

**BEFORE THE ALARM SYSTEM CONTRACTORS BOARD, AND DIVISION OF
REGULATORY BOARDS, TENNESSEE DEPARTMENT OF COMMERCE AND
INSURANCE AT NASHVILLE, TENNESSEE**

In Re:)
)
) **Docket No.** _____
Petitioner:)
 Adam Jackson, d/b/a,)
 Edge AI.)

**PETITION FOR DECLARATORY ORDER BEFORE THE ALARM SYSTEMS
CONTRACTORS BOARD, AND DIVISION OF REGULATORY BOARDS OF THE
DEPARTMENT OF COMMERCE AND INSURANCE,
PURSUANT TO TENN. CODE ANN. §§ 4-5-223 AND 4-5-224**

To: Cody Vest
Executive Director
Alarm Systems Contractors Board
Department of Commerce and Insurance

COMES NOW PETITIONER, Adam Jackson, d/b/a Edge AI, pursuant to Tennessee Code Annotated Sections 4-5-223 and 4-5-224, and hereby petitions the Tennessee Alarm Systems Contractors Board (“Board”), and the division of regulatory boards of the Department of Commerce and Insurance, for a hearing and a declaratory order as to the validity and/or applicability of the Alarm Contractors Licensing Act of 1991 (“the Act”) to Adam’s product and to Adam Jackson, Petitioner.

**I.
INTRODUCTION**

1. This case is about whether a cutting edge facial recognition software system may be characterized as an “alarm system” just because it works through an existing closed circuit television system. But this really just an example of a rising, and far bigger problem. This case is really about regulatory mismatch, that is, the tendency to shoehorn new and innovative technologies into an existing and poorly fitting regulatory scheme.

2. Adam, through his company, Edge AI, has developed a software program that operates on a computer. Targeted users are sensitive facilities, ones with particular need to recognize individuals that may not be authorized to be in or on a facility's grounds such as schools, domestic violence shelters, halfway houses, and childcare centers. The software, utilizing facial recognition technology, will analyze a person's facial features through an existing closed circuit television camera ("CCTV") and compare the person's features to a database within a computer. If the person's facial features match, the computer will inform a designated administrator user through a text or an email. The administrator can then decide whether or how best to manage the situation. Adam's product does not involve any mechanical or electrical wiring – it is simply software. His product does not consist of a camera, but it will need cameras to properly function. Thus, it may be a part of a new, or integrated into an existing CCTV, system. Although Adam will not be installing the CCTV system for the purchaser (Adam may recommend a licensed CCTV installer), Adam does plan on integrating its product into an existing CCTV system during product installation. Adam plans to manufacture, sell, and install the software program and computer ("the product") to targeted users.

3. The product is no more an alarm system than the countless apps and software systems that are designed to provide notices based on location. Yelp, Waze, Snapchat, Find My Phone, even Pokémon Go are all nothing more than software systems that, like Adam's, contemporaneously monitor location and provide notices in real time. Driverless cars will soon be here too and will likewise rely on software systems that monitor movement and provide notices. These technologies must be given room to grow in order for Tennesseans to flourish, not strangled in the crib by regulatory boards that were not set up to deal with these sorts of technologies in the first place and are not equipped to address them.

4. This case is also about the right to earn a living, a fundamental right in Tennessee. Adam Jackson, Edge AI's CEO, is a highly trained U.S. soldier. Yet he would potentially need to train for **five (5) years** installing things like burglar alarms if his software is mischaracterized as an alarm system, even though he has provided elite security at highly sensitive locations like an embassy and a military base. This makes no sense because burglar alarms are nothing like Edge AI's software. The imposition of such a ludicrously high burden upon Adam's fundamental right when it would have no tendency to actually make the product safer is unconstitutional.

5. This case is also about equal treatment under the law. Adam's product no more impacts the public's safety than many of the exceptions to the definition of "alarm system." Finally, this case is also about free speech rights. All Adam's product does is provide timely (and extremely important) information to the people responsible for protecting children so that they may make the most informed decision possible. By trying to require a license before Adam may communicate this information, the Board has imposed a prior restraint and a content-based restriction on speech. The robust protection of these rights is no less necessary for Tennesseans to flourish.

6. Adam has not sold or installed his product in Tennessee since the Board told him – with little explanation – that his product is probably an alarm system. Thus, he has halted the progress of Edge AI to both the detriment of himself, his company, but also the broader community who, in this day and age, could benefit greatly from enhanced security measures.

7. Notwithstanding the fact that Edge AI does not sell an alarm system, Adam seeks this declaratory order because of the Board's previously stated position.

