



The Implications of Brexit for Trade Mark Protection

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Synopsis

Brexit has had far-reaching implications for IP rights in the UK and, in particular, on brand protection. With the Trade and Cooperation Agreement between the EU and the UK now in place, in addition to the Withdrawal Agreement, and the English courts starting to grapple with IP protection in a post-Brexit world, this presentation highlights the most important legal changes after the end of the transition period and the effect of these changes on trade mark litigation.

European Trade Marks

The EU Perspective

- As of 1 January 2021 (31 December 2020 was IP completion day), EU trade marks continue to be valid in the EU-27 Member States but no longer have effect in the UK.
- International registrations designating the EU pursuant to the Madrid system no longer have effect in the UK.
- Applications pending as at the IP completion day no longer covered the UK from that date.
- Existing seniority claims in EU trade marks based on national trade mark rights in the UK will still be processed and published if filed before the end of the transition period.

European Trade Marks

- Requests for conversion to the UK received by the EU IPO before the withdrawal date were accepted if they fulfilled the conditions set out in the EU Trade Mark Regulation.
- UK rights ceased as of the withdrawal date to be 'earlier rights' for the purposes of *inter partes* proceedings (e.g., oppositions, invalidity); the territory and public of the UK are no longer relevant for the purpose of assessing a conflict between an earlier EU right and a later EU Trade Mark or application.
- The EU IPO did not issue any individual notifications to EU Trade Mark applicants, rights holders and professional representatives whose rights may have been affected.

European Trade Marks

- Actions in *inter partes* proceedings based solely on UK rights that were still pending as at the withdrawal date were dismissed; each party was ordered to pay its own costs.
- UK parties will need to be represented by a representative from within the EEA in proceedings before the EU IPO where representation is mandatory (i.e., not for filings or renewals).
- UK representatives who no longer met the requirements of Art 120 of the EU Trade Mark Regulation lost their capacity to act in proceedings as of the IP completion day.
- UK nationals with no domicile in an EU-27 Member State are no longer entitled to file an international application through the EU IPO as office of origin.
- See EU IPO guidance on *Impact of the UK's withdrawal from the EU – EUTMs*

UK Trade Marks Post-Brexit

The UK Perspective

- During the transition period, the EU Trade Mark Regulation continued to apply in the UK. It is only as of 1 January 2021 that the legal position really changed.
- Legislative context affecting the Trade Marks Act 1994 after the IP completion day:
 - The Withdrawal Agreement (Articles 54 to 61 of Part 3, Title IV aim to prevent loss of rights that would otherwise have followed from the UK's withdrawal)/European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020.
 - Title V of Part Two of the Trade and Cooperation Agreement covers IP but in relation to Trade Marks is largely limited to (i) setting out minimum standards that the EU and the UK must adhere to and which are already enshrined in EU and UK law; and (ii) holding the UK and EU to their existing international treaty obligations.

UK Trade Marks Post-Brexit

The UK Perspective

- Spring 2019 SIs ((i) The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/269); and (ii) The Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/638); and
- September 2020 SI (Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1050).
- The spring 2019 SIs were originally intended to come into force on Exit Day in the event of a no-deal Brexit but were then deferred as a result of the Withdrawal Agreement and updated by the September 2020 SI.

UK Trade Marks Post-Brexit

Withdrawal Agreement: provisions relating to trade marks

- **Comparable trade marks:** holders of EU Trade Marks that are registered before the end of the transition period become holders of comparable trade mark rights in the UK without any need for re-examination (Article 54(1)(a)) (includes certification and collective trade marks).
- **Effect of cancellation of corresponding EUTM:** if after the end of the transition period an EU Trade Mark is declared invalid or revoked in proceedings started before the end of the transition period, the corresponding comparable trade mark will also be cancelled as of the same date unless the grounds for invalidity or revocation are not applicable in the UK (Article 54(3)).

