

 BRIEF

Intellectual Property Implications of Russia's Invasion of Ukraine

ZEROFOX INTELLIGENCE

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Scope Note

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Intellectual Property Implications of Russia's Invasion of Ukraine

Executive Summary

In response to sanctions levied against Russia by Western nations following Russia's invasion of Ukraine, the Russian government and courts have made a series of decisions encouraging domestic entities to appropriate trademarks and patents from multinational companies with Western ties. Well-known brands such as McDonald's and Starbucks have already seen their branding appear in new trademark applications filed by Russian applicants. Protecting intellectual property within Russia could become increasingly difficult and expensive for companies with ties to countries that the Russian government considers to be "unfriendly." Companies should give these challenges careful consideration when making decisions about whether to continue operations in Russia.

Details

In September 2021,¹ multinational entertainment company Entertainment One, the producer of British children's television show *Peppa Pig*, sued Russian national Ivan Kozhevnikov for alleged infringement of the Peppa Pig trademark and other intellectual property.² On March 2, 2022, Russian Judge Andrei Slavinsky threw out the case, citing recent American and British sanctions against Russia as justification for refusing to recognize Entertainment One's intellectual property rights.³

In the brief time since Judge Slavinsky made this ruling, Russian threat actors have already begun efforts to appropriate the intellectual property of iconic multinational brands and misuse it for their own benefit. In a March 12 trademark filing, Russian Field-Logistic LLC sought to register the Uncle Vanya's brand for a wide variety of food service uses, including restaurants.⁴ The brand's logo prominently features the

¹ <https://www.independent.co.uk/news/world/europe/peppa-pig-russia-trademark-ukraine-b2034842.html>

² <https://www.jdsupra.com/legalnews/putin-v-peppa-pig-how-russia-s-war-in-2435822/>

³ See also Case No. A28-11930/2021 in the Arbitration Court of the Kirov Region.

⁴

https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUTMAP&rn=3512&DocNumber=2022715219&TypeFile=html



McDonald's golden arches rotated 90 degrees clockwise to form part of the letter “В” in the Cyrillic alphabet, corresponding to the “V” in Vanya.⁵



Source: https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUTMAP&rn=3512&DocNumber=2022715219&TypeFile=html

On March 14, 2022, Russian applicant Ekaterina Yurievna Petrunina filed for ownership of the Cyrillic versions of “McDuck” — as McDonald's is often referred to in Russia — and McDonalds, along with the Latin alphabet version of Starbucks.⁶ Other brands that have been targeted with similar activity include IKEA and Instagram.⁷ It is unclear when or if these applications could result in trademarks being granted to the applicants; like those in many other countries, Russian authorities take months to review trademark applications.



Source: <https://twitter.com/JoshGerben/status/1504846143246712860>

⁵ <https://www.washingtonpost.com/world/2022/03/18/uncle-vanya-russian-mcdonalds-replacement-logo/>

⁶

<https://www.law360.com/foodbeverage/articles/1474611/mcdonald-s-starbucks-already-facing-russian-tm-copycats>

⁷

<https://finance.yahoo.com/news/mc-donalds-starbucks-and-others-have-no-recourse-for-stolen-ip-in-russia-174530523.html>



Russian politicians have encouraged this behavior. Earlier this month—prior to the Uncle Vanya's trademark filing—Vyacheslav Volodin, who is the Speaker of the lower house of Russia's parliament, commented on McDonald's suspension of business within the country. “They announced they are closing. Well, okay, close. But tomorrow in those locations we should have not McDonald’s, but Uncle Vanya’s,” he said. “Jobs must be preserved and prices reduced.”⁸ Russian President Vladimir Putin has endorsed a plan to nationalize foreign-owned businesses leaving the country, saying that Russia must “introduce external management” on these companies “and then transfer these enterprises to those who want to work.”⁹

In addition to the trademark issue, legalized patent theft within Russia has also become a concern. Earlier this month, the Kremlin issued a decree¹⁰ stating that entities in “unfriendly countries” will no longer be compensated for infringement of their patents.¹¹ The Kremlin has formally recognized 24 countries as being “unfriendly” since the invasion of Ukraine began.¹² Russian individuals and companies will no longer be able to be sued for patent infringement by entities with registered patents in those countries, entities that do business with those countries, or entities formed and registered in those countries.¹³

