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Trade marking ‘COVID’ and ‘Coronavirus’ in the USA: an empirical review

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This article

- Famous and sensational events often lead to several entities filing trade mark applications that include terms related to these events. The most recent example of this phenomenon is the COVID-19 pandemic, which has led to large numbers of (largely controversial) filings worldwide.
- In this article, I review the applications including the terms ‘COVID’ and ‘Coronavirus’ filed with the United States Patent and Trademark Office (USPTO) in 2020 based on the data available and recorded by the end of January 2021. These data offer significant information related to the type of products for which the applications were filed, the type of filing entities, the legal basis for filings and the timing of these filings throughout the months of 2020.
- In particular, the COVID-19 pandemic led not only to a large number of filings for medical and pandemic related products, but also, and even more, for unrelated and promotional products. Individuals and small businesses were the largest groups of filing entities. Moreover, over two-thirds of the filings were submitted based on intent-to-use rather than use in commerce. Not surprisingly, the number of filings closely

mirrored the development of the pandemic during the various months of 2020. Perhaps, one of the lessons that could be derived from the COVID-19 pandemic, and this unprecedented number of applications, is the need to further study the phenomenon of ‘sensation-drive’ trade mark filings and the problems that these filings can represent for the trade mark system.

I. Introduction

Famous and sensational event often leads to several entities filing trade mark applications that include terms related to these events. The most recent example of this phenomenon is the COVID-19 pandemic, which has led to large numbers of (largely controversial) filings worldwide.¹ In this article, I review the applications including the terms ‘COVID’ and ‘Coronavirus’ filed with the United States Patent and Trademark Office (USPTO) in 2020.² These data offer significant information related to the type of products for which the applications were filed, the type of filing entities, the legal basis for filings, and the timing of these filings throughout the months of 2020. In particular, the COVID-19 pandemic led not only to a large number of filings for medical and pandemic related products, but also for unrelated and promotional products. Individuals and small businesses were the largest groups of filers, and over two-thirds of the applications were based on intent-to-use rather than use in commerce. Lastly, the number of filings closely mirrored the development of the pandemic during the various months of 2020.

* E-mail: Irene.Calboli@gmail.com. I thank Katie Kruijselbrink and Madison Kuczynski for excellent research assistance. This article is based on a larger ongoing study of the trade mark applications filed with the United States Patent and Trademark Office (USPTO) related to the COVID-19 pandemic. The first part of the study, which addresses in detail a larger sample of applications and their possible legal challenges, will be published in the 2021 Symposium Issue of Aakron Law Review.

1 See, eg, Large Growth in COVID-19 or CORONA Related Trademark Applications, *Lexology* <<https://www.lexology.com/library/detail.aspx?g=355b8a76-dc3a-4bb8-8e6c-9fb391fa9a5c>> accessed 23 January 2020).

2 The data analysed are based on an originally developed dataset which I created by manually retrieving the USPTO’s administrative records for the trade mark applications including the terms at issue, which are recorded in the Trademark Electronic Search System (TESS). The dataset includes all the applications filed until 31 December 2020 and which were published in the TESS at the time of submission of this article in January 2021. The list of these applications is published as Appendix to this article in the online version, which is available at <https://academic.oup.com/jiplp>.

II. Empirical review of ‘COVID’ and ‘Coronavirus’ trade mark applications in 2020

A. Type of products

As of January 2021, a total of 573 trade mark applications were listed as filed in 2020 with the USPTO for the terms analysed in the article. Out of these applications, 519 included the term ‘COVID’ and 54 ‘Coronavirus’.³

To better understand the impact of the COVID-19 pandemic on the trade mark system, I categorized the applications examined into four separate categories based on the type of products listed, and notably: (i) medical and pandemic management products; (ii) unrelated products; (iii) merchandizing and promotional products; (iv) and filings including derogatory terms, or slurs, filed for promotional and other products. This analysis offers relevant insights on how the applicants use or intend to use the proposed signs.

In particular, a total of 217 applications were filed for signs to be used for *medical and pandemic management products*. These products range from COVID-19 testing kits, protective gear such as medical masks, and COVID-tracking software. A total of 209 of these filings include the term ‘COVID’, while only eight feature the term ‘Coronavirus’. Examples of applications for these products are: COVIDVAX for vaccine research and development⁴; COVIDAGE RISK CALCULATOR for a product calculating the risk of complications due to COVID-19⁵; COVID SHIELD for air filters for applying disinfectants⁶; STICK IT TO COVID for consulting services in the field of health⁷; COVID GUARD for protective barriers for office partitions⁸; COVID

COCKTAIL for physician services⁹; CORONAVIRUS TRACER for computer software design¹⁰; COV-BEAT for scientific research in the field of coronavirus and infectious diseases¹¹; and THE CORONAVIRUS BLUES for pharmaceutical preparations in the nature of gel caps for reducing symptoms related to emotional and psychological issues.¹²

A total of 121 applications were filed, on the other side, for *unrelated products*—from food items to film services, videogames, etc. In particular, 111 of these applications include the term ‘COVID’ and 10 the term ‘Coronavirus’. Relevant examples in this respect include: COVIDBLAST for computer games¹³; COVID SAUCE for coffee, tea, and spices¹⁴; COVID-KUSH for candies and desserts¹⁵; CORY THE COVID for children’s books¹⁶; COVID COMBAT for dietary and nutritional supplements and herbal supplements¹⁷; ANTI-COVID BRUSH, FOR GUMS for toothbrushes and cases, and oral health kits¹⁸; COVID LIFE for direct marketing services¹⁹; NO CORONAVIRUS...I’M VACCINATED! for business management services²⁰; QUARANFEAST SINCE CORONAVIRUS 2020 for online social networking in the field of food²¹; and CORONAVIRUS TAX AMNESTY PROGRAM for taxation planning.²²

A large number of applications were also filed for *merchandising and promotional products*. Notably, 222 applications were filed in this category, 187 of which include the term ‘COVID’ and 34 the term ‘Coronavirus’. While these products could also qualify as ‘unrelated products’, they tend to fall within the category of merchandizing. Due to the large number of applications, I categorize these products separately. The following are examples in this category: COVID BEATER for t-shirts²³; COVID VS. EVERYBODY for athletic

3 Of these 573 applications, at the time of submission of this article in January 2020, 10 were categorized as ‘dead’ for signs including the term ‘COVID’ and 1 for signs including the term ‘Coronavirus’. It should also be noted that, at the time of the review of the proofs of this article, in late February 2021, the total number of applications recorded in the TESS including the term ‘COVID’, which were filed until 31 December 2021 increased to 528 applications. In particular, 10 additional applications were added to the TESS during the month of February 2021, notably 3 additional applications filed in December 2020, 5 filed in November 2020, 1 filed in October 2020, and 1 filed in June 2020. No additional applications were listed, on the other side, including the term ‘Coronavirus’, and the total of these applications remains 54 for the year 2020.

