered trademark rights in the mark EDGE in United States commerce even after you received a Cease and Desist notice.

RESPONSE: Petitioner objects to this interrogatory as it does not request information relevant to this proceeding and includes a number of premises based upon conclusions of law. Without waiving its objections, and subject to the foregoing General Objections, Petitioner states that after Petitioner learned about Respondent it soon thereafter encountered information that suggested that Respondent was not engaged in the genuine sale of software and that Respondent was not in a position to assert valid rights.

INTERROGATORY NO. 46: Describe in detail your repeated defamation of Respondent, and in particular Respondent's CEO, Dr Tim Langdell, given that you have known at all times that all your defamatory statements have been untrue yet you have still chosen to state

them, and have repeated such falsehoods and defamatory comments as recently as in filings in the present proceedings. In particular, describe in detail why you have persistently made reference to Dr Langdell being put in jail, or similar, when you are fully aware that no judge has ever ordered Dr. Langdell to go to jail or made a legal finding that Dr Langdell should go to jail, particularly given that in the final order resulting from the 2010 District Court Case before Judge Alsup, it was clearly stated that no party is deemed to be guilty of any wrongdoing.

RESPONSE: This question is not relevant to the present proceedings, which solely relate to the ownership of the mark ownership EDGE in the United States. In addition to the foregoing General Objections, Petitioner objects to this interrogatory as irrelevant.

INTERROGATORY NO. 47: Describe in detail your knowledge of, and when you became aware of, the 2008 Federal Court Decision in the case between Velocity Micro Inc and Respondent, which resulted in a Final Order, ruled on to be considered to have been heard on the merits, stating that Respondent prevailed on all counts, including Respondent being found to have not obtained any U.S. trademark as a result of fraud, and including Respondent being determined not to have abandoned any of its EDGE marks through non-use, and including Respondent being found to be the true and legitimate owner of the mark EDGE for and in relation to computer game software and hardware in United States commerce.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that Respondent provided a copy of a 2008 Federal Court Decision that involved Velocity Micro Inc. and Respondent during the course of the proceedings in USPTO Trademark Opposition No. 91212834. That was Petitioner's first knowledge of the document. Petitioner makes no concession as to Respondent's interpretation of the document.

INTERROGATORY NO. 48: Describe in detail the gross receipts received by you resulting from sales of your game titled "Edge" in United States commerce for each year of the five years prior to 7 October 2010, indicating the source of each receipt and which format of the game was sold in each instance.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that the total U.S.-specific revenue for the EDGE game for the period of January 2009-December 2009 through the AppStore platform was \$136,192. The total U.S.-specific revenue for the EDGE game for the period of January 2010-October 7, 2010 through the AppStore platform was \$41,608. Sales via the Sony Erickson portal from December 2009 through September 2010 totaled €1,604.27.


INTERROGATORY NO. 49: Describe in detail the amount spent by you on promoting and marketing your game titled "Edge" in United States commerce for each year of the five years prior to 7 October 2010.

RESPONSE: Subject to the foregoing General Objections, Petitioner states that the total amount spent by Petitioner on promoting and marketing its EDGE game in the U.S. from the period of January 2009 to October 2010 was €87,000.

VERIFICATION

I, David Papazian, am Chief Executive Officer of MOBIGAME. I have read the foregoing interrogatories and the answers to those interrogatories, which are true according to the best of my knowledge, information, and belief. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of March 2021.

David PAPAZIAN
Signature 

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITIONER'S RESPONSES TO FIRST SET OF INTERROGATORIES TO PETITIONER has been served by email on Respondent on March 1, 2021 at timlangdell@gmail.com.



Patrick J. Concannon



Industrial Property Department
15 rue des Minimes CS 50001
92677 Courbevoie Cedex
FRANCE

INPI

Dreyfus & associés
Paris - Lyon - Strasbourg

78 avenue Raymond Poincaré
75116 Paris - France
T.: +33 (0)1 44 70 07 04
F.: +33 (01) 40 06 99 64
contact@dreyfus.fr
www.dreyfus.fr

To the attention of Mr. Stéphane Hidalgo-Friaz

Paris, July 27, 2022

SARL au capital de 500 000 €
RCS Paris B 453 207 383
Code NAF : 6910Z
TVA : FR 30 453 207 383

Via the procedures.inpi.fr platform

Subject: Action for nullity against the French designation of the international trademark "EDGE GAMES" No. 1515050 – Arguments in response by the Applicant Société Mobigame SARL c/ Edge Games, Inc

V/Ref. : NL22-0042 / 1515050 / SHF
N/Ref. : C2485LITM0001/ND/CG

Dear Sir,

Following the filing of its arguments in response by the company Edge Games, Inc, owner of the trademark contested by this action for nullity n° NL22-0042, please find below our counter-arguments in response , presented by Mobigame.

For all practical purposes, we recall that this action for nullity is aimed at the French designation of the international trademark " **EDGE GAMES** " No. 1515050, dated December 26, 2019, registered in the name of the company Edge Games, Inc., targeting the following goods in Class 9: ' *Computer game programs; computer game software; game software downloadable from a global computer network; computer game software for use on cellular and mobile phones* ' (hereinafter the " **EDGE GAMES**" trademark).

This action for nullity concerns all the products covered by the French designation of the international trademark "EDGE GAMES" No. 1515050.

We represent in this procedure the simplified joint-stock company Mobigame, registered on January 26, 2004 with the RCS of Paris under number 452 476 831, whose registered office is

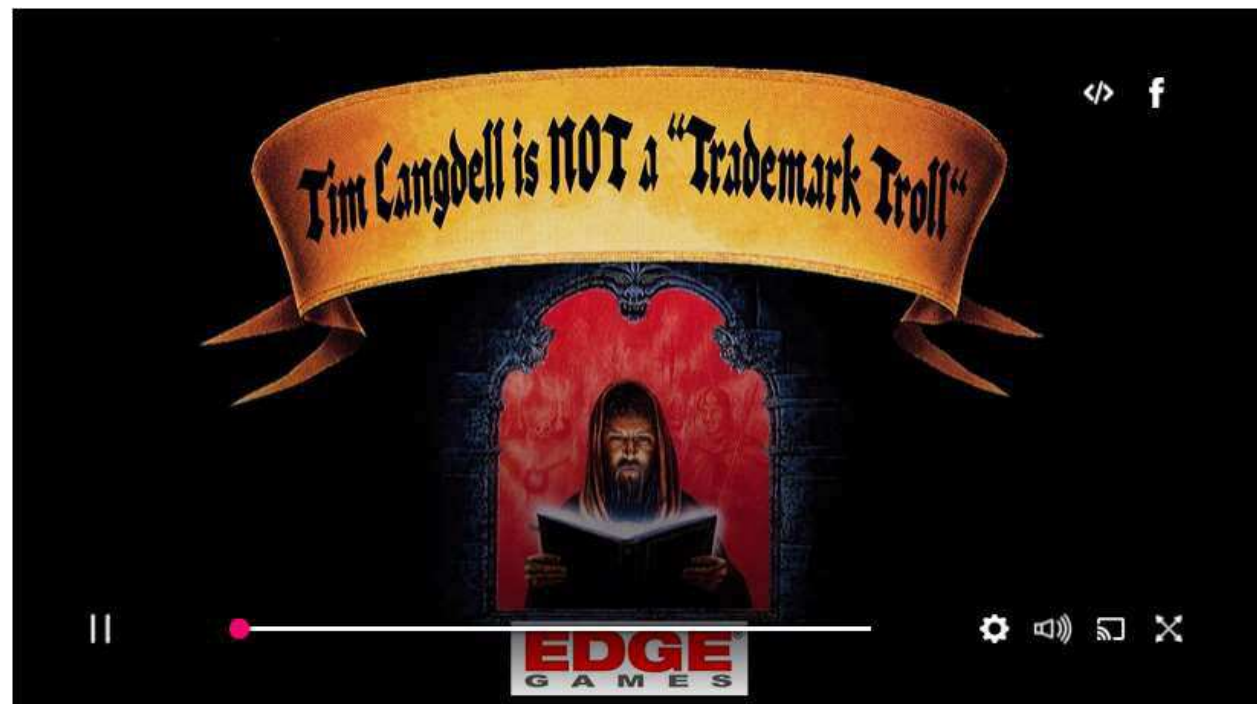
EDGE004448

For the purposes of transparency, the Applicant would like to point out that this data does indeed include the figures relating to the "EDGE" game as well as its various variations. As mentioned above, the relevant public will necessarily make the link between the well-known trademark "EDGE" and the games resulting from it, namely "EDGE", "EDGE Extended" and "EDGE Demo", the figures relating to the latter therefore having to be considered as an integral part of the notoriety of the "EDGE" sign of which they are a variation.

Also, over the period from July 2008 to July 2022, the games of the "EDGE" range were downloaded [REDACTED] times, generating a turnover of € [REDACTED]. This is Mobigame's 4th downloaded application, after the very famous "Zombie Tsunami", "Cross Fingers" and "Truckers Delight". Please note that the Mobigame company only started using the AppFigures application after the launch of the "EDGE" game, so the data is incomplete.

“Tim Langdell: Vindicated after 10+ years” (The Funky Spectrum Website; 25 June 2023)

<https://www.funkyspectrum.com/?p=13473>



EDGE004784

Transcript

(performed using audio to text transcription in Microsoft Word)

Hello, it's George again. And for today's video, I have something that's been kicking around in my head for some time and it's something I think really does warrant a decent bit of coverage in order to hopefully set the record straight on a few things. Now, my regular viewers will know that I'm no stranger to controversy. I'm no stranger to sticking up for people when they've been maligned online and in the gaming media, and now that we're very much in the digital era, it's never unfortunately been easier to create a false image of someone. And to trash their reputation simply by dropping a few buzzwords into the mix, even if what is being said is completely untrue. Also, there often comes a point where the narrative has been shaped by so many and to such a degree that to tear down the untruths and to expose actual facts beneath is tantamount to torpedoing your own content. And this seems to be something that online pundits and news outlets are basically loathe to do. Many of them will set up their shack on their square of land, serve whatever it is that they're serving, and they will never move. The menu will never change, even if it starts to make people ill. As long as the clicks keep coming. The narrative remains the. In point of fact. We now live in a time where to attempt to change this narrative. From within can often lead to a quick and unceremonious termination of working relations with the company or individuals in question who've put out the original story.

Now this goes doubly for Youtubers and other online iconoclasts to seek to break stories and provide scurrilous gossip to their fans solely for the aforementioned clicks. And if the cap fits on a certain day, they'll keep wearing it as they sink into the mire. Often such individuals will seek to curry favor from certain others, paying it forward with toxic and incorrect content. They can at some point in the future obtain some kind of freebie or recoup DOS boost from shouting from their position on the most popular side of the fence. Now this situation, both with Youtubers online news portals and physical magazines and journals, has fundamentally fractured journalism to the point where it's now extremely difficult to take anything at face value. We live in a time where the divided underdog is now often the only place from where one can take facts as into their wide white washers, curated ably by the barometer of online opinion, seek to dog our mental walls with a narrative that is not so much correct as it is simply something. That has been agreed upon as a general consensus. A general consensus, sadly. That need have no basis in fact and simply serves to farm more cliques. For those only really interested in their own popularity and their own bottom line. Many people over the years have been caught in these types of tumultuous situations.

