

# Firm footing? Brands in the trademark legal services market

**With external counsel under acute pressure to provide a wider range of services at more cost-effective price points, trademark law firms and practitioners are increasingly seeking to differentiate themselves on the market. Are brands the answer?**

There is nothing that the likes of Apple, Samsung and Google do not know about the importance of branding to their business. According to Brand Finance's Global 500 2013 list – on which they take the top three spots – their brands are collectively worth a staggering \$198 billion-plus.

In today's challenging economic climate, companies are increasingly leveraging this most intangible of assets to gain competitive advantage. In the pre-crunch world back in 2008, brands represented just 10% of a company's total enterprise value, on average. That had risen to 16% by the beginning of 2013 – confirming that, even as companies fight the financial tide, brands can make a crucial contribution to the bottom line.

Law firms have likewise been forced to reassess and refocus on what makes them stand out in the marketplace. The trademark practitioner's *raison d'être* is to assist clients in building, promoting and protecting their brands; yet it might be that creating and nurturing strong brands of their own is one of the biggest challenges they face.

A whole host of descriptors spring to mind when thinking about law firm brands. Firms can be 'expensive' or 'cost efficient', 'City' or 'provincial', 'corporate' or 'collegiate', 'modern' or 'traditional'. But do any of these perceptions influence the way in which trademark owners choose their legal counsel? And should they?

Simon Tracey, senior partner at Bear & Wolf, is in no doubt as to the importance of brands for trademark practices. "They play an absolutely substantial role," he says. He cautions that law firms overlook this issue at their peril: in a world where branding has moved to the top of the corporate agenda, why would a firm that seeks to advise companies on building and protecting brands not build and protect a strong brand of its own? "As a trademark lawyer, you are in a marketplace where all of your clients are completely up to speed on the importance of branding," he explains. "But it seems that many law firms are the last ones to get that. When brand owners consume IP services, they want their lawyers to be on the same wavelength as them." He believes that

many firms – particularly those at the more traditional end of the spectrum – risk being perceived as stuffy or arrogant as they cling on to practices and values from a bygone era.

According to Robin Rolfe, president of Robin Rolfe Resources, a management consultancy for IP legal practices, one of the problems for trademark service providers is that they are operating in a marketplace where it can be difficult to distinguish between firms on the basis of their offerings. "It is very hard to identify differences in many aspects of trademark practice in the marketplace, and it is very hard to distinguish good work," she says. "That is because you don't see the work – you see the results."

The more progressive outfits are meeting this challenge head on with a diverse range of strategies. Some have merged to increase capacity, diversify their offerings and expand their global reach. Others have opted to overhaul their image. In other cases, practitioners have left large firms to start up their own brand-focused boutiques.

## Palpable effects

Tracey speaks from experience of the power that can be harnessed through revamping a brand. Prior to establishing Bear & Wolf, he headed the trademark team at London-based general commercial firm Mishcon de Reya. At the time, the firm was engaged in a



substantial rebranding campaign, aimed at shaking off its public image as an old-fashioned, medium-sized practice focused on private client and family law matters. “Of course, Mishcon didn’t want to be seen like that – because they see themselves as a full service, aggressive, progressive law firm,” he says. Although the firm was best known for its family law practice – including its representation of Diana, Princess of Wales in her divorce from Prince Charles in 1996 – around 90% of its £47 million revenues in 2009 in fact came from corporate, employment, litigation and real estate work. “What they wanted to do was reposition how people saw the firm, so they went about a rebrand and a re-education programme,” Tracey continues. As part of this initiative, the firm forged strategic marketing relationships – including an association with the *Financial Times* – to highlight key practice areas. Another aspect of the rebrand was an extensive redesign of the firm’s online presence. “If you look at the Mishcon de Reya website now, you will see that it is slick, well put together, with some current, sexy colours – all of which presents exciting, energetic, modern and subtle messages,” says Tracey. In the year following the campaign, Mishcon de Reya saw revenues leap by 30% to £61.5 million.

But the extent to which these positive results can be attributed to the success of the rebrand is unclear. Rolfe suggests that branding elements such as eye-catching logos, glossy marketing materials and dynamic websites only go so far when it comes to securing a firm’s standing in the marketplace. She cites the example of full-service firm Orrick Herrington & Sutcliffe and its ‘O’ logo: “Around 10 years ago, Orrick spent many millions of dollars on building its brand through its advertising for the ‘O’ look. But I think that effective branding for law firms is much more related to reputation, relationships and identity.” For Rolfe, they key question for brand owners seeking a law firm partner is not: “What does your brand stand for?” Rather, it is: “What is your reputation in the marketplace?” “And there is a difference,” she continues. “A brand is identifiable and it has certain developed attributes to it, but a reputation is very personal and it always goes to quality.”

