

# Intellectual Property Overview

Patents, Trademarks, Copyright

## Intellectual Property

- Patent
  - Inventions; processes, machines, algorithms, designs; must be novel
- Copyright
  - Original works of authorship; art, books, software, movies, manuals, forms
- Trademark
  - Identify the source of a good or service; company name or product line, logos, slogans
- Trade Secret
  - Any info that gives the owner some competitive benefit; could be patentable
- Patents and Trademarks: <http://www.uspto.gov>
- Copyright: <http://www.copyright.gov>

## Trademarks ® TM

- Identifies the source of goods or services
- The only ways to acquire the exclusive right to use a mark are to
  - be the first to properly use it in your trade area
  - or file a federal trademark application that issues as a registration.
    - A federal trademark registration gives an exclusive right to use the mark throughout the U.S. against later users of the same or confusingly similar mark for similar goods or services.
- Can be anything!
  - Words
  - Sounds
  - Colors
  - Images
- Servicemark ® SM
  - Identifies the services of a business or provider

## Trademark Examples

- <http://tess2.uspto.gov/>
- Coke
- Pepsi Max
- Nana's Naturals Love, Peace & Hairgrease
- Pentium
- Don't Leave Home Without It
- Tomahawk
- Skinny Cow
- Amazon.com



# Trademarks can be...

- Shape of a bottle
- Shape of a device or package
- Colors
- Sounds



T-Mobile

## Copyright

© 2000-2006 T-Mobile USA, Inc.  
All T-Mobile Web site design, text, graphics, and the selection and arrangement thereof are the copyrighted works of T-Mobile USA, Inc. © 2000-2006. All rights reserved.

### Trademark Information

T-MOBILE, the T-MOBILE logo, T-ZONES, the T-ZONES design, the HOTSPOT design, T-MOBILE MDA, T-MOBILE SDA, T-MOBILEWEB, the WORLDCLASS logo, the "digits" design, the T-MOBILE acoustic logo, and the color magenta are registered and/or unregistered trademarks of Deutsche Telekom AG in the US and/or other countries. CALLERTUNES, COURTSIDE COACH, EASYSPEAK, FAMILYTIME, FAMILYTIME PLUS, FAMILYTIME ULTRA, GET MORE, GET MORE FROM LIFE, GET MORE AMERICA, GET MORE MAX, GET MORE PLUS, GET MORE SUPRA, GET MORE ULTRA, HIFI



## Image Trademark with Serial Number 78798428

Status: 701 - Section 8-Accepted



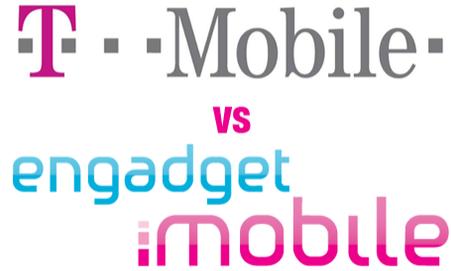
Serial Number	78798428
Registration Number	3263625
Word Mark	
Status	701 - Section 8-Accepted
Status Date	2013-07-24
Filing Date	2006-01-24
Registration Number	3263625

FILED UNDER [Cellphones](#)

## Deutsche Telekom / T-Mobile demands Engadget Mobile discontinue using the color magenta

By [Ryan Block](#) posted March 31st 2008 2:24PM

BREAKING



So last week Deutsche Telekom, owners of the global T-Mobile brand, sent Engadget a late birthday present: a hand-delivered letter direct from their German legal department requesting the prompt discontinuation of the use of the color magenta on [Engadget Mobile](#). Yep, seriously.



