

Brand Protection Beyond Brexit

A survey of business opinion in the UK
and Europe by HGF, the global Intellectual
Property rights specialist

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HGF Limited

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About HGF

HGF Ltd is one of Europe's leading firms of Intellectual Property specialists. The firm is one of only a few to offer a fully integrated IP solution, bringing over 200 trade mark attorneys, patent attorneys and IP solicitors together to provide a full-service IP solution. The firm has 22 offices throughout Europe in Austria, Germany, Ireland, The Netherlands, Switzerland and the UK.

Our strength is our exceptional people and the depth and breadth of our individual specialist expertise – not only in IP but in the specific fields and industries our attorneys represent. We provide clients with insightful sector knowledge, informed advice and a consistent high-quality of service, complemented by in-depth local knowledge.

We explore every avenue and obsess over the finest detail to truly understand your business and IP and how to maximise its potential. Our people not only have immense technical knowledge and experience but an astute commercial mindset and a pragmatic approach. We're thought leaders, not followers, and are highly ranked and respected around the world.

Our approach, from the inception of ideas to the enforcement of rights, is truly collaborative. Our unique and successful professional relationships come from our strategic teams that fit around the specific requirements of each client. Our patent and trade mark attorneys work with IP solicitors in multidisciplinary teams, each guided by the great value we place on people, teamwork, excellence and progression.

The Survey

Since the UK voted to leave the EU in 2016's referendum, HGF has worked to ensure that Brexit will just mean 'business as usual' for its clients.

However, ongoing negotiations and unresolved political debate on the future status of the UK in its relationship with the EU has created an environment of uncertainty for business.

We carried out a survey to better understand how prepared some of Europe's biggest companies are for life after Brexit, in terms of protecting their valuable IP rights and the brand equity this adds to their business.

We consulted more than 120 companies, many of them world-leaders in their markets and industry sectors, with a specific focus on the UK, Germany, France, Spain, Switzerland and The Netherlands.

Together they have annual revenues of hundreds of billions of pounds, are major employers, product innovators, economic drivers and exporters.

By taking the temperature of their concerns, priorities, planning and preparations, areas of doubt and perceived opportunities, weaknesses and threats, we can make sure we continue to offer the dynamic intellectual property service that every innovative and competitive organisation needs.

Which of the following best describes where your job title or role fits in the organisation?



The Value of Brand

The value of brand, and therefore its protection, has never been greater than it is today. According to Interbrand's Best Global Brands 2019 Rankings, the cumulative value of the world's top 100 brands has reached \$2.1 trillion. It is no surprise that concerns over the rigour and implications for brand protection post-Brexit is one of the primary themes of our findings.

Our comprehensive poll was divided into three sections –

Brexit Brand Protection Business Growth

Among the key findings:-



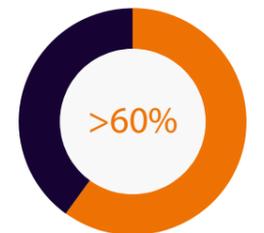
(46%) of respondents say they will change their brand protection strategy after the UK leaves the EU.



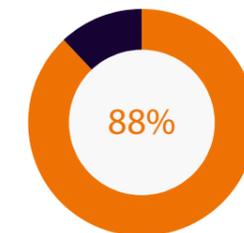
(31%) still do not know how they will register trade marks after Brexit.



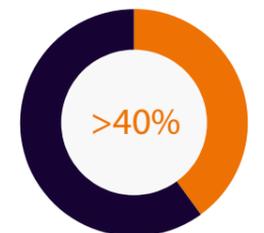
(33%) of European businesses say Brexit will make brand protection harder for their business.



of respondents believe it is now important to have IP advisors based in multiple European jurisdictions with 83% saying local knowledge is the key benefit.



of respondents either didn't use Registered Design Protection as part of their IP protection strategy at all, or only used it a little.



said that brand protection strategy was not regularly discussed at Board level.

