

The Trademark Ecosystem

Through the lens of the C-suite

Executive Summary

A trademark is often seen as one of a brand's most valuable assets and as such should be protected. However, in today's economy when globalization and the expansion of the digital world has opened up new markets and new channels for businesses, this is not always easy.

While organizations are able to expand their footprint into wider markets, across more countries, and enlarging their customer base, it also brings them into contact with a host of other brands, organizations and products. This means that the potential for brand infringement increases, especially if brand names and taglines are being used by other organizations or individuals in these new regions.

Infringement is also affected by the rise in new trademark filings globally. Currently, there are over 55.3 million active trademarks, according to SAEGIS® on SERION®. Meanwhile, there were nearly 6 million trademark applications in 2015 alone.

Add in the difficulty of developing a strong, unique brand in the first place, clearing and protecting it, and there is also the potential for brand dilution. The immediacy of the digital age may bring increased opportunity to businesses, but it compresses the time brand owners and trademark professionals have to clear and launch brands. With more opportunity comes more risk for brand owners to inadvertently infringe on existing marks — with costly consequences.

With that in mind, CompuMark commissioned Opinium, a leading research agency, to conduct a global survey of C-level executives, including CEOs, CTOs, CIOs and CFOs. This report delves into the challenges they face, as well as their outlook on infringement and the trademark management process overall. Globally, 440 respondents were surveyed. Online interviews were carried out in the U.S., U.K., Italy, Spain, France and Germany between August 12 and August 22, 2016.

Key Findings

Trademark infringement is on the rise - 8 in 10 respondents say trademark infringement is increasing

Just as the number of trademarks is increasing, so too are instances of trademark infringement. The research found that the majority of respondents (79%) thought that trademark infringement was on the rise, with 63% having been negatively affected by it. In fact, more than half of respondents (53%) indicated their organization had taken legal action on third parties who had infringed upon their brand, and 34% had to change one of their brand names as a result of infringement.

Concerns around infringement are on the rise as well, with 40% of participants stating they were more concerned now than five years ago.

More companies are clearing and registering trademarks - Two-thirds of organizations will be launching new marks in next 12 months

The research found that in the last 12 months, 61% of respondents had launched new trademarks, while a further 66% said they would be launching more in the next year. Organizations were also likely to launch more trademarks if the clearance process was simpler (80%).

When it came to budgets, 41% of respondents in the survey indicated that they were increasing, while only 5% said that they had less money for trademark clearance. This perhaps demonstrates the importance that organizations are placing on the process.

Despite the growth in the number of trademarks being registered, challenges remain. 44% of participants state that better technology would help clear trademarks more quickly and accurately

When it comes to launching and clearing new brands, the appetite may be there but there are still challenges around the process. Speed to market was identified by 50% of respondents as the most significant obstacle, followed by having to clear a mark for use across global markets (47%) and creating a suitable brand name to begin with (43%).

Looking at the trademark clearing process itself, respondents identified better technology, more cost-effective solutions and self-service style in-house products as the ideal options which would make the process quicker and more accurate.

While the growth of both launching trademarks and infringement is evident, once the clearance process is complete, not many brands are actively watching their marks. The research shows that only one in five respondents actively watch more than 76% of their trademarks, while half of the sample are only watching between 26%-75% of their portfolio.

The growth of the trademark landscape

Globally, the number of trademark applications is on the rise — according to CompuMark and its SAEGIS® on SERION® solution, the number more than doubled between 2008 and 2015. Looking at specific regions, figures from the World Intellectual Property Organization, (WIPO), indicate there was a 2.7% rise in filings in Europe and a 6.7% increase in the U.S.A. in 2014. Indeed this growth shows little sign of slowing, particularly considering the strides that China is making, and considering that the WIPO says the average annual growth rate in trademark applications has been between 6-8% for the last two years.

What this means for business is that there needs to be increased focus on selecting the appropriate marks, taking them through the clearing process, and then protecting them, and existing marks, in order to ensure they are not being infringed upon.

This state of growth is reflected in the research findings — with 61% of respondents saying they had launched a mark in the last year. Interestingly, 43% registered one mark, while 18% said they registered two or more. Spain demonstrated the highest number of single registrations (53%), while the U.S.A. showed the highest amount of multiple registrations (25%).

