

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K/A

Current report filing [amend]

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FILER

**MAD CATZ INTERACTIVE INC**

CIK: **1088162** | IRS No.: **874627953** | State of Incorporation: **Z4** | Fiscal Year End: **0331**  
Type: **8-K/A** | Act: **34** | File No.: **001-14944** | Film No.: **161894392**  
SIC: **3944** Games, toys & children's vehicles (no dolls & bicycles)

Mailing Address

181 BAY STREET  
SUITE 4400  
TORONTO ONTARIO A6 M5J  
2T3

Business Address

181 BAY STREET  
SUITE 4400  
TORONTO ONTARIO A6 M5J  
2T3  
4163608600

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K/A  
Amendment No. 1**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): April 26, 2016**

**MAD CATZ INTERACTIVE, INC.**  
(Exact Name of Registrant as Specified in Charter)

**Canada**  
(State or Other Jurisdiction  
of Incorporation)

**001-14944**  
(Commission  
File Number)

**N/A**  
(I.R.S. Employer  
Identification No.)

**10680 Treena Street, Suite 500  
San Diego, California 92131**  
(Address of Principal Executive Offices)

**(858) 790-5008**  
(Registrant's telephone number, including area code)

**Not applicable**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14.a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))



## EXPLANATORY NOTE

Mad Catz Interactive, Inc. (the “Company”) is filing this Amendment No. 1 (the “8-K Amendment”) to its Current Report on Form 8-K filed with the Securities and Exchange Commission on April 28, 2016 (the “Form 8-K”) for the sole purpose of re-filing the First Amendment to that Certain Harmonix Rock Band 4 Manufacturing, Publishing and Distributing Agreement, dated April 26, 2016 (the “First Amendment”), originally filed as Exhibit 10.1 to the Form 8-K, in response to comments received by the Company from the Securities and Exchange Commission (the “SEC”) regarding the Company’s request for confidential treatment of certain portions of the First Amendment. In response to the SEC’s comments, this 8-K Amendment and the First Amendment attached to this 8-K Amendment discloses the “Wind-Down Period” defined and set forth in Section 8.6 of the First Amendment. As previously disclosed by the Company in its quarterly report on Form 10-Q, filed with the SEC on August 4, 2016, the Wind-Down Period ended September 6, 2016.

This 8-K Amendment contains only the Cover Page to Form 8-K, this Explanatory Note and a restatement of Item 1.01 of the Form 8-K to include the additional information. Except as expressly described in the prior paragraph, this 8-K Amendment does not change any of the disclosure contained in the Form 8-K. This 8-K Amendment speaks as of the original filing date of the Form 8-K and does not reflect any events that occurred at a date subsequent to the filing of the Form 8-K or modify or update those disclosures therein in any way. Accordingly, this 8-K Amendment should be read in conjunction with the Company’s filings made with the SEC subsequent to the filing of the Form 8-K.

### **Item 1.01. Entry into a Material Definitive Agreement**

On April 26, 2016, Mad Catz Interactive, Inc. (the “Company”) and its subsidiary Mad Catz Inc. (“MCI”), entered into a First Amendment (the “Amendment”) to that certain Harmonix Rock Band 4 Manufacturing, Publishing and Distribution Agreement (the “Agreement”) by and between the Company, MCI, and Harmonix Music Systems, Inc. (“Harmonix”), which is dated October 14, 2015 and which is effective March 4, 2015. The Amendment, which is effective April 26, 2016, amends Licensed Products, as defined in the Agreement, to those Licensed Products that exist or have been approved by Harmonix as of the effective date of the Amendment; sets minimum wholesale prices for certain sales of new Licensed Product Bundles, as defined in the Agreement; sets a payment schedule for the payment of royalties due Harmonix related to the Minimum Quantities, as defined in the Agreement; adjusts the royalty amounts due for sales beyond the Minimum Quantities; and amends certain termination provisions, including the right to terminate the Agreement and the effects of termination of the Agreement and associated wind-down period of one-hundred twenty (120) days following the effective date of the termination.

The description of the Amendment set forth under this Item 1.01 is qualified in its entirety by reference to the complete terms and conditions of the Amendment filed as Exhibit 10.1 hereto and incorporated herein by reference.

### **Item 9.01. Financial Statements and Exhibits**

(d) Exhibits.

