

Intellectual Property Rights: A Key to Russia's Economic Revival

The Coalition for Intellectual Property Rights (CIPR) is a private-public partnership dedicated solely to the advancement of intellectual property protection and reform in the Baltic States, Russia, Ukraine, and other countries of the former Soviet Union.

When Russia makes economic news internationally, the topics are fairly predictable. Tax reform and the battle against corruption and capital flight are media favorites. They are also cited as issues of major concern to the international business community. However, according to a recently released survey of major foreign investors in Russia, one more issue should be added to this list: the protection of intellectual property.

Russia is a signatory to the Paris Convention, a member of the World Intellectual Property Organization (WIPO) and has recently declared its determination to join the World Trade Organization (WTO). Yet, Russia's rampant counterfeiting and trademark violations are estimated to cost billions of dollars annually in lost revenues to businesses operating in Russia, and to Russia's federal and regional budgets it costs hundreds of millions of dollars each year in lost taxes, duties and investment.

The survey of 50 major foreign investors in Russia conducted by CIPR revealed that counterfeiting, trademark piracy and other intellectual property infringements are costing businesses in Russia an estimated \$1 billion a year. Half of the companies surveyed stated their yearly losses attributed to IPR violations amount to at least \$1 million, and a third said losses were between \$5 million and \$50 million.

The survey also found that inadequate protection of IPR ranks on par with customs and tax problems as the most critical challenges facing businesses in Russia.

The companies most affected by counterfeiting and infringement of their products are fast-moving consumer goods, tobacco, alcohol, personal health care, and the automotive industry. Twenty-eight percent of survey participants stated that more than 10 percent of their products are copied while a number of respondents believe more than 25 percent of their products are counterfeits.

According to CIPR President Peter Necarsulmer, foreign companies are not

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the only ones that suffer from Russia's lack of IPR protection. "IPR violations not only hurt businesses in Russia, but cost the Russian government billions of rubles in uncollected revenues from counterfeit products evading taxes and duties," says Necarsulmer. "IPR violations are barriers to new investment and impede Russia's effort to join the WTO. IPR violations also result in higher consumer prices and place individual's health and safety at substantial risk. This can prove fatal when violators infringe on pharmaceutical goods that could possibly cause harm to the consumer."

The survey's primary objective was to determine the opinions and practices of foreign companies on a range of IPR issues in Russia, including registration and regulation, protection and enforcement, adjudication and interaction with Russian government authorities.

Laying the Groundwork for IPR Protection in Russia

Intellectual property rights (IPR) protection is fairly new to many countries, specifically the countries of the former Soviet Union. In these countries, formerly

under communist rule, all property was owned by one entity (the state) and thus, there were no laws governing protection of property.

Nearly 10 years after Russia's independence, the country is starting to come into compliance with international requirements for intellectual property rights protection. While much work needs to be done to bring Russia up to international standards, Russia's patent and trademark agency,

RosPatent, has made notable progress during the last two years in strengthening IPR protection.

For example, the Russian Federation has recently taken steps to establish procedures for officially identifying "well-known" trademarks. The Russian Federation Ministry of Justice officially registered on May 18, 2000, the "Rules for the Recognition of Trademarks as Well-Known in the Russian Federation (no.2231). The rules were developed and previously approved by RosPatent. International IPR standards, such as those set by the WTO, have established the principle of "well-knownness." A well-known trademark is a trademark that is recognized extensively due to the broad promotion of the trademark worldwide, large international market presence, and trademark registrations in several countries.

However, the key to adequate IPR protection is enforcement, and Russia's lack of enforcement of existing IP law is a major impediment to improving the IPR climate in the country.

Many CIPR survey respondents believe that the Russian government and its leading politicians underrate IPR protection as a

public policy priority. They also cited corruption and a lack of political support as the primary factors for the government's inability to enforce intellectual property rights, followed by weak laws and criminal penalties, and inadequate technology and training.

Tim Trainer of the International Anti-Counterfeiting Coalition also points to an inexperienced judiciary, "these are people who need to be educated and trained on issues of intellectual property."

