

What will Brexit hold for trade marks? The most recent guidance comes from the [Trade Mark Exit Regs](#), released in December. Strictly speaking it is marked as a draft, but it is broadly expected to come into force in its current form on Exit Day which currently looks to be 29 March 2019. If a deal is done before then, with the anticipated transition period, Exit Day will then be for 31 December 2020.

In the event of no deal or if nothing else is agreed then the Exit Regs, in combination with other draft instruments such as the Withdrawal Agreement and September's No-Deal guidance, will determine what will happen to your trade marks.

Read our answers to some frequently asked questions on the future of trade marks following Brexit.

Question	Answer
<p>What will happen to my existing EU registrations?</p>	<p>Your EU registration will continue to offer protection in EU member states. Of course the UK will no longer be part of the EU and so the EU registration won't provide protection in the UK.</p> <p>However, as long as your mark was registered prior to Exit Day, it will be automatically cloned into a corresponding UK mark (the clone) maintaining the original filing and registration dates. You are not required to take any action in relation to the cloning though can, in some circumstances, opt out of the cloning process. No IPO fee is expected for cloning.</p>
<p>What will happen to my pending EU applications?</p>	<p>The EU application will proceed in the usual way.</p> <p>However, pending applications will not be cloned into UK applications. Instead applicants will have a 9 month window to apply for UK rights while maintaining the filing date of the pending EU application. UK IPO fees are expected to be payable in relation to applications filed in that 9 month window.</p>
<p>I have opposed a third party's EU application. The opposition is based on my earlier UK rights. What will happen to the opposition?</p>	<p>Your opposition against the EU application per se will fail but it is expected that there will be some mechanism to oppose should the third party apply for UK rights within the 9 month application window mentioned above.</p>
<p>If I need to prove use of my cloned mark, how will that be dealt with?</p>	<p>The use issue may of course apply as soon as your mark is over 5 years old. To the extent that the proof of use period falls before Exit Day, use in the EU (including in the UK), for that period, will count. To the extent that the proof of use period falls after Exit Day, the use will need to be off the cloned mark and so will be limited to use in the UK.</p>
<p>If I need to prove use of my EU mark after Exit Day, how will my use be assessed?</p>	<p>Where use has been predominantly UK use, it will be more difficult/not possible to defend an attack on the EU mark after 5 years. There are a number of unanswered questions around this point.</p>
<p>Will the IPO refer to reputation gained in the EU when assessing my cloned mark's reputation?</p>	<p>If the date at which reputation is to be judged falls before Exit Day then reputation in the EU (including the UK) is relevant. If that date falls after Exit Day, only reputation in the UK is relevant.</p>

Question	Answer
How will my license agreements (and coexistence agreements etc) be interpreted after Exit Day?	References to an existing EU mark in an agreement made before Exit Day shall be deemed to cover the clone, unless there is evidence that the document was not intended to have effect in the UK.
What about existing UK injunctions based on an EU mark?	If an injunction prohibits acts which would infringe an existing EU mark, then from Exit Day the injunction will still be enforceable, essentially having substituted the cloned mark for the EU mark. The position in relation to UK ordered pan European injunctions is less clear.
What will happen to parallel imports?	There is an imbalance with the way in which parallel imports are to be treated (assuming we do not join the EEA): <ul style="list-style-type: none"> ■ the draft Exit (Exhaustion of Rights) Reg provides that the UK will continue to recognise EEA-wide exhaustion of IP rights. Owners of UK IP rights will therefore not be able to prevent parallel imports from the EEA ; ■ in contrast rights owners in the EEA will be able to prevent parallel imports from the UK.

There are a number of issues for portfolio owners and practitioners that the guidance documents and Exit Regs have not answered and some of these are:

Question	Possible outcome
What will happen to my opposed UK application where the opposition is based on an earlier EU registration?	A practical solution would be to allow the relied on earlier EU mark to be substituted by the cloned mark.
What will happen to existing EU designations of International Registrations?	Just before Christmas 2018, the UK IPO confirmed that to ensure legal certainty it will implement a domestic fix in the UK to provide continued coverage of international registrations designating the EU. We do not yet have details as to how this will work.
What will happen to my EU registered design portfolio?	So far there has not been an equivalent Exit Regulation dealing with this but the guidance issued to date indicates a similar cloning process for designs.

So, while there is still a good deal of uncertainty, a number of trade mark issues are starting to become clear for the management of trade marks at Brexit whether that is 29 March, 31 December 2020 or a date in between.