**Ina Fried**

[ethics statement](#) | [bio](#) | [e-mail](#) | [RSS](#) | [Follow @inafried](#)

## T-Mobile Sees Red, Sues AT&T Subsidiary Over Magenta Infringement

AUGUST 28, 2013 AT 10:48 AM PT



Here's Aio's logo:



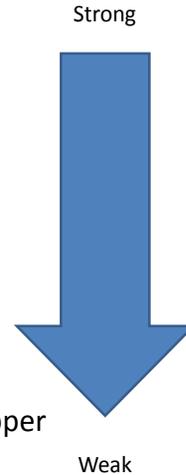
And here's T-Mobile's:



T-Mobile's suit does say that it is about more than just the logo, citing in-store displays and coverage maps it said could further confuse customers.

## Trademark Strength

- Fanciful
  - Pentium, Exxon
- Arbitrary
  - Apple Computer, Camel Cigarettes
- Suggestive
  - Roach Motel, 7-Eleven
  - Die Hard Batteries, Mustang Auto
- Merely Descriptive
  - Beer Nuts, Vision Center
- Generic
  - bran flakes, cola, aspirin, heroin, yo-yo, zipper



## Misconceptions

- Registration of the mark as a trademark or service mark does not necessarily mean it is permissible to use the mark everywhere.
  - Depends on business area
  - e.g. Capone's Pizza (two in Anchorage; many in Chicago?)
- Your name and company are not automatically trademarked and are not entitled to be trademarked.

## Maintaining a Trademark

- Use of the mark
- Renew registration every 10 years
- Police the mark
  
- Losing a Trademark
  - Not using the mark in commerce
  - Not policing third-party use of infringing marks so they become generic terms
  
  - Freeware, aspirin, heroin, thermos, zipper, trampoline, popsicle, thermos, jumbotron, xerox



## Trade Secret

- A trade secret is any secret information used by a business that gives it a competitive advantage
  - The secret must be documented and kept confidential; you can't protect it if you don't know what it is
- Trade secret case must:
  - Prove a trade secret existed
  - Defendant learned of the trade secret through a confidential relationship
  - Defendant disclosed the trade secret without authorization
  - Defendant profited from or plaintiff damaged by disclosure of the trade secret
- Trade secrets are protected without any procedural formalities – no registration needed

# Copyright

- Copyright protects original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
  - “Tangible medium” includes any stable reproducible medium (e.g. paper) or saved computer software
- **Copyright protects the expression of an idea but not the actual idea itself**
- No requirement for novelty or uniqueness but must be original authored work

## Copyright Examples

- Books
- Buildings
- Drawings
- Software
- Advertisements
- Website content
- Movies
- Plays
- Photographs
- Sound
- Music
- Maps
- Rules
- Games

## Securing Protection

- Copyright protection is secured automatically upon creation. You don't have to do anything special to have your work copyrighted.
- No publication or registration is required.
  - Unless you go to litigation
  - File with Copyright Office
  - No complex examination like patents or trademarks
- Notice
  - Not required
  - This is the © 2014-2015

## Length of Copyright

- Life Plus 70: In the U.S., copyright subsists from creation and endures the full life of the author plus 70 years after the author's death.
- 95 Years from Publication: If the author is not natural person, then copyright endures 95 years from publication or 120 years from creation, whichever expires first.

Dates	Term
Published or registered before 1923	Public domain
Published or registered 1923-1963 and not renewed	Public domain
Published with © notice or registered 1923-1963 and renewed	95 years from when secured (no registration benefits if not renewed)
Published with © notice or registered 1964-1977	95 years from when secured (but no registration benefits unless renewed)
Published without © notice pre-1978	Public domain
Created pre-1978, but not published or registered	Life plus 70 years and, if published before 2003, at least through 2047
Created after 1977 and published without © notice before 3/1/89	Public domain unless reclaimed, e.g. registration within five years, etc.
Created after 1977 and published with © notice before 3/1/89	Life plus 70 years (but if made for hire, earlier of 95 years from publication or 120 years from creation)
Created after 1977 and not published until after 3/1/89	

