



RIGHT TO REPAIR

Apple Sued an Independent iPhone Repair Shop Owner and Lost

Apple said an unauthorized repair shop owner in Norway violated its trademark by using aftermarket iPhone parts, but a court decided in favor of the shop owner.

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Jason Koebler

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Image: iFixit



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iPhone screens at his repair business and that he pay the company a settlement.

Norway's customs officials had seized a shipment of 63 iPhone 6 and 6S replacement screens on their way to Henrik's shop from Asia and alerted Apple; the company said they were counterfeit.

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In order to avoid being sued, Apple asked Huseby for "copies of invoices, product lists, order forms, payment information, prints from the internet and other relevant material regarding the purchase [of screens], including copies of any correspondence with the supplier ... we reserve the right to request further documentation at a later date."

The letter, sent by Frank Jorgensen, an attorney at the Njord law firm on behalf of Apple, included a settlement agreement that also notified him the screens would be destroyed. The settlement agreement said that Huseby agrees "not to manufacture, import, sell, market, or otherwise deal with any products that infringe Apple's trademarks," and asked required him to pay 27,700 Norwegian Krone (\$3,566) to make the problem go away without a trial.

"Intellectual Property Law is a specialized area of law, and seeking legal advice is in many instances recommended," Jorgensen wrote in the letter accompanying the settlement agreement. "However, we can inform you that further proceedings and costs can be avoided by settling the case."

Huseby decided to fight the case.

"That's a letter I would never put my signature on," Huseby told me in an email. "They threw all kinds of claims against me and told me the laws and acted so friendly and just wanted me to sign the letter so it would all be over. I had a good lawyer that completely understood the problem, did good research, and read the law correctly."



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The undersigned

PCKOMPANIET
Henrik Huseby

NORGE

acknowledges towards

Apple Inc.
1 Infinite Loop
Cupertino California 95014-2084
U.S.A.

(hereafter Apple)

that the products sent from Hong Kong to PCKOMPANIET/Henrik Huseby seized by Norwegian Customs Control, in the case; 2017/29214, TTVG-053/2017 | Ark. nr.: 562, displaying trademarks belonging to Apple without their authorisation constitutes a violation of Apple's rights.

1. PCKOMPANIET/Henrik Huseby acknowledges that the right to the goods included in Norwegian Customs Authorities decision; 2017/29214, TTVG-053/2017 | Ark. nr.: 562 are hereby transferred to Apple and their representatives for destruction under the control of the Norwegian Customs Authorities.
2. PCKOMPANIET/Henrik Huseby undertakes not to manufacture, import, sell, market, or otherwise deal with any products that infringe Apple's trademarks. PCKOMPANIET/Henrik Huseby confirms that the importation of goods displaying Apple's trademarks has ceased.
3. PCKOMPANIET/Henrik Huseby pays a compensation of NOK 2,700.00 to Apple in order to cover damages and costs related to the trafficking and seizure of the counterfeits. The compensation shall be paid within 14 days from signing the settlement.
4. If PCKOMPANIET/Henrik Huseby fails to fulfil any of the obligations in this settlement, PCKOMPANIET/Henrik Huseby shall be under an obligation in each and every instance of non-fulfilment - in addition to damages for Apple's loss due to the original infringement - to pay liquidated damages amounting to NOK 25,000.00.

NJORD
LAW FIRM

3/4

From the settlement agreement Apple asked Huseby to sign.

Apple sued him. [Local news outlets](#) reported that Apple had five lawyers in the courtroom working on the case, [but Huseby won](#). Apple has appealed the decision to



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Why a Norwegian court case should matter to Americans

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The specifics of Huseby's legal case apply only in Norway, of course, but his case speaks to a problem faced by independent iPhone repair shops around the world. Apple's use of the legal system and trademark law turns average repair professionals into criminals and helps the company corner the repair market for Apple products.

In the United States, Apple has worked with the Department of Homeland Security and ICE to seize counterfeit parts in the United States and to **raid the shops of independent iPhone repair professionals**. ICE's National Intellectual Property Rights Coordination Center **rejected a Freedom of Information Act request** I filed in 2016 regarding Apple's involvement in its "Operation Chain Reaction" anti counterfeiting team, citing that doing so "could reasonably be expected to interfere with enforcement proceedings." Apple declined to comment for this article.

"In this case, Apple indirectly proves what they really want," Per Harald Gjerstad, Huseby's lawyer, told me in an email. "They want monopoly on repairs so they can keep high prices. And they therefore do not want to sell spare parts to anyone other than 'to themselves.'"

