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Russia: Non-profit organizations are eligible to protect name, even when “traditional” trademark and company name protection does not work

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In mid-July the Russian Supreme Court released an interesting decision in the dispute between one of the largest and most recognized non-profit organizations against a copycat suspected of raising money from confused donors all over the country.

The judges decided in favor of the plaintiff despite the fact that it did not possess a trademark and could not enjoy the right to a company name.

On July 11, 2017 the Russian Supreme Court published a long-awaited Decision in case No. 53-KG17-12.

Under the merits of the case, in 2016 the charity fund for helping children with cancer “Podari Jizn” [“Gift of Life”] filed a lawsuit against a copycat, identically named non-profit charity fund, seeking to prohibit the same naming. In the lawsuit the plaintiff referred to its “exclusive right to a non-profit organization name”.

However the courts of the first and appeal instances denied the claims on the ground that (1) the plaintiff did not possess an enforceable trademark to protect its brand, (2) “non-profit organization

name" is not *de jure* listed as an IP asset in the Civil Code and therefore is not subject to judicial protection.

The conclusion was strongly criticized by the Supreme Court. The panel of judges noticed that "non-profit organization name" shall fall under the regime of protected intangible assets, even if it does not constitute an IP right. Therefore, those non-profit organizations, which registered their names in due course, shall enjoy the exclusive right to use and protect them against any copycat, even if they do not possess trademarks, company names or other IP assets.

To succeed in such dispute, the plaintiff shall evidence a few facts:

- the plaintiff has duly registered its non-profit organization name
- the defendant has used the same name
- the defendant's intent is to use the name for misleading purposes

If evidenced, registration and use of a non-profit organization name by the defendant shall be prohibited by court as an act of bad faith and infringement.

It should be noted that the same issue was already raised in para. 58.2 of the Supreme Court Plenum's Resolution No. 5, Supreme Arbitrazh Court Plenum's Resolution No. 29 as of March 26, 2009, under which non-profit organizations were deprived of the "traditional" right to a company name. However the courts did not offer an alternative remedy, which for a long time made it almost impossible to enforce non-profit organization names against copycats.

We believe that the recent clarification of the Supreme Court has brought a positive impulse for further development of court practice in the disputes of protection of brands of non-profit organizations.

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