

## Fashion in the Times of War: The Recent Exodus of Luxury Brands from Russia and What It Means for Trademark Law

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In February 2022, Russia infamously invaded Ukraine, starting an unprovoked war. As a result, many foreign companies left their Russia-based operations, including most luxury fashion houses.<sup>1</sup> In this Foreword, we elaborate on the possible issues that these companies may face regarding the enforcement of their IP rights, particularly trademark rights, in Russia following their departure and resulting from the sanctions imposed by Western countries against Russia.

Besides the desire to take a stand against the war, luxury fashion houses (and other Western companies) decided to leave Russia because of the growing logistical issues they faced as a result of Western sanctions against the

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\*\* Ph.D. Candidate, Hanken School of Economics. Any errors in translation or other errors pertaining to sources in Russian are those of the authors. This Foreword was written in May 2022. Between then and the date of publication, the list of applications for signs identical or similar to famous Western marks filed with the IP Office of Russia (Rospatent) has grown. At the date of publication of this Foreword, these applications are still being examined by Rospatent.

<sup>1</sup> *500 Companies Have Withdrawn from Russia – But Some Remain*, YALE SCH. OF MGMT. (July 13, 2022), <https://som.yale.edu/story/2022/over-400-companies-have-withdrawn-russia-some-remain> [<https://perma.cc/S9TQ-5Y6B>] (listing, amongst the companies leaving the Russian market, the following luxury fashion houses: Rolex, Kering (including Gucci, Saint Laurent, and Bottega Veneta amongst other brands), LVMH (including Louis Vuitton, Dior, Tiffany, Bulgari, Givenchy, Tag Heuer, Loewe, Céline, and Kenzo amongst other brands), Chanel, Richemont (including Cartier, Jaeger-LeCoultre, and Van Cleef & Arpels amongst other brands), Hermès, Swatch (Omega, Tissot, Longines), Burberry, Prada, and Moncler).

country. Notably, it had become very difficult, if not impossible, to import luxury goods to sell to consumers in Russia.<sup>2</sup> Moreover, luxury fashion houses depended on payments in foreign currencies for their sales in Russia, and Western sanctions had blocked these payments.<sup>3</sup> While closing their operations, however, most companies specified that their departure from Russia was only “temporary” and that they were “keeping options open for return” once the war ended.<sup>4</sup>

Of course, departing Russia was a difficult business decision. Luxury fashion houses spent the past few decades establishing their operations in the country, including protecting their intellectual property (IP) rights.<sup>5</sup> Notably, almost all famous luxury marks are registered in Russia today, and some of these marks have also been included in the Russian Reputable Trademarks Register—a registry listing all marks that have a “reputation” and enjoy enhanced legal protection.<sup>6</sup> Moreover, many famous luxury logos and products enjoy copyright and industrial design protection in Russia.<sup>7</sup>

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<sup>2</sup> *Luxury Brands Halt Sales in Russia, Citing Concern Over “Current Situation”*, FASHION L. (Mar. 5, 2022), <https://www.thefashionlaw.com/luxury-brands-halt-operations-in-russia-citing-concern-over-current-situation> [https://perma.cc/CA64-9SJ8].

<sup>3</sup> *Id.*

<sup>4</sup> *500 Companies Have Withdrawn from Russia – But Some Remain*, *supra* note 1.

<sup>5</sup> See generally Evgeny Alexandrov & Vladimir Trey, *Russia’s Fight Against Fakes, Imitations and Replicas*, WORLD TRADEMARK REV. (June 29, 2018), <https://www.worldtrademarkreview.com/brand-management/russias-fight-against-fakes-imitations-and-replicas> [https://perma.cc/9AKM-H3NH].

