



## Section 3. Intellectual property

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### PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN RUSSIAN JURISDICTION AMID LEGALIZATION AND EXPANSION OF PARALLEL IMPORTS: TRENDS AND PROSPECTS

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#### Abstract

In 2022, hostilities in Ukraine caused a massive exodus of foreign companies from the Russian market. Replenishing the deficit in Russia of goods labeled with foreign trademarks is carried out through the legalization of parallel imports. At the same time, the current parallel import scheme is not capable of ensuring the entry into Russian cinemas and online platforms of foreign films, the copyright holders of which do not provide consent to the use of their works in Russia, due to the fact that, by their legal nature, films and other content are objects of intellectual property, but not goods. This article analyzes trends in judicial practice and legislative activity in the field of intellectual property rights in Russian jurisdiction, taking into account the current geopolitical situation.

**Keywords:** *parallel import, IP, intellectual property, pirated content*

#### Introduction

Since the onset of hostilities in Ukraine in 2022, numerous European, American, and Asian companies have announced their departure from the Russian market. Some major well-known business entities with production facilities and factories in Russia sold their assets, while others ceased the supply of their products, disrupting existing logistical chains and closing official distribution and dealer centers. Desperate attempts by the Russian government to address the sharply rising deficit of high-quality products from

foreign brands led to the support of the shadow economy through the legalization of parallel imports. This involves the importation of goods into the country without the official permission of rights holders.

In March 2022, Russia enacted Federal Law No. 46-FZ date 08.03.2022 amending certain legislative acts of the Russian Federation. According to this law, the Russian government in 2022 and 2023 has the authority to make decisions specifying a list of goods (groups of goods) for which certain provisions of the Civil Code of the Russian Federation

regarding the protection of exclusive rights to the results of intellectual activity expressed in such goods and the means of individualization by which such goods are marked cannot apply. In turn, the Ministry of Industry and Trade, authorized by the government, approved a list of such goods, indicating brands for which parallel import is legalized. This list includes trademarks of goods in the automotive industry, clothing and footwear, alcoholic beverages, electronics, cosmetics, and more.

It is currently expected that measures supporting parallel imports will continue in Russia at least until 2025, and the list of goods subject to import without the permission of rights holders will be expanded.

Apart from all other negative consequences of such a decision for the development of the shadow economy, such as an inevitable increase in counterfeit products marked with well-known trademarks, reputational losses for companies, and their financial losses, the most significant is the limitation of legal recourse for foreign entities that have left the Russian market.

### **Data Analysis**

This article is based on an analysis of Russian arbitration practice related to the enforcement of the rights of foreign rights holders for the protection of intellectual property, taking into account the provisions of Federal Law No. 46-FZ date 08.03.2022. It incorporates official statistics, legislative activities, and current legislation.

### **Results of the Research**

Based on Part 2 of Article 8 of the Constitution of the Russian Federation, citizens and organizations on the territory of the Russian Federation are equally guaranteed protection for all forms of property, including intellectual property (The Constitution of the Russian Federation). According to Article 7, Paragraph 1 of the Civil Code of the Russian Federation, universally recognized principles and norms of international law and international treaties of the Russian Federation are integral parts of the legal system of the Russian Federation (The Civil Code of the Russian Federation). Russia is a participant in the Berne Convention for the Protection of Literary and Artistic Works dated

09.09.1886, the Universal Copyright Convention (signed in Geneva on 06.12.1952), and the Protocol to the Madrid Agreement Concerning the International Registration of Marks dated 28.06.1989.

