

# Ministerial Statement Sheds Light on Fate of EU Trade Marks Post-Brexit

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Many IP owners wonder what they need to do to ensure the continued protection of their EU trade marks and Community Registered Designs after Brexit. Some attorneys, since the referendum, encouraged clients to file in the UK to secure those rights. This would have been an expensive strategy. This week, the UK government gave some reassurance on this

issue through a ministerial statement in Parliament that promised that these registered EU rights will become UK rights automatically and at no cost when the UK leaves the EU system. See the report on the CITMA website [here](#).

Contrary to most issues surrounding Brexit, this one does not depend on an agreement being reached between the UK and the EU. How to deal domestically with EU registered rights after Brexit is purely a matter for the UK. So this announcement is quite significant.

The statement given in Parliament is not detailed but unsurprisingly the UK government wishes to ensure a smooth transition and as little administrative burden as possible which is best achieved by giving full effect in the UK to all EU registered rights, automatically.

There are many technical questions that remain open and which may be answered, partially or fully, once legislation is published in this regard. First and foremost the question concerning EU applications that are pending on the cut-off date. Other legal issues include the rules on non-use and reputation, etc. in trade marks and issues such

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as the availability of prior designs in the market in connection with the novelty and individual character requirements for CRDs. I expect after Brexit the “naturalised” EU registrations will be treated as if they were always UK registrations and subject to normal rules under UK law that treat the UK territory as the relevant market. This seems to be the simplest solution. If so, some of those EUTMs (probably the vast majority of those more than 5 years old) that will convert automatically to UK rights may become vulnerable overnight to non-use challenges (if they were not put to use in the UK).

There will also be some questions for the EU to resolve post Brexit, the most obvious one whether use of an EUTM in the UK before Brexit will be relevant for non-use challenges and for assessing reputation of an EU registration after Brexit. Hopefully, the EU will pass legislation in due course to clarify the position on these kind of issues.

We will not have many more details for at least several more months, but this announcement puts to rest the key concerns regarding the effect of Brexit on registered EU rights.