

The trademark ecosystem

Global insights into infringement, technology and evolving trademark research



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Executive summary

In today's global business landscape, competition is fierce.

Organizations are competing on a fast-changing international stage, impacted by regulation, politics and shifting economies as well as the prevalence and convergence of advanced technologies. For the trademark industry, business transformation is further shaping the landscape with an uptick in new entrants to the market, consolidation and merger and acquisition activity. This increase in activity in the trademark space and the way the market is evolving highlights the increasing value of intellectual property (IP) and the corresponding investment in it.

In such a dynamic environment, organizations need to make use of all tools at their disposal to boost their competitiveness and strengthen their market position. In addition to other forms of IP, registering and protecting a trademark is one of these tools; something that builds a foundation for future growth, helping to establish brand identity and solidify the promise to the customer, partner and prospect.

Despite their importance, developing, registering and protecting a unique trademark in the current climate is getting more and more challenging. More trademarks are being filed than ever before. According to the World Intellectual Property Office (WIPO) nearly 11 million marks were filed in 2018, covering 14.3 million classes, which equates to a rise of 15.5% from 2017. It is also the ninth year in a row that applications have increased¹. China is playing a leading role in this growth, with the majority of these new marks (7.4 million) coming from this country².

¹ www.wipo.int/pressroom/en/articles/2019/article_0012.html

² www.wipo.int/pressroom/en/articles/2019/article_0012.html

With active trademarks nearing 83 million worldwide, we can expect time and budget pressures related to developing new and unique brands.

Looking at the landscape overall, the number of active trademarks now equates to 82.9 million worldwide – according to SAEGIS® on SERION®. As more marks enter the market, the challenge and complexity increase.

The traditional trademark is also changing. We are seeing the emergence of more opportunistic approaches to trademark applications that demonstrate the value of intellectual property. A case in point was the recent application by celebrity entrepreneur Kylie Jenner to trademark the phrase “rise and shine” or NBA star LeBron James who tried to trademark “Taco Tuesday”. The latter was rejected by the US Patent and Trademark Office (USPTO)³, but demonstrates the way the landscape is evolving.

While the sheer number of trademark applications and active trademarks presents a challenge for organizations establishing a unique mark, it also creates a challenge for trademark professionals when it comes to protecting existing marks. The more trademarks and trademark applications, the greater risk of infringement, and the more resources, namely time and money, need to be spent actively protecting a trademark portfolio.

For many organizations with large trademark portfolios, watching all of their marks across all channels, all of the time, is just not possible from a practical and economic point of view. However, that is not to say that brand protection is not a priority. Instead, it means the entire trademark process from beginning to end, needs to be streamlined, efficient and right sized to allow for maximum protection across the portfolio.

Trademark professionals do have a host of tools and technologies that aid them in their tasks. They also work with experts, such as intellectual property law firms and third-party providers who can lend their own expertise and tools to assist throughout the trademark ecosystem.

To gain a deeper insight into the practices, perspectives and experiences of trademark professionals, CompuMark™, a Clarivate Analytics company, commissioned research into the trademark ecosystem. Carried out by independent survey firm Vitreous World, the research sought the views of 351 trademark professionals, both in-house and external counsel, across five countries.

Key findings

Technology continues to play a leading role in the trademark process

Trademark professionals demonstrate an increasing appetite for new tools and technology.

- Technology is the most cited improvement when it comes to trademark research and protection, chosen by 49% of respondents.

In addition, artificial intelligence (AI), previously thought of as a threat to trademark professionals, is now identified as one of the ways to enhance aspects of the trademark process, especially speeding it up, predictive analytics and automating tasks.

More filings and more infringement

While the two cannot be linked, both the number of trademarks filed and incidents of infringement are on the rise.

- 48% of respondents filed more marks this year than in 2018 (with 31% filing the same number)
- 85% experienced infringement in 2019, compared to 81% in 2018 and 74% in 2017
- Infringement is spanning channels, from business names and social media, to web domains and advertising campaigns

The cost of infringement remains high

In addition to customer confusion, loss of revenue and reputational damage, infringement can be costly

- 46% of respondents had to change a brand name as a result of infringement
- 75% of respondents say infringement has led to litigation
- 40% of respondents have spent between \$50,000 - \$249,999 on infringement cases

Internal processes and perceptions are changing too

Over the last year there's been a move toward more collaboration during the naming process between trademark professionals and other areas of the business, such as marketing. Training forms a part of this move, either formally or on an ad-hoc basis, with 30% delivering formal training programs.