However, by the Resolution of the Government of the Russian Federation No. 506 dated 29.03.2022, in accordance with Federal Law No. 46-FZ date 08.03.2022 amending certain legislative acts of the Russian Federation, it is established that provisions of the Civil Code of the Russian Federation on the protection of exclusive rights (Article 1252), features of licensee rights protection (Article 1254), protection of exclusive rights to a work under an open license (Part 5 of Article 1286.1), responsibility for violation of exclusive rights to a work (Article 1301), responsibility for violation of exclusive rights to objects of neighboring rights (Article 1311), responsibility for violation of exclusive rights to an invention, utility model, or industrial design (Article 1406.1), violation of the rights of the author of a selection achievement or another patent holder (Subparagraph 1 of Article 1446), responsibility for the illegal use of a trade secret (Article 1472), responsibility for the illegal use of a trademark (Article 1515), responsibility for the illegal use of a geographical indication and the name of the place of origin of goods (Article 1537) do not apply concerning goods allowed for parallel import. This applies if the goods (groups of goods) are introduced into circulation outside the territory of the Russian Federation by rights holders (patent holders) with their consent.

This implies that the restriction of foreign rights holders in legal recourse for violated intellectual property rights, in the conditions of legalized parallel imports, is only applicable to goods entering Russia not through official dealers but as original products, not counterfeit.

Thus, despite the controversial decision of the Arbitration Court of the Kirov Region dated 03.03.2022 in case No. A28–11930/2021, where the court dismissed the lawsuit of Entertainment One UK Limited, the rights holder of Peppa Pig and Daddy Pig characters, against a Russian individual entrepreneur whose store was found to be selling a children's constructor in packaging

marked with altered images of Peppa Pig and Daddy Pig characters, which was recognized as illegal and unfounded by two higher instances, the right to judicial protection of violated rights in the case of detecting counterfeit products is still acknowledged.

For example, in the ruling of the Court for Intellectual Rights dated 27.04.2023 in case No. A41–51820/2022 (claim of Sonaks EST OU against the limited liability company Alta on the protection of the exclusive right to the CHAMPION trademark), it is stated that the defendant's argument that CHAMPION brand products fall under parallel imports, approved by the Ministry of Industry and Trade, and therefore the use of the trademark does not infringe the plaintiff's exclusive right, is rejected (The Arbitration Court of the Kirov Region Decision No. A28–11930/2021). This is because the case did not prove the fact of introducing this product into civil circulation abroad with the consent of the rights holder to place the trademark.

During this research, no cases were found where foreign rights holders' claims for the protection of intellectual property rights were denied in the implementation of goods in Russia for which parallel import is legalized if the counterfeit nature of these goods was established.

At the same time, the decline in the film screening market segment in Russia reveals an undesirable trend in legislative activity that allows the use of content without the permission of the rights holder. It is worth noting that the film screening industry in Russia is one of the most affected by the mass departure of foreign corporations, as the local film industry cannot provide enough high-quality content. The measures taken by the Russian state to support parallel imports are applicable only to goods, not intellectual property objects, such as audiovisual works.

For example, according to official statistics from the Federal Tax Service of Russia,

in 2022, the revenue of the largest Russian cinema network, CJSC CINEMA PARK, decreased by more than 43% compared to 2021, approaching the record low figures of 2020, when quarantine measures were in place to counter the spread of the COVID-19 coronavirus.

In 2023, a bill has been developed by the senators of the upper house of the Russian Parliament, providing for the temporary suspension of the norms of legislation protecting the rights of foreign film rights holders during film screenings in Russia without their consent.

It should be noted that, unlike parallel import of goods, where the quality and technical characteristics must be original but entered into the country through dealers unauthorized by rights holders, the use of foreign-made films and other content without the rights holder's consent by copying, translation, and duplication, as well as demonstration in all cases without exception, will create counterfeit unauthorized products regardless of whether the original audiovisual content was legally introduced into civil circulation outside the Russian Federation.

### **Conclusion**

Currently, the rights of foreign rights holders whose trademarks are affixed to goods included in the list subject to parallel import are significantly restricted, despite the existing norms of international law and international treaties. Additionally, there are indications that the mentioned list of goods will be expanded, and the period of parallel import legalization in Russia will be extended.

This implies that, despite the possibility of seeking protection for their rights in Russian courts in case of counterfeit sales, tracking such counterfeits will be significantly more challenging. Proving the signs of counterfeiting through judicial expertise will incur additional expenses.

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