



Possible effects of Brexit on European Union trademarks and registered designs Newsletter Update 12 April 2019

I. What has happened so far? A brief overview.

After the referendum of 23 June 2016, in which 52 % of the British people voted for a “Brexit” and thus for leaving the European Union, the United Kingdom officially submitted its request for withdrawal to the European Union on 29 March 2017.

The subsequent tough withdrawal negotiations with the European Union led by Prime Minister Theresa May ultimately resulted in the “Draft Agreement on the withdrawal of the United Kingdom”, which provided a legal basis for a regulated Brexit (“Brexit Deal”). However, this draft agreement did not meet with approval of the House of Commons and was rejected on 15 January 2019, again on 12 March 2019 and finally on 29 March 2019.

Following a UK Parliament vote on extending Article 50, the UK asked the EU for an extension to the Brexit date of 29 March 2019. It was agreed that, if the Brexit Deal were approved by the UK Parliament by 29 March 2019, then the UK would leave the EU on 22 May 2019 in accordance with the provisions of the Brexit Deal. However, if the Brexit Deal were rejected without a further extension being sought by the UK or without the UK unilaterally revoking Article 50 then the UK would leave the EU without a deal on 12 April 2019. As the UK Parliament rejected the Draft Agreement on the withdrawal of the UK on 29 March 2019, and as the UK Parliament were keen to avoid a “No Deal” scenario, Theresa May requested a further extension to the Brexit date and this was approved by the EU in the early hours of 11 April 2019.

The extension to the Brexit date means that the UK will now leave the EU on **31 October 2019** unless a deal is agreed with the EU before that date, in which case the UK will leave earlier and in accordance with the terms of the agreed deal.

II. What will the future hold for EU trademark and registered design owners? A compilation of conceivable scenarios.

Up until 31 October 2019 (or later if the UK leaves the EU with a deal) all EU registered trademarks/ registered designs will continue to provide right holders with protection in all 28 member states of the European Union. As regards the future, several scenarios are possible. A non-binding vote in the British Parliament on 29 January 2019 and a further indicative vote on 27 March 2019 revealed that a “No Deal” Brexit was not acceptable to the majority of British Members of Parliament. However, the default position is that, in the absence of a deal being agreed between the UK and the EU, the UK will leave the EU without a deal on 31 October 2019.

The extension to 31 October 2019 provides sufficient time for various events to potentially take place before then. It is likely that Theresa May will once again ask the UK Parliament to vote on the thrice rejected Withdrawal Agreement. Talks between the major UK political parties are continuing and there may also be a further series of indicative votes in the UK Parliament to ascertain the preferred options for the future relationship with the EU. It is possible that, if the UK Parliament cannot reach a decision, there may be a change of Prime Minister or a General Election. There has also been increasing talk of a further public vote on the issue.

The possible scenarios for the future are:

1) “No Deal” Brexit

If no further action is taken by the UK, then the default position is that the UK will leave the EU on 31 October 2019 with no transitional provisions in place.

The UK government has issued advice in respect of Intellectual Property matters in the event that the UK leaves the EU without a deal. According to the government advice, registered EU trademarks and EU registered designs will be converted into equivalent national UK rights, thereby protecting existing EU registered rights in the UK. Furthermore, trademarks and designs applied for in the EU may be subsequently filed within a prescribed time limit in the UK while maintaining the filing date and priority date of their EU application.

2) No Brexit

The United Kingdom might remain in the European Union by unilaterally revoking Article 50. EU trademarks and designs would then – consequently – maintain their current form and the above provisions would not enter into force. At this time, this scenario seems to be an unlikely outcome unless the UK Parliament changes its current majority opinion against revoking Article 50, possibly as a result of a further referendum or a general election.

3) The UK leaves the EU with a deal

The EU has indicated that they are not prepared to renegotiate the Withdrawal Agreement. If the UK votes for a fourth time on this agreement and if it is approved, then the UK would leave the EU before 31 October 2019 on the terms of this agreement, which provides for a transitional period until 31 December 2020. During this transitional period, the provisions for EU trade marks and designs would not change.

Following further UK Parliamentary discussions, it is possible that further negotiations with the EU might take place. As evidenced by the indicative votes on 27 March 2019, the UK Parliament currently appears to prefer a softer Brexit than the deal that the government has negotiated so far. It is possible that a New Brexit Deal might be negotiated, however, the contents of any such agreement are of course, as yet, uncertain.

4) A further extension of the Article 50 period to leave the EU

It is unlikely that the EU will agree to the Article 50 period being extended further but it is not impossible.

III. What to do now? Our recommendation.

As a result, EU trademark owners are faced with the choice of how to address the uncertainties associated with Brexit.

For those trademark owners, **whose business interests focus to a greater extent on the territory of Great Britain**, we recommend considering applying for national UK trademarks before 31 October 2019 if the UK has not agreed a deal with the EU, in order to be on the safe side and entirely independent of the developments that may or may not take place in the United Kingdom. We would be pleased to advise you on the requirements and costs associated with a national UK trademark application.

For those EU trademark owners whose **business interests in Great Britain are small or negligible**, we consider it to be a calculable risk not to apply for national UK trademarks for the time being, but to wait and see which developments will take place in the United Kingdom before 31 October 2019.

In any case, please do not hesitate to contact us, if you have any questions or would like further information regarding any of the above.



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