Looking to the year ahead, the outlook is similar. When asked about plans to launch new marks in the next 12 months, 39% said they would launch one, while 27% said they would launch more than one. Compared to regional figures, 60% of respondents in France said they would launch a new trademark, more than 20% higher than the global average.

In line with the increase in the number of marks being launched, budgets are keeping pace. According to respondents in the study, 41% saw an increase in their budgets, while only 5% reported a decrease in the last five years. Budgets, however, remain an important consideration for organizations, particularly those registering their marks across regions and multiple channels.

The challenge in trademark work

Despite the obvious growth in the number of trademark applications, and the desire for more launches, there are still challenges. From initial screening, to a full clearance search and registration, the process requires both time, effort and expertise. However, in a highly competitive marketplace where speed is key, trademark professionals, regardless of whether they are in-house or external, are under increased pressure to produce results — and to do so accurately.

Interestingly, 80% of respondents said they would be more likely to launch new brands if trademark clearance were simpler — 41% stated this was very likely. Overall, this figure was highest in Italy (88%) and Spain (66%).

Taking the idea of simplicity a step further, participants were asked what they thought the best solution would be to clear trademarks more quickly and more accurately. Overwhelmingly they cited better technology (44%), a more cost-effective solution (28%) and a self-service style option that can be used in-house (25%). Interestingly there are solutions like this on the market, but perhaps what is required is more education and awareness around the role that technology can play in the trademark research and protection process.

When asked about specific challenges that they faced in launching and clearing a new mark, respondents identified speed to market (50%), clearing a mark globally (47%), creating a suitable brand name (43%) and launching in a multi-channel environment (42%).

Reassuringly, those in the survey indicated that they were confident that their marks had been properly cleared for use across all relevant markets. Respondents showed 94% confidence, which was highest in Italy (100%) and U.S.A. (97%).

In addition, there was a high level of confidence (93%) in terms of having the right information needed to protect marks. Respondents in the U.S.A. demonstrated the highest levels at 97%.

The rise of trademark infringement

Snapshot: Trademark infringement



With the increasing number of trademark launches across the globe, there is a corresponding fear that infringement too will rise. Looking at trademark infringement in the U.S. alone, the number of cases has been fairly consistent in the last decade — with 3,820 trademark infringement cases brought to court in 2005, and 3,449 brought in 2015¹.

CompuMark found that overall, C-level respondents said they thought trademark infringement had increased (79%). Specifically, 32% stated it had increased significantly, while a further 47% said it had increased slightly. Attitudes regarding the rise of infringement cases were highest in Spain, where 92% of respondents thought they had increased. Only 5% of the sample thought that the number of cases had actually declined.

Despite this view that infringement is on the increase, industry statistics indicate that the number of cases has actually remained steady over the last decade. This could be due to the fact that there has been more negotiation and arbitration over infringement cases, in an effort to keep them out of court.

In fact, the research shows that 40% of participants in the survey are actually more concerned about trademark infringement than they were five years ago. Half of the sample is as concerned as they were five years ago, with only a marginal 8% stating they were less concerned.






Apart from the fact that litigation is costly, the consequences of brand infringement extend beyond the bottom line, creating market confusion, affecting customer trust, and causing great detriment to the brand. This is reflected in the research, with 63% of respondents being negatively affected by trademark infringement. These effects were highest in Spain (76%) and Germany (65%).

¹ <https://lexmachina.com/lex-machina-2015-end-of-year-trends/>

Looking at litigation alone, to initiate a realistic trademark claim, experts warn brands to expect to pay \$100,000 or more. Total costs, depending upon how vigorously the matter is defended and/or appealed, can potentially cost millions. As a result, statistics show that most litigation is resolved prior to trial and even after trial – in some cases to avoid the expense of appeal.

In the research, loss of revenue was the greatest implication of infringement, cited by 26% of respondents, followed by damage to brand reputation (21%), customer confusion (21%) and reduced customer loyalty and trust (19%). Interestingly, loss of time for marketing and legal teams was also identified by 12% of respondents. This figure rose to 25% in Germany.

