
Exhaustion of Intellectual Property Rights

What does it cover?

- Exhaustion of intellectual property rights. This means the loss of the exclusive right to control the resale and distribution of a product, after such product has been legitimately placed on a market within a particular territory (i.e. by, or with the consent of, the rights holder).
- Parallel imports, meaning products (non-counterfeit) imported into a territory where the intellectual property rights in such product have been exhausted.

What will happen?

- Currently, the UK is part of a regional exhaustion scheme which covers the European Economic Area (EEA). As a result, once a product is legitimately put to market anywhere in the EEA, intellectual property rights in such product are considered exhausted.
- In the event that the UK leaves the EU without a deal, the UK intends to continue to recognise the existing EEA regional exhaustion scheme, and make no immediate change to rules dealing with goods imported into the UK. This means that parallel importing of goods from the EEA can continue.
- However, in such no deal situation, parallel importing of goods **from the UK** to the EEA may be restricted, and intellectual property rights **will not be exhausted** throughout the EEA by the legitimate placing of a product on the market in the UK.
- The government is therefore considering all options for how to manage exhaustion of intellectual property rights following the exit period.

What will businesses have to do?

- In the absence of a deal, following the UK's departure from the EU, intellectual property rights in a product will be exhausted in the UK if it is legitimately placed on the market within the EEA. Parallel imports of such goods **into** the UK should therefore be able to continue as before.
- However, placing a product on the market within the UK in the same circumstances, will not lead to the exhaustion of intellectual property rights the EEA. As a result, businesses **may need consent** from the relevant rights holders **to export goods from the UK into the EEA**, even though they have been legitimately put on the UK market.
- It is not clear whether intellectual property rights in goods that have been legitimately put on the market in the UK before a no deal withdrawal from the EU, but not

exported to the EEA before such time, will be treated as exhausted and so businesses may need consent from the rights holders before exportation.

- It is therefore essential that businesses seek legal advice on the impact this may have for their operations, as well as the intellectual property rights they, or others, may hold.

This Technical Notice was compiled with the kind assistance of the law firm Squire Patton Boggs, who are working with a number of businesses in the UK and internationally on their preparations for Brexit, and can be contacted via jeremy.cape@squirepb.com

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