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## [What do iPhone, iPad, iCloud, and iBooks Have in Common?](#)

Posted on June 17, 2011 by [Dan Kelly](#)

Let's review:

- From 1978 through 2007, Apple was in on-again, off-again trademark litigation with Apple Corps, holder of rights in The Beatles' music and record label, over use of the APPLE trademark in connection with numerous music-related aspects of various Apple products and services, including iTunes.
- In 2007, [Apple](#) introduced its iPhone while [Cisco](#) held a federally registered trademark for IPHONE for use in connection with "computer hardware and software for providing integrated telephone communication with computerized global information networks." Cisco sued.
- In 2010, Apple introduced its iPad while [Fujitsu](#) held a pending U.S. trademark application for IPAD for use in connection with "hand-held computing device for wireless networking in a retail environment."
- Somewhat unrelated, in 2010, [Microsoft](#) filed a Notice of Opposition against Apple's U.S. trademark application to register APP STORE for use in connection with "retail store services featuring computer software provided via the internet and other computer and electronic communication networks," among other goods and services, arguing that it is generic. (And in 2011, [Amazon](#) filed a counterclaim attacking the APP STORE trademark as generic in Apple's suit against Amazon for infringing the APP STORE trademark.)
- Last week, [iCloud Communications](#) sued Apple over the introduction of its [iCloud service](#).
- This week, a New York publisher [sued](#) Apple over the use of iBooks in connection with [electronic books](#).

Like the iPhone and iPad matters, the iCloud and iBooks cases are "reverse confusion" cases, where the putative junior user, the accused infringer, is substantially larger than the senior user, and could well overwhelm the senior party's trademark to the point of oblivion. (We treated the concept in the ["Who's Your Patty"](#) case, among others.)



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I have been hard on Apple in the past for its apparent trademark gaffes ([here](#) and [here](#), among [others](#)), and the iPhone and iPad cases were not necessarily clear-cut losers for Apple. Apple is making money hand-over-fist, so there is probably no trademark dispute that it cannot afford to fight or settle. These suits are the cost of doing business where every product and brand it rolls out is almost instantaneously famous. For the trademark rights holders, why not sue and hope to get bought out in a settlement? Unless the case is a complete dog, and all of the iPhone, iPad, iCloud, and iBooks cases appear to have legitimate merit, a suit is probably the best way to get Apple's attention and a half-decent offer.

What do you think of these new cases, given Apple's history? Is Apple a bumbler when it comes to trademarks? A [bully](#)? A tough-luck case? A lightning rod? Are these plaintiffs reaching? (Note that neither plaintiff in the iCloud and iBooks cases owns pending or issued U.S. trademark registrations for its mark, although each may well have substantial common law rights.) Whatever the case, Apple seems to be writing its own chapter for trademark case books across the land.

