Parallel Imports: New Legal Developments

On 29 March 2022, the Russian Government approved an exception from the principle of national exhaustion of rights to trademarks, inventions, utility models and industrial designs, established by civil legislation (Resolution No. 506). The exception will apply to a list of goods (groups of goods) to be approved by the Russian Ministry of Industry and Trade.

Parallel imports

The Russian Civil Code (the “Civil Code”) provides that goods bearing a trademark, products incorporating an invention or utility model, and manufactured articles in which an industrial design is used can be put on the market in Russia only by, or with the consent of, the owner of the trademark, invention, utility model or industrial design (hereinafter, “rights owner”). Consequently, putting such goods on the market in Russia without the consent of the rights owner constitutes a violation of exclusive rights, and the rights owner may demand that the violating party pay compensation, reimburse losses or cease the activities that violate, or threaten to violate, those rights. Rights owners, manufacturers, importers and distributors used this legal mechanism extensively to structure sales of goods in Russia.
The longstanding discussion about the possibility of legalizing parallel imports in Russia concluded on 30 March 2022 with the partial approval of parallel imports and the limitation of the exclusive rights of rights owners and with the introduction of the principle of international exhaustion of rights to trademarks, inventions, utility models and industrial designs in respect of certain goods (groups of goods). The list of those goods (groups of goods) is expected to be approved shortly by the Russian Ministry of Industry and Trade, based on proposals submitted by federal executive authorities.

The new rule became possible after emergency powers were granted to the Russian Government by Federal Law No. 46-FZ of 8 March 2022 in order to protect Russia’s national interests in connection with unfriendly actions by foreign countries and international organizations. The Russian Government is entitled in 2022 to develop a list of goods (groups of goods) that will be exempt from certain provisions of the Civil Code concerning exclusive rights to the results of intellectual activity incorporated in such goods and the means of individualization borne by such goods, or to delegate this power to the federal executive authorities in charge of the development of government policy and regulations in the respective areas.

**Implications**

The legalization of parallel imports will deprive rights owners of certain options for protecting their exclusive rights.

However, it should be noted that the partial legalization of parallel imports does not mean that counterfeit goods can be sold in Russia. It rather allows original goods to be imported not only by rights owners and their official distributors, but also via alternative channels. In addition, we believe that the new rules do not prevent rights owners from controlling larger imports to Russia, tracking and assessing operations of major independent importers or monitoring for violations and taking necessary actions to protect their exclusive rights.

EY professionals have broad competencies and expertise with intellectual property. Leveraging our substantial experience, gained by providing services and consulting on various issues in that area, we can analyze each specific case in detail in terms of the applicability of the new parallel import regulation, the existence of inherent risks and the implications for contractual relations. We can also assist with framing new contracts or drafting required amendments to existing contracts to mitigate adverse consequences.

**Authors:**
Alexey Markov  
Anton Sidnin  
Alena Karpova

For more information, please contact the authors of this publication:

Alexey Markov  
+7 (495) 641 2965  
Alexey.Markov@ru.ey.com

Anton Sidnin  
Anton.Sidnin@ru.ey.com
Inquiries may be directed to one of the following executives:

**Moscow**

**CIS Tax & Law Leader**
Irina Bykhovskaya +7 (495) 755 9886

Oil & Gas, Power & Utilities
Alexei Ryabov +7 (495) 641 2913
Marina Belyakova +7 (495) 755 9948

Financial Services
Irina Bykhovskaya +7 (495) 755 9886
Alexei Kuznetsov +7 (495) 755 9687
Maria Frolova +7 (495) 641 2997
Ivan Sychev +7 (495) 755 9795

Advanced Manufacturing & Mobility
Andrei Sulin +7 (495) 755 9743

Consumer Products & Retail, Life Sciences & Healthcare
Dmitry Khalilov +7 (495) 755 9757

Real Estate, Hospitality & Construction, Infrastructure, Transportation
Dmitry Tetiouchev +7 (985) 773 6818

Technology, Telecommunications, Media & Entertainment; Tax Performance Advisory
Ivan Rodionov +7 (495) 755 9719

Tax Technology
Andrei Ignatov +7 (495) 755 9694

People Advisory Services
Ekaterina Ukhova +7 (495) 641 2932
Gueladjo Dicko +7 (495) 755 9961
Sergei Makeev +7 (495) 755 9707

Private Client Services
Anton Ionov +7 (495) 755 9747
Alina Lavrentieva +7 (495) 648 9651

Customs & Indirect Tax
Vladimir Shavshina +7 495 755 9700

International Tax and Transaction Services
Yuri Nechuyatov +7 (495) 664 7884
Vladimir Zheltonogov +7 (495) 705 9737

Transfer Pricing and Operating Model Effectiveness
Evgenia Veter +7 (495) 660 4880
Maxim Maximov +7 (495) 662 9317

Tax Policy & Controversy
Alexei Nesterenko +7 (495) 622 9319

Global Compliance and Reporting
Yulia Timonina +7 (495) 755 9838
Alexei Malenkin +7 (495) 755 9898

Law
Georgy Kovalenko +7 (495) 287 6511
Alexey Markov +7 (495) 641 2965

**St. Petersburg**

Dmitri Babiner +7 (812) 703 7839

**Vladivostok**

Alexey Erokhin +7 (914) 727 1174

**Ekaterinburg**

Irina Borodina +7 (343) 378 4900

**Krasnodar**

Alexei Malenkin +7 (495) 755 9898
Alexei Nesterenko +7 (495) 622 9319

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ED None.

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