

IP REPUTATION: TURNING A CORNER

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In the past Russia has had a bad reputation for enforcing intellectual property rights. The competence and expertise of courts in IP matters has been especially questionable. Even after several changes in legislation and practices, many IP owners still have doubts about the existence of effective mechanisms for protecting and, especially, enforcing IP rights in Russia.

The reasons for the bad reputation may be historical, economical or cultural—or just unawareness of the Russian IP environment. For a while there has been a strong effort to improve this reputation. Several recent changes in legislation and an increase in awareness of IP rights have indeed made a difference.

The creation of the specialised IP Court a few years ago has remarkably improved the expertise and effectiveness of handling IP cases, and has led to harmonised decisions. The new practice of publishing of IP Court's decisions has made it easier for IP owners to follow interesting decisions and court practice in general. All this has increased the awareness of the importance of IP protection in Russia.

Although it may sound surprising Russia constantly follows international IP trends and harmonises the legislation and regulations accordingly, sometimes even very intensively. Some recent positive changes will definitely improve the Russian reputation for IP.

Bad faith now recognised

The Law on Protection of Competition has been recently changed to include new regulations on unfair competition in the field of IP. The new articles prohibit the registration of IP rights in bad faith. Further, the law prohibits the illegal use of signs similar to trademarks, company names, trade names, etc, on packaging and labels, including use on the internet.

Additionally, copying or imitation of the overall appearance of a product, packaging, label, colour, trade name, corporate style or shop window will also be prohibited, provided that the actions are caused by a competitor. Actions based on unfair competition are handled by the Federal Antimonopoly Service (FAS).

This is definitely an improvement and opens new windows to owners to enforce their rights and prohibit bad faith registrations. Previously, the term bad faith was not recognised in IP regulations. In other words, it was impossible to cancel registrations applied for in bad faith.

Well-known process clarified

The Russian IP office, Rospatent, has adopted new regulations on the protection of well-known trademarks. These regulations include a more detailed process for obtaining the status of a well-known trademark. The new regulations include a time limit for the process, while the list of documents needed for a mark to be acknowledged as well-known is now exhaustive.

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Obtaining well-known status for a trademark is neither easy nor cheap in Russia. Therefore this change gives trademark owners better views of the process and more information for deciding whether there would be sufficient grounds for seeking well-known status in the first place.

New way to cancel trademark registrations

Rospatent has adopted a process for cancelling a trademark registration due to dissolution of the owner company/death of the owner. A request for cancellation can be filed by any interested party. A document confirming the dissolution must be submitted in connection with the request. Rospatent should decide the case within five months.

This is one of the minor practical changes which actually is not a concern for very many trademark owners, but still shows the willingness of the authorities to improve the processes to serve them better.

All these changes are very welcome, as trademark owners can now better enforce their IP rights in Russia. The most important change is that the competence of the FAS has become wider—it is no longer necessary to apply to the IP Court to contest IP rights, but Rospatent may cancel registrations solely based on a decision by the FAS. ■

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