UK Trade Marks Post-Brexit

- **Renewal of comparable trade mark:** a comparable trade mark will have the same renewal date as the corresponding EU Trade Mark (Article 54(4)).
- **Filing and priority dates of comparable trade marks:** a comparable trade mark will enjoy the same deemed filing or priority date as the corresponding EU Trade Mark and, where appropriate, any claimed seniority of a UK mark (Article 54(5)(a)).
- **Genuine use:** a comparable trade mark will not be liable to revocation on the ground that the corresponding EU Trade Mark was not put to genuine use in the UK before the end of the transition period (Article 54(5)(b)).
- **Effect of reputation of corresponding EU Trade Mark:** comparable trade marks will continue to benefit from reputation acquired in the EU before the end of the transition period. Following IP completion day, the comparable UK trade mark's reputation will be based only on use in the UK (Article 54(5)(c)).

UK Trade Marks Post-Brexit

- **No initial fees or administration for comparable marks:** comparable trade marks will be granted and registered free of charge (Article 55(1)). The UK will not impose any application requirement or other administrative procedure for the acquisition of a comparable trade mark, and owners of comparable marks will not be required to have a UK correspondence address during the first three years from IP completion day (Article 55(2)).
- **EU Trade Mark applications pending at end of transition period:** those whose EU Trade Mark applications are pending on IP completion day are permitted a further nine-month period during which they may file UK applications for the same rights and take advantage of the same filing, priority and seniority dates as the corresponding EU Trade Mark applications (Article 59(1)).
- **Exhaustion of trade mark rights:** rights exhausted in the UK and EU before the end of the transition period remain exhausted in both territories (Article 61).
- **Procedure for grant of comparable UK rights:** rights holders not required to carry out administrative procedures or make applications (see Article 55).

UK Trade Marks Post-Brexit

The Spring 2019 and September 2020 SIs

- UK government had to legislate to implement the Withdrawal Agreement and protect holders of EU Trade Marks who did not also hold equivalent UK registered rights.
- Rather than to amend the retained EU Trade Mark Regulation, the first of the 2019 SIs revoked the retained EU Trade Mark Regulation on IP completion day and the government chose instead to amend the Trade Marks Act.
- A new Schedule 2A to the Trade Marks Act covers European Union trade marks, creating the comparable trade mark (EU):
“A trade mark which is registered in the EUTM Register immediately before IP Completion Day (an “existing EUTM”) is to be treated on and after IP Completion Day as if an application had been made, and the trade mark had been registered, under this Act in respect of the same goods or services as the existing EUTM is registered in the EUTM Register”
(paragraph 1(1) of new Schedule 2A to the TMA).

UK Trade Marks Post-Brexit

- A comparable trade mark (EU) has the same status and effect as a trade mark registered under the Trade Marks Act – but no registration certificates have been or will be issued.
- Priority/filing date recorded for the comparable trade mark (EU) is the same as that of the EU Trade Mark from which it derives.
- Pending EU Trade Mark applications did not give rise to a comparable trade mark (EU) and applicants have until 30 September 2021 to file an application for a UK national mark in order to take advantage of the same filing and priority dates as the original EU Trade Mark application.
- A new Schedule 2B to the Trade Marks Act covers International Trade Marks protected in the European Union, creating the comparable trade mark (IR).
- Comparable trade marks (IR) are deemed to have been registered on the date when the international mark was applied for (where the EU designation was contained in that original application) or, where protection in the EU was the result of a request for territorial extension, the date when that request was recorded in the international register of marks.

UK Trade Marks Post-Brexit

Other Key Changes

- Use of trade mark in the EU prior to 1 January 2021 will count as use of the comparable trade mark (EU) in the UK for consideration of use and reputation.
- The proprietor of an existing EU Trade Mark or IR may serve notice on the UK trade marks registrar at any time (during or after the transition period) to opt out of owning the corresponding comparable trade mark (EU) or (IR). The opt-out notice must comply with certain form requirements and an opt-out will not be available in certain circumstances.
- If the opt-out is accepted, it will be deemed to have taken effect from IP completion day and the registrar will have a duty to remove the comparable trade mark from the register.
- Where EU trade mark registrations and applications are reinstated after 1 January 2021, the UK IPO will only create comparable trade mark (EU) on notification of reinstatement by proprietor (beware deadlines).