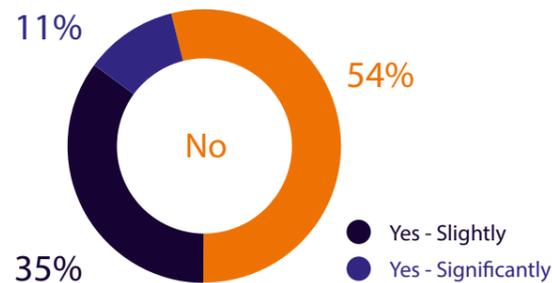
Brexit

Local IP Knowledge Mitigates Need for Change of Strategy

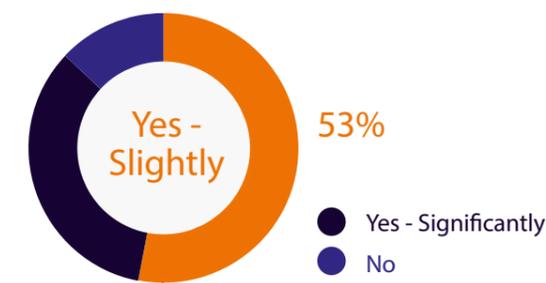
Almost half (46%) of businesses expect to change their brand protection strategy after Brexit. But, after more than three years of political debate, negotiations, government advertising and awareness campaigns, a third (31%) still do not know how they will register trade marks after the UK leaves the EU.

Two thirds (66%) of businesses are seeing the impact of Brexit on their sales, brand or wider business, given political and economic uncertainty, with the same proportion (64%) concerned about economic slowdown in their key markets over the next 18 months.

After the UK leaves the EUIPO do you believe you will change your brand protection strategy?



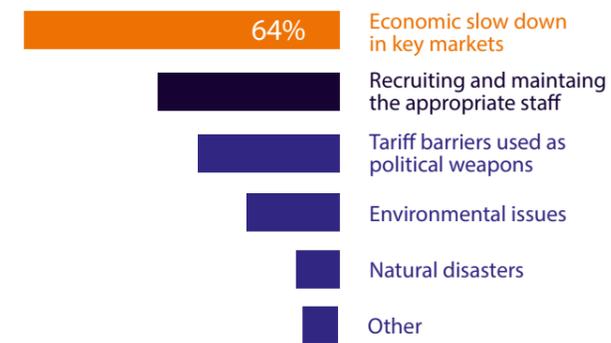
Is the uncertainty of Brexit affecting your sales, your brand and/or your wider business?



When the UK leaves the EU, how do you intend to register your trademarks?



What are the main concerns for your business over the next 18 months?



Attorney Response /

“It’s no surprise to see that half of businesses expect to update their brand protection procedures after Brexit, but a concern that a third of those don’t yet know how they will do so.

In this uncertain climate, brand protection is more important than ever before in ensuring business protection post-Brexit.

Many IP attorneys with only a UK presence have little knowledge or understanding of local European IP laws, how to search for trade marks or indeed, how to action trade mark infringements for their clients.

Ahead of Brexit, the UK remains part of the EU. In this situation, registering trade marks at the EUIPO ensures they are registered across all 28 EU member states. Following Brexit there will be a transition period when the UK remains part of the EU registration system. However, following that transition period, when the UK leaves this EU registration system, businesses will need to register their trade marks separately in the UK and again at the EUIPO.

UK attorneys without EU offices will be isolated and unable to directly represent clients at the EUIPO. Similarly, European firms – German or French for example – are only able to register trade marks in the EU and in their own territories but not the UK.

The process of searching for and registering several trade marks has the potential to be costly, complex and time consuming and risks a disjointed and exposed approach in using several separate IP firms and advisers across multiple jurisdictions.

We mitigate any worry for companies concerned about the complexities of registering trade marks in different locales – our presence across six key European jurisdictions makes our comprehensive service cost effective – our clients need only tell us where they need protection and we can ensure it, seamlessly.”



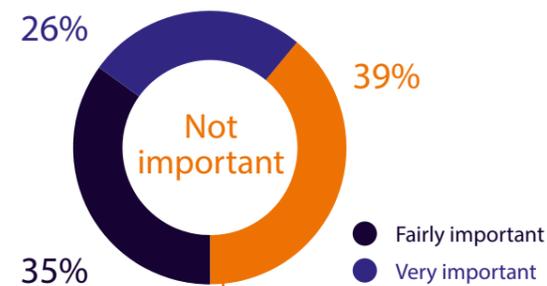
David Potter – UK Head of Trade Marks at HGF

Brand Protection

Location, Location, Location

A third of businesses (33%) think Brexit will make brand protection harder and nearly two thirds (61%) believe it important that their IP advisor has bases in multiple jurisdictions across Europe. Local knowledge and expertise is cited by 83% of businesses as a key benefit for this, amid growing concerns that brand licensing will be more complex in other EU territories after Brexit, with additional legal jurisdictions to negotiate, more trade marks to file and possible issues with cross-border knowledge and policing around brand protection.

