The Impact of Trademarks, Patents, Copyrights and Intellectual Property of Apple Inc.

Matthew M. Frazier

Informatics Department

Fort Hays State University

Professor Hunsicker-Walburn

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Abstract

This paper discusses the foundation of Apple's copyrights, patents, trademarks and intellectual properties. Apple has been notorious for brand recognition and the company does anything in their power to keep recognition at an all-time high. Between counterfeit products and the Apple logo usage, Apple ensures to keep its items and picture consistent across the board. Apple has had, and will continue to undergo various court trials for either impeding on another company's property, or other companies impeding on their property. Two notable cases are between Apple and Samsung, and Apple and VirnetX. From the outcome of both cases, it is shown that the cases have little monetary impact on Apple.

The Impact of Trademarks, Patents, Copyrights and Intellectual Property of Apple Inc.

Since their start in 1976, the major corporation has always been protective of their brand name. Ironically, one of their earliest lawsuits, was Apple Computer vs. Apple Corps. Apple Corps sued Apple computers for encroaching on their "Apple" brand name and trademark violation. Both parties settled with the deal that Apple Computers would never enter the music industry (Hormby, 2014). The initial situation of Apple Computers being sued for trademark violation has taken a complete turn. Currently, Apple Computers is strongly known for their brand recognition and status. Between the consistency of their products and stores and the holds of their trademarks and intellectual property, Apple Computers is one of the leading computer manufacturers, and will continue for years to come if they do what they do best, stay consistent.

Copyrights, Trademarks and Intellectual Property

For any business, large or small, ideas arise and are needed to be kept. In terms of Apple Computers, with new ideas and innovations every year, Apple needs a way to secure the name of their ideas to the company name. Apple defines trademarks as, "a name, a logo, or even a slogan—any word, symbol, or device used to identify a company's products or services and distinguish them from those of other companies. Because trademarks are essential in building strong brands, they are extremely valuable assets" (Apple, 2016). With over 200 trademarks and copyrights to the name of Apple, they hold an extensive grasp on anything they create (Apple, 2017). Apple shows a trend of creating a copyright or trademark on any new product that is released, even if not for public use. With trademarks only lasting ten years, Apple continues to renew their old trademarks such as LocalTalk. LocalTalk was an old way for old Apple computers to "talk" back and forth between a RS-422 printer port (Rosen, 2014). Even though

this technology is outdated, as LocalTalk was used in the mid 1980s, LocalTalk is still registered under the Apple name with a valid copyright.

With how many names Apple has copyrighted, they have grown into the grey area of common copyright names. The copyrights Lightning, Metal, Chicago and Instruments are all registered under the Apple name. These copyrights exclude any computer based company to create a product or service with the name as or like those previously listed. If a new and upcoming developer wants to create a new software with metal in the name, they will have to take extra precautions around Apple and make sure not to infringe on any rights. From the perspective of Apple, Apple can easily create branching off products of Lightning, Metal, etc., and expand on what they previously owned.

Several previously owned copyrights may be due to Apple's unsolicited idea submission policy. Apple explicitly states that individuals should not submit ideas to Apple, as they "do not accept or consider unsolicited ideas, including ideas for new advertising campaigns, new promotions, new or improved products or technologies, product enhancements, processes, materials, marketing plans or new product names" (Apple, 2017). Essentially, if an individual were to submit their idea to Apple, Apple would then automatically own the rights to the idea, and can redistribute without consent or compensation to the presenter. Apple does this for their own security and protection. If a large corporation such as Apple were to listen to ideas, and turn them down without owning them, there may be a lot of retaliation if they end up using the idea later. For example, if an individual were to present a new cable capable of transferring data at high speed, and Apple was to turn them down, only to use the idea two years later, the individual could sue Apple for damages, and theft of intellectual property.

