IP in Apps

Intellectual Property in Mobile Software Applications

Mobile Software Applications

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The first mobile phones were developed with the most basic of software. Limited processing power, storage and monochrome screens, only allowed for simple software applications (Apps) such as calculators, ringtone creators, calendars and basic arcade games such as the "Snake", which was introduced for Nokia phones in 1998. As the technology improved, the possibilities expanded. In 2002, BlackBerry released a major achievement in the field of mobile Apps. However, mobile phone users did not get a real taste of Apps until 2007 when the iPhone was launched. The initial excitement surrounding the convergence of the media player, telephone and web access tools into a handheld device gradually shifted to the thousands of Apps that were available for download through Apple's App Store.

Today, Apps are one of the fastest growing business sectors in the world. The explosion of Apps has provided a landscape for developers to reach millions of customers. However, the ease and pace with which Apps are launched has created a situation whereby they are released without necessarily engaging in a scrutiny of the intellectual property issues that apply to more traditional business ventures.

An App is a piece of isolated computer software that is designed for use on small, wireless, handheld devices. Apps enhance the functionality of mobile devices in a simple and user-friendly way. Quite frankly, it is difficult not to be impressed by the user-friendly nature of Apps. Most devices are sold with bundled, pre-

installed, Apps such as, web browsers, emails, music players, etc. Those that are not pre-installed are usually available on distribution platforms or App Stores. Apps have formed a significant part of businesses and even constituted entire businesses in some cases.

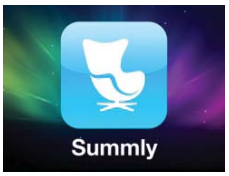
TuneIn

The first impression of an App is created by its name and icon. Typically, the name is first promoted on the Internet. Once the App is downloaded and installed on a mobile device, it appears as an icon, which identifies and distinguishes it. Thus, names and icons are important to Apps. These elements do not only gain strength through usage, but also become vulnerable to duplication. This is where trademark protection comes in. A trademark right is an exclusive right to use a name or other identifying element of a product (e.g. an App) or a service, to indicate its source and distinguish it from those of others. The name TuneIn is an example of a trademark that represents an internet radio. The best form of trademark protection is obtained through registration in a territory where the product or service is commercially exploited.

Trademark applications can take up to 12 months or more to conclude. However, even if an application to register the name and or icon of an App is not concluded before the official release of the App, once it is approved, the protection is retroactive to the date of filing of the application. A developer should consider registering the name and icon of an App in the territory where the App is to be exploited, at the earliest opportunity.

Summly

In 2013, Yahoo announced its acquisition of Summly from a British entrepreneur named Nick D'Aloisio, for just under $30 million. Summly was a mobile news aggregation App that scanned the Web for news items, used an algorithm to find the type of news items required by a user and summarized it. Yahoo planned to shut down Summly as a standalone App and incorporate the technology into its own Apps. According to Law 360, the likely reason for the huge sum expended in the acquisition was Summly's combination of patent applications and trade secrets.



The primary purpose of a patent is to create a monopoly over an invention or the product of an invention. A patent right is acquired through registration and is applicable in the territory in which it is obtained.

Each territory has its own criteria for examining patent applications. In many territories including Nigeria, software or Apps cannot be patented in their intangible form. However, Apps are patent-eligible when the application for registration relates to the processes and interactions within the App that are novel, the result of an inventive step, capable of industrial application and which do not form part of the state of the art. Save for where the desire is to promote mobile-related inventions as open source platforms, patent protection can be very useful, particularly where:

1. The technology embodied in the App is of a broad general appeal.
2. There is an opportunity for competitors to use the technology in their own Apps as direct competition or develop new variations of their own.

The development of Apps allows for rapid growth cycles. However, potential patent rights may be lost by releasing an App into the market without patent protection. To avoid this, a developer should consider filing a patent application prior to offering an App for download or disclosing its idea.

Youtube

Copyright allows for protection of classes of original works of authorship, such as literary, musical, artistic works and sound recordings. The Source Code of an App, provided it is original, is protected in many territories as a literary work. Movable images, music and other forms of content that are contained in the user interface of an App are protected as artistic and musical works and sound recordings. Unlike trademarks and patent, copyright does not generally require registration but arises automatically and as soon as the works are created. However, in some climes, such as the United States, proof of copyright registration is required to file a suit in court for infringement and claim statutory damages.

Securing ownership of copyright is necessary to commercially exploit an App and make improvements without infringing on third party rights. Where developers are commissioned to create an App, a formal agreement should be in place that will vest ownership of the copyright in the App in the commissioning party. Where the App is developed independently and sold to a 3rd party, an assignment or license between the parties will be required to transfer copyright ownership to the purchaser or permit him to exploit the App. In all cases, it is important to retain all documentation confirming ownership of copyright.

The Best Kept Secret

Any confidential information, business methods, product information, know-how, software applications or other proprietary information that is genuine, non-obvious and which provides the owner with a competitive or economic advantage, may be considered as a trade secret. The recipe for Coca Cola for example, has been described as the world's best kept trade secret.

Developers of Apps could rely on trade secrets as a means of protecting critical and proprietary information within an App without implementing the procedures described above. However the decision whether to adopt a trade secret as a form of protection or a patent application for example, must be made early enough, because use of a trade secret as a competitive advantage may void the ability to obtain a patent protection for the same idea at a later date. This is because a patent application must disclose all aspects of a technology and critical information contained therein.

The above measures should serve as guideposts for securing the broadest form of protection for your App, which in turn will enable you fully exploit it. They should considered when initiating work on an App and policed throughout its life cycle. If you require more information, please send us an email via ipassociates@olajideoyewole.com.