UK Trade Marks Post-Brexit

- Various provisions of section 3 (absolute grounds for refusal of registration) have been amended so that provisions of EU law prohibiting the use or registration of a mark can no longer be relied on as the basis of an absolute ground of refusal (paragraph 2, Schedule 3).
- Various provisions of section 5 (relative grounds for refusal of registration) have been amended to remove references to EUTMs, international trade marks (EU), and EU law (paragraph 3), so that they can no longer form the basis of a relative ground for refusal.
- Section 6A (raising of relative grounds in opposition proceedings in case of non-use) has been amended to remove references to proof of use of an EU Trade Mark or International mark (EU) relied on in opposition proceedings (paragraph 5).
- Section 10A (right to prevent goods entering the UK without being released for free circulation) has been amended so that it applies to goods coming from outside the customs territory of the UK rather than that of the EU (paragraph 6).
- Section 11 (limits on effect of registered trade mark) has been amended to remove section 11(1A) relating to non-infringement of a UK mark through use of a later valid EUTM (paragraph 7).

UK Trade Marks Post-Brexit

Exhaustion of Rights

- The UK elected to recognise that the first placing of products on the market in the European Economic Area (EEA), and not just within the UK market, will exhaust IP rights in those products. IP rights cannot then prevent subsequent sale of those products in the UK.
- However, the EU position does not mirror this approach: businesses that place their products on the UK market will not be considered to have exhausted the IP rights for those products and will be able to rely on IP rights to prevent the resale of those goods on the EU market.
- The UK proposes to consult on its eventual position concerning exhaustion of rights, with the current position expected to change.
- Pending adoption of a new exhaustion regime, the UK will operate a hybrid exhaustion regime with the EEA, and a system of national exhaustion with non-EEA countries.

UK Trade Marks Post-Brexit

Effects on Trade Mark Litigation before the High Court and the UK IPO

- The High Court was formerly designated as an EU trade mark court under the Community Trade Mark (Designation of Community Trade Mark Courts) Regulations 2005.
- Since 1 January 2021, the English courts no longer have jurisdiction to grant remedies affecting EU Trade Marks, including cancellations and injunctions, subject to an exception for proceedings that were ongoing at the end of the transition period; *vice versa*, EU-wide injunctions will not apply to the comparable UK rights.
- In proceedings for infringement, injunctions granted by the court after the IP completion day may only relate to use of the corresponding comparable trade mark (EU) and, if they relate to cancellation, may only revoke or declare invalid the corresponding comparable trade mark (EU).

UK Trade Marks Post-Brexit

- If an injunction was in force on IP completion day that prohibited acts of infringement of an EU Trade Mark or International mark (EU) in the UK, an equivalent injunction has effect in respect of the corresponding comparable trade mark, subject to any court order to the contrary.
- Subject only to transitional provisions, the rules on jurisdiction and the recognition and enforcement of judgments as previously set out in the Brussels Regulation (recast) no longer apply to the UK.
- Where EU Trade Mark revocation or invalidity proceedings were pending before the EU IPO on IP completion day, and these eventually result in revocation or a declaration of invalidity, the trade marks registrar must revoke the comparable trade mark (EU) that derived from the EU Trade Mark, or declare it invalid to the same extent as the EU Trade Mark and with effect from the same date.

UK Trade Marks Post-Brexit

- In practice, where an EU Trade Mark is subject to cancellation proceedings, a UK comparable right will still be created but the cancellation proceedings will be recorded against the UK comparable right pending resolution of the proceedings.
- An exception applies where the grounds for invalidity or revocation would not have applied had the proceedings been brought against the comparable trade mark (EU) under the Trade Marks Act on the same date as the proceedings against the EU Trade Mark were started.
- The owner of a comparable mark, whose "parent" EU Trade Mark has been cancelled, has the opportunity to file a derogation notice to assert that the cancellation grounds do not apply in the UK.
- Statutory guidance clarifies main impacts on users of the Intellectual Property Office's (IPO's) Tribunal Service following the end of the Transition Period on 31 December 2020, including examples when a derogation is likely to be successful or not (see: Tribunal Practice Notice (2/2020) End of Transition Period- impact on tribunal proceedings).

