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INTELLECTUAL PROPERTY: CURRENT REGULATION, TRENDS AND OUTLOOK

**ИНТЕЛЛЕКТУАЛЬНАЯ СОБСТВЕННОСТЬ:
ТЕКУЩЕЕ РЕГУЛИРОВАНИЕ И ВЗГЛЯД В БУДУЩЕЕ**

Anti-counterfeiting in
e-commerce in Russia

Борьба с контрафактом
в электронной торговле

Intellectual property
protection on the Internet

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**TADZIO
SCHILLING**

AEB Chief Executive Officer

DEAR FRIENDS,

I am pleased to present to you the next issue of the "Business Quarterly". It covers intellectual property issues, which invariably remain in the focus of AEB's attention, as this topic is extremely sensitive for both foreign businesses and Russian companies.

Last year, a significant number of proposals and initiatives in the field of intellectual property were discussed in Russia; some legislative changes came into force. The experts of the AEB Intellectual Property Committee have done a great job, responding to the most pressing issues and significant innovations.

On May 29, 2024 the Committee organized its annual conference "Intellectual property rights: recent trends, practices, issues and solutions". Among the speakers were representatives of the Eurasian Economic Commission, the Court of Intellectual Rights, the Eurasian Patent Office, the Federal Service for Intellectual Property, the Federal Antimonopoly Service.

In this edition, the Committee members addressed such topics as: combating counterfeiting in online commerce;

opportunities and risks for right holders under conditions of parallel imports; practical recommendations for the protection of intellectual property on the Internet; legal regulation of objects created by artificial intelligence; shares in intellectual property; permission of the right holder as a means of exhausting exclusive trademark rights.

I would like to thank the authors for the prepared materials. I believe that they will be of interest to a wide range of readers. I am grateful to the AEB Intellectual Property Committee for enthusiasm and hard work.

As always, the publication contains information on AEB events, provides data on Russia's economic indicators for the first quarter of this year, and presents an overview of the Association's activities in the field of interaction with government authorities. A separate section is dedicated to companies that have recently joined AEB. I express my sincere gratitude to the new members for their trust and wish them success.



ANTON BANKOVSKY

Chairman of the AEB Intellectual Property Committee; Counsel, Gorodissky and Partners

DEAR READERS,

I welcome you and introduce this year's second issue of the "Business Quarterly" publication, which will take an in-depth look at intellectual property issues relevant to the past two years.

It is obvious that the current difficult situation in the world economy has significantly affected the Russian market, led to the rupture of many established economic ties and models of economic behavior, and to the formation of new ones. These rapid processes could not but affect the intellectual property sphere as well.

The authors have done a lot of work to analyze the current and forecast the future intellectual property law in Russia and the region: regulation of the rapidly growing e-commerce market, current trends in parallel imports, legal issues related to works created by artificial intelligence, etc.

We are especially grateful to the active participants of the AEB Intellectual Property Committee for searching and analyzing the most relevant and interesting legal issues in different periods of time.

I believe that the publication will be of interest both to lawyers and representatives of the business community and creative professions, who may face the issues discussed in the articles in their daily activities, as well as to all those who are not indifferent to intellectual property law.

Finally, I would like to take this opportunity to invite you to join the AEB Intellectual Property Committee and the community behind it to develop the law and evolve with it.



**ANTON
BANKOVSKY**

Counsel, Gorodissky and Partners; Chairman of the AEB Intellectual Property Committee

ANTI-COUNTERFEITING IN E-COMMERCE IN RUSSIA: CURRENT PRACTICE AND TRENDS

According to the Association of Internet Trade Companies (AKIT), in 2023 the volume of online trade in Russia increased by 27.5% and amounted to 6.4 trillion roubles. From 2019 to 2023, the Russian e-commerce market more than tripled.

This growth has triggered a series of amendments to Russian legislation in the e-commerce area, and the process is still ongoing. This situation also led to the increase of fakes in the Internet sales, especially on marketplaces, which inter alia raises legal responsibility issues of both sellers and marketplaces themselves.

The concept of the “owner of a product information aggregator” was introduced into the Law on the Protection of Consumer Rights in 2018. Marketplaces are defined by the Law as aggregators of information about goods or services that have a corresponding resource – software or website through which consumers can learn about goods or services and purchase them.

In Russia, there is still no single comprehensive regulation of online trading through marketplaces. The parties independently develop contractual provisions, taking into account the requirements of the Civil Code, the Law on the Protection of Consumer Rights, Government resolutions, and other by-laws.

Different marketplaces enter into various types of legal relationships with their clients – sellers of goods. Some sites, under

a contract, provide only services for publishing the seller’s information, organizing delivery and all document flow (checks, returns, etc.).

