

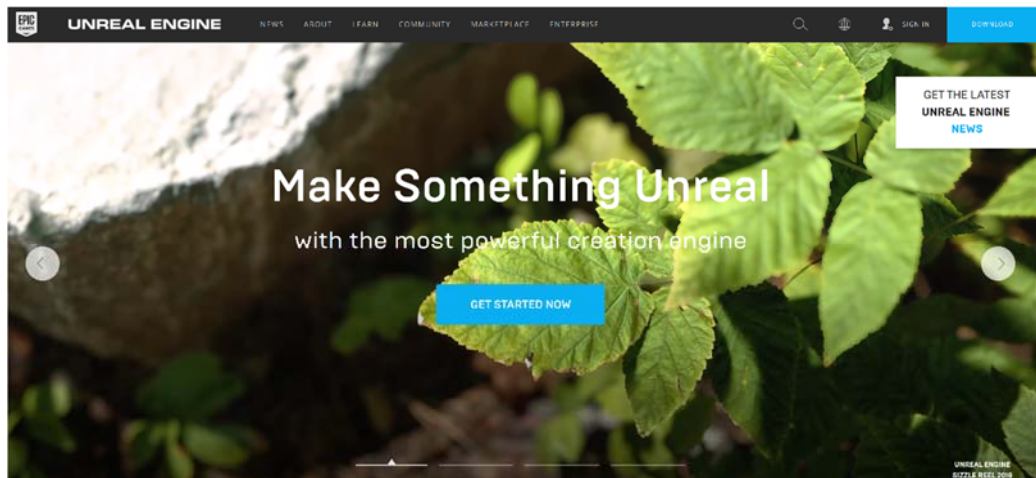
Two Trademark Applications Owned by Epic Games, Inc.

Mark: UNREAL  
Serial No.: 88392286

Mark: UNREAL ENGINE<sup>1</sup>  
Serial No.: 88392282

### **Explanation of Class 9 Specimen of Use Consisting of Sequential Webpages**

This explanation relates to the Class 9 specimen of use consisting of sequential webpages<sup>2</sup> that shows how a user downloads Applicant's "downloadable software for use in creating, manipulating and participating in virtual environments." Each of the webpages displays its URL and the date accessed at the bottom. A partial screenshot of the first webpage is shown below, which shows (1) the applied-for marks UNREAL and UNREAL ENGINE<sup>3</sup> in the upper left-hand corner in the header of the webpage, and (2) a "DOWNLOAD" button in the upper right-hand corner:

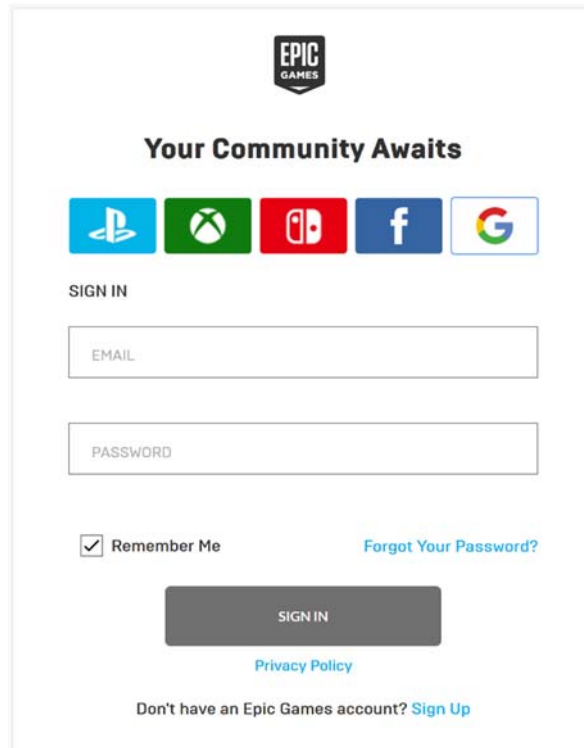


<sup>1</sup> "ENGINE" is disclaimed apart from the mark as shown.

<sup>2</sup> See T.M.E.P. § 904.03(i) ("If ordering information is not readily discernible from the submitted web page, the applicant may provide multiple, sequential web pages as part of the specimen to clarify the ordering process on the website.").

