



The Trademark Ecosystem:
Insights from Intellectual Property
Professionals around the World

CompuMark
Trademark Research and Protection

 **Clarivate**
Analytics

Introduction

It is easier today than ever before for organizations large and small to compete and conduct business around the world. Cloud-based plug-and-play technology, growing online commercial channels, and increasingly sophisticated business strategies have all leveled the playing field. This is especially true for smaller brands and start-ups that no longer face the traditional barriers to compete on a global level. And this has had a corresponding impact on branding and the trademark space; competition for unique brands on a global level is no longer limited to large, multinational corporations. With businesses and individual proprietors worldwide competing over the same finite space, the ability to build and defend trademarks that are powerful, meaningful and have universal relevance is harder than ever before.

Consider that according to the World Intellectual Property Organization (WIPO), a record number of marks were filed under the Madrid system in 2016. An estimated 52,550 international trademarks were filed, demonstrating the fastest growth rate recorded since 2010 at 7.2%¹. Currently, there are over 61.3 million active trademarks worldwide, according to SAEGIS® on SERION®.

It's no longer enough to look just locally when creating a potential brand. Instead, marketing and legal teams need to work together and consider markets that the business currently operates in, as well as those they may grow into in the future. In addition to these geographical markets, there has also been an explosion of additional marketing channels that must be considered. This means searching for potential conflicts while considering social media user names and domain names.

As a result, the need for the effective clearing, registering and watching of trademarks has never been more important. The consequences of not getting this right can have a significant detrimental impact on brands, including costly legal action, customer confusion and loss of revenue.

A further challenge for brands, and indeed trademark professionals, lies in the trademark research process itself and the sheer number of brands, names and associated elements that need to be considered. There are also inherent challenges in the tools and resources available, as well as imposed deadlines and budgets.

With that in mind, CompuMark—a flagship brand of Clarivate Analytics—commissioned independent research on the state of the trademark industry, the challenges that professionals face, the prevalence of infringement and overall opinions and perceptions of the market. In the third quarter of 2017, Vitreous World surveyed 300 trademark professionals across the United Kingdom, USA, Germany and France. This sample was taken from in-house and external legal teams, and from organizations of all sizes.

¹ http://www.wipo.int/edocs/pubdocs/en/wipo_pub_940_2017.pdf

Key Findings

Increase in trademarks, increase in complexity

In line with the overall growth in the trademark industry, the research shows an increase in the number of trademark filings by the surveyed businesses. 43% of respondents said they filed more marks in 2016 than they had done in 2015.

In fact, 75% of respondents filed between one and five marks during this period. Specifically, the majority of marks applied for were in products and services (63%), followed by logos and images (60%). Looking at the frequency of these filings, on average, 37% of the respondents filed quarterly, while a smaller percentage (20%) filed monthly. This increase in the number of filings adds to the burden for businesses looking to secure and launch unique, defensible marks.

Trademark teething problems

There are a number of challenges inherent in the brand creation process, specifically launching and clearing a new brand. Respondents identified time pressures (46%) and budgetary issues (42%) as the two main barriers.

Respondents also identified speed to market, globalization, lack of tools, software and resources, and launching into multi-channel environments as particular issues they were facing. This aligns with a number of improvement areas the research identified to make the trademark search and watch functions more effective—bigger budgets (51%), better technology (49%), more resources (48%) and more time (41%) were most cited.

Trademark growth and shrinking budgets

Despite the acknowledged growth in the industry and the increase in number of filings, only 30% of respondents said their budgets had actually increased in the past two years.

Budgetary issues remain a significant sticking point for trademark professionals, as demonstrated by this being one of the main challenges identified by trademark professionals. In addition, while 30% of respondents said their budgets increased, a further 58% said their budgets remained static for the same period, while fewer than 10% stated budgets had decreased. Considering that trademark filing is actually on the increase, these figures most likely indicate that trademark professionals are being tasked with doing more for less.

The trademark infringement challenge

Almost three-quarters of respondents (74%) said they experienced trademark infringement in the last year.

Looking at the instances of infringement, 41% experienced up to 10 occurrences, while a further 22% experienced up to 30 instances in a year. Respondents were also asked about the impact of these infringements, with customer confusion (44%) cited as the biggest effect. 56% said their organization had taken legal action against third-party infringements, and one-third of the respondents said they had changed a brand name as the result of trademark infringement issues.

Exploring the trademark landscape

In 2016 there were 6.6 million trademarks filed globally, according to SAEGIS on SERION. In the EU, the figure alone was 135,000 demonstrating year-on-year growth of more than 3.7%, according to EUIPO. According to the Madrid System, the USA and Germany remain the two countries that filed the most marks, increasing 4.7% and 10.8%, respectively, from the year before². In the first three quarters of 2017 in the US, there were 435,024 filings (an increase of 9.4% from the previous year), according to the USPTO.