Negative consequences of trademark infringement

Global Average		Highest in country
26%	Loss of revenue	 39%
21%	Damage to brand reputation	 28%
21%	Customer confusion	 27%
19%	Reduced customer loyalty and trust	 34%
12%	Loss of time for marketing/legal teams	 25%

Taking this even further, the research uncovered that overall, 34% of respondents had had to change the name of one of their brands due to trademark infringement. This figure was highest in Italy (40%). On the other hand, 66% of organizations said they had not changed a brand name as a result of infringement, highest in Spain and the U.S.A. (72%).

There are inherent dangers for brands in both infringements by other brands, as well as infringement upon other marks. The cost of litigation aside, rebranding can be just as expensive. While larger organizations may be able to absorb the cost, smaller businesses and start-ups may not.

For rebranding, figures can vary depending on size of business, ranging anywhere from a few thousand dollars to up to multimillion if dealing with a larger corporation. To break it down further, it would cost a general start-up business between \$2,000 - \$10,000 to rebrand. For an established small business, it would cost between \$10,000 and \$60,000, whereas a mid-size to large organization close to \$60,000 or more to rebrand. This doesn't include the lost value in brand equity built for the original brand.

Trademark watching

Despite increasing budgets and a general attitude that trademark infringement is on the rise, the research uncovered that trademark watching — a process whereby organizations or third-party experts they work with are tasked with keeping an eye on the landscape to identify cases of infringement — did not necessarily receive as much attention. Only a small portion — one in five — of respondents said they actively watched more than three quarters of their marks, while half said they only watched between 26%-75% of their marks.

So, how exactly does trademark watching help brand owners? Primarily, it enhances their ability to respond to potential brand threats quickly. They can discover potential trademark infringements before opposition deadline during the application process and avoid losing trademark rights due to tardy and/or no reaction. This information is supplemented with common law information, such as social media usernames, mobile app names and business names, which identifies potential threats to brands in these key online channels. The availability of this information helps increase peace of mind for the brand owners, while also reducing brand risk. Secondly, trademark watching can help brand owners enhance their competitive stance by staying abreast of trends in their industry.

What can happen if brands actually watch their trademarks?

There have been a number of examples of brands proactively watching their marks and addressing infringements. This includes UK brand, The Weetabix Company, opposing a trademark application in Kenya by MULTIBIX². Registration of the mark was stopped and the Registrar awarded the costs of the opposition to Weetabix. In another example, the estate of singer Frank Sinatra filed (and won) an opposition with the Trademark Trial and Appeal Board (TTAB) against the use of “Franks Anatra” by a Michigan hot dog vendor³.

² <http://www.businessdailyafrica.com/Corporate-News/Weetabix-wins-trade-name-order-against-Multibix/539550-2639618-m8dfg4z/index.html>

³ <http://www.law360.com/articles/378061/sinatra-estate-snuffs-hot-dog-truck-s-franks-anatra-mark>

The trademark process – a changing landscape?

The importance of trademark clearance has never been greater. In an environment where more marks are being registered than ever before, the potential for infringement and dilution is alarming. As a result there is increased emphasis on choosing the right mark to protect and getting it registered — often across regions.

Given the appetite for launching new marks (66% of brands said they would be doing so in the next year), the research also sought to understand what is important to executives in terms of choosing a brand and how they go about the trademark clearing process.

From choosing the right name, taking it through the screening and clearance process, and registering it, are brands doing all they can? Especially considering the cost of litigation and rebranding, and the other associated negative implications of infringement.

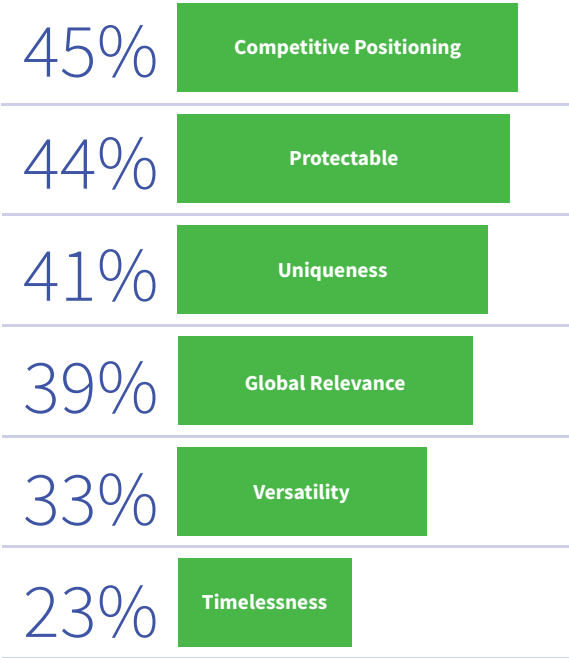
Part of the trademark research process is selecting the right name, or series of names, that can be put forward for a full search. There are various elements to consider here, and ideally the name should be easy to remember and encapsulate the brand personality, but ultimately it should be suitable for registration.

