



## **PSION STARTS PROCESS OF AFFIRMING 'NETBOOK' TRADEMARKS**

**8 January 2009**

### **What does Psion do?**

Psion Teklogix is a global provider of mobile computing solutions designed to improve business efficiency and productivity for leading enterprises throughout the world. Solutions are built around a range of high-quality, innovative mobile computers designed for tough and demanding environments. With over three decades of industry experience, Psion Teklogix has customers in more than 80 countries, and 39 sales and support offices in 23 countries. Psion Teklogix is headquartered in Mississauga, Ontario, Canada with additional corporate offices located in the United States, Europe and Asia. Psion Teklogix parent company, Psion PLC, is listed on the London Stock Exchange (PON.L). Psion developed the world's first PDA in 1984 and is associated with many other technical innovations. In 1998, it set up Symbian Ltd, which now provides the world's most popular smartphone operating system.

### **Why is Psion affirming its 'Netbook' registered trademark?**

Developing and supporting a brand for an electronic device can cost many tens, if not hundreds of thousands of dollars. We feel we have a very good brand in 'Netbook' and we also feel strongly that we should be free to develop that brand further in the future. We registered the 'Netbook' trademark in 1996 and launched our first 'Netbook' ultra-portable computer in 1999. So the brand has a very long history.



The Psion Netbook® ultra-portable computer

There's also a matter of principle – we respect others' trademarks and we hope that others in turn will respect our trademarks.

### **Does Psion even use the 'Netbook' registered trademark anymore?**

Yes. We have been using the 'Netbook' trademark continuously since 1999 – whilst in recent years the extent of use has been somewhat reduced, we are still actively supplying accessories for our 'Netbook' ultra-portables and are also providing maintenance and support

to existing users of 'Netbook' ultra-portables. Registered trademarks aren't just for protecting multi-billion dollar brands.

### **Will Psion release an updated version of its 'Netbook' ultra-portable computer?**

We have been considering adding new models to our 'Netbook' line for a while, but our policy is not to pre-announce new products.

### **Why is Psion affirming its 'Netbook' trademarks now?**

If we had failed to act now, we faced the possibility of losing our registered trademarks for 'Netbook'. But we wanted to be sure that there was a real danger to these registrations before undertaking the costly and time consuming process of contacting literally hundreds of entities around the world.

### **Has 'netbook' in fact become generic?**

No. The class of Intel® Atom®-powered ultra-portable computers is a very new category, emerging in 2008. Few computer manufacturers use the term 'netbook' descriptively to describe computers in this class, and even today, many on-line and bricks-and-mortar retailers do not use the 'netbook' term descriptively, preferring instead 'ultra-portable', or 'sub-notebook' or some other term.

Although the level of generic (i.e. descriptive) use of 'netbook' within the tech community is quite high, the level of consumer understanding and recognition of this term in the generic or descriptive sense is still low; it is the level of consumer understanding and recognition that is key in determining whether or not a term is so generic that it cannot be a proprietary, trademarked term.

So whilst it may seem to be a complicated picture, the reality is that 'netbook' is not sufficiently generic to vitiate our trademark registrations.

But even though 'netbook' is not yet a generic term for ordinary buyers of these products, it could become so soon if retailers (and others) persist in calling these devices 'netbooks'.

However, we don't think that retailers (and others), once they understand the issues, will wish to be complicit in, and in part responsible for, the genericisation of someone else's registered trademarks.

### **Should Psion have acted sooner?**

It was not at all clear that there was a real threat that ordinary buyers of these devices might start to understand 'netbook' as a generic term until perhaps Q3 2008 - before that time it was quite possible that a different descriptive term would have become adopted.

Psion acted promptly once it became clear that the threat of genericisation was real and growing.

### **Is Psion looking for financial compensation?**

Although taking someone's trademark is a serious matter, we have simply asked retailers and manufacturers to transition to a different descriptive term over a 3 month term. We have not sought compensation at all from any party contacted. We have no intention of selling the

'Netbook' trademark registrations either, valuable as they may be, or of licensing them on a for-profit basis. We simply wish to continue use of our 'Netbook' trademark, and to be free to use it on our future products.

### **Who is Psion contacting?**

Our external counsel has sent letters out solely to those making a direct, financial profit from use of the 'Netbook' trademark.

95% of all letters have been sent to retailers and manufacturers using the 'Netbook' trademark (including the very largest players in this space. But note that few portable manufacturers in fact use the 'Netbook' term at all. For example, Asus, a pioneer in this space, does not to any appreciable extent – it's an Eee PC. Not an Eee PC 'Netbook'. But it's a different picture in retail and our over-riding priority is to persuade the retail community to adopt a different term).

5% have been sent to websites that have sponsored advertising or other for-profit links that include the prominent use of the 'Netbook' trademark and a link to a retailer or manufacturer using the 'Netbook' trademark.

0% have been sent to straight blogs, tech enthusiasts sites or review sites – i.e. with no prominent use of sponsored advertising with Psion's 'Netbook' mark or other for-profit links making use of Psion's 'Netbook' mark.

When we started this project, we drew a firm distinction between entities profiteering off the 'Netbook' mark, and those not doing so. Neither we, nor our external legal counsel, thought that it would be fair, proportionate or sensible to start this process off by writing to those not profiteering financially and we have not done so. Journalists and bloggers obviously have to use some term to refer to the new class of ultra-low cost portables – we'd rather they didn't use 'netbook' now that they're aware of our registered trademarks, and we hope that they too will transition to whatever term becomes the legitimate generic. But are we about to start a wave of lawsuits against journalists and bloggers? The answer is an emphatic 'no'. Our priorities lie elsewhere and always have done.

And where a blogger uses context sensitive advertising that is completely outside of its control (so it has no knowledge at all whether an advert associated with our mark 'Netbook' will be placed in its blog site), then we're taking the view that we need to focus on working on persuading the featured retailer to adopt a generic term other than 'netbook'. So if any recipient of one of our letters is in that position, if they want to let our legal counsel know, that would be helpful all round. Although we can't accept that use of 'netbook' in a generic fashion is legitimate, our priorities lie elsewhere.

### **What should journalists and bloggers do?**

We hope that journalists and bloggers will use a different generic term. James Kendrick has posted a thoughtful piece in his jkontherun blog at, where he suggests that the tech community should adopt a term other than 'netbook':

<http://jkontherun.com/2008/12/29/jkontherun-op-ed-the-psion-netbook-trademark-situation/>

We hope others will follow the lead he is showing. We personally favour the term 'ultra-portable', because we think ordinary consumers will more easily understand that 'ultra-portable' implies small, light, and low-cost, as well as functionality that is constrained compared to a laptop or notebook computer.

**What should retailers and manufacturers do?**

We hope that they will respect our trademarks rights, just as they would expect others to respect their trademark rights, and will transition to a different generic term.

We expect to be discussing this issue with the major players in Q1 2009.

We believe that most responsible retailers and manufacturers understand that it is wrong for them to contribute to, and be complicit in, making a registered trademark generic.

**What trademark registrations does Psion own for 'Netbook'?**

US trade mark registration no. 2404976, filed 18 December 1996  
EU trade mark registration no. 428250, filed 9 December 1996  
Canadian trade mark registration no. TMA 521007, filed 18 November 1998  
Singapore trade mark registration no. T9705577B, filed 14 May 1997  
Hong Kong trade mark registration no. 1999B01273, filed 6 May 1997

**Will Psion commence litigation?**

Litigation is always a last resort.