II. DISCUSSION

8. Adam is a former member of a special forces group in the U.S. armed forces.

9. Adam has provided electronic security for a U.S. embassy and installed software systems on an overseas military base.

10. After his honorable discharge, Adam founded Edge AI.

11. Edge AI's software provides facial recognition services through a secure application. The system matches faces picked up on existing closed circuit televisions and detects similarities with faces in known offender databases, particularly helpful for places with a particular need to carefully monitor entry, like, say, schools and nonprofits that house and serve abuse victims.

12. The system features a notification mechanism that allows customers to receive text messages or emails on their personal cell phones.

13. Adam designed his product for open-ended use, but potential applications include domestic violence shelters, schools, daycares – any place with a need to monitor entry.

14. Adam's product provides enhanced identification capabilities at an affordable price.

15. Administrators at many sorts of locations are constantly trying to manage who enters onto the properties.

16. Edge AI has provided a valuable new way to disseminate important and time sensitive information.

17. The installation process consists of merely running one Ethernet cable from a piece of hardware (like a computer or hard drive) with the software on it to a network feed, and then entering the network address of an existing security camera.

18. Installation does not involve electrical or internal wiring. It is about as technical as setting up an internet connection by plugging a computer into a wall jack.

19. Adam has created software that merely supplies *information* to a user and the user decides what to do with the information, a great deal like many smart products now available for the home and workplace like a smart doorbell, refrigerator, thermostat, baby monitor, pet cam, or motion-activated light.

20. On June 22, 2017, Adam appeared before the Board to ask whether he required certification pursuant to the Act.

21. Throughout the meeting, the Board characterized Edge AI as falling within a “gray area” of the Act.

22. The Board stated numerous times that the best recommendation was to “become licensed.”

23. The Board stated that Adam’s “onsite work” to sell, connect, or install his product is the principal factor requiring licensing. If Adam did not go onsite, then Adam did not need a license.

24. One Board member even acknowledged that Edge AI’s product sounded more like a “non-alarm add-on to an existing system.”

25. At the above meeting, the Board appeared to determine that Adam’s product may meet the definition of an alarm system, although the Board did not provide any specific reasoning other than “onsite work” and perhaps “wiring” to support its decision.

26. The effect of characterizing Adam’s product as an alarm system is to require at least Adam to become certified as a qualifying agent, as well as comply with a whole host of laws and regulations designed for alarm system companies.

27. Because Adam does not hold a four (4) year degree, or an associate's degree in engineering, he would need at least five (5) years working experience covering the actual installation of alarms.

28. Although it intimated that his extensive military experience and training might count, the Board declined to conclusively tell him once and for all if it would.

29. The Board's executive director, Code Vest, told Adam that he could only find out for sure if he made a formal application, including the payment of non-refundable fees.

30. But for the Board's action, Adam would have sold Edge AI's product to numerous customers.

31. The Board's action has thus imposed a significant financial harm on Adam.

32. The Board's action has thus impacted Adam's property rights, economic liberty – among his most precious of rights — and free speech rights.

III. ANALYSES

Claim One-Edge AI does not sell an alarm system

33. Adam hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

34. This case involves the possibility of both civil and serious criminal penalties. Thus, the Rule of Lenity is in play. Ambiguity should be resolved in Adam's favor.

35. Interpretation should also be shaped by the recently enacted "Right to Earn a Living Act." It provides, "it is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition," and stated a policy designed "to ensure that regulations of entry into businesses, professions, and occupations are demonstrably necessary and narrowly tailored to legitimate health, safety, and welfare objectives." *See* Exhibit, Public Chapter No. 1053

(2016). In short, respect for the importance of this right also requires a narrow interpretation of any statute that impacts a fundamental right.

36. An “alarm system” is defined as “any mechanical, electrical or electronic system, or any combination of those systems, designed to: a) record, view, monitor, protect against, avoid or reduce the probability of personal or property loss or injury resulting from fire, smoke, heat, burglary, theft, shoplifting, pilferage or other losses of that type; b) monitor, detect or prevent intrusion; or c) detect and summon aid for other emergencies.” *See* Tenn. Code Ann. § 62-32-303(1).

37. Adam contends that that his product does fit the definition of an alarm system pursuant to Tenn. Code Ann. § 62-32-303(1)(a) as follows:

a. First, the product must be a mechanical, electrical or electronic system, or any combination of those systems. Adam concedes that his product is arguably an electrical or electronic system (because it is software running on a hard drive connected to a network through an Ethernet cable), but adds that this definition never contemplated application to a software system running on a drive connected thorough an Ethernet cable to a system feed.

b. Second, Adam’s product must be “designed to” record, view, monitor, protect against personal or property loss or injury. Adam’s product was specifically designed only to recognize and match facial data. It will not avoid or reduce injury or loss. The product user, typically a school administrate, is responsible for utilizing the data provided. Among its many applications, it is difficult to envision how the product could ever be used to include avoiding or reducing injury or property loss. Even if the product is somehow used this way, it was not “designed” for this function. It would have been only because of the choice of the end user to make a decision based on this unforeseen application. Essentially, Adam is providing a neutral tool not “designed to” do any one thing other than identify faces, and

certainly not to protect against personal or property loss or injury. For this reason, Adam's product does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(a).

