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 Analysis

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Argentina's emergency trademark law amendments and reassuring filing figures; exclusive data analysis

- **Country's re-opening to global markets expected to bring more foreign interest and filings**
- **New decree will shake up trademark law for the first time in over three decades**
- **Local filings remain confined to the Americas; has kept brand values low**

In our latest data report, *World Trademark Review* examines Argentina's IP profile, exploring the potential impact of the new emergency decree on trademark law, while providing a thorough breakdown on filings at the Argentine register and delving into the performance of the trademark office.

Major trademark law developments incoming

From a branding perspective, Argentina has traditionally been a tough market to crack. In addition to recurring economic and political difficulties, the country has long been characterised by deficiencies in its IP rights protection and enforcement regime. For over two decades, it has featured consistently on the 'Priority Watch List' of the US Trade Representative's Special 301 Report. In the latest edition of the report, a number of ongoing challenges are flagged up: a lack of effective IP enforcement by the national government; that prosecutions can stall; and cases languishing in excessive formalities.

Counterfeiting and piracy remain huge concerns as well. In particular, a significant volume of fake and illegal goods continues to be shifted at La Salada, a central market in Buenos Aires and the largest black market in South America. While efforts to tackle the problem have been significantly ramped up as of late, with hundreds of raids being conducted and the arrest of La Salada's so-called "kingpin" last July, the latter operation revealed that widespread police corruption has facilitated criminal activities in the capital. This will continue to pose a major hurdle in tackling the trade of illicit goods.

However, a wide-ranging emergency decree issued at the beginning of this year is set to shake up IP practice in the country. On the trademark front, it is hoped that the planned revisions will cut down prosecution times and simplify the opposition procedure. To emphasise the significance of this development, it is the first time that trademark law in the country has been revisited since 1981.

Of course, the full impact of the decree remains to be seen as most of the changes have not yet been implemented. As noted by Santiago Ricardo O'Connor, managing partner of O'Connor & Power: "It is too early yet to determine the impact the emergency decree will have, but we have noticed, since the notification of this decree, there have been delays at the patent and trademark office (INPI) in the issuance of resolutions, which were faster before." Although optimistic about these developments overall, O'Connor also believes that the mediation proceeding in an opposition is a useful tool for settling disputes and should be re-established, as it has been removed under the new system.

Juan Carlos Ojam, attorney at law at Berton Moreno + Ojam, is likewise hopeful about the changes the decree will bring about, but stresses that for the successful implementation of these amendments, more professional staff will be needed at the trademark office to resolve pending cases.

While improvements to the IP environment remain ongoing, the economy has been on an upswing under the direction of pro-market president Mauricio Macri, whose proactive government has helped open the country to global markets again. Led by private, and an influx of foreign investment, the economy has enjoyed seven consecutive quarters of growth. As we will see below, this continued growth has, unsurprisingly, had a positive knock-on effect on trademark filings.

INPI shows mixed performance but filings keep climbing

Analysis of the performance of Argentina's trademark office suggests there is room for improvement. In *World Trademark Review's* previous innovation index of IP offices, Argentina came 21st among all IP offices in terms of the non-core tools and services it offers – in our 2018 edition of the same list, it has dropped to 46th. Notably, other Latin and South American IP offices, namely those of Peru and Mexico, have overtaken Argentina in the rankings.

As seen below, INPI was held back in all three categories that we examined: online metrics, value-added propositions, and knowledge and public outreach. It did particularly poorly in the third category, with our results showing that improvements could be made regarding its interaction and outreach with both the IP and non-IP communities.

