

Judge unimpressed with Apple 'App Store' claim

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A man sitting on a balcony in Berlin last month surfs the web on an iPad while listening to music on his iPhone. A federal judge denied a bid by Apple to stop Amazon.com from calling its online shop for smartphone programs an "App Store."

A federal judge on Wednesday denied a bid by Apple to immediately stop Amazon.com from calling its online shop for smartphone programs an "App Store."

US District Court Judge Phyllis Hamilton didn't buy Apple's argument that the phrase "App Store" was tantamount to a trademark, which it has applied for.

She ruled that Apple has not established that its "App Store" mark is famous in the sense of being "prominent" and "renowned."

"The evidence does show that Apple has spent a great deal of money on advertising and publicity, and has sold/provided/furnished a large number of apps from its App Store," Hamilton wrote in her ruling.

"However, there is also evidence that the term 'app store' is used by other companies as a descriptive term for a place to obtain software applications for mobile devices."

Regarding Apple's argument that the name "Amazon Appstore for [Android](#)" would cause confusion in the minds of consumers, the judge concluded that the phrase "App Store" was more "descriptive than it is distinctive."

Hamilton denied a request by Apple for a preliminary injunction that would have barred Amazon.com from referring to its software shop as an "Appstore" pending the outcome of a suit filed by Apple in the matter.

Amazon in March began offering applications for mobile devices running Google's Android software.

The Seattle, Washington-based Amazon offers free and paid programs for Android smartphones and [tablet computers](#) in its "Amazon Appstore for Android" at www.amazon.com/appstore.

In a lawsuit filed in March, Apple, which sells applications through its "App Store," set out to bar Amazon from using a similar name, accusing it of

"unauthorized use of Apple's App Store trademark."

Apple said it coined the term App Store with the July 2008 launch of the service and has spent "millions of dollars on print, television, and

Internet advertising."

Apple said the US [Patent and Trademark Office](#) had approved its application to register App Store as a trademark -- a move opposed by Microsoft, which offers mobile applications for devices running its Windows Phone software.

The case is being heard by an appeals board.

The suit seeks unspecified damages and for the court to enjoin Amazon from using the phrase App Store.

The Amazon Appstore can be reached through a Web browser or from Android smartphones or tablets using the Amazon Appstore application.

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