



The IPReport
October – November 2009

The Coalition for Intellectual Property Rights (CIPR) is pleased to offer select updates on pertinent IPR developments in Russia, other countries in the region and around the globe. Please let us know if you have questions or suggestions.

RUSSIA

WTO Accession Making Progress – On October 15, Russia’s World Trade Organization (WTO) lead negotiator Maxim Medvedkov stated that Russia, Belarus and Kazakhstan have dropped their attempts to join the WTO as a single Customs Union and would instead continue separate bilateral membership talks. Medvedkov noted that, “the earliest completion of [WTO] accession remains a strategic goal.” At a meeting with the leaders of the Russian Union of Industrialists and Entrepreneurs on October 20, President Medvedev emphasized that “[Russia] will join the WTO despite certain delays caused by the establishment of the Customs Union. There can be no doubt about this.”

These statements formalize Russia’s intent to join the WTO individually and officially put an end to the discussion of WTO accession as a trade bloc together with Belarus and Kazakhstan. Despite the fact that the months of deliberation over Russia’s path toward WTO membership have slowed the negotiations significantly, Russia still has the potential to complete the accession process before the end of next year as long as the renewed negotiations remain on track. The U.S., EU and other WTO member states have repeatedly stressed that the pace of Russia’s WTO accession largely depends on Russia’s willingness to implement agreed upon requirements for IPR and other trade areas.

Customs Union Taking Shape – In addition to negotiating its WTO accession, Russia continues to prioritize the creation of the Customs Union with Belarus and Kazakhstan. At a session of the RF State Border Commission on October 9, Prime Minister Putin said, “we plan to launch the mechanisms of the Customs Union of Russia, Belarus and Kazakhstan in the near future. I hope that they will actually start working on January 1, 2010.” Putin also noted that the formation of such a union is an example of “genuine integration on the former Soviet soil.”

On November 27 in Minsk the presidents of Russia, Belarus, and Kazakhstan will sign documents establishing the Customs Union, including the common Customs Code and the creation of a unified import tariff.

The new draft Customs Code will determine customs control operations and delineate the

relationships among participants in international economic transactions — specifically, producers, customs brokers, and transportation companies. Imported goods can be transferred without additional customs controls from the point of entry at the outside border of the Customs Union to the location of the receiving party in any of the member states. In effect, goods imported in Kazakhstan could be transported to Belarus without any additional customs declarations.

While customs controls between Russia and Belarus will be removed on July 1, 2010, customs posts between Russia and Kazakhstan will remain until July 1, 2011 due to concerns about the security of Kazakhstan's southern borders. Kazakhstan's southern border is porous, allowing for the movement of illicit goods into the country from Uzbekistan and Kyrgyzstan. During a meeting of the EurAsEC (Eurasian Economic Community) Customs Union Commission on October 21, Kazakh officials proposed eliminating customs controls between the two countries a year earlier, simultaneous with the change on the Russia-Belarus border. Russian First Deputy Prime Minister Igor Shuvalov replied that they would consider the Kazakh proposal and not "exclude the acceleration" of the removal of the customs posts. CIPR's view is that Kazakh proposal will not be accepted unless Kazakhstan can demonstrate that it is addressing the high volume of counterfeit goods crossing the southern border into Russia.

A cause for concern regarding the Customs Union Code is that it does not contain sufficient protection for trademark holders. Trademarks registered in one country are not automatically registered in the other countries of the Customs Union once it is formed. For example, a registered trademark in Russia will not be protected in Belarus or Kazakhstan unless the trademark owner registers the mark in each respective country. This could lead to an increase in counterfeiting and other IP violations in the three countries unless this issue is sorted out before the Customs Union comes into force on January 1, 2010. (We should confirm this with B&M.)

CIPR is working to learn more about this issue and address it quickly.

KAZAKHSTAN

Plagiarizing Advertisements - Kazakhstan's market abounds with trademarks, slogans and advertisements that blatantly infringe on scores of internationally recognized trademarks. A lengthy article in the October 5 issue of *Expert Kazakhstan* (a leading Kazakh business magazine) entitled, "You're Not a Genius, You're a Thief" details how Kazakh firms knowingly infringe on both large international companies such as McDonalds, Coca-Cola, Starbucks and others, as well as smaller national or regional firms. According to the author, the infringers' work will differ somewhat from the "original" version, which makes it difficult for trademark owners to prevail in court cases against the infringers. Moreover, the infringers are trying to steal more than legitimate trademarks and often copy another company's branding or marketing ideas.

In the article, some local experts claim that, in an attempt to cut costs, it is often clients who demand that the marketing firm copy someone else's idea. Other specialists are quoted that the

problem is due to the fact that Kazakhstan does not have a clear legal definition of “plagiarism”. Because of this, each accusation of plagiarism has to be examined individually by the court. To counter this, the article’s author state that some companies prefer to deal with this problem by pressuring the plagiarizers unofficially or by attempting to raise negative publicity about them.

Comment: CIPR is troubled by the views expressed in this article. We reject any attempts to characterize blatant infringement or product counterfeiting as anything other than the theft of another rights holders’ intellectual property. Calling it plagiarism suggests that fault behind the illegal use of someone else’s property lies only with poorly written laws and a troubled economy. These factors may motivate businesses and advertising agencies to bend IP protection laws, but does not justify these actions. CIPR strongly supports strengthening IP laws and enforcement in Kazakhstan.

To read the article (in Russian), please click here <http://www.expert.ru/printissues/kazakhstan/2009/38/reklama/>. For an English language translation, please contact CIPR.

Madrid System Accession Nearing - On October 7-9, 2009, three WIPO top-level officials participated in a seminar on Kazakhstan’s forthcoming accession to the Madrid system for the international registration of marks and in a roundtable on trademark registration. The Madrid System would simplify procedures for Kazakh firms registering trademarks abroad, and foreign companies registering trademarks in Kazakhstan.

Enforcement Activities and Software Piracy - In the beginning of November, the Kazakh Interior Ministry registered 478 infringements of intellectual property laws during a five-day police raid in Almaty in the beginning of November. The majority of the cases were sales of counterfeit DVDs and CDs.

While still rampant, the problem of software piracy in Kazakhstan has improved slightly. According to the BSA-IDC Global Software Piracy Study 2008, 78% of software in Kazakhstan is pirated which has resulted in an economic losses of \$125 million. This is down by 1% from 2007 figures. Some analysts, however, are concerned that the situation might worsen due to the financial crisis. They believe that some previously financially stable firms will be required to cut their budgets and to risk their reputation by using counterfeit software.

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