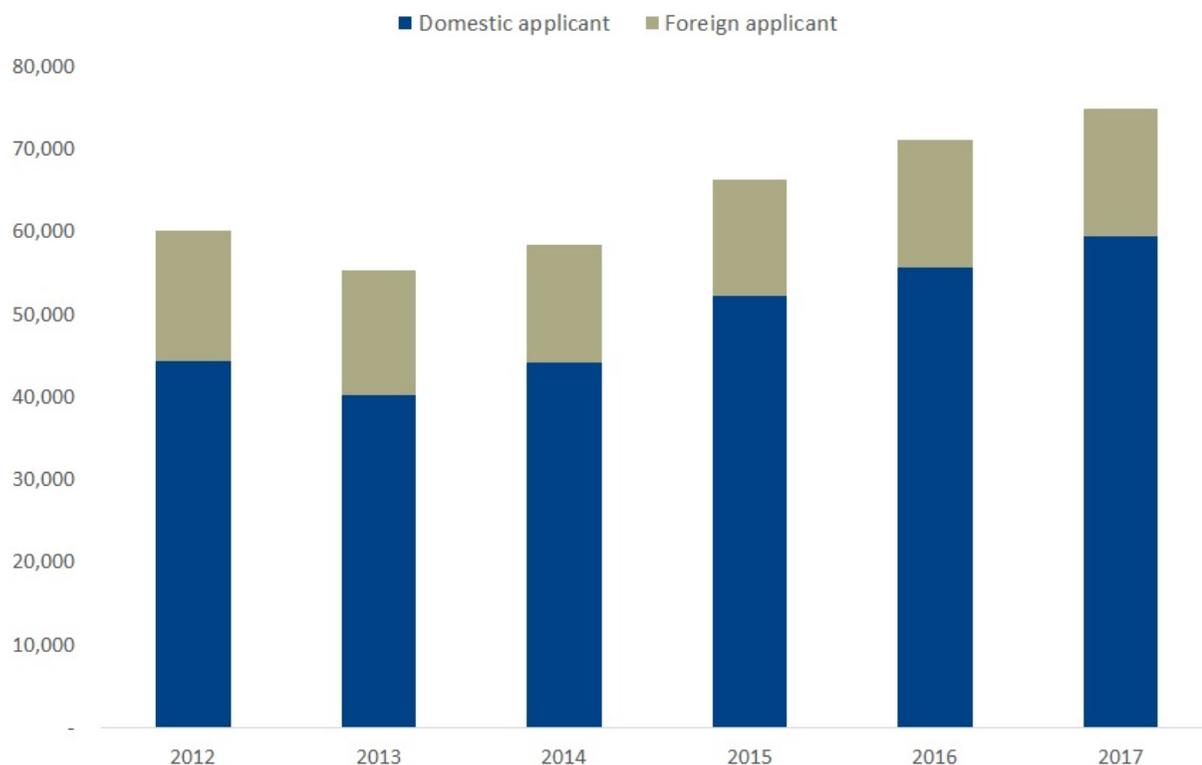
Ranking	Office	Total class count	Online metrics					Value-added propositions				Knowledge and public outreach				
			Website user rating	E-filing user rating	Website accessibility	Third-party database	Third-party office actions	Dispute mediation	Brand-based facilitation	IP advice for SMEs	Liaising on enforcement	Public events	Use of social media	Release of research	Attending non-IP events	
46	Argentina	71,058														

Key	Accomplished/offered	Partially accomplished/offered	Not accomplished/offered
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But it's not all bad news for INPI. Dámaso Pardo, who took over as the office's president in 2016, has high hopes for modernising the office and making procedures more efficient, with an increased focus on electronic filings. Also, Ojam notes that the awareness of the importance of trademark rights has been increasing due to educational efforts from public institutions, NGOs, universities, and the government.

Although INPI may have fallen behind in the innovation rankings, it recorded a strong performance over the last year with regard to its core services. For example, the number of trademark filings has continued to rise in the last year, as it has done since 2012:

Number of applications at INPI – 2012-2017 ([view full-size here](#)):



Source: CompuMark

The constant rise in application numbers can also be attributed to the recovery of the economy. O'Connor states: "With the slow but steady recovery of the economy, we have seen an increase in trademark filings, and this trend will continue, especially if the legal and economic systems remain stable. The trademark market will also be empowered if governmental bureaucracy and taxes diminish to give more room to private investment."

It should be noted that the increase in filings has been driven almost exclusively by domestic applicants. Applications from foreign applicants has consistently hovered at around 15,000, demonstrating some stagnation from an outside perspective.

