

# **EXHIBIT B**

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**From:** Edge Systems [<mailto:support@edge-systems.com>]  
**Sent:** Wednesday, November 12, 2014 10:54 AM  
**To:** Cindy Cantavaspri  
**Subject:** Response from Edge Systems to your inquiry

Hello Cindy,

My name is John Wilcox and I am a Regional Sales Manager at Edge Systems. I just called you and left a voice mail message.

Please feel free to call me at my direct telephone number at 305-508-5052 or you can call our toll-free number at 1-877-831-3898.

Regards,  
John Wilcox  
Regional Sales Manager

Edge Systems  
6800 SW 40th Street  
Miami, FL 33155-3708  
Toll-free: 1-877-831-3898  
[www.edge-systems.com](http://www.edge-systems.com)

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

EDGE SYSTEMS LLC, a California limited  
liability company, and AXIA  
MEDSCIENCES, LLC, a Delaware limited  
liability company,

Plaintiffs,

v.

Rafael Newton Aguila, a/k/a Ralph Aguila, an  
individual, d/b/a Hydradermabrasion  
Systems,

Defendant.

Civil Action No. \_\_\_\_\_

**DECLARATION OF WILLIAM COHEN IN SUPPORT OF PLAINTIFFS' MOTION  
FOR *EX PARTE* TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY INJUNCTION**

I, William Cohen, declare as follows:

1. My name is William Cohen, I am over the age of eighteen (18) and competent to execute this Declaration, and the following statements are true and correct based on my personal knowledge or information transmitted to me from records made at or near the time of the transactions referenced therein by person(s) with personal knowledge thereof.

2. I am the President for Plaintiff Edge Systems LLC ("Edge"), and have held this position since January of 2013.

**Edge's History and Current Success**

3. Edge was founded in 1997, and has always been at the forefront of the aesthetic industry. Edge has worked continuously to bring new technology and breakthrough processes to the market.

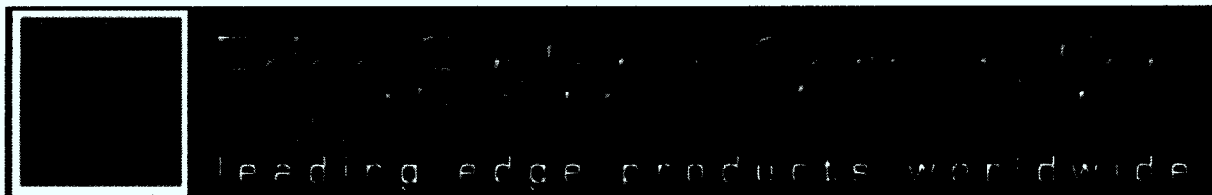
4. Since its founding, Edge has continuously operated under the trade name "Edge Systems," using the mark EDGE SYSTEMS in connection with the sale and promotion of its products.

5. Since 1999, Edge has used the following variations of its chevron-styled "E" logo formed by three triangles, including the examples below.

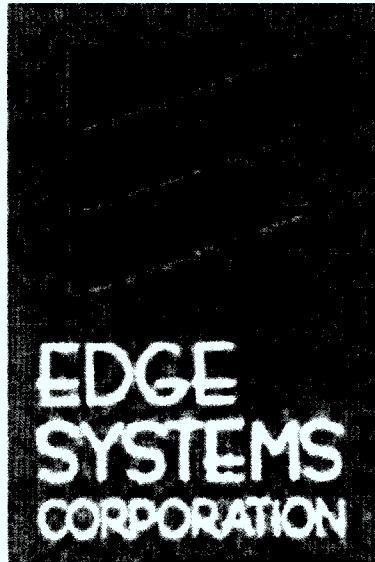
*a. 1999*



*b. 2003–2007 (FROM WEBSITE)*



*c. 2007–2008 (FROM WEBSITE)*



*d. 1999–2011*



*e. 2011–PRESENT*



6. Edge's trademarks relevant to this motion are shown in the table below:

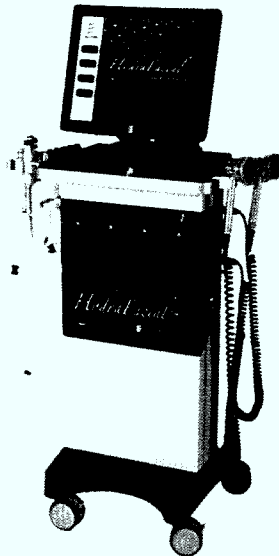
| <u>MARK</u>        | <u>REG. NO.</u> | <u>REG. DATE/FIRST USE</u> |
|--------------------|-----------------|----------------------------|
| "EDGE SYSTEMS"     | Common Law      | 1997                       |
| Chevron "E" Logo   | Common Law      | 1999                       |
| "THE EDGE SYSTEMS" | 2,992,734       | September 6, 2005          |
| "HYDROPEEL"        | 3,500,086       | September 9, 2008          |
| "VORTEX-FUSION"    | 4,114,466       | March 20, 2012             |
| "HYDRAFACIAL MD"   | 3,341,027       | November 20, 2007          |

