

# Alert

## INTELLECTUAL PROPERTY



# The Implications of 'Brexit' – What Impact Does it Have on Protection of Intellectual Property Rights?

By Amy Bishop

The exit of England and Wales, or the United Kingdom (UK), from the European Union (EU) has sent shock waves around the world. There has been a great amount of concern reported in the media in relation to the negative economic implications that Brexit may bring. It can also be expected that there will be a myriad of legal implications to deal with.

Whilst intellectual property rights, in particular trade mark rights, may seem just one small concern in the wake of Brexit, it is an area that may have huge implications for Australian businesses competing in a global market.

Many Australian businesses operating globally will have protected their trade marks both in Australia and overseas. Often this protection will have been sought through trade mark applications based on the Madrid Protocol.

The Madrid Protocol allows holders of trade marks in any of the 97 member states to seek international protection of their trade marks by designation to other member countries. The EU is a member of the Madrid Protocol and will have accepted numerous trade mark registrations lodged under the expectation that protection be afforded across England, Wales and the rest of the UK.

Businesses who previously had a trade mark protected by their EU designation

may now be facing the prospect of having no trade mark protection in England and Wales, or possibly the whole of the UK.

England, Wales and the UK have yet to trigger Article 50 of the Lisbon Treaty, meaning that the process of withdrawal from the EU has not yet formally begun. Following its trigger, those leaving the EU will enter a 2 year period of negotiations of withdrawal. The outcome of these negotiations will determine whether existing trade marks will be recognised.

Although it is to be hoped that a system of conversion of existing trade marks will be negotiated between those leaving and the EU, this is not guaranteed.

It can be expected that until the issue is determined holders of trade marks in the EU will have the usual rights of enforcement in the UK. Once a determination is made, if arrangements are not made to preserve all the EU trade marks, applications to separately register in those countries leaving the EU will need to be made. This means that without pre-emptive action to preserve a trade mark there is potentially a period in which rights of holders of existing EU trade marks could be unprotected in the UK or parts of it.

A solution may be to now promptly seek to register any existing EU trade mark, which is protected through the Madrid Protocol, through the UK's membership of the Madrid Protocol or by direct registration in the UK. Of course, either course will attract expense which may prove unwarranted. Also many would see this option as deficient in that no protection would be afforded until the date of registration and would therefore not cover the period from when the original Madrid Protocol application was effective. Nevertheless there is room for concern at the risk of doing nothing.



MORE INFO

**Amy Bishop** Senior Associate

p: +61 8 8124 1924

[amy.bishop@dwfoxtucker.com.au](mailto:amy.bishop@dwfoxtucker.com.au)

**DW Fox Tucker Lawyers**

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: [info@dwfoxtucker.com.au](mailto:info@dwfoxtucker.com.au) [dwfoxtucker.com.au](http://dwfoxtucker.com.au)

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