But here, too, there is reason to be optimistic. As Argentina opens up to international markets once more, there will be a plethora of opportunities for foreign investors and businesses. Diego Palacio, attorney at law at Palacio & Asociados, suggests that this will bolster filings from abroad: "I believe filings will continue to gain pace, but we expect more incoming applications from foreign companies in particular as a result of the greater openness to global markets shown by the current government."

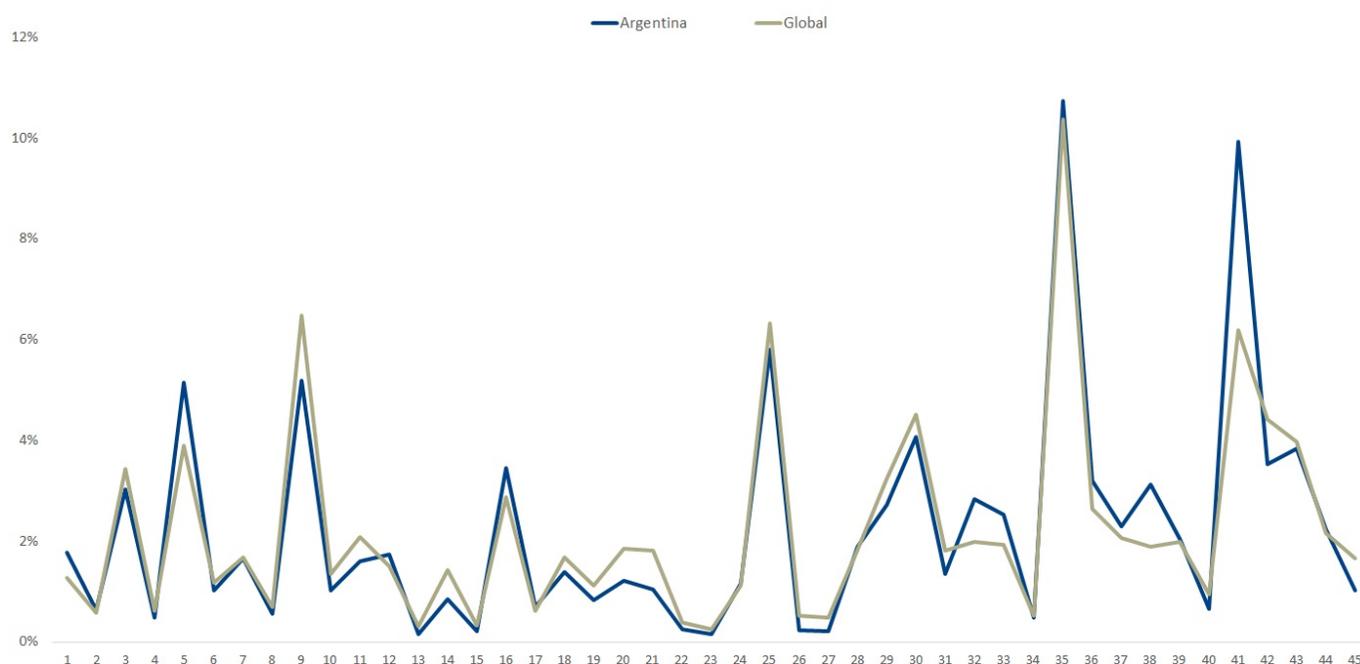
Trademark applications breakdown

With regard to what type of trademarks are being applied for, rights holders are paying more attention to goods than services, with 57% of applications over the last year being for the former – although interest in service marks is increasing at a slightly faster rate, according to trademark searching and watching platform CompuMark.

A full spread of filings by Nice Class by percentage can be seen below, as compared to the global average for each class. Similar to what we saw in our Brazil data report, filings in Class 41 (education, entertainment and sports) are significantly higher than average. Filings in Class 5 (pharmaceuticals), Class 38 (telecommunications) and classes 32-33, covering alcohol and light beverages, are also noticeably higher.