How important is it to you to have an IP advisor with bases in multiple European jurisdictions?



Why is it important?



Exiting the world's largest trading bloc prompted 54% of respondents to express concerns about the impact of the \$460 billion global counterfeit industry on their businesses, given the EU's great emphasis on muscular protection and enforcement of IP rights in third countries. Despite this worry, 88% of respondents do not protect their IP with Registered Design Protection, with the minority touting the scheme's reliability on formal legal registrations in case of infringements or significant impact as proof.

Attorney Response /

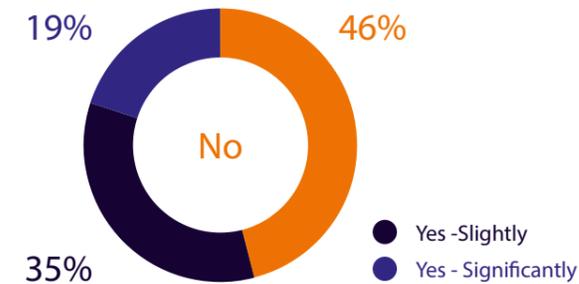
“ One of the most important benefits of having an IP adviser with a footprint in multiple territories is access to local expertise. HGF has attorneys in the UK, Germany, Ireland, The Netherlands, Austria and Switzerland, located across 22 offices, and they are all highly knowledgeable about IP rights in their own countries.

With our set up, Brexit categorically will not make brand protection harder, because we have the capacity and expertise to deal with IP rights at UK and European level. ”

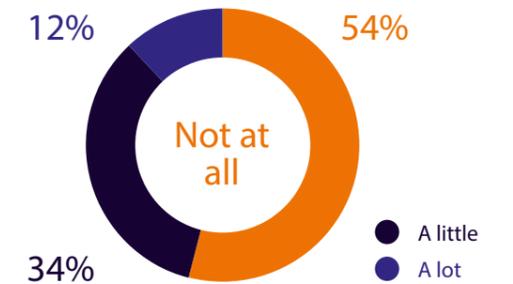
Alexander Hagen –
The Netherlands
Partner and Trade Mark
Attorney at HGF



According to figures from the International Trademark Association, counterfeit goods are a \$460 billion industry. Are counterfeit goods an issue of concern for your business?



To what extent do you use Registered Design Protection as part of your IP protection strategy?



Registered Design Protection – An Effective Addition to Your IP Armour /

Registered Design Protection can be a relatively low-cost option to shield IP, however, many businesses come up with new designs all the time, so although the base cost to register one design is low, doing this for all designs results in an expensive way to manage assets.

The best way to understand whether or not Registered Design Protection will work for your business is through a planned strategy. For example, designer or luxury apparel brands create hundreds of designs; some will take off and likely be copied, others won't. Where the former situation arises and the product is building equity, a design registration strategy can be a very effective way of protecting IP and preventing copies.

Attorney Response /

“ Whilst partly explained by the fact that some companies (for example, those in the service sector) will have no need for designs, that almost 9 in 10 businesses do not utilise Registered Design Protection suggests they could be missing out on highly valuable and cost-effective IP protection.

Registered designs have proven their worth across many industries, not just the fashion and consumer goods sectors that are seen by many as the traditional domain of design registration. For example, pharmaceutical and medical device companies have successfully used registered design to limit the entry of generic products to the market.

Fables of opportunities lost often best highlight the value of designs. The difficulties faced in recent high profile cases, where poorly registered designs have either been lost or found unenforceable show the value of getting designs right and the potential value of designs as the unsung hero of IP.

