

Intellectual property: recent developments

5 July 2022

Over the past fortnight, there have been several important developments in the field of intellectual property worthy of special mention. They relate to parallel imports and the protection of rights holders from the so-called “unfriendly” states.

Change in the regulation of parallel imports

On 28 June 2022, the President signed a [law](#)* amending the provisions of [Federal Law No. 46](#) relating to the regulation of parallel imports.

Initially, Federal Law No. 46 gave the Russian government the authority to determine the list of goods allowed for parallel imports. The government delegated the authority to issue this list to the Ministry of Industry and Trade.

In practice, despite the adoption of the list, questions arose about the legal protection of those who plan to engage in parallel imports. Companies feared that such measures would not protect them against claims from rights holders.

To address this issue, the decision was made to introduce more changes at the legislative level.

The new provisions of the law suggest that the use of someone else’s intellectual property will not be an infringement if the goods containing that intellectual property are in the list of goods of the Ministry of Industry and Trade permitted for parallel importation.

However, the adopted amendments leave one important question unanswered: to what extent can this regulation apply to counterfeit goods?

If we delve deeper into the meaning and purpose of the parallel importation provisions, it becomes clear that counterfeit goods should still be prohibited. It is not in the interest of the state to encourage such activity, particularly because the producers of counterfeit goods will not be responsible for their proper quality and safety, nor will they ensure their warranty service. Furthermore, the transparency of such activity for tax purposes is at the very least questionable.

This view is [supported](#)* by, among others, officials stating that the legalisation of parallel imports does not imply that counterfeiting is allowed.

Thus, taking into account the general approach of the legislation on this issue and the objectives of the parallel importation mechanism, we can conclude that the legitimate interests of rights holders to remove counterfeit goods from the market should be protected, even in light of the adopted amendments. The ambiguity of some of the wording of the new laws can probably be explained by the legislator’s haste rather than its intention to legalise counterfeit goods.

Reversal of the decision in the famous “Peppa Pig” case*

On 21 June 2022, the Second Commercial Court of Appeal quashed the decision of the Kirov Regional Court in the “Peppa Pig” case and satisfied the rights holder’s claim for compensation for infringement of its exclusive rights to a trademark.

As a refresher, on 3 March 2022, the Kirov Regional Commercial Court dismissed the claim of a British company for trademark infringement of the image of the Peppa Pig character, stating that the very fact that the plaintiff went to court was an abuse of rights as the company is registered in a state which imposed sanctions against Russia.

This case provoked much speculation that the intellectual property of foreign rights holders is no longer protected in Russia.

In a previous [alert](#) on the subject, we noted that more recent court decisions raising the issue of the so-called “unfriendly” origin of companies did not support the view of the Kirov Regional Court.

The higher court also disagreed and reviewed the decision on appeal. In its judgment, the court noted that foreign companies, including those registered in the UK, are guaranteed to receive equal protection of their intellectual property in Russia.

The appellate court’s findings confirmed that the decision in the Peppa Pig case was the exception rather than the rule, and that protection of intellectual property rights could not be denied on the sole ground that the company was registered in a state that had imposed sanctions against Russia.

* *In Russian*

For further information, please email the author or your usual contact at our firm.

Author



Anton Bankovskiy

Partner

Head of Intellectual Property

E anton.bankovskiy@seamless.legal

Co-authored by Shermet Kurbanov, Paralegal in Intellectual Property.

As of 15 June 2022, we are SEAMLESS Legal. Our new domain name is

@seamless.legal; emails sent to previous addresses will be redirected.

Contact us

Unsubscribe

Manage preferences

Visit our website

