

WHO OWNS IT?

Dear Linux Magazine Reader,

Trademarks receive much less media attention than patents or copyrights – at least in open source circles – but it looks like the trademark buzz might be heating up again with the recent news that a company in China called Proview owns the name “iPad” and is preparing to throw down with Apple over the use of it. The fact that iPads are actually made in China adds urgency to this problem, with the company threatening to stop all exports until Apple settles.

Like other intellectual property concepts, trademark issues can vary from the obvious to the arcane. You might think that vendors would strive for clarity and avoid the nebulous, undefined spaces that lurk within the IP landscape, but it seems that the companies with the largest and most powerful legal teams often intentionally seek out the gray areas and lay claim to no man’s land just to maximize the boundaries of their ownership.

The basic concept behind a trademark is that a company invests time and money into building an image for a product or service, and their investment in that identity must be protected from someone showing up later and stealing the name or other iconography. There are a few ground rules for how this can happen. At least in the US, it is not cool to steal a real word out of the language and trademark it for the use to which it already applies. Microsoft’s trademark for the term “Windows” for instance, is on relatively shaky ground – they were not able to stop a Linux company from calling itself “Lindow” a few years ago, at least in the US courts: the European court later sided with Microsoft, causing the company to change its name to “Linspire.” Similarly, Apple was not able to stop other companies from using the term “App Store” because the term was deemed too generic.

On the other hand, a so-called “whimsical” name that has no practical association with the concept is more effective as a trademark. A company that sells apples could not trademark the name “Apple,” but a company that sells computers was free to claim “Apple” as a name. (Interestingly, when Apple drifted into the music store business, they ran into trademark problems with Apple Records, which meant that Beatles songs weren’t available on iTunes until they resolved the dispute in 2010.)

With their emphasis on clarity and simplicity of message, Apple has always taken its trademarks very seriously, pioneering a new approach to wielding whimsical names. For instance, they were careful to brand their implementation of IEEE 802.11 wireless standards AirPort, and they call their version of Zeroconf technology “Bonjour.”

The details are still emerging on the Chinese iPad trademark debacle, but at this writing, this is how it looks to me: Apple started putting an “i” in front of product names with the iMac in

1998, which seemed pretty safe, since they already had the “Mac” part nailed down. Never content with stasis, the company soon ventured further into the language the next year with the iBook in 1999. At that point, a Chinese company, sensing the pattern, started wondering what else they could put “i” in front of before Apple got around to it. They nailed down the “iPad” trademark for China in 2001 – years before Apple got there. Should Apple get to control the term anyway, since they have established the “iXXX” nomenclature as their schtick?” Well that’s getting close to the gray area where it depends on who has more lawyers – and what those lawyers know about China. In this case, Apple sensed a vulnerability and made a deal with a Taiwanese company claiming to control the term. But now, it seems a mainland Chinese affiliate of the company claims that assignments of the rights doesn’t apply to the mainland.

Could more lawyers have helped Apple avoid this mess? Should they have dropped a few hundred K on consulting services with a think tank of Asia experts? Maybe, but maybe the lesson is that relying on your superior legal team to protect your trademarks doesn’t work so well if you venture too far from home. I am not a lawyer or an Asia expert, but even I could have helped them with one modest observation: It is actually not surprising that Taiwan and mainland China can’t agree on who owns the term “iPad,” considering they don’t even agree on who owns the word “China.”

Joe

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