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What Trademark Holders Should Know About Russia's Authorization of Parallel Imports

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The Russian government has issued regulations authorizing importation into Russia of specified luxury items without the consent of the relevant trademark owners, in an apparent effort to circumvent Western sanctions prohibiting the supply to Russia of such items. Such imports, known as “parallel imports” or “gray market” activity, present legal and reputational risk for luxury brand companies to the extent their products are diverted to Russia.

This article summarizes the relevant measures, describes the risks presented, and provides tips for risk mitigation.

Russian Parallel Imports Regulations

On March 29, 2022, the Russian government adopted [Resolution No. 506](#), which authorized the Russian Ministry of Industry and Trade to identify goods for parallel import to Russia. Later, on May 6, 2022, the Russian Ministry of Industry and Trade published [Order No. 1532](#), an extensive list identifying goods from prominent Western brands for parallel import.

Order No. 1532 covers 56 categories of goods, including mineral products, pharmaceutical products, cosmetics and skincare, clothing, footwear, watches, musical instruments, automobiles, electric machinery, electronics, and other big-ticket consumer items.

The list appears to aim to get around Western sanctions prohibiting the supply to Russia of luxury goods. The Resolution expands on [Russian law 46-FZ](#), enacted on March 8, 2022, empowering the Russian government to exclude certain goods from standard civil intellectual property rights.

What Are Parallel Imports?

Parallel imports, also known as gray-market goods, are branded goods that are imported and sold in a market without the trademark owner's consent to sell in that particular market. Such goods have been lawfully produced with the trademark owner's permission—either direct manufacture or by licensing—for sale in one territory, but then are imported for sale from the authorized territory into an unauthorized territory.

Notably, Resolution No. 506 does not authorize sale of counterfeit goods in Russia, but rather authorizes only imports goods that are legally put into circulation by trademark owners in the country from which the items are imported.

Exhaustion of IP Rights

The concept of exhaustion of IP rights provides a framework for understanding the extent to which a trademark owner can control the distribution of its goods. As a general matter, once a trademark owner places a branded good for sale in a particular territory, the trademark owner cannot stop resale of that product in the same territory. As the IP rights holder, the trademark owner has exhausted its IP rights in the branded good upon first sale.

Two types of exhaustion systems exist:

- Under a “national exhaustion” regime, exhaustion of IP rights occurs within a given market when a branded good has been placed for first sale in a specific country or region by the trademark owner or with the trademark owner's consent—i.e., licensed goods. As to the countries and regions outside this market, the IP rights holder continues to be able to prevent unauthorized resales.
- In an “international exhaustion” system, a trademark owner exhausts its rights in any and every market once a branded good is placed for first sale somewhere in the world by the trademark owner or with the trademark owner's consent.

Notably, Resolution No. 506 allows the Russian Ministry of Industry and Trade to selectively apply international exhaustion principles to the prominent Western brands listed in Order No. 1532. In contrast, the Russian Civil Code incorporates national exhaustion principles, as does the Eurasian Economic Union, of which Russia is a member.

Application of Western Sanctions

In response to Russia's invasion of Ukraine, the US and its partners have imposed a range of sanctions against Russia, including with respect to the supply of luxury goods. Such measures include the following:

- US
 - [Executive Order 14068](#). Prohibiting US persons from supplying to Russia luxury goods specified by the U.S. Department of Commerce.
 - **Export Administration Regulations**. Specifying the luxury items subject to US sanctions, and prohibiting all persons worldwide from exporting to Russia and designated Russian persons specified U.S.-origin luxury goods. [15 C.F.R. § 746.10](#); [15 C.F.R. Part 746](#), Supplement No. 5.
- EU
 - **Council Regulation (EU) No 833/2014**. Prohibiting the supply to Russia of specified luxury goods. Council Regulation (EU) No 833/2014, Art. 3h.
- UK
 - **The Russia (Sanctions)(EU Exit) Regulations 2019**. Prohibiting the supply to Russia of specified luxury goods. The Russia (Sanctions)(EU Exit) Regulations 2019, Reg. 46B.

Implications & Recommended Risk Mitigation

Companies potentially subject to Order No. 1532 should closely monitor whether their goods are being imported into Russia under the new parallel imports scheme, as such activity could present significant sanctions risk and adversely impact a company's brand.

Sanctions Risks

Sanctions breaches are subject to significant penalties. Notably, under U.S. sanctions, violations are punishable by civil penalties of up to the greater of ~\$330,000 per violation or twice the value of the transaction, and criminal penalties of up to \$1 million per violation and/or 20 years' imprisonment. Furthermore, under U.S. sanctions, and more recently UK sanctions, authorities can levy penalties on a strict liability basis, *i.e.*, a person need not have acted with any particular state of mind (such as recklessness or negligence) in order to be liable for a violation.

Should a company's items end up in Russia through Order No. 1532 in contravention of applicable sanctions, the company could attract the attention of sanctions regulators and could face penalties, even where the relevant gray market activity took place without the company's consent. In this context, regulators may scrutinize the company's sanctions policy and whether the company took steps to seek to prevent the diversion of its products to Russia.

Brand Impact

In the event that a company's products are diverted to Russia through gray market activity, the company could face not only negative press, but also all that goes with being a brand manufacturer in terms of quality control, honoring warranties, liability for defects, and other consumer protection regulations, even if the product was never meant to be sold or used in Russia.

An added complication is the mixing of counterfeit goods with legitimate goods meant for sale outside Russia. Trademarks function as source identifiers; anything that compromises the integrity of a brand owner's trademark can cause consumer confusion and damage the goodwill in the brand owner's mark.

Risk Mitigation Steps

IP rights holders potentially impacted by Order No. 1532 should consider appropriate risk mitigation steps, including all of the following:

- Incorporation of sanctions-related terms and conditions into contracts
- Implementation of sanctions compliance policies and procedures
- Monitoring of potential gray market activity as described in media reports and social media
- Proactively sending cease and desist letters to unauthorized trademark users
- Conducting periodic audits to assess the flow of the company's products and whether counterparties are handling the products in accordance with the terms of relevant contracts