I myself have covered a lot of them, for example, and more and more of these are relating to IP infringements and the chaos that spirals off from such interactions. Often they can be as simple as a reasonable person trying to guard their own IP from misappropriation or profiteering by unrelated online vampires. Online vampires, who then choose to subvert the narrative using their viewers and readers, or other content creators to paint the IP holder in a bad light to attack them, and to attempt to trash their reputation. Now this will take place regardless of these people's actual rights to use the IP that they're knowingly infringing upon. For example, this happened with Martin McNeil. We all remember the situation with Martin MacNeil. Martin McNeil, I would cast him as a friend. He's a good man. He's someone who's done a lot to protect the rights of artists and creators over the years, and he was dragged through the fire and had his home and

EDGE004785

family threatened with repeated and thankfully thwarted by myself and others, calculated attempts to ruin his reputation and his livelihood. Now this all took place because someone knowingly stole from him. Then she immediately fabricated the narrative replete of crocodile tears and photos of the children who were being deprived of their 89th holiday of the year. Because they were being asked to pay the going market rate for using a copyrighted photograph completely without authorization, in one of their idea cookie cutter videos made solely for absolute morons. The unfortunate thing about morons is that they're extremely easy to mobilize. You can sit your corpulent baboon breasted over the hill self on a mound of your own self importance, bang on an empty butter tub, and you shall have your army if you lie to them, they will come.

And so, ladies and gentlemen, this brings us to the topic of today as. From what I've been able to piece together from a deep dive into the actual facts of the situation, what we're going to hear about now is a textbook example of the Internet fabricating a reality that is completely incorrect at odds with the actual reality of things. And is being sold to people as gospel now the end result is that someone who's contributed a lot to gaming over the years and clearly has a lot of love for it as an art form has been labeled a copyright troll and cast into the yawning maw of Digital Hades to burn for all eternity in a bottomless chasm of white-hot ones and zeroes. The person I'm going to talk about today is Tim Langdell. Now, there may be several of you listening who immediately think who? So allow me to give you a little background into Mr. Langdell's life. Tim has been an active indie game developer and publisher since 1981 where he began Softek before changing the company name in 1984 to the Edge Games, moniker. Since those very early days, he and his co-workers created many titles that are still much beloved by players today, Titles such as Brian Bloodaxe, Bobby bearing Garfield's Big Fat Hairy Deal and more, and also for the Fantasy fans listening, Edge Games, as you all know, also created Fairlight.

The main character on the front of the box of Fairlight is actually wearing Tim's face, and I don't mean in a Texas Chainsaw massacre sort of style. I mean that the wizard was actually painted as an homage to Tim, and as such bears his likeness. Now, aside from gaming and work with Edge, Tim has also participated in many other ventures that have helped grow and legitimized the gaming industry from executive producing. The first televised video game awards show Cyber Mania '94 to co-founding The Academy of Interactive Arts and Sciences. He was also involved with the meagre as well as being one of the few software companies to agree to support Trip Hawkins 3DO System and. After a relatively unremarkable decade producing PC games in the 90s, the early 2000s saw Edge pushing a lot of their older content to modern mobile devices. And as that decade rumbled on, Tim found himself a highly regarded figure in the gaming industry. In no small measure down to the fact that he'd managed to steer his company for almost 30 years through an increasingly cutthroat and ever-changing commercial landscape and continued to do so. He found himself invited to many events as the keynote speaker. He took up positions on bodies such as the Board of Independent Game Developers Association and the new media divisions of both the Hollywood Writer's and Producer's Guilds. He also worked on a small title known as World of Warcraft in 2004 and helped with the production of a similarly unknown little title known simply as God of War, which was a tiny game that no one heard of to this day and was actually created by a former student. So all in, Tim has done more than most over the years when it comes to advancing gaming as both entertainment and art, and for pushing it greatly into the public consciousness where it's now thought of as a very lucrative and

legitimate business, drawing in more revenue than all other forms of entertainment on the planet combined.

Now of course this is not all of Tim's work single handedly and there were, and still are many other irons keeping the fire hot, but it's also incorrect to claim that Tim has not had some part in shaping the so-called industry we see before us around us in 2023. Now at this point I could imagine some of you are listening and thinking this is like some kind of f*****g infomercial. Why is George doing the puff piece? But fear not ladies and gentlemen, for this is where the tale begins to catch fire and lurches back towards the precipitous lip of that awful chasm incandescent white. With the fire of an infinite number of ones and zeros and into which reputations are routinely cast, often with zero regard for the facts of the situation, and this is the problem. Tim's reputation is on the brink of ruin, or, according to some, resides in ruins because he's one of those awful, awful individuals who have had the temerity, the gall to actually defend and protect their own IP from those who seek to take it from them, and to shackle it beleaguered and battered to their own projects for their own gains.

So, let's go back a few years and as stated, Tim and his company have been operating in the gaming sphere with varying degrees of success peaking and troughing, as the industry itself has done until around 2009. Now, unfortunately, in 2009, a malicious and unknown blip appeared on their radar and it would not be long before this simple glow on the metaphorical bridge monitor became barrage after full blown barrage of legal attacks against him, his company Edge. So, in 2009, the attempted bullying began, coupled with an attempt to deliberately and maliciously destroy Tim's reputation in the gaming sphere completely. How did all this happen? I hear you cry.

Well, ladies and gentlemen, in 2009 a French chap called David Papazian or Papazian [*makes two attempts to pronounce it*]. And I'm not sure how that's pronounced. Because of this, I'm going to refer to hereafter, as Mr. Marzipan decided he was going to burn Tim's reputation from the ground up. The key to Mr. Marzipan's attack was to push the narrative that Tim was and is a copyright troll, and to relentlessly pursue this, a false narrative. Relentlessly and from all possible angles. Now it seemed at first that the gaming press and those he thought he could count on for support were very much in Tim's corner, but one by one they found their think tanks polluted by the disinformation pushed relentlessly by Mr. Marzipan. As an unfortunate result of this, opinions changed very quickly. Tim found himself cast into the lake of burning binary, relegated to troll status and to all intents and purposes, his legacy burned to ashes, which were conveniently arranged by Mr. Marzipan so as to form several letters which would go on to forever spell out the word troll in the minds of the gaming press and pundits.

And what started this? Well Mr. Marzipan was the head of a tiny French company by the name of Mobigame and contacted him in early 2009 with the request to use his trademark Edge as the title of an upcoming iPhone game that they were working on. Tim refused to immediately grant the use of rights and was perfectly within his rights to do so. And the game was thus retitled as Edgy on Tim's suggestion. Despite accepting the outcome of the trademark request and changing the title of this game, Mr. Marzipan could not sleep at night for thoughts fizzing in his head relating to how he'd been denied the use of someone else's copyrighted content in a commercial endeavor that had nothing to do with them. He was, to put it simply, f*****g livid.

EDGE004787

Marzipan then went on to hatch a plot to tie Tim up in endless legal shenanigans relating to his request and to attack him as an individual and his handling of the affair, which in the eyes of any sane trademark lawyer on the planet was a cut and dry case that no matter how it was looked at, always featured Tim as being in the right as he himself was the right holder. He simply refused to allow his trademark to be used by something completely unrelated to his company. This, ladies and gentlemen, as I'm sure you can agree, is a completely acceptable stance to take. Any one of us could boil some sugary water in a pan, dye it brown and bottle it. We could do that easily. What would be just a soupcon more difficult would be to then label that bottled liquid as Coca-Cola and expect that we'd be met with zero resistance. Now this is not a case of a rampant capitalist juggernaut crushing the little man. It's simply common f*****g sense.

If an IP holder denies you the rights to an IP, you are denied the rights to that IP. You can't use an IP without seeking permission from the IP holder without basically preparing for legal war. There's just no way around it and to seek to circumvent such a situation is to seek to sail through very choppy legal waters indeed. Marzipan chose to set. He not only chose to set sail, but he invited along other crew members too. Who were more than happy to row towards creative and intellectual oblivion with a bitter madmen charting their course into the realms of the ridiculous. Now, one of these crew members was a Blogger by the name of Simon Carless who lived up to his almost name when he carelessly allowed his brain and fingers to work on a hit piece for Gamasutra that basically cast Tim in the role of the gaming industry Satan simply for choosing to defend a trademark that had been his for decades. This hit piece by Simon was actually removed from Gamasutra as a result of pressure from industry heavyweights and legal experts. But as with all things on the Internet, the touch paper was lit, and once the cat is out of the bag, you can't put it back in. Also, as we've seen many times, this sort of situation enables those who have willingly manufactured it to further cast themselves in the role of being picked on by the corporate machine, which seeks nothing but to squash all creativity out of the bones of a plucky small developer simply trying to eke out an income in a nightmarish capitalist warren of legal blades all conspiring together to slice them to bits. Despite this piece being removed, the groundswell had already begun to build gaming forums sites and ghoulish think tanks began to bubble, with dissent aimed squarely towards a man who had simply dared to protect his company name from misappropriation. And that is indeed all that he had done.

In fact, top gaming attorney Tom Buscaglia said at the time, "If you do not enforce your trademark, you may lose it." And this, folks, this is the crux of the matter. This is always the crux of the matter when it comes to dealing with an IP that you hold, and this, and often this alone is why IP holders choose to defend their IP. If you wish to keep hold of such an IP in perpetuity, you cannot allow it to fall into the hands of others lest you find it removed from your own. There's such a thing as abandonment. That's the simple fact. So by choosing not to allow his IP to be used by Mr. Marzipan, he was simply reaffirming to all involved that it was his IP, would remain his IP and would continue to be used solely as his IP within the sphere in which he was entitled to use it, and that's also a very important point. Now if I went out and started Edge Sandwich Bar tomorrow Tim would have no legal grounds for action against me. Trademark law is very well wrought and tight with regards to the application and usage of any one trademarked IP, and the sphere in which the trademark persists.

If I were to write a book called Edge of Darkness, that's a philosophical musing on mankind's impending slide into centuries of shadow, again Tim could do nothing about this. The fact is that someone was making a computer game called Edge in a marketplace where there is already an existing company with an existing profile using the trademark and the name edge. Marzipan didn't get this memo, and in his pig-headed boorish way he doubled down on his attacks on Tim, spreading a swathe of new rumors, the most preposterous of these being that Tim hadn't actually done any work on games since the 1980s and had simply been living off of suing people for using the word edge in anything gaming related. Does that sound familiar? Ladies and gentlemen, does that sound familiar? Of course it f*****g does, as this is the tried and tested tactic used by bitter cretins in so many situations nowadays online that it's frankly staggering. Does anyone remember an orb shaped crying mother with two young children to support sitting in front of a wall of valuable games bemoaning a career copyright troll who's dared to ask for the regulation, remuneration for her unauthorized usage of a piece of his work? I'm sure we all do and I'm sure we can all think of 101 similar. They're everywhere nowadays.

Needless to say, such allegations are almost always invariably false, and a cursory Google search will confirm that no such trolling on Tim's part has ever taken place. But that doesn't seem to matter in the mind of the aggrieved party, who will happily just make things up as the waters begin to get more and more choppy around. And as we've seen so many times, once you push a narrative and frame it in a certain way, it's easy to get bright lights for hire on board to spread such nonsense as they are happy for the drama clicks, and they're all seeking to be seen on the right side of the fence, which is. Invariably, framed as a David and Goliath situation taking place wherein a complete f***up with no understanding of legalities or even the basics of right and wrong, has chosen to cast themselves as the hero of the peace. Even a lone hero sometimes needs an ally. Every Punisher has their micro[word?]. Every Bond has his Q. And so it was that Mister Marzipan found an unlikely ally to hitch himself to in the even more bizarre case of Tim Langdell versus Electronic Arts.