The trademark landscape is expanding

More than half of respondents say they filed more image marks over the last 12 months, and surprisingly 78% have included industrial design in their filing strategy.

An overall view of the ecosystem

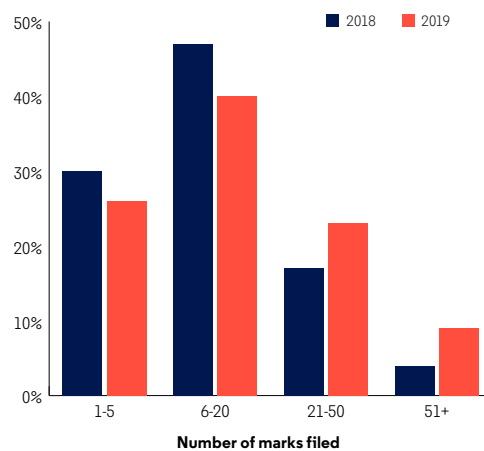
Trademarks play an important role in global commerce, regardless of whether they are start-ups or well established in the marketplace. As a result, marks must be unique, in good legal standing, and must be protected in order to mitigate risk and maximize commercial value. However, the pace of innovation and change creates a challenging landscape in which both brands and trademark professionals operate.

The number of trademarks filed globally keeps growing year-on-year according to WIPO and this is supported by the research.

Nearly half of respondents (48%) say they filed more trademarks in the last 12 months than they did in the previous year, 31% filed the same number of marks, while just 21% say they filed fewer marks.

These figures are placed into context considering the number of marks trademark professionals say they filed in the last 12 months. While 40% filed 6-20 marks, 23% filed 21-50 and 9% filed more than 51. This is a slightly different picture compared to CompuMark results from its 2018 research.

Figure 1. Trademarks filed globally



More marks, different marks

While there is certainly upward movement in the number of marks that are being searched and filed, there are also other changes within the industry. Notably, this is in the types of trademarks that are being filed.

For example, there has been an increase in the filing of image marks, with 56% of respondents saying they filed more in the last year.

Respondents also say they face significant challenges when clearing a mark on their own; these include the fact that there is too much data (49%), not enough time (44%), not enough resources (38%) and not having the right tools and technologies (35%).

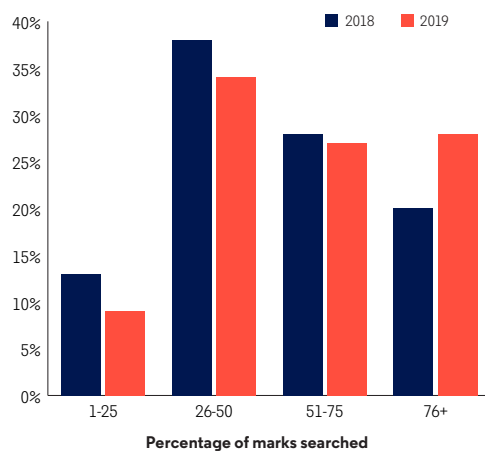
Surprisingly, respondents also say they are filing industrial designs. Nearly eight in 10 (78%) of trademark professionals say they have included industrial designs into their filing strategy, while those that don't say it is due to lack of demand (45%) or budget (33%),

Availability and protection

Best practice certainly dictates that all trademarks should be thoroughly searched before filing. However, practically it is not always possible, especially when resources like time and budget are in short supply. When asked about how many trademarks they searched before filing, just 29% say they search more than three quarters of marks. Most respondents say they search between 26-50% of marks.

Again, compared to the same result from last year, there are some differences, particularly when it comes to the least and most searched. Last year just 20% searched 76% or more of their marks, which has risen to 29%. In 2018, 13% searched 1-25% of marks, while in 2019, this has dropped to 9%.