As explained by Ojam: “The higher filings in these classes reflect the most dynamic sectors here that receive the most investment. The cultural, entertainment and sports industries have seen much growth, and in the last few years, Argentina has become stronger in the production of high-quality audiovisual content in various formats. Additionally, the sports sector in general has followed the international trend of being increasingly tied with the entertainment industry.”

Percentage of filings by trademark class - 2017 ([view full-size here](#)):

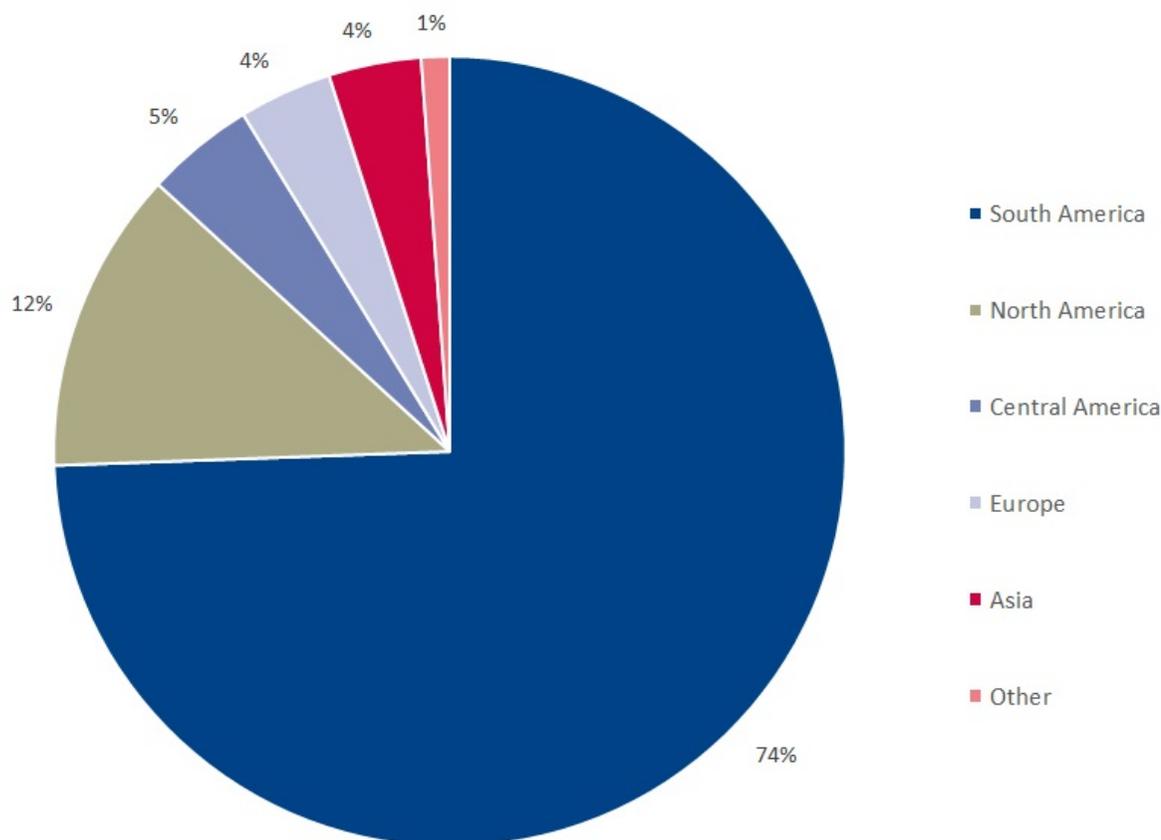


Source: CompuMark

It is worth pointing out that Argentina does not allow the filing of multi-class applications under the current system, meaning that there are cost barriers in place for applicants looking for trademark protection in multiple classes. However, this restriction is set to be removed by the new decree.

In terms of where Argentinian applicants are filing, 74% of applications filed outside of the country were for South American registers, according to data from CompuMark. Together with the North and Central American registers, this figure goes up to over 90% of all international filings, indicating that trademark holders in Argentina have little appetite for markets outside of the Americas.

