

ROYAL IP

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Prince Harry and Meghan Markle have announced that they are stepping down as "*senior royals*". This revelation means that the Duke and Duchess of Sussex will be financially independent balancing their time between the United Kingdom and North America. They agree, however, to continue to support Her Majesty the Queen.

The Royal Couple continue to receive extensive press coverage and with it, various legal matters have arisen, notwithstanding two issues concerning intellectual property ("IP").

COPYRIGHT

Meghan Markle had addressed a private five-page letter to her father, Thomas Markle. Certain extracts were subsequently published by the British Newspaper, The Mail on Sunday without her consent, the letter purportedly sent to the paper by her father. As a result, the newspaper is defending claims of copyright infringement, invasion of privacy and misuse of personal data in court proceedings brought by the Duchess. Although before the UK courts, the principles of Copyright are equally applicable in South Africa:

- The Duchess' letter to her father is a protected work under the Copyright Act defined as a "literary work", The Duchess being the author and owner of the Copyright therein;
- Copyright infringement occurs when a substantial part of a protected work is copied without permission. "Substantial part" does not relate to volume but instead substance which, in this instance, negatively portrays the Duchess and her strained relationship with her father.

In defending these claims of Copyright infringement, the Mail on Sunday has argued that the Duchess and other royals "*rely on publicity about themselves and their lives to maintain the privileged positions that they hold and that they could therefore have no "reasonable expectation of privacy" that the contents of the letter were private and would remain so.*"

They state that there is huge and legitimate public interest in the private lives of the royals and have raised the defence of "*fair dealing*" as relevant for purposes of reporting current events in the newspaper, claiming that the publication of the letter is excluded from copyright protection. There are also claims that Meghan did release her letter to the People Magazine in February 2019 with the result that the letter is already within the public domain. The matter is currently before the courts and it remains to be seen whether Thomas Markle will testify on behalf of the Mail on Sunday as recently reported.

Trade marks

Sussexroyal.com is the website launched by the Royal Couple concerning their work and their commitment to Community, Commonwealth and the Monarchy under the name SUSSEX ROYAL with social media further referencing their adoption of the name of SUSSEX ROYAL for a various products and ventures. Appropriate steps to register the trade mark SUSSEX ROYAL, in the UK as well as an *international registration designating Australia, Canada, the European Union and the USA in wide range of classes from stationery to fundraising and social care services have also been taken. It is reported that brand SUSSEX ROYAL already has several million followers on Instagram and that the name has been applied on a wide range of products.

While the Royal Couple's current private wealth is an estimated thirty four million sterling it is anticipated that their ventures under the name SUSSEX ROYAL may also include book and television deals, public speaking, retail and fashion promotions and endorsements on a variety of social media platforms possibly generating an income of four hundred million sterling or more.

The recently released terms of their Royal exit include the payback of public funds spent refurbishing their home and notably relinquishing their titles placing their endeavours under the name SUSSEX ROYAL at stake. Losing their titles may mean losing the ability to trade off the name, a developing story to watch with interest.

* International registrations

The question of international or "global" registration comes up often and the strategy adopted depends on the country where protection is required and where the IP is managed.

It is not possible to register a trade mark "globally" with one trade mark. Instead reference to "global registration" is likely to be a reference to an international registration whereby it is possible to file a trade mark in one country (the home territory). In order to file an international registration and designate countries the home territory and relevant countries should be members of either and/or the Madrid Agreement and Madrid Protocol. An advantage of filing an international registration is that one registration can extend to numerous designations. The registries in each of the designations are still required to examine the trade marks and should an issue arise it will be dealt with the local registry requiring the assistance of local agents. South Africa is not, as yet, a member of the Madrid.



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