

Brexit: accustomed to borders

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In a recent Notice to Stakeholders, the European Commission has highlighted a possible outcome for customs and enforcement, following the British exit from the EU. Whilst this is subject to transitional provisions and the withdrawal agreement at large, it serves to reiterate the cliff edge which may conceivably be presented to UK based brand owners in the wake of Brexit.

At present, a third party may request that the customs authorities of a single or multiple member state take action against activity which may infringe that third party's IP. If this request is accepted by the customs authority of the relevant member state, this decision to enforce the request will also be accepted in the other member states, as dictated by the request.

In the event that the UK leaves the EU without a provision to the contrary, the UK will no longer stand as a jurisdiction wherein such a request may be filed and then actioned in the remaining member states of the EU. In addition, decisions taken in the UK to enforce certain IP rights at customs will no longer bind the remaining EU27.

As such, the recommendation for the brand owner would appear to be that of pre-emptive action. If a UK based decision on a Union application has allowed certain IP rights to be enforced by EU based customs, the brand owner ought not assume that this protection will persist. Instead, a further application will need to be filed in

one of the EU27.

Whilst this communication does not necessarily raise any new concerns, it certainly serves to highlight an additional area wherein the brand owner ought to be vigilant in light of Brexit. Whilst the UK's withdrawal agreement and transitional provisions will hopefully address many of these legal pitfalls, a clear stop gap in protection remains a possibility.