Percentage of filings by Argentinian applicants in Latin American registers (view full-size here):



Source: CompuMark

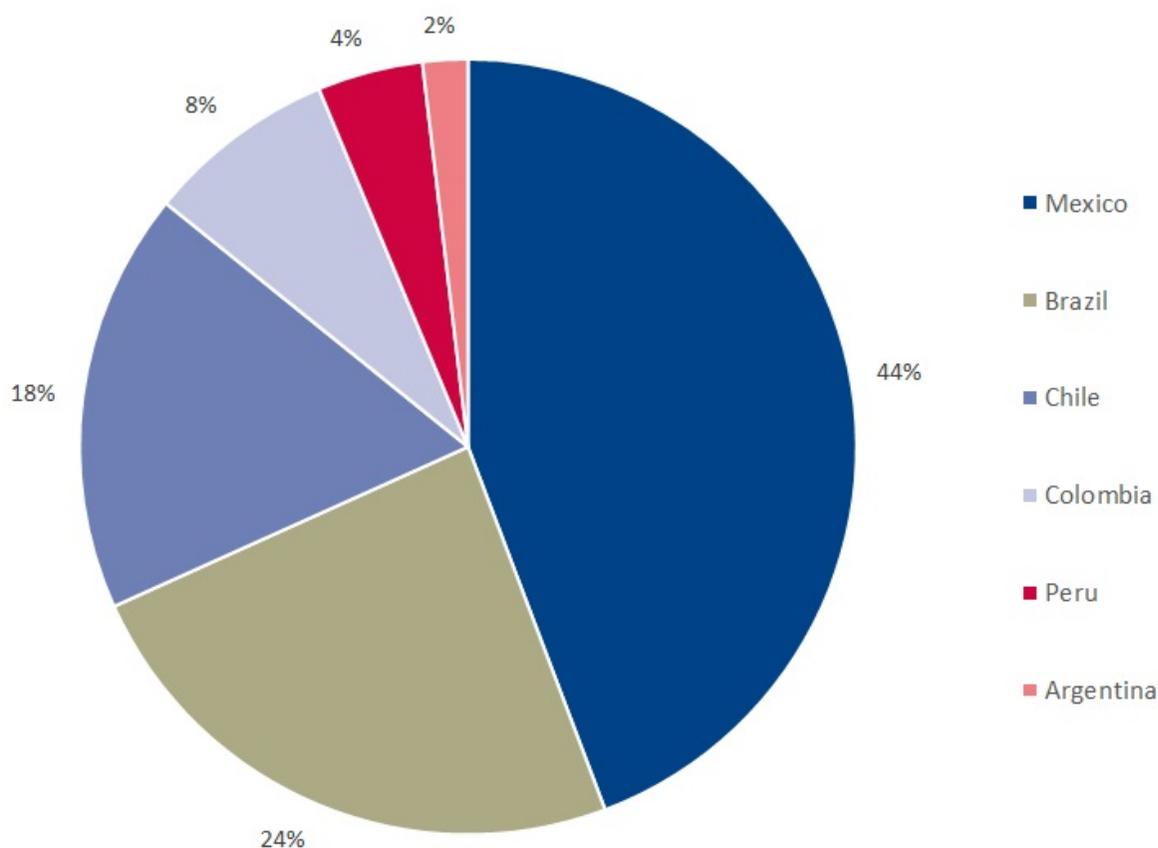
Lack of international presence hindering brand value growth

Although Argentina's brand nation value rose by an admirable 33% in 2017, according to Brand Finance's latest Nation Brands report, the country still suffers from a weaker branding perception overall when compared to many other countries in Latin America, as well as the rest of the world. This would be in part because, as we saw above, INPI is currently losing out to other Latin American IP offices when it comes to innovation and services, and the country is still tussling with high volumes of illicit trade.

Another major factor would be the lack of global expansion among its brands. Data from trademark management platform TrademarkNow shows that filings from even the most valuable Argentine brands are essentially limited to the local register. With filings confined to the Americas, as we noted above, it is tough for Argentine brands to dominate on the international stage. For example, no brands from Argentina feature on Brand Finance's list of the 500 most valuable brands in the world.

