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BREXIT and its effect on UK IP Rights Holders – An Update! (14 December 2018)

Article 50 of the Treaty of Lisbon was invoked on 29 March 2017. The UK therefore has 2 years until 29 March 2019 to negotiate its departure from the EU.

After much discussion in Parliament, the European (Withdrawal) Act was finally passed and received the Royal Assent on 26 June 2018.

The Act effectively repeals the European Communities Act 1972 and makes other provisions in connection with the withdrawal of the United Kingdom from the EU.

Section 19 of the European (Withdrawal) Act makes it clear that nothing in the Act shall prevent the UK from replicating in domestic law any EU law made on or after exit day, or continuing to participate in, or have a formal relationship with, the agencies of the EU after Exit day.

The Draft Withdrawal Agreement was published on 14 November 2018, with a vote on the Agreement due to take place in the House of Commons on 11 December 2018. This vote was postponed, however, due to government fears that the Agreement would not be able to garner sufficient support in parliament. The Prime Minister is currently trying to make last minute amendments to the draft Agreement in the hope that these will result in positive passage through the House of Commons. The rescheduled vote is expected to take place by 21 January.

It still remains to be seen whether the route to be taken for the UK's departure will be that of a Hard Brexit (which is generally taken to mean a significant change, with the UK leaving the EU single market and customs union, and no longer implementing EU freedom of movement rules) or that of a Soft Brexit (which is often used to describe the UK keeping some kind of free trade arrangement with the EU, remaining in a customs union and allowing EU citizens to live and work in the UK).

However, for our purposes, the position as at today is that:

EU TMs (formerly known as CTMs) and EU Registered Designs are as effective in the UK as they have always been.

Our General Recommendations (subject to specific advice in particular circumstances) therefore remain:

1. File a UK TM application if the UK is your key country of interest (this would always have been our advice in any case).

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2. File an EU TM application if you are interested in using your mark in other EU member states (the UK territory will be divided out as a separate registration retaining its original date, post-Brexit, most likely by the Montenegro Model). THERE WILL BE NO NEED TO REFILE POST-BREXIT.
3. Use a UK trade mark registration as the basis for filing any International Registration, if appropriate (less likelihood of Central Attack from the owners of any potentially conflicting marks in 27 other countries). This could include designation of the EU TM.
4. File EU Registered Design applications now (the UK territory will be divided out as a separate registration, retaining its original date, post-Brexit, most likely by the Montenegro Model). THERE WILL BE NO NEED TO REFILE POST-BREXIT.
5. File a UK Design Registration after 1 October 2017 as the basis for filing an International Design Registration through the Hague system, claiming priority, if appropriate - when the UK joins Hague (now planned for April 2018). You could then claim priority and include a EU Design application in the process.
6. UK unregistered Design Right is not affected by Brexit.
7. EU unregistered Design Right will be lost. (This will affect the fashion industry.)

NB:

- The UK remains a member of the Patent Cooperation Treaty which remains unaffected by its membership or otherwise of the EU.
- The European Patent Convention is “European” in a geographical rather than a political sense and is unaffected by Brexit.
- Copyright is governed by the Berne Convention and is unaffected by BREXIT.

The Unified Patent Court (UPC) system was ratified by the UK Government on 26 April 2018. The UPC will now have exclusive competence in respect of European patents and European patents with unitary effect.

For further information or advice, please email or phone Carin Burchell on info@trade-mark.co.uk or + 44 1904 476388.

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