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Russia: IP Court clarifies how to tackle “cooling-off” period in parallel import disputes

Boris Malakhov (Lidings) · Friday, December 2nd, 2016



In mid-November, the Russian Intellectual Property Court published a noteworthy decision shedding light on an ambiguous pre-trial procedure in IP disputes.

The procedure (effective since 1 June 2016) has raised numerous concerns over its adverse effect on IP enforcement.

On November 18, 2016, the Russian IP Court reviewed the dispute between Daimler AG and TMR Import (case No. [A41-39075/2016](#)).

Under the auspices of the case, on June 30, 2016 the claimant filed a lawsuit against the alleged grey importer. However, the Court of Moscow Region refused to consider the case based on Daimler AG’s failure to comply with the mandatory 30-day pre-trial period (the requirement was introduced on 1 June 2016 with [Federal Law No. 47-FZ](#)).

Contesting the decision in the superior IP Court, Daimler AG invoked art. 331 of the Customs Code authorizing any trademark holder to sue a parallel importer within 10 days upon the competent customs post’s decision to suspend grey goods rendered on the trademark holder’s initiative.

On the claimant’s view, application of the shortened 10-day pre-trial term instead of default 30 days would guarantee that the trademark holder could enforce the decision (if positive) and destroy disputed goods. Otherwise, the grey importer would be able to use a 20-day gap to release goods and freely sell them on the Russian market.

On the other hand, Daimler AG tried to convince IP Court that its general cease-and-desist letter addressed to TMR Import long before disputed goods had been found was sufficient for the purposes of the pre-trial settlement.

However, the IP Court [declined](#) both arguments and explained how to tackle the “cooling-off”

period in parallel import disputes (applicable to other IP disputes as well):

- General (abstract) cease-and-desist letters that do not specify exact customs declarations and goods shall be found inadmissible. Thus, such letters are eligible only when they contain detailed information of a committed infringement.
- The shortened pre-trial term (art. 331 of Customs Code) is inapplicable in parallel import disputes.

In addition, the IP Court pointed out that the trademark holder's right to enforce the decision is legally guaranteed should the trademark holder consecutively seek for (1) suspension of goods on the competent customs post for 10 days, (2) extension of this period for other 10 days, and (3) preliminary injunction in the competent court for extra 15 days. This legal mechanism is designed to keep disputed goods arrested throughout the 30-day "cooling off" period and further litigation.

In the context of the IP Court's conclusions, we would recommend trademark holders to struggle against discovered infringements as soon as possible in order to maintain illegally imported goods arrested and destroyed in the most efficient way.

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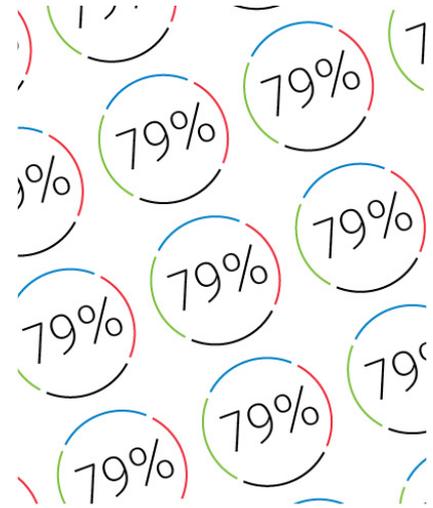
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