And so, ladies and gentlemen, enter the game in behemoth that is EA and enter Mirrors Edge. It is, as they say in the game. So in 2010, EA offered Edge games \$50,000 to use the title for their upcoming futuristic parkour package delivery simulator, and things rapidly went downhill from there. Now, unfortunately for Tim, a contingency firm known as the Lanier Law Firm came out of the woodwork fresh from billion dollar victories against companies like Toyota, and they offered to take on Tim's side of the case against Electronic Arts in a no win no fee agreement that would see them take a percentage of the winnings off the top when EA were finally toppled, resulting in what the Lanier firm claimed to Tim would be a multi-million-dollar payout in their favor. And it's worth noting that Tim now looks back on this and believes that taking on the Lanier firm was one of the biggest mistakes he's ever made in his entire life. So sadly for Tim, it became apparent very quickly that the Lanier lawyers didn't really know much about trademark law. And as things went on, it became apparent quite quickly that they actually knew nothing about it. They filed an injunction against Electronic Arts without Tim's approval and things fell apart in the case very quickly from then on. EA's Specialist trademark lawyers annihilated the Lanier lawyers in court, as well as regaling the judge with tales of Edge versus Mr. Marzipan, which unfortunately the judge took at face value, perceiving him to be the copyright troll he was painted as. And as a result, he refused to even let the Lanier attorneys make their case, refusing

their injunction and basing his opinions and statements on incorrect statements relating to the situation with the aforementioned Mr. Marzipan.

Now, shortly after this the Lanier lawyers abandoned the case, leaving Tim to work out a settlement with the EA. It is, as they say “in the game.” The game that was to play out was actually a fair one and didn't go badly for Tim at all. See, the deal Tim struck with EA actually worked out reasonably well for him as he was found not guilty of any wrongdoing with regards to trademark fraud and edge games were still affirmed to retain their common law rights to their trademark. More importantly, and this relates to the point I touched on earlier relating to losing. IP due to non-commission of action, it was ruled that Edge would not lose any trademark by abandonment. Indeed, as part of the deal with EA, Edge games were permitted to file the registration of its Mark ‘Edge Games.’ This way the deal cut with EA ensures Edge would still have continuity of trademark registration coverage in the US for its edge marks right back to 1994. And of course, as part of the deal, Edge still retains all of its trademarks in the UK, Europe and elsewhere. The ins and outs of this deal were deliberately misunderstood by all who actually reported on it. Seizing on the opportunity to once again vilify the career copyright criminal Tim in the press and to skew the narrative and the fact of the situation in favor of salacious falsehoods once more, Marzipan, of course, also emerged once again in the press, even going as far as to claim that Tim is going to be put in jail for trademark misbehavior and once more doubling down on his trademark troll. He also continued to tell anyone who'd listen that Tim and Edge hadn't actually been responsible for any games since they had a short run at them in the 1980s. Now, well, that's untrue. It's ironic because it's actually Mobigame who didn't produce many games producing as they did only a handful of now forgotten titles between the years 2009 and 2012. Now, as I'm writing this in 2023, Mobigame have not actually produced any new games whatsoever in over a decade.

Edge, however, have continued producing games since the 1980s and have in point of fact published six games in the last few years. As Edge had been producing content, Mr. Marzipan has simply been churning the black waters of bitterness and inviting the increasingly more deluded in for a swim on his dime. As he sits on the side, regaling them with tales of Tim, the Master IP manipulator, troll and wannabe jailbird now. Sadly, the fact that Mister Marzipan was clearly a bitter individual talking absolute b*****it by this point was never something that's been reported in the press. Not once, not at all. No one who took against him in the past has gone on in any way to attempt to clear his name. The narrative was in place and it seems, according to these people, they wanted it to remain there. Tim Langdell is a copyright troll who produces nothing save for ill feeling and spends his days and nights basically camping out under the various bridges in order to make his ill-gotten living from suing innocent underdog after innocent underdog. That was interesting then. But in 2023, we finally got the final verdict in the case of Mobigame versus Tim Langdell. It's even more interesting that none of the news outlets, bloggers, Youtubers and the rest who vilified and sought to destroy Tim's reputation have said a f*****g thing regarding this verdict and why, ladies and gentlemen, might that be? Well, it's obvious they would have to admit they're wrong. They'd have to admit that they willfully took part in a manufactured endeavor to ruin the reputation of a man who simply sought to do what trademark law implicitly states one should do when overseeing the use of your own trademark.

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So let's take it back to the beginnings of these rumblings and the beginnings of this eventual verdict. In 2020, the United States Trademark Office made a final ruling that Mobigame, and by extension Mr. Marzipan, are not entitled to register the mark Edge as a name and ruled completely in favor of Edge Games who also went on to receive registration of the mark Edge Games. As well as still holding the EU and UK registrations for the same. Now one might think at that point, well, it's kind of cut and dry, isn't it? That seems to be the end of it. But did this stop Mr. Marzipan? No. Did this stop people from reporting it as more manipulation by Mr. Marzipan, by now famous for doubling down, doubled down? He started another battle, this time seeking to get Edge games, trademarks completely canceled and ripped up by the roots. However, finally, rationality prevails, and in the summer of 2022 the UK Trademark Office came to a decision regarding the ownership of the Edge trademark. Did Edge indeed own the trademark they've been working under since the early 1980s, or did fly by night mobile game cowboy Mr. Marzipan and his company Mobigame, in fact, now own the rights to the trademark?

They dug into all aspects of the trademark and found overwhelmingly in favor of Tim. Tim was stated as the rightful owner of the Edge and Edge Games marks and, much like Mr. Gravy, Tim had always been the caretaker of the Edge and Edge Games marks. But thankfully the only thing being killed with an axe, albeit metaphorically, were Mr. Marzipan's designs on the name as the Trademark Office's ruling stated that Mobigame had failed to generate any interest whatsoever in the trademark Edge from their side of the situation, and thus were deemed to be existing solely on goodwill generated and built up by Mr. Langdell's company of the same name. Now we're getting into repetitive territory, but can you guess what Mr. Marzipan did next? If you think he quietly accepted the ruling, gave up his career of trolling and maligning an innocent man, and disappeared quietly back to low key software development in France, then to page 312. If you think he chose to once again stick the dummy and double down unable to believe that the reality in which he cast himself couldn't be spliced with the reality in which sane, rational human beings conduct their business and chose to mount a frankly insane and hope for supper against the verdict, please turn to page 400.

Now, let's be honest, folks, for those familiar with fighting fantasy books, we all want to turn to page 400. We always want to turn to page 400 as 400 is synonymous with victory. So without further ado, let me tell you what happens on page 400 in another stunning and total defeat for Mobigame. The result of the UK appeal went completely against them, with the UK Trademark Office upholding their decision of August 2022 that Edge Game and, by extension, Tim Langdell are the rightful owners of the trademark. Tim had at no point been acting as a trademark troll, as his accusers claimed on occasions too numerous to mention, Tim always had the right to claim that his company owns the trademark on the word edge, as they have always held the mark in perpetuity since the early 1980s. And so, ladies and gentlemen that means to oppose this initial coverage of a situation that has been growing in the background, like a painful cyst on the gaming industry for many years and one which I believe I am the first to lance and to report upon with any degree of recognition of the actual facts involved. Now I am hoping to get him on for

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an interview so we can go a bit more in depth about all of this now. Now that I've put you all in the picture, and ideally I'd also like my friend Martin McNeil himself, now qualified expert on copyright law, to join us too. But I will have to see if that can be arranged since both of these folks are very busy people. But I like to think I've done my job here and someone needed to actually put out the facts on this situation. And as usual, it often takes an outsider. Someone at the very edge of the community, if you will, to speak the truth in the hope that it percolates down through the heads of those who have wished nothing. Their ill will against this innocent man over the years for the most manufactured and incorrect of reasons. Now, for those who wish to continue to paint a narrative against them in the face of a body of facts that refute your beliefs, that every step, there's a white, hot, hungry, more filled with ones and zeroes, waiting for more fuel. Feel free to dive in at any time.

A 14-year trademark battle over the name 'Edge' in gaming nears its close

Dean Takahashi
@deantak

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2020-2023



Edge Games' latest titles. (Image Credit: Edge Games)

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Fourteen years ago, Tim Langdell and his [Edge Games](#) became a pariah of the game industry. His firm was branded a "trademark troll" in a naming dispute with [Mobigame](#) and its president David Papazian over the names Edge and Edge Games in the game business.

Langdell's Edge Games started making games in the 1980s, but Mobigame created a hit mobile game in 2009 with the name Edge. The two companies have disputed the naming ever since.

Yet Langdell said in an interview with GamesBeat that his company has now [emerged largely victorious](#). As far as we can see, this case isn't what it seemed, and it's worth a second look. Revera, an international law firm that doesn't do work for any of the parties in the dispute, studied the ruling in the United Kingdom and found that Edge Games prevailed over Mobigames earlier this year. Based on the latest ruling, Apple has informed Mobigame that its Edge game will be removed from the Apple App Store. Langdell said he has won favorable legal terms in 36 trademark cases involving Edge in games.

Asked if the company had lost its cases in the U.K. and France, and if Apple had sent a letter saying it could remove Mobigame's Edge from the App Store, Papazian directed us to comment to his lawyers regarding the U.K. Regarding France, he said, "In France, Mobigame decided not to renew its [trademarks] because it was under the mistaken belief that Langdell had accepted the position and had stopped his activities. As for the UK, I would direct you to [law firm] Sheridans for a comment on the matter."

Papazian disputed that Apple had threatened to pull Mobigame's Edge from the app store pending a legal explanation. He noted Langdell made the original request to remove the game. He said Mobigame has "responded to those requests from Langdell explaining why there is no lawful basis on which to take the game down and it therefore remains on the App Store." He described Langdell's defeats as "comedic gold" and said Langdell hasn't produced anything "genuine" since the 1980s.

For his part, Langdell refutes everything that Papazian said, including showing a copy of the Apple notification. In 2009, Mobigame won over the press in its cause and cast Langdell as a greedy troll who was using the flaws in trademark law to extract a toll from an entrepreneurial startup.

The term "trademark troll" refers to someone who owns a trademark registration for a mark that the person never used at all. That troll uses the registration to threaten people to give the troll money. But a "trademark troll" is not the appropriate term to use for someone who is lawfully trying to police and protect their trademark rights, and it does not fit even if people think the person is perceived as aggressive about enforcing their rights. Langdell's company put its name on numerous games that came out since the 1980s and it still puts its name on games it is launching today.

During this dispute, the press was never on the side of Edge Games. It may have seemed reasonable for a company to defend the name "Edge Games," but it was an overreach to claim ownership of the common word "Edge" in all of gaming.

"I think what I have discovered to my horror these past 14 years is that if people repeat a false statement over and again on the internet often enough it becomes accepted truth without people checking to see if it is true," Langdell said. "We've seen a lot of this with politics in the last few years. How when a group of people grab onto a whole statement, they stick with it, (even when) people have presented evidence to the contrary."

A response from Papazian

Papazian initially declined to make a comment about the latest developments in the case, saying, "While I am not providing specific comments at this juncture, I am more than willing to guide you to the latest legal documents pertinent to this trademark dispute. These documents offer a comprehensive perspective on the ongoing matter."