10.1 First Amendment to that certain Harmonix Rock Band 4 Manufacturing, Publishing and Distribution Agreement. Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 20, 2016

**MAD CATZ INTERACTIVE, INC.**

By: /s/ DAVID MCKEON

Name: David McKeon

Its: Chief Financial Officer

CERTAIN INFORMATION INDICATED BY [\*\*\*] HAS BEEN DELETED FROM THIS EXHIBIT AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT UNDER RULE 24B-2.

**FIRST AMENDMENT TO THAT CERTAIN HARMONIX ROCK BAND 4 MANUFACTURING, PUBLISHING AND DISTRIBUTION AGREEMENT**

This First Amendment (“First Amendment”) to that certain agreement entitled “Harmonix Rock Band 4 Manufacturing, Publishing and Distribution Agreement and Software Publishing and Distribution Agreement,” dated October 14, 2015 and effective as of March 4, 2015 (the “Agreement”), is entered into as of this 26th day of April, 2016 (the “Amendment Effective Date”), by and between **HARMONIX MUSIC SYSTEMS, INC.**, a Delaware corporation, with offices at 40 Broad Street, 7th Floor, Boston, MA 02109 (“Harmonix”) on the one hand, and **MAD CATZ INTERACTIVE, INC.**, an Ontario corporation, and **MAD CATZ, INC.**, a Delaware corporation, both with offices at 10680 Trenea Street, Suite 500, San Diego, California 92131 (collectively, “Company”) on the other hand. Harmonix and Company are each referred to as a “Party” and collectively referred to as the “Parties” herein. Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Agreement.

**WHEREAS**, under Section 8 of the Agreement, Harmonix has various rights to terminate the Agreement;

**WHEREAS**, the exclusive obligations set forth in Section 2 of the Agreement became non-exclusive no later than January 31, 2016; and

**WHEREAS**, effective as of the Amendment Effective Date, the Parties agree that the Agreement shall be amended pursuant to Section 12.8 of the Agreement as more fully described herein;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. [\*\*\*], Company shall pay to Harmonix [\*\*\*] pursuant to Section 6.1.2.B. set forth below and as consideration for entering into this First Amendment.
2. Section 1 of the Agreement is hereby amended by adding the following definitions:
  - “Amendment Effective Date” means April 26, 2016.”
  - “Minimum Quantities” means the Minimum Launch Quantities and Minimum Black Friday Quantities.”
3. Section 2 of the Agreement is hereby amended by adding the following as a new Section 2.6.9:
  - “2.6.9. Licensed Products Restrictions. Company acknowledges and agrees that notwithstanding anything in this Agreement to the contrary: (i) the rights granted under this Agreement apply solely to the specific Licensed Products that exist and have been approved by Harmonix on or prior to the Amendment Effective Date and not any other products or Bundles, except that the Licensed Products may include Guitar straps and Guitar pick guards once such products are approved in writing by Harmonix, (ii) as of the Amendment Effective Date, Company shall have no rights to create, manufacture, distribute and sell any new types of Licensed Products under this Agreement, (iii) Company shall have no right to manufacture any additional Licensed Products beyond what exists as on-hand inventory as of the Amendment Effective Date, provided that Company may package finished goods that exist as of the Amendment Effective Date, pursuant to the terms of this Agreement, (iv) as of the Amendment Effective Date, Company had the on-hand inventory set forth on Schedule 4 attached hereto, (v) any on-hand inventory of Licensed Products located in [\*\*\*] as of the Amendment Effective Date may only be sold within [\*\*\*] and may not be used to fulfill any orders outside of [\*\*\*] (the “[\*\*\*] Restriction”), and (vi) as of the Amendment Effective Date, Company shall only sell Licensed Software as part of a Band in the Box Bundle or Guitar Bundle, and shall not sell Stand-Alone Licensed Software or Dongle Bundles.”
4. Schedule 4 of this Amendment is hereby added and incorporated into the Agreement as Schedule 4 thereto.

CERTAIN INFORMATION INDICATED BY [\*\*\*] HAS BEEN DELETED FROM THIS EXHIBIT AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT UNDER RULE 24B-2.

