



Brand Briefing

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Brands and Brexit

This Briefing adopts a brand perspective and sets out the criteria for a conducive climate for brands. It identifies the primary policy areas relating to the decision to leave the EU and gives some thoughts on optimum policies during and post the leaving process. It highlights to UK policymakers the areas relevant to brands and where the Group stands ready to engage.

INTRODUCTION

The British Brands Group, a membership organisation, champions brands and has a mission to create the best possible climate in Britain for brands to be created, built and sustained, benefiting individuals, companies, the economy and wider society. Leaving the EU presents both risks to and opportunities for this mission. This paper outlines to UK policymakers where and how the Group stands ready to contribute to the legislative, regulatory and policy changes involved.

Branding is a powerful force in the UK economy, working across sectors, in B2C and B2B markets and shaping Britain's own reputation. Investments in branding rely heavily on intellectual property (IP) rights and in particular trade marks. UK trade mark intensive industries account for over 38% of UK GDP, £680 billion of value added and more than one in five of all jobs. The Group wishes to see this contribution grow once the UK leaves the EU.

CRITERIA FOR BRAND SUCCESS

Six criteria crucial to brands and branding provide the context for the Group's engagement:

- A climate that encourages and supports vigorous competition based on quality, innovation and reputation as well as price;
- A climate that supports innovation in all its forms;
- The ability for consumers to access wide choices and make informed, accurate purchasing decisions;
- The ability to access the required brand-creation and brand-building skills worldwide;
- The ability to access world markets on a competitive basis with other countries;
- The capability for brand owners to safeguard the integrity of their products and services, sustaining reputation and trust.

The Group echoes calls from the wider business community for the greatest possible levels of continuity and predictability during the leaving process.

KEY AREAS RELEVANT TO BRANDS

At this point, the main policy areas most relevant to brands across sectors are:

The intellectual property regime

Intellectual property rights form the bedrock of the brand business model as they allow companies to earn returns from investments in quality, innovation and reputation, all of which build brands.

Registered rights: Registered trade mark and design rights stand to be most affected by the decision to leave the EU. Continuity and predictability of protection afforded by these rights are therefore a key concern. Of the range of options available, full integration with the EU IP regime provides greatest continuity while the automatic addition of existing European rights to UK rights on date of departure would also provide the ongoing protection desired with minimal disruption to business. UK membership of the Hague Agreement in its own right will assist the registration of designs across territories.

Unregistered design rights: Both UK and EU unregistered design rights have their strengths and protection would reduce were EU unregistered design protection to cease. There is a case to streamline and simplify unregistered design protection to combine the strengths of both UK and EU systems in terms of scope of what is protected and the duration of protection.

Trade mark exhaustion regime: This regime affects brand owners' influence over the flow of products carrying their marks between international markets, with important implications for brand consistency, product compliance, the fight against counterfeits and the scope to develop export markets. The current regime of EEA exhaustion provides the greatest continuity. Were this unsustainable politically, national exhaustion is the optimum baseline UK regime for brand owners and consumers across the world. Were any future free trade deal with a particular country to require a different regime, the implications of national exhaustion with bilateral extension may need to be explored. In any event, brand owners would require strong, effective measures to protect the consistency and legitimacy of products (including packaging) carrying their trade marks.

Counterfeit goods in transit: In the continual fight against counterfeits, it is important for brand owners to be able to prevent such products passing through UK ports to other countries. The arrangements in the Trade Mark Package relating to the seizure of counterfeit goods in transit through the EU would provide an appropriate, balanced approach for the UK.

Enforcement: For IP rights to function, they must be enforceable. While acknowledging room for improvement, the Group supports the existing enforcement regime involving the IPO, dispute resolution options and the court system, including the Intellectual Property Enterprise Court. Exclusion from the pan-European injunction mechanism will be a loss but considered unavoidable.

Consumer protection

Misleading and Comparative Advertising: The Group strongly supports self-regulation of advertising under the CAP Code. Where misleading advertising falls outside the remit of the ASA, enforcement provisions require strengthening to allow private civil enforcement by affected companies (enforcement by those specified under the Enterprise Act is no longer always effective due to their escalating manpower and budgetary constraints).

Consumer Protection Regulations (CPRs): In theory the CPRs provide a high level of consumer protection and indirectly safeguard legitimate businesses. One important amendment is required.

A 2006 government review found that brands in the UK are not well protected from misappropriation. This makes brands in the UK vulnerable. This weakness manifests itself most visibly in brand owners' inability to challenge packaging designs that mimic familiar brands, mislead shoppers and free ride off brand investments. Consequently, the practice flourishes. Private civil enforcement of the CPRs is urgently needed to allow such deception to be challenged.

OTHER RELEVANT AREAS

While the IP and consumer protection regimes are crucial to the climate for brands, and traditional areas of the Group's expertise, there are other relevant policy areas to highlight:

Competition policy

Intense competition is a catalyst for innovation and differentiation while lowering prices. After leaving the EU there may be scope for the UK to re-frame competition policy to focus more single-mindedly on consumer welfare without the current single market consideration.

Furthermore, there may be potential to relax restrictions in vertical relationships between brand producers and distributors and to move to a more effects-based approach (rather than strict object infringements) in relation to resale price maintenance and predatory pricing. The goals for reform would be stronger competition, less regulatory pressure and higher consumer welfare.

Product standards, supply chains and border controls

Consumers increasingly expect delivery of goods immediately or at short notice. Low inventory and just-in-time delivery increase efficiency and lower prices. Individual product ingredients, parts and components are sourced on global markets while finished products are exported to global markets. These forces require fast, efficient supply chains with frictionless transit of ingredients and finished products through border controls. Meanwhile product standards should remain stable to deliver consistency to consumers, support access to the EU market and avoid differing product formulations by country which add cost and complexity.

Trade policy

UK competitiveness will rely on the ability to trade with overseas markets on competitive terms with other economies. Comparable trade terms must therefore be the goal, with the avoidance of tariff and non-tariff barriers that hamper free trade, bring inefficiency and raise prices.

Intellectual property will be an important consideration in trade agreements, to ensure trading partners' IP regimes safeguard and respect investments in innovation, design, quality and reputation. Key elements include the efficient granting of rights, certainty around the rights that have been granted and confidence that rights can be enforced by companies of all sizes. The 'exhaustion regime' (see above) will be a further consideration, with mechanisms in place to safeguard the consistency and legitimacy of branded products in related markets.

Immigration policy

For the UK to retain its world class brand creation record, companies require access to the best skills available. This holds true for many other areas of business too. The fast, efficient granting of visas and the avoidance of quotas will be a requisite for securing those skills.

BRITISH BRANDS GROUP

The Group stands ready to work with Government to ensure that, on leaving the EU and in trade agreements with other countries, the UK strengthens its position as an economy in which brands and branded companies are best placed to deliver strong value to individuals, the economy and to wider society.