In Europe, the process for securing designs is quick and inexpensive, with designs often registered in just a few days. ”

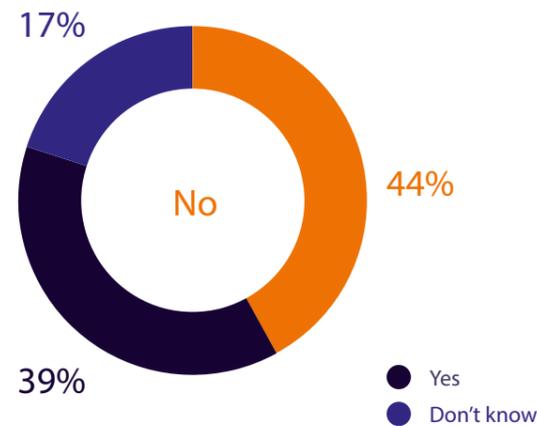
Richard Wylie – UK
Partner and Trade Mark
Attorney at HGF



Business Growth

From Brand to Boardroom

Is your strategy relating to brand protection regularly discussed at Board Level?



Brand is arguably the most important asset a business has. Get it right and it will drive growth and maximise commercial value. Leave it exposed or misaligned from the future direction of a product or service, it can lead to loss of market share, exposure to counterfeiters and reputational damage.

For many companies, their worth is determined by consumer goodwill towards their brand – Interbrand’s 2019 report cites Amazon’s brand as worth \$125,263 million, Disney at \$44,352 million and Nike at \$32,376 million.

And yet, despite this, according to our findings almost half of businesses (44%) do not discuss their brand protection strategy at board level, with IP likely being a focus under internal legal counsel.

So why, when the board is the agent of change for a business, is brand and IP protection not a prominent and regular feature on the boardroom agenda?

Attorney Response /

“ Brand is increasingly the most important aspect of global business and reputation. The reason many brands are worth millions is, indeed, because of the level of protection they are under – their IP rights are preserved and executed across a multitude of global territories.

In May 2016 the Beijing Intellectual Property Office ruled that Apple violated design patents of Chinese maker Shenzhen Baili with its iPhone 6 and iPhone 6 Plus and would be barred from selling those models in the country’s capital.

Although the ruling was eventually overturned, this was a costly exercise for Apple and a lesson in ensuring the appropriate trade marks, patents and design protections are registered in every territory you are likely to encounter copycat design. Increasingly, this means every territory you are likely to sell in.

This particular case cost Apple millions in fees and lost sales – its turnover in the Greater China region fell by 12% in the last quarter of 2016, with the company lagging behind local competitors like Huawei, newcomers Oppo and Vivo, and Xiaomi.

The bottom line is that without a robust IP protection strategy, a brand’s value can simply depreciate in a matter of months. This is exactly why boards should be channelling time and resource into this business-critical issue. ”



David Potter – UK
Head of Trade Marks
at HGF

Brexit

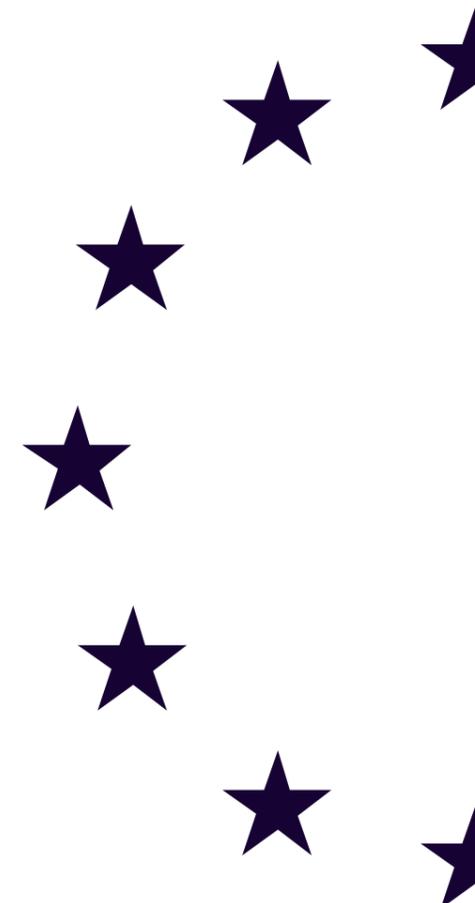
Fast Fact Check

The headline points in respect of IP rights are that:

- / UK national IP Rights won’t be affected by UK exit from EU
- / Patents obtained via the EPO won’t be affected by UK exit from the EU
- / EU registered trade marks and registered designs, which currently cover the UK, will remain in place and enforceable in the UK until new provisions are in place to give them continuing, or corresponding, effect in the UK

It will be business as usual for some time before the UK exits from the EUIPO. In the coming months and even years, there will be changes to address the UK’s departure and we will be proactively informing our clients about new processes in place to continue your rights as before.