Further, on a regional level, Argentina is bested – in terms of brand value – by Chile, Colombia, Brazil, Peru and Mexico. As seen below, the top Argentine brands only make up a 2% share of the 50 most valuable brands in BrandZ's Latin American Brands 2017 report.

Percentage of brand value in Latin America by country – 2017 (view full-size here):

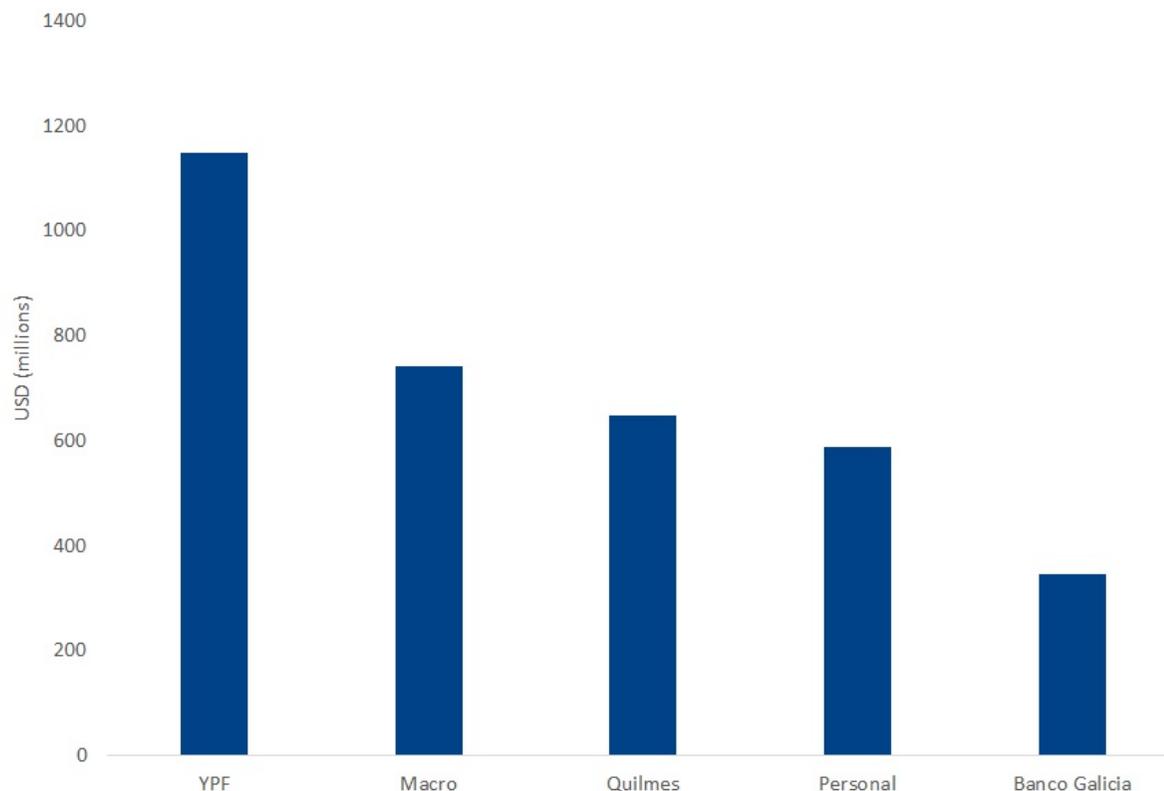


Source: Kantar Millward Brown and BrandZ

The top five brands in the country by brand value, according to the same BrandZ report, can be seen below. YPF, the country's leading energy company, is the only brand that breaks the \$1 billion mark in value and takes the clear lead. Banking brands feature prominently as well – Banco Galicia is the largest domestically-owned private bank in the country, while

Macro is a private bank that has experienced a surge of growth over the last decade. The alcoholic beverages and telecoms industries for brands are led here by Quilmes and Personal respectively – the latter brand is the mobile-phone division of Telecom Argentina, and represents one of only three major mobile phone companies in the country.