4 US Trademark Application Serial No 88/857,477 (filed 2 April 2020).

5 US Trademark Application Serial No 88/907,609 (filed 8 May 2020).

6 US Trademark Application Serial No 88,958,574 (filed 10 June 2020).

7 US Trademark Application Serial No 90/395,804 (filed 19 December 2020).

8 US Trademark Application Serial No 90/393,354 (filed 18 December 2020).

9 US Trademark Application Serial No 90/378,853 (filed 14 December 2020).

10 US Trademark Application Serial No 79/290,511 (filed 12 May 2020).

11 US Trademark Application Serial No 88/870,071 (filed 13 April 2020).

12 US Trademark Application Serial No 88/855,631 (filed 1 April 2020).

13 US Trademark Application Serial No 88/913,406 (filed 13 May 2020).

14 US Trademark Application Serial No 88/905,782 (filed 7 May 2020).

15 US Trademark Application Serial No 90/083,209 (filed 30 July 2020).

16 US Trademark Application Serial No 88/901,217 (filed 5 May 2020).

17 US Trademark Application Serial No 90/332,787 (filed 20 November 2020).

18 US Trademark Application Serial No 90/253,798 (filed 14 October 2020).

19 US Trademark Application Serial No 90/234,959 (filed 5 October 2020).

20 US Trademark Application Serial No 88/898,833 (filed 3 May 2020).

21 US Trademark Application Serial No 88/917,877 (filed 15 May 2020).

22 US Trademark Application Serial No 88/836,456 (filed 16 March 2020).

23 US Trademark Application Serial No 90/010,115 (filed 19 June 2020).

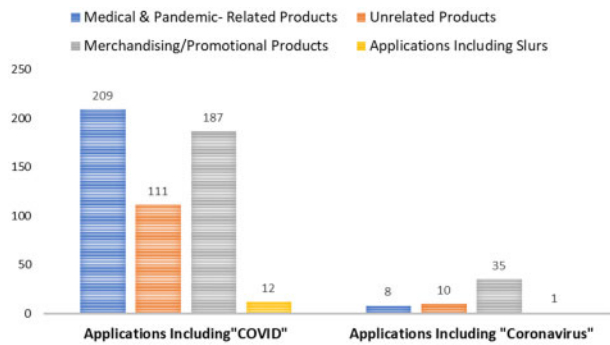


Figure 1 Total applications by type of products.

apparel²⁴; CLASS OF COVID-19 for sweatpants, sweatshirts and t-shirts²⁵; COVID-19 MADE IN CHINA for all types of apparel²⁶; COVID-19 for bumper stickers, t-shirts and hats²⁷; COVID CHRISTMAS for clothing, accessories and hardline goods²⁸; #CORONAVIRUS for merchandising and clothing²⁹; CORONAVIRUS FREE for t-shirts³⁰; and I SURVIVED THE CORONAVIRUS for hats, hoodies, shirts, sweatshirts and t-shirts.³¹

Finally, 13 applications including derogatory terms were filed for promotional and other products: 12 for the term 'COVID' and 1 for 'Coronavirus'. Examples of these applications are COVIDIOT for t-shirts³² and DON'T BE A COVIDIOT for t-shirts, hats and graphic t-shirts.³³ These applications deserve individual attention because derogatory terms can now be registered in the USA and can no longer be rejected based on morality of public policy grounds.³⁴

Figure 1 illustrates these data and the type of products listed in the applications.

In addition, to offer a more detailed review of the products for which the applications were filed, I reviewed the goods and services listed in the applications based on the International Classifications of Goods and Services.³⁵

Table 1 and Figure 2 report in details the information related to the specific goods and services based on the International Classification.

Table 1. Number of applications filed per International Class.

International Class	COVID	Coronavirus
Class 1	8	0
Class 2	0	0
Class 3	11	1
Class 4	0	0
Class 5	59	3
Class 6	0	0
Class 7	1	0
Class 8	1	0
Class 9	41	3
Class 10	43	0
Class 11	6	0
Class 12	0	0
Class 13	1	0
Class 14	21	1
Class 15	0	0
Class 16	28	2
Class 17	1	0
Class 18	3	0
Class 19	0	0
Class 20	7	1
Class 21	10	1
Class 22	0	0
Class 23	0	0
Class 24	0	0
Class 25	154	36
Class 26	5	2
Class 27	1	0
Class 28	7	0
Class 29	0	0
Class 30	2	0

Continued

24 US Trademark Application Serial No 90/018,626 (filed 24 June 2020).

25 US Trademark Application Serial No 88/842,845 (filed 20 March 2020).

26 US Trademark Application Serial No 90/205,729 (filed 24 September 2020).

27 US Trademark Application Serial No 90/175,567 (filed 11 September 2020).

28 US Trademark Application Serial No 90/138,555 (filed 26 August 2020).

29 US Trademark Application Serial No 88/872,578 (filed 15 April 2020).

30 US Trademark Application Serial No 88/960,707 (filed 11 June 2020).

31 US Trademark Application Serial No 88/845,606 (filed 24 March 2020).

32 US Trademark Application Serial No 88/875,925 (filed 17 April 2020).

33 US Trademark Application Serial No 88/897,876 (filed 1 May 2020).

34 See 15 USC s 1052(a) as revised after *Iancu v Brunetti*, 139 S Ct 2294 (2019) and *Matal v Tam*, 137 S Ct 1744 (2017), in which the US Supreme Court found part of the provision to be unconstitutional.

35 Since 1 September 1973, the USPTO classifies products according to the International Classification of Goods and Services under the Nice Agreement. See *About the Nice Classification*, WIPO, <https://www.wipo.int/classifications/nice/en/>.

