

# Kluwer Trademark Blog

## “100 %” Trademark approved by the Russian Intellectual Property Court

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After a long battle Saule LLC, a manufacturer of motocross and extreme cycling equipment, has



managed to register the designation <sup>1</sup> as a trademark in Russia.

Saule LLC uses the slogan “RIDE ONE HUNDRED PERCENT” and a graphic designation “100%” as a trademark in the USA and many other countries. Moreover, Saule LLC is the rights holder of certain similar trademarks in Russia.

However, the Russian Patent Office (“**Rospatent**”) refused to register the “100%” logo stating the following:

- The trademark has a *lack of distinctiveness*, since it consists of the number “100”, the generally accepted mathematical unit “%” and is inscribed in a simple geometric figure;
- Consumers *do not have a strong association* between the designation and the company, as well as its products.

Saule LLC filed an objection to the decision of Rospatent and, having received a refusal twice, filed a lawsuit with the Intellectual Property Court (“**IP Court**”).

Specifically, the applicant stated the following:

- The slogan “RIDE ONE HUNDRED PERCENT” and its graphic representations are trademarked in the USA and several other countries.
- Rospatent did not take into account its own past practice of applying Article 6.quinquies of the Paris Convention for the Protection of Industrial Property as of 1883, according to which registration of a similar trademark requires to assess all factual circumstances of the case for making a decision.
- The combination of elements of the designation in question has distinctiveness, since it indicates different ways of displaying the combination of the number “100” and the symbol “%” within a simple geometric figure.
- Rospatent’s refusal to grant legal protection to the applicant’s trademark, which is protected in a number of countries, deprives Saule LLC of a legal instrument to fight against unfair competition in Russia.

The IP Court agreed with these arguments. In particular, according to the IP Court's decision, it is obvious that the main individualizing meaning of the controversial designation consists in the designation 100%. As a result, the IP Court obliged Rospatent to register the designation "100%" as a trademark in Russia.

This case establishes a significant rule that might be applicable to other trademark cases when Rospatent refuses to register international trademarks. When registering several trademarks on the name of the same person, Rospatent is bound by its previous conclusions made in relation to the same trademarks and its elements. Once recognized by Rospatent as having distinctiveness, in the absence of objections from other persons, Rospatent shall continue to recognize such elements as distinctive. The distinctiveness of several elements or the trademark as a whole may only be revised by Rospatent exclusively based on the third parties' objections as established by Russian IP law.

Previously, a similar rule was developed and applied in the cases "Nevskaya cosmetics" and "Hochland". In both cases, Rospatent primarily refused to register the applicants' designations (specifically, packaging of washing powder and creamy cheese) as trademarks due to the lack of distinctiveness. However, the IP Court obliged Rospatent to register these designations as trademarks, based on the provided evidence of acquired distinctiveness (e.g. survey) and the fact that Rospatent has already provided legal protection to similar Russian and international trademarks for these applicants.

Overall, this case shows that filing a claim to the IP Court seems to be an effective legal mechanism when Rospatent refuses to register an international trademark in Russia.

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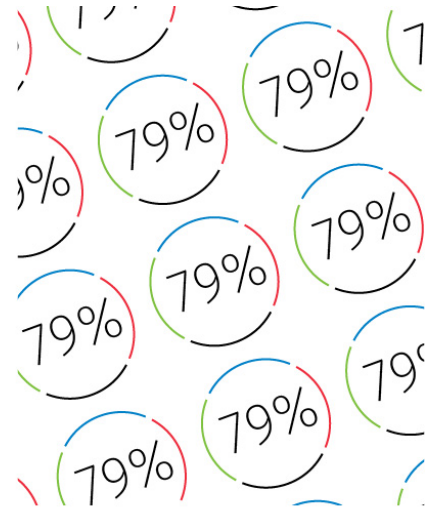
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