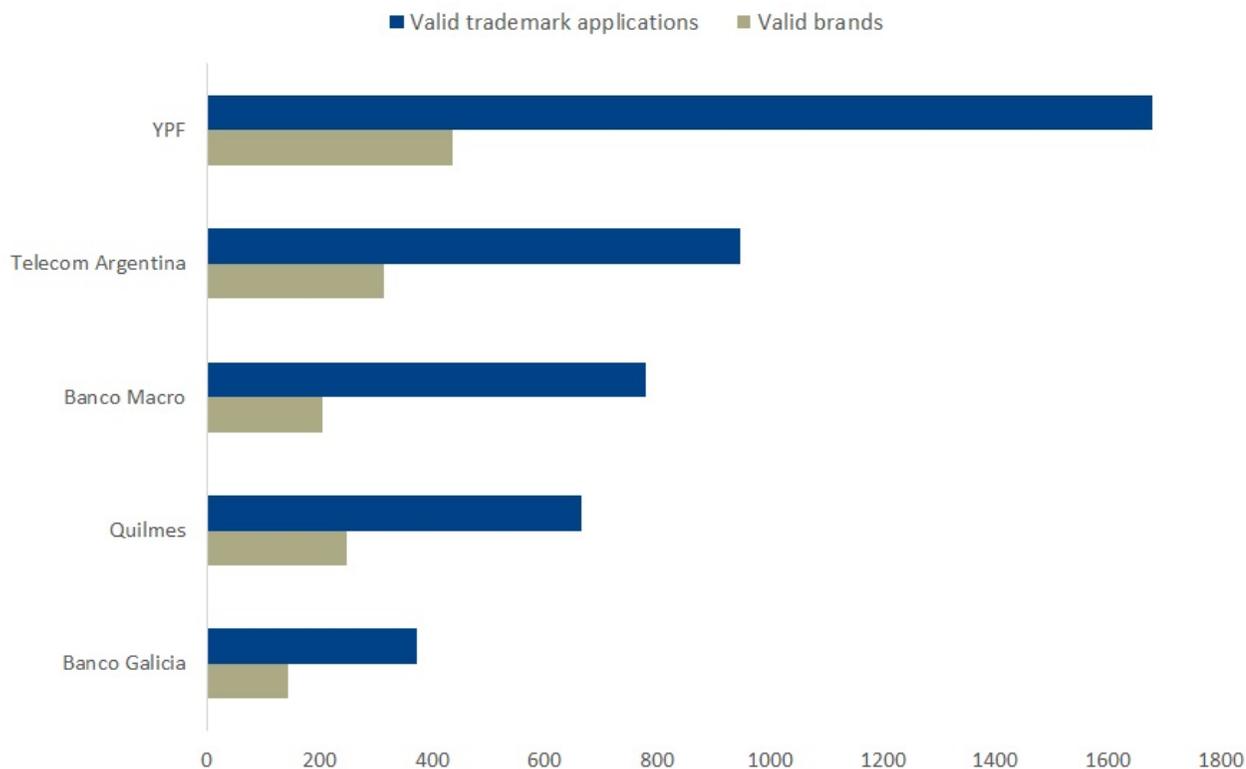
Top five brands in Argentina by brand value – 2017 ([view full-size here](#)):



Source: Kantar Millward Brown and BrandZ

For each of the above brands, brand value directly correlates to the size of their trademark portfolios. The number of valid trademark applications and brands at their disposal can be seen below, with data being provided by TrademarkNow.

Trademark portfolio sizes of five most valuable brands – 2017 ([view full-size here](#)):



Source: TrademarkNow

Far from the easiest market for international brands to navigate, Argentina nevertheless remains a central hub of Latin America with plenty of potential and opportunities. And, although there are still difficulties in the IP enforcement arena and areas for INPI to improve in, there is much to be excited about: the economy is on an upturn; foreign investment is growing; filings are rising; and, trademark law is being re-examined for the first time in over three decades. As Diego Palacio notes, under the new decree, "It is believed that the trademark market will continue to grow and these modifications will generate a more positive environment for rights holders."

Timothy Au

Author | Data reporter



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