<sup>6</sup> RUSSIAN REPUTABLE TRADEMARKS REGISTER, <https://fips.ru/registers-web/action?acName=ClickRegister&regName=WKTM> [https://perma.cc/X94F-RQAU] (last visited July 14, 2022) [hereinafter Register]. For example, the mark “Chanel” is included in the Register for cosmetics, perfumery, female handbags, and clothing. REGISTRATION NO. 136, [https://fips.ru/registers-doc-view/fips\\_servlet?DB=WKTM&DocNumber=136](https://fips.ru/registers-doc-view/fips_servlet?DB=WKTM&DocNumber=136) [https://perma.cc/BYW3-WP6M]. The mark “Cartier” is included for timepieces and jewelry. REGISTRATION NOS. 95 AND 96, [https://fips.ru/registers-doc-view/fips\\_servlet?DB=WKTM&DocNumber=95](https://fips.ru/registers-doc-view/fips_servlet?DB=WKTM&DocNumber=95) [https://perma.cc/UZN2-MMHT] and [https://fips.ru/registers-doc-view/fips\\_servlet?DB=WKTM&DocNumber=96](https://fips.ru/registers-doc-view/fips_servlet?DB=WKTM&DocNumber=96) [https://perma.cc/WGE9-642W]. The mark “Tiffany” is included for precious metals and jewelry. REGISTRATION NO. 56, [https://fips.ru/registers-doc-view/fips\\_servlet?DB=WKTM&DocNumber=56](https://fips.ru/registers-doc-view/fips_servlet?DB=WKTM&DocNumber=56) [https://perma.cc/4JL9-RTEL].

<sup>7</sup> Russia is a member of the Berne Convention for the Protection of Literary and Artistic Works, which grants copyright protection in the territory to all members (including Russia). See Berne Convention art. 3(1), Sept. 9, 1886, WORLD INTEL. PROP. ORG., <https://wipolex.wipo.int/en/text/283698>. Russia is also a member of the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which provide that their members should protect industrial designs. See Paris Con-

However, the recent events have taken a sour turn for these companies. Besides leaving their operations in the country, luxury fashion houses (and Western companies in general) are now at risk to lose their IP rights in Russia altogether.<sup>8</sup> Notably, as mentioned by news outlets, the Russian government has threatened several measures against the IP rights held by entities from “unfriendly” countries in retaliation against Western sanctions. To date, these threats have included not granting copyright protection to foreign films;<sup>9</sup> introducing compulsory software licenses;<sup>10</sup> not collecting royalties for foreign right holders;<sup>11</sup> prolonging the term of license agreements;<sup>12</sup>

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vention art. 5quinquies, Mar. 20, 1883, WORLD INTELL. PROP. ORG., <https://wipo.int/en/text/288514>; TRIPS art. 25, WORLD TRADE ORG., [https://www.wto.org/english/docs\\_e/legal\\_e/31bis\\_trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm). Russian copyright and industrial design protection is regulated in Russia by the Civil Code (Part 4). See Civil Code of the Russian Federation, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629) [<https://perma.cc/WSE4-GUGC>]. For examples of registered foreign industrial designs in Russia, see REGISTRATION NO. 79266 (Bulgari) [https://new.fips.ru/registers-doc-view/fips\\_servlet?DB=RUDE&DocNumber=79266](https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUDE&DocNumber=79266) [<https://perma.cc/VWS2-YQE8>]; REGISTRATION NO. 118567 (Cartier) [https://new.fips.ru/registers-doc-view/fips\\_servlet?DB=RUDE&DocNumber=118567](https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUDE&DocNumber=118567) [<https://perma.cc/968E-XDGV>]; REGISTRATION NO. 118263 (Van Cleef & Arpels), [https://new.fips.ru/registers-doc-view/fips\\_servlet?DB=RUDE&DocNumber=118263](https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUDE&DocNumber=118263) [<https://perma.cc/WN6E-QKW2>]; REGISTRATION NO. 95473 (Louis Vuitton), [https://new.fips.ru/registers-doc-view/fips\\_servlet?DB=RUDE&DocNumber=95473](https://new.fips.ru/registers-doc-view/fips_servlet?DB=RUDE&DocNumber=95473) [<https://perma.cc/S8J4-XZBN>].

<sup>8</sup> This topic has been discussed extensively in the news in the past few months. See, e.g., *How Russia Is Using Intellectual Property as a War Tactic*, FASHION L. (Mar. 18, 2022), <https://www.thefashionlaw.com/how-russia-is-using-intellectual-property-as-a-war-tactic> [<https://perma.cc/EDQ7-5RXZ>]. In this Foreword, we address luxury fashion houses, but the same observations apply to other Western companies, such as restaurants, retailers, and so forth.

