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New Supreme Court plenum resolution provides guidance on unfair competition issues

Russian Federation - A Zalesov & Partners Patent & Law Firm LLC

- **The Supreme Court has adopted a plenum resolution "On some issues arising from the application of the antitrust law by the courts"**
- **It specifically points out that a mere breach of civil or other laws, including IP rights infringement, does not always constitute an unfair competition action**
- **However, it provides additional criteria to help ascertain whether the general requirements of unfair competition are met**

On 4 March 2021 the Russian Supreme Court adopted Plenum Resolution No 2 "On some issues arising from the application of the antitrust law by the courts", which provides additional guidelines on competition protection and intellectual property. The general concept of an 'unfair competition act' is defined in Article 4, Part (9) of the Law on Competition Protection. Articles 14.1 to 14.7 list certain acts which are considered as unfair competition by default, while Article 14.8 prohibits all other types of unfair competition, provided that the main indications of an unfair competition act are present in the competitor's behaviour.

The general signs of unfair competition are:

1. the parties involved in the dispute are competing on the Russian market;

2. the challenged behaviour breaches the law or customs, or is unfair, unreasonable or unjust;

3. the challenged behaviour is intended to obtain unreasonable advantages to the detriment of a competitor; and

4. the challenged behaviour causes damages, creates a threat of damages, or harms the reputation of the competitor.

Four articles of the Law on Competition Protection clearly relate to the IP field:

1. Article 14.4 prohibits the unfair registration of a trademark or the unfair obtention of rights to similar objects.

2. Article 14.5 prohibits unfair competition through the infringement of copyrights, patents, designs and know-how.

3. Article 14.6 prohibits unfair competition by creating confusion, which covers two types of acts which are significant for IP rights owners:

   - unfair competition by trademark infringement; and
   - unfair competition through parasitic behaviour (copying or imitating the outer appearance of the competitor's goods, packaging, colour combination or other means of individualisation that are not registered as trademarks).

4. Article 14.7 prohibits unfair competition by illegally obtaining, using or dissolving a competitor's commercial or other secrets.

The new plenum resolution specifically points out that a mere breach of civil or other laws, including IP rights infringement, does not always constitute an unfair competition action (Clause 30).

However, it provides additional criteria to help ascertain whether the general requirements of unfair competition are met:

- the market player's challenged acts can influence the state of competition;
- the challenged acts differ from the behaviour which would be expected from all other market players pursuing their own proprietary interests, but acting fairly and within the laws;
- the challenged acts are aimed at getting advantages, including monetary benefits or the possibility of obtaining such benefits, at the expense of other market players, including by influencing the choice of consumers or influencing the possibility of other fair market players obtaining advantages by offering the goods on the market; or the challenged acts are aimed at causing damages to other market players by other similar ways.

Against this background, how can one challenge an unfair competition act? There are two ways:

- applying to the administrative antitrust bodies (the Federal Antitrust Service or its regional departments); or
- applying directly to the courts (Clause 61 of the new plenum resolution supported this option).

Actions based on Article 14.4 are considered by the IP Court (direct filings or appeals against decisions of the Federal Antitrust Service). Actions based on Articles 14.5, 14.6 and 14.7 are considered by the regional courts at the location of the defendant (in case of direct filing) or of the antitrust body (if applying to the antitrust body first). The decisions of the regional antitrust bodies can be appealed directly to the courts at the location of the relevant body or to the Federal Antitrust Service. In this respect, the plenum resolution establishes a new rule under which the deadline for appealing the decision of a regional body to the Federal Antitrust Services can be reinstated if it has been missed based on good reasons.

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TAGS

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