

Kluwer Trademark Blog

BREXIT: The time for extension has passed, so what next?

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It has been several months since our last publication on Brexit and the world is very different since then due to the COVID-19 pandemic.

As for BREXIT, this could be another pandemic for several industries as it remains unclear whether there will be a deal or no-deal exit at the end of the transition period, 31 December 2020. Businesses are desperate for clarity in order to prepare for the end of the transition period.

Whereas the UK government thought in February that there would be ample time to negotiate a fair deal, many months have been overshadowed by the focus on the COVID-19 pandemic. Despite this, in June the UK government informed the EU that there would be no extension of the transition period beyond 31 December 2020. “The time for extension has passed.” So where do things stand at present?

Regardless of how the negotiations go with the EU, the UK will be leaving the Single Market and the Customs Union. This means tariffs, quotas and checks on goods could be introduced. As a result, the main focus right now is on trying to negotiate a free trade agreement covering goods and services. Not surprisingly, the negotiations are not going smoothly. The EU wants the UK to adhere to the rules which are currently in place and the UK wants to be in a position to make its own rules going forward, if desired. Unfortunately, if the negotiations do not end well and we face no-deal scenario, the UK would need to adhere to the rules set by the World Trade Organization. This would introduce tariffs on some goods leaving the UK and entering the EU as well as more stringent border controls.

In the meantime, the UK government has confirmed that there are no immediate plans to introduce full import controls on goods that enter from the EU next year. On 13 July, the Chancellor of the Duchy of Lancaster, Michael Gove, made a statement in the House of Commons regarding plans and preparations for the end of the transition period. The key points are that an information campaign will be launched in order to provide businesses with the facts required in order to be ready for the end of the transition period. Furthermore, an operating model for the border will be released to provide guidance to hauliers, shippers, freight companies and UK customs intermediaries in order to assist the movement of goods.

It was also stated that border controls would be introduced in three stages up to 1 July 2021. View the complete statement to parliament here for further information on this topic:

<https://www.gov.uk/government/speeches/michael-gove-statement-on-eu-exit-preparations-13-july>

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It seems as though the UK government is preparing for a no-deal exit. However, from an Intellectual Property perspective, the position would remain the same. The UK government has indicated that in the event of a no-deal Brexit it will create equivalent UK rights for registered EUTMs, CDs, Community plant variety and EU geographical indications at no cost to the rights holder. For pending EUTMs and CD applications there is a period of nine months after the transition period to file an application for the same trade mark or design in the UK, retaining the date of the earlier EU filing. The UK IPO's standard filing fees will apply.

There is a new development around the topic of representation. This has been a contentious issue during the negotiations. At present, the UK would allow EU representation in the UK post Brexit whereas the EU has confirmed that it will not allow UK representation in the EU, although UK representation would be allowed in the EU during the transition period and a UK representative may continue as representation for ongoing procedures before the EUIPO and EU Courts after the transition period.

The UK IPO has now published an informal consultation regarding proposed changes to its address for service rules. A deadline of 14 August 2020 has been set to provide comments. The proposed changes would mean that only UK or Channel Island addresses for service will be accepted going forward, if implemented.

Watch this space – 2020 has proven to be a surprising year and anything is possible!

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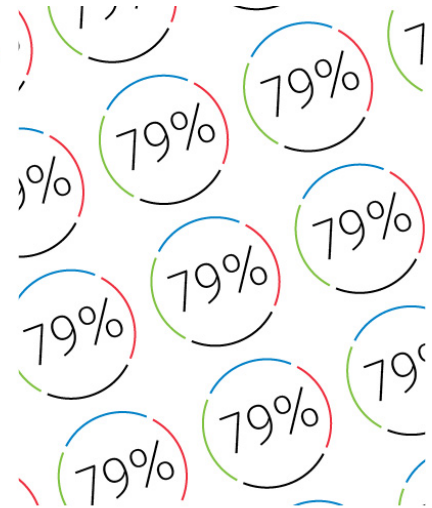
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