<sup>9</sup> Novaya Gazeta, *Medinsky Proposed to Ignore Copyright When Showing Foreign Films on Television* (Mar. 24, 2022), <https://novayagazeta.ru/articles/2022/03/24/medinskii-predlozhit-ignorirovat-avtorskie-prava-pri-pokazhe-zarubezhnykh-filmov-po-televideniiu-news> (reporting the suggestion from Vladimir Medinsky, the Russian former minister of culture and now a negotiator with Ukraine).

<sup>10</sup> Marina Tyunyayeva, *Government Does Not Abolish Liability for Pirate Software from Unfriendly Countries*, VEDOMOSTI (Mar. 11, 2022), <https://www.vedomosti.ru/technology/articles/2022/03/11/913009-otvetstvennost-piratskii-soft>.

<sup>11</sup> Valeria Lebedeva & Darya Andrianova, *Author's Separation*, KOMMERSANT (Mar. 23, 2022), <https://www.kommersant.ru/doc/5270797>.

<sup>12</sup> Maksim Varaksin, *Agreements Will Not Be Allowed to be Executed Due to Sanctions*, PRAVO.RU (Mar. 24, 2022), <https://pravo.ru/story/239959>.

and, in general, seizing and nationalizing IP assets held by “unfriendly” countries’ IP holders.<sup>13</sup>

Even though these threats aim largely at rallying public support against the West, it is possible that Russia would follow through on them. In particular, shortly after the announcement of Western sanctions, Russia implemented a 0% payment system instead of the required “adequate remuneration” for patent compulsory licenses<sup>14</sup> and considered a list of products for which IP enforcement may be ignored.<sup>15</sup> In early March 2022, the rising “IP war” launched against Western companies struck its first victim: Peppa Pig, a famous children’s cartoon.<sup>16</sup> The Commercial Court of the Kirov Region of Russia denied a claim for trademark and copyright infringement in a case involving the cartoon because the plaintiff was from the United Kingdom—one of the countries that sanctioned Russia (though the lawsuit was filed in 2021).<sup>17</sup> Because of its blunt disregard of established IP principles the decision was widely criticized, however, not only internationally but also

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<sup>13</sup> Yekaterina Vinogradova et al., *How the Authorities Decided to Manage the Property of Companies Leaving Russia*, RBC (Mar. 9, 2022), <https://www.rbc.ru/economics/09/03/2022/6228acf99a79477828ae9aba>.

<sup>14</sup> Nikolay Bogdanov, *Russian Federation: Russia Does Not Abolish Intellectual Property Rights*, MONDAQ (Mar. 18, 2022), <https://www.mondaq.com/russianfederation/patent/1173396/russia-does-not-abolish-intellectual-property-rights> [https://perma.cc/DS52-3GE3] (reporting that, in March 2022, the Russian government issued a compulsory license and, at the same time, amended the Methods for Determining a Remuneration so that for patent holders “from countries that commit unfriendly acts against Russia,” “the remuneration is 0% of the revenues”). This amendment represents a violation of both art. 1360 of the Civil Code of the Russian Federation and art. 31 of TRIPS, which provide for the payment of an adequate remuneration in the case of a compulsory patent license. *See* Civil Code of the Russian Federation art. 1360, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629); TRIPS art. 31, WORLD TRADE ORG., [https://www.wto.org/english/docs\\_e/legal\\_e/31bis\\_trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm) [https://perma.cc/L5BK-JYEA].

<sup>15</sup> [Federal Law no. 46-FZ art. 18(13)] Mar. 8, 2022, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_411095](http://www.consultant.ru/document/cons_doc_LAW_411095).

<sup>16</sup> Judgment of the Commercial Court of the Kirov Region of Mar. 3, 2022, case no. A28-11930/2021, Register of Commercial Cases of the Russian Federation, <https://kad.arbitr.ru/Card/a45fa186-05bb-43b5-87d9-1f0d3b640142>.

