

War and Peace at Rospatent: Protecting Trademarks in Russia

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Yes, we shall live, Uncle Vanya. Could Anton Chekhov ever have imagined that his literary work would be used to sell hamburgers? In March, a controversial application for an "Uncle Vanya" mark in connection with "snack bars, cafes, cafeterias, restaurants, bar services, canteens, cooking and home delivery services," incorporated the red-and-yellow golden arches logo of McDonald's. It was just one in a series of recent applications in Russia that have caused serious pearl-clutching among intellectual property lawyers.

Since Russia invaded Ukraine on February 24, the country has faced numerous financial, trade and travel sanctions. It's also been snubbed by major intellectual property partners. In a [February 28 letter](#), a group of whistleblowers and staff representatives at the World Intellectual Property Organization (WIPO) called for the entity's public condemnation of Russia's invasion of Ukraine and the rapid closure of its Russia Office. The European Patent Office [severed ties with Russia on March 1](#), and shortly thereafter the United States Patent and Trademark Office (USPTO) confirmed that it had "[terminated engagement](#)" with officials from Russia's agency in charge of intellectual property, the Federal Service for Intellectual Property (Rospatent), and with the Eurasian Patent Organization.

In response, Russia has adopted an aggressive posture in the intellectual property realm where it once sought to peacefully engage with the world, an effort that began well before the collapse of the Union of Soviet Socialist Republics. When the USSR joined the Paris Convention in 1965, it eagerly sought to develop Soviet intellectual property. Yet in March, Russia issued [Decree No. 299](#), which effectively nullifies the enforcement value of Russian patents owned by entities and individuals in "unfriendly" countries including the United States, European Union member states, the United Kingdom, Ukraine, Japan, South Korea, Australia and New Zealand.

Russian Prime Minister Mikhail Mishustin also [greenlighted the importation of branded products without the brands' permission](#), creating gray market headaches. As Boris Edidin, deputy chairman of the Commission for Legal Support of the Digital Economy of the Moscow Branch of the Russian Bar Association, clarified in a recent legal commentary published by Moscow-based RBC Group: "entrepreneurs have the opportunity to import goods of well-known brands, regardless of the presence or absence of an official representative on the Russian market."

Russia, like the EU, had traditionally adopted a tougher stance than the United States on parallel imports. Now, however, "both by 'anti-crisis' measures and by cloak-and-dagger methods" Russia is sure to do all it can to keep its planes flying and its factories running, said Peter B. Maggs, research professor of law at the University of Illinois at Urbana-Champaign and noted expert on Russian and Soviet law and intellectual property.

The increase in parallel imports makes trademark prosecution and maintenance more important than ever in Russia, but it's not the only cause for concern. In March, as political tensions reached a crescendo, a Russian court declined to enforce the trademark rights for Peppa Pig, the famous British cartoon character, due to "unfriendly actions of the United States of America and affiliated foreign countries." (See case No. A28-11930/2021 in the Arbitration Court of the Kirov Region; an appeals court later [overturned](#) this holding, in a win for the porcine star.) RBC Group [reported](#) in March that it had tracked more than 50 trademark applications by Russian entrepreneurs and businesses for the marks of famous foreign brands, many in the fashion and tech sector. While most trademark applications were explicit copies of existing brands, in other cases applicants were content to imitate well-known trademarks and trade dress.

For example, a Russian entrepreneur from a design studio called Luxorta applied to register an IDEA brand that mimics the style and yellow-and-blue color schemes of famous Swedish brand IKEA. He told RBC that his business had suffered after IKEA suspended its Russian operations, and that he aspired to develop his own line of furniture and work with IKEA's former suppliers. Other applicants RBC interviewed indicated they hoped to sell the marks back to foreign companies once those companies return.

On April 1, Rospatent published [a press statement](#) clarifying that "in case an identical or similar trademark has already been registered in the Russian Federation, it would be the ground for refusal in such registration." More recently, the head of Rospatent, Yury Zubov, has responded with frustration to news coverage of trademark woes in Russia, noting that intellectual property legislation is unchanged and the "Uncle Vanya" hamburger mark had been withdrawn.

Prof. Maggs agreed that those trying to register or use close copies of foreign marks in Russia will likely fail. He cited a June 2 decision by the Court of Intellectual Property Rights to uphold lower court

findings that the mark "FANT" for a carbonated orange soft drink violated unfair competition laws, because it was confusingly similar to the "FANTA" brand owned and licensed to third parties by Coca-Cola HBC Limited Liability Company. Russia's consumer protection agency had originally brought the case.

The Court reasoned that "confusion in relation to two products can lead not only to a reduction in sales of the FANTA drink and a redistribution of consumer demand, but can also harm the business reputation of a third party, since the consumer, having been misled by the confusion between the two products, in the end receives a different product with different quality, taste and other characteristics."

In addition, Prof. Maggs said, "the Putin Regime is and will be promoting Russian products as 'just as good' as foreign products. An example, obviously approved at high levels is the adoption of a totally different trademark for the sold McDonald's chain," he said, referring to the June 12 reopening of former McDonald's restaurants in Moscow under the name "Vkusno & tochka" ("Tasty and that's it").

Brands should be wary of inadvertently jeopardizing their Russian marks by suspending local operations; a trademark may be cancelled in Russia after three years of uninterrupted non-use. While Article 1486 of the Russian Civil Code states that "evidence presented by the rightholder of the fact that the trademark was not used *due to circumstances beyond his control* [emphasis added] may be taken into account," brands claiming infringement still risk being ineligible for damages or injunctive relief, because technically they are not losing sales while pausing business in Russia.

Moreover, if a company has suspended sales in Russia to show solidarity with Ukraine but seeks to stop sales in Russia by others, it may be accused of violating the good faith requirement of Article 10 of the Russian Civil Code, which states that exercising "rights for the purpose of limiting competition and also abuse of a dominant position in a market are not allowed."

Russia remains a party to numerous intellectual property treaties, including the Paris Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Hague Agreement. But as the Peppa Pig case illustrates, court decisions on intellectual property are not immune to political heat.

The question looming on the horizon is whether, if the current crisis escalates, the Russian government would outright cancel trademarks from hostile countries. It would not be the first time a state denied intellectual property rights during political conflicts. In the aftermath of the First World War, for example, the US government advocated for the "expropriation" of property, including intellectual property, of German nationals, perceived as responsible for the militarism of their government¹. And in the 1930s, the German patent office removed Jewish patent-holders from its

roster as part of its notorious "[Aryanization](#)" process. However, because Russia is not officially at war with the countries it has deemed "unfriendly," these precedents are not directly on point.

Brands that have suspended business operations in Russia should monitor their trademark portfolios closely for infringement and consider how they can prove use of each mark during a prolonged absence from the Russian market. In other words: keep your eyes on Uncle Vanya.

[i](#) Caglioti DL. Property Rights in Time of War: Sequestration and Liquidation of Enemy Aliens' Assets in Western Europe during the First World War. *Journal of Modern European History*. 2014;12(4):523-545. doi:10.17104/1611-8944_2014_4_523.

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