#### Brand or reputation?

Rolfe argues that while visual branding can improve a firm’s market visibility, it has little real impact on the way in which the firm’s identity is perceived by consumers. “Orrick is a very big firm with

a general practice, but in the trademark area, you are targeting a much narrower audience,” she says. “Creating a brand identity can be useful in terms of overcoming the ‘never heard of them’ syndrome. But for trademark practitioners doing business with in-house counsel, I don’t think that that kind of branding is particularly helpful. If I want to be recognised by a trademark-owning company, I don’t think it is so much about them being able to recognise my logo as it is to have some understanding of my reputation.”

According to Rolfe, this reputation subsists in constructing and maintaining strong professional relationships over time, with both existing and prospective clients, while also building recognition for the firm in the community and the wider trademark profession. “Essentially, the formula is simple,” she explains. “If they don’t know you, they won’t hire you; if they don’t like you, they won’t hire you; and if they don’t trust you, they won’t hire you.”

Jean-Pierre Maeder, group head of trademarks at Nestlé, agrees with this assessment. “In trademark and brand matters, we prefer to work with specialist IP firms that excel in expert knowledge with reputation,” he says. “We do not choose our law firms on the basis of their brand. If they have a good brand, then that’s fine; but this is not the main criterion for our selection.”



For the most part, his team works with private practitioners with whom they have enjoyed longstanding working relationships or have found through referrals. When the company needs to instruct a new law firm partner, there are well-defined criteria in place to assist Maeder and his team in making their choice. “We look around the market by evaluating firms based both on referrals and meeting with them – for example, at INTA – to interview them,” he explains. “We then have a structured process where we send them qualification forms which they have to fill out. They have to give us their own information about their experience, the expertise they have, whether they work for any of our competitors and costs. We can then make a decision based on this information.”

At golf equipment and apparel maker Acushnet Company, director of trademarks and brand protection Lisa Rogan agrees that brand is largely inconsequential when it comes to selecting external counsel. “Word of mouth and references are very important, but it also has to be a good fit personality-wise,” she suggests. “You need to be able to work well together. As a company, we have certain thresholds for things such as the clearance of marks, adverse proceedings and prosecution, and you need to have a lawyer who similarly understands your approach and believes in it.”

Developing such a deep understanding can often take a long time, and it might be years after an initial inquiry or chance meeting before a working relationship is formalised. “For example, with our UK counsel, we first met about seven years ago, but it wasn’t until about two years ago that we actually transferred the work over to them,” she continues. “Over the years, we got to know each other and we found that they were both highly competent and easy to work with, and we built a working relationship over the course of several years.”

Rogan also confirms that Acushnet primarily seeks out individual lawyers, rather than firms as a whole, when instructing external counsel. “Our choice is based more on the partners, associates and team, rather than the overall brand of the firm,” she says. Maeder echoes this view and suggests that, if there is any brand value in a law firm, it lies primarily with the individual professionals there rather than with the firm itself. “Knowing the individual lawyer is absolutely more important than looking at the brand of the law firm,” he says. “We want to know who is handling each particular matter for us, who is taking care of our litigation – we want to meet with them and be convinced that we are in the right hands.”

#### Personal best?

As is evidenced by the fact that so many private practitioners are followed by their clients when they migrate to new firms, it would appear that many brand owners tend to view their dealings with external counsel as a relationship with the individual lawyers themselves, rather than a connection to the wider firm. “I think that if you speak to clients, most of them will tell you that they instruct the individual and not the firm,” says Nick Bolter, a partner at Edwards Wildman Palmer. “They are looking for individual lawyers whom they know and trust, and who can provide advice in a way that works for them.”

Nevertheless, Bolter contends that a powerful firm brand can serve to strengthen the individual brands of its practitioners. “For anyone who instructs a lawyer – whether that is the head of trademarks reporting to the general counsel or the general counsel with the board above them – I think that it is an easier sell in both directions if they are instructing someone who they think is not only a great lawyer, but also has the credibility of a well-recognised

firm brand name behind them.”

While particular practitioners may be well known to in-house trademark counsel, general counsel and others in corporate legal functions may be less familiar with them, explains Bolter. “On some of the bigger matters, in-house trademark counsel may need to have discussions with their general counsel or head of litigation, who might ask them: ‘Who are you using in London?’ Now, they might not have heard of Nick Bolter, but when they ask: ‘What firm is he at?’, they may well have heard of Edwards Wildman,” he says. “That’s where I think you get that additional reassurance. When you are seeking new business, the ability to say that, in addition to your personal experience and expertise, you are at a well-known firm can give you a vital competitive advantage.”