<sup>17</sup> *Id.* The court found that the plaintiff had abused its rights and violated art. 10 of the Civil Code of the Russian Federation and found “no reason to satisfy the claim” of trademark and copyright infringement. The court specifically referred to the presidential decree of February 2022, stating “[o]n the application of special economic measures in connection with the unfriendly actions of the United States of America and the foreign states and international organizations that joined them.” *See* Presidential Decree no. 79 (Feb. 28, 2022), CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_410417](http://www.consultant.ru/document/cons_doc_LAW_410417).

by Russian lawyers.<sup>18</sup> In June 2022, the Second Commercial Appeal Court ultimately reversed the decision of the lower court,<sup>19</sup> yet this cannot guarantee that other Russian courts would not follow the approach of the first “Peppa Pig” court.

At the time of writing, perhaps the most pressing issue regarding the protection of trademarks in Russia is whether luxury fashion houses risk losing their mark rights due to their decision to suspend their operations, even though temporarily. Ultimately, trademark protection is based upon the use of the mark in commerce, and, without such use, a mark is deemed abandoned and protection ends. Generally, a term of non-use for no less than three years, five years in many countries, is necessary as evidence of such abandonment.<sup>20</sup> Yet, as mentioned, luxury fashion houses never stated their intention to leave Russia indefinitely, and Russian consumers continue to use the products that they purchased before the war displaying their marks.<sup>21</sup> In particular, trademark revocation under the Russian Civil Code requires no genuine use of a mark for three years.<sup>22</sup> In addition, an action for the revocation of a registered mark requires a separate proceeding with a compulsory pre-trial stage.<sup>23</sup> Still, no one knows how long the conflict will continue and Russian courts have highlighted the non-use argument, along with other reasons, in instances in which they found abuse of rights by trademark trolls or other unfairly behaving entities.<sup>24</sup> In this respect, they could again use the non-use argument against foreign trademark holders and

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<sup>18</sup> Anastasiya Gavrilyuk & Yekaterina Volkova, *Peppa Pig Is Not of the Right Citizenship*, KOMMERSANT (Mar. 14, 2022), <https://www.kommersant.ru/doc/5252458>.

<sup>19</sup> Judgment of the Second Commercial Appeal Court of June 27, 2022, case no. A28-11930/2021, Register of Commercial Cases of the Russian Federation, <http://kad.arbitr.ru/A28-11930-2021/1058674>. The court concluded that the foreign entity had all rights to submit a lawsuit to the Russian court and satisfied the plaintiff's claims, though reducing the requested compensation for the infringements.

<sup>20</sup> Paris Convention art. 5, Mar. 20, 1883, WORLD INTELL. PROP. ORG., <https://wipolex.wipo.int/en/text/288514>. TRIPS art. 19, WORLD TRADE ORG., [https://www.wto.org/english/docs\\_e/legal\\_e/31bis\\_trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm) [<https://perma.cc/PXP8-D347>].

<sup>21</sup> *500 Companies Have Withdrawn from Russia – But Some Remain*, *supra* note 1.

<sup>22</sup> Civil Code of the Russian Federation art. 1486, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629).

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Judgment of the Intellectual Property Court of Aug. 27, 2021, case no. A33-4702/2018, Register of Commercial Cases of the Russian Federation, <https://kad.arbitr.ru/Card/9530ccd0-e77b-483e-8839-a57ad6516e26>; Judgment of the Intellectual Property Court of May 19, 2021, case no. A41-105281/2019, Register of Commercial Cases of the Russian Federation, <https://kad.arbitr.ru/Card/00f0e994-2f76-4e3e-b129-e018262f8ecd>.

dismiss their claim of infringement under the lens of the “unfriendly” status and abuse of rights by the right holders as they recently did in the Peppa Pig case.<sup>25</sup>

An additional issue facing luxury fashion houses is the recent flurry of applications submitted to the Russian IP Office (Rospatent) for signs identical or similar to their registered marks.<sup>26</sup> Notably, shortly after their withdrawal from Russia, the Russian authorities announced that the country may seize foreign IP assets. At the same time, several applications including names such as Chanel, Givenchy, Christian Dior, and Giorgio Armani, amongst others, were submitted to Rospatent by applicants unrelated to the luxury fashion houses.<sup>27</sup> While surges in applications for sensational events are frequent—as for example in the case of the COVID-19 pandemic<sup>28</sup>—such a flurry of applications for signs identical or similar to existing famous marks by unrelated parties is unprecedented in Russia (and elsewhere).