c. Finally, Adam certainly did not design his product to address loss or injury specifically resulting from "fire, smoke, heat, burglary, theft, shoplifting, pilferage or other losses of that type". As clearly stated throughout, Adam designed a product that only analyzes facial features, compares it to facial data and informs the user of any possibility of a data match. Adam's product was not designed to prevent losses due to fire, smoke, heat, burglary, theft, shoplifting, pilferage. It is difficult to even imagine how it could have that application. Adam's product's sole purpose is to analyze and match facial data and inform the user. Thus, it does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(a).

38. Pursuant to Tenn. Code Ann. § 62-32-303(1)(b), an alarm must be system designed to "monitor, detect or prevent intrusion." Adam's product does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(b). It was not designed to and does not "monitor, detect or prevent intrusion." The term "intrusion" is defined as "the act of intruding or the state of being intruded; the act of wrongfully entering upon, seizing, or taking possession of the property of another."¹ Thus, intrusion requires an unlawful act. Adam's product only provides notice of entry; it does not presume that the entry was unlawful. Even a person who makes entry and matches the face in the database may have a legitimate reason to be there. Again, Adam has just built a tool. The administrator must determine, first, whether to inquire further, and second, whether the entry is unlawful. Adam's product only assists in the potential identification a person. Thus, Adam's product does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(b).

¹ *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 18 Nov. 2017.

39. Pursuant to Tenn. Code Ann. § 62-32-303(1)(c), an alarm system must be designed to “detect and summon aid for other emergencies.” Adam’s product does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(c). It was not designed to, cannot, does not, and was not intended to “detect and summon aid in other emergencies.” It only provides notice of potential entry. It makes no claim of an emergency. Usually, an alarm system determines if fire police or ambulance is necessary, detects the correct authority to notify, and then the device automatically summons the appropriate authority. The term “detect” is defined as “to discover the true character of; to discover or determine the existence, presence, or fact of.”² Adam’s product does not “determine” anything or anyone to summon for aid. The term “summon” is defined as “to order (someone) to come to a place; to order (someone) to appear in a court of law; to ask for (someone or something) to come; to send or call for (someone or something).”³ Any summoning would come from the end user, only after he or she has made decisions well after receiving notice. Adam’s product does not notify the police, fire departments, ambulance or other emergency agency or activate security equipment. It certainly was not what it was designed to do. Thus, Adam’s product does not meet the requirements of Tenn. Code Ann. § 62-32-303(1)(c).

40. Adam’s product does not meet any of the required criteria of the definition of “alarm system” as contained in Tenn. Code Ann. § 62-32-303(1).

41. Moreover, the characterization of Adam’s product as an alarm system is not demonstrably necessary and narrowly tailored to legitimate health, safety, and welfare objectives. Thus, Edge AI does not sell an alarm system, nor is Adam subject to the Board’s jurisdiction.

² *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 18 Nov. 2017.

³ *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 18 Nov. 2017.

Claim Two-Right to Earn a Living

42. Adam hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

43. As a Tennessean, Adam has a right to earn an honest living protected under Article I, Section 8 of the Tennessee Constitution. It provides that “no man shall be ... disseized of his freehold, liberties or privileges ... or in any manner destroyed or deprived of his life, liberty or property, but by judgment of his peers, or the law of the land.”

44. In Tennessee, the Right to Earn a Living is deemed fundamental.

45. Fundamental rights receive special protection.

46. The Right to Earn a Living Act also contained legislative findings. They likewise specify, “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference is a *fundamental* civil right.” See Exhibit, Public Chapter No. 1053 (2016) (emphasis added).

47. No compelling, or even legitimate, reason exists to mandate that Adam become certified before installing and selling his product.

48. To require certification would prohibit Adam from developing and selling a software system without substantial prior training and testing. Such training and testing is irrelevant, and unreasonably prevents an otherwise qualified person from embarking onto a lucrative career.

49. Requiring Adam get a certification to sell and install his product does not protect the public health and safety interest.

50. Furthermore, requiring certification from Adam before he may install his product is not tailored to address whatever legitimate interests the Board may have.

51. The certification requirement also far exceeds whatever legitimate public health and safety requirements are necessary to protect the public.

52. The reason for certification of Adam is protectionism.

53. Protectionism is not a legitimate governmental interest.

54. For these reasons, the Board has violated Adam's constitutional right.

Claim Three-Unequal Treatment

55. Adam hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

56. As a Tennessean, Adam has a right to equal treatment. Tennessee's constitutional guarantee of equal treatment under the law is found in two different clauses of the state constitution. The first is found in art. I, § 8. The second is found in art. XI, § 8.

