

Parallel imports in Russia: current regulation and trends

Anna Degtyareva of Gorodissky & Partners examines the evolving landscape of parallel imports in Russia, detailing the government's temporary allowances for select goods amid ongoing sanctions while reinforcing that parallel imports remain largely illegal.

In the last two years, the political and economic situation in Russia has experienced constant change, and parallel imports have become a highly debated issue. Sanctions have resulted in some Western companies leaving the Russian market; to combat this, the Russian Government is seeking new remedies to meet the high demands of the local consumers.

These circumstances have culminated in misinformation that parallel import is allowed in Russia. However, this is not correct.

The current situation has not changed the general approach of Russian law here: parallel imports remain prohibited and constitute an infringement of exclusive rights.

Exhaustion of rights principle

Most commonly, parallel imports relate to the *principle of exhaustion of exclusive rights to trademarks*, which means that if the original goods were introduced to the market by the trademark owner or under their consent on a particular territory, there is no trademark infringement.

The Russian Civil Code (CC RF) establishes the *national principle* of exhaustion of trademark rights, meaning that once goods legally enter the Russian market, their subsequent sale does not infringe on those rights (Article 1487 of CC RF). At the same time, Russia is a member of the Eurasian Economic Union (EAEU), and the Treaty on the EAEU of May 29, 2014, signed by the member states, including Russia, Belarus, Kazakhstan, Armenia, and Kyrgyzstan, which stipulates the *regional principle* of rights exhaustion: if the product was introduced to the market in one of the member states, its further sale in any of the EAEU countries does not constitute infringement.



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Résumé

Anna Degtyareva graduated from the Faculty of Law of Lomonosov Moscow State University.

She received professional training at the law offices of Schlütius Eulitz Schrader Rechtsanwälte. Anna started her career as a lawyer in the non-profit partnership "Lawyers for Civil Society". From 2010 to 2013, she worked in the Moscow office of the law firm Gowlings International (Canada).

Since 2013 she has been working at Gorodissky & Partners, where she represents and advises clients on trademark, copyright, and patent protection, anti-counterfeiting and parallel import, licensing and franchising, of IP, Internet and domain names, advertising and unfair competition, and selection achievements.



Overall, the List can be seen as a balanced solution to meet consumers' needs, keeping parallel imports prohibited for the brands that continue their business in Russia in good faith.



National and regional principles are applied in Russia in conjunction.

New regulations

To overcome recent economic challenges, the Russian Government decided to temporarily allow parallel import for some goods: in April 2022, the Russian Ministry of Industry and Trade (Minpromtorg) approved a list of goods that can be imported into Russia without consent of the rights holders (the List). Since 2022, the List has been modified multiple times, with the current version introduced by the Order of Minpromtorg No. 2701 of July 21, 2023 (as amended on July 5, 2024).

The legislation does not indicate any criteria that shall be applied while forming the List, but it can be assumed that the main criterion is the insufficiency of particular goods on the Russian market. The List covers general categories of goods but also specific brands, mainly of the companies that have left the Russian market. Below is an example of how the goods can be represented in the List:

Customs Commodity (CC) Group	Product Type	CC Code of the Product and (or) Means of Individualization (one should be guided by the EAEU CC code and (or) trademarks that belong to right holders registered in unfriendly countries)
35	Protein substances; modified starches; adhesives; enzymes	42) 3503 00 100 1 GELITA 43) 3506 44) 3507 90 900 0 SMARTENZ, MEDLEY
36	Explosives; pyrotechnic articles matches; pyrophoric alloys; certain flammable substances	45) 3602 00 000 0 3M
37	Photo- and cineme products	46) 3701 20 000 0 FUJIFILM, KODAK 47) 3703 20 000 0 3703 90 000 0 brother, CANON, EPSON, HEWLETT PACKARD (HP), xerox 48) 3707 90 900 0 brother, CANON, EPSON, HEWLETT PACKARD (HP), TOSHIBA, xerox

The import of goods included in the List shall not constitute a violation of exclusive rights. Overall, the List can be seen as a balanced

solution to meet consumers' needs, keeping parallel imports prohibited for the brands that continue their business in Russia.

Protection of exclusive rights

Companies that remain in the Russian market see the current situation as an opportunity to expand their presence in Russia. As the business of such companies in Russia can be affected by counterfeit and grey products, they show interest in protecting their exclusive rights.

As a first step aimed at monitoring the imports into Russia, it is recommended that companies register trademarks in Russia and to include their trademarks in the Customs IP Register, maintained by the Russian Federal Customs Service. Once the trademarks are included in the Register, the customs checkpoints shall inform the trademark owner of suspicious importations.

Trademark violations can also be established during regular market monitoring, both online and offline. Whether the goods are crossing the Russian border or being sold on the market, the trademark owners may pursue the infringers of their exclusive rights by filing a petition to initiate administrative/criminal/civil actions against importations of counterfeits or filing a civil lawsuit against parallel importations or sales.

Parallel import: taking actions

The actions against parallel import can include out-of-court and in-court remedies. In some cases, forwarding a cease and desist letter to the violator can be considered as an initial step, and it can be effective, for instance, when the importer/seller is not aware of the company's exclusive rights and is ready to cooperate.

Obviously, most importers and sellers of grey goods know exactly what they are doing and receive significant profits from their actions. In this instance the IP owner may go to court. A civil action is the only in-court remedy against parallel goods, and it can be applied either against the importation or sales thereof on the market.

A civil lawsuit can be filed with a commercial court by the trademark owner or its exclusive licensee. In a lawsuit, it is possible to claim the **ban of the importation in question from entering the Russian market, as well as grounded compensation for infringement of exclusive rights.**

Previously, pursuing the destruction of parallel imported goods was also possible, but in 2018, the Constitutional Court limited the available remedies in its landmark Resolution No. 8-P of February 13, 2018. The Court ruled that legal consequences shall not be the same with respect to the importers of counterfeits and original "grey" goods.

In particular, the Constitutional Court ruled that the **destruction of grey goods shall only be permitted if the goods are of low quality or for reasons of security, safeguarding people's health and life, protecting the environment and cultural values**. Further, the Court explained that the compensation amount for parallel imported original goods should not be the same as for the importation of counterfeits.

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Court practice

Recent court practice supports the general approach that parallel import is not allowed in Russia. In court case No. A53-26676/2023, the company Davide Campari-Milano N.V., owner of a famous apéritif brand "Aperol", filed a civil action against a local company for importation of branded goods into Russia without consent of the trademark holder. The first instance court considered the case and satisfied the right holder's claim to ban sales or other marketing of the batch of goods in question.

Most importantly, the court confirmed that parallel import is prohibited in Russia for the goods not included in the List of Minpromtorg mentioned above. Courts of appeal and the cassation instance, IP Court of Russia, upheld this approach.

Conclusions

Despite the common misconception, parallel import can be pursued in Russia, provided that the rights holder's business is present in the Russian market. We are constantly monitoring the legislative initiatives and court practices and will be pleased to provide high-end services for the protection of exclusive IP rights.

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