

Trends in Trademarks

This Year's Highlights:

- **U.S. Trademark Filings Reach All-Time High**
- **Surge in Eco-conscious Marks Creates Green Gridlock**
- **Financial Services Booms, Mortgage Marks Go Bust**
- **Great Leap Forward for Applications from China**
- **A Good Year for Wine**

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In Booming 2007, Trademarks Were Colored Green

Companies may be seeing red ink as the economy slumps downward in early 2008, but 2007 was all green as far as trademarks were concerned. It was the busiest year ever for the Trademark Office, with new applications at a record high, and environmentally-conscious "green" branding was leading the surge.

Applications for new trademarks topped the 300,000 mark for the first time in history in calendar year 2007, beating the previous all-time high of 289,000 set during the Internet bubble year of 2000. Each new application represents a potential brand name, logo, or tag line for a new business, product launch, or ad campaign. Thus, the demand for new trademarks offers a crystal ball into future marketing plans, and tends to reflect larger economic and social trends. By examining patterns in filing volume, one can get a sense of whether companies are feeling optimistic or pessimistic about the public appetite for new products and services in coming months. Applications also provide a glimpse at the buzzwords and advertising themes that marketers think will appeal to consumers in the future.

The consistently high volume of U.S. Patent and Trademark Office applications throughout 2007 suggests that businesses were still bullish on the economy during the year. New filings in every single month topped those for the same month in 2006, driven in particular by new marks for financial services, eco-friendly products, and web-based services. In many ways, it was a return to the go-go era of 1999-2000,

when Wall Streeters and.COM entrepreneurs pushed trademark applications to an all-time high. In fact, the first material downturn in filings did not appear until March 2008, when negative economic portents became inescapable.

At the Trademark Office, Every Day was Earth Day

Earth Day 2008 brought a flood of advertising and promotion from companies eager to their emphasize concern for the environment, but the wave began forming offshore long before at the Trademark Office, which received a surge of applications for eco-conscious marks in 2007. In a year in which the overall flow of trademark filings increased by an impressive 10% over 2006, demand for new earth-friendly marks registered a much greater



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increase. The result was green gridlock, with multiple companies filing for almost-identical marks at nearly the same time. Clearly, it's not easy being green—since a trademark by definition is a distinctive term that tells consumers that a product or service comes from a single source, many of these me-too filings will either not merit legal protection, or will be very weak trademarks.

It's Not Easy Being GREEN

Not surprisingly, the word GREEN was the most popular vehicle for communicating environmental friendliness. Applications more than doubled in 2007, increasing from 1100 to over 2400. In fact, it was the third year in a row when GREEN branding far outpaced the overall increase in applications, following a 37% increase in 2006 and a 23% gain in 2005. However, originality was not always the watchword—the phrase GO GREEN appeared in various forms in over 100 different proposed marks, for example.

Some businesses tried to expand the color palette, only to find that they too had company—four different applicants sought trademark registration for GREEN IS THE NEW BLACK for apparel or tote bags, and two different companies filed for BLUE IS THE NEW GREEN, one for irrigation systems and the other for water conservation publications. A similar theme appeared in applications for BLUE IS GREEN (for seafood), WHERE BLUE MEETS GREEN (natural gas), BLUE WATER FOR A GREEN WORLD (wastewater treatment), RED STATES, BLUE STATES, GREEN STATES (television programs), and BLUE GREEN & BEYOND (filed by Bed Bath & Beyond).

Interest in the word CLEAN went hand-in-hand with GREEN, with over 900 applications in 2007, up from 800 in 2006. The words GREEN and CLEAN appeared together in 74 would-be trademarks, including multiple filing for GREEN CLEAN, GREEN IS CLEAN, and CLEAN & GREEN from various companies offering soaps, household cleansers, pet shampoo, toilet paper, carpet cleaning, janitorial services, car washes, and the "evaluation of investment risks and opportunities in involved in corporate environmental policies." Not surprisingly, CLEAN appeared together with the words FUEL, ENERGY, or POWER in over 50 different marks. Six different companies applied to register ECOCLEAN (for cleaning services, carpet cleaning, dry cleaning, kitchen appliances, aromatherapy, and oil well fluids), and four others filed for BIOCLEAN for a similar array of products.