At the most renowned firms – such as London’s Magic Circle or the white shoe practices of New York – the firm’s name can count for a lot and can generate much of its workload. “When you think of the very strongest law firm brands, it is often the firm brand that is doing much of the marketing rather than the individual,” says Bolter. “Even though those firms will have some of the most talented lawyers, it is almost immaterial in terms of marketing, because the firm’s brand is just so bright and so strong that the brand of the individual lawyer counts for less.”

But there is likewise a danger that a prominent firm brand can overshadow a lawyer’s personal brand, warns Rogan. “The firm name does complement the attorney in certain situations, but I also think the reverse can happen,” she says. “An individual lawyer can sometimes lose their identity because they are swallowed up in a big-name firm.”

#### One for all and all for one

For full service firms, the trademark practice will more often than not be one of the smaller aspects of their overall offering. This presents two potential issues from a branding perspective. First, a commercial firm serving a wide range of clients across various industries can face difficulties in targeting its brand towards specific audiences. Second, the need to sustain the business across all practice areas can result in costs regimes that are unattractive to clients using just one of those practices. “The problem that these bigger firms have all got on their hands is that they’ve got to make everybody happy – the corporate department, the real property practice, the private client stuff like tax, inheritance, family – across the entire spectrum of hundreds of partners,” says Tracey. “With the economy in its current state, property practices aren’t doing so well, while litigation is booming. Therefore, big firms have to set prices to allow for the practices that are doing badly and the ones that are doing well.” This means that clients may end up paying more to sustain a juggernaut which cannot necessarily provide a personalised level of service. As a result, many trademark lawyers have decided to leave the general practice world to set up smaller trademark and brand-focused boutiques.

“There is this constant struggle going on in established legal practices as to where the brand equity lives – is it with the individual partners or with the partnership?” Tracey continues. “If you ask the partnership, they will tell you that it is the firm that carries the reputation and the partners benefit from that. But where that is not the case, you start to see breakaways in the market, because that way the individual partners can take their own reputation and make the most of it to build their own practice and position it in the marketplace.”

#### Boutique brands

That is the route that Tracey took when he decided to leave

## Name dropping

Traditionally, law firms have tended to construct their names around the surnames of their lead partners. While this convention still dominates, a growing awareness on branding and the effects of mergers and spin-outs are now prompting many firms to think differently.

Edwards Wildman Palmer was established in October 2011, when Edwards Angell Palmer & Dodge merged with Wildman, Harrold, Allen & Dixon. A new brand - including a new name reflecting both legacy firms - was created as a result. The task of promoting this new incarnation has fallen to the lawyers at the firm, including partner Nick Bolter. "As the people responsible for building business under the Edwards Wildman brand, we face several challenges, as the brand doesn't have the

immediate recognition for some of our big corporate clients that some of our competitor firms may have," he explains. "'Edwards' is not particularly distinctive and is not an especially strong element; so when the new name was created after the merger, we faced a situation which was effectively like starting out from scratch with an altogether new brand."

Bolter experienced a similar situation at his former firm Howrey, which was created through the 2000 merger of Howrey & Simon and Arnold, White & Durkee. The new firm was officially named Howrey Simon Arnold & White - though conversationally was usually referred to by first name alone. When the firm underwent a rebrand some years after the merger, it was renamed Howrey to reflect that

reality. "It changed from a long, very provincial US-sounding name to a very short, punchy, distinctive single-element name," says Bolter. "The 'Howrey' element of the initial name was strong enough that the rebrand was positive, because most people referred to the firm simply as 'Howrey' already."

Other firms have decided to drop the 'founding partners' names above the door' archetype altogether. London's Redd Solicitors took 'redd' - an old Scots word meaning to set something in order - as its name. UK-based IP attorney firm HLLBshaw rebranded as Avidity IP in October 2011 to reflect its structural change from a partnership to a corporation, and to depict "the dynamic, enthusiastic way the company behaves and captures its first core value of

energy", according to a press statement.

Brand and trademarks boutique Bear & Wolf is another firm that has decided to forgo partners' names in favour of creating a separate firm brand. "Bear & Wolf is all about communicating to our clients that you want us on your side," says Simon Tracey, senior partner at the firm. "If you are going to be in a scrap, those are two top-level predators that you want on your side!" However, he also underlines the importance of living up to the promise made by such a clear brand message. "If you pitch your brand like we did, you have to deliver the service," he says. "And that service has to be consistent with the brand message - every single day it has got to be the same. So that sets our standards extremely high."

