

Exhaustion of IP Rights

UK ↔ European Union



1. Current position

IP rights are considered “exhausted” once goods have been placed on the market by the IP owner or with the owner’s consent anywhere within the European Economic

Area (EEA), namely the member states of the European Union plus Iceland, Liechtenstein and Norway. (During the transition period, the UK has in practice

continued to operate as though part of the EU.) This means that the IP-owner can no longer prevent those same goods from being re-sold anywhere in the EEA.

Company A in the UK sells their goods to Company B based in the UK or EU →

Company B can re-sell those same goods to Company C in a different EU member state →

Company C can then re-sell those same goods again, including back into the UK

Example of exhaustion: Once Company A has sold their goods in the EEA, their IP rights, including the trade mark on the packaging of the goods sold, are exhausted. This means Company A cannot generally enforce its IP rights, to stop the re-sale or distribution of their goods.

2. Post Brexit (From 1 January 2021)

After the end of the transition period on 31 December 2020, goods first placed on the market in the EEA (which will no longer include the UK) by, or with the consent of, the IP right-holder, will remain freely importable into the UK.

However, products first placed on the UK market by, or with the consent of, the IP rights holder, will no longer be considered “exhausted” in EEA territories.

Businesses importing these IP-protected products from the UK to the EEA could be at risk of infringement actions in EEA territories if they resell without the consent of the IP rights holder. This means that the rights owner (or a person with their consent) may oppose parallel imports into the EEA from the UK.

Trade negotiations are ongoing between the EU and UK but the position on exhaustion is unlikely to change before the end of 2020. In addition the UK Intellectual Property Office plans to publish a formal consultation on exhaustion in early 2021.

The EU and UK have agreed that IP rights exhausted in the EU and the UK before the end of the transition period shall remain exhausted in both areas indefinitely.

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3. Actions for parallel exporters of IP-protected goods to the EEA

- › Check whether you currently export IP-protected goods to the EEA (for example, goods branded with a trade mark) that have already been placed on the UK market and where the rights holder's permission to export those goods is not currently required.
- › You may need to contact the rights holder to get permission to continue after 1 January 2021. The IP rights holder may not provide permission for their IP-protected goods to be parallel exported to the EEA.
- › You may need to review your business arrangements, business model or supply chain based on the outcome of the discussion with the IP rights holder.



4. Actions for IP rights holders

Businesses that own IP rights (for example, a trade mark) may wish to seek legal advice if their IP-protected goods are parallel exported from the UK to the EEA.

You will need to consider if you want to allow parallel exports of your IP-protected goods from the UK to the EEA after 1 January 2021.

If you would like any further advice on these new rules, then please do not hesitate to get in touch with the relevant contacts in the IP team, or alternatively email us at ip@fieldfisher.com



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