Apple makes its own replacement parts available only to Apple Stores and shops in its "Authorized Service Provider" program. By becoming "authorized," repair companies have to pay Apple a fee (and buy parts from the company at a fixed rate.) They are also **restricted from performing certain types of repairs**; there are many types of repairs—most commonly ones that require microsoldering for Logic Board damage—that independent companies can do that Apple itself does not do, so there are many reasons why a repair shop might want to remain independent.

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"Huseby is largely dependent on being able to import screens with covered up Apple logos to be able to operate in the market as a non-



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Apple continues to lobby against right to repair legislation in [18 states around the United States](#), which would require electronics manufacturers to sell replacement parts and repair tools to the general public and independent repair companies.

“Apple is proving themselves to be the worldwide poster child of the Right to Repair movement,” Gay Gordon-Byrne, executive director of Repair.org, which is pushing for this legislation, told me. “They continue to make our case for us—suing legal repair providers, such as Henrik, lying to consumers about CPU performance throttling instead of battery replacements, and the coup de grace of hypocrisy—building products that are hard to repair and then proclaiming they care about the environment.”

In the absence of right to repair legislation, there are few ways for repair professionals to get replacement parts for iPhones and Apple computers. They can harvest parts from broken phones and computers, or they can buy aftermarket parts from the Chinese grey market, which is what Huseby and thousands of repair shops in the United States and around the world opt to do.

63 aftermarket screens

Parts on the grey market are of varying quality. Some are made in the same factories as original manufacturer parts; others are parts that “fell off the back of a truck,” or otherwise went missing or were stolen from production lines; others were made by the original manufacturer but didn’t pass diagnostic tests; others are copies made by third parties.

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The legal status of many of these parts remains an unanswered question around the world, but the general consensus seems to be that a part is “counterfeit” if it is masquerading as an original manufacturer part rather than an aftermarket one. Counterfeit parts are “tangible goods that infringe trademarks,” the Organization for Economic Cooperation and Development, a partnership between 35 countries and a United Nations observer, [wrote in a report last year](#).



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and sent back to independent repair companies. Are those “counterfeit” parts or are they repaired or refurbished genuine parts?

For his repair operation, called PCKompaniet, Huseby imported 67 iPhone 6 and iPhone 6S screens that fell into this grey area. They were seized by Norwegian customs officials because Apple logos on the inside components of the screens “had been covered up by ink marker. The ink marker could be removed with rubbing alcohol,” according to the [Oslo District Court decision](#) that ruled in favor of Huseby.

“It is not obvious to the court what trademark function justifies Apple’s choice of imprinting the Apple logo on so many internal components”

Huseby told me in an email that he bought the screens from a company he found at an electronics fair in Hong Kong, and that they were “refurbished screens assembled by a third party.” Huseby told the court that “the logo is covered up because it has never been relevant to market the products as Apple products,” the court decision states. “PCKompaniet has never removed the coverup of the Apple logo on the screens that have been imported and has no interest in doing so. PCKompaniet does not pretend or market itself as Apple authorized and does not give any indication that the repair comes with an Apple warranty.”

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The court decided that Norwegian law “does not prohibit a Norwegian mobile repair person from importing mobile screens from Asian manufacturers that are 100 percent compatible and completely identical to Apple’s own iPhone screens, so long as Apple’s trademark is not applied to the product.”

The court noted that importing refurbished parts with visible Apple logos on them would be in violation of European Union trademark law (it would be legal, the court said, if the refurbishment of these screens had happened in the EU rather than Asia), but, crucially, decided that because the Apple logo would not be visible to customers while the product was in use, Huseby had not actually used Apple’s trademark.



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The court also acknowledged that Huseby doesn't have many other options when it comes to importing quality parts that either have Apple logos permanently removed or never had them to begin with: "It is not obvious to the court what trademark function justifies Apple's choice of imprinting the Apple logo on so many internal components," the court wrote. "Huseby is largely dependent on being able to import screens with covered up Apple logos to be able to operate in the market as a non-authorized iPhone repair technician."

Gjerstad believes Apple will lose its appeal: "Apple does not 'own' the product after they have sold it," he said. "Others have the right to remove the logo and sell it as an unoriginal, compatible part."

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The specifics of Huseby's case won't matter for American repair shops, but that Apple continues to aggressively pursue a repair shop owner over 63 iPhone screens signals that Apple is not interested in changing its stance on independent repair, and that right to repair activists and independent repair companies should expect a long fight ahead of them: "I feel that this case was extremely important for them to win," Huseby said.

He just hopes to get back to his shop, he told me.

"I will continue to repair iPhone like I did before, no change," he said. "I'm glad I now don't have to be afraid of importing compatible spare parts for iPhone again."

Anders Hillestad translated Norwegian court documents and legal documents to English for this article.



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