Mishcon de Reya and set up brand law boutique Bear & Wolf. He suggests that while brand may be important for large, established firms, it is absolutely critical for specialist practices. "When you look at boutiques, brand takes a really different role in how a law firm can present itself," he says. "That is because an IP boutique that is doing brands advisory work should be able to communicate in the same language as its brand-owning clients." Tracey's rationale is that a firm claiming to be a specialist in brands and trademarks should understand the importance of branding and how it works - and the most persuasive way of demonstrating that is by creating a powerful brand of its own. "What is the best way to show somebody that you get what you do for a living, other than how you present yourself?" he adds. "When we launched Bear & Wolf, we wanted to portray genuinely how we go about advising, our style, the way we work and what we are all about. And we wanted to communicate that to our clients in the same way as our clients communicate with their consumers."

However, the decision to move to boutique practice involves some tough challenges. Eschewing a big-name firm brand leaves individual lawyers almost entirely reliant on their own reputations. "When a partner moves over to a small boutique, all of a sudden they have a different mindset, because now their name is above the door, and they appear to be less restrained," says Rogan.

Furthermore, while the largest full service firms often have offices in multiple jurisdictions and can therefore offer their clients worldwide coverage, boutiques are unlikely to have the necessary resources to establish that kind of global footprint. "It can be both an advantage and a disadvantage," Tracey acknowledges. "The advantage for us is that we are not politically burdened by having to instruct one of our own offices in another jurisdiction. Rather, we can pick the best - or who we think is the

best - in other countries. The disadvantage is that we can be seen in the marketplace to be under-gunned." He reveals that one of the concerns he hears most often from clients is that using a boutique such as Bear & Wolf to instruct lawyers in another country may prove more costly than if they had instructed one firm with offices in both jurisdictions. "One of the obstacles we have to overcome is the perception that we only do UK work, and that therefore we will be more expensive if used to handle work somewhere other than the UK," he elaborates. "My answer is that if the client were to try to go to another jurisdiction and ask for a price, it would work out more expensive for them versus having us do it for them and supervise the work," he continues. "That is because we have big buy-in power in other markets, as we are always referring work to firms there, and them to us."

### Building visibility

Another concern for boutiques and rebranded firms is that, just like any new business, they start out with little or no market recognition. Edwards Wildman Palmer was formed as the result of a merger in 2011 and a new brand identity was developed for it. "Edwards Wildman is a new brand, and from a marketing perspective, effectively we're starting from scratch," says Bolter. "It takes a considerable time to build positive associations with that brand name and get it out into the market." The firm has adopted a creative approach to building brand recognition, including sponsoring exhibitions at the Royal Academy of the Arts in London. "That means that there are posters in Tube stations and around London with our name on it. Little things like that add together to slowly build that recognition, so that in-house counsel will start to remember our name, what areas of practice we are strong in and some of the clients we act for."

At Bear & Wolf, Tracey and his team have also spearheaded a promotional drive in an effort to build visibility in the marketplace. One innovative strategy to achieve this has been to call on its clients for assistance. At May's INTA conference in Dallas, Texas, Bear & Wolf held what is probably the first ever co-branded law firm reception in conjunction with client Abercrombie + Fitch. "One of the first questions you will encounter when you are dealing with a sophisticated client is: 'Who else do you act for?' So as a law firm, your client list is an important part of your brand message, provided that your clients are always comfortable for you to say that you act for them," says Tracey. "But at the same time, you have got to be careful not to be seen as showing off – that is why we decided not to list who we act for on our website. We prefer to do it in more subtle ways, such as the Abercrombie + Fitch reception."

Publicising the names of clients is still anathema to many law firms, says Rolfe: "They are often reluctant to do it because it exposes them to who they represent. Part of that may have to do with client confidentiality, but also client discretion, since it sets those clients' names out there to be poached by a competitor. Additionally, there could be an assumption that there would be a conflict of interest." Nevertheless, she suggests that this can pay handsome dividends in establishing a firm's reputation where appropriate, and where clients are comfortable with their association with the firm. "It has some measure of reputation by reference," she says. "If you attach yourself to a well-known name

and somebody that is assumed to have knowledge, presumably there is some credibility that attaches to you."

Ultimately, Rolfe believes that the power of a firm's reputation boils down to the care and effort spent on nurturing such relationships. "Currently, law firms are struggling with how they ought to distinguish themselves. I think they have to think a lot about the relationships that took them to where they are – and that is the same whether we are talking about a law firm or an individual lawyer. And while many of the distinctions between practices are led by cost, the fact of the matter is that when people have strong relationships with people they trust, and get good service and good advice, they are more loath to change." <sup>WTR</sup>

Jack Ellis *World Trademark Review*

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