Yet Papazian then sent a letter to GamesBeat also pointed to U.S. case documents [here](#), [here](#), [here](#) and [here](#). In response to Papazian's letter, Langdell noted his team is preparing to file a trove of documents in response in preparation for a proceeding in January in the U.S. case, and it has not lost any cases.

In an email to GamesBeat, Papazian said his firm is "actively working in various countries to prevent Langdell from continuing his pattern of harassment and extortion."

In reply, Langdell said, "He seems to be in deep denial that he irreversibly lost those cases even in his homeland of France where we were proven to have not harassed anyone, not extorted anyone, and that we are the rightful owners of the Edge and Edge Games [trademarks], not Mobigame. He stubbornly refuses to accept the simple reality that he is the one who is deluded when he claims Edge Games or I personally have ever been in the wrong."

Showing an email, Langdell alleged that Papazian once threatened his lawyers in France if they continued to represent Edge Games.

Regarding the document links, Langdell said, “He then links to two pages of actions before the U.S. trademark office that show we have won case after case after case since 1993 with no recent losses whatsoever. This is what I mean by his showing a blank piece of paper and declaring it proves I am a bad guy.”

Langdell added, “In fact, the most recent USPTO decisions in the list he send you are On The Edge Productions (92081057), Hibernum Creations (92080972) Accel Entertainment (92080943), Mobigame (91212834) and Razer Pacific (92075393) — all of which actions we won. The other recent cases are still pending outcomes but in all cases we are on course to either win or settle amicably in our favor, mostly the latter.”

In another email to GamesBeat, Papazian said:

I truly appreciate the effort you are investing in investigating and providing an accurate portrayal of the ongoing situation involving Mr. Langdell. Your journalistic integrity is evident and commendable.

I must, however, offer a word of caution, drawn from past experiences. The possibility of encountering manipulations and fabrications in the information provided by Mr. Langdell is significant. We've observed his tendency to distort reality in previous media interactions, a pattern that can potentially mislead even the most meticulous journalists. Alarming, even trademark registration offices have been ensnared multiple times by his machinations, underscoring the depth of his deception. I wonder if this is what prompted your inquiry, indicating a level of awareness of the intricacies and sensitivities surrounding Mr. Langdell's claims.

In 2011, a similar scenario unfolded when [redacted] published an article post-interview with Langdell. Unfortunately, the piece was tainted with misinformation and misrepresented facts, a consequence of unverified claims. I reached out to [redacted], with comprehensive evidence — much of which was publicly accessible online — to rectify these misrepresentations. The subsequent official apology from [redacted] underscored the necessity of thorough scrutiny.

Your inquiry signals a well-intentioned effort to present an unbiased account of the ongoing conflict, a pursuit I hold in high regard. The imperative to rigorously examine each piece of information and assertion, especially those emanating from Mr. Langdell, cannot be overstated. His history of deception necessitates extreme caution to prevent the inadvertent propagation of falsehoods and safeguard your esteemed publication's integrity.

For example, you may have seen on Langdell's website that he claims to give 10% of his profit to charities and institutions for the benefit of children in need, at-risk children and sick children. Did he provide any proof of that? Such assertions, while noble if true, require validation to ensure authenticity and credibility.

While I am not providing specific comments at this juncture, I am more than willing to guide you to the latest legal documents pertinent to this trademark dispute. These documents offer a comprehensive perspective on the ongoing matter:

David Papazian

Back to 2009



Tim Langdell is CEO of Edge Games.

It all started in early 2009. Edge Games owned the registered trademark Edge (along with The Edge, Gamer's Edge and some others) and Mobigame had "unlawfully used our Edge mark for an iPhone game," Langdell said. As noted above, based on the latest ruling, Apple has informed Mobigame that its Edge game will be removed from the Apple App Store.

"If the matter is not resolved shortly, Apple may be forced to pull your application(s) from the following App Store territories: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, and United States," Apple said in a letter to Mobigame.

The case could have ended long ago. Langdell said that Mobigame's Papazian admitted he was in the wrong, [asked for permission to use Edge](#), and when Edge Games refused, he agreed to change the game's name to Edgy. Yet Papazian didn't give up his efforts to overturn the trademark. Langdell maintains his efforts in the case of Mobigames were always "amicable."

The EA lawsuit over Mirror's Edge



Timeline cover Mirror's Edge

Langdell was labeled a "trademark troll" in another high-profile case, but Langdell argued that pursuing enforcement of trademark rights is not being a "trademark troll."

That other time, Langdell was accused of overreaching by claiming the Electronic Arts game Mirror's Edge infringed on the name, or mark, of Edge Games' trademarked word "Edge."

Electronic Arts sued over the enforcement attempt. Langdell believed that Mirror's Edge and Edge were "sufficiently confusable." The judge in the case was critical of Edge Games in an initial hearing, granting an injunction that favored EA. At first, EA hailed the case as a victory over nuisance complaints.

But Langdell said that the judge's view was based on representations that EA provided to the judge that were based on falsehoods that Papazian allegedly had made on the internet. Once he pointed that out, EA's stance changed. Langdell said Edge Games allowed some "registrations" of trademarks to be canceled, but not the trademarks (established by use) themselves.

Upon pointing the alleged falsehoods to EA, Edge Games agreed to a "compromise" settlement with EA and Langdell said the order — written by himself and EA — meant that Edge Games did not abandon its rights or admit to any fraud in obtaining them. This subtlety was glossed over by the media, which reported that EA had had the judge cancel Edge trademarks.

That is, in the agreement, Edge Games had won what it wanted to win — the fact that it owned the marks, Langdell said. Edge Games also renewed its trademarks in the U.S. as older ones expired. In this respect, Langdell believes he won the important legal points in the litigation with EA. We asked EA for its interpretation of the ruling and will update this story if EA has a comment.

Papazian said, "Our efforts to counter Langdell are aligned with EA's past successes. EA not only managed to cancel some of his trademarks but also ensured a judge prohibited Langdell from re-registering those trademarks. This brings up a significant question that might be worth exploring with the USPTO directly — why haven't more preventative measures been taken against Langdell considering his history?"

Langdell replied, "EA did not ensure a judge prohibited Langdell from re-registering those trademarks. There is nothing in the EA judgment that says anything about our not being able to re-register our marks. The record speaks for itself: in the rest of the world outside of the U.S., Edge Games Inc. owns trademark registrations for Edge and Edge Games (and The Edge) for games in all relevant game playing consumer territories, or has relevant common law rights; and in all those non-U.S. territories to-date Mobigame has lost every attempt to claim they own the [trademark] Edge rather than us."

Langdell added, "[In most cases], Mobigame hasn't even bothered challenging our rights to the [trademark] Edge and has never applied to register the [trademark] Edge in their own name. This bears repeating. I know for a certainty that Mobigame has never applied to register the [trademark] Edge in the U.K. for instance. But I don't think he has attempted to register Edge anywhere else other than the U.S. (which he lost to us) — other than the French/EU trademark he lost to us when he abandoned it."

To summarize the litigation with Electronic Arts, there were several points where it seemed Edge Games lost or gave up legal ground. Edge Games gave up a handful of [trademarks] but kept its important ones, Langdell said, and it registered Edge Games before other [trademarks] were canceled so the company would have continuity of filings back to 1994 and so it did not abandon its rights as alleged. In short, there was a strategy behind which trademarks Edge Games could lose and which ones it needed, Langdell said.

Meanwhile, things stayed nasty in the Mobigames dispute. In an email in 2011, Papazian wrote to Langdell, threatening to sue.

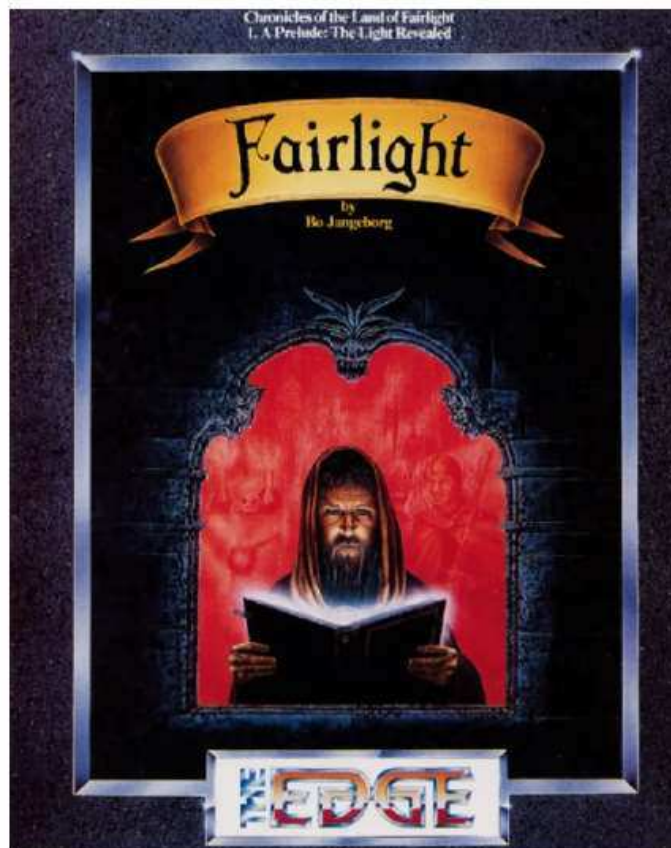
"You are a criminal, and you must be stopped for the sake of the society. It is my business since the day you tried to extort us, until the day when you are in jail," Papazian wrote. He added, "That's pathetic, is your wife aware that you are destroying your life, seriously? What do you say to your daughter? Forget 'edge' and get a life." Papazian also wrote, "You are not, and you never will be an indie. As said by the Californian judge, 'your place is in jail,' and it's where we are going to send you."

Langdell noted that the judge said no such thing.

The law firm Revera noted there are points to debate on both sides about whether Langdell is a trademark troll, including whether Langdell is a 'trademark bully,' and it noted multiple facts that suggested that he is not one. In conclusion, Revera said it could not conclude the term of trademark troll fits Edge Games. Langdell noted he has only ever sued two companies: Future Publishing and EA.

"I do push back against anyone saying the term 'trademark troll' should be equivalent to 'trademark bully' such that if someone bullies someone about a mark then they are a 'troll.' That is not a fair use," Langdell said. "The reason is that so many people have no idea about trademark law and so when they receive a completely legitimate notice to stop using a registered trademark, they 'feel' bullied. But that doesn't mean they are being bullied. If you see my point. I am sure some people mistakenly see us as bullying when all we are doing is precisely what trademark law requires us to do (send 'cease and desist' notices to stop use)."

Common law for trademarks



Fairlight is one of Edge Games' hits from the 1980s.

Langdell said he always believed his firm acted within its legal rights. He also noted the firm has invested in the Edge trademark for 40-plus years, and perhaps \$75 million in investment. He said that millions of people have played Edge games over that time. There are many games in the [Edge Games catalog](#) across the decades.

“Having a common name as a trademark is quite common,” Langdell said.

In trademark law, you either defend your legal rights to a trademark against all potential infringers or you surrender those rights. You can also trademark a common name in a category such as games so long as you maintain use of that name, as Apple has done so in trademarking the name “Apple.” Microsoft has successfully defended “Windows,” and Blackberry did so with that word for its smartphones.