Counterfeit Products and Apple

Due to the nature of the business of Apple, there are bound to be counterfeit and knockoff items. Apple has taken many strong precautions to prevent against uncertified products, and even helps their users learn about counterfeit items. Apple has released documents online that users can refer to and compare Apple certified products to a counterfeit. A recent lawsuit Apple filed was against Mobile Star LLC, a company who sold "genuine" Apple chargers and accessories over Amazon.com. One of the largest legal issues was that Mobile Star used Apple's marketing images without the consent of Apple. In addition to the stolen images, the products "haven't been safety certified or properly constructed" (RT News, 2016). According to Apple, if a product has not been certified or properly constructed, can cause damage and "pose a risk to the public" (RT News, 2016).

Mobile Star was also not properly using Apple's trademark. Apple stated in the trial, "consumers, relying on Amazon.com's reputation, have no reason to suspect the power products they purchased from Amazon.com are anything but genuine" (RT News, 2016). In Apple's defense, when a user is shopping online and they see a genuine Apple trademarked picture, they expect they will receive an "Apple quality" product. Apple bought over 100 iPhone devices to test the products, and found that over 90 percent of the items bought were counterfeit.

In terms of damages, Apple is seeking an eradication of all counterfeit products, and $2 million per product type. A key point to this case is the settlement on damages (RT News, 2016). $2 million per product type will create a large monetary gain for Apple, but in realistically, $2 million is a mere fraction to a $750 billion company (La Monica, 2017). However, $2 million per product to a company like Mobile Star would essentially put them out of business.

The Apple Logo

The key feature of any business is the company's logo. Nike has the famous swoosh, Starbucks has the green mermaid, and Apple has their apple. Apple does not allow any modification of any sort to their logo, and is very restrictive on how to use it. Apple has a training devoted to how to properly display the Apple logo for resellers, so it does not conflict with their copyright policy and brand image.

Solely for Apple resellers, Apple has released a training document that clearly outlines the exact measurements and specifications for using the Apple logo. This 64-page document lays outlines from Apple Channel signatures, to social media, even to vehicles. One of the most notable specifications that Apple holds for its brand recognition is the ability to modify the logo, or rather lack thereof. For an Apple reseller, the reseller can only use a white or black logo; silver is purely reserved for Apple. Apple also states, "do not alter the typographic proportions. Do not place a registered trademark symbol next to the Apple logo" (Apple, 2016). Just naming the tip of the iceberg, naming such strong limitations on intellectual property creates such an environment that prevents any question when using a trademark or copyright from Apple.

For example, Apple explicitly states, "Do not refer to Apple devices generically as 'smartphones' or 'tablets.' Use the product names" (Apple, 2016). If a reseller is selling both iPads and Amazon Fires, the specific need for labeling an iPad sets it apart and reduces any confusion. There is also a specification that Apple trademarks must appear exactly as shown on their trademark list (Apple, 2016). All products that start with an "i" must remain lowercase, followed with a capital letter, followed by lowercase letters; for example, iMac. No alteration is allowed and can result in action taken by Apple.

Apple Versus Samsung

Since the creation of the iPhone in 2007, Samsung responded shortly after by making the Samsung Galaxy. Even though the name Samsung had been around much longer than the iPhone, after the release of the iPhone, the two corporate bodies have been in dispute. Since the first iPhone, there were lawsuits directly following.

With the creation of a new technology, Apple was in a very tough situation of filing patents. The company needed to file patents before showing the product to the buyers, but not too soon to ensure there would be no design changes. Before the launch, Apple released four patents, "D558,757 covered the basic shape (flat box with rounded edges); D558,756 covered the features (screen, connectors, buttons…); D580,387 covered the surface finish (glass-like); and D558,758 covered the color (black, silver…)" (Nowotarski, 2013). With each patent, they eventually began to expand on them, creating "children" and "grandchildren." By expanding on their original patents, Apple creates a portfolio that continues to expand, and allows no other company to even come near what they are trying to produce.

One of Apple's first design patents, D604,305 was for the design of the home screen, as shown in figure 1.

