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Keywords

trademark, Apple, appstore

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by Amer Raja

Editor’s Note: The following blog post was published on www.ipbrief.net on May 23rd, 2011.

Earlier this year the IPBrief covered two stories on trademark claims by Apple for the “Appstore” title. In the first story, Microsoft was challenging Apple’s efforts to acquire a trademark on “Appstore.” The second story covered Apple’s trademark infringement claim against Amazon.com for using the phrase “Appstore” to sell Android applications. The trademark lawsuit has since developed into an amalgam of both stories of sorts. Microsoft’s arguments against Apple’s trademark claims have become increasingly relevant for Amazon as it defends itself.

Apple and Amazon haven’t always seen eye to eye, especially in light of Amazon’s recent expansions into selling music downloads. Apple has viewed Amazon’s expansion as incursions into its market and consequently Apple has attempted to restrict Amazon’s growth as much as possible. For Apple this also means getting mired in legal disputes and trying every avenue possible to limit its competitors’ growth. The March 18th complaint is a great example of Apple desperately trying to restrict the growth of the Android market and Amazon’s one-stop shop aims.

In an effort to defend itself from Apple’s trademark infringement claim, Amazon answered the March complaint with the contention that “Appstore” is a generic term. A generic term, under trademark law cannot be protected because it conveys limited, if any, information to the consumer regarding the quality of the product. The other three categories a term or phrase could fall under are “arbitrary/fanciful,” “suggestive,” and “merely descriptive.” Apple’s best shot at winning this case would be if it could prove that “Appstore” is suggestive or arbitrary. Unfortunately for Apple, proving that “Appstore” is arbitrary would be a near impossible task since the term “Appstore” clearly relates to the products being sold. However, Apple’s claims that “Appstore” is suggestive, may be better received by the court depending on the breadth of evidence submitted to the court.

Earlier this week Apple took its first step in asserting that “Appstore” is suggestive and should therefore be protected by trademark. Apple filed additional court documents this week to deny Amazon’s allegations that “Appstore” is a generic term. Apple claimed in these documents that “based on their common meaning, the words ‘app store’ together [do not] denote a store for apps.” Apple will need to show more than a simple denial that the common meanings

of app and store were not the reasons they coined the term “Appstore,” which may prove to be extremely difficult.

Although the term “app” has been in usage for many years prior to Apple’s release of the “Appstore” in 2008, Apple claims that this usage is independent of the term they coined to sell Apple OS specific software. In addition to this contention, Apple indicates that they even filed an application with the U.S. Patent and Trademark Office to trademark “Appstore” prior to this lawsuit. Apple aims to use both of these arguments in protecting its rights over exclusively using “Appstore,” and to effectively reduce the ripple effect of Amazon’s latest expansion.

Despite Apple’s direct response to Amazon’s claims, Amazon may have the upper hand in this lawsuit. Apple knowingly used the term “app” to describe the bits of software that consumers can purchase in the “Appstore.” The term “Appstore” does not operate in the same manner as iTunes or any other trademark since it may be difficult to prove that consumers think of Apple when they hear the term “Appstore.” Apple’s Steve Jobs has even used the term, “app store” to describe the “Appstore,” which according to Amazon could show that the term “app store” is generic.

Of course, market research and statistics may be used to bolster Apple’s claims that “Appstore” should be a protected term, but it is unclear how well Apple controls the market for “apps” and whether it should be afforded with trademark protection. Both Amazon and Apple’s filings in preparation for this lawsuit may very well be dispositive of the outcome of this case, so be sure to keep an eye on this case. The result of this case has the potential to greatly affect trademark protection in markets across the board and the threshold that businesses must cross in order to avoid being deemed to use a generic term. Regardless of how the Court comes out in this case, the verdict will likely set a strong precedent for future trademark infringement claims.