UK Trade Marks Post-Brexit

Conclusions – what should trade mark owners do now?

- Check that EU Trade Marks/IRs were correctly transitioned into comparable trade marks (EU) or (IR).
- Specific rules apply where a comparable trade mark (EU) has expired or will expire within six months of 1 January 2021.
- New trade marks require separate applications in the UK and EU.
- Rights holders should consider re-filing EU Trade Marks in the EU if they have only been used in the UK in the last five years.
- Impact on parallel imports and exhaustion of rights: beware hybrid system and monitor forthcoming changes in UK law.
- Pending opposition and cancellation actions filed against EU trade marks will have received procedural directions; going forward, separate proceedings in the UK and EU will now be required.

UK Trade Marks Post-Brexit

- Review pending and threatened infringement actions: appropriate procedural directions will have been given in most cases; going forward, trade mark enforcement now requires separate proceedings in the UK and EU.
- Review existing licence agreements and clarify rights covered (note that existing licences relating to EU Trade Marks will be deemed to apply to the corresponding comparable trade mark (EU)); check that creation of the new comparable right does not infringe any agreement either.
- Budget for increased portfolio management and enforcement costs.
- EU customs authorities will no longer enforce UK IP rights at their borders; new system for cooperation between customs authorities to enforce intellectual property rights yet to be developed.

Thank you!
Questions?

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Withdrawal and The Trade Marks Act 1994

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Topics

1. The Withdrawal Act 2018 as it relates to IP
2. Tunein Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA
3. Is the Trade Marks Act 1994 EU Derived Domestic Legislation?
4. The Impact

1. The Withdrawal Act and Intellectual Property

s.2 Saving for EU-derived domestic legislation

(1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.

(2) In this section “EU-derived domestic legislation” means any enactment so far as—

(a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,

(b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,

(c) relating to anything—

(i) which falls within paragraph (a) or (b), or

(ii) to which section 3(1) or 4(1) applies, or

(d) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act 1972.

(3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation).

1. The Withdrawal Act and Intellectual Property

S.6. Interpretation of retained EU law

(1) A court or tribunal—

- (a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court, and
- (b) cannot refer any matter to the European Court on or after exit day.

(2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after exit day and so far as they are relevant to it—

- (a) in accordance with any retained case law and any retained general principles of EU law, and
- (b) having regard (among other things) to the limits, immediately before exit day, of EU competences.

(4) But—

- (a) the Supreme Court is not bound by any retained EU case law,
- (b) the High Court of Justiciary is not bound by any retained EU case law when—

(i) sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998), or

(ii) sitting on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995, and

(c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

(5) In deciding whether to depart from any retained EU case law, the Supreme Court or the High Court of Justiciary must apply the same test as it would apply in deciding whether to depart from its own case law.

1. The Withdrawal Act and Intellectual Property

S.9 Implementing the withdrawal agreement

“(1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purposes of implementing the withdrawal agreement if the Minister considers that such provision should be in force on or before exit day, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the EU.”

The Withdrawal Act
is silent as it concerns
intellectual property

The Withdrawal Agreement

Article 4

“Methods and principles relating to the effect, the implementation and the application of this Agreement 1. The provisions of this Agreement and **the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.** Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law. 2. The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.”

The Withdrawal Agreement

TITLE IV INTELLECTUAL PROPERTY

Article 54

Continued protection in the United Kingdom of registered or granted rights

1. The holder of any of the following intellectual property rights which have been registered or granted before the end of the transition period shall, without any re-examination, become the holder of a **comparable registered and enforceable intellectual property right** in the United Kingdom under the law of the United Kingdom:

(a) the holder of a European Union trade mark registered in accordance with Regulation (EU) 2017/1001 of the European Parliament and of the Council shall become the holder of a trade mark in the United Kingdom, consisting of the same sign, for the same goods or services;

The Withdrawal Agreement

TITLE IV INTELLECTUAL PROPERTY

Art. 54(3).