Figure 1: Patent D604,305 (Anzures & Chaudhri, 2007)

D604,305 was picked from 192 other screen shots, which were then filed as child patents later. Apple then filed for patent infringement on Samsung and received a $725 million jury verdict.

In the same trial, Apple was also claiming patent infringement on three other patents; D593,087; D618,677; and D504,889. D593,087 is regarding the front face of Apple's phone. The six embodiments all resemble an upper speaker, home button and screen border. Each embodiment claims different aspects of the design while leaving others unclaimed. On embodiment 6, the speaker and screen border were claim, and the home button unclaimed. Embodiment 6 is what trapped Samsung into part of this lawsuit even though Samsung phones do not have a square button (Carani, 2013).

D618,667 dates to January 5, 2007. The design is two images with a front facing and side facing picture of a rectangular device; only the front facing diagram was claimed. Apple claimed the patent was more than a "rectangle with rounded corners" (Carani, 2013) as Samsung quoted. The front facing diagram specifically showed an upper speaker, and crosshatching on the screen to indicate "transparent, translucent, highly polished, or reflective surfaces" (Carani, 2013). The issue on this case that was strongly debated is the question of does Apple own the right to a rectangular device?

D504,889 refers the first design of Apple's tablet, the iPad. The patent shows one embodiment which encompasses the full design of the device. All six sides are shown and laid out, shown in figures 2, 3 and 4 (Carani, 2013). Again, this design is a battle between whether Apple has trademarked a rectangle. This patent, although encompasses the entire devices shows much less than D618,667. There is an obvious reflection on the front and back, with a screen frame, but nothing much past. The key focal point Samsung had on Apple was the transparent or

reflective back. Traditionally Samsung tablets did not have a reflective back, whereas figure 2 clearly shows “Electronic Device” does. The jury ruled in favor of Samsung not infringing on Apple’s patent D618,667 (Carani, 2013).

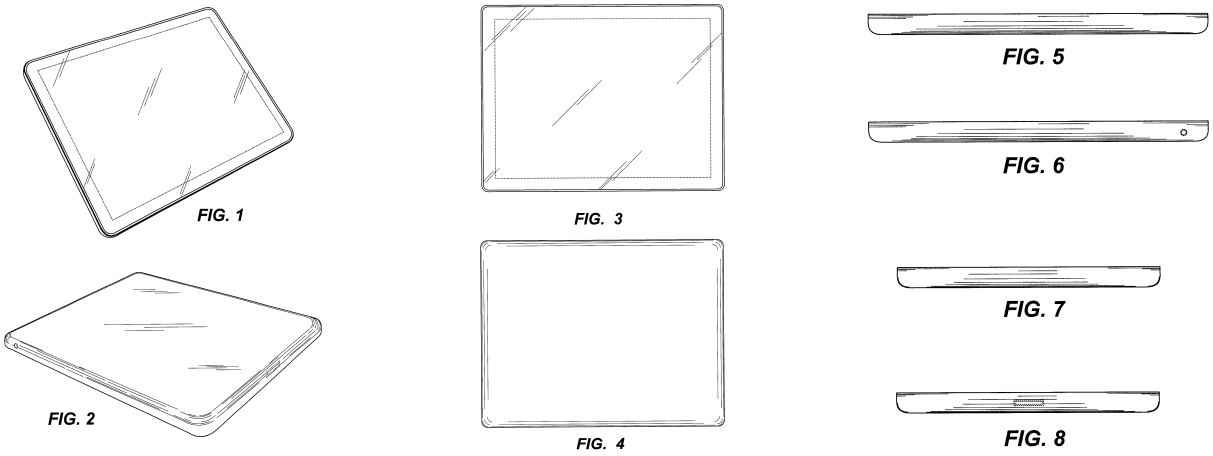

Figure 2, 3 and 4 respectively: Patent D504,889 (Andre, et al., 2004)

For the four patent infringement charges, the only device or design that was found not to be Samsung’s Galaxy 10.1 Tab on patent D504,889; and Galaxy Infuse 4G on patent D593,087. However, the Galaxy Infuse 4G was found to infringe on Apple patent D618,677 (Carani, 2013). Since these charges, Samsung and Apple have still been in a constant back and forth battle between patent and trademark violation, and will continue to happen.