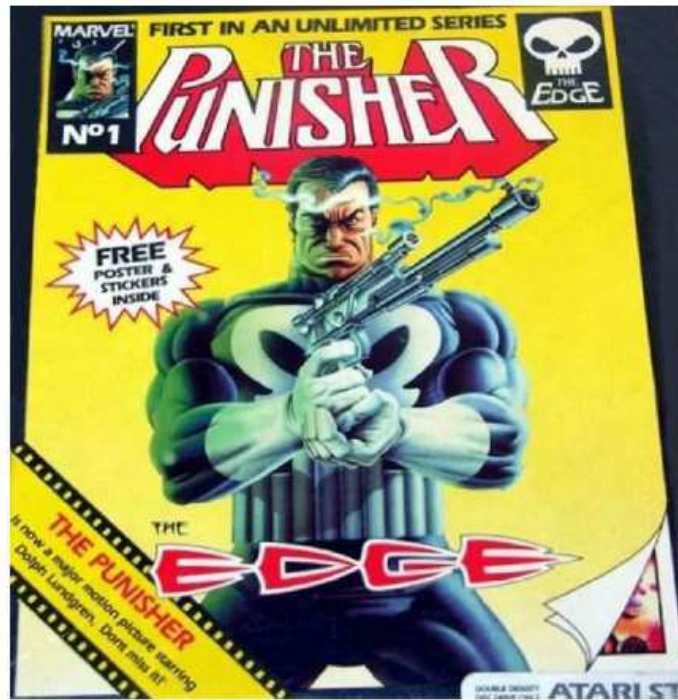
In contrast to patents, where you can be a troll, trademarks are based on whether you use it in a well-known product or service. Was Edge well known? Edge Games had sold tens of millions of dollars’ worth of the game Fairlight in the 1980s. Over time, the company has generated tens of millions of dollars in revenue.

Its biggest hits came early, with titles such as Fairlight, Brian Bloodaxe, Bobby Bearing, the Garfield license games, the Snoopy license games and various arcade game conversions by Taito and Konami. Mobigames has also been successful, as Papazian said its Zombie Tsunami title has had more than 600 million downloads.

“A mark becomes weaker, rather than stronger, if you allow other people to do what is called ‘dilute’ the name, and so you have to stop other people from using it,” Langdell said. “You have to be the only ones associated with the market. And that’s why we have to keep using Edge to minimize dilution.”

Those who file first usually get protection. If you don’t use a brand for three or five years (depending on the country), you will have been considered having “abandoned” the trademark. Edge Games never abandoned its trademark, Langdell said, and its oldest trademark is dated 2008 in the U.K. But he said the company has records showing that it was using the name as early as 1984. There was controversy about his during the EA trial, when Edge Games was accused of faking evidence, but Langdell said proper evidence surfaced of the use of Edge in the 1980s.

Hindsight



Edge Games made a game based on The Punisher long ago.

If Langdell could turn the clock back, would he use another name? He probably would do so. But he noted that no one has said it's an overreach for Microsoft to use the name Edge in internet browsers.

"After 40 years, we've got a lot invested in that brand and it is actually quite valuable," Langdell said.

In the 1990s, Marvel agreed to stop using the name Marvel Edge. And in an agreement with Future Publishing, Edge Games granted a license in the United Kingdom for the use of the word Edge in a gaming magazine, in exchange for a payment in the hundreds of thousands of pounds.

"That's how sensible, level-headed companies talk to each other about trademark rights," Langdell said. "What we never ever did was go to anyone and bully them for money or anything like that. That was complete fabrication. If anyone thinks we went up against so the Marvel, a huge company, and that they got bullied by us, that's just preposterous."

And Bandai Namco, after being asked for a payment to license the name from Edge Games, changed the name of its "Soul Edge" game to "Soul Blade" to avoid litigation. Langdell said this was the "minimum action required by trademark law in each country to protect and retain our Edge [trademarks]."

In the U.S. and the U.K., trademark law is similar when it comes to "common law" usage. If you establish "goodwill" using the game and selling goods with that name, then you have the right to protect that [trademark] in the marketplace.

King, now a division of Activision Blizzard, ran into a similar controversy in 2014 as it trademarked the use of the words "candy" and "saga" in games thanks to Candy Crush Saga. Its defense was that it had to trademark the word or risk losing it to others based on its obligations under trademark law. Like Edge Gaming, King ran into a lot of criticism for "monopolizing" the words in gaming.

King's legal burden was to prove that "candy" was inevitably associated with the game Candy Crush Saga in games, and that it was not already rock solid in the public domain as a word unto itself. Companies such as Elevator and Thermos lost their trademarks over time as they became public domain words. King eventually settled many of the disputes without litigation, Revera said.

The litigation and the press



Destructoid created an image of Tim Langdell as a snake.

In this defense of legal rights, the [press was on Langdell's side](#) only in the very beginning. Gamasutra (now Game Developer) published a scathing article by Simon Carless that cast Langdell as a trademark troll. Langdell called the piece "defamatory" with "complete falsehoods" and then Gamasutra removed the story. Before it was removed, others joined in [similar coverage](#). (In an email to GamesBeat, Papazian brought up the Carless article as an example of good coverage on Langdell).

"Overnight I went from being one of the more highly regarded members of the international game community to being the black sheep who everyone was being told to hate," Langdell said.

Later headlines on the stories included "Game industry bully Timothy Langdell loses asinine 'Edge' lawsuit against EA" ([Games Radar](#) 2010), "Tim Langdell will be 'put in jail' claims Mobigame CEO Papazian as Edge Games man shirks trademark troll label" ([Pocket Gamer](#) 2011), "Trademark troll Tim Langdell actually puts out a game" ([Destructoid](#) 2011), "After four years, an industry scourge loses his Edge" ([Kotaku](#) 2013) "Tim Langdell's 'Edge' trademarks are finally cancelled" (Game Developer 2013), and "The thing about trolls is they regenerate | 10 years ago" ([GamesIndustry.biz](#) 2020).

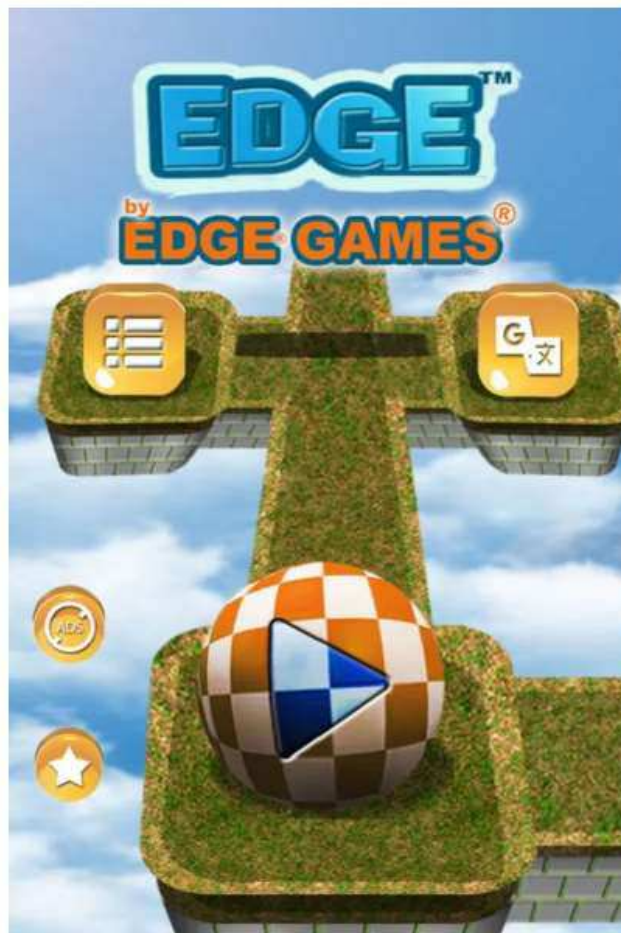
Yet Langdell stubbornly hung on to his legal rights and sought to correct the record and his name. And in the last year few years, Edge Games has emerged victorious in the courts and tribunals across the globe over who has the right to use the mark "Edge" for games. Recently, Apple (which has successfully defended its common law name as a trademark over the years) told Mobigame that its game Edge would be removed from the App Store in the wake of the rulings.

Mobigame repeatedly lost trademark cases to Edge Games (which Langdell calls EDGE Games, or EGI). In 2020, Edge Games [won in the U.S. in a ruling](#) that declared Mobigame was denied the right to register the mark Edge in its name for games. Mobigame [lost again in August 2022](#) when the United Kingdom trademark office, after reviewing Edge Games' filings since 1984, ruled that Edge Games had maintained its mark and used it in games continuously in real games.

The latter ruling countered what Langdell said was Papazian's "bizarre" claim that he was the first ever user of the mark Edge. The U.K. trademark office also said that Mobigame had not acquired any goodwill arising from its use of the mark Edge for its iPhone game.

“I must warn you again against making such libelous (and, if spoken, slanderous) statements since you know you are copying what you write to a third party. You are well aware that at no time did we ever try to ‘extort’ you, that is a pure fiction you invented in 2009 that I am appalled you are still repeating,” Langdell wrote during the litigation in 2011. “You know that the earliest communications with you onwards we made clear that we are not and never have been seeking any payment from you, only an amicable resolution to the trademark dispute between us. You repeated remarks to third parties that we ever tried to extort you or that I am a ‘criminal’ are outright falsehoods and defamation since you know that none of this is true, despite your having had a shocking success in convincing some people to the contrary by your outrageous statements. I respectfully request yet again that you cease from such false and defamatory statements to third parties.”

Papazian replied, “You don’t seem to understand. We are going to sue you and all these materials will be used against you. This is very serious, a judge forbade you to do this kind of things, and you keep doing them. You are a criminal, and you must be stopped for the sake of the society. It is my business since the day when you tried to extort us, until the day when you will be in jail.”



Edge Games is working on a game called Edge.

Mobigame appealed the 2022 U.K. trademark office decision to the highest appeal judge for trademarks, and, on March 30, 2023, [Mobigame lost the appeal](#). The appeal judge affirmed the decision of the trademark office expert and denied Mobigame’s attempt to cancel Edge Games’ marks Edge and Edge Games.

Three attorneys at Revera – Ekaterina Erohovec, head of IP and brand protection; Pavel Manoilau, associate; and Marharyta Firsiankova, junior associate – reviewed the litigation in the U.K. and offered feedback on trademark law. They concluded that, based on the UK Trade Mark Decision No. O/743/22 dated August 31, 2022 – and supported by the UK Trade Mark Decision No. O/0317/23 dated 30 March 2023 – the Mobigames’ application for declaring the Edge Games Inc’s Edge Games and Edge trademarks invalid failed and was rejected.

“From our opinion, this means that Edge Games has won the case against Mobigames at least in the U.K.,” said Revera’s team.

Two other law firms that also did work in the past for Edge Games — but do not currently work for Edge Games — also concluded that Edge Games won in the U.K. and France.

Mobigame also lost to EGI in its home territory of France. That [country’s trademark office also ruled](#) in favor of Edge Games, allowing it to retain its Edge registrations in France and denying Mobigame the right to any claim to the right to use the trademark Edge in France. At that time, Papazian allegedly threatened Edge Games’ French lawyers, saying [he would use his social media presence](#) to destroy them. In both the U.K. and France, trademark attorneys confirmed that the rulings against Mobigame are final.

The French authorities ruled that while Mobigame had sold some copies of its iPhone game that it titled “Edge” in the 2009 to 2012 period, those sales were insufficient to make Mobigame “famous” for the trademark Edge. The French judge also noted that in any event, Mobigame had not published a new game in over a decade and had sold very few of its existing games in the past eleven years.

