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UK Brexit from the EU

As you are no doubt aware, the UK has now voted to leave the European Union. The exact date and time of departure is still uncertain because it depends upon when the UK Government triggers the exit procedure under Article 50 of the Lisbon Treaty. We understand that this is unlikely to take place until a new Government leader is elected. However, there will still be a two year period during which current EU legislation, including trade mark and design law, will apply.

In relation to your trade marks, the important points are that:

1. The current EU trade mark law and protection will still apply during this period;
2. Accordingly, for the foreseeable future and during this two year period, any European Union Trade Mark registration or applications will still extend to the UK;
3. The position is unclear but it is likely that once the UK does leave the UK, a proprietor or applicant for an EUTM application / registration will be able to "convert" the "UK portion" of that application / registration into a UK national application or registration, while retaining the original priority from the EUTM;
4. An existing UK Trade Mark registration or application will be unaffected by the UK's departure from the EU.

We will be closely monitoring the UK Government's negotiations with the EU for departure particularly in relation to Trade Mark and Intellectual Property matters and we will report further as the position becomes clearer.

However, you should consider the following key points in due course:

1. If you are considering filing an EUTM application, you should consider also filing a UK trade mark application to ensure that you have protection extending to the UK for the future;

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2. Currently, under the EU Single Market principles, goods which would do not infringe a trade mark registration elsewhere in the EU, which are imported into the EU as "grey goods", would not infringe a UK trade mark registration in certain circumstances. If as part of your business, you import such goods, you should be aware that this provision will no longer apply if the UK leaves the EU single market and does not, for instance, become a member of the EEA.
3. Allowing for the current uncertainty over the transition of rights from an EUTM application/registration, you should review your trade mark portfolio. If a mark is of key importance to you, you should consider in due course whether to file a UK trade mark application to ensure that you will have protection extending to the UK, once the UK leaves the EU.

For the future, we can also reassure you that we have a relationship with another firm in the EU which means that we will be able to continue to file EUTM applications and handle such applications and EUTM oppositions on your behalf for the same fee level as currently offered.

If you have any questions, please feel free to contact us either on 01959 546212 or by email at mark.hiddleston@hiddlestons.com.

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