International Class	COVID	Coronavirus
Class 31	0	0
Class 32	1	0
Class 33	0	0
Class 34	0	0
Class 35	55	4
Class 36	15	0
Class 37	9	0
Class 38	2	1
Class 39	5	0
Class 40	10	2
Class 41	26	3
Class 42	66	3
Class 43	0	0
Class 44	65	0
Class 45	19	1

In this respect, it is interesting to note that a high number of applications (more than 30) were filed in the following Classes: 5 (which includes pharmaceuticals and other preparations for medical purposes), 9 (which lists apparatus and instruments for scientific and research purposes, audiovisual technology equipment and safety equipment), 10 (which includes medical instruments used to treat persons or animals), 25 (which consists of clothing, footwear and headwear goods), 35 (which includes advertising services, business management and business administration), 42 (which is related to scientific laboratory services, engineering, computer programming) and 44 (which includes mainly medical and beauty care products).

In particular, these numbers correlate with the fact that almost two thirds of the goods or services listed in the applications analysed are filed for unrelated or promotional products and not for products that are directly related to the diagnosis or treatment of COVID-19 or the management of the pandemic. This confirms the impact of the COVID-19 pandemic as a sensational event driving a large number of applications, many of which for products not related to the treatment of the disease or the management of the pandemic.

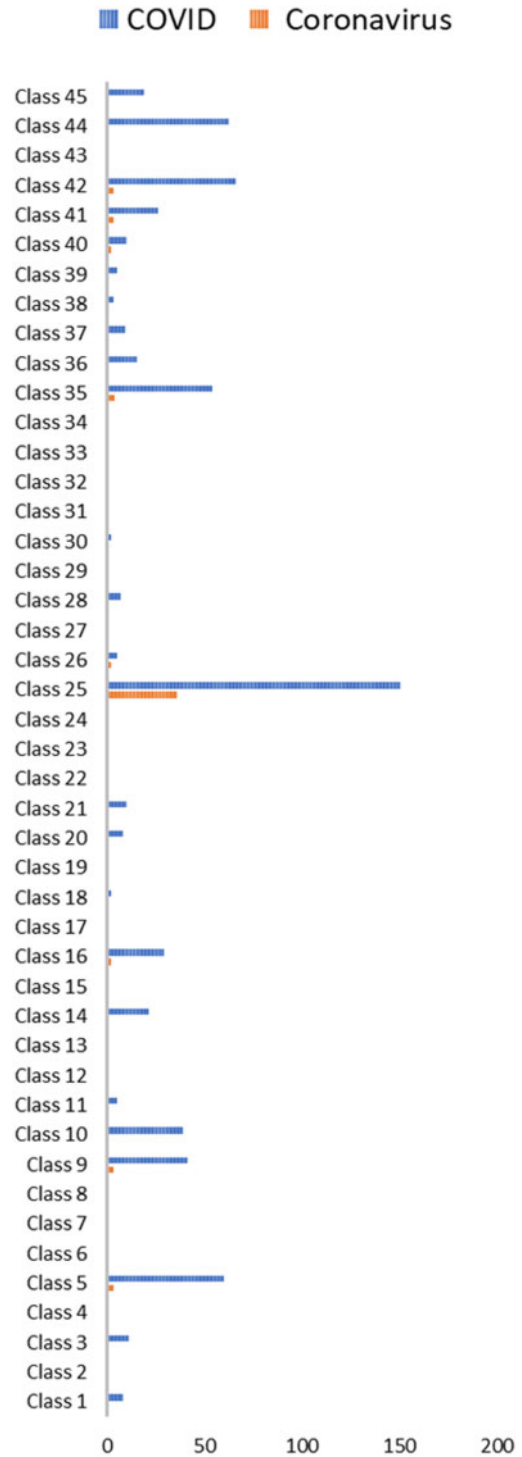


Figure 2 Applications filed by International Classes.

Figure 3 illustrates the specific percentages of the type of products listed, cumulatively, in the filings including both “COVID” and “Coronavirus.”

Applications Including "COVID" and "Coronavirus"

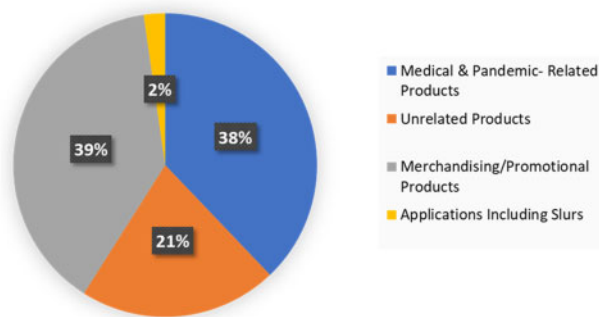


Figure 3 Percentages of applications by type of products.

B. Filing entities

The second set of data reported relates to the filing entities listed in the applications. This analysis is useful to understand the relationship between the filing entities and the products listed in the applications.

In particular, the data collected indicate that, taken cumulatively, individuals are the largest number of filers for applications including both the terms 'COVID' and 'Coronavirus'. The second largest number of applicants comprises of limited liability companies, followed by corporations in third place. However, as illustrated at the end of this section, these data change somewhat when they are further divided and focus on the filing entities for each specific type of products listed in the applications.

Figure 4 illustrates the cumulative data for the specific filing entities listed in the applications including "COVID" and "Coronavirus" for all types of products.

In particular, out of the 573 applications filed in 2020, a total of 123 were filed by corporations, 118 of which included the term 'COVID' and 5 the term 'Coronavirus'. Examples of applications filed by corporations include: COVID-19 RAPID RESPONSE for disinfectants and cleaners³⁶; COV-BEAT for medical and scientific research in the field of coronavirus and infectious diseases³⁷; KOVIDSUN for various medical items such as test kits³⁸; CERTIFIED COVIDSAFE

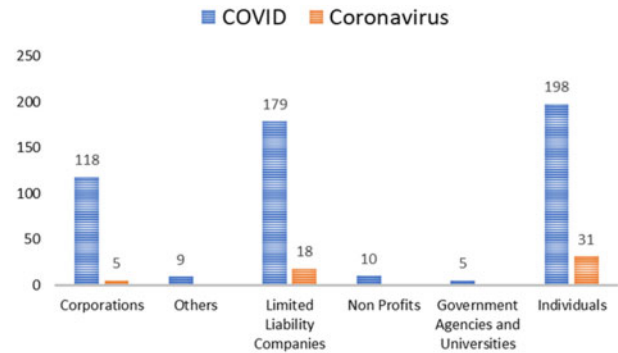


Figure 4 Total applications by filing entities.