In a filing in 2015, Papazian said that Langdell is commonly known as a “trademark troll” and cited the Wikipedia entry which was edited from Mobigames’ point of view. He later said, “Tim Langdell IS a trademark troll, it’s not an insult, it’s his job.”

Langdell said he is unsure how Papazian has been funding legal actions over the past 14 years, as he alleges Papazian, as an indie game developer, has been outspending him many times over.

Langdell believes this exonerates him against the allegations of being a “troll” or that he had acted badly, as Papazian had alleged. Langdell said he was shocked that the press took Papazian’s side over the years in a legal dispute, during which Papazian alleged that Edge Games had never published games since the 1980s. In fact, Langdell said the company continuously published games and still does so today. So far, only a [single podcast](#) by George Cropper has noted that he won and was “vindicated.”

Mobigame was asked to pay thousands of dollars in legal costs in the U.K. and France, but Langdell said it has yet to make payments based on court deadlines. Edge Games also won a case in the U.S. against Razer for use of the term Edge.

“We were proven to be the true owners of the [trademark] Edge’ and Mobigame’s use was shown to be unlawfully passing off on our rights in the trademark in the U.K. and France,” Langdell said.

He added, “Consequently, there is not the slightest indication I or Edge ever acted badly in this dispute with Mobigame and certainly never acted as a trademark troll as Papazian falsely stated and as so many news outlets falsely repeated as if it were fact. With respect, the utter destruction by the game press of my prior very good reputation in the game industry, as a founding member of the industry, was undeserved and unfair.”¹³



Early Edge Games titles.

Edge Games has been making games for decades, with six titles in recent years, while Mobigame has not released a new title in over a decade and was active from 2009 to 2012.

"I very much hope that at last the truth can be written about this dispute with Mobigame, that we were in the right all along and the accusations against my company and me personally never did have any foundation or merit," Langdell said.

Langdell said the case took a long time in the courts and tribunals because of the complexities over who filed what and when. In the U.S., after canceling some early filings, Edge Games became second in line and had to oppose Mobigames' registration of the trademark.

Much of the game press stopped covering the story around 2016. Delays pushed much of the real litigation to 2019. And then Edge Games started winning rulings up through this year. Langdell considers the British case to have the best adjudication of the facts. A couple of writers I contacted declined to comment.

"They went over our sales records and went over the history of our marketing, the history of that website in 1995, and our archives, or Wayback Machine, shows that website," Langdell said. "They just had dispassionately and objectively assessed the situation. The appeal judge said the same thing."

Those legal victories made Langdell believe that, just as in the case of the false claims of politicians, the courts can eventually establish a good ruling based on the facts. Overall, Mobigames may owe something like \$3,300 to Edge Games for the court-ordered legal costs.

Another response from Mobigames

Papazian sent a lengthy reply in response to questions from GamesBeat. While trying to convince me of Langdell's poor character, he belittled my ability to do reporting and he brought up a Wikipedia page in response for a query about proof on whether Langdell is a "trademark troll." Papazian said it is already well-documented. Langdell replied that he won the cases in the U.K. and France.

"In fact, a U.S. District Court judge (a reference to the EA case) labeled Langdell as such. This isn't gossip or opinion; it's a legal judgment. You can easily find this info on Wikipedia and verify it with the sources provided at the bottom of the page: https://en.wikipedia.org/wiki/Trademark_troll," Papazian said.

[Update: Langdell contends that the judge in the EA case never said Langdell was a "trademark troll" and that story was spread by Papazian. Langdell said that the judge's remark was based on the (one-sided, inaccurate) picture of Edge Games painted by EA. The judge said, "It is an open question whether plaintiff's business activities legitimately extend beyond trolling various gaming-related industries for licensing opportunities."

"That isn't the same as saying I am a trademark troll. No judge ever said I am a 'trademark troll,'" Langdell said. I pinpoint this inaccuracy in your piece out only because it is the same inaccuracy at the heart of why I am listed on the Wiki page for trademark trolls – in the past the game press repeated Papazian's falsehood that Judge Alsup had labelled me a trademark troll when he didn't and this is the main reason my name is on that Wiki entry. Which is unfair."]

Langdell replied, "You'll note that he is unable to give a single example of me or Edge Games acting as a 'trademark troll.' Having convinced people back in the 2009-2011 timeframe to label me a troll simply because he claimed I am a troll, getting a number of journalists to repeat it because they didn't research the issue, and even getting one judge to imply it (but even he didn't say it), he has since pointed to those statements by others that he caused them to make as the only 'proof' I am a troll. He has never been able to come up with a single piece of evidence that I am actually a trademark troll."

As for the Wikipedia page, Langdell said there has been a lively "talk" section of that page, "including people stating they have repeatedly removed my name from the page but some malicious person keeps putting it back there."

As for the judge in the EA case, Langdell said, "What the judge said in his 'opinion' (based solely on EA repeating to him what Papazian had said), is 'it remains open to question whether plaintiff's business activities extend beyond trolling for licensing opportunities.' That is not labelling me a troll, and the final decision in the case said no one was found guilty of any wrongdoing and we were found to have valid sales of our games. So clearly that voided his opinion of us doing nothing other than trolling for licenses — especially as there was no evidence of our trying to get licenses (we still don't know why the judge opined that given even EA didn't suggest we were trolling for licenses)."

Papazian also ridiculed GamesBeat. "For a journalist, I'd expect a quick check on something as accessible as Wikipedia to be a given. Simon Carless and Simon Parkin are two journalists who, in the past, did their homework and came prepared with informed questions."

Papazian pointed to other people who have interactions with Langdell, such as Robert Figgins, the owner of the copyright to Bobby Bearing, the CEO of Velocity Micro; Steve Jarratt, the founder of EDGE Magazine; and he referenced the final order by the judge in the EA case. He brought up a judgement in the U.K. case against Future, including an alleged “manipulated floppy disk with the Edge logo.” And he noted that Soul Edge’s name had to be changed to Soul Caliber due to Langdell.

Langdell replied, “Velocity [Micro] and Future admitted they were infringing our trademark rights in the [trademark] Edge and both settled in our favor. So how does that make me a troll? In Papazian’s twisted world, — whenever we win a legal case — to him that proves I am a troll when any sane person would conclude that trolls don’t win legal cases. The fact the U.K. judge could not understand how computer discs are made is not relevant (I can explain that reference to you if you really wish me to), and we won the dispute with Namco over Soul Edge who amicably agreed to change the game’s name to Soul Blade. What relevance does that have to the question? Again, getting an amicable resolution doesn’t make a troll, it makes me the opposite of a troll.”

Papazian said it’s essential to look up Langdell’s background to get a well-rounded view.

“I have to ask if you reached out to 20th Century Fox regarding Langdell’s claim to their movie ‘The Edge,’ or to Malibu Comics, Datel, and even The Edge from U2 to verify Langdell’s assertions. Yes I have an email from Langdell about U2, and it’s hilarious. Also, you might want to ask him about an incident in the 1980s when a UK developer allegedly broke his nose and why he left the U.K. under questionable circumstances. These stories add layers to the narrative that are worth exploring,” Papazian said.

Regarding the allegations about other companies, Langdell replied, "It obviously annoys him that 21st Century Fox, Datel and Malibu Comics all entered into amicable settlements with Edge Games over their use of the mark Edge. It's been hard for me to tell over the past 13 years whether he thinks the fact each of these entered into amicable arrangements with us means I am a trademark troll or whether he doubts they did enter into agreements with us, but if so how does that make me a trademark troll?"

Langdell said the reference to U2, someone breaking his nose, and his departure from the U.K. under questionable circumstances are fabrications.

It appears that Langdell is actively seeking positive media coverage to strengthen his position in legal battles, Papazian added.

"[Redacted] made the mistake of falling into this trap, and we were compelled to counter the narrative with indisputable evidence. Should any misinformation arise from your end, be assured we will respond with accurate, well-substantiated information that won't be to your liking," Papazian said. "Your role as a journalist carries the responsibility of ensuring accuracy and fairness. Every detail and every piece of legal judgment matters and should be considered to maintain the integrity of the conversation."

He said that Mobigames' Zombie Tsunami title has more than 600 million downloads worldwide.

"Battling a trademark troll is not only time-consuming but also a significant financial strain. It becomes increasingly challenging when we find ourselves expending effort to elucidate evident facts to professionals who should ideally be well-versed in them," Papazian said.

Langdell said, "[Trademark] oppositions are an absolutely standard, entirely legitimate action to take if someone tries to register a mark similar to your own. It is not 'harassment' to file such oppositions, nor are these oppositions what we would ever usually call 'legal actions' and certainly are not 'suing someone.' And I say this because that two page list Papazian linked you to of our actions before the USPTO since 1993 are nearly all oppositions. Not evidence of harassment (as he likes to falsely say) but evidence Edge Games has for decades been doing exactly what trademark law requires it to do to protect its Edge [trademarks], and nothing more or less than that."

The aftermath



Super Cookie Blast! comes from Edge Games.

To this day, there is skepticism and distrust around Langdell. He believes it is unjustified.

Langdell said he sent out a press release in April and virtually no one responded. He also sent out mock stories in the hopes of making it easier for publications to write. One of those was printed by a site dubbed [Indy Gamer News](#), or IGN (not the [IGN you're probably thinking of](#)).

The site looked fake as it had few other public stories available to read, prompting people to conclude it was fake. Langdell affirmed he did not write it but attributes the piece to a "well-intentioned soul" using the draft news story Edge Games circulated in April 2023 to create it.

There is one trademark case pending in the U.S. between Mobigames and Edge Games. Given the victories in the U.K. and France, Langdell is confident he can win in the U.S.

"I am hoping that now the truth can finally get out there that most people in the industry will be sympathetic about my victory," he said.

Langdell said he was heartened that some supporters in the industry have stood by him and remember his contributions to games.

One person who supported Langdell's view said, under condition of anonymity, that the internet has become dangerous over the years where false information is routinely accepted as fact. That person thinks Langdell has been wronged in social media and by the "mob" on the internet.

"If people who own IP are effectively stopped from defending the IP they own, it spells the end of the creative industries in general," the person said. "While IP should not be used inappropriately to stifle growth, it cannot be ignored either, as it will kill all creative works, in the same way you cannot just go and make pharmaceuticals which other companies have spent billions developing, for all the obvious reasons."

The person confirmed that they and their family have received death threats related to support for Langdell.

Upon winning the case with Mobigames, Langdell has sent letters to other companies about their use of the word "Edge" in games. Microsoft, which published Bleeding Edge, is one of those. Langdell said that negotiations have continued "amicably" but he could not otherwise comment on it.

A dozen or so other game companies have reached agreements with Edge Games.

Peak's Edge has been deleted from app stores. PathPix Edge was renamed Draw Edge 3D. Lion Studios agreed to phase out use of Cutting Edge! in the future. Edge of Reality games is being renamed. Sinister Edge was renamed. Edge Mech Ascent has been renamed. Sabers Edge and On the Edge reached a settlement. Absolute Edge was removed from the U.S. registration.

This is probably not earning Langdell any new friends. But Langdell repeated he is under obligation to challenge anyone who uses an Edge [trademark] at the risk of losing the [trademark] if it goes unchallenged. And he is resolving these disputes through negotiation, not by name calling in the press, he said.

"It's just how the system works," he said.

