



SPEAKING OUT

Mark Bearfoot provides a personal perspective on the importance of an open environment in the legal profession

Readers of the *ITMA Review* who are not familiar with me may be wondering why I've been invited to write an article on the experiences of the lesbian, gay, bisexual and transgender (LGBT) community, and the issues its members face within the IP profession.

One of the reasons for this invitation was that, on 30 November 2015, ITMA joined the UK IPO, the Chartered Institute of Patent Attorneys and other leading IP organisations in launching a diversity initiative called IP Inclusive. Led

by a taskforce of nearly 40 members, IP Inclusive will focus on four work streams:

- Creating resources aimed at raising awareness of the IP profession and encouraging recruits from a wider range of backgrounds;
- Developing and implementing a voluntary code of practice for IP professionals, and best-practice guidance;
- Creating and delivering equality, diversity and inclusion training for IP professionals; and
- Launching IP Inclusive support networks for the LGBT community, under the banner of IP Out, and Women in IP;

these networks will eventually be offering mentoring schemes to their members.

The foundation of the IP Inclusive initiative is its Charter for Equality, Diversity and Inclusion. This Charter is a public commitment by signatory organisations to adhere to the principles of equality, diversity and inclusion in all aspects of employment practice, especially recruitment and retention, career development and workplace ethos. The Charter consists of the following six commitments:

"1. Having in place a named individual within our organisation as Equality, Diversity and Inclusion Officer. This



person will be sufficiently senior to make change happen and to be accountable for our progress;

2. Having in place a written Equality, Diversity and Inclusion policy for our organisation and making everybody in the organisation aware of it;
3. Promoting openness and transparency so as to demonstrate merit-based equal opportunities in our recruitment and career-progression processes;
4. Acknowledging the effects of unconscious bias and introducing measures to tackle it;
5. Monitoring and reporting internally on our progress using measures, and at intervals that are appropriate to our size and nature;
6. Sharing our experience within the IP Inclusive community to help build an effective network for equality, diversity and inclusion across the IP sector.”

Now, you could be forgiven for asking why this initiative is necessary in a modern Western society – and, on the basis of my own personal experience, you’d be right to voice your reservations. Which brings me

back to that writing invitation. As an openly gay man in the IP community, I honestly do not believe that my career has ever been hindered through discrimination on the basis of my sexual orientation. I certainly have never been the recipient of any form of homophobic mistreatment or bullying in the workplace; far from it, in fact.

I came out in 1999, when I was 18 years old and working as a formalities clerk at Markforce Associates, and I have only ever encountered tolerance and acceptance throughout my career since then. In fact, I have had managers at both The Coca-Cola Company and at the Harley-Davidson Motor Company who are openly gay. Interestingly, the trade mark team here at Harley-Davidson consists of eight people, and three of us are openly gay. I could not wish for a more accepting team.

ATYPICAL EXPERIENCE?

However, my experiences may not be typical for all LGBT employees. In 2013, YouGov conducted a survey on

behalf of the LGBT charity Stonewall that found that one in six (15 per cent) of LGBT employees have experienced verbal homophobic bullying from their colleagues in the past five years. One in eight (13 per cent) of LGBT employees would not feel confident reporting homophobic bullying in their workplace. Just over a quarter (26 per cent) of LGBT employees are not open to colleagues about their sexual orientation.

This last finding is perhaps the statistic I can relate to the most. For me, there have always been two aspects in which my homosexuality has interacted with my career.

First, coming out. When starting a new job, it is always difficult to decide when to disclose the fact that you’re gay, and, in my case, that you’re married to a man. I remember that it took a few weeks, if not months, before I felt comfortable enough to come out to my colleagues at the firms I worked at earlier in my career – though this reluctance was much more to do with my own confidence



than the environment of those respective firms. When I did eventually decide to come out, it never seemed to surprise my colleagues, and it was certainly a non-issue. Now, as a mature 30-something with much more confidence and an established career, I will purposely mention my husband in interviews, because I would rather be open from the outset.

Having said that, I do have friends in the broader IP and legal profession who are not open about their sexual orientation with their colleagues. I have even witnessed one friend pretend to be straight with senior colleagues in an attempt to be “one of the boys”. These were colleagues with whom that person had worked for many years.

The fact is that being out at work is incredibly important. A Stonewall research paper entitled *Peak Performance* found that LGBT employees who can be open about their sexuality at work “are more likely to enjoy going to work, feel able to be themselves, form honest relationships with their colleagues, are more confident, and [are] ultimately more productive.”

Interestingly, Law Society research suggests that four per cent of partners in large law firms and 4.8 per cent of partners in small firms have reported that they are lesbian, gay or bisexual. The proportion of solicitors reporting that they are LGB is also four per cent

in large firms and 4.6 per cent in small firms. The proportion of other legal staff reporting they are LGBT is higher in small firms (5.3 per cent) than large firms (2.6 per cent).

I would be fascinated to discover the corresponding percentages in trade mark firms, and would certainly support any research commissioned by ITMA in this area.

