

## IP LANDSCAPE POST BREXIT – FACTS, TIPS AND IP ESSENTIALS!

### Designs – Post Brexit and UK/EU Deal

- Designers can still apply for RCD's, but they will no longer offer protection in the UK and designers will have to apply for UK registered designs separately incurring the extra fees of doing so.
- Designers with valid RCD's as at the end of the transition period will have equivalent rights in the UK created automatically at no cost to them.
- Designers with pending applications for RCD's (or registered applications not yet published) at the end of the transition period have a 9-month period to September 2021 to apply to the UK IPO for the same protection in the UK. Crucially if you take advantage of this the UK IPO will use the filing date for the original RCD application, ensuring no loss in protection.
- UCD's arise when a design is first disclosed in the EU and lasts for three years from the date of publication. If you have any UCD's arising before 1 January 2021 these will remain valid in the UK for their remaining term as what will be known as a Continuing Unregistered Design (the CUD). The CUD aims to prevent a loss in protection in the UK for any UCD which already existed at the end of the transitional period and still had time remaining. The CUD will protect the design automatically in the UK for the remainder of its 3-year UCD term.
- The current UK Unregistered Design Right only protects the shape and configuration of an article whereas the UCD protects additional elements such as surface decoration and textiles but lasts for a longer period of 10 years from the end of the year in which the design was made publicly available. As the UCD will no longer be available in the UK there will, from 1 January 2021 be a new Supplementary Unregistered Design (SUD) available in the UK which mirrors the protection offered by the UCD. Designs that are first disclosed in the UK after the end of the transition period will be protected automatically under the new SUD right in the UK for 3 years from the date of publication as with the UCD. This is in addition to the original UK Unregistered Design Right which remains available to designers.

### Trade Marks

- If, at the end of the transition period, you had a valid registered EUTM then the UK IPO will create a comparable UK registration automatically and at no cost to you. This new UK mark will retain the filing date of the original EU mark so there will be no gap in protection.
- If, at the end of the transition period, you had a pending EUTM application then you will, as with registered designs, have a nine-month period to September 2021 in which to apply for a mirror UK registration keeping the filing date of the EUTM. You will however have to pay the UK application fees for a new trade mark and the UK application must be identical to the EU application. These comparable marks will also have the same renewal dates as the original EUTMs which could lead to fees having to be paid twice in relatively quick succession.
- Trade marks have to be used to remain valid. Previously use of an EU trade mark in the UK counted as use for the purposes of validity. This will no longer be the case and so if you own an EU mark but currently only offer your goods or services in the UK then you risk losing your EU registration, or at least part of the specification covered, through a lack of use.

## Copyright & Patents

Protection of your copyright internationally is governed by international treaties rather than EU laws so protection for copyright works remains largely unchanged by Brexit. There may be some issues around things such as orphan rights and database rights however these are outside the remit of this guide.

Equally, patents are not currently governed by EU laws so the way that patents are applied for and prosecuted will remain largely unchanged. There may be issues around the proposed Unitary Patent and Supplementary Protection Certificates but, again, these are outside the remit of this guide but do not hesitate to contact the authors if you require further input on these or any copyright issues.

### IP ESSENTIALS:

1. **Check your EU registered rights, whether designs or trade marks, to make sure that the mirror UK rights have been properly created and recorded.**
2. **If you have pending EU applications, whether for designs or trade marks, make sure you apply for the mirror UK right before the end of the nine-month period for doing so.**
3. **If you want to maintain your EUTM's make sure that you are using them in a member state of the Union.**
4. **If you rely on unregistered rights, consider now which market is more important to you; the UK or the EU and implement a strategy for making your designs public accordingly.**

As a result of Brexit many UK law firms can no longer represent clients in respect of their EU intellectual property rights. McDaniels Law have however made arrangements so that they can continue to handle EU issues on behalf of their clients so if you have any questions arising from this guide please do not hesitate to contact the team.

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