CONTROL PLAN for verifying that restaurant operators understand procedures and best practices for disease control and prevention³⁹; GOLDMANS X-GENE RT PCR DETECTION KIT FOR NOVEL CORONAVIRUS for medical diagnostic reagents and assays for testing body fluids⁴⁰; and COV-BLOCK for medical and scientific research in the field of coronavirus and infectious diseases.⁴¹

In addition, one application was filed by a professional corporation for ESCRAN COVID-19 SCREENING POD related to stations to administer medical tests⁴²; one application was filed by an incorporated association for the slogan I AM A COVID-19 SURVIVOR for t-shirts⁴³; and one application was filed by a joint venture for the slogan WE WILL DEFEAT COVID-19 for various apparel.⁴⁴

A total of 197 applications were filed, on the other hand, by limited liability companies. In particular, 179 of these applicants sought to register signs using the term 'COVID' and 18 for signs using 'Coronavirus'. Examples of these applications include: COVID-19 filed for respiratory masks for non-medical purposes⁴⁵; COVIDLAW filed for legal services⁴⁶; COVID-19 AMERICAN HERO'S filed for stickers⁴⁷; COVID 19 SENTINEL for diagnostic test kits, medical services and scientific research⁴⁸; CORONAVIRUS FREE filed for t-shirts⁴⁹; CORONAVIRUS for audio tapes, t-shirts, live vocals by an entertainment group⁵⁰; CORONAVIRUS

36 US Trademark Application Serial No 88/897,423 (filed 1 May 2020).

37 US Trademark Application Serial No 88/870,071 (filed 13 April 2020).

38 US Trademark Application Serial No 90/116,253 (filed 15 August 2020).

39 US Trademark Application Serial No 90/103,900 (filed 10 August 2020).

40 US Trademark Application Serial No 88/869,476 (filed 13 April 2020).

41 US Trademark Application Serial No 88/890,064 (filed 13 April 2020).

42 US Trademark Application Serial No 90/020,403 (filed 25 June 2020).

43 US Trademark Application Serial No 88/850,676 (filed 27 March 2020).

44 US Trademark Application Serial No 88/884,330 (filed 23 April 2020).

45 US Trademark Application Serial No 88/918,652 (filed 15 May 2020).

46 US Trademark Application Serial No 88/909,197 (filed 11 May 2020).

47 US Trademark Application Serial No 88/854,906 (filed 31 March 2020).

48 US Trademark Application Serial No 79/301,184 (filed 30 September 2020).

49 US Trademark Application Serial No 88/960,707 (filed 21 April 2020).

50 US Trademark Application Serial No 88/790,444 (filed 9 February 2020).

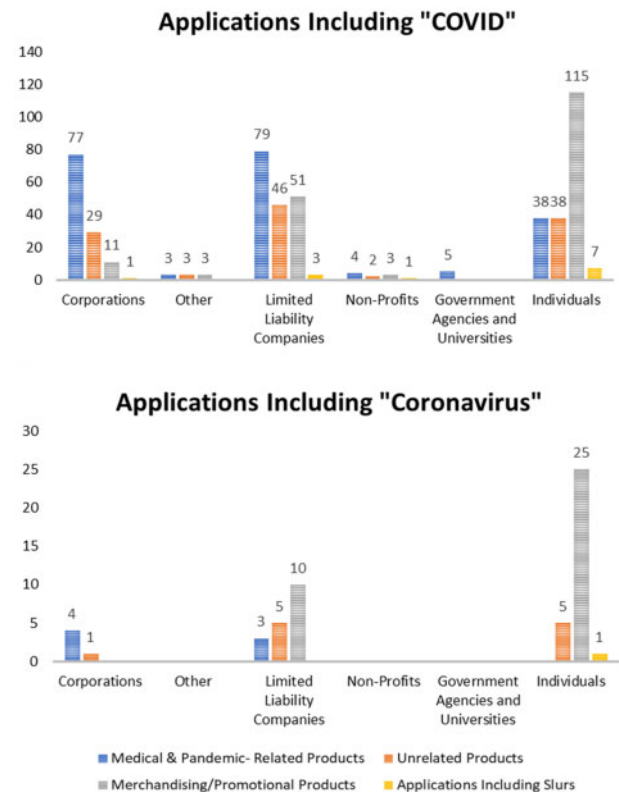
CLEANING for specialized cleaning services designed for coronavirus⁵¹; and CORONAVIRUS INFECTED for t-shirts.⁵²

Ten applications including the term 'COVID' were filed by non-profit entities. The applications include COVID19CHEF for website organizing recipes⁵³ and COVID CARE FORCE for charitable services.⁵⁴ Two government agencies also filed applications for COVIDVIEW for information on COVID provided online⁵⁵ and COVIDVIEW INTERACTIVE for a website to track and monitor medical information.⁵⁶

Still, as mentioned, the largest number of applicants were individuals. In particular, of a total of 229 individuals, 198 applied to register signs including 'COVID' and 31 signs including 'Coronavirus'. Examples include: COVID-SEROINDEX for medical testing⁵⁷; COVID BREATH for masks and signs⁵⁸; COVID BUDDY for teddy bears⁵⁹; COVID-19 CORONAVIRUS RECOVERY SYSTEM for pillows, herbal pastes, nutritional supplements, medicinal teas and syrups⁶⁰; NOT EVERY COUGH IS COVID for bumper stickers⁶¹; COVID-19 2020 FRONTLINE HERO THANK YOU FOR YOUR SERVICE COIN HAS DEPICTION OF CORONAVIRUS, SURGICAL MASK, AND AMERICAN FLAG for commemorative coins⁶²; and I BEAT THE CORONAVIRUS for merchandise and clothing.⁶³

As mentioned, the data partially change, however, when they are further divided base on the specific type of products included in the applications. Figures 5 illustrates these distinctions and the correlation between the filing entities and types of products.

In particular, corporations and limited liability companies represent the largest group of filing entities or medical and pandemic management-related products. Notably, corporations filed 77 applications, whereas limited liability companies filed 79 applications including the term 'COVID' followed by 38 applications by individuals. For the term 'Coronavirus', four corporations and three limited liability companies filed applications for medical and pandemic management-related products.



