

Annie Allison in World IP Review: Boxed-in Brands: 'Dealing With Trademark Infringement During COVID-19'

October 5, 2020 Annie Allison

PRACTICES Intellectual Property, Trademark and Advertising, Trademark Litigation

Haynes Boone Associate [Annie Allison](#) talked with *World IP Review* about how the COVID-19 pandemic has posed unprecedented challenges to many businesses, presenting questions about how to best protect their brand and IP against audacious rivals.

Here is an excerpt:

Before COVID-19, companies had already reported a marked increase in trademark infringement. According to a study by CompuMark, released earlier this year, 85% of brands experienced trademark infringement during 2019 – a steady upward trend from 74% in 2017. The costs were significant for brands experiencing brand infringement, with the top three cited as customer confusion (45%), loss of revenue (38%) and damage to brand reputation (37%).

Moreover, brands were prepared to take action. Three quarters of trademark infringements led to litigation, with 40% of organisations spending between \$50,000 to \$249,999 on legal proceedings. In addition, 46% of companies reported having to rebrand as a result of infringement.

Fear of litigation

“It’s a delicate balancing act for established brands who must weigh the enforcement of their IP rights against public relations concerns,” says Annie Allison, associate at Haynes Boone. “On one hand, established brands have a strong interest in maintaining and protecting the goodwill and reputation of a brand that likely has tremendous value for their business and for which they have likely expended significant resources.”

She adds that, conversely, enforcement against a newcomer could have significant public relations consequences if consumers perceive these enforcement activities as bullying or territorialism. “Established brands need to be thoughtful in their enforcement strategy,” she says.

Creative enforcement

When faced with a blatant incident of trademark infringement, brands wishing to avoid a costly litigation battle or a damaged reputation could also consider adopting a good-humoured, tongue-in-cheek approach.

“We have seen some excellent examples of creative and effective approaches to enforcement that can actually bolster the reputation of the established brand,” says Haynes Boone’s Allison.

She points to Budweiser’s reaction to Modist Brewing’s new beer, called ‘Dilly Dilly’ back in 2017, a slogan already trademarked by the larger beer brand for its refrain of “Dilly Dilly” in its TV commercials set in medieval times.

To read the full article, click [here](#).