
United Kingdom: Registered EU Rights Protected in UK Even if no Brexit Deal

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It is now part of British law that the UK will leave the EU on March 29, 2019, regardless of whether a deal has been reached with the EU as to how the separation will actually work. Currently, there is a lengthy withdrawal agreement setting the terms of divorce, including financials (who owes money to whom) and what happens to the residency of affected UK and EU citizens. There is also a much shorter statement on future relations, which is not legally binding but sets forth the kind of relationship that the UK and EU envision in several areas, including trade. The current proposed deal was voted down by the UK Parliament, however, on January 15, 2019, so further negotiations will take place in the days and weeks ahead.

If the UK leaves the EU in March without a deal, the current guidance provides that all existing registered EU trademarks and Registered Community Designs will continue to be protected and enforceable in the UK through a new UK equivalent right that will come into force at the moment of exit. Minimal administrative burden is anticipated, and the new right will be treated as if it had been a UK right all along. Therefore, these trademarks and designs will be subject to renewal in the UK, can form the basis for proceedings before the UK courts and the UKIPO, and can be assigned and licensed independently from the corresponding EU rights. No fees are expected to be charged for this “cloning” process. For pending but unregistered applications, owners will be able to refile in the UK, and for a

period of nine months post-exit, the UK government will recognize the earlier filing dates from the corresponding EU applications. It is unclear whether a fee will be charged for these re-filings. These same provisions apply to IRs designating the EU. And, post-Brexit, UK applicants will still be allowed to file EU applications just as they do now.

While other implications of Brexit (political and/or economic) may be uncertain, brand owners now have at least some assurance that their EU rights will remain protected in the UK post-Brexit, even if the separation is not preceded by a fully-negotiated agreement.

Primary Contacts

Robin N. Baydurcan