From a legal point of view, the most important aspect of a mark is whether it can be protected. However, the survey discovered this objective was not necessarily top of the agenda for the C-level respondents. In fact, competitive positioning was cited as the most important (45%) followed by whether it was protectable (44%) and uniqueness (41%).

This view was reflected across regions, too. The concept of being protectable did feature in the top three considerations in all countries in the survey, but was only identified as being the most important consideration by participants in the U.K. In the U.S.A., for example it featured third after uniqueness and competitiveness, while Italy favored uniqueness and global relevance more than whether it was protectable.

Given the prevailing attitude that trademark infringement is on the rise, and that litigation and rebranding does require a significant investment, this is somewhat concerning. Moving beyond choosing main brand names and marks, more than half (53%) of brands said they currently trademark seasonal and secondary products and services. However, the sample also revealed that they would consider launching new, seasonal or secondary brands without clearing them first — cited by 59% of respondents. This figure was highest in the U.K. (65%) and France (63%). Reassuringly, almost one in four (37%) stated that they would not consider it. This attitude was most prevalent in Spain (47%) and the U.S.A. (42%).

Global Snapshot: What brands consider when trademarking a product or service



Country Snapshot
TOP 3: U.S.A.



Country Snapshot
TOP 3: U.K.



Conclusion

The number of trademarks being launched and registered is on the rise on a global scale. Never before has trademark management been as important — from selecting the right mark to register, to proactively watching for cases of infringement. And in such a changing landscape, the importance of trademark vigilance only grows.

So too, will the drive to find better, more streamlined ways of doing things, driven largely by the adoption of new technology. This will support law firms, trademark professionals and in-house counsel in meeting ever-tightening deadlines, performing due diligence, and providing accurate, reliable results that can be used to make informed decisions.

If technology does, in fact, make the process more efficient, more organizations may launch more brands, as reflected in the research.

What the research also reveals is that there is a growing awareness of the importance of streamlining the trademark research and protection process, particularly in light of the increase in cases of infringement and the negative effects suffered by brands as a result.

There are still a number of challenges to be overcome, particularly around registering a mark across multiple regions and multiple channels, which is also an obstacle that the right technology can help overcome.

Going forward then, the role of the trademark professional remains the same — aided or not by technology — providing the best, most efficient service within the constraints of budget and timelines, to help brands mitigate the risk that trademark infringement can bring to the organization.

Methodology

The research was carried out on behalf of CompuMark by leading research agency Opinium. The survey was conducted online between August 12 to 22, 2016 on a sample of 440 C-suite respondents in organizations of 10 or more employees. The research covered five countries — U.S.A. 106; U.K. 104; Italy 59; Spain 59; France 57; Germany 55.

About CompuMark

Meeting Your Trademark Challenges with Innovation

Increasing globalization. Technology transformation. Expanding online media. In today's brand landscape, it's crucial to partner with a trademark expert who can help you establish and protect your brands around the world, across all channels—including Internet, mobile, and social media.

At CompuMark, we continuously invest in innovation that enables brand owners and IP professionals to meet the demands of the global, digital economy. Our solutions enable you to work more effectively and efficiently wherever your brand takes you, at every stage of the trademark lifecycle.

Our SAEGIS® online solution provides fast, efficient “knock out” screening. Our analyst-led Full Availability Search is the industry gold standard, providing unparalleled coverage and quality to give you the certainty to make trademark investments with maximum confidence. Our revolutionary, new TM go365™ online clearance solution provides an ideal choice for secondary or seasonal brands, giving you the power to clear trademarks that time and budget pressures previously wouldn't allow. And our industry-leading Watch services provide the rapid, reliable intelligence needed to monitor and protect your brands in markets around the world.

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