Figures 5 Applications by filing entities divided by type of products.

Instead, limited liability companies and individuals are the highest groups of filers for applications related to unrelated products. This includes 46 applications by limited liability companies including the term 'COVID' followed by 38 applications by individuals, and 29 by corporations. For applications including the terms 'Coronavirus', five applications were filed each by limited liability companies and individuals, while only one application was filed by a corporation.

Also interestingly, individuals are the highest group of filers for applications for merchandizing and promotional products. A total of 115 applications were filed by individuals for signs including the term 'COVID' followed by 51 by limited liability companies and 11 by corporations. Similarly, 25 individuals filed applications

51 US Trademark Application Serial No 88/883,829 (filed 23 April 2020).

52 US Trademark Application Serial No 88/836,107 (filed 16 March 2020).

53 US Trademark Application Serial No 90/020,584 (filed 25 June 2020).

54 US Trademark Application Serial No 88/871,733 (filed 14 April 2020).

55 US Trademark Application Serial No 88/895,096 (filed 30 April 2020).

56 US Trademark Application Serial No 88/895,142 (filed 30 April 2020).

57 US Trademark Application Serial No 90/089,958 (filed 3 August 2020).

58 US Trademark Application Serial No 90/433,861 (filed 30 December 2020).

59 US Trademark Application Serial No 90/421,773 (filed 28 December 2020).

60 US Trademark Application Serial No 90/169,872 (filed 9 September 2020).

61 US Trademark Application Serial No 90/115,136 (filed 14 August 2020).

62 US Trademark Application Serial No 88/919,461 (filed 16 May 2020).

63 US Trademark Application Serial No 88/833,726 (filed 13 March 2020).

including the term ‘Coronavirus’, followed by 10 applications by limited liability companies.

Lastly, seven applications including slurs were filed by individuals, three by limited liability companies, one by a corporation and one by a non-profit for signs including the term ‘COVID’. One individual applied for an application for this group that included the term ‘Coronavirus’.

C. Filing basis

The third set of data presented focuses on the filing basis for the applications. Notably, applications can be filed based on the proof of use in commerce under Section 1(a) of the Lanham Act⁶⁴ or *bona fide* intent-to-use under section 1(b).⁶⁵ In addition, applications can be filed based on a foreign priority basis under section 44(d).⁶⁶ Finally, a mark can be registered as an extension of an international application based on the Madrid System under section 66(a).⁶⁷

Out of the 573 applications filed in 2020 that included the terms ‘COVID’ and ‘Coronavirus’, 139 applications were filed based on section 1(a), 409 applications were based on section 1(b) and 1 application was filed under both section 1(a) and section 1(b). In addition, four applications, were filed under the foreign priority right under section 44(d) and five applications under section 66(a). Lastly, 15 applications did not list a specific basis for filing.⁶⁸

In particular, 121 of the applications filed based on actual use included the term ‘COVID’ and 18 the term ‘Coronavirus’. Examples of these applications are: COVID-19 INFECTED for t-shirts⁶⁹; COVID-19 VACCINATED for plastic bracelets in the nature of jewelry⁷⁰; COVID-ZERO for retail of disinfectant dispensers, solutions and cleaning products⁷¹; COVID-19 CORONAVIRUS RECOVERY SYSTEM for pillows, herbal pastes, nutritional supplements, medicinal teas and syrups⁷²; MY CORONAVIRUS EXPERIENCE for

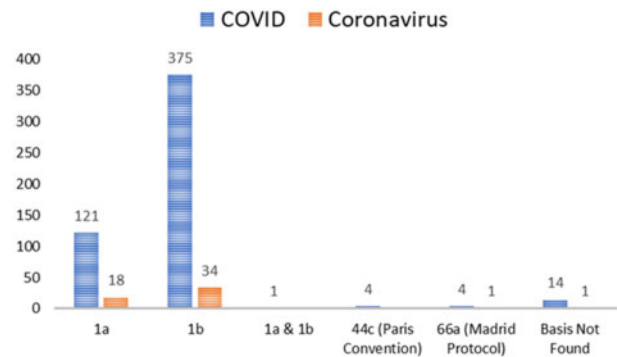


Figure 6 Total applications by filing basis.

online facilities for electronic interactions relating to customer and employee experience during the pandemic⁷³; and CORONAVIRUS CLEANING for specialized cleaning services designed for coronavirus.⁷⁴

A considerably larger number, 409 applications, were filed as intent-to-use applications. A total of 375 of these applications included the term ‘COVID’ and 34 the term ‘Coronavirus’. Examples of these applications are: COVID-SEROINDEX filed for diagnostic agents⁷⁵; NOT EVERY COUGH IS COVID filed for clothing and apparel⁷⁶; COVID SHIELD INFECTIOUS BUILDING COMPLIANCY for the construction and operation of buildings⁷⁷; COVID CLINIC for health care services, namely, disease management programs⁷⁸; COVID-19 HINDSIGHT 2020 CORONAVIRUS HINDSIGHT 2020 filed for advertising and marketing⁷⁹; #CORONAVIRUS for all types of clothing⁸⁰; and CORONAVIRUS for musical audio tapes, headwear, t-shirts, and entertainment services in the nature of live vocals.⁸¹

Figure 6 summarizes the numbers reported above while Figure 7 illustrates the breakdown, with percentages, between the various types of filing basis.

The finding that almost two thirds of the applications examined was filed on an intent-to-use basis is,

64 15 USC s 1051(a).

65 15 USC s 1051(b). Applicants must submit a statement of use and a specimen reflecting such use before the mark can be registered. 37 CFR s 2.76(a); TMEP s 1109.01.

66 15 USC s 1126; See Paris Convention for the Protection of Industrial Property, art 4, 20 March 1883, as revised at Stockholm, 14 July 1967, 21 UST 1583.

67 15 USC s 1141(f); TMEP s 1303.01.