INTERNATIONAL ELEMENT

The other element of coming out is how it affects relationships with external business partners, clients and foreign counsel. Building networks and relationships is an extremely important element in any successful career. I know a number of you will have recently returned from the International Trademark Association annual meeting, at which you would have attended meetings and drinks receptions with various foreign counsel. I’m sure part of your conversations with these friends, colleagues and acquaintances would have turned to the subject of wives, husbands, children and family holidays. I, for the most part, will likely have tried to avoid these conversations with particular foreign counsel, because I simply cannot predict their reaction when I start to talk about my husband Daniel. I have had people in the past refuse to shake my hand because of my homosexuality, and it’s certainly an experience I’d rather not repeat.

Perhaps the most challenging aspect of the role at Harley-Davidson is attending motorcycle rallies and engaging with members of the biker community, who will regularly ask about my presumptive wife or girlfriend. Rather than correcting their assumptions, I simply find myself changing the subject.

The second aspect is in relation to international business travel, which

my role requires me to undertake in a relatively large amount. This year will likely entail as many as 16 trips. Readers may not be aware that there are at least 75 countries in which homosexuality remains illegal. This list includes India, Singapore and the UAE, where anyone with business connections in the Middle East or Asia will likely be required to travel. Admittedly, these laws are rarely enforced against tourists or business travellers, but there are instances where they are.

A British man was arrested in 2014 and imprisoned for four months in Morocco. This is certainly an issue that should be on the radar of senior partners and equality, diversity and inclusion officers.

Another point that is particularly relevant to those working for multinational firms is the potential for assignments and/or promotions to international offices within your company. These offers are usually highly competitive and are incredible opportunities to develop and progress in your career. While an LGBT employee may be willing to travel to Dubai or Singapore for a business trip, accepting a long-term assignment or permanent promotion in the Dubai office may not be feasible, particularly if that employee is married and has children. Turning down such an offer is never going to be looked upon favourably by senior management, and may negatively impact your career if that opportunity is the only way to gain particular experience.

I think we need to look at the broader legal profession, particularly law firms, for inspiration on how they have engaged with equality, diversity and inclusion over the past 10 years.

CULTURE CLASH

In 2006, a report by the Law Society revealed that the “macho” culture of

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law firms was hindering LGBT lawyers from coming out at work, fearing it would affect their career progression. It described “constant trips to Spearmint Rhino (a lap-dancing club chain), rugby matches and drinking sessions as holding undertones of homophobia”.

In the 2008 Stonewall *Workplace Equality Index*, not a single law firm entered the Top 100 Employers list. This year, however, 11 law firms have reached the Top 100 – with Pinsent Masons coming fifth overall – and the majority of these law firms have notable IP practices, including Clifford Chance and Baker & McKenzie. The Stonewall *Workplace Equality Index* is an evidence-based benchmarking tool used by employers to assess their achievements and progress on LGBT equality in the workplace. Each participant must demonstrate their expertise in 10 distinct areas of employment policy and practice, including networking groups, career development, training and community engagement. More than 400 organisations participated in the 2016 index, with MI5 being named employer of the year.

Interestingly, there was a catalyst for this sudden engagement by the

legal profession. In 2007, JP Morgan’s Associate General Counsel and Managing Director Tim Hailes summoned its key relationship partners from its panel law firms to a meeting with Stonewall to learn about best practice towards LGBT staff, and to bring its LGBT policies into line with the bank’s own policy. It targeted its top 15 external firms by spend. In his letter to the external firms, Tim Hailes noted that the legal community is “perceived by some to lag behind other industries ... We believe that the seminar will provide an opportunity to discuss the issues and help to equip you with the tools to address it proactively and in line with your firm’s unique culture.” He also appeared in *The Lawyer* and stated that: “The firms’ commitment to this agenda will be a relevant factor [in the bank choosing them]. It isn’t the deciding factor, but it will be taken into account as part of our assessment, and not doing it won’t be viewed positively. We want to see change.”

Another key development was the creation in 2008 of the InterLaw Diversity Forum for LGBT Networks. This is an inter-organisational forum for the LGBT networks in law firms and all personnel (lawyers and non-lawyers) in the legal sector, including in-house counsel and some 1,000 members and supporters from more than 70 law firms and 40 corporates and financial institutions. The forum holds monthly meetings for its members in which best practices are shared and discussed,

and networking opportunities provided. Despite my participation in the forum since its inception, I have rarely had the opportunity to meet with other IP professionals, and certainly never with any registered Trade Mark Attorneys. We are most definitely under-represented in the forum.

PLAY YOUR PART

As I’ve witnessed the progress made by law firms, I have been a little disappointed by the lack of engagement by trade mark firms in the form of equality, diversity and inclusion, and therefore welcome the launch of IP Inclusive and the creation of IP Out. However, the initiative and the support networks will only succeed if the respective communities sign up and get involved.

If your firm is interested in learning more about supporting your LGBT employees, then I would certainly recommend that you check out the workplace resources available on the Stonewall website at stonewall.org.uk, particularly its *Peak Performance* guide. Stonewall recommends a number of key actions employers can take to make employees more productive in the workplace, including: introducing anti-gay-bullying and harassment policies; training line managers; auditing existing policies to ensure they create a safe and supportive workplace for LGBT employees; monitoring sexual orientation in employee engagement surveys; and creating an LGBT network group. ■



Mark Bearfoot

is Brand Protection Manager EMEA at Harley-Davidson Europe Ltd

mark.bearfoot@harley-davidson.com

Mark is a member of the ITMA Council.