

The end to the “Sussex Royal” saga: Prince Harry and Meghan’s decision to drop the brand internationally

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On 25 February 2020, the Duke and Duchess of Sussex have officially withdrawn their trade mark applications for the words “SUSSEX ROYAL” and “SUSSEX ROYAL THE FOUNDATION OF THE DUKE AND DUCHESS OF SUSSEX”. The couple further announced that they will stop using the brand from Spring 2020.

The couple launched their brand last April 2019 and subsequently decided to protect their brand in the UK, EU, USA, Canada and Australia for a variety of goods and services including magazines, clothing, sporting activities, fundraising and emotional support services to name a few.

However, it’s a change of script for a story that could have been a great success. In fact, Prince Harry and Meghan faced many challenges during the application process:

- Many notices of threatened opposition were filed at the UK IPO to extend the opposition deadline. Whether the third parties would have filed a formal opposition under valid legal reasons will now remain a mystery;
- Approximately 30 trade mark applications for the word mark, SUSSEX ROYAL, or a confusingly similar mark have been filed worldwide. These

would not have stopped Prince Harry and Meghan from obtaining registrations but they would have caused some delays. Despite the couple's decision to drop the brand, Prince Harry and Meghan should still take actions against these applications as there are clear examples of bad faith applications. They would not want any third parties to trade under "SUSSEX ROYAL" and create confusion amongst the public or provide goods and services that would tarnish their reputation;

- The biggest challenge of all and perhaps, the main reason of their withdrawal is the Queen's decision to not allow them to use the brand following their decision to step back from their Royal duties.

In the UK, the trade mark law contains special provisions for the use of Royal Arms, Emblems, Titles, names and images of the Royal family. One would have to obtain an approval by the Queen or the relevant member of the Royal family, if the use of the trade mark is likely to lead consumers to think that the applicant has Royal patronage or authorisation (section 4(d) of the 1994 Trade Mark Act).

Following on Prince Harry and Meghan's decision to move away from the Royal Household, the Queen has "banned" the couple from using the word "ROYAL" in their brand. As a result, the trade mark applications have been withdrawn and the couple decided to drop the brand.

Whilst the couple would have been able to continue use of the brand overseas as such special provisions do not apply outside of the UK, they seem to have made the right choice by dropping the brand completely.

Why did the couple decide to stop pursuing applications of the SUSSEX ROYAL brand worldwide?

Firstly, registration outside of the UK would have become a very long and expensive exercise as the withdrawal of their UK applications means that their international application would follow the same fate. Applying for a transformation of their IR into national rights would have resulted in delays in obtaining registrations and increase of legal costs.

Secondly, morally it is probably not right for Prince Harry and Meghan to have continued use of the brand overseas given their decision to step down, even if legally nothing would have prevented to do so. The Queen and the Royal family would have certainly not approved and some of the public at large would have

probably shared that view.

Lastly, offering your goods and services under one brand in all the countries of interest to you, just makes commercial sense to reduce the chances of confusion amongst the consumers who know you under that brand. It will be quite easy for Prince Harry and Meghan to find a new brand name fit for purpose and the authors understand that the transition will happen within the next few weeks. The couple could decide to continue using "SUSSEX" within their brand as this is not a protected term under UK law. It therefore remains to be seen whether the couple will keep "SUSSEX" as part of their new branding or whether they will pick a completely different brand. In any case, we can only hope that after all, they get their "happily ever after"!