He also finds that overall enforcement of the laws is inadequate, stating, "More than ever, enforcement and implementation are the keys to protecting intellectual property...It is not enough that a country's laws comply with international obligations on paper."

Companies Fight to Protect Marks

In the past year, there have been a number of high profile cases in Russia involving large American companies attempting to protect their well-known trademarks and domain names against violators.

United Distiller and Vintners (UDV), owner of the Smirnoff vodka trademark, continues to fight its six-year case in Russia's courts to protect its legally registered trademarks against infringement by a Russian company. The courts, particularly the regional courts, have repeatedly committed errors in procedural and substantive law in the case. Only recently have the courts agreed to consider evidence that the Smirnoff vodka trademark is internationally "Famous and Well-known", despite the fact that it has over 2,000 registrations worldwide, including several in Russia, and it is sold in more than 144 countries around the globe.

The newly approved "Rules for Recognition of Trademarks as Well-Known in the Russian Federation" may play a significant role in current and future trademark disputes by providing useful criteria and guidelines for the courts to make consistent and reasoned determinations that certain trademarks are "well-known." According to the new rules, 60 percent of consumers surveyed must recognize a trademark for it to be considered "well-known." For example, in separate

independent surveys in 1998, and again in 1999, the Smirnoff brand was recognized by 97 percent of Russian adult consumers.

Philip Morris is also engaged in the appeals process before the Russian Federation's Supreme Court of Arbitration in an attempt to resolve a trademark infringement conflict over its Apollo Soyuz cigarette brand. Philip Morris' Apollo Soyuz brand was created in 1975 to commemorate the Apollo and Soyuz satellites. In 1999, a Russian

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company began producing cigarettes under the label Planeta Soyuz with package designs strikingly similar to Philip Morris' Apollo Soyuz brand.

Philip Morris has spent the last year in Russia's courts trying to protect its trademark and brands to no avail. Russia's courts have denied Philip Morris' claim, disregarding not only the fact that the design, colors and names are similar, but also disregarding an independent opinion poll surveying buyers that showed a high rate of confusion between the two packs. The Russian court's rejection or disregard for the evidence, as well as the speed at which decisions were made, highlight the lack of a knowledge base and experience in intellectual property law.

Kodak has also been struggling for over a year to stop a Russian businessman from using the kodak.ru domain name. Kodak is also faced with "interpretations" of the laws, and judges that do not have much experience with Internet IPR issues.

One of the main obstacles in the past was the lack of a regulatory agency empowered to recognize famous and well-known trademarks. It was not until 1998 that a regulatory body, the Rospatent Supreme Patent Chamber, was established to make well-knownness determinations. To date, the Russian newspaper *Izvestiya* and

metals manufacturer Uralmash are the only marks to receive this status.

Russia is Under "Watch"

United States Trade Representative (USTR) Charlene Barshefsky, in her annual review of intellectual property protection by U.S. trading partners, placed Russia in May 2000 on the "Special 301 Priority Watch List." Placement on the "Watch List" is the first step in a process that could ultimately lead to retaliatory trade sanctions by the United States.

USTR stated that "a number of intellectual property laws...do not comply with the TRIPS agreement or the intellectual property provisions of the U.S.-Russian bilateral trade agreement signed in 1991." The USTR report also states that in Russia, despite "commendable official efforts to improve the enforcement climate," criminal enforcement of IPR remains minimal. The report specifically cites the lack of protection of well-known marks and the unauthorized production of CDs and CD-ROMs as "serious and growing problems."

Mary Ann Alford, CIPR Executive Policy Chair and Associate General Counsel for Intellectual Property, Diageo, confirmed, "The report accurately highlights the significant problems that remain in protecting foreign and domestic IP owners in Russia, including criminal enforcement, counterfeit products and protection of well-known marks." However, she added that under the leadership of Dr. Alexander Korchagin, RosPatent has stepped up its efforts to strengthen IPR enforcement in Russia, and progress has been made.

The European Union is also putting pressure on Russia to improve IPR protection. In its Agreement on Partnership and Cooperation with Russia, signed in 1997, the EU requires Russia to "Continue to improve the protection of intellectual property rights...for a level of protection similar to that existing in the Community (EU) including effective means of enforcing such rights."