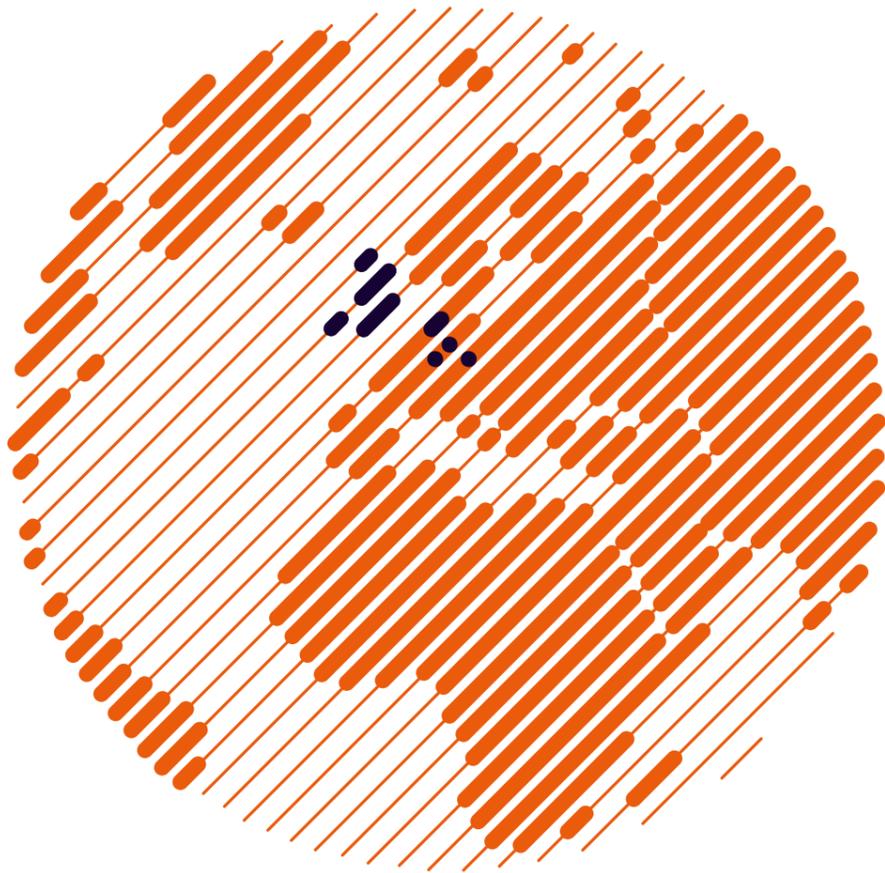
We’ll continue to act for clients before the EUIPO in respect of European registered trade marks and registered designs and our established network of European offices and proven local knowledge and expertise to remain ahead of the game as the process evolves.



HGF offers everything you would expect of a world-class intellectual property firm both across the UK and internationally, including patent and trade mark acquisition as well as appeals and oppositions to protect your creative work.

Critically, as businesses navigate the potential changes presented by Brexit, having a firm that is able to deliver a single service across trade marks, IP and brand protection is invaluable. Through our established network of 22 offices across the UK, Germany, Ireland, The Netherlands, Austria and Switzerland, we provide a high level of on the ground expertise and knowledge on trade mark searches, registration and infringement procedures. HGF seamlessly manages both EU and UK trade mark processes together, reducing cost and complexity for our clients.

We also focus on providing a bespoke service tailored to your industry, to ensure you really get the most out of your big ideas. Our teams are dedicated to providing professional, expert advice and support every step of the way.



Contact /

To contact us and find out how we can work with your business, call us on the appropriate number below or email us at enquiries@hgf.com to be referred to the right person for you.

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