<sup>3</sup> The wording "UNREAL ENGINE" on the specimen supports the use of both UNREAL and UNREAL ENGINE because the word "ENGINE" is not distinctive – and hence disclaimed – as applied to a creation engine or game engine. "An applicant may apply to register any element of a composite mark if that element presents, or will present, a separate and distinct commercial impression apart from any other matter with which the mark is or will be used on the specimen, i.e., the element performs a trademark function in and of itself." T.M.E.P. § 807.12(d). "The courts in a proper case may recognize the right to registration of one part of an owner's mark consisting of two parts." *In re Royal BodyCare Inc.*, 83 U.S.P.Q.2d 1564, 1566 (T.T.A.B. 2007) (quoting *In re Servel, Inc.*, 85 U.S.P.Q. 257, 260 (C.C.P.A. 1950)). Here, because the word "engine" is not distinctive, the word UNREAL performs a trademark function in and of itself. See also *Parfums de Coeur Ltd. v. Lazarus*, 83 U.S.P.Q.2d 1012, 1015 (T.T.A.B. 2007) ("In January 2000 opposer introduced a men's line of fragrances under the marks BOD/BOD MAN. In the packaging the word BOD appears in very large letters, with MAN in smaller letters below and somewhat to the right of BOD. Thus, the same display on the packaging supports the use of both marks.") (emphasis added).

Upon clicking the “DOWNLOAD” button, the user is taken to a sign-in page. A partial screenshot of that webpage is shown below:



The screenshot shows the Epic Games sign-in page. At the top is the Epic Games logo. Below it is the heading "Your Community Awaits". There are five social media icons: PlayStation, Xbox, Nintendo Switch, Facebook, and Google. Below the icons is the text "SIGN IN". There are two input fields: "EMAIL" and "PASSWORD". Below the input fields is a checkbox labeled "Remember Me" and a link "Forgot Your Password?". Below that is a dark grey button labeled "SIGN IN". Below the button is a link "Privacy Policy". At the bottom is the text "Don't have an Epic Games account? Sign Up".

Upon signing in, the user must agree to the End User License Agreement (“EULA”) in order to download the software:



In order to download, you must agree to the appropriate End User License Agreement.

**Game Developers**

**Enterprise**

This license is for game developers intending to produce titles for distribution.

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of the Unreal® Engine and related content. By downloading or using this software or any related content, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, please do not download or use this software or any related content.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 25.

If your primary residence (or primary place of

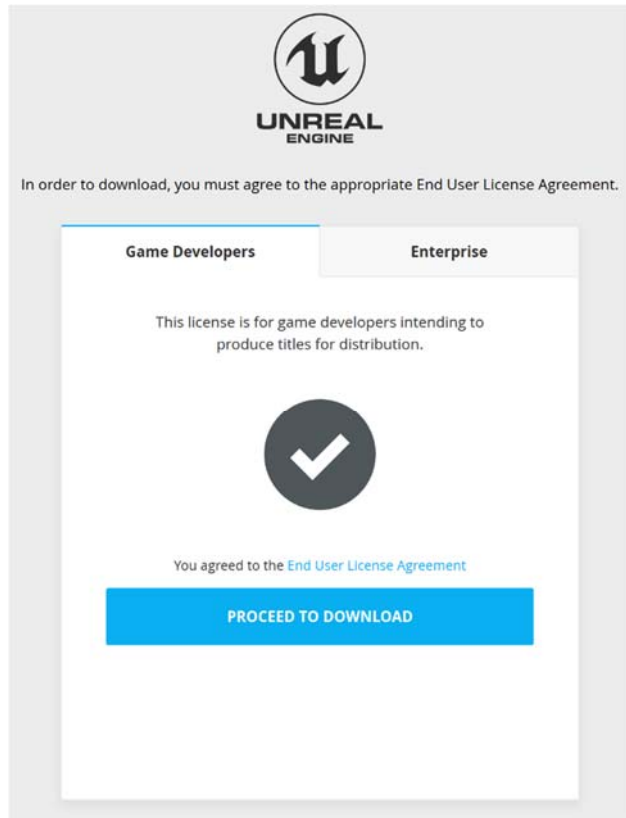
[EULA FAQ](#)

I have read and agree to the [End User License Agreement](#).

ACCEPT

[Complete later](#)

And once the user has agreed to the EULA, the user downloads the software:



In sum, a user seeing Applicant’s marks used in connection with Applicant’s “downloadable software for use in creating, manipulating and participating in virtual environments” can immediately download the software from Applicant’s website, which Applicant respectfully submits demonstrates proper trademark use. “For intangible goods, such as downloadable computer software programs, buttons and links for downloading . . . should be considered sufficient ordering information.” T.M.E.P. § 904.03(i)(C)(1).