|                |            |               |
|----------------|------------|---------------|
| “HYDRAFACIAL”  | 4,317,059  | April 9, 2013 |
| “ACTIV-4”      | Common Law | 2006          |
| “ANTIOX+”      | Common Law | 2013          |
| “ANTIOX-6”     | Common Law | 2006          |
| “BETA-HD”      | Common Law | 2006          |
| “DERMABUILDER” | Common Law | 2010          |
| “GLYSAL”       | Common Law | 2010          |

7. Edge’s best-selling product is its HydraFacial MD® hydradermabrasion system (“HydraFacial MD”). The HydraFacial MD is an innovative non-ablative facial rejuvenation system. Edge’s HydraFacial MD incorporates the technology claimed in U.S. Patent Nos. 6,299,620, 6,641,591, 7,678,120, 7,789,886, 8,066,716, and 8,337,513 (“Axia Patents”). Edge is the exclusive licensee of the Axia Patents. The features of the HydraFacial MD claimed in the Axia Patents drive consumer demand for the product.

8. The HydraFacial MD is registered with the FDA as a Class 1 Device in the classification BRUSH, DERMABRASION, POWERED, regulation number 878.4820, for the medical specialty General & Plastic Surgery. The HydraFacial MD also conforms with all of the legal requirements for CE marking for a Class 1 Device.

9. The HydraFacial MD has a unique and distinctive design consisting of a light grey body with a translucent blue cover over the serum bottles, a darker-grey base, a monitor positioned on top of the tower, and four wheels at the corners of the base, as shown below. The design of the HydraFacial MD is not necessarily the simplest or most inexpensive possible design for the machine. Edge has been selling product bearing this unique and distinctive design as early as 2010 and has been selling a product bearing a nearly identical design since 2005.



10. Since the beginning of 2010, Edge has spent approximately \$4 million advertising its products in connection with Edge's trade name, trademarks, and the design of the HydraFacial MD. In 2014 alone, Edge spent nearly \$1.4 million on advertising. Edge advertises its products at trade shows, seminars, and through trade publications, social media, search engine optimization, emails, and webinars.

11. Edge includes its chevron "E" trademark on nearly everything affiliated with the company including, for example, its products, letterhead, envelopes, business cards, company banners, website, email signatures, pens, mugs, t-shirts, collared shirts, and windbreakers.

12. The following media outlets have profiled Edge and its products, including the HydraFacial MD: *People Magazine*, *Allure*, *The Hollywood Reporter*, *Tampa Bay Times*, *New Beauty*, *OK! Magazine*, *Star Magazine*, *Elle Beauty Book*, *Harper's Bazaar Magazine*, *Essence*, *Simply Her*, *Examiner.com*, *In Style*, *Good Day LA*, *The Doctors*, *KLBK News*, *Great Day Houston*, and the *Real Housewives of Beverly Hills*.

13. Edge products and services are offered at more than 2,500 locations throughout the United States, including all 50 states.

14. Edge sells its products to many consumers, including dermatologists, plastic surgeons, and health spas.

15. The Edge trade name, trademarks and trade dress are extremely valuable to Edge as identifiers of the company. Edge has developed and cultivated immense goodwill and brand recognition in its distinctive trademarks and trade dress. Edge's trade name, trademarks, and trade dress have become synonymous in the consumer's mind with Edge's business and high quality products.

16. Edge has continuously operated a website since 1999, displaying Edge's trademarks in connection with the sales and promotion of its products. Edge's website has reached over 56,000 individual users since July 2013 and averages over 55,000 page views per month.

17. Edge has a sales force of over 60 employees in the United States covering each of the 50 states. Edge has been selling products in the state of Florida since 2000, and has sold versions of the HydraFacial MD in Florida beginning as early as 2005.

18. Over the last five years, Edge has generated over \$93 million in revenue, including over \$48 million in revenue from sales of the HydraFacial MD.

**Mr. Aguila's Conduct**

19. In October of 2014, Edge was surprised to learn that one of its main competitors, Lumenis, was offering a copycat version of the HydraFacial MD on the website [www.hydradermabrasion.com](http://www.hydradermabrasion.com). Edge contacted Lumenis and learned that Lumenis was just as surprised as Edge. Edge and Lumenis both discovered that the website was actually registered to Ralph Aguila. Mr. Aguila was apparently using Lumenis' trade name and trademarks to advertise a knock-off HydraFacial MD.