Regardless of the system, the fact remains that more businesses are filing trademark applications than ever before. This was reinforced by our own research, with 43% of respondents in the sample stating they had filed more trademarks in 2016 than they had in the previous year.



This figure was highest in the UK and the USA, where 46% of respondents in both regions, stated there had been an increase. Overall, 42% said the number of trademarks remained the same, with only a small portion (14%) stating they had actually filed fewer marks in 2016.

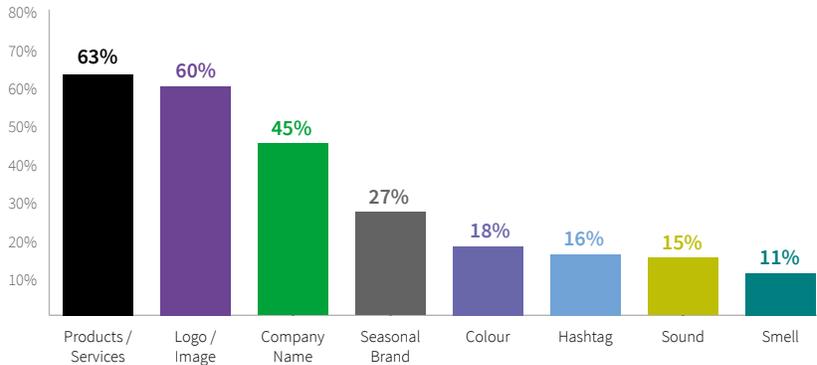
We also wanted to find out what effect, if any, Brexit was having on trademark filing behavior. Resoundingly, 70% of respondents said Brexit was impacting how they were approaching the trademark process; 22% said they were filing more UK trademarks (the figure for UK respondents was 34%, US 21%, France 17% and Germany 7%). Overall, 31% said they were filing more European Union (EU) marks, 18% among the UK sample, 29% in the US, 50% in France and 43% in Germany.

Almost one-quarter (24%) said they were filing fewer UK trademarks, with only 7% stating they were filing fewer EU marks.

The category of products and services accounted for the most number of trademarks filed in the past year, followed by logos, company names and seasonal brands. Non-traditional marks, such as hashtags (16%), sounds (15%) and smells (11%), also made the list. Interestingly, hashtag marks were filed more often in France (23% versus the global average of 16%), as were applications for sound trademarks (23% versus the global average of 15%).

² http://www.wipo.int/export/sites/www/ipstats/en/docs/infographics_systems_2016.pdf

Trademarks filed—types



Faster, better, more—the trademark process challenge

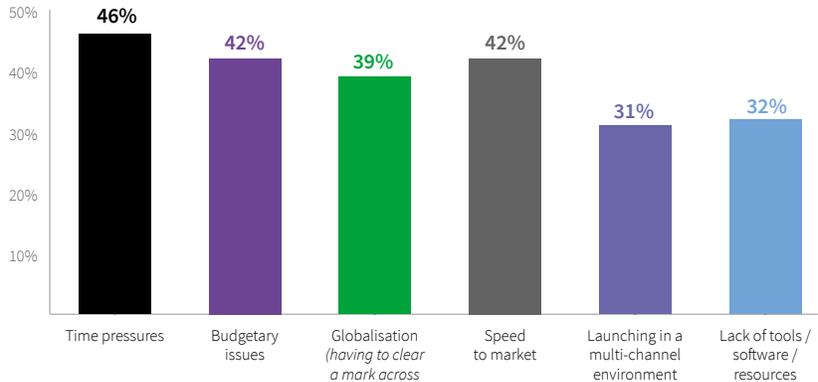
With a fast-expanding market due to the proliferation of social media, the pace of innovation and the ease that new businesses can enter the marketplace, trademark filing is on the rise. This is having an effect on the number of hours that trademark professionals spend on search, clearance and watch activities. As the trademark landscape evolves then, it is logical that brands and their legal teams need to adapt to keep up.

We asked respondents what they thought would help make search and clearance of new marks more efficient and effective. They identified four main areas: budgets, technology, resources and time. In fact, 51% said budgets need to be bigger, an attitude especially prevalent in Germany (56%) and the USA (56%). There was also a call for better technology (49%), which was highest among French respondents (63%), as well as more resources (48%) and more time (41%).

These areas for improvement tie back directly to the challenges that trademark professionals face. When asked about the main barriers they faced, respondents identified time pressures, budgetary issues and speed to market. However, operating in a global market, lack of tools, software and resources, and launching into multi-channel environments also played a role.

Budgets, technology, resources and time pressures are four key challenges trademark professionals face

The trademark process—challenges



Many of these issues are not new, but remain key issues for trademark professionals. In 2016 CompuMark³ conducted similar research on the trademark ecosystem. In the report entitled: *The Trademark Ecosystem, Through the lens of the C-suite*, similar challenges were identified by corporate executives, including speed to market, globalization and launching into a multi-channel environment.

