

## **BREXIT & INTELLECTUAL PROPERTY – What jewellery and giftware businesses need to know and what to do in preparation for No Deal**

Intellectual Property is the name given to a collection of rights that enable a business to stop others stealing, or copying, its brand name, its inventions, the designs and appearance of its products and what it writes, makes, or produces.

The different types of Intellectual property are; copyright, design right, patents and trademarks. Some rights arise automatically and others have to be applied for. Giftware and jewellery businesses are, for the most part, design led businesses for whom the shape and appearance of the product along with branding are the key Intellectual Property considerations. For that reason this guidance note is concerned with trademark and design right. If you should own a registered patent, or you have invented something capable of being made, which you feel might benefit from being patented, then seek independent legal advice, or visit the Government's IPO website for more information, [www.gov.uk/patent-your-invention](http://www.gov.uk/patent-your-invention).

### **BREXIT**

In 2016 the UK held a National referendum on whether to leave, or remain, as a member of the EU. The vote was to leave, but as yet the terms under which the UK should leave have not been agreed. In March 2017 Britain triggered Article 50 of the European Treaty, being the official notice to the EU of Britain's desire to leave.

On 9 September 2019 the European Union (Withdrawal)(No. 2) Act 2019 <http://www.legislation.gov.uk/ukpga/2019/26> was passed, also known as the Benn Act. It imposes legal obligations on the Government which aim to ensure that the UK doesn't leave without a deal on 31 October 2019, primarily that if a deal hasn't been reached by 21 October 2019 the Government must seek an extension to the leave date. But, the Prime Minister has repeatedly said that there will be no extension, and that the UK will be leaving the EU on 31 October 2019, deal or no deal.

### **NO DEAL**

If the Government doesn't request an extension, or the EU should decline a request, then the UK will leave the EU on 31 October 2019. Immediately all pan-European arrangements; regulations, customs and law cease to have effect in the UK. There will be no transition period. If the UK Government and the EU reach an agreement, be it before 31 October 2019, or following an extension, then the parties will enter into a transition period during which the terms under which EU law, regulations, customs etc shall cease to have effect will be implemented, which should enable a smooth transition. In that event further guidance may be provided with due certainty.

This guidance note seeks to help businesses in the jewellery and giftware industries prepare for a **No Deal** Brexit in terms of their Intellectual Property rights.

The Government has introduced a variety of statutory instruments designed to come into force if there is a no deal Brexit. If a withdrawal agreement is concluded, the content of the

regulations will need to be revised so that the commencement of their provisions is deferred to the end of the transition period.

## TRADE MARKS

As a member of the EU, British companies can own a trademark registered with the EU (a Community Mark) as well as having a trademark registered in the UK. When the UK ceases to be a member of the EU any community trademark will cease to be of effect in the UK.

In a guidance note (updated 19 September 2019), the Government says for all registered community trademarks it will create comparable UK trademarks, which will be recorded on the UK register. From exit day all existing EU trademarks will be treated as if they had applied for and registered under UK law ("the Comparable EU right").

- Holders of the Comparable EU right will not receive a UK registered certificate, but will be able to access details on the Government website, [www.gov.uk/search-for-trademarks](http://www.gov.uk/search-for-trademarks);
- For those with EU trademark applications pending on exit day, an identical application should be filed with the UKIPO for a UK registration within 9 months. The Applicant will be entitled to claim the earlier filing date of the EU trademark application;
- Comparable EU marks will retain the same renewal date as the original EU mark, and be subject to the same terms and conditions of renewal as UK marks;
- The UK Courts will continue to accept jurisdiction over ongoing proceedings relating to EU trademarks and will continue to apply the provisions of the EU trademark regulations in such proceedings, but any remedy they grant in such cases will apply only to the comparable EU mark.

**Note :** Existing EU trademarks automatically convert to a comparable right **no action is required.**

Pending EU applications: apply to UKIPO **within 9 months** of exit day.

