

December 2017

The European Commission's Notice on Brexit of December 1, 2017

The European Commission issued a Notice on December 1, 2017, countersigned by EUIPO, to holders of and applicants for European Union Trade Marks and Registered Community Designs in the context of the notification of 29 March 2017 by the United Kingdom of its intention to withdraw from the European Union.

Following the UK's notification, and unless a ratified withdrawal agreement establishes another date or that such period is extended by the European Council in accordance with Article 50(3) of the Treaty on European Union, all Union primary and secondary law will cease to apply to the UK from **30 March 2019, 00:00h (CET)**. The United Kingdom will then become a "third country".

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, EU rules on EU trade marks and Community designs will no longer apply to the United Kingdom.

The Notice corresponds to a potential scenario in which no agreement is reached by the negotiating parties. The contents of the Notice are in no way prejudicial to any settlement or arrangement that may be agreed between the negotiating parties.

The complete Notice can be found on the following link: <https://euipo.europa.eu/ohimportal/es/news/-/action/view/3927547>.

Its content may be summarized as follows:

- **EU Trademark Registrations, Community registered and Unregistered Designs:**

EU trademarks and registered Community designs registered in accordance with Union law (Regulation (EU) 2017/1001 on the European Union trade mark and Regulation (EC) No 6/2002 on the Community designs) as well as **unregistered Community designs** made available to the public in the manner provided for in Union law (Regulation (EC) No 6/2002) **before the withdrawal date will continue to be valid in the EU27 Member States but will no longer have effect in the United Kingdom as from 30 March 2019 (the "withdrawal date")**.

- **EUTM and Community Design Applications:**

Any **application for an EU trade mark or for a registered Community design pending before the withdrawal date will no longer cover the United Kingdom as from that date**. Any right granted by the European Union Intellectual Property Office on or after the withdrawal date will only cover the EU27 Member States.

- **Seniority claims based on UK rights:**

All existing **seniority claims in EU trade marks based on national trade mark rights in the United Kingdom will cease to have an effect in the EU as from the withdrawal date**.

- **International Registrations having designated the EU:**

The **holders of international registrations of trademarks and designs having designated the European Union before the withdrawal date pursuant to the Madrid system for the international registration of marks, and the Hague system for the international deposit of industrial designs**, should consider that, as from that date, *those international registrations will continue to be valid in the EU27 Member States only and thus will no longer have effect in the United Kingdom*.

Professional Representation before the EUIPO

Natural or legal persons that are domiciled or have a seat in the United Kingdom only will have to be represented before the European Union Intellectual Property Office in accordance with Article 120(1) of Regulation (EU) 2017/1001 (on the European Union trade mark) and Article 78(1) of the Regulation (EC) No 6/2002 (on Community designs) in all proceedings provided for in those two Regulations, other than the filing of an application for an EU trade mark or an application for a registered Community design. Therefore, *UK representatives will no longer be authorized to represent before the EUIPO and UK companies will need to act through EU representatives, other than for filing applications.*

In its Notice, the Commission reminds stakeholders of the European Union Trademark and Design systems that preparing for the withdrawal is not just a matter for European Union and national authorities, but also for private parties. Therefore, in view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, all right-holders and applicants are reminded of certain legal repercussions stemming from currently applicable rules of Union law when the United Kingdom becomes a third country, and which need to be considered and anticipated.

Our advice:

Consequently, for new applications, we would advise clients to file UK Trade Mark and Design applications in addition to their EUTM and Community Design applications since there is no guarantee that an agreement will be concluded recognizing the continued protection in the UK of EU rights registered or filed prior to the withdrawal date.

It will be necessary to evaluate, closer to the 30 March 2019 withdrawal date, the necessity of filing new UK applications for existing EUTM and Community Design registrations.

Contact us:

For any question you may have, please do not hesitate to contact our team.



Cristina Bercial-Chaumier
Alicante Office
Partner
Attorney at Law



Caroline Casalonga
Paris Office
Partner
Attorney at Law



Karina Dimidjian-Lecomte
Paris Office
Partner
Attorney at Law



Marie Pusel
Paris Office
European Trademark &
Design Attorney

PARIS OFFICE: 5/7 & 8 avenue Percier, 75008 Paris, France
Tel: +33 (0)1 45 61 94 64 - Fax: +33 (0)1 45 63 94 21 - [E-Mail: paris@casalonga.com](mailto:paris@casalonga.com)
ALICANTE OFFICE: Avenida Maisonnave 41, E-03003 ALICANTE, Spain
Tel: +34 96 513 17 95- Fax: +34 96 513 16 89 - [E-Mail: alicante@casalonga.com](mailto:alicante@casalonga.com)