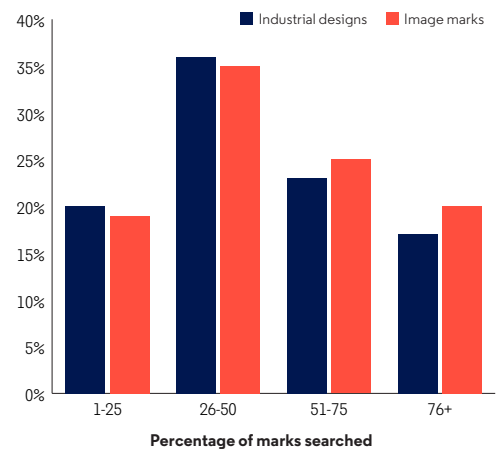
Figure 2. Marks searched



This is certainly not an easy task; with many factors to contend with, such as pressure on resources, especially in-house. Nearly half of respondents (47%) that clear marks on their own, with no outside help, say they spend between six to 10 hours. Considering that these could be billable hours, trademark professionals have to determine resource trade-offs. Respondents also say they face significant challenges when clearing a mark on their own; these include the fact that there is too much data (49%), not enough time (44%), not enough resources (38%) and not having the right tools and technologies (35%).

When it comes to how trademark professionals search industrial designs and image marks, the majority search between 26-50%.

Figure 3. Industrial designs and image marks searched

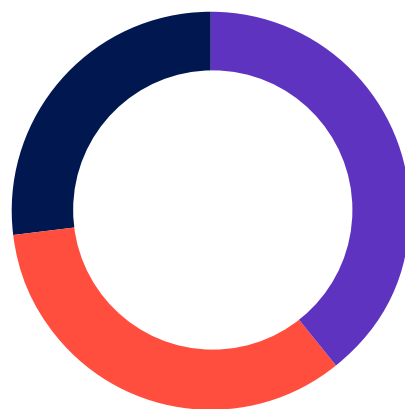




Given the number of marks respondents say they search before filing, it is important to understand how they make those decisions and what influences which trademarks are searched. In 2019, the main factor influencing search was overall investment in brand, selected by 28% of respondents, followed by budget (22%) and tier of brand (18%). This is rather different to 2018 results where budget was the most important factor (28%), followed by investment in the brand (25%) and anticipated revenue from the brand (19%).

While the percentages don't differ significantly, it is interesting to note that budget is no longer the main consideration. This could possibly be due to the fact that professionals are getting bigger budgets to get this done, or simply because prioritizing overall investment is more important.

Figure 4. What influences which trademarks to search before filing



- 2018**
- Budget (28%)
 - Investment in brand (24%)
 - Anticipated revenue from the brand (19%)

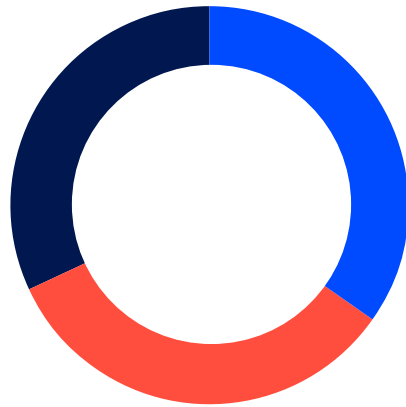


- 2019**
- Overall investment in the brand (28%)
 - Budget (22%)
 - Tier of brand (18%)

This prioritization is in sharp contrast to the way that trademark professionals prioritize which trademarks to watch. In 2018, it was anticipated revenue from the brand that influenced watch, while in 2019, it is budget.

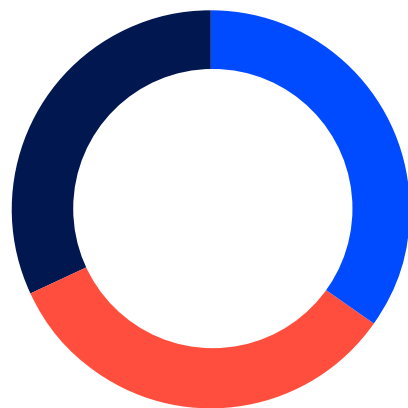
This is the full picture when it comes to prioritizing watch services:

Figure 5. What influences which trademarks to watch



2018

- Anticipated revenue from the brand (23%)
- Investment in brand (22%)
- Budget (21%)