New games

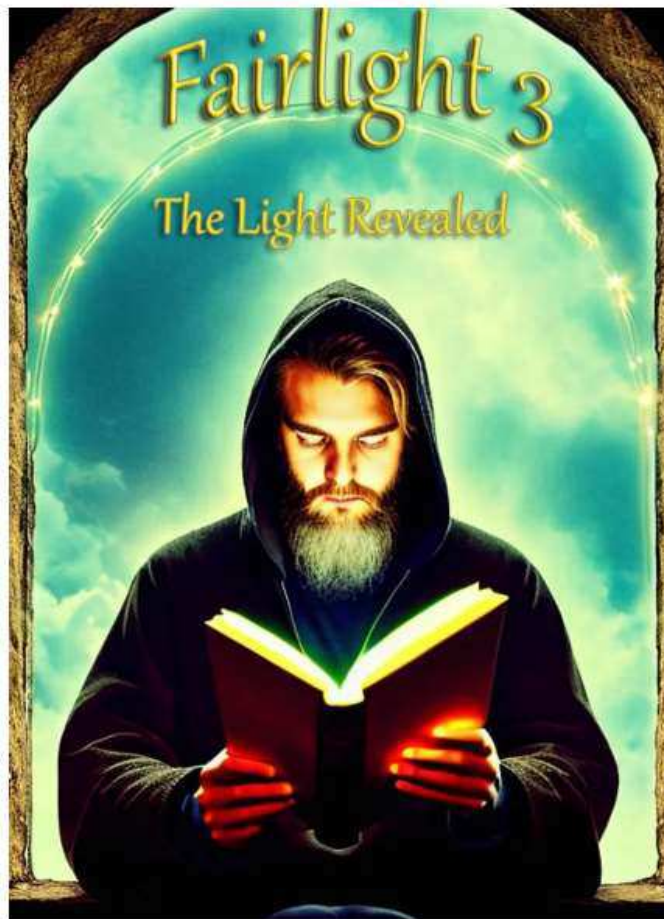
He said he is proud of last year's Super Cookie Blast!, which he acknowledged may seem like yet another Candy Crush style game, but one he carefully designed so each level rewarded "outside the box" thinking to solve. The game has an AI mode where it adjusts difficulty based on the skill of the gamer.

"If you want to say that we shouldn't be able to own the common name, then that's your opinion. Trademark law permits it. We historically have Apple, we have Windows. Microsoft even has Edge. Nobody is saying how dare they use a browser name for the trademark. To pick a totally different trademark would be easiest thing. But there's nothing wrong with what I've done. It's not wrong, immoral, unethical, illegal, nothing. It's just a choice. Now I'm hoping we can start making games and get bigger budget games which I hope will be well received."

Langdell studied physics and psychology at the United Kingdom's Leicester University in the 1980s, and he got a master's degree and a PhD from University College London/Institute of Psychology. He did early research on autism. In 1980/1981, he founded the game company Softek and wrote books on game programming. He has designed or helped design over 100 games.

He said he has been making games since the early 1980s, and as Edge since 1984. He has made "modest contributions" to gaming as he was the founding governor of the Academy of Interactive Arts & Sciences, served as executive producer of the first ever televised game awards (Cybermania in 1994) and started the first game design classes at the University of Southern California School of Cinematic Arts (then The School of Cinema Television). He helped start the British Federation Against Software Theft, which lobbied the U.K. to include software as something that could be copyrighted.

Langdell said he is proud of these accomplishments.



Edge Games is working on Fairlight 3, Langdell said.

"There's also a sense of pride because we produced some pretty good people over time," he said. "We met not only success ourselves, but I think people that have worked for us have had success. "And the period I was teaching at USC there's quite a few of those that come on. fundamental."

Langdell said he "sincerely (believes) the destruction of the high positive regard I was held in by the game industry prior to 2009 was, and is, undeserved. Surely it's time for Papazian's 14-year long smear campaign against me to be brought to a close and, to whatever extent possible, the damage his campaign has caused me, and my company be reversed."

Papazian closed his comments with this remark, "I have duly warned you that Langdell may attempt to mislead. Should any defamatory material find its way into your publication, be aware that citing Langdell won't serve as a viable defense; the laws concerning online defamation are stringent both in the U.S. and Europe. I trust your judgment and hope for a balanced and accurate portrayal of events. Nevertheless, be assured that the truth will be pursued diligently, no matter the cost."

Langdell acknowledges the company hasn't been able to do many original, cutting-edge games, and he partly blames the litigation and legal fees for that. But he hopes to do better with bigger budgets in the future. He said there are six games in the works.

He wants to make a game related to autism, something he studied before he got into games. He said he is looking forward to Mobigames' Edge being removed from Apple's App Store.

"The devastation caused my reputation in the gaming industry is not based on anything that was true," Langdell said. "It has had really devastating effects over 14 years. To try and rehabilitate, if I ever can, is pretty crazy."

EXHIBIT FF

Part 2



December 1, 2009 roskelld

20 comments

Langdell managed to pull his tricks again in getting Apple to remove Edge from the App Store. He's found his tool of choice now, the letter to Apple seems to work his bidding nicely. So again, to try and make a living from what they do best, Mobigame has had little choice but to change the name of their game Edge, this time to Edgy and Apple in all fairness have been gracious enough to quickly reprocess the application and put it back on the store (under the new name) in very quick time.



So yes, Edge is on sale (as Edgy) and can be purchased here.

To end this short article, it would be a shame to not poke a bit fun towards our Bowser of the trademark industry. Recently Develop Online published an article that featured a statement from an Edge Games representative.

“the company took issue with the new name for Mobigame’s iPhone title, which was once called ‘Edge’ but then sold as ‘Edge by Mobigame’.
“Adding ‘by Mobigame’ was determined not to get around infringement,” said Langdell’s ‘rep’.

Chaos Edge

The Chaos Engine fund to aid Mobigame in their legal dispute with Tim Langdell (who conducts business as Edge Games).

Please help us to put a stop to this trademark bully!



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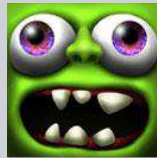


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You are the most advanced creature ever discovered on Earth. Trapped in a high security submarine base you must use your superpowers to escape from this hostile environment.

Play as up to 3 Cells on the same screen with an intuitive multi-touch gameplay, dash through the air with a swipe gesture or cut off your enemies' heads with a 'super dash'!

- Best Action/Infiltration/Puzzle iOS game!
- 35 original levels / 5 hours of pure gameplay
- Full 3D HD Graphics

If you need help with our games, email us at: support@mobigame.net







EDGE
Android

"Mithon Award for Best Mobile Game". (Festival du Jeu Video). Awarded at the International Mobile Gaming Award in the "Excellence in gameplay" category. Triple finalist in IGF mobile 2009.

Develop your telekinetic strength by pushing a Cube within a geometric universe. Platforms, enigmas and reflexes combine to make Edge a rich and very comprehensive game.

Buy \$2.99

Try for FREE


Trailer


Soundtrack

- An original game ideally suited for mobility
- 48 levels and 18 unique tunes
- A simple, addictive game



If you need help with our games, email us at: support@mobigame.net





EDGE Extended
Android

Mobigame's multi-awarded and critically loved game is back, and now it's on Android! EDGE Extended introduces a brand new 3D graphics engine, 48 original levels, 23 unique tunes and new gameplay mechanics.

Develop your telekinetic strength by pushing a Cube within a geometric universe.


Buy \$2.99

Try for FREE


Trailer


Soundtrack

- New 3D engine running at 60 FPS
- 48 original levels and 23 unique tunes!
- A simple, addictive game



If you need help with our games, email us at: support@mobigame.net





Truckers Delight
iPhone, iPod Touch

As seen on MTV2 and on the net with 3 million+ views, TRUCKERS DELIGHT is now more than just the BEST, GRITTIEST, MOST VULGAR, FUNNYEST VIDEO ever on this side of the digital world. It's now a fully playable iPhone app.

Episode 1: The Highway puts you in very HOT pursuit of Alpha Chick, a blonde bombshell in a red Corvette. Honk the horn, dodge vehicles, get bonuses and race for the ultimate prize: THE GIRL.


Buy \$0.99

Trailer

Goodies

Soundtrack

- Old-school 16-bit graphics "à la" Outrun.
- Hilarious new bonuses!
- Awesome soundtrack by Flairs



© Mobigame & 3rd Side Records 2012

404 Not Found

nginx



EDGE Games <edgegames@gmail.com>

RE: Apple Inc. (our ref# APP139401) Notice of Complaint [SHER=023195-17]

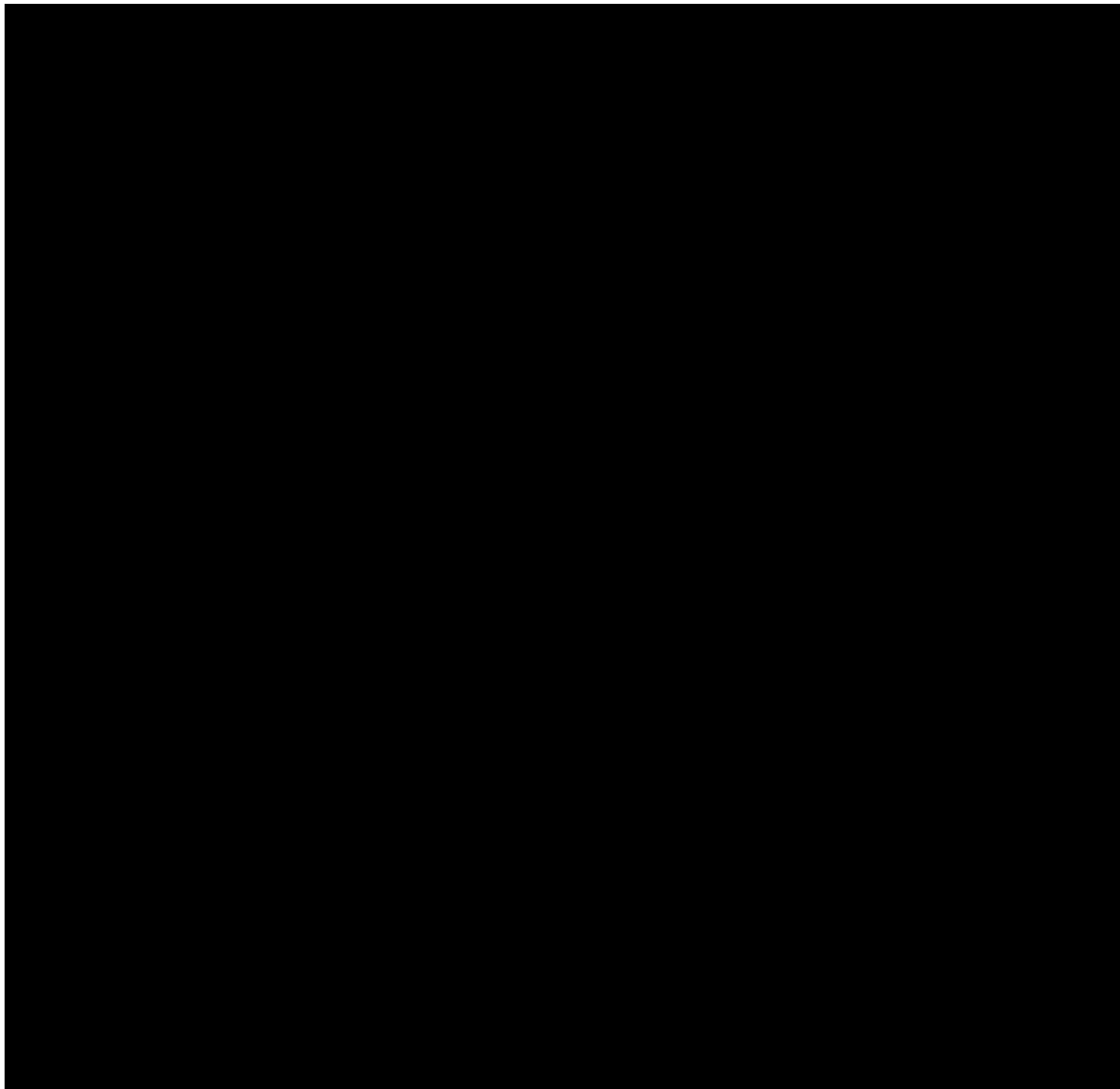
Andrew Bravin <andrew.bravin@sheridans.co.uk>