68 Nine of these applications were filed by individuals, 10 by limited liability companies, and 1 by a corporation.

69 US Trademark Application Serial No 88/836,065 (filed 16 March 2020).

70 US Trademark Application Serial No 90/371,788 (filed 20 December 2020).

71 US Trademark Application Serial No 90/331,022 (filed 19 November 2020).

72 US Trademark Application Serial No 90/169,872 (filed 9 September 2020).

73 US Trademark Application Serial No 88/839,789 (filed 18 March 2020).

74 US Trademark Application Serial No 88/883,829 (filed 23 April 2020).

75 US Trademark Application Serial No 90/089,929 (filed 3 August 2020).

76 US Trademark Application Serial No 90/115,134 (filed 14 August, 2020).

77 US Trademark Application Serial No 90/400,557 (filed 21 December 2020).

78 US Trademark Application Serial No 90/371,001 (filed 9 December 2020).

79 US Trademark Application Serial No 88/897,789 (filed 5 May 2020).

80 US Trademark Application Serial No 88/872,578 (filed 15 April 2020).

81 US Trademark Application Serial No 88/790,444 (filed 9 February 2020).

however, a considerable variation from the average trade mark filings with the USPTO during the same period. This variation is illustrated in Figure 8, which reports that almost half of the applications filed in 2020 were based on actual use and not intent-to-use.

Once again, the finding that a large number of applications were filed under section 1(b), in addition to the facts that individuals and limited liability companies represent the largest group of filers, and the highest number of applications received was for promotional products and unrelated businesses illustrates the impact of the COVID-19 pandemic on the trade mark registration system. In particular, it highlights how filings related to sensational events are frequently driven by individuals and small businesses that perhaps hope to

take some advantage from these events by securing exclusive rights on related terms to be used on unrelated and promotional products.

D. Date of filing

As mentioned, the filing dates of the applications examined mirror the development of the pandemic in the USA.

Notably, prior to 2020, only one application had been filed for the term ‘COVID’. Likewise, at the beginning of 2020 when the pandemic had not yet become a global phenomenon, no applications were filed. Instead, the filing activity started in February with three applications to the USPTO. Then, as the pandemic spread around the world, a larger number of applications were filed. In March, 78 filings included the terms ‘COVID’ and ‘Coronavirus’, a number that increased over two times, to 165 applications, in April. After this peak, the number of filings started to gradually diminish, with 89 applications in May, 54 in June, 45 in July, 42 in August, and 26 in September. The downward trend continued with 25 applications in October and 15 in November. In December, the number of filings saw a small increase, with a total of 30 applications almost exclusively driven by filing including the term ‘COVID’.

Figure 9 summarizes the monthly filings for applications including the terms “COVID” and “Coronavirus” applications in 2020.

In particular, out of the three applications that were filed in February, one application was for the term ‘COVID’, and two for the term ‘Coronavirus’. These

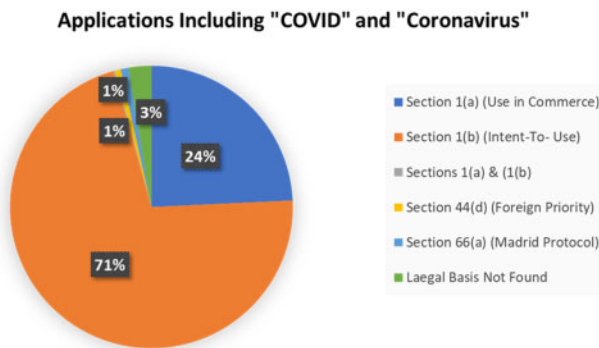


Figure 7 Percentages of applications by filing basis.

Application Filing Basis

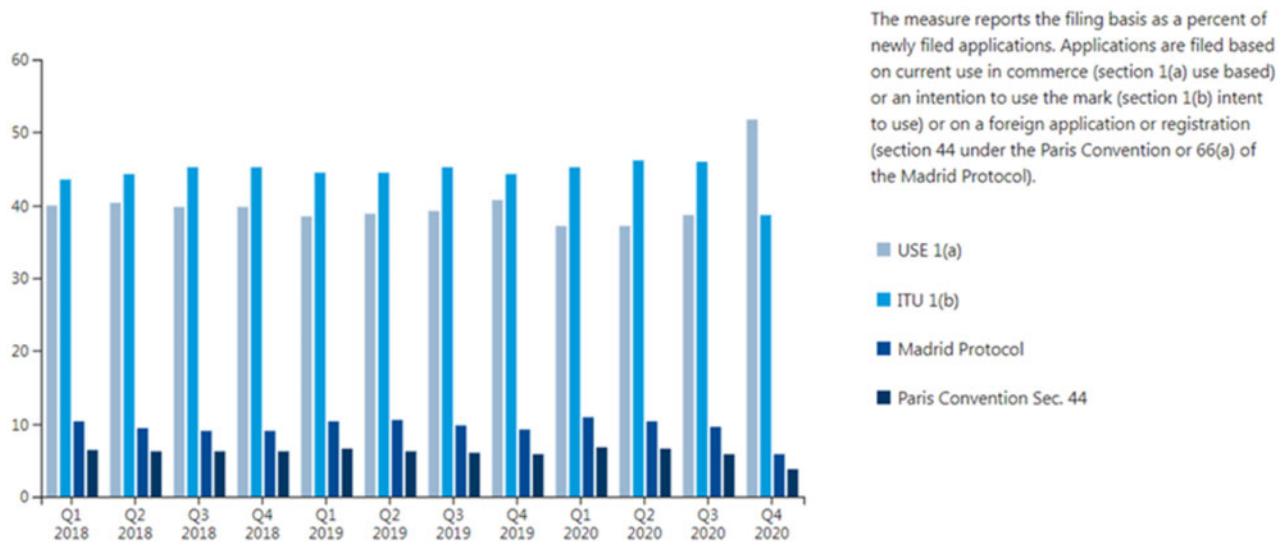


Figure 8 USPTO general chart of applications by filing basis (Source Trademarks Dashboard | USPTO)

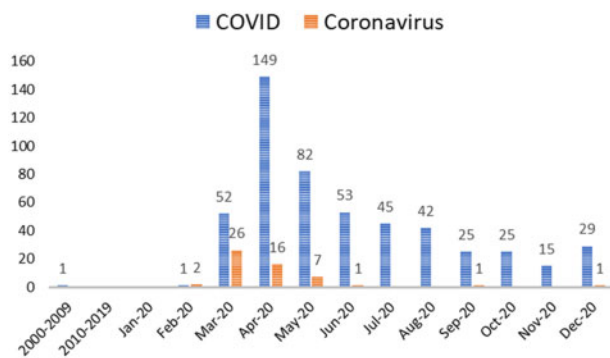


Figure 9 Total applications by date of filing.