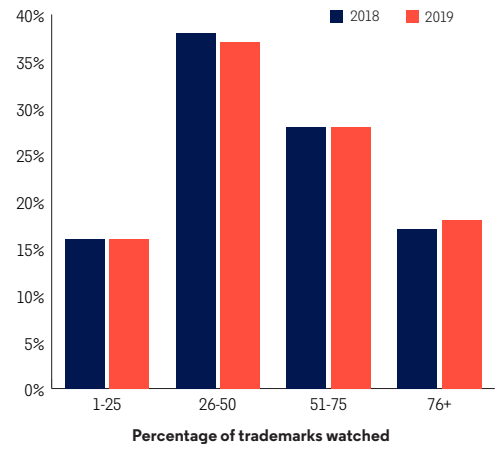


2019

- Budget (22%)
- Overall investment in the brand (21%)
- Anticipated revenue (21%)

While the factors that influence watch have changed from last year, the number of marks being watched has not. The figures have remained the same, with the majority (37%) of respondents watching 26-50% of their existing marks.

Figure 6. How many trademarks are being watched?



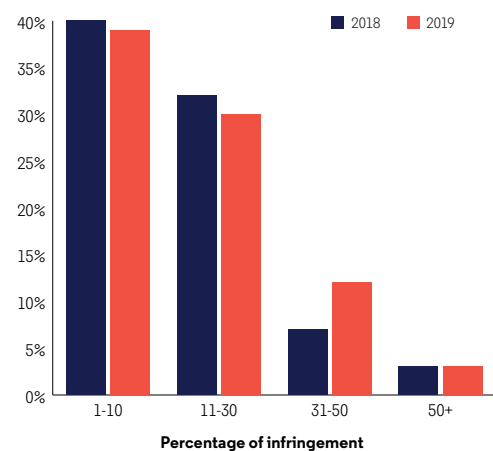
Infringement continues to rise

Despite the lack of time and resources to effectively search and watch all trademarks, the fact remains that infringement is on the rise. A glance at the news headlines certainly reinforces this sentiment; in October 2019 California Wine Company filed a complaint that Applebee's VAMPIRE cocktail is infringing on its own VAMPIRE trademark⁴. A similar case saw Riot Games sue Riot Squad for trademark infringement, saying Riot Squad was intentionally using Riot's name to infer a relationship between the two brands to fans⁵.

The research highlights a growing trend in infringement. In 2017, 74% of trademark professionals experienced infringement. This increased to 81% in 2018, and now in the latest research has hit a high of 85%. In just two years, there has been a 15% increase, signaling a definite upward trend.

This increase can also be seen in the number of cases reported by respondents. Nearly four in 10 report they experienced between 1-10 instances of infringement, while 30% experienced between 11-30.

Figure 7. Instances of infringement



⁴ www.lexology.com/library/detail.aspx?g=8e885998-d08f-4f45-8304-8ac160609438

⁵ www.pcgamer.com/uk/riot-games-sues-esports-organization-riot-squad-over-trademark-infringement



The figures from the 2018 research are in line with the new research, except where respondents reported 31-50 cases; in 2018 7% experienced 31-50 cases, while in 2019 this figure rose to 12%.

This rise is reflected in perception too. More than four in 10 (43%) trademark professionals say they believe infringement has increased over the last two years, while 37% say they believe cases of infringement remained the same during the period. This demonstrates the severity of the threat and the fact that the consequences for brands remain a major issue that they need to contend with.

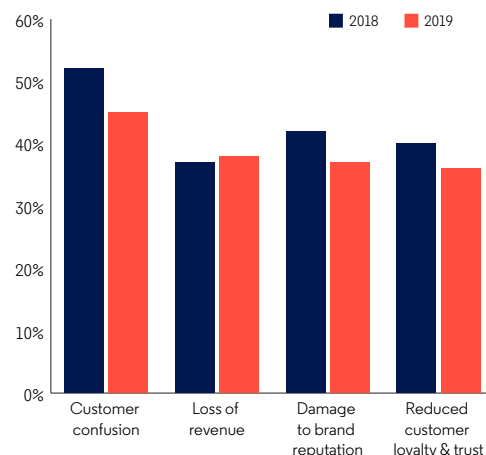
Additionally, the research highlights that infringement is taking place across channels. Respondents experienced infringement across business name (44%), web domains (44%), social media (38%), online marketplaces (38%), and advertising campaigns (34%).