Wed, Mar 31, 2021 at 7:01 AM

To: ASN <AppStoreNotices@apple.com>, "david@mobigame.net" <david@mobigame.net>, "david.papazian@mobigame.net" <david.papazian@mobigame.net>, "sylvain.nowe@mobigame.net" <sylvain.nowe@mobigame.net>, "pierre@mobigame.net" <pierre@mobigame.net>

Cc: "edgegames@gmail.com" <edgegames@gmail.com>, Alex Chapman <alex.chapman@sheridans.co.uk>

Dear Victoria and Edge



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally the trade mark EDGE GAMES is unenforceable against our client and its game due to the fact that the additional word GAME clearly differentiates it from the signs used by our client namely "EDGE" of "EDGE EXTENDED". More specifically "EDGE GAMES" is distinct from the word "EDGE" and accordingly no third party looking at the marks would consider there to be any association with the sign used by our client and no third party would reasonably consider there to be an economic connection between Edge Games Inc or its products and our client and its products. This is furthered by the fact that our client's game is highly regarded and commercially successful and well known to the average consumer of games.

[REDACTED]

documents should be relied upon for an understanding of what took place not the subsequent arguments of the losing party.

Our client reserves all its rights and remedies.

Kind regards

ANDREW BRAVIN

Telephone +44 (0)20 7079 0121

Mobile +44 (0)7889 536 600

Email andrew.bravin@sheridans.co.uk

Web www.sheridans.co.uk

We have prepared some information setting out the Government support available to individuals and businesses affected by COVID-19 which we hope you will find useful – see <https://www.sheridans.co.uk/>



Please note Sheridans' new Privacy Policy which is available on our website at www.sheridans.co.uk/footer/privacy-policy.aspx. Please take time to review the policy to understand how we use your personal information.

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-----Original Message-----

From: ASN [<mailto:AppStoreNotices@apple.com>]

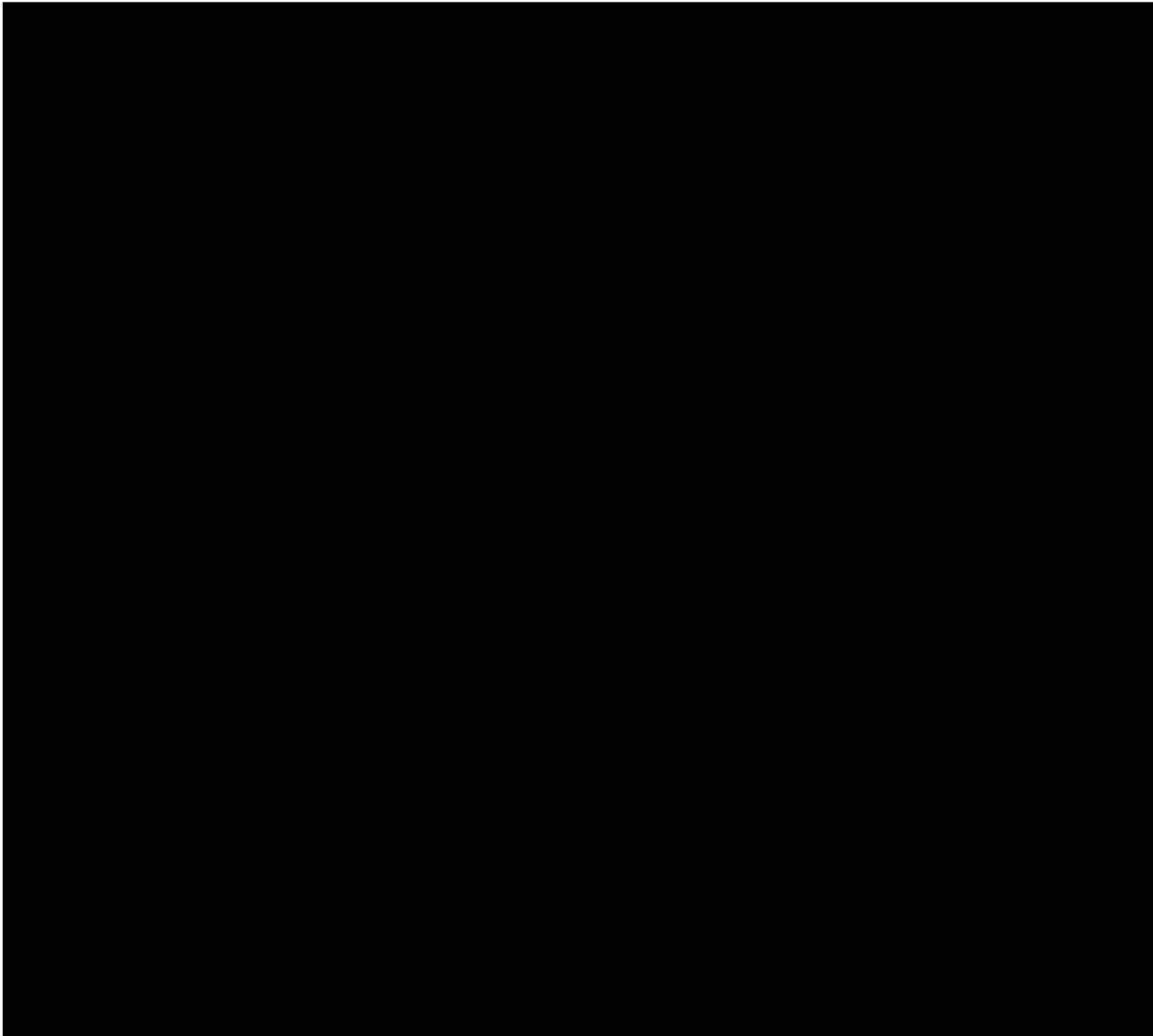
Sent: 31 March 2021 00:09

To: david@mobigame.net; david@mobigame.net; david.papazian@mobigame.net; sylvain.nowe@mobigame.net;

EDGE004389

EXHIBIT GG

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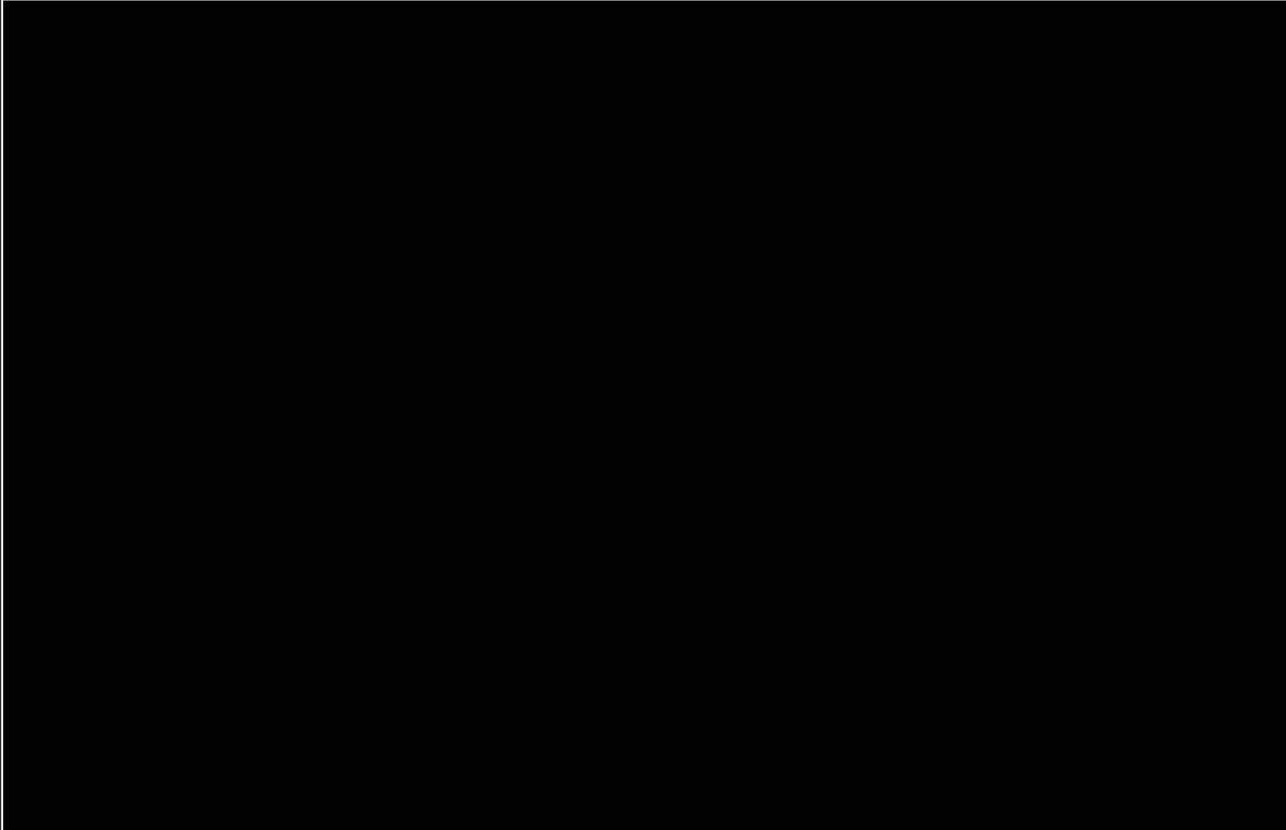
SIXTH CLAIM FOR RELIEF

Declaratory Relief

127. Counterclaimants incorporate the above allegations as if set forth in full herein.

128. An actual controversy exists as to whether Counterdefendants have any common law rights in the alleged “family” of marks set forth in the First Amended Complaint, including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826; 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294, including as a result of abandonment through non-use of each mark with the intent not to resume use and otherwise through a course of conduct that has caused each mark to lose all significance as a mark and/or as an indicator of source.

1 129. EA is entitled to a declaratory judgment that Counterdefendants have no common
2 law rights in and to the alleged “family” of marks set forth in the First Amended Complaint,
3 including the marks that are the subject of Registration Nos. 3,105,816; 2,219,837; 3,381,826;
4 3,559,342; and 2,251,584 and Application Serial Nos. 78/807,479 and 78/981,294.



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18 Dated: August 29, 2010

KENDALL BRILL & KLIEGER LLP

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21 By: /s/ Robert N. Klieger
22 Robert N. Klieger
23 Attorneys for Defendant and Counterclaimant
24 Electronic Arts Inc. and Counterclaimant EA
25 Digital Illusions CE AB
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