applications were: COVID-19 VAX filed for vaccines⁸²; CORONAVIRUS SURVIVAL GUIDE filed for magazines in the field of survival, protection, medicine and pandemics⁸³; and CORONAVIRUS filed for audio tapes, t-shirts and live vocals by an entertainment group.⁸⁴ In March, 52 applications included the term ‘COVID’ and 26 applications the term ‘Coronavirus’. Examples in this group included COVIKILL filed for hand sanitizer⁸⁵ and CORONAVIRUS INFECTED filed for t-shirts.⁸⁶

In April, 149 applications were filed for signs including the term ‘COVID’ and 16 for the term ‘Coronavirus’. Examples include signs such as: COVID-19 MARATHON filed to conduct marathons⁸⁷ and CORONAVIRUS OUTBREAK 2020 for merchandise and clothing. In May, 82 applications were filed for the term ‘COVID’ and 7 ‘Coronavirus’, including a filing for COVID ESSENTIALS filed for nutritional supplements.⁸⁸ In June, 53 applications were filed for the term ‘COVID’ and only 1 for ‘Coronavirus’. Applications include: COVID KIT for lip balm⁸⁹ and CORONAVIRUS FREE for t-shirts.⁹⁰

In July, 45 applications were filed and only for the term ‘COVID’. Examples include: COVID CLEAR for all purpose disinfectants⁹¹ and MAKING COVID-19 HISTORY for transport and packaging.⁹² Similarly, in August, 42 applications were filed for the term ‘COVID’ including COVID WAR VETERAN filed for cloth patches and embroidered patches for clothing,⁹³ and MOUTH-COVID CONNECTION filed for dentistry services.⁹⁴

In September, 25 of the applications were for the term ‘COVID’ and 1 for ‘Coronavirus’. These included AMERICA FIGHTS COVID filed for vaccine research and development⁹⁵ and COVID-19 CORONAVIRUS RECOVERY SYSTEM filed for pillows, herbal pastes, nutritional supplements, medicinal teas and syrups.⁹⁶ Also, in October, 25 applications were filed for the term ‘COVID’ and examples include COVID LIFE filed for bumper stickers and magnets⁹⁷ and P!#CHE COVID filed for masks and a t-shirt logo.⁹⁸ Then, in November, 15 applications were filed, again only for the term ‘COVID’, which included COVID COMBAT filed for vitamins and nutritional supplements⁹⁹ and I_CRUSHED COVID filed for mugs, t-shirts and hats.¹⁰⁰

Lastly, 29 new applications were filed for the term ‘COVID’ in December and 1 for the term ‘Coronavirus’. These include: COVID SHIELD INFECTIOUS BUILDING COMPLIANCY filed for the construction and operation of buildings¹⁰¹; COVID CLINIC filed for health care services, namely, disease management programs¹⁰² COVID-19 VACCINATED filed for rubber bracelets¹⁰³ and CORONAVIRUS VACCINATED filed for novelty buttons and pins.¹⁰⁴

Not surprisingly, the impact of the arrival of the vaccine can be seen in these filings. In addition, the term ‘Vaccine’ has been added to several independent applications in December 2020, as highlighted in Section III.

82 US Trademark Application Serial No 88/792,612 (filed 11 February 2020).

83 US Trademark Application Serial No 88/783,939 (filed 4 February 2020).

84 US Trademark Application Serial No 88/790,444 (filed 9 February 2020).

85 US Trademark Application Serial No 88/847,283 (filed 25 March 2020).

86 US Trademark Application Serial No 88/836,107 (filed 16 March 2020).

87 US Trademark Application Serial No 88/893,385 (filed 29 April 2020).

88 US Trademark Application Serial No 88/908,216 (filed 9 May 2020).

89 US Trademark Application Serial No 90/025,383 (filed 29 June 2020).

90 US Trademark Application Serial No 88/960,707 (filed 11 June 2020).

91 US Trademark Application Serial No 90/034,240 (filed 2 July 2020).

92 US Trademark Application Serial No 90/046,537 (filed 10 July 2020).

93 US Trademark Application Serial No 90/125,529 (filed 20 August 2020).

94 US Trademark Application Serial No 90/091,061 (filed 4 August 2020).

95 US Trademark Application Serial No 90/152,118 (filed 1 September 2020).

96 US Trademark Application Serial No 90/169,872 (filed 9 September 2020).

97 US Trademark Application Serial No 90/261,978 (filed 18 October 2020).

98 US Trademark Application Serial No 90/277,856 (filed 26 October 2020).

99 US Trademark Application Serial No 90/332,787 (filed 20 November 2020).

100 US Trademark Application Serial No 90/318,986 (filed 13 November 2020).

101 US Trademark Application Serial No 90/400,557 (filed 21 December 2020).

102 US Trademark Application Serial No 90/371,001 (filed 9 December 2020).

103 US Trademark Application Serial No 90/389,115 (filed 17 December 2020).

104 US Trademark Application Serial No 90/358,181 (filed 3 December 2020).

III. Contextualizing the data and the impact of the COVID-19 pandemic

From the data reported above, there is no doubt that the COVID-19 pandemic has had a large impact on the number of applications submitted to the USPTO. However, how unprecedented is this impact?

The comparison to illustrated in Figure 10 is useful answer this question. In particular, in this figure, I compare the data presented in this Article with the historical numbers of applications including several terms that related to past sensation events, including pandemics. These terms are: '9/11', 'War on Terror', 'Katrina', 'Ebola', 'Bird Flu' and 'HIV/AIDS'.¹⁰⁵

Interestingly, the number of filings including these terms is considerably lower than the applications including 'COVID' and 'Coronavirus' with the only exception of 'HIV/AIDS'.

In particular, only 56 applications were filed with the USPTO for signs including the term '9/11'. Considering the magnitude of the tragedy, which affected the whole world and brought, for the first time, a large-scale terrorist attack to the shore of the USA, this number seems much lower than the applications including 'COVID' and 'Coronavirus'. An even lower number, only 10 applications, were filed for signs including the term 'War on Terror'.

On the other hand, 93 trade mark applications were filed for the term 'Katrina', although several applications are unrelated to Hurricane Katrina. Here again, considering the number of casualties and the magnitude of the natural disaster, the gap between the trade mark applications filed for this term and the COVID-19 related applications is noticeable.