The cost of infringement

It is not just the number of instances of trademark infringement that organizations face that is concerning, but the overall cost of that abuse. The consequences of infringement are well documented; from loss of customer trust to loss of revenue. Trademark professionals in the research identified four key areas that infringement had an effect on, namely customer confusion, loss of revenue, damage to brand reputation and reduced customer trust and loyalty.

These remain aligned to the 2018 CompuMark research:

Figure 8. The impact of infringement



However, there are other tangible concerns that organizations experience as a direct result of trademark infringement, all of which affect the four elements listed above. Specifically, 75% have started litigation as a result of infringement. This is a costly avenue and impacts on the wider business in terms of publicity, how customers and the market perceive the brand.

In fact, 47% of respondents say their organization spent up to \$50,000 on litigation in their most challenging infringement litigation. Additionally, 40% spent between \$50,000 - \$249,999. While lawsuits may be settled amicably, such as in the well-publicized case of Burberry versus Target⁶, or Adidas America versus Skechers USA⁷, it can also lead to more costly conclusions.

Apart from litigation, 46% of trademark professionals say their organization had to change a brand name as a result of

infringement. This figure is up significantly from 2018 where 30% had to resort to this measure. Again, changing a brand name has wide-reaching implications, including cost, reputational damage and customer trust. Depending on where the organization is in launching a new brand, for example, changing the name can be devastating and affects everything from website design and advertising, to packaging and logos. This affects everyone from global brands to local businesses.

A case in point is Sol Kitchen, a coffee and juice bar, that opened in Denver. Soon after opening its doors, the business was sued for trademark infringement by an Arizona-based restaurant operator that said it conflicted with its Sol Cocina brand (cocina meaning kitchen in Spanish). The owners of Sol Kitchen already invested \$10,000 in website and logo design but had to rebrand⁸.

⁶ www.lawyer-monthly.com/2018/12/the-top-10-biggest-trademark-disputes-of-2018/6/

⁷ www.lawyer-monthly.com/2018/12/the-top-10-biggest-trademark-disputes-of-2018/8/

⁸ www.denverpost.com/2016/04/19/sol-kitchen-owners-sued-over-downtown-denver-cafes-name/



Improving the process: technology and beyond

While name creation, clearance and filing are important aspects of the trademark process, there are other elements to consider, too. Looking at the overall process itself, it is clear from this year's research that technology continues to play a significant role throughout.

Nearly half of trademark professionals (49%) say that technology is one of the primary ways to improve both the research and protection process. This is followed by more resources (46%), bigger budgets (45%), more time (40%) and better collaboration between departments (40%). The prioritization of these elements is in line with last year's results.

When asked specifically about how technology in the research process could be improved to make the process more efficient, respondents say it could:

50%

Provide a real-time view of data

50%

Include better analytics capabilities

46%

Include better reporting

42%

Improving unstructured data

46%

Offer opportunities to configure data

These results demonstrate both the appetite for more user-friendly technology, as well as the acknowledgement that there are definite enhancements that can be made. The appetite for the use of technology is also clearly demonstrated in attitudes toward the use of AI. While traditionally AI has been seen as a threat to trademark and IP professionals, the fact remains it has the power to automate time-intensive tasks, perform more quickly and bring new levels of accuracy to the process .

This sentiment is reflected in the results. Respondents say AI would be most helpful in speeding up the trademark search and watch process, followed by the use of predictive analytics in helping with applications or case outcomes, and in performing redundant tasks.