57. Adam has been denied equal treatment if the Board will not allow him operate without a certification because it allows other business that implicate any legitimate governmental interest far more than Edge AI.

58. The following are but a few examples of the types of businesses that are no more of a threat to the public safety than Edge AI, yet are exempt from the definition of alarm system:

a. A company that does not provide monitoring services and that has fifty million dollars (\$50,000,000) or more in annual sales and whose product requires no internal building wiring to install;

b. The monitoring and minor maintenance of alarm systems by a hospital or an affiliate of a hospital solely for its own use;

c. The sale or installation of delayed egress locks by a company when the locks are used to detect and monitor the wandering of residents of a nursing home.

d. Telemarketers who do not have access to confidential information regarding an existing or proposed alarm system;

e. The manufacture and sale of mobile homes containing alarm systems do not require certification under the Alarm Contractors Licensing Act of 1991. The servicing and monitoring of such systems do require certification;

f. Red light violation monitoring systems.

59. The differential treatment of Adam furthers no legitimate governmental interest.

60. By unreasonably and arbitrarily requiring Adam to obtain certification, the Board has subjected Adam to difficult and expensive burdens that are not required of the above businesses.

61. For these reasons, the Board has violated Adam's constitutional right.

Claim Four-Free Speech

62. Adam hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

63. As a Tennessean, Adam has a right to free speech guaranteed by the First Amendment of the U.S. Constitution and art. I, § 19 of the Tennessee Constitution.

64. Adam seeks to communicate information. His product informs an administrator that a particular person who has just entered resembles someone in a known database.

65. In this way, it is no different than if a person were to recognize someone entering as resembling someone from a wanted poster at the post office and then informing a school administrator.

66. Assuming, *arguendo*, that Adam does sell an alarm system, thereby requiring certification before he may speak, then the Board will be imposing an impermissible prior restraint.

67. Assuming, *arguendo*, that Adam does sell an alarm system, then the Board will be imposing an impermissible content-based restriction on speech by requiring certification before Adam may speak.

68. No compelling reason exists to burden Adam's speech.

69. The requirement of a certification is not narrowly tailored to any legitimate governmental interest.

70. For these reasons, the Board has violated Adam's constitutional right.

IV. Relief Sought

WHEREFORE, PREMISES CONSIDERED PETITIONER REQUESTS THAT:

A. The Board convene a contested case hearing at its next regularly scheduled meeting or as soon as possible regarding this Petition pursuant to Tenn. Code Ann. § 4-5-223(1).

B. The Board submit electronically to the Secretary of State the notice of hearing for publication in the notice section of the administrative register in a manner required by Tenn. Code Ann. § 4-5-224.

C. The Board determine that Adam's product is not an alarm system as defined by Tenn. Code Ann. 62-32-303 and that Adam does not require an Alarm Systems Contractors' License or certification as required by Tenn. Code Ann. § 62-32-304 before he may sell and install his product.

D. The Board issue a declaratory order to this effect as requested by Adam.

E. Award costs, expenses and reasonable attorney's fees to the extent allowed by law or under any available statutory provision or equitable principle.

F. Award any other relief as is appropriate under the circumstances.

Dated: _____

Respectfully submitted,

ADAM JACKSON d/b/a Edge AI
1153 Franklin Drive
Greenbrier, TN 37073

Dated: _____

Respectfully submitted,

BRADEN H. BOUCEK
B.P.R. No. 021399
Beacon Center of Tennessee
P.O. Box [REDACTED]
Nashville, TN 37219

[REDACTED]

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that I have forwarded a true and correct copy of the foregoing Petition For Declaratory Order to the following individuals by the following means:

Person	Title	Via
Julie Mix McPeak Commissioner Department of Commerce and Insurance 500 James Robertson Pkwy Nashville, TN 37243-0565	Department of Commerce and Insurance	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF
Cody Vest 500 James Robertson Pkwy Nashville, TN 37243-0565	Executive Director Alarm Systems Contractors Board	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF
Carter Lawrence 500 James Robertson Pkwy Nashville, TN 37243-0565	Assistant Commissioner for Regulatory Boards	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF
Lorrie Brouse, Esq. 500 James Robertson Pkwy Nashville, TN 37243-0565	Deputy Commissioner and General Counsel Department of Commerce and Insurance	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

Dated: _____

Respectfully submitted,

BRADEN H. BOUCEK
B.P.R. No. [REDACTED]
Beacon Center of Tennessee

[REDACTED]
[REDACTED]
braden@beacontn.org

Counsel for petitioner

EXHIBIT

Public Chapter No. 1053-“Right to Earn a Living Act”