

Brexit: Assurances on preservation of rights

Kluwer Trademark Blog

July 31, 2018

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Please refer to this post as: Julius Stobbs, Cameron Malone-Brown, 'Brexit: Assurances on preservation of rights', Kluwer Trademark Blog, July 31 2018, <http://trademarkblog.kluweriplaw.com/2018/07/31/brexit-assurances-preservation-rights/>

After many months of uncertainty, we have now received a degree of assurance as to the manner in which EUTM and RCD rights will persist in the UK following Brexit. This assurance has come from Robin Walker, the Under-Secretary of State for Exiting the European Union, in a recent Parliamentary debate:

UK-owned trademarks and design rights in the EU27 will be unaffected by our withdrawal. Meanwhile, we have agreed to protect all existing EU trademarks, community-registered designs and unregistered designs in the UK as we leave the EU. In place of those EU-level rights, 1.5 million new UK trademarks and registered designs will be granted automatically and for free. The creative industries can therefore be confident that their existing intellectual property rights will not be diminished, and that the UK will remain one of the best places in the world to protect and enforce IP rights.

Whilst this leaves a large number of questions unanswered, it serves as a positive step towards clarity for the brand owner. As discussed previously, one option for the post-Brexit protection of the unitary rights is indeed an automatic generation of an equivalent UK right. There are a number of potential issues with this position, including but not limited to, the owner of the new UK right having no use to

support the registration in the UK, pending applications which are mid-examination incurring parallel examination, marks which may not have obtained registration in the UK sidestepping the examination requirements and so on, *ad brexitum*.

The process by which these rights will be generated is, seemingly, *automatic*. Clear positives of such a system is the minimal administrative burden for the rights holder, as well as the immediate continuation of protection in the UK. One key issue which such an automatic system may generate is with regards to non-use, as mentioned above. If the owner of an EUTM has maintained said registration based on use which has not taken place in the UK, their automatically generated UK equivalent right will immediately be subject to cancellation for non-use. This could be addressed by beginning a new 5 year period of non-use invulnerability, however, it feels undesirable to have the UK register flooded with unused trade marks, which are invulnerable in this manner.

Non-use is just one question which remains, in light of this recent clarification. It is noted, however, that the minutiae of a possible arrangement is inappropriate for discussion in a debate of this kind. The details must presumably be considered by those with extensive expertise in the area, rather than those directly responsible for the overarching withdrawal agreement. Nonetheless, it is a welcome development that protection of intellectual property is being actively considered at this stage.