Static budgets

While trademark activity is on the increase, there is a reasonable expectation that budgets should be increased accordingly. However, just under one-third of respondents (30%) said their budgets had increased over the last two years. A further 58% said budgets remained the same during that period, while 8% said they had decreased. Looking at the industry overall and the rise in trademark applications, as well as the increasing importance of brand value, the question remains: why haven't budgets increased accordingly?

Looking back at the CompuMark research from 2016, in which C-level decision makers were surveyed, one of the questions looked at changes to budgets over the past five years. Here, almost half of all respondents (48%) stated budgets had remained static, while 41% saying they had increased .

While the questions in 2016 and 2017 were slightly different, as were the audiences, the static nature of budgets in a fast-changing environment is clear.

³ http://www.compumark.com/wp-content/uploads/dlm_uploads/2017/03/trademark-ecosystem.pdf

⁴ *ibid*

When good trademarks go bad

A trademark is seen by many companies as a valuable asset, something that must be protected and nurtured. Of course, as markets expand and businesses move into new markets and online, they are brought into contact with a host of other brands, companies, products and taglines. This, of course, increases the likelihood of infringement and makes the process of clearing and registering marks more difficult.



of respondents experienced **brand infringement** in the last year

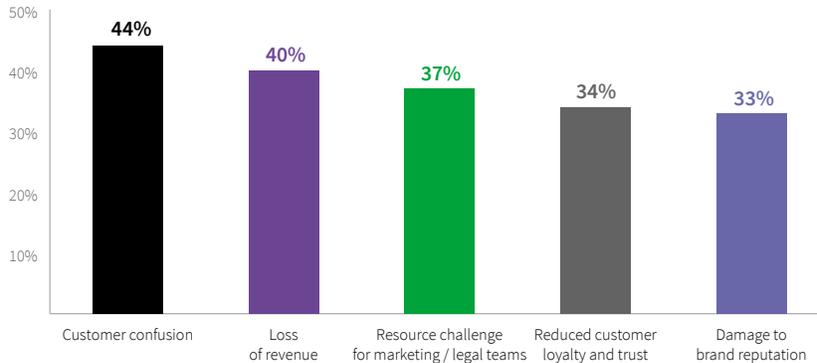


said it **increased** in the last 24 months

Our research found that 74% of brands surveyed experienced infringement of some kind in the last 12 months. Instances were widespread—41% of respondents experienced up to 10 instances, while 22% experienced infringements 11-30 times. 11% said they had experienced more than 31 instances of infringements. More than this, 40% of respondents said they had seen an increase in infringement in the last two years. This figure was higher among French (50%) and German (44%) respondents.

Infringement isn't a standalone issue; it has serious knock-on effects, including brand dilution, loss of customer trust, customer and market confusion, loss of revenue, and litigation. Our research found that when asked about the impact of brand infringement, respondents ranked customer confusion (44%), loss of revenue (41%) and as a resource challenge for marketing or legal (37%) as the top three effects.

Effects of brand infringement



When it comes to litigation, consider that in the US, it can cost upwards of \$100,000 to pursue trademark litigation and can run into the millions depending on its length and outcome⁵. These figures don't include the time required in addition to legal fees. Seen by many as a last resort, due to the time, effort and expense involved, there are occasions where taking legal action is necessary. Our research shows that 56% of respondents took legal action against third party infringements. This figure was highest in France (76%) and Germany (69%).

Infringement is an ever increasing risk for brands, as evidenced in our 2016 research. Respondents were asked if they had seen a change in infringement over the last five years—resoundingly, 79% said they had seen a definite increase⁶.

Ultimately, despite the challenges faced by trademark professionals, search, clearance and watching must be done properly in order to mitigate the risk of infringement.

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⁵ <http://www.law.com/insidecounsel/2016/09/22/to-sue-or-not-to-sue-for-trademark-infringement/>

⁶ http://www.compumark.com/wp-content/uploads/dlm_uploads/2017/03/trademark-ecosystem.pdf

Trademark search, clearance and watching—getting it right

It is true that brands and trademark professionals are under increasing strain to effectively clear marks, register them quickly for new products, sub brands and associated marketing elements to be launched to the market. Given the challenges faced, in terms of budget and time needed, there may be the temptation to seek quicker methods.

 **26%** of respondents have launched a new, secondary or seasonal brand **without clearing the trademark** first

Looking at seasonal and secondary product / service names, as an example; it is not always possible to put all names through the extensive and expensive clearance process. While this is the only way to best mitigate the risk of infringement, many organizations don't have the time or budget to do it. We asked respondents if they had ever considered launching a new, secondary or seasonal brand without clearing the trademark first.

