

BREXIT!! HOW DOES BREXIT IMPACT MY UK AND EUROPEAN INTELLECTUAL PROPERTY?

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Well well well, that was unexpected! What a tumultuous and surprising day 24 June 2016 was in world politics, and of course in world equities, commodities and bonds markets in particular. A lot seemingly changed, but did it? There is plenty of talk and uncertainty about what may happen next as a result of the UK leaving the EU, so let's have a quick discussion on what Brexit means immediately for Australian brands and companies that hold European and UK intellectual property, and specifically registered trade marks, and then touch on the potential long term effects.

Brexit's immediate impact on European Union Trade Marks and UK Trade Marks

In short, nothing will change in the short term. If Brexit is ratified by the UK Parliament (which is likely but not guaranteed) it will be at least two years until the exit actually occurs. In the meantime, there will be a litany of consultation and hand-wringing about the mass of laws, regulations and procedures that will need amending, abolishing and replacing. Somewhere in that mass is the prevailing trade mark law; both the UK's domestic trade mark law that governs UK Trade Marks (UKTMs) and the EU conventions that govern European Union Trade Marks (EUTMs).

It is almost certain that UKTMs will retain their strength and remain entirely unchanged. The situation with EUTMs however is less clear, and to the extent that EUTMs provide some coverage in the UK, it is not entirely clear what will happen. Our partners overseas and most authors on the topic share our immediate point of view, being that it is extremely likely that protection in the UK will not be lost for current EUTM holders as a result of Brexit. In the meantime, it must be noted that EUTMs are still very much in force in the UK, and new protections will almost certainly be put in place to protect EUTMs in the UK. Whether these protections will extend to current and new marks post-Brexit is not known at this time.

For now, however, there is nothing that EUTM rights holders need to do to strengthen their rights in their EUTMs in the UK.

What about longer term? What will happen and should I consider filing new trade mark applications?

These are very interesting questions and some of the many that are hard to categorically answer at this stage. It is possible that in the longer term an EUTM will not grant rights in the UK, but this seems unlikely. The fact that the UK is out of the EU does not preclude the EU and UK from agreeing to extend coverage of EUTMs into the UK. However, for now we simply do not know and we must watch this space carefully. Anisimoff Legal will keep abreast of all developments and update our clients either by future publications or direct contact. As for the question of whether filing new applications would be prudent, the only filings that may be worthwhile are new UK domestic applications, but only in circumstances where the UK is a particularly important market and to date you only own EUTMs. The risk of the UK dropping out of the EUTM protection zone is minor, but it is there, and if you have concerns you should contact us to discuss your options.

Contact us

If you would like further information on EUTMs, UKTMs or Brexit and how it impacts on you or your business, please contact one of our experts below.

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