



The Russian Government legalizes parallel imports as a remedy to counter the termination of supplies by foreign producers

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On 30 March 2022 the Office of the Prime Minister announced the legalization of parallel imports in Russia, following Resolution of the Russian Government no. 506 dated 29 March 2022. The Resolution is based on Federal Law no.46-FZ dated 08 March 2022, which granted the Russian Government the power to suspend or terminate IP rights under certain circumstances, and is effective from the date of its publication, namely 30 March 2022.

More particularly, the Resolution provides that part 6 of article 1359 and article 1487 of the Russian Civil Code shall not be applicable to certain goods (or product groups), which are identified by the Ministry of Industry and Trade.

The provision of article 1359 allows the import into and sale in Russia of products protected by an invention patent, utility model or industrial design only by or with the consent of the right-holder. Article 1487 contains an identical provision for trademarks.

This reflected the principle of national exhaustion of IP rights, which in fact is already in place at the regional level for all States of the Eurasian Economic Union (EAEU: Russia, Belarus, Kazakhstan, Kyrgyzstan, Armenia). As a result, IP rights (invention patents, utility models, industrial designs and trademarks) are exhausted once the goods enter any of EAEU country and thereafter enjoy free movement within the Union without the need of the further consent of the IP right-holder each time a national border is crossed. The lifting of



the aforesaid provisions of Civil Code will introduce the so-called international exhaustion doctrine instead. Once the relevant goods are identified by the Ministry, their importers and resellers will not be liable for the use of the inherent IP right in Russia without the consent of the right-holder upon the first lawful sale of the goods wherever occurring in the world.

The authorities noted that the international exhaustion doctrine is applied in a number of jurisdictions, for instance in Japan, and that the policy objective is to support the Russian economy, arguably within the exceptional context that derived from the Ukrainian crisis and the international sanctions put in place by the European Union, the United States and other countries.

During March 2022, about 200 foreign companies announced to have stopped operations in Russia, including famous brands such as Nike, Adidas, Lego, IKEA, Samsung, BMW, Chanel, INDITEX, Kering, LVMH, Prada, Cartier, Procter & Gamble, Nokia, Dell, IBM, Shell, Eni, Bosch, Xerox, Michelin, Bayer, Pfizer, Novartis, Merck, Lavazza, Starbucks. However, most companies in reality only suspended import and retail activities but maintained the availability of premises and employees on their payroll, and may resume business in Russia.

On 11 April 2022 the Russian Patent and Trademark Office (Rospatent) in a news release to the Russian press indicated that the Government had developed a general approach to the selection of goods admitted to the new parallel import regime, whereby the protection ordinarily afforded by the IP right is for practical purposes set aside for goods, whose importation and sale were suspended or terminated by the right-holders.

Later, on 25 April 2022, the Russian press reported that the list of goods and brands was being prepared by the Ministry of Industry and Trade and forwarded for approval to the Russian Ministry of Justice. Based on available information, parallel imports will be legalized for wide range of products. A representative of the Government

advised that the list shall be adapted to any change of the current situation, so that brands or goods can be included or excluded from the list dependent on whether the foreign companies concerned maintain an official presence and activities in Russia.

The current list includes Tesla, Land Rover, Jaguar, Chrysler, Bentley, Cadillac cars, parts for Volvo, Hyundai, Nissan and Volkswagen cars, and Michelin, Goodyear, Continental, Bridgestone tyres. Even if the list of brands included in the new parallel import regime for car parts may be considered a mass market, the cars themselves are premium brands with a moderate market share.

The list also includes all goods produced by Apple, Hewlett Packard, Intel, Nokia, Sony, Panasonic, Samsung, Asus, including both consumer goods and telecoms and other equipment. Electrolux, Miele, Siemens and Dyson as household equipment brands, Xbox, PlayStation and Nintendo as gaming devices are also included in the parallel import regime. It was no surprise that the list of goods comprised in the parallel import regime includes any clothing and footwear irrespective of brands.

A representative of the Ministry had previously advised the press that the list of brands included in the parallel import regime may include foreign companies that voluntarily suspended operations and imports in Russia in the wake of the Ukrainian crisis, but not all of them. Thus, it is not entirely clear what criteria will apply to the drawing up of the list, and some extent of political discretion may be expected.

The information available on the official website of the Government indicates that all goods remain subject to all relevant import customs procedures and controls, as well as to any inherent maintenance and service obligations. It has been observed that the new regime does not legalize counterfeit goods, that remain illegal in Russia, even if the discovery and countering of counterfeits are likely to become less effective as a result.

The Government has indicated that the legalization of parallel imports can help to provide sufficient supply of necessary goods and stabilize prices in the current context originated by the Ukrainian crisis. However, industry representatives advised that the legalization of parallel importation in the absence of additional control from foreign producers is likely to increase the volume of counterfeited goods, in particular clothing and footwear fakes are expected to increase by as much as 50% volume rate, as well as their prices.

On the other hand, the main consequence of the legalization of parallel imports based on an unsophisticated criterion such as that of a mere international exhaustion will be the deprivation of foreign right-holders of their IP rights resulting from a complex network of international treaties and conventions of which Russia has been a party for decades if not centuries, and cannot by all reasonable standards be

perceived an incentive for continuing their presence in the country in an already complex context. Quite on the contrary, it may well contribute to the eventual decision of foreign companies to definitively withdraw from Russia.

An added circumstance affecting the future presence of international brands and foreign companies in Russia is that imports under the current circumstances face significant logistic and payment hurdles, which may prove a further factor of dissuasion for both for existing foreign right-holders and potential new exporters.

One is tempted to say that IP rights and the old-established participation of the Russian Federation to the worldwide intellectual property system happen to be a victim of the “friendly fire” of a geopolitical confrontation that takes place on entirely different fronts.





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