Apple Versus VirnetX

2010 began a battle between Apple Computers and VirnetX, a company that develops security technologies. The most recent case, VirnetX Inc. v. Apple Inc., U.S. District Court, Eastern District of Texas, No. 10-417, brought new issues to the table. VirnetX claimed that in Apple’s FaceTime and other software used VirnetX’s patented security technology without permission. VirnetX claimed that Apple had begun their infringement in 2009 (VirnetX Inc. v. Apple Inc., 2016). VirnetX filed the original suit six years ago, and Apple was on infringement notice.

There are two key issues in this case; the infringement of VPN on Demand and FaceTime. Starting on November 6th, 2012, VirnetX claimed Apple started infringing on the original version of VPN on Demand in iOS 3 through iOS 6. “That infringement was affirmed on September 16, 2014. See VirnetX, 767 F.3d at 1313” (VirnetX Inc. v. Apple Inc., 2016). Supposedly Apple continued the same infringement on their later iOS updates. In iOS 7 and iOS 8, “Apple simply moved the infringing feature from one mode of VPN On Demand to another” (VirnetX Inc. v. Apple Inc., 2016).

According to the -417 case, VirnetX Inc. v. Apple Inc., Apple agreed to spend $3.7 million to route FaceTime call via servers, which would not infringe on VirnetX. The change was planned to take two weeks. After the original trial, the court recognized that Apple, “grossly misrepresented its ability to implement a non-infringing alternative to the jury.” -211, Dkt. No. 48 at 7” (VirnetX Inc. v. Apple Inc., 2016). According to VirnetX, it would cost Apple $4.2 million per month to continue their non-infringement strategy; in response to the cost, Apple broke the software on customer’s iPhones. By breaking the software, Apple would be able to switch from iOS 6 to iOS 7 and abandon the new non-infringing method (VirnetX Inc. v. Apple Inc., 2016).

When seeking damages, VirnetX was asking for between $1.21 and $1.67 per unit infringed upon. Apple rebutted with no more than $0.10 per unit. VirnetX’s damage expert concluded in response to Apple that $1.20 per unit would be the exact minimum of damages allowed. The jury came to a verdict more in favor or VirnetX, with a damage charge of $1.41 per unit infringed upon. (VirnetX Inc. v. Apple Inc., 2016).

VirnetX two charges were combined into one larger case, resulting in $625.6 million. The case was split back into two separate damages as repeated references to earlier cases could have

confused juror members and created an unfair advantage towards VirnetX. VirnetX was found in favor of the trial and was awarded $302.4 million from Apple; VirnetX was seeking this damage total originally. The cases of VirnetX will continue to expand, as Apple is predicted to see another court on infringing other patents. There is also speculated to be an additional lawsuit against Apple from VirnetX regarding Apple's iMessage and its security features (Reuters, 2016).

Conclusion

Apple is under constant legal battles between various corporations; either by them infringing upon rights, or vice versa. In the grand picture, when Apple either wins or loses a case, the cost of $300 million is miniscule to the giant corporate head. From their earliest patents on the look and design of the iPhone and iPad, to more recent developments in FaceTime and iMessage, Apple and its contenders will always be stepping on toes trying to create new unique ideas. We are reaching a point in technology where most things are being "recreated," and the recreation is an easy way for infringement to happen. Regardless of what happens, if the company is large enough, they will be able to secure new patents without a problem, and any court case that confronts them is a mere speedbump. Realistically what keeps a corporation like Apple in business, and keeps them striving, is the brand recognition and continuity. By releasing 64-page training documents that outline precisely what Apple is requiring, there is not confusion, and even the Apple resellers resemble the image of Apple. This image was not built in a day, it has taken a few decades, and it is a prime example for other corporations what suit to follow.

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