From <http://images.jw.com/com/publications/351.pdf>

## Fair Use

- The Fair Use doctrine gives a right to copy in the areas of criticism, news reporting, parody, teaching, etc.
- Factors considered
  - the purpose and character of the use
  - the nature of the copyrighted work
  - the amount and substantiality of the portion used
  - the effect on the market for or the copyrighted work
- Generally a short excerpt and almost always attributed; should not harm the commercial value of the work

# Software Licenses

- Related to copyright
- All software not in the public domain is subject to licensing; contract stipulating allowable use of the software
- Violating the license typically means copyright infringement
- Source code license
  - Proprietary / Open Source
  - GNU General Public License – free/copyleft license, source code must be made available to modify

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## Ethics and Copyright

- You're working on a project for work and use Google to find some code that is exactly what you are looking for!
- Can you or should you use it?
- What if the code is posted on a site like [stackoverflow.com](http://stackoverflow.com)?

## Copyright Myths

1. If it doesn't have a copyright notice then it is not copyrighted
2. If I don't charge for it, it's not a violation
3. If it's posted on the web then it's in the public domain
4. If you don't defend the copyright you lose it
5. Derivative work avoids the copyright issue

# Patents

- A patent is a temporary government-granted monopoly right on something made by an inventor.
  - Patent holders receive exclusive rights to make, use, or sell an invention, design, or plant.
- Purpose
  - Encourage development and disclosure of new inventions; remedy for fear someone will copy your invention so you get the monopoly for a short time
- Patents can be licensed and companies can collect them to retaliate if sued for infringement
- Expensive (\$5K-\$15K) and time-consuming process (years)

## Types of Patents

- Plant Patents
  - Creating new varieties of plants
- Utility Patents
  - Invention; protects processes, machines, articles, compositions. Includes software patents (e.g. MP3 compression), business patents (e.g. Priceline model)
  - 20 years
- Design Patents
  - Ornamental characteristics
  - 14 years

# Patentable

- To be patentable the invention must be:
  - New – not prior art
  - Useful
  - Not obvious
- Can be:
  - A process
  - A machine
  - A composition of parts
  - A manufacturing process
- You must compare your invention to the relevant prior art to determine if it warrants a patent application

# Misconception

- A patent does not entitle its owner to “practice” (i.e., “make” or “build”) the invention. It entitles the owner to exclude others from making, using, selling, offering to sell, and importing the claimed invention.
- Example
  - Al patents a chair with a back and 4 legs
  - Bob patents a rocking chair
  - Al’s patent covers Bob’s if it has a back and 4 legs so Al can prevent Bob from making/selling a rocking chair
  - Bob can prevent Al from making/selling a rocking chair
  - The two might cross-license their patents

## Provisional vs. Non-Provisional

- Provisional
  - Establishes a filing date but is a placeholder that preserves an invention for one year. Includes a cover sheet, partial description, diagram.
- Non-Provisional
  - Begins the examination process with detailed description, specifications, drawings, declaration

## One Year Bar

- You can publicly disclose your invention and have up to a year to file a patent in the US; after that you can be barred from getting a patent
- Not all foreign patents allow the one year period so most patent attorneys recommend filing at the same time disclosure is made

## Controversial: Software Patents

- 1983, Unisys patent of Lempel-Ziv-Welch compression scheme
  - Used in GIF image format; popular 1987-1994; promoted by CompuServe, apparently unaware of the patent
  - 1994: CompuServe and Unisys announced developers must pay a license fee to use the image format
  - Expired in 2003
  - Helped lead to PNG and alternate compression formats not based on LZW

## Amazon 1-Click Patent

- 1999 Patented feature that a customer can click once to check out a shopping cart using previously stored information instead of having to re-type their information
- Challenged and re-examined 2007-2010; reconfirmed in 2010 with some changes
- 1999: Filed patent infringement lawsuit against B&N “Express Lane”
  - B&N added a second click; settled in 2002
- 2000: Licensed to Apple