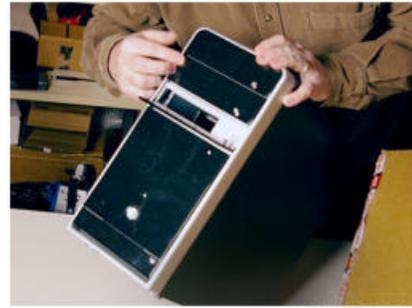


Apple suit: Psystar's Mac clones must be recalled

Posted by [Ina Fried](#)

Apple's list of grievances against Mac clone maker Psystar spans 16 pages, but, in the end, its argument boils down to the one [expected](#). Psystar, Apple says, had no right to do what it did, and should be stopped and forced to pay.

In its [lawsuit](#), a copy of which was seen by CNET News courtesy of our colleagues at ZDNet, Apple alleges copyright infringement, inducement of copyright infringement, trademark infringement, as well as a couple of other legal claims. It seeks any profits earned by Psystar from its [Open Computer](#), triple damages for willful acts, a permanent injunction against the sale of the product, as well as recall of those units already sold.



Psystar's Open Computer, as seen shortly after its unboxing at CNET. (Credit: CNET News)

"Apple licenses the use of its Macintosh operating system software for use only on Apple-labeled hardware," the Mac maker says in the suit (click [here](#) for PDF) adding that the only way to get a full version of the Mac OS is on a new machine. The boxed software product, it says, is only an upgrade version, valid only for upgrading an existing, Apple-branded Macintosh.

Apple argues that by selling the Open Computer in conjunction with a copy of the Mac OS, Psystar both infringed on Apple's copyright and induced purchasers to also violate Apple's copyright.

The infringement, Apple says, "is and continues to be intentional, willful, and in conscious disregard of Apple's rights." It also alleges that its use of Apple's trademarks "is likely, if not certain, to deceive or cause confusion or mistake" over whether there is a connection between Apple and Psystar.

A Psystar employee told CNET News on Tuesday that no one was available to comment on Apple's suit.

Apple v. Psystar
Will Apple prevail in court against the clone maker?

- Yes
- No
- Who cares? I use

However, Apple charges that Psystar owners and managers have admitted in public statements their knowledge of the existence of Apple's software license agreement and its terms.

Because the infringements were willful, Apple says it is entitled to triple damages.

A status conference in the case is set for October.

another OS.

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Mark A. Goldstein, a lawyer with the Westlake Village, Ca.-based **SoCal IP Law Group**, said Apple's case appears to be a "slam dunk."

"In view of the [Grokster ruling](#), it's hard to see any viable argument (for Psystar)," he said.

"If Psystar only sold hardware without an OS or only with Ubuntu or MS XP, then the case would be wholly different," he said. "They could assert that there are substantial non-infringing uses. That is, a hardware maker/reseller should be able to sell a computer that can run multiple operating systems."

"That they are selling Apple OS leaves them open for direct and contributory copyright infringement," Goldstein added.

John Ferrell, chairman of the intellectual property practice at Carr & Ferrell, also wondered what legal theory Psystar will used to defend their cloning of the Mac.

"Using copies of Apple's operating system to build Apple look-alikes was thought to have been clearly settled in the 1983 landmark copyright decision that put the last of the significant Apple clone makers, Franklin Computer, out of the Apple business," he said in an e-mail interview. "Apple's Macintosh products are protected by a wide range of intellectual property assets including copyrights, patents, and trademarks. It's no (coincidence) that there have been no successful Macintosh 'me-too' manufacturers in the past quarter of a century."

Ferrell added that One Infinite Loop, the road that stretches through Apple's headquarters, "is littered with the wrecked business plans of companies that have tried to copy and sell Apple look-alikes."