## REGISTERED COMMUNITY DESIGNS

Many jewellery and giftware companies presently enjoy registered designs in the UK and EU. A registered community design ("RCD") grants rights over the entire EU, but in the event of a no deal, RCD's will cease to subsist and be enforceable in the UK. You will still be able to obtain registered design protection in the remaining 27 member states of the EU, by application to the EU IPO.

- All existing RCD's will be given a comparable UK design, recorded on the UK register;
- At present it is not known if the holder has to apply for a re-registered design or whether this is automatic. The Government says it will be at "*minimal administrative burden*" to the right holder, and at NO COST;

- The number to be allocated to the re-registered design will consist of the full RCD number prefixed with the digit “9”;
- A pending RCD can apply for an identical UK design within 9 months after exit day and retain the earlier filing date of the pending RCD;
- Once a re-registered UK design is created a separate renewal fee will apply. Both UK registered designs and RCD’s can be renewed every 5 years up to a maximum of 25 years.

**Note** : Existing RCD’s should automatically generate a re-registered design.

**no action is required.** but do check [www.gov.uk](http://www.gov.uk) regularly.

Pending RCD applications: apply to UKIPO **within 9 months** of exit day.

## UNREGISTERED COMMUNITY DESIGNS

For smaller businesses and those heavily design-led businesses for whom registration of every design is neither practical or economic, the unregistered designs regime is of paramount importance. The EU Unregistered Community Design (“UCD”) differs from the UK Unregistered Design Right (“UKUDR”). The UCD is for a period of only 3 years, whereas UKUDR can be up to 15 years. But, it is much wider in its application extending beyond just shape and configuration, to include original features of contour, colour, texture, material or ornamentation of the product provided that the design possesses individual character.

- All UCD’s which exist at the point that the UK leaves the EU (that is where the design has been subject to first disclosure in the EU by exit day) will automatically continue to be protected and enforceable in the UK for the remaining period of protection of the UCD right, without any action being required from the right holder. This right will run alongside the UCD rights themselves, which will continue to be protected as normal in the remaining 27 member states;
- In addition, the UK will create a new UK unregistered design right, known as the *Supplementary Unregistered Design Right*, which mirrors the characteristics of the UCD right. This will protect designs which are first disclosed in the UK after exit day.
- It will make provision as to the status of legal disputes about UCD rights that are ongoing in the UK courts before exit day.

**Note** : The new Supplementary Unregistered Design Right (“SUDR”) will automatically exist in UK law on exit day.

**No action required**, but details of its status in legal disputes to follow, again see [www.gov.uk](http://www.gov.uk).

The Government has taken steps to ensure the above measures come into effect either following a transition period in the event of a deal, or immediately upon exit in the event of a no deal; see Designs and International Trademarks (Amendment etc)(EU Exit) Regulations 2019 (SI 2019/638). <https://www.legislation.gov.uk/ukdsi/2019/9780111180037/contents>

## **COPYRIGHT**

This unregistered right is largely unaffected by Brexit. Copyright law has largely been harmonised across the EU, by use of Directives. The UK is signatory to a number of International copyright Treaties including EU and non-EU countries.

### **COPYRIGHT QUALIFICATION**

Presently works by any EU National may qualify for protection in the UK, but after exit day the Government will amend legislation to remove references to the EEA and so only UK and treaty countries will apply – which in effect will mean no change.

**Note : No action required**

## **UK DOMAIN NAMES**

In a no deal scenario, after exit day those who wish to own an .eu domain name will need to have a close connection with EU. The .eu registry EURid, has announced a scheme for the suspension and withdrawal of domains owned by persons with UK or Gibraltar contact details.

If the UK leaves without a deal, for a two month period after exit day, those that have a GB or GI country code will be allowed to:

- Update their contact data to demonstrate that they have an establishment in the EU;
- Transfer their domain names to registrants that do not have a GB or GI country code;
- Any domains owned by such registrants will not automatically be renewed during this period. As of 30 March 2020, all such domain names will be revoked.

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