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Brexit and EU trademarks

Information is still scarce and nobody knows for sure what will happen, but here's some background and educated speculation on Brexit and what it means for the owners of EU trademarks.

Where are we now?

The UK government has now passed first pieces of legislation on Brexit. When Brexit happens, all EU law will be implemented in the UK. **Presumably this also means that rights conferred by EU law and EU bodies will at first be valid in the UK as well.** This would mean that EU trademarks continue in force for the UK when Brexit happens. It is likely that during the negotiation phase more detailed regime will be implemented.

The EU Commission has on its part published a position paper on intellectual property. The Commission states that EU rights should be continue in force in the UK after Brexit without additional cost to the right holder. If necessary, the UK should introduce national legislation to ensure this. If EU Commission's position is accepted by the UK government, the transition to post-Brexit world will be relatively smooth.

What is the likeliest scenario?

First, nobody knows for sure what will happen. We consider it the **most likely scenario that there will be an implementation mechanism whereby EU trademark rights are accepted in the UK, but there is a need for some kind of "validation"**, basically a fee for the UK Intellectual Property Office. As for now, we don't see any particular reason for companies to file separate UK trademark applications in preparation for Brexit. This could however change when more information emerges.

Legal representation after Brexit (the use of UK attorneys)

Many companies, whether based in the UK or elsewhere, rely on UK attorneys to represent them before the European Intellectual Property Office (EUIPO). **At the moment it is unclear whether UK attorneys will continue having representation rights before EUIPO.** The decisive question is whether the UK will stay in the European Economic Area (EEA) and the single market similar to Norway and Iceland, or whether they will conclude bilateral agreements similar to Switzerland. There is at least a risk that companies will not be able to use UK representation after Brexit. This would affect hundreds of thousands of EU trademarks. For those companies that are based on EEA countries this would not be a major issue because they do not need a representative in the first place. For others, this question is something that they should take note and prepare for ensuring that their trademark portfolio is under representation that can continue even after Brexit.



UK practitioners' view

The Chartered Institute of Trade Mark Attorneys is advocating a position whereby EU trademarks would continue being valid in the UK as well and UK attorneys would continue having representation rights before EUIPO. This view approach would be the most beneficial for rights holders (as well as UK based representatives) because the impact of Brexit would be the least disruptive. No immediate action would be necessary on part of companies and EU trademarks would continue to be valid in the UK as well. It is unlikely that this position will be accepted as such because it would require significant changes to EU legislation.

What should you do about Brexit?

1. Make sure you have a good understanding of your EU trademark portfolio. Make sure you know each trademark and their details (possible priority dates, seniority claims, representative, etc.). When we finally know what happens when Brexit hits and what is necessary, you should make sure that no mark is left behind. If you are unsure of your EU trademark rights, please contact us through Reggster.com/brexit.

2. Check Reggster.com regularly for our Brexit alerts. We will keep on monitoring the negotiations between the UK government and the EU. You can subscribe on Reggster.com/brexit.