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5. Section 2.7.1.1 of the Agreement is hereby deleted and removed in its entirety.
6. Effective as of February 5, 2016, Darren Richardson is replaced with Karen McGinnis as the Company's primary interface with Harmonix in Section 4.2.9 of the Agreement.
7. Section 4.3.5 of the Agreement is hereby amended and supplemented with the following:

“Notwithstanding the above, the Company agrees that, without Harmonix’s prior written consent, the Company shall not sell in [\*\*\*] (i) any Band in the Box Bundle below a wholesale price of \$[\*\*\*] per Bundle or (ii) any Guitar Bundle below a wholesale price of \$[\*\*\*] per Bundle. The Company may, however, sell in [\*\*\*] up to [\*\*\*] total refurbished or reconditioned Band in the Box Bundles and/or Guitar Bundles, considered collectively, at a price below the authorized wholesale prices set by this Section 4.3.5 for new Bundles, respectively, and without Harmonix’s prior written consent.”

8. Section 6 of the Agreement is hereby amended as follows:

Section 6.1.2	<p>The first sentence of Section 6.1.2 is hereby deleted and removed in its entirety and replaced with the following:</p> <p>“Subject to <u>Sections 2.6.9, 4.3.5 and 6.2</u>, Forty-Five (45) days after the end of each calendar month in which Licensed Software was sold, Company shall pay to Harmonix a royalty of (i) \$[***] for Licensed Software sold outside a Bundle, (ii) \$[***] for Licensed Software sold in a Dongle Bundle, (iii) \$[***] for Licensed Software sold in any other Bundle as part of the Minimum Quantities, (iv) \$[***] for Licensed Software sold in [***] on or after the Amendment Effective Date that is beyond the Minimum Quantities, and (v) \$[***] for Licensed Software sold outside of [***] on or after the Amendment Effective Date (subject to the [***] Restriction). For the avoidance of doubt, any Licensed Products sold shall first be counted towards the Minimum Quantities, as applicable.”</p>
Section 6.1.2.B.	<p>Section 6.1.2.B. is hereby deleted and removed in its entirety and replaced with the following:</p> <p>“For [***] Bundles and the [***] Stand-Alone Licensed Software included in the Minimum [***] Quantities, Company shall pay Harmonix [***], representing [***]% of the Software Royalty for such Bundles (calculated as [***]) and Licensed Software (calculated as [***]), on the following payment schedule:</p> <p>(i) On or before the [***]: \$[***];  (ii) On the [***]: \$[***];  (iii) Beginning on the [***] and continuing on or before each [***]:  (a) \$[***]; or  (b) [***].”</p>

9. Section 8 of the Agreement is hereby amended as follows:

Section 8.4	<p>Section 8.4 is hereby deleted and removed in its entirety and replaced with the following:</p> <p>“8.4 <u>Termination for Convenience</u>. In addition to any other rights Harmonix has to terminate this Agreement, at any time during the Term, Harmonix may, in its sole and absolute discretion, terminate this Agreement for any reason upon three (3) business days’ notice to Company.”</p>
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Section 8.5	<p>Section 8.5 is hereby deleted and removed in its entirety and replaced with the following:</p> <p>“8.5 <u>Effect of Termination</u>. Except as explicitly provided for during the Wind-Down Period, if any, set forth in Section 8.6 below, upon any termination or expiration of this Agreement, (a) all rights and licenses granted to Company shall terminate, (b) any and all payments due or to become due including, without limitation, any</p> <p>Royalties, shall be immediately due and payable and (c) Company shall no longer manufacture, advertise, distribute or sell the Licensed Products or any product which may infringe upon Harmonix’s proprietary rights, including without limitation, the Harmonix Intellectual Property, or use any name, logo or design which is substantially or confusingly similar to the Harmonix Designs on any product in any place whatsoever. In the event of such termination or expiration, Company shall promptly deliver to Harmonix a statement indicating the on hand inventory of finished Licensed Products. Harmonix shall have the right to conduct a physical inventory in order to ascertain or verify such inventory and statement. Except as provided for during the Wind-Down Period, if any, set forth in Section 8.6 below, such inventory shall at Harmonix’s option, be destroyed by Company, at Company’s cost, or purchased by Harmonix at [***] for such Licensed Products. Disposition pursuant to a sale by Company to Harmonix of any plates, molds, forms, lithographs or other materials relating to the Licensed Products shall be subject to notice from Harmonix to Company to deliver same to Harmonix or its designee.”</p>
Section 8.6	<p>Section 8.6 is hereby deleted and removed in its entirety and replaced with the following:</p> <p>“8.6 <u>Wind-Down Period</u>. Upon expiration of this Agreement or termination for convenience by Harmonix pursuant to Section 8.4, Company may continue to sell Licensed Products, previously manufactured and on hand in Company’s inventory as of the effective date of expiration, on a non-exclusive basis for a maximum period of One Hundred Twenty (120) days following the effective date of such expiration (“<u>Wind-Down Period</u>”), subject to all of the terms and conditions contained in this Agreement, including, without limitation, Company’s obligations to continue to remit Royalties to Harmonix under this Agreement (including, but not limited to, the Royalties set forth in Section 6.1.2.B, to the extent unpaid), <u>provided</u>, however that (a) the Licensed Products shall be sold in the ordinary course of business at prices not lower than the prevailing wholesale price or prices charged by Company during the 60-day period immediately preceding the expiration of this Agreement and in any event no lower than the thresholds set forth in Section 4.3.5 and (b) no new Licensed Products are manufactured during the Wind-Down Period. Upon the occurrence of any of the events set forth in Section 8.2, including, but not limited to, Company’s failure to make a Royalty payment, Company’s breach of Section 4.3.5, or any other material breach by Company, in each case that is not cured by Company within [***] days, the Wind-Down Period shall immediately terminate. Upon the expiration or termination of the Wind-Down Period, the terms of Section 8.5 shall govern. Company acknowledges and agrees that nothing herein shall be deemed to restrict or limit Harmonix’s rights in and to the Harmonix Intellectual Property during the Wind-Down Period, including, without limitation, the right to enter into any agreements with third parties in connection with the manufacture and distribution of peripherals, controllers and other devices for use with the Licensed Software.”</p>
Section 8.7	<p>The following is added as a new Section 8.7 of the Agreement:</p>