20. On October 27, 2014, Edge sent Mr. Aguila a cease and desist letter and asked that it stop infringing the asserted patents.

21. Upon information and belief, Lumenis separately asked that Mr. Aguila stop using Lumenis' trade name and trademarks. Mr. Aguila then changed his website, replacing Lumenis' trade name and trademarks with Edge's trade name and trademarks.

22. Mr. Aguila responded to our October 27 cease and desist letter with two separate letters. In the first letter, he discussed allegations of fraudulent credit card purchases from 2006. In the second letter, he accused Edge of mounting a "fraudulent click" campaign against his infringing advertising.

23. Mr. Aguila also started using a second website, [www.edge-systems.com](http://www.edge-systems.com), that has nearly identical content as [www.hydradermabrasion.com](http://www.hydradermabrasion.com) and advertises the same infringing material. Mr. Aguila also sells the same serums and solutions as Edge on both these websites.

**Edge's History With Mr. Aguila**

24. Edge first became aware of Mr. Aguila in early 2006, when Mr. Aguila—doing business as DiamondSkin Systems—was selling a microdermabrasion machine on eBay that appeared to infringe some of the Axia Patents. In response to Edge's request to eBay, Mr. Aguila sent an email accusing a former Edge employee of making fraudulent purchases with his credit card information. The employee's name was Marshae Colbert, and she had already been terminated at the time of the accusations. Nonetheless, Edge took additional precautions to ensure no private customer information could be accessed by the former employee. Aguila again raised this allegation in response to the October 27, 2014 cease and desist letter.

25. In January 2010, Edge became aware that Mr. Aguila, again as DiamondSkin Systems, was infringing Edge's trademarks and copyrights and at least two of the Axia Patents. Edge sent Defendant a cease and desist letter. Although Defendant did not respond, the infringing products were removed from the offending websites.

26. In October 2011, Edge sent a notice letter to Yahoo regarding infringement of Edge's trademarks and copyrights, including text from Edge's website on the website [www.hydradermabrasion.com](http://www.hydradermabrasion.com). At that time, the website was registered to Mr. Aguila. To my knowledge, Mr. Aguila did not respond to the takedown notice, but did appear to cease his activity.

27. A true and correct copy of a screenshot of the website [www.hydradermabrasion.com](http://www.hydradermabrasion.com) from October 21, 2014 is attached hereto as Exhibit C.

28. A true and correct copy of the cease and desist letter sent from me to Mr. Aguila, dated October 27, 2014 is attached hereto as Exhibit D.

29. A true and correct copy of a letter sent on November 7, 2014 from Mr. Aguila to Ted Papagiannis, a partner at Knobbe Martens, is attached hereto as Exhibit E.

30. A true and correct copy of a letter sent on November 11, 2014 from Mr. Aguila to me and Ted Papagiannis is attached hereto as Exhibit F.

31. A true and correct copy of the October 17, 2006 email from Ralph Aguila to me is attached hereto as Exhibit G.

32. A true and correct copy of a letter sent on October 12, 2011 from Edge's former President, Roger Ignon, to Yahoo!, Inc. is attached hereto as Exhibit H.

33. A true and correct copy of a February 25, 1999 FDA 501(k) notification from Edge is attached hereto as Exhibit I.

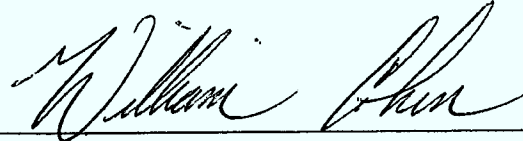
34. A true and correct copy a screenshot (November 24, 2014) listing Edge's HydraFacial MD in the FDA's Establishment Registration & Device Listing is attached hereto as Exhibit J.

35. A true and correct copy of a screenshot (November 24, 2014) listing Edge's FDA Registered Devices in the FDA's Establishment Registration & Device Listing is attached hereto as Exhibit K.

36. A true and correct copy of Edge's Device Manufacturing License issued by the State of California, Department of Public Health, Food and Drug Branch, is attached hereto as Exhibit L.

37. A true and correct copy of the Declaration of Conformity to the specified Directives and Standards for CE marking of the HydraFacial MD, executed by me on September 10, 2014, is attached hereto as Exhibit M.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of November 2014 at Signal Hill, California.

A handwritten signature in cursive script, appearing to read 'William Cohen', is written over a horizontal line.

William Cohen

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