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Brexit: the silence is broken

Julius Stobbs (Stobbs IP) · Thursday, October 19th, 2017

Earlier in September, a task force representing the European Union Commission released a [position paper to the EU27](#), setting out their preliminary position on the continued protection of IP rights in the UK. It has been met with a mixed reception, but within it there are certainly positive indications for holders of unitary rights (such as EUTM, RCD), as was to be expected given its origin.

The key points raised are as follows:

- Holders of unitary rights granted or applied for prior to the date of withdrawal ought to be recognised as having a comparable domestic right after this date;
- These rights must be recognised automatically and at no additional cost to the rights holders;
- Domestic law ought to be introduced to ensure continued protection of geographical indications, protected designations of origin and other protected terms in relation to agricultural products (for which there is currently no domestic protection);
- The rules on genuine use ought to be adapted so that new domestic rights are not left vulnerable to cancellation simply by virtue of the change in jurisdiction;
- Rights exhausted in the European Union prior to the date of withdrawal will remain exhausted;
- Supplemental Protection Certificates requested or extended prior to the date of withdrawal ought to be recognised following this date;
- Database rights established prior to the date of withdrawal ought to be recognised following this date.

Of particular note is the requirement that the generation of a comparable UK right ought to incur no additional cost for the rights holder and only minimal administrative burden. This would certainly be preferable from the point of view of the rights holder but it also serves to highlight the absence of discussion relating to transitional provisions. These transitional provisions will be of utmost importance come the date of withdrawal and will need to be furnished in detail as negotiations continue.

Overall, the preliminary comments represent a measured approach to the preservation of rights,

guided by common sense. The paper prioritises discussion of the rights and obligations that will be generated when the UK leaves the EU and is a positive indication to EU/UK based rights holders that their interests are of primary consideration at this stage. It is worth bearing in mind that this is a unilateral position paper and it remains to be seen exactly what the UK response will look like. As ever, in the uncertain world of Brexit, we will be watching this space rather than assuming we know how it will be filled.

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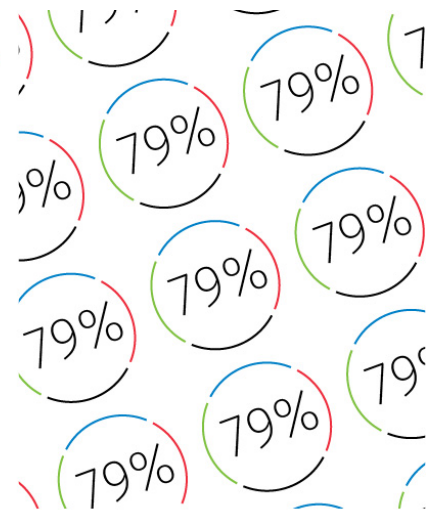
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