The United States Patent and Trademark Office (USPTO) has already announced that it will “terminate engagement with the Russian IP Office (Rospatent) as well as the Eurasian Patent Organization (EAPO) and the IP Office of Belarus, which has been cooperating with Russia in the lead-up to and during the Russian invasion of Ukraine.”¹⁴

The European Patent Office previously made a similar announcement.¹⁵

Analyst Commentary

If Russia continues to permit or encourage intellectual property theft within its borders, the ensuing legal and business uncertainty could make investment in the country increasingly risky for foreign entities. In addition, Russia could see a surge in counterfeit products that might be exported to other countries. Companies with widely-recognized and valuable brands could also see the value of their trademarks deteriorate as competitors attach identical or similar branding to inferior products or services.

⁸ <https://www.washingtonpost.com/business/2022/03/10/russia-nationalize-foreign-business-ukraine/>

⁹ <https://www.washingtonpost.com/business/2022/03/10/russia-nationalize-foreign-business-ukraine/>

¹⁰ <http://publication.pravo.gov.ru/Document/View/0001202203070005?index=0&rangeSize=1>

¹¹ <https://www.washingtonpost.com/business/2022/03/09/russia-allows-patent-theft/>

¹² <https://www.newsweek.com/russia-list-unfriendly-countries-1685468>

¹³ <https://www.washingtonpost.com/business/2022/03/09/russia-allows-patent-theft/>

¹⁴

<https://www.ipwatchdog.com/2022/03/13/ip-crosshairs-government-agencies-terminate-relationships-russian-ip-entities-kremlin-sanctions-ip-theft/id=147454/>

¹⁵

<https://www.managingip.com/article/blwzv65sfwb6wg/european-ip-offices-cut-ties-with-russia-over-ukraine-invasion>



Multinational companies that want to attempt to protect their brands from misuse in Russia may be forced to expend resources fighting losing battles within the Russian court system, almost certainly facing lawyers and judges who want to avoid any appearance of pro-Western sympathies. Companies that continue to actively conduct business within Russia despite the conflict in Ukraine might have a better chance of protecting their corporate assets than those who withdraw, but there are no guarantees. Companies that stay will likely face political and moral backlash outside Russia, in addition to practical difficulties with keeping their workers in Russia safe in the midst of the conflict.

Recommendations

In the short term, businesses with registered trademarks or patents in Russia should carefully examine whether it is worth paying any fees required to maintain these protections in the hopes that the Russian government rolls back its recent decisions. A de-escalation of hostilities in Ukraine could make this more likely, but it is not known how quickly—or whether—it will change Russia's decisions related to intellectual property. Filing for any new Russian intellectual property protections at this time also does not appear to be beneficial.

Until any de-escalation of hostilities occurs, companies should add the deteriorating intellectual property environment in Russia to their list of factors to consider when deciding whether to continue any operations they have within the country.



Appendix: Traffic-Light Protocol for Information Dissemination

Red

WHEN SHOULD IT BE USED?

Sources may use TLP:

RED when information cannot be effectively acted upon by additional parties and could lead to impacts on a party's privacy, reputation, or operations if misused.

HOW MAY IT BE SHARED?

Recipients may not share TLP:

RED with any parties outside of the specific exchange, meeting, or conversation in which it is originally disclosed.

Amber

Sources may use TLP:

AMBER when information requires support to be effectively acted upon but carries risks to privacy, reputation, or operations if shared outside of the organizations involved.

Recipients may not share TLP:

AMBER information with members of their own organization and only as widely as necessary to act on that information.

Green

WHEN SHOULD IT BE USED?

Sources may use TLP:

GREEN when information is useful for the awareness of all participating organizations, as well as with peers within the broader community or sector.

HOW MAY IT BE SHARED?

Recipients may not share TLP:

GREEN information with peers & partner organizations within their sector or community but not via publicly accessible channels.

White

Sources may use TLP:

WHITE when information carries minimal or no risk of misuse in accordance with applicable rules and procedures for public release.

Recipients may not share TLP:

WHITE information may be distributed without restriction, subject to copyright controls.