The United States and European Union continue to work closely with Russia on IP issues, including providing technical assistance and training. The U.S. Patent and Trademark Agency has been particularly active in providing technical assistance, including judicial and customs training.

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WTO Accession Impossible without IPR Improvements

Russia is one of 29 countries currently in the process of applying to become a member of the World Trade Organization (WTO), the successor organization to the General Agreement on Tariffs and Trade (GATT), which has 137 Member Country signatories bound by the organization's rules and regulations.

One of the criteria for Russia to become a member of the WTO is that it must meet the minimum standards laid out in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), a WTO agreement outlines the rules that govern IPR protection and enforcement in Member Countries.

Russia has yet to meet the minimum standards of the TRIPS Agreement, but is beginning to make progress on key intellectual property issues, including the proper recognition of well-known trademarks, adequate enforcement of legislation and improved customs border measures. Unquestionably, Russia must improve protection and enforcement of intellectual property or it will impede its efforts to join the WTO.

Intellectual property issues are also a focus of continued bilateral discussions between the U.S. and Russia and other WTO Member countries.

Private Sector Key to Strengthening IPR

CIPR survey participants not only pointed the finger at the Russian government for inadequate protection of IPR, as many companies also recognized that they are responsible for protecting their trademarks and must follow procedures to ensure that all of their brands are properly registered.

The survey findings indicated that the most effective and viable approach to advancing IPR protection and enforcement in Russia is a well-coordinated private-public partnership. Both Russian and international intellectual property owners must work with government officials and politicians to make the protection and enforcement of trademarks, patents, and copyrights a top priority in Russia.

Action Plan

CIPR has designed an action plan based on the following principles and programs:

- A true public-private partnership is the only effective way to address the myriad of IPR issues and concerns in Russia. A good example of this partnership is CIPR's first international conference: "Protecting & Enforcing Intellectual Property Rights in the Baltic States and the Commonwealth of Independent States (CIS)," held in Moscow on June 26–28, 2000. Participants included senior government officials, legislative leaders and senior judges from Russia and other CIS countries, senior officials from the U.S. and European Union; high-ranking regional and European judicial officials; leading world and regional experts on trademark protection, and key members of the Russian and international business communities.
- Intellectual property protection and enforcement must be made a priority among Russia's top political leadership, and must become a major element of the government's overall anti-corruption program.
- Adequate funding and other resources from the Russian government must be made available for enforcement agencies and authorities. These resources must be augmented by international community support for training of judicial, customs, and other officials; information and technology transfer; computerization; and, other technical assistance.
- Responsibility begins with the private sector. Companies must take an active role in protecting and exercising their own intellectual property rights, including registering trademarks, registering products with state customs authorities, more effectively using existing laws and procedures, conducting their own research on trademark violations and counterfeiting, and working closely with other businesses and government agencies on enforcement activities, including police raids.
- Laws and regulations must be improved, particularly by increasing civil and criminal penalties for IPR violators.
- Effective consumer public education must be undertaken to explain that IPR violations raise the costs of legitimate consumer goods and that counterfeit products often present dangerous risks to health and safety.

"IPR abuses require a top-down approach involving political elites combined with bottom-up support from consumers and the international and domestic business communities," explains Peter Necarsulmer. "Only then can we make progress on this extremely costly problem that is stifling new investment, robbing government coffers, and threatening consumer health and safety."

USRBC

CIPR assists governments and businesses in the former Soviet Union to establish transparent and non-discriminatory IPR regimes and adhere to international IP standards through education and training, legislative initiatives, coalition building and legal, judicial and regulatory reforms.

The state Patent and Trademark Office (PTO) Directors-General from Belarus, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, and Ukraine officially support CIPR and actively participate in the Coalition's programs and activities. CIPR also cooperates with the World Intellectual Property Organization (WIPO), International Trademark Association (INTA), United Nations Economic Commission for Europe (UNECE) and World Customs Organization (WCO), among others. CIPR is accredited with formal Observer Status by the intergovernmental CIS Interstate Council on Industrial Property Protection. The U.S.-Russia Business Council is an Associate Member of CIPR.

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