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INTELLECTUAL PROPERTY

BRAND OWNERS: ARE YOU BREXIT READY?

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The initial Brexit date of 29 March 2019 was re-scheduled to 31 October 2019 – deal or no deal.

The UK remains one of South Africa's major trading partners with mutual trade between the countries in excess of one hundred and fourty billion ZAR in 2018. In September 2019, a trade agreement was concluded with the purpose of safeguarding South Africa's arrangement with the UK should the UK exit the EU with no deal. This agreement includes Lesotho, Eswatini (previously Swaziland), Namibia, Botswana and Mozambique, and once ratified by cabinet will be referred to as SACUM-UK Economic Partnership Agreement. This Agreement replicates the terms of trade that currently govern the arrangement between South Africa and the European Union including health and safety regulations, quotas and tariffs.

Brexit has ramifications for every arrangement between the EU and the UK notwithstanding intellectual property, since a European Union registration ("EUTM") currently covers all twenty seven member countries of the European Union[1], including the UK.

Our advice to date concerning trade marks is that separate trade marks should be filed in the UK in addition to the EU to avoid the inevitable administrative delays at the UK Intellectual Property Office ("UKIPO") in the event of a "no deal" Brexit. This is particularly so if the UK is a trading partner.

ADVICE TO BRAND OWNERS

- Review your current UK and EUTM trade mark portfolios and if there is no separate UK mark consider the following:

A "DEAL" BREXIT		All EUTM trade mark registrations will be considered in force and effect in the UK with a transition period until at least December 2020.
A "NO DEAL" BREXIT	**EUTM Registrations**	Registrations will automatically replicate to the UK as "comparable trade marks (EU)" identifiable by **UK009**. No further action is required, no additional official fees apply.
	EUTM Applications	It will be necessary to file an application to the UKIPO for the grant of a UK replica application on payment of a fee.
	Opposed EUTM's	It will be necessary to file an application to the UKIPO for a UK replica application on payment of a fee.
	Pending cancellation application against an EUTM	A new cancellation action may be required in the UK against the "comparable trade marks (EU)".
	Renewals	Two separate renewals will apply for the EUTM and the "comparable trade mark (EU)" when due.
	Non-use cancellations	A trade mark is vulnerable to cancellation for non-use by any interested third party if it has not been used for a period of five years or longer after registration.

		Currently, as an EUTM includes the UK any use of the mark within the UK could assist in defending a non-use cancellation against an EUTM. On Brexit, use in the UK from then will not be taken into account which brand owners should be aware of. It is not uncommon to refile trade marks that are vulnerable to cancellation, albeit it defensively.

Should you require any clarity on the above or assistance with reviewing your current position in the EU please contact our Intellectual Property Team.

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[1] A EUTM covers all 28 member countries of the EU, namely Austria, Belgium, Bulgaria, Cyprus, The Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.



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