

The Brexit IP doomsday scenario spelled out - EUIPO gets frank with EUTM and RCD owners about what happens if the UK lands “no deal”

Kluwer Trademark Blog

December 8, 2017

Julius Stobbs (Stobbs IP)

Please refer to this post as: Julius Stobbs, ‘The Brexit IP doomsday scenario spelled out - EUIPO gets frank with EUTM and RCD owners about what happens if the UK lands “no deal”’, Kluwer Trademark Blog, December 8 2017, <http://trademarkblog.kluweriplaw.com/2017/12/08/brexit-ip-doomsday-scenario-spelled-euipo-gets-frank-eutm-rcd-owners-happens-uk-lands-no-deal/>

On 5th December the European Commission and the EUIPO issued this notice to EUTM and RCD applicants and owners. It is a stark spelling out of what will happen on the date of withdrawal of the UK from the EU - 30 March 2019 - *if* there is no agreement on the issue of EUTMs and RCDs and other EU IP law.

In that scenario the UK is now a “third country” and registered EUTMs (including International Registrations designating the EU) and RCDs will cease to have effect in the UK. It is scary to think the UK might leave without a settlement and in my view very unlikely, but one never knows in politics especially in the current climate. Some UK parties in the debate have been suggesting “no deal” is better than a “bad deal” and this is after all the week when ministers admitted there had in fact been no research into the economic impact of Brexit on the UK economy. Of course, we have this morning had an indication agreements can be made and deals can be done.

So does this notice from the EUIPO up the ante? I would suggest it certainly ups the uncertainty for brand owners. If the UK does leave with no deal it will very

likely be at short notice leaving very little time to take remedial action such as emergency re-filings. If we do leave in a rush, is it likely sorting out the trade mark and design position will be anywhere near the top of the government's list?

So does this increased uncertainty change the landscape for brand owners? Does it now counsel re-filing EUTMs as UKTMs to give certainty of position? Is there such a pre-emptive option for RCDs?

But is this really so cliff edge apocalyptic? What of the Great Repeal Bill? Could the UK not unilaterally decide to convert / adopt the EUTMs and (more tricky) RCDs as having full effect in the UK?

Interesting times...

As it has been since the referendum there is still little certainty and in general uncertainty and destabilising of harmonised and unitary rights is a bad thing for brand owners, and certainly there is no one size fits all advice or option for brand owners.