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Eurasian Trademark – new opportunities for IP owners

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The Treaty on the Eurasian Economic Union signed in Astana in May 2014 by the Presidents of Belarus, Kazakhstan and Russia (the “**Treaty**”), has now been ratified by the Parliaments of these countries. It will come into effect on 1 January 2015.

The Treaty will substitute numerous agreements previously concluded between the three Customs Union member states, including among other things some of the agreements regulating general issues in the field of intellectual property (“**IP**”). The Treaty, however, will not supersede all existing agreements or acts, and some, such as the Customs Code of the Customs Union, will remain in effect after 1 January 2015.

Main IP-related aspects regulated in the Treaty

The Treaty contains general provisions regarding IP issues in the member states of the Eurasian Economic Union (the “**EEU**”). It provides for the harmonisation of national legislations and regulations in this sphere.

The Treaty states the importance of cooperation between member states in the matters of:

- IP enforcement (including IP enforcement on the Internet);
- customs enforcement of IP rights, and in particular through the Unified Customs Register of IP objects – this Register has been established for about three years but is not yet functioning, possibly due to the workload of the Eurasian Economic Commission, which is responsible for the Register;
- preventing and combating the circulation of fake products.

A system of Eurasian Trademarks and Eurasian Appellations of **Origin** will be introduced under the Treaty. However, no provisions have been made for the creation of a new Eurasian Trademark Office that could be similar to Europe’s Office for Harmonization in the Internal Market in Alicante. A Eurasian Trademarks Register and a Eurasian Appellations of **Origin** Register are to be held, each as a single register, by the Trademark Offices of the member states, who will be responsible for the registration of IP rights and examination of applications. These new systems and procedures will be governed by a specific Treaty and by a set of Administrative Regulations, which have been under discussion for about two years but are still in draft form.

Some other more detailed and specific provisions governing IP rights are contained in the Protocol on the Prosecution and Enforcement of IP Rights (Annex No. 26 to the Treaty). The Protocol reaffirms the regional exhaustion of rights for trademarks within the EEU, although this principle continues to be attacked by parallel importers both at the national and at the regional levels.

Comments

The upcoming entry into force of the Treaty can be considered as a positive step towards the unification of the IP system within the EEU, the creation of a Eurasian Trademark system, and a more profound cooperation against the transnational circulation of counterfeits.

The introduction of Eurasian Trademarks will not lead to the abolishment of the national trademarks in the EEU member states. Rather, this will provide IP owners with a new option to protect their trademarks, which they should consider when reviewing their IP protection strategy.

We would also recommend that trademark owners who are interested in supporting the regional exhaustion of rights increase their efforts in supporting this, since parallel importers, especially in the automotive industry, are now becoming more pro-active at the regional level as well.

If you have any questions on the matters referred to in this Alert, please do not hesitate to contact CMS, Russia expert Anton Bankovskiy or your regular contact at CMS, Russia.



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