ECOmania

GREEN and CLEAN had a particular appeal because it's easier to coin a short brand name or concise tagline with a one-syllable word than a long word. The two-syllable prefix ECO was also hot in 2007, more than doubling in popularity to nearly 900 new applications. In fact, if all the new ECO-branded products filed in 2007 actually came to market, an ECO CITIZEN could buy an ECOHOUSE in ECOTOWN from an ECO REALTOR. Clad in ECO STUCCO and topped with an ECOROOF, the house would be equipped with an ECO HEATER, ECO HANGERS in the ECO CLOSET, an ECO JOHN and ECO SHOWER (accompanied by ECO TOWELS), and an ECO RUG on the floor. You could rest your head on your ECOSOFT ECO PILLOW and get an ECO-SLEEP in your ECOSNUG bed under an ECO BLANKET, with ECO LINENS made of ECO FLANNEL on your ECOMATTRESS.

Next to your backyard ECO POOL, you could mow your ECO LAWN with an ECOMOWER, and water your ECO PLANTS and ECO FLOWERS with an ECO HOSE. Your ECO BABY could play with ECO DOLLS, while you sent your ECO TOTS off to ECO CHILDCARE with an ECO LUNCH, including an ECO APPLE, ECOMILK, and ECO YUMMY snacks. Your ECODUDE teenager would wear ECO THREADS made of ECO DENIM and ECO DOWN as he rode his ECOBIKE to ECOSCHOOL. On a big night out, you could put on your ECOUTURE, your ECO JEWELRY, ECO-SEXY cosmetics, and ECO CHIC perfume, go partying at the ECOLOUNGE—and perhaps be stalked by ECORAZZI. On the weekend you could go fishing for ECOSALMON, get some ECO-LIFECOACHING, or play ECO GOLF (but don't forget your ECO-BRELLA if it's raining). Or you could pack your ECOBAGS and fly an ECO AIRLINE through the ECO-SKIES to an ECOSAFARI. Perhaps you'd just relax with a cup of ECO-JOE until you buy more ECOGEAR at the ECO SHOPPE. It would be the ideal ECOLIFE for an ECOGEEK in an ECOTOPIA—until you were laid to rest in an ECOCOFFIN.

The lengthier word ENVIRONMENT lends itself less readily to branding, but applications containing some form of that word nevertheless increased dramatically, jumping past 450 in 2007, up from 325 the year before. Many marks avoided using the entire word, and instead paired the prefix ENVIRO- with a suffix that communicated something about the product—ENVIROSAX for reusable shopping bags, ENVIROSTONE for recycled building materials, and ENVIROGROOM for pet shampoo, for example.

Trademarks Go EARTH FRIENDLY

Some companies chose to communicate their concern for a cleaner earth by referring to it in their brand names and taglines. Applications for marks incorporating the word EARTH showed a large increase, jumping about 60% from 550 to over 900. PLANET was a popular alternative, up 50% from 275 to over 400. GLOBE/GLOBAL also showed a significant jump, up 36%.

Prospective brand-owners were feeling very FRIENDLY in 2007, with applications for trademarks containing that word increasing by 88%. Environmentally-oriented marks accounted for much of the gain. In fact, 30 out of 180 filings contained the phrase ECO-FRIENDLY and another 30 incorporated EARTH FRIENDLY. However, FRIENDLY has also become a popular vehicle outside the green realm, with such marks as BODY FRIENDLY for apparel, SCHOOL FRIENDLY for snack foods, AGE FRIENDLY for computer games, WOMEN FRIENDLY for sales training seminars, and FEMALE FRIENDLY for auto dealerships.

Not surprisingly, the word ENERGY saw a 25% increase in 2007, increasing from 875 filings to nearly 1200. However, not all of the applications related to sources of energy or products that consume energy more efficiently. Almost one-third of the filings were for marks for energy drinks, nutritional supplements, and other food and beverage products that promise a shot of caffeine or another boost to the system.

The concern about shrinking ice caps was reflected in a variety of GLOBAL WARMING applications, including GLOBAL WARMIN' NORMAN for dolls and plush toys and AN INCONVENIENT BOOTH for trade show marketing seminars.

Everything's Turning ORGANIC

The green trend was accompanied by a big jump in marks that contained the word ORGANIC, rising 57% from 450 to 700. Interest in organic products registered across the board. Only about 1/3 of the applications containing the word ORGANIC covered food products, and less than 10% covered beverages. A quarter of the ORGANIC filings covered cosmetic products, and about 10% covered apparel. Branding featuring the word NATURE or NATURAL registered a 15% increase.

Does all this mean that marketers think consumers will view conspicuous consumption as less fashionable? If so, companies don't seem more eager to explicitly communicate that they have downsized their products from XXL to SM. The increase in applications for marks containing the word SMALL was no greater than the overall 10% increase in filings. In fact, the word BIG appeared in more than 3 times as many marks as SMALL. Then again, SMALL is gaining on BIG and LARGE, both of which were essentially flat in popularity compared with 2006. If living LARGE was still okay, too much boasting was out of fashion—the word GIANT was 25% less popular in 2007 than in 2006.