“Notwithstanding paragraph 1, if an intellectual property right referred to in that paragraph is **declared invalid or revoked**, or, in the case of a Community plant variety right, is declared null and void or is cancelled, in the Union **as the result of an administrative or judicial procedure which was ongoing** on the last day of the transition period, **the corresponding right in the United Kingdom shall also be declared invalid or revoked, or declared null and void, or be cancelled**. The date of effect of the declaration or revocation or cancellation in the United Kingdom shall be the same as in the Union.”

The Withdrawal Agreement

TITLE IV INTELLECTUAL PROPERTY

Article 59(1)

Right of priority with respect to pending applications for European Union trade marks, Community designs and Community plant variety rights

“Where a person has filed an application for a European Union trade mark or a Community design in accordance with Union law before the end of the transition period and where that application was accorded a date of filing, that person shall have, for the same trade mark in respect of goods or services which are identical with or contained within those for which the application has been filed in the Union or for the same design, the right to file an application in the United Kingdom within 9 months from the end of the transition period. An application made pursuant to this Article shall be deemed to have the same filing date and date of priority as the corresponding application filed in the Union and, where appropriate, the seniority of a trade mark of the United Kingdom claimed under Article 39 or 40 of Regulation (EU) 2017/1001.”

The Withdrawal Agreement

TITLE IV INTELLECTUAL PROPERTY

Article 61

Exhaustion of rights

Intellectual property rights which were exhausted both in the Union and in the United Kingdom before the end of the transition period under the conditions provided for by Union law shall remain exhausted both in the Union and in the United Kingdom.

TuneIn Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA EWCA Civ 441, 2021 - 26 March 2021-Court of Appeal

TuneIn Radio indexes and provides hyperlinks to users.

The underlying stream URL of the internet radio station is not obviously visible to the user.

s.20 CDPA 1988 :

"(1) The communication to the public of the work is an act restricted by the copyright in—

The Section was derived from: (i) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations agreed at Rome on 26 October 1961, (ii) the WIPO Copyright Treaty, (iii) The WIPO Performances and Phonograms Treaty, (iv) Article 3 of Directive 2001/29/EC of 22 May 2001 -"the Information Society Directive“, (v) transposed into UK law by the Copyright and Related Rights Regulations 2003, SI 2003/2498, Arts 3, 6 and 7, which became (vi) s.20 CDPA 1988.

Tunein Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA EWCA Civ 441, 2021 - 26 March 2021-Court of Appeal

CJEU has held that accessibility of a website from a Member State is not sufficient to give rise to an infringement of rights conferred by the law of that State, and that the relevant act must be targeted at that State in a series of 25 judgments and Case C-392/19 *VG Bild-Kunst v Stiftung Preußischer Kulturbesitz* [EU:C:2021:181] ("*VG Bild*").

Question: Should this Court depart from the jurisprudence of the CJEU?

Tunein Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA EWCA Civ 441, 2021 - 26
March 2021-Court of Appeal

As s.20 CDPA implements the Information Society Directive: by s. 2(1) of the European
Withdrawal Act 2018 such legislation remains in effect unless and until it is repealed or
amended.

Furthermore, 24 of the 25 judgments and orders of the CJEU listed in paragraph 67 above
constitute "retained EU case law" s.6(3)&(7) of 2018 Act - they continue to form part of
domestic law post-Brexit and continue to bind lower courts .

Tunein Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA EWCA Civ 441, 2021 - 26
March 2021-Court of Appeal

“The Court of Appeal and the Supreme Court have power to depart from such judgments and orders, **but only on the same basis that the Supreme Court has power to depart from one of its own precedents** or of one of the House of Lords in accordance with the *Practice Statement (Judicial Precedent)*”

“In the domestic context both the House of Lords and the Supreme Court have consistently stated that **this is a power to be exercised with great caution.**” :

"Over the past 40 years the House has exercised its power to depart from its own precedent rarely and sparingly. It has never been thought enough to justify doing so that a later generation of Law Lords would have resolved an issue or formulated a principle differently from their predecessors."

