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[Microsoft store brings back fond memories of Yankee Candle](#)

June 30, 2011 by [Catlan McCurdy](#)

A few weeks ago, I found myself at the Mall of America, or MOA, as Minnesotans fondly refer to the great shopping mecca. Clutching my coffee and walking as briskly as possible to the destinations of my choice, I had one goal in mind, which I infer is the goal of anyone who has been to MOA more than once: get in and get out as fast as possible.

In my typical take-no-prisoners approach to shopping, I moved with lightning speed through the corridors, until a new storefront caught my eye, bringing me to a complete halt. [Microsoft had opened a new store](#), and not only that, but they strategically rented the space directly across the aisle from the Apple store. If the Microsoft store's proximity to Apple wasn't interesting enough, the similarity between the interior of the two stores was even more so. Borrowing (some would claim copying) many of the Apple store elements, Microsoft has an answer bar (spinoff of the Genius Bar), an open layout with plenty of wooden tables to test out gadgets, and employees milling about to answer questions. If not for some variances in types of wood, lighting, and of course the obvious differences in trademarks, the stores would be virtually identical. See for yourself:



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Having some knowledge of the amount of work the Apple team has put into their [store design](#) and knowing about their [recent trademark application for the store design](#), I wondered what the company would do next. Architectural works were given copyright protection in 1990, but in its infinite wisdom, Congress defined architectural works as "the design of a building," and neglected to define the term "building" in the Copyright Act. This oversight led to lawsuits such as [Yankee Candle Co. v. New England Candle Co.](#) Yankee Candle brought a suit against New England Candle after a New England Candle store opened in a mall with remarkably similar features and design elements as the Yankee Candle store in another mall.

To cut to the chase (warning, spoiler alert) Yankee Candle lost, because the district court said that an internal structure in a mall was not a "building," and that Yankee Candle was not an "author" because the company had not designed the walls or ceilings of the internal store. The court did note that a mall itself *would* count as a building and qualify for copyright protection as an architectural work.

So what will this mean for Apple? The company avoided a Yankee Candle repeat by not filing a copyright suit, and they filed a trademark application instead. Apple could attempt to use this trademark registration, if granted, to sue Microsoft for infringement, or they might just wait it out. Strategically, it might be advantageous for Apple to wait. Reportedly, Microsoft is going way over budget in their attempt to create stores to rival Apple, and the products haven't been selling as well as predicted, mainly because Microsoft products are available for sale at a variety of retailers. And if my pictures from ten o'clock on a Saturday morning are any indication, the clientele at MOA still seems to be very Mac loyal.

