



# Brexit and the changing trademark landscape

Shifts are happening and Rob Davey says companies need to understand these changes and keep themselves protected across regions

**U**nsurprisingly, the Brexit referendum has had a startling effect on politics, business and the economy. As negotiations gain momentum in preparation for the UK's eventual departure from the European Union (EU) in March 2019, the repercussions of the move are being felt far and wide — and not just in the UK.

The same is true for industries within the region. While some, such as retail, felt the effects almost immediately after the vote in June 2016, others are slowly coming to terms with the changes that may occur as a result of Brexit. Looking at intellectual property, for example, questions abound regarding the registration of trademarks. As it stands, for any business wanting to operate and protect their interests in the UK or EU, filing a mark with the European Union Intellectual Property Office (EUIPO) has been enough.

### **A shifting landscape**

However, the trademark landscape is changing on a daily basis and, as a result, trademark professionals, are adapting their search, clearance and watch strategies already — evident in the changing numbers of trademark applications.

According to CompuMark research, courtesy of the company's Custom & Managed Solutions unit (using SAEGIS® on SERION®), there was a 20% increase in UK trademark filings. In the 18-month period before the Brexit referendum, the average monthly filing figure for UK trademarks was 4,538. However, in the first 11 months after the vote, that figure soared to 5,567.

Looking at US-based applicants of UK trademarks, the average number of monthly applications in the 11 months following the referendum was 261, compared with just 104 in the 18 months beforehand. That's a sharp increase of 150%.

From a UK business point of view, before the referendum, there was an average of 933 trademark applications by UK-based applicants per month for EU trademarks. Following the vote, however, this monthly average fell to 766, an 18% decline.

As it stands, there has been a significant rise in brands registering both UK and EU trademarks, readying themselves for a new environment post-Brexit. While this is not necessary for the time being, after March 2019, brands are likely to treat UK filings in much the same way as they would for Switzerland or Norway, countries that are part of the Europe, but not the EU. Of course this will mean additional work and expense as trademark professionals are filing two marks instead of one.

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This approach won't necessarily change the way marks are searched, cleared or watched, as the tools, solutions and processes currently used will still follow the same processes and search the same regions.

### **Converting existing EU marks**

However, what will need to change is the state of current EU registered marks. These may have been filed with the UK in mind, and post-Brexit there could be a need to convert EU marks to UK marks to ensure all regions are in fact covered.

In this case, there is a high probability that transitional provisions would be put in place to enable this cost-effective conversion of existing EU trademark registrations and pending applications. Hopefully, these processes would mean no loss of priority, filing or seniority claim dates into UK national applications in the longer term, which would subsequently mean no loss of rights.

In addition there will also be an impact on the work the industry does with the EUIPO which has sparked much debate over legal representatives losing their rights of representation at the office. The possible solutions range from the politically unlikely option of the UK joining the European Economic Area (EEA), as this allows members to represent clients before the EUIPO, or UK trademark attorneys obtaining licences to practice in another EU country or perhaps even relocation for those employees of UK companies who handle IP work at the EUIPO.

### **The official response**

While there is no concrete plan in place currently, the industry and government are working to find a solution. According to the UK government [website](#):

*“The UK system for protecting trade mark rights is not affected by the decision to leave the EU. While the UK remains a full member of the EU then EU Trade Marks (EUTM) continue to be valid in the UK. When the UK leaves the EU, a EUTM will continue to be valid in the remaining EU member states.*”

*We recognise that owners of existing EU trade marks want clarity over the coverage of those rights when the UK leaves the EU. The government is exploring various options and we are discussing the best way forward with users of the system. When the UK has left the EU, UK businesses will still be able to register an EU trade mark, which will cover all remaining EU member states.”*

### **Trademark fundamentals remain the same**

Despite this changing landscape, the fundamentals of search, clearance and watching remain the same. This includes going through the search, clearance and registration process properly, using the right tools — paid-for from reputable vendors — and relying on the experience and expertise of trademark lawyers and professionals to advise on risk mitigation and the best practice approaches to apply for new trademarks and watch existing ones in their portfolio.

This is especially important as trademark complexity will only increase moving closer to the UK’s departure deadline. Brands need to rely on the advice of professionals within the industry who are adept at understanding the changes and the impact on current, pending and new trademark applications.

Importantly, trademark lawyers and professionals need to understand the scope of their portfolios — knowing which marks are registered in the UK, which are registered in the EU, and which ones have to be converted; again, ensuring that all regions are covered.

## **Conclusion**

There are many opposing views on Brexit, how business and the economy will be affected, and what wider consequences will be in store for the UK. On an industry level, organisations are exploring their options and relying on government to set a clear path forward. For the trademark market, this is no different. Day-to-day operations are continuing, and marks are still being searched, cleared and watched. There is also the general awareness that a shift is coming, and already organisations are proactively seeking to understand these changes and keep themselves protected across regions. ■

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