Back to the beginning: the naming process

Choosing a unique name that encapsulates the brand values and identity is certainly a task that is becoming more challenging. For the most part, this is left to marketing

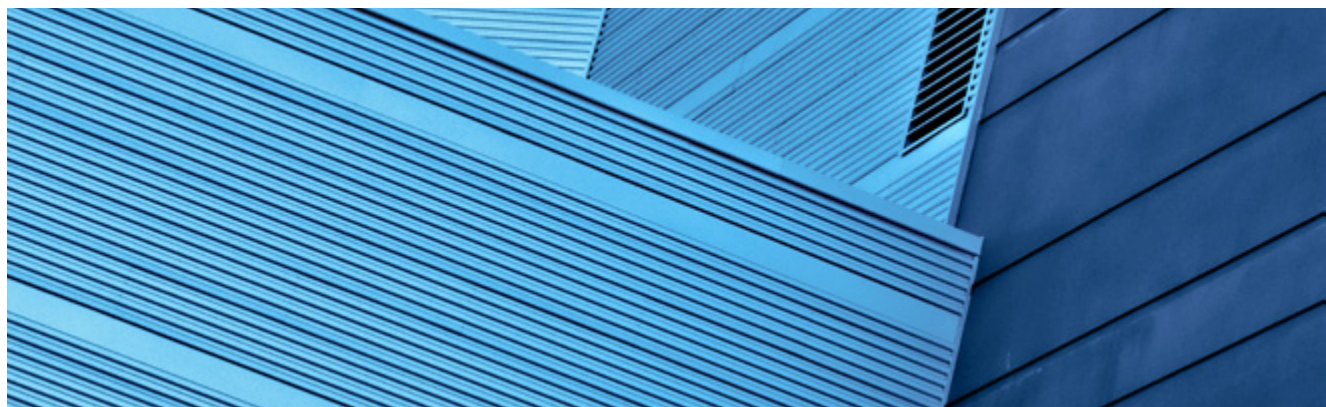
when they conceive ideas for products, solutions and campaigns. There can be different objectives between the marketing and legal teams, however, it appears that these groups are respective of these objectives and we see indications that the teams are working more closely together.

In the past there was little involvement from trademark professionals early in the name creation process and with a gap in knowledge around best practice with legal clearance in mind even if specific tools were used.

When asked about collaboration during the naming process, 42% of respondents are integral to this naming process, while a further 41% are consulted on an ad-hoc basis. Reassuringly, only 15% say there is little collaboration between themselves and other departments.

In addition, education seems to be a focus around the naming process, too. Nearly a third of respondents (30%) say they have formalized training programs in place to help educate marketing, 24% have processes in place for working with brand owners, 22% have ad-hoc training in place, and 21% educate as they go.

But there was also acknowledgement that the naming process could be improved in the areas of education and collaboration, as well as others. Technology was identified by 51% of respondents as one of the ways to make the naming process smoother, followed by better communication (47%), involvement of legal from the outset of name creation (41%), and education for people creating the names (38%).



Conclusion

As the wider industry transforms, driven by broadening markets, changes in legislation, politics and economics, businesses need to keep pace with this change. This is especially true as the marketplace becomes more crowded and establishing a unique brand presence becomes more challenging. The trademark ecosystem is evolving too, not just in the number of marks being filed but in the types of marks. Finding a unique mark is a challenge in itself, but with the sheer number of active trademarks and applications protecting existing marks from infringement also becomes an issue. In fact, infringement is rising steadily year-on-year. It is also taking place across channels and is no longer affecting just traditional word marks.

As the trademark industry continues to evolve and the value of IP continues to grow, trademark professionals will benefit from

investments in this space. Practically, the awareness and growth in trademarks means more chance for infringement. Moving forward, trademark professionals and other stakeholders in the trademark ecosystem can take advantage of the tools and expertise at their disposal to forge the best path ahead.

Methodology

Independent survey firm Vitreous World was commissioned by CompuMark to conduct research into the state of the trademark industry. The research looked specifically at the experiences of trademark professionals around infringement, practices around the trademark process, and challenges faced. Online interviews were carried out toward the end of 2019 with a sample of 351 in-house trademark counsel and external trademark attorneys across the United Kingdom, USA, Germany, Italy and France.

About CompuMark

CompuMark™ is the industry leader in trademark research and protection solutions. We enable trademark and brand professionals worldwide to launch, expand and protect strong brands through the highest quality global content; expert analysis; superior trademark screening, search, and watch tools; and best-in-class service. Key products include: SAEGIS Trademark Screening Tools; TM go365 Self-Service Research Solution; Trademark Full Search; Trademark Watching; Copyright Searches; and Custom Solutions. CompuMark is a Clarivate Analytics™ company. For more information, please visit compumark.com.

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