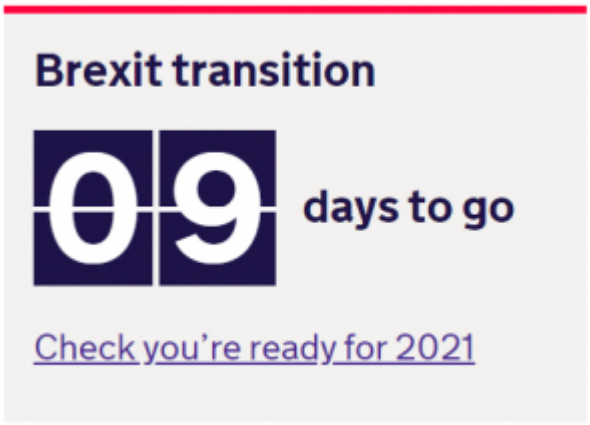


December 23, 2020 | Insights, Trademark & Copyright

What Happens to your Trademark in the EU when the Brexit Transition Period Ends?

By: Rich May, Arvid von Taube

On January 31, 2020, the United Kingdom ("UK") officially withdrew from the European Union ("EU"), making it the first and only country to formally leave the EU in the process known as Brexit. Prior to Brexit, trademarks applied-for or registered with the European Union Intellectual Property Office ("EUIPO") generally provided protection for the mark in all EU member nations, which included the UK.



This means that trademarks applied-for or registered with the EUIPO will no longer provide protection in the UK, and the applicant or owner should assess what steps to take in order to obtain such protection. In order to provide an orderly transition of such trademarks, an 11-month transition period was instituted. This transition period expires on December 31, 2020, meaning that on January 1, 2021, trademarks previously applied-for or registered with the EUIPO will no longer provide protection in the UK.

Thankfully, the EUIPO and the UK Intellectual Property Office ("UKIPO") have approved a clever process whereby certain trademarks will be automatically "moved" to the UK trademark register without any further action necessary by the owner. However, other trademarks will require the applicant to take certain actions to move the mark to the UK trademark register.

If your trademark is registered with the EUIPO prior to January 1, 2021:

1. A comparable trademark registration will automatically be created in the



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UK trademark register;
2. It will have the same legal status as if you had applied-for and registered the trademark with the UKIPO;
3. Importantly, it will keep the same EUIPO filing date;
4. It will keep any original priority or UK seniority dates;
5. It will be a fully independent UK trademark that can be challenged, assigned, licensed or renewed separately from the original EU trademark (which will remain active);
6. You will not need to pay any additional fees for the creation of this new trademark (but will pay any ongoing, regular maintenance fees in the future); and
7. You will not receive a new certificate of registration for the new UK trademark, but it will show as registered in the UKIPO register.

If your trademark is not registered with the EUIPO prior to January 1, 2021 (e.g., is applied-for, challenged or otherwise pending):

1. You may apply for a new trademark (for that mark that is pending with the EUIPO) with the UKIPO during a nine month transition period ending on September 30, 2021, and receive the earlier filing date of the mark pending with the EUIPO;
2. The new trademark must relate to the same trademark that was pending with the EUIPO and seek protection in respect of goods and services that are identical to, or contained within, the corresponding existing EU application;
3. You may claim any valid international priority you had on the pending EU application, along with any UK seniority claims recorded against it; and
4. You must pay all applicable UKIPO filing fees.

We are happy to answer any questions that you may have on pending EU trademarks or other potential trademark applications, renewals or rejections issued by the USPTO. Please reach out to the author of this post or any member of our firm's Trademark & Copyright group.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Arvid von Taube.

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