“The Parties acknowledge and agree that, notwithstanding any term or provision of this Agreement to the contrary, the rights and licenses granted to Company under this Agreement are personal to the Company and within the scope of 11 U.S.C. section 365(c)(1) and 11 U.S.C. section 365(e)(2), and may not be assumed or assigned by Company, and may be terminated by Harmonix, in any bankruptcy or similar proceeding of Company, and any purported assumption or assignment by Company, and any change of control of Company, including without limitation through the appointment of a trustee or similar representative for Company, shall result in an automatic termination of this Agreement and all rights of Company hereunder and thereunder.”

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10. Effective as of February 5, 2016, the Company's notice addresses and contact information are replaced with the following:

"Company: Mad Catz Interactive, Inc.  
Attention: Karen McGinnis  
Address: 10680 Treena Street, Suite 500  
San Diego, California 92131  
Telephone: 858-790-5008  
Telecopy: 858-790-5018  
Email: kmcginnis@madcatz.com

With a copy to:

Company: Mad Catz, Inc.  
Attention: Tyson Marshall  
Address: 10680 Treena Street, Suite 500  
San Diego, California 92131  
Telephone: 858-790-5008  
Telecopy: 858-790-5018  
Email: tmarshall@madcatz.com"

11. No Waiver. This First Amendment shall not be construed as a waiver by Harmonix of any rights, claims, remedies, or defenses under or in respect of the Agreement or applicable law, and does not constitute any election among rights or remedies. Harmonix reserves all rights, claims, remedies, and defenses it may have under the Agreement or applicable law, and all elections among rights and remedies, with respect to any matter.
12. Miscellaneous. The Parties agree that this First Amendment will be fully incorporated into the Agreement and, except as specifically provided for in this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. This First Amendment may be executed in one or more counterparts and by facsimile or electronic copy, each of which, when executed, shall be deemed to be an original, but all of which when taken together shall constitute one and the same agreement.

*[Signature page follows]*

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed and delivered by their duly authorized officers as of the Amendment Effective Date.

**HARMONIX MUSIC SYSTEMS, INC.**

By:     /s/ STEVE JANIAK    

Name:     Steve Janiak    

Title:     CEO    

**MAD CATZ INTERACTIVE, INC.**

By:     /s/ KAREN MCGINNIS    

Name:     Karen McGinnis    

Title:     President & CEO    

**MAD CATZ, INC.**

By:     /s/ KAREN MCGINNIS    

Name:     Karen McGinnis    

Title:     President & CEO    

CERTAIN INFORMATION INDICATED BY [\*\*\*] HAS BEEN DELETED FROM THIS EXHIBIT AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT UNDER RULE 24B-2.

# Schedule 4

[\*\*\*]

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