

# "BREXIT BITES": INTELLECTUAL PROPERTY RIGHTS

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By: Arthur Artinian, Briony E. Pollard, Andrew W. Gilchrist, Ignasi Guardans

*This is the sixth in our series of "Brexit Bites" which focuses on Intellectual Property.*

## REGISTERED TRADE MARKS

- Post-Brexit, the UK would no longer be part of the European Union Trade Mark (EUTM) system, formally known as Community Trade Mark (CTM) system. A registered EUTM would not, therefore, enjoy automatic protection in the UK and additional, UK national trade mark registrations will need to be applied for or obtained, if UK protection is desired. Transitional provisions to address the "gap" in protection would likely be negotiated by the UK Government to provide brand owners with an opportunity to secure national protection for existing EUTMs.
- Brand owners should consider whether it is sufficient to rely just on a EUTM, or if they should consider applying for separate UK (and other national) registrations as part of their brand protection strategy going forward. Businesses with significant brand launches planned for the rest of 2016 should consider this option in light of the current uncertainty.

## REGISTERED DESIGNS

- The position with respect to registered designs post-Brexit will be similar to registered trade marks. Post-Brexit, the UK would no longer be part of the EU registered design system. Therefore, a Registered Community Design would no longer enjoy automatic protection in the UK and additional UK rights may need to be applied for / obtained (if not already in place).

## PATENTS

- The UK's participation in the European Patent Convention (EPC), which provides a legal framework for the granting of European patents via a single, harmonised procedure before the European Patent Office, will not be affected by a Brexit. Other non-EU members are also part of the EPC.
- However, if the UK ceases to be a member of the EU, UK businesses will be excluded from the Unitary Patent (UP) system. Strategic plans which involve filing of a UP rights or devising an enforcement strategy reliant on the UP system should be reviewed.

## COPYRIGHT

- UK copyright is primarily regulated by national law. Rights are granted and enforced on a territorial basis and supplemented by a number of applicable international conventions which are unlikely to be affected by Brexit.

- However, copyright law in the UK is partially driven by, and harmonised throughout, Europe, so a Brexit may lead to complications further down the line, including with respect to the current digital single market strategy, as the two legal systems diverge.

## ENFORCEMENT

- As a result of its membership of the EU, the UK is subject to harmonised rules about the enforcement of judgments. For example, recognition and enforcement of civil and commercial judgements across member states is regulated by the Brussels I Regulation.
- If the UK ceases to be part of the EU, the laws of the EU and UK on enforcement may no longer be harmonised. Instead, matters would be dependent on domestic rules of law in the UK, which may lead to uncertainty and difficulties in the enforcement of legal rights and obligations.
- Rights owners should consider the impact of Brexit on existing court proceedings and whether remedies such as injunctions which are currently in place will be affected, as well as future litigation strategies for pan-EU issues.

## LICENSING

- Businesses who enter into commercially significant licence or distribution agreements should review the impact of Brexit (including any transitional provisions) on existing arrangements.
- Agreements which are entered into in 2016 should be 'future-proofed' by including provisions addressing potential territorial changes and changes to the nature and scope of the licensed IP rights.

For information about our Brexit Task Force please, [click here](#).

## KEY CONTACTS



**ARTHUR ARTINIAN**  
PARTNER

LONDON  
+44.(0)20.7360.8207  
ARTHUR.ARTINIAN@KLGATES.COM

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