

Kluwer Trademark Blog

Guidance issued by UK customs on Applications for Action post-Brexit

Harriet Berridge, Julius Stobbs (Stobbs IP) · Wednesday, March 20th, 2019

It's been a busy couple of weeks for the UK government, and what can now only be described as the Brexit nightmare rumbles on.

Despite the deadline for the UK's departure from the EU being just over a week away, we are still no clearer on how or when exactly this will take place, with talks of possible extensions to the 29th March deadline continuing.

Amidst the chaos, Her Majesty's Revenue and Customs ("HMRC") has provided some further guidance on how the customs protection regime and Applications for Action ("AFAs") will operate once Brexit takes place, in particular, if the UK should leave the EU without a deal. Whilst the possibility of a 'no deal Brexit' is now looking improbable given the events of last week in Parliament, the guidance is still worth noting.

Understandably, the focus for businesses and IP professionals has been on the enforceability of EUTM trade mark and design rights in the UK post-Brexit. However, customs protection and enforcement, which is a highly important issue for many businesses, has not received as much attention and consequently, guidance is patchy.

We understand that the Anti-Counterfeiting Group ("ACG") in the UK is pushing hard for more clarity on it and some guidance has recently been given by HMRC to existing holders of AFAs in the UK.

An AFA is part of a current EU-wide mechanism on customs enforcement relating to intellectual property rights. The AFA process allows IP rights holders to register rights with the customs authorities throughout the EU. Currently, an AFA can be filed in any member state of the EU and can either be an EU AFA (i.e. have EU-wide applicability) or can be limited to a particular member state (or states).

The European Commission issued some [guidance](#) on this in June 2018. This Notice confirmed that if the UK leaves the EU without a deal on 29th March, EU AFAs (i.e. those that have effect throughout the EU) cannot be submitted via UK customs after that date. Any EU AFAs filed pre-29th March, and which designate the UK, will continue to have effect throughout the remaining 27 EU member states but will no longer have effect in the UK (see below).

However, EU AFAs will cease to have effect in the remaining EU member states if they were filed via the UK customs authorities. EU AFAs filed in other member states will continue to be enforceable.

EU AFAs filed through UK customs will therefore need to be refiled in the remaining EU member states once the UK leaves in order to be enforceable.

This will have massive implications for rights holders who currently rely on UK based EU AFAs as part of their brand protection strategy.

Recent guidance from HMRC suggests that UK Customs will replace the current EU AFA with a UK AFA, meaning that rights owners will not need to take action to convert existing EU AFAs in order for them to continue to have effect in the UK. This will happen automatically provided the AFA was applied for before 29th March 2019 and the AFA will be valid for the remaining term.

Customs protection is an important part of an IP strategy for many businesses and can be a very effective mechanism for controlling counterfeit activity. We would encourage businesses to review their current customs protection strategy in light of Brexit to ensure no loss of rights in the event that the UK leaves the EU without a deal.

To make sure you do not miss out on regular updates from the Kluwer Trademark Blog, please [subscribe here](#).

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

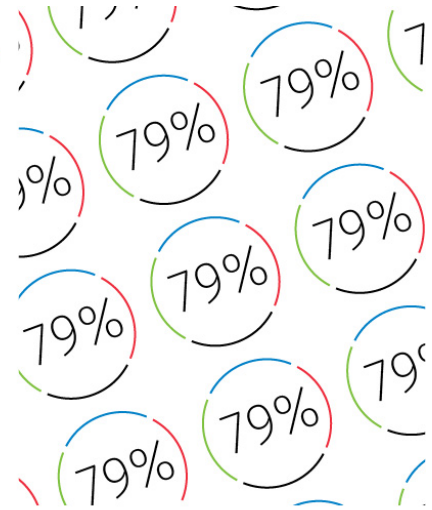
79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change



This entry was posted on Wednesday, March 20th, 2019 at 10:17 am and is filed under [Brexit](#), [The EU is an economic and political association of certain European countries as a unit with internal free trade and common external tariffs.](#)“>[European Union](#), [United Kingdom](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.