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## Getting the brand back together: a year in trademarks

To close out 2021, WTR has invited a series of industry leaders from across the trademark ecosystem to reflect on the past 12 months. For this instalment, [Andrew Price](#), partner at Venable in Washington DC, presents a law firm perspective.

We all hoped 2021 would be about 'getting the band back together' in person, with colleagues back in the office and full-fledged in-person meetings like the INTA Annual Meeting. Instead, 2021 ended being more about 'getting the *brand* back together', as clients continued to pour attention and resources into securing and preserving trademark rights in new and existing brands. While this heightened level of activity started in 2020, clients in 2021 showed an even greater sense of urgency about registering, enforcing and defending their marks, without regard to client size, industry or location. This made for an intensely busy year, where clients were less focused on cost than speed and results.

Moreover, if the early 2020 covid-19 shutdown moved people into self-preservation mode, 2021 put many in self-exploration mode. Attorneys thought more about their role in the trademark world, their personal and professional priorities, and how and where they want to leave their mark. And the IP profession saw more lawyer movement than the year before, as the US economy roared back. Yet this movement created opportunities for remaining lawyers to step up, as we sped up the path to partnership. Indeed, 2021 was about the care and feeding of brands as much as people.

As much as 2021 was a success when it came to client engagement on trademark work, US brand owners found it increasingly difficult to succeed in protecting brands in China. We saw chances of success in prosecution and dispute matters, as well as the level of actual success, move to the lowest level in years. Pursuing well-known status, for example, became essentially a non-starter for US owners. China is one of the most important countries when it comes to protecting marks; however, it is certainly now the most challenging.

Back in the United States, we saw the effects of increased activity at the USPTO. Examination slowed. We increasingly faced new examiners who are still 'green' and learning the nuances of trademark law. Moreover, we have multiple matters where the TTAB has not acted on motions it has historically resolved quickly, leading to delay and uncertainty.

Meanwhile, we learned, through the launch of Venable's Wellbrand naming service, that lawyers love creative trademark solutions, although the divide between in-house legal and marketing departments remains. In-house legal teams want to 'get to yes' faster and at lower cost when clearing marks and have embraced this offering, through which Venable does the brand name ideation and gives clients preliminarily cleared naming ideas. Nevertheless, some marketing departments remained territorial and self-protective during covid and slower to embrace the idea that lawyers have the creativity it takes to do naming. Despite challenges, this launch has been a success and Venable remains committed to disrupting the status quo and helping to close the gap between legal and marketing. Indeed, we are currently working to brand a significant US political campaign.

On a personal level, it was terrific to finally have an in-person client meeting in 2021, as well as an in-person Law Rocks, a charity event at which lawyer-based bands compete and raise money for their favourite charities. This year's event at the iconic 9:30 Club in Washington DC raised more money than ever, bringing our band Noise in the Basement's six-year fundraising total to nearly \$100,000, a good portion of which goes to the non-profit Together We Bake.

Unique to this year, the bands shared a special sense of camaraderie despite the competition, as a result of being back in person. On the heels of that memorable experience, our band was lucky enough to perform with the singer of Collective Soul at another local charity event. So in a literal sense, maybe 2021 was about getting the band back together.

As our ears continue to ring from Law Rocks, all eyes are on the newly implemented Trademark Modernisation Act (TMA) in the United States. For 2022, the world is watching to see that how aggressively brand owners and would-be owners will use the expungement and re-examination procedures enabled by the TMA. This is yet another tool that, in theory, will keep US applicants/registrants and their competitors in check. We will wait to see how the TMA unfolds in practice as we enter the New Year.

Finally, just as we plan to return to the office more in 2022, we look forward to welcoming the global trademark community to Washington DC for an in-person INTA Annual Meeting this coming spring!

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### TAGS

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