Other marketplaces tend to enter into other types of legal relationships with sellers, acting on behalf of the sellers and retaining a percentage of sales. In this case, we do not talk only about merely information intermediation. Thus, if a counterfeit product is sold on this marketplace, it is logical that the marketplace will also be held liable for the IP rights infringement. This position was supported by the Supreme Court of the Russian Federation; similar recommendations are reflected in the Ruling of the Plenum of the Supreme Court No. 10 of 23 April 2019.

In this regard, Internet service providers, Internet hosting providers, marketplaces, social media, peer-to-peer networks, among others, are considered information intermediaries in Russia and they can also be held liable for IP infringements. According to Article 1253.1 of the Civil Code, Internet hosting providers and other information intermediaries can be held liable for IP infringements except in cases where they can prove that:



INTERNET SERVICE PROVIDERS, INTERNET HOSTING PROVIDERS, MARKETPLACES, SOCIAL MEDIA, PEER-TO-PEER NETWORKS, AMONG OTHERS, ARE CONSIDERED INFORMATION INTERMEDIARIES IN RUSSIA AND THEY CAN ALSO BE HELD LIABLE FOR INTELLECTUAL PROPERTY INFRINGEMENTS.

- they do not initiate the transmission of data;
- they do not modify data in the process of their transmission;
- they were not and should not have been aware of the fact that the content is infringing;
- on receipt of a written notice of the rights holder containing links to the infringing content, they made all necessary actions to cease the infringement.

Compensation for infringement may be claimed only from guilty information intermediaries; and claims for removal of infringing content or restriction of access to this content may be applied against innocent information intermediaries.

Thus, the above provides the possibility to send takedown notices not only to the direct infringers but also to information

intermediaries, since they have technical options for blocking or removing infringing offers or other content (i.e. cease the infringement).

Practically, at this stage, anti-counterfeiting regulations remain in general not uniform among major market players in the e-commerce, and various marketplaces use different approaches in this regard. Some of them assure that they track counterfeit products, including using a neural network. They do not either support the negative assessments, emphasizing that all transactions are tracked in real time, and before purchasing, the buyers can familiarize themselves with the ratings of products and sellers. They also use different approaches in their cooperation with the intellectual property owners.



MARKETPLACES CONFIRM THEIR READINESS TO WORK OUT A MECHANISM FOR SUSPENDING THE ACTIVITIES OF COUNTERFEIT SUPPLIERS IN COOPERATION WITH THE FEDERAL ANTIMONOPOLY SERVICE.

While total refusals to cooperate are infrequent, some marketplaces can be slow in responding enquiries – they might be trying to buy some time until the goods are sold out. Some of the marketplaces prefer to merely refer to the sellers directly.

While civil, administrative or criminal liability is envisaged by the Russian law for selling fakes, warning letters and further negotiations with the marketplaces remain the most preferable option chosen by most brand or copyright owners.

Marketplaces normally try to respond requests of the IP owners, and this is a good way to quickly stop the sale of counterfeits. Thus, there are chances that it will be possible to resolve

the issue without going to court and save time and money. When a marketplace receives a complaint, it usually first requests information from the seller and only then, after studying all the materials, decides how to respond.

Lawyers who work closely with the infringements on marketplaces note that very often the reason for refusal to block a seller is an insufficiently well-drafted claim. The prospects for the court action against marketplaces vary depending on the role that the marketplace has in the sale of goods. In some cases, a marketplace may act as a direct seller of the product. Alternatively, it may just provide infrastructure for third parties to sell their own products. While the liability of the marketplace in the first situation should not be difficult to substantiate, the second case can be more challenging for IP owners. The courts have not yet developed a unified approach to assessing the status or actions of marketplaces in these cases. Thus, the perspective of the court action should be analyzed in each case depending on the role of the marketplace in a particular transaction.

In 2022 large Russian marketplaces created a system for exchanging information about sellers of counterfeit products. This system should collect information about cases of placement of counterfeit goods, as well as information about the seller and data from documents confirming the infringement. Having detected a counterfeit, the marketplace is supposed to block it. If the same seller is noticed on other trading platforms, one can request documents from the seller and, if they are missing or unreliable, also block that seller. Marketplaces also confirm their readiness to work out a mechanism for suspending the activities of counterfeit suppliers in cooperation with the Federal Antimonopoly Service. It is assumed that after the first infringement, the seller's activities should be suspended for three months, and after a second infringement, the seller should be denied the opportunity to place product offers on all trading platforms in the country.

In March 2024, a bill "On state regulation of trade activities of aggregators of information about goods in the Russian Federation and on amendments to the Federal Law "On the fundamentals of state regulation of trade activities in the Russian Federation" was submitted to the lower house of parliament. The new regulation will apply not only to platforms, but also to sellers and operators of delivery points. To some extent, indirectly, the provisions of the bill are intended to regulate and facilitate the fight against the circulation of counterfeit products. However, we believe that the IP owners are looking forward to seeing not only more active work of the enforcement bodies in the future, but also a more profound and uniform regulation of the cooperation process between IP owners and various e-commerce platforms.