

Top Ten Trademark Trends of 2011

2011 was a busy year for brand owners and those following the field of trademarks as trademark filings in the US increased and continued growth of the internet, social media platforms, and mobile applications impacts brand owners. Some of the biggest news stories of the year – from the passing of Steve Jobs to the “Occupy Wall Street” movement - also had trademark significance.

Celebrity trademarks continue to grow. Numerous celebrities made news in 2011 with their trademarks: ‘The Situation’ and Abercrombie are contesting the apparel company’s use of “The Fitchuation” and other parodies; Charlie Sheen filed numerous trademark applications after his well publicized blow up with CBS; and the Kardashian trademark empire continues to grow with the filing of more than 40 U.S. Patent and Trademark Office (“USPTO”) trademark applications.



Political trademarks. [Sarah](#) and [Bristol](#) Palin made headlines for receiving registered trademarks in 2011 covering their names in connection with motivational speaking services. President Obama’s re-election campaign filed to protect its [logos](#) and also recently sued a merchandise maker for infringement. The death of Osama Bin Laden was followed by Disney trademark applications for SEAL TEAM 6; they were abandoned days later after the ensuing public relations backlash. In the last part of 2011, more than 20 “Occupy Wall Street” related applications were filed.

Steve Jobs. The October death of Apple Inc. founder and CEO Steve Jobs inspired many retrospectives about how he changed our culture over the 30 years by teaching us to [THINK DIFFERENT®](#). Along the way, Jobs helped make several Apple brand names and logos among the most recognized and most valuable in the world: iPhone®, iPad®, Mac®, and many others. Many Apple product designs are also registered trademarks.



.XXX domain names. In September, the ‘sunrise’ or pre-registration period began for the new .xxx top level domain name extension. Owners of registered trademarks and operators of adult websites were given the opportunity to secure .xxx domains before the full public release on December 6th.

New gTLDs. ICANN announced the long discussed launch of [new generic top-level domain names](#) (gTLDs) in 2011 with an application process commencing in 2012. Reaction ranged from excitement from some brand owners to serious concerns by many others as the procedures for protecting and blocking “.brand” domain names are convoluted, expensive, and not guaranteed to provide quick and affordable resolutions. As 2012 begins, look for last minute challenges to the ICANN plans.

Trademark filings increase. Through the end of November 2011, USPTO trademark application filings increased 6.5% over the same period last year. The increase may be a positive indicator for the economy’s growth as filing levels are approaching a return to the record high of 2008. At the close of FY2011, the USPTO register of trademarks contained 1,719,247 trademarks, an increase of 24.6 percent in just four years!

Trademark bullies study released. In April, the Department of Commerce released the “Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting” study, which was mandated by Congress to assess the extent of trademark “bullying.” The study fell short of making sweeping recommendations or identifying any significant perceived problems and suggested (1) private sector *pro bono* efforts, (2) additional legal education programs for attorneys, and (3) enhancing outreach from government agencies. The study largely fell on deaf ears as Congress held no hearings and issued no reaction.

USPTO outreach. The USPTO continued growing dialogue and collaboration with its trademark users and applicants as it hosted several roundtables and the National Trademark Expo, and requested comments from the public on several proposed changes to its practices. USPTO online trademark systems continued to move into the future in 2011 with enhancements to the online trademark filing system and the availability of trademark records via the cloud.

Popular trademark words in 2011. Here are some of the most popular terms appearing in USPTO trademark applications filed in 2011 (through December 1st):

SOCIAL	753	GREEN	1,607
NETWORK	1,000	MOBILE	708
CLOUD	827	BOOK	606

Louboutin’s red soles put to the test. In 2008, designer Christian Louboutin [registered](#) a mark consisting of red sole in connection with “women's high fashion designer footwear.” Earlier this year the designer sued Yves Saint Laurent for infringement based on YSL’s all red shoes which included a red sole. The court not only failed to side with Louboutin, it indicated that the registration could not be enforced and might be cancelled. The case has since been appealed to the Second Circuit and will be watched by many fashion brands.



What to look for in 2012. Expect even more trademark disputes between brand owners related to social media and mobile applications as their use continues to grow. Louboutin’s appeal will be closely watched as the lines between fashion, aesthetics, and brands continue to blur. The biggest trademark story of 2012 will likely be the launch of the new top level domains and the challenges and opportunities they will present to brand owners.

About Erik M. Pelton: Erik Pelton is the founder of [Erik M. Pelton & Associates, PLLC](#), a boutique trademark law firm in Falls Church, Virginia. Established in 1999, the firm has registered more than 1,500 U.S. trademarks for clients and represented dozens of parties in trademark disputes. In 2011, Erik presented on trademark and social media issues to a variety of audiences, including the Harrisburg University Social Media Summit, Business of Software, and American Bar Association.

