# Court finds ban on import of original spare parts unfair competition: another step towards legalisation of parallel imports in Russia

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On 11 August 2021, the Moscow City Commercial Court dismissed* a major German car manufacturer's claim to challenge an injunction by the Russian Federal Anti-monopoly Service (FAS) on parallel imports of spare parts. A day later, the court rendered* the same ruling in a similar dispute with a Japanese manufacturer of hydraulic equipment.

The term "parallel imports" refers to the importation of original products without the authorisation of the trademark owner. Worldwide practice and current Russian law prohibit parallel importation, classifying it as a violation of exclusive rights to the trademark. However, as we reported earlier, the FAS has already been trying for several years to legalise parallel imports in Russia, and the decisions made by the commercial court are aimed at strengthening this position.

In both cases, the foreign companies appealed the decisions the FAS handed down in 2020 and 2021 in connection with complaints from two Russian importers who challenged the refusal to allow them to import spare parts. The importers argued that granting the exclusive right to import products to a limited number of companies results in the subsequent sale of those products at inflated prices, gives unjustified advantages to such dealers and generally threatens the state of competition in the car parts market. The rights holders argued that the refusal to issue authorisations was based on the need to prevent negative consequences for consumers and the market in the long term, citing in particular the applicants' reputation for repeatedly importing products repackaged in non-original packaging into Russia.

Having examined the applications, the FAS found evidence of unfair competition in the rights holders' actions and issued notifications* to remedy the violations. Thus, the rights holders were required to adopt regulations on reviewing applications from unauthorised importers for importing marked spare parts into Russia and to revise certain provisions of their existing contracts with official dealers. The foreign companies were held administratively liable and fined for failing to comply with these injunctions.

In the case involving the automobile conglomerate, the court, citing the Paris Convention for the Protection of Industrial Property and the Russian law "On Protection of Competition", upheld the FAS's position, finding the absence of a procedure for reviewing applications for permission to import goods – at a time of confirmed demand for these goods by Russian consumers – to be an act of unfair competition.

Notably, in support of its decision, the court referred to Article 1487 of the Civil Code enshrining the principle of exhaustion of trademark rights, which provides that the use of marked goods introduced into civil circulation in Russia by the rights holder or with its consent, does not infringe the rights to the trademark. Based on this norm, the court made a general conclusion that the sale by organisations of legally purchased goods marked with the manufacturer's trademark is not, in principle, an infringement of exclusive rights. This broad interpretation actually reproduces the interpretation proposed by the FAS in the 2019 bill*, which we previously reported on (and which has not yet been submitted to the State Duma). However, the court did go on to make a reservation about the need to exhaust the right in the territory of the Russian Federation or the countries of the Eurasian Economic Union, emphasising the national and regional nature of this principle, respectively.

The main part of the court's reasoning is devoted to the need to balance the interests of rights holders, importers and purchasers of goods and exclude cases of abuse of trademark rights. Thus, referring to the 2016 decision* of the Constitutional Court, the commercial court pointed out that "abuse of the exclusive right to a trademark in the form of the rights holder exceeding reasonable limits for the protection of its economic interests … must not be encouraged since the exercise of subjective rights in conflict with their purpose or with public purposes … entails the denial of legal protection".

The commercial court also stressed that, in general terms, the actions of a rights holder "making unfair use of the mechanism of national exhaustion of the exclusive right to a trademark" (including by restricting importation into

Russia of specific goods or overpricing on the Russian market) "cannot be regarded as endorsable from the standpoint of protection of constitutionally significant values if such actions result in limitation of access of Russian consumers to the goods concerned".

The court reproduced similar reasoning in the case against the Japanese company.

Car market players have criticised* these decisions. For example, the industry fears that legalisation of parallel imports of spare parts would have a negative impact on market development and localisation of production, and could potentially pose a threat to consumer safety and health because parallel importers would not be liable for product quality and the provision of warranty support to end consumers.

The judgements confirm Russian law enforcers' intent to push for the legalisation of parallel imports, at least in relation to automotive products. In this regard, we recommend that rights holders pay attention to the current trend, monitor legislative initiatives in this area and consider adopting internal regulations to deal with applications from unauthorised importers to import marked products.

Both decisions have been appealed by the foreign rights holders, with the first appeal hearing taking place in October 2021. We will keep you updated on further developments.

For further information, please email the authors or your usual contact at CMS Russia.

** In Russian*

## KEY CONTACTS

**Anton Bankovskiy**

Partner | Head of Intellectual Property, Moscow

 

**Alisa Mikheeva**

Associate | Intellectual Property, Moscow