

Commercial

Commercial Update – Trade Marks and Brexit

The UK is currently in a transition period following the approval of the Withdrawal Agreement. During this time, EU law will continue to apply to the UK until the transition period ends on 31 December 2020. This means that EU law will continue to apply to the UK and there will be no changes in the way EU law applies to European Union Trade Marks (EUTMs) until the end of the transition period.

After 31 December, the transition period may have been extended, an agreement on the future relationship between the UK and the EU could have been agreed, or it is possible that there will be no further agreement. This effectively means that the applicability of EU law after the end of the transition period will not be fully known until the two parties' positions become clearer as negotiations progress.

Whilst there is no immediate need for companies to take action to protect their trade marks, you should undertake a review of pending and existing trade marks so that you are aware of how your trade marks will be affected following the end of the transition period.



What you should do

The action you will have to take as the transition period progresses will depend on, amongst other factors, where you require protection for your trade mark and what the status of your trade mark will be at the end of the transition period.

1. If you currently have an existing registered EUTM, you do not need to make an application for registration in the UK as equivalent UK registrations will be automatically created with effect from 1 January 2021.
2. Companies that have applications for EUTMs pending on 1 January 2021 will have to make an application to the IPO in the UK for an equivalent UK trade mark if they wish to register the mark in the UK in addition to the EU. There will be a nine-month period in which to make such an application. Any applications currently pending are likely to be registered prior to the end of the transition period and, as such, are unlikely to remain pending at the end of the transition period. It should be noted that for applications submitted from September 2020 (or earlier, if objections are anticipated), the application may still be pending at the end of the transition period. If this is the case and UK protection is required, it would be sensible to file a separate application to the UK IPO.
3. From 1 January 2021, EUTMs will no longer cover the UK and so companies intending to secure equivalent geographical protection will have to file both an application for an EUTM and also an application for a UK trade mark.

If you are unsure as to where you require geographical protection or what steps you should take to ensure that your trade mark is adequately protected following the transition period, it is a good idea to take legal advice as soon as possible.

If you would like further advice in relation to this issue or further information about our compliance services please contact the Commercial team at 3CS.

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