The numbers of applications for 'COVID' and 'Coronavirus' are also considerably higher than the numbers filed for terms related to previous pandemics with the exception of HIV/AIDS.

Only 15 applications were filed for signs including the term 'Ebola'. The reason for the low number of applications may be that the Ebola outbreaks have happened, so far, far from the USA. Just three applications were also filed for signs including the term 'Bird Flu'. Also in this case, the bird flu pandemic (thankfully) never became a generalized danger for the population at large.

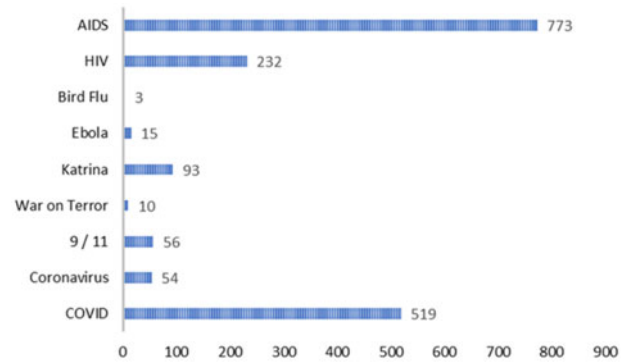


Figure 10 Total applications filed for other sensational events.

A larger number of applications were filed, instead, for the term 'HIV' at 232 applications. The higher number may be explained by the generalized fears and pervasiveness of the HIV/AIDS pandemic worldwide and the large attention that was given to it by many famous public figures. An even a larger number of applications, 673, were filed including the term 'AIDS', many of which, although not all, are products related to the acquired immunodeficiency syndrome. In this respect, the HIV/AIDS pandemic can probably be compared to the COVID-19 pandemic in terms of public awareness, societal fears and strong emotion. However, even though the beginning of the 'HIV/AIDS' pandemic did not see a similar rush to trade mark filings and the related applications have been filed in the span of several years.¹⁰⁶

Lastly, that the COVID-19 pandemic had an unprecedented impact on trade mark registrations is further evidenced by the raise in filings not only for signs including 'COVID' and 'Coronavirus', but for sign including several other medical and pandemic-related terms.

Table 2 illustrates the number of applications filed with the USPTO which included the following terms that have also entered the mainstream lexicon in 2020 due to the pandemic: 'Quarantine', 'Social Distancing', 'Six Feet Apart', 'Shelter in Place', 'Mask', 'Immunity', 'Antibodies', 'Pandemic', 'Epidemic' and 'Vaccine'. Invariably, the number of applications related to these terms saw considerable, if not sharp, increases in filings in 2020. To better highlight this increase, Table 2 reports the yearly filings including these terms since 2011.

¹⁰⁵ The search for the term 'AIDS' in the TESS was conducted to retrieve only the records for the word 'AIDS' and not 'AID'.

¹⁰⁶ Between 1983 and 1990, only 101 applications were filed for 'AIDS', whereas 179 applications were filed between 1991 and 2000, 261 applications were filed between 2001 and 2010 and 128 between 2011 and 2020.

Table 2. Number of applications filed for medical and pandemic related terms.

Trademark Applications	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total Applications (Until 12/31/2020)
COVID	0	0	0	0	0	0	0	0	0	518	519
Coronavirus	0	0	0	0	0	0	0	0	0	54	54
Quarantine	1	1	1	1	0	5	0	2	1	102	121
Social Distancing	0	0	0	0	0	0	0	0	0	62	62
Six Feet Apart	0	0	0	0	0	0	0	0	0	16	16
Shelter in Place	0	0	2	0	1	0	0	0	0	6	10
Mask	36	44	56	68	101	73	88	126	113	740	2299
Immunity	13	11	11	16	10	15	18	18	17	113	352
Antibodies	0	7	4	7	8	10	5	5	5	17	125
Pandemic	2	6	3	0	1	1	1	3	3	101	152
Epidemic	1	3	6	2	5	2	1	4	2	21	91
Vaccine	24	12	13	16	17	16	25	12	12	34	510

Notably, applications including the term ‘Mask’ saw the highest increase in 2020, with 740 applications.¹⁰⁷ In addition, 102 filings including the term ‘Pandemic’ and 21 including the similar term ‘Epidemic’ were filed in 2020. One hundred and thirteen applications were also filed for signs including the term ‘Immunity’ and 17 for signs including the term ‘Antibodies’ in the past year. Filings including the terms ‘Quarantine’ and ‘Social Distancing’ also saw a relevant increase in 2020, with 102 and 62 filing respectively. On the other side, filings with the terms ‘Six Feet Apart’ and ‘Shelter in Place’ contained only 16 and 6 applications, respectively. Finally, a total of 34 applications were filed for the term ‘Vaccine’ in 2020, particularly in the final two months of the year.

Conclusion

The data presented in this article illustrate the impact of the COVID-19 pandemic on the number of trade mark applications filed for related terms, even though it remains difficult to understand what triggered this large number of filings. Probably, applicants think that these terms may promote sales, even though most people (certainly this author) would prefer to forget the

pandemic as soon as possible. Moreover, it is almost certain that large numbers of these applications could be rejected¹⁰⁸ as several signs may be found to be generic or descriptive—in particular, for medical and pandemic-related products—or deemed not to function as trade marks—for example, if they are used as ornamentations on promotional products. The signs may also be found to be deceptive if they imply a specific cure or solution, when this may not be accurate.

Still, the data presented highlight several interesting aspects of the phenomenon of ‘filing sensationalism’. Notably, that these filings are largely driven by individuals and small businesses submitting applications for large numbers of unrelated and promotional products, and most frequently based on intent-to-use rather than use in commerce. Perhaps one additional lesson from the COVID-19 pandemic and the unprecedented number of applications that resulted from it, is the need to further study the phenomenon of ‘sensation-driven’ trade mark filings, the problems that these filings can represent for the trade mark system, and the possible solutions to deter and limit these filings.

107 The search for the term ‘Mask’ in the TESS was conducted only for the singular term.

108 As of 31 December 2020, four applications have been registered for the term ‘COVID’: COVID-ONESWAB, Registration No 6,230,465, for

diagnostic kits; COVID-ONESWAB, Registration No 6,224,097, for diagnostic kits; COVID-ONESWAB, Registration No 6,224,097, for diagnostic kits; and COVID-19 TAX AMNESTY PROGRAM, Registration No 6,155,584, for tax planning services.