Tunein Inc v Warner Music UK Limited, Sony Music Entertainment UK Limited CA EWCA Civ 441, 2021 - 26 March 2021-Court of Appeal

[77] “In my judgment, this Court should not depart from the CJEU's jurisprudence in the present case for the following reasons:

[78] First, there has been no change in the domestic legislation.

[79] Secondly, there has been no change in the international legislative framework. Even if this Court was not bound by the CJEU case law, it would adopt the same approach to s.20.

[80] Thirdly, the CJEU has unrivalled experience in confronting this issue in a variety of factual scenarios. Moreover, it has developed and refined its jurisprudence over time. The jurisprudence is not free from difficulty or criticism, but it does not follow that better solutions are readily to hand.

3. Is the Trade Marks Act 1994 EU Derived Domestic Legislation?

The Recital:

“An Act to make new provision for registered trade marks, implementing **Council Directive No. 89/104/EEC of 21st December 1988** to approximate the laws of the Member States relating to trade marks; to make provision in connection with **Council Regulation EC No. 40/94 of 20th December 1993 on the Community trade mark**; to give effect to **the Madrid Protocol** Relating to the International Registration of Marks of 27th June 1989, and to certain provisions of **the Paris Convention** for the Protection of Industrial Property of 20th March 1883, as revised and amended; and for connected purposes.”

Non EU provisions: (i) Madrid Protocol (ii) Art 6 bis, ter & septies of the Paris Convention (iii) those provisions concerning passing off ss.1(2); 5(4)(a); 11(3) & 7(3)-(honest concurrent use).

4. The Impact of Tunein

Returning to s.2 of The Withdrawal Act 2008

s.2 Saving for EU-derived domestic legislation

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(3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation).

4. The Impact of Tunein

Returning to s.2 of The Withdrawal Act 2008

s.2 does not distinguish between provisions of an Act and the Act as a whole.

It is thus likely the Trade Marks Act 1994 will be treated as “EU derived domestic legislation”

Unless: The Supreme Court of the United Kingdom Practice Direction - Amended October 2020

“If an application for permission to appeal 1. asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords ... **the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so.**”

Background

- GW Pharmaceuticals plc are leaders in cannabinoid science and have developed two cannabis-based medicines
 - Epidiolex for the treatment of seizures in Dravet syndrome, Lennox-Gastaut syndrome and Tuberous Sclerosis Complex (approved in US/EU and other RoW markets)
 - Sativex for the treatment of spasticity associated with multiple sclerosis (approved in a number of countries including UK)

- Acquired by Jazz Pharmaceuticals plc on 5th May 2021 for \$7.2Bn
 - Jazz is a world leader in sleep and narcolepsy and oncology
 - The new company has a global footprint a diversified product portfolio

- The products range from traditional small molecule drugs, botanical drugs and biological products

Brexit and Pharmaceuticals

- The pharmaceutical industry relies heavily on patent protection, and the patent system is largely unaffected by Brexit
- The main impact has been seen in registered trademarks
 - EU trademarks have been cloned and there are now parallel UK rights and EU rights covered the EU territories
 - For new registrations there is the additional cost of filing and prosecuting applications in the EU and now the UK as well
 - Additional cost of maintaining UK mark and EU trademarks
- Some impact for the ownership of marketing authorisations for EU approved medicines
 - Requires a non-UK entity within the corporate group to own the EU authorisation
- For pharmaceuticals our brands are fundamental to what we do, however, the impact of Brexit is relatively low:
 - We generally have global brand names, or at least pan-regional brands
 - Our brands generally have a relatively long life
 - Therefore, the additional cost and administration is a relatively small impact on larger pharmaceutical companies
- Some variations to documentation required for products placed on the Northern Irish market post-Brexit
 - This has caused a one-off increase in workload and cost to comply with this requirement

A pair of silver scissors is shown cutting through two flags. On the left is the Union Jack (United Kingdom flag), and on the right is the European Union flag (blue with yellow stars). The scissors are positioned diagonally, with the blades meeting at the center where the two flags overlap. The background is a dark, textured blue.

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