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Brexit: Further extension granted, and more clarity from the EUIPO

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With the original Brexit date now having passed (29 March 2019), it is worth reflecting on where we now find ourselves, as brand owners/IP professionals with interests in the UK and EU. The EU has granted the UK a ‘flexextension’ to the Article 50 period until 31 October 2019, with the option to leave sooner should the withdrawal agreement be ratified. This still leaves significant uncertainty around when the UK will be considered to have left the EU (*brexited?*), with many feeling that a further extension past the end of October can’t be ruled out. Indeed, for many UK residents, the recent last minute extensions are reminiscent of a dog walker pretending to throw a tennis ball, with much of the population now feeling like a cynical Labrador.

As has been discussed previously, we have seen the rough outline of IP protection which will result in the case of [no deal](#) being reached, or the Prime Minister’s [draft agreement](#) crossing the line. The terms of the withdrawal agreement are still to be confirmed, and amendment seems perfectly plausible given the continuing debate in Parliament. That said, the proposed amendments tend not to focus on IP protection, but on movement of goods and people, so one might consider these terms less likely to be contested moving forwards. By way of further administrative development, the UKIPO has [confirmed](#) that all EUTMs for which an equivalent UK right is generated post-Brexit will be listed with a “UK0009” prefix, to identify these rights from existing UK registrations.

The EUIPO has also published [guidance](#) as to the manner in which UK rights/ right holders will be considered, following a *no-deal* Brexit. A non-exhaustive list of key points are detailed below:

- The EUIPO will not notify right holders or professionals whose rights are narrowed due to a no-deal Brexit
- Seniority claims filed prior to withdrawal will be published, however, all seniority claims based on UK rights will cease to have effect following withdrawal
- Requests for conversion received before the withdrawal date will be processed as usual, but will be refused following this date
- All *inter partes* proceedings which are based *solely* on UK rights, will be suspended once the no-

deal scenario is confirmed, and then dismissed as of the withdrawal date for lack of valid basis. Each party shall have to bear their own costs

- For EUTM holders demonstrating proof of use based on use in the UK, this use will be valid but will progressively diminish in significance in the time period following withdrawal (NB evidence of use in the UK will not support a claim of reputation for the purpose of 8 (5) EUTMR, following withdrawal)
- Where representation is mandatory, Applicants/Registrants will be invited to appoint a representative. Representatives currently entitled to act before the EUIPO by virtue of qualification in the UK will no longer be entitled to act, and will lose their representative capacity.

As such, we have a reasonable indication of the process and expectation for a no-deal versus an agreement-based withdrawal from the EU. What remains to be seen is which will come to pass, and when.

A further complication which is raised in light of the extensions to Brexit is the upcoming EU elections, whereby the country will be asked to nominate MEPs to represent the UK in the EU parliament. Whilst Theresa May has indicated in the past that she anticipates the UK being exempt from these nominations (in light of the pending departure), the UK may be required to take part in light of the constitutional requirements of the EU, as set out by treaty. Whether this will be used by voters as an opportunity to elect EU-skeptic politicians as MEPs, or to seek representation outside of the main political parties, remains to be seen.

As it stands, we likely have some breathing space while the political wrangling over the withdrawal agreement continues. Whether we'll be back at the cliff edge in six months' time remains to be seen.

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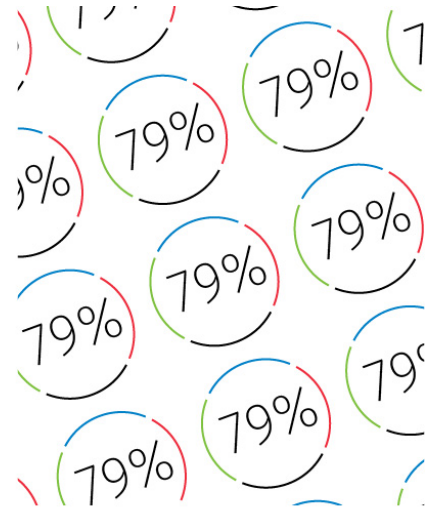
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