Branding Looks Forward

Marketers sensed that consumers were looking ahead to the future in 2007 rather than the past, as new trademarks emphasized tomorrow rather than yesterday. In a high-flying year in which overall applications were up 10%, brands containing the word FUTURE were up 14%, filings for NEXT, TOMORROW, and MODERN were all up 17%, and FORWARD increased 32%. In contrast, the word CLASSIC showed no increase at all, and TRADITION edged up only 3%. Clearly, it was not a back-to-basics year, as applications for BASIC went backwards, slumping 12% compared with the year before.

Growth in Mortgage Marks is Foreclosed

The overall trend in applications for financial services trademarks showed a very healthy increase in 2007. However, if one looks more closely at the numbers, it's clear that not every segment of that market was flourishing.

It was a boom year for investment management, with applications covering such services rising much more rapidly than filings as a whole. Marks for mutual fund services grew by 32%, increasing to over 850. The hedge fund world, which does not rely on consumer branding, nevertheless saw an even bigger jump, with applications rising by 26%, to just under 350.

Amidst the boom, there were harbingers of future problems. Filings for products and services related to real estate saw a big jump in 2006, but were flat in 2007. Applications for trademarks for mortgage-related services fell from 1900 in 2006 to

approximately 1750 in 2007, and have fallen more than 40% in the first quarter of 2008.

Chinese Applications Continue to Surge

The vast majority of applications filed with the Trademark Office come from U.S. businesses, but about 15% are from companies in other countries seeking to protect their marks in America. Among these foreign applicants, China has been responsible for the most significant increase in recent years. Back in 2003, Chinese companies accounted for only 500 U.S. applications, but in 2007 the number rose to 1750, leapfrogging applicants from South Korea and Taiwan, each of which accounted for about 1,000 filings.

This clearly signals Chinese aspirations to export products sold under the country's own brand names, and not merely serve as a manufacturer of goods sold under U.S., Europe, and other Asian marks. So far, however, Chinese companies appear to be primarily focused on seeking U.S. registration for the marks they use in China, rather than tailoring their branding to an English-speaking market. Most of the applications filed in 2007 were for marks that consisted solely of Chinese characters or a combination of Chinese and Roman characters. Some of the marks would clearly be a challenge for English speakers to pronounce—KONGZHONGNIAO for luggage (translating to “a bird is in the air”), and WUHANDIANZIANERCHANG for electric wiring (meaning “flying crane”), for example. A relatively small portion of Chinese companies’ marks have been

anglicized for U.S. consumption, but sometimes with uncertain syntax—FIXMAN for tools, I LOVE KITCHEN for kitchen accessories, and BLUE INKS for clothing. In other cases, Americans may be mystified as to what message the mark is seeking to convey—GRASSLAND PASTORAL for hotels, FREE IDOL NEWYORK for engine parts, MONKEY KING for game shows, movies, and opera, GLACIALPOWER for electrical supplies, and MORALS VILLAGE for restaurants.

A Good Year for Wine

2007 was a vintage year at the vineyard, with applications for new trademarks for wine increasing from over 3500 in 2006 to nearly 4000 in 2007. Although some consumers may still think that wine names are stuffy, intimidating, and likely to start with the word “Chateau,” many vintners did not take themselves too seriously, seeking protection for marks like SO NOT FRENCH and CRANKY GRAPE. Prospective brand names in 2007 ranged from the quirky (RUSTED LYRE, CHAOS THEORY, TO BE CONTINUED, KNUCKLEDUSTER) to the curious (FISH TOSS, PLATE LICKER, REFUGEE, BLA BLA BLA). Some were poetic (WHISPERING ANGEL, CATHEDRAL OF NECTAR, PAINTED HEART), while some left nothing to the imagination (DOMINATRIX, FOREPLAY, ORGASM, INNER SLUT). Strange locations (SCAREDY CAT RANCH, HIPPIE HILL) and oddball creatures (PIGS IN THE SKY, MAD SQUIRREL, DANCING DOGS) were also plentiful. As usual, there was no shortage of puns (ZINFUL, CHARDONYEAH!, SCREW-PULOUS, GUILTY AS ZIN, SHAMPAIN, SAAR CHASM).

Practice group contacts

Visit www.dechert.com and the “Practice Areas” section under “Intellectual Property Litigation” and “Intellectual Property Transactions and Counseling.” For more information about the *Report*, contact Glenn Gundersen.

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