Just over one-quarter (26%) of respondents said they had done so, with a further 38% stating they would do so in future if the risks of infringement were minimal.

Keeping this in mind, our research also uncovered that one-third of respondents stated they had to change the name of one of their brands as a result of trademark infringement—this figure was highest in France (52%). Again, changing a brand name has serious knock-on consequences, including time, customer confusion, and cost.

Added complexity: the role of free tools

The emergence of free tools and internet search engines has also had an impact on the trademark process. While these tools have basic brand information and don't have a cost attached, they do not offer the same level of detail and search capabilities as tools developed especially for trademark searching. The danger here is that search results are not as comprehensive and may miss out potential conflicts. In addition, the results themselves may not be that easy to understand or interpret without the expertise of a trademark professional.

Regardless of the dangers, however, 62% of respondents said they relied on free internet search engines and trademark office tools when clearing a trademark. In addition, 70% said they felt these tools provided a comprehensive enough result to pass judgment on.

But does this confidence in free tools mean professionals are getting the right results? Looking back at the figures for instances of infringement (74% of respondents experienced infringement and 41% said it has increased from the previous year) and it's not a leap to suggest that the use of these tools doesn't help organizations mitigate the risk of infringement and may even add to it.

Trademark clearing, watching and confidence in the process

Beyond the pressures of searching and filing marks, there is also the challenge of watching existing and newly filed marks for instances of infringement. As the number of registered trademarks increases—it may not be possible for brands to watch every single mark, particularly if they are older or part of seasonal campaigns.

We asked respondents, firstly, if they were confident their trademarks had been effectively cleared and 80% stated they were.

Secondly, we asked respondents about their watching behavior. Only 22% of the sample said they watch 76% or more of their marks. In addition, 32% said they watch 51-75% of their marks, while 30% said they only watch between 26-50% of their marks, and 10% only watch up to a quarter of their marks.

Again, taking our 2016 research into account, figures were slightly different. Keeping in mind the audience was C-level decision makers, 18% of respondents said they watch 51-75% of their marks (compared to 32% in 2017), while 33% said they watched 26-50% of their marks (slightly higher than the 2017 figure of 30%). Interestingly, almost one-fifth of respondents (19%) said they only watch up to a quarter of their marks, compared to 10% in 2017.

What this demonstrates perhaps is that as the size and complexity of the trademark portfolio grows, companies are choosing to monitor only a portion of their portfolio—likely those marks identified as the most valuable and impactful. However, as the pressures of increased filings and limited budgets continue, the ability to monitor marks will be challenged.

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Conclusion

The research yielded significant insight into the trademark environment, especially around prevalent attitudes of trademark professionals, the challenges they are facing and areas they felt could actually improve the trademark clearance and protection process. It is acknowledged that as more trademarks are being filed, professionals could benefit from the use of better technology, more time and resources, and bigger budgets.

While these remain challenges and will not abate as long as the industry continues to grow at pace, there is still the need for trademarks to be effectively cleared (and watched) in order to mitigate the risk of infringement. The presence of free tools may, on the face of it, present a solution but the quality of search results will never equal those generated by specially designed vendor software.

It is key to note that as the number of trademark filings increases, so too does instances of infringement. This alone should reinforce the need for proper and comprehensive search and brand protection.

Throughout the process, from clearance and registration, to watching of marks, there will be the continued drive to improve the process. Whether that is through the use of better technology and software, or relying on the experience and expertise of trademark lawyers and professionals, one thing remains clear: when it comes to avoiding infringement and protecting a brand's reputation, there can be no short cuts.

Methodology

The research was carried out on behalf of CompuMark by leading research agency Vitreous World. The survey was conducted online in August 2017, with a margin of error of approximately 5.7%, on a sample of 300 trademark professionals working in-house and in external legal teams. The research covered four countries—U.S.A. 100; U.K. 100; France 46; Germany 54.

About CompuMark

CompuMark provides the industry's broadest range of trademark research and brand protection solutions. We enable trademark and brand professionals worldwide to launch, expand and protect strong brands through unmatched global content, expert analysis and tools, and best-in-class service.

About Clarivate Analytics

Clarivate Analytics accelerates the pace of innovation by providing trusted insights and analytics to customers around the world, enabling them to discover, protect and commercialize new ideas faster. Formerly the Intellectual Property and Science business of Thomson Reuters, we own and operate a collection of leading subscription-based services focused on scientific and academic research, patent analytics and regulatory standards, pharmaceutical and biotech intelligence, trademark protection, domain brand protection and intellectual property management. *Clarivate Analytics* is now an independent company with over 4,000 employees, operating in more than 100 countries and owns well-known brands that include *Web of Science*, *Cortellis*, *Thomson Innovation*, *Derwent World Patents Index*, *CompuMark*, *MarkMonitor* and *Techstreet*, among others. For more information, visit clarivate.com.

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