Based on Russian law, Rospatent should reject these applications directly or following the opposition of luxury fashion houses.<sup>29</sup> In particular, Russia is a member of the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which, together with the Russian Civil Code,<sup>30</sup> provide a series of absolute and relative grounds that may af-

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<sup>25</sup> See *supra* note 16.

<sup>26</sup> See *Companies Fear Trademark Squatting, Nationalization in Russia*, FASHION L. (Mar. 28, 2022), <https://www.thefashionlaw.com/luxury-brands-fear-trademark-nationalization-in-russia> [https://perma.cc/9M8B-W5Q8].

<sup>27</sup> For example, Russian entity Smart Beauty LLC submitted trademark applications for brands such as Chanel, Christian Dior, and Givenchy, covering such goods as cosmetics and perfumery. See the following applications: no. 2022716514 (Chanel), no. 2022716533 (Christian Dior), no. 2022716528 (Givenchy). One of the shareholders of Smart Beauty LLC, Vadim Ryabchenko, also filed applications for Lacoste (no. 2022716597) and Hugo Boss (no. 2022716603). Mr. Ryabchenko is also a shareholder of Biotechfarm-M LLC, which filed applications for Reebok (no. 2022716612), Puma (no. 2022717060), Adidas (no. 2022717061), and Nike (no. 2022717063), amongst others. The applications can be viewed by typing application numbers into the Russian Trademark Applications Register at <https://fips.ru/registers-web/action?acName=clickRegister&regName=RUTMAP>.

<sup>28</sup> See Irene Calboli, *Trademarking “COVID” and “Coronavirus” in the United States: An Empirical Review of the Applications Filed in 2020*, 16 J. INTEL. PROP. L. & PRAC. 473 (2021).

<sup>29</sup> Rospatent conducts ex officio examination on both absolute and relative grounds, but at the examination stage, right holders can still file “soft” oppositions based on the same grounds. See Civil Code of the Russian Federation, art. 1493(1), CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629).

<sup>30</sup> See Civil Code of the Russian Federation, art. 1483, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629).

fect the validity of trademark applications. Notably, relative grounds refer to conflicts between a new application and previous identical or similar applications or registration for identical or similar products.<sup>31</sup> Moreover, as mentioned, reputed marks enjoy higher protection in Russia, including with respect to signs that are used for dissimilar goods or services, so long as consumers will “associate such a use with the reputable mark’s right holder and if such a use may negatively affect legal interests of the right holder.”<sup>32</sup> Based on these grounds, Rospatent should reject all the recent applications because they clearly conflict with existing prior rights.

Moreover, under Russian law, a mark cannot be registered if it is capable of misleading consumers regarding the origin or quality of the products or their manufacturer.<sup>33</sup> In its guidelines, Rospatent elaborated on this ground for refusal by giving an example of imitations of famous names to designate goods or services.<sup>34</sup> Over a decade ago, the then-Russian Higher Commercial Court applied this rule regarding the use of the name Vacheron Constantin. The court based its ruling, *inter alia*, on the principles of unfair competition as per article 10bis of the Paris Convention and the abuse of rights provision in the Russian Civil Code.<sup>35</sup> Because the luxury marks at issue have decades of history and influence in Russia, any unrelated application should be found to be misleading and in violation of this rule by Rospatent.<sup>36</sup>

Another obvious observation is that these applications were filed in bad faith by entities which are well aware of, and specifically intended to take

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<sup>31</sup> *Id.* at art. 1483(6).

<sup>32</sup> *Id.* at art. 1508.

<sup>33</sup> *Id.* at art. 1483(3)(1).

<sup>34</sup> See Guidelines to Conduct Administrative Procedures and Actions within the State Service of State Registration of a Trademark, Service Mark, Collective Mark and Issuance of Certificates for a Trademark, Service Mark, Collective Mark, Duplicates Thereof, Federal Institute of Industrial Property, <https://new.fips.ru/documents/guidelines/rucov-tz.pdf>.

<sup>35</sup> Judgment of Higher Commercial Court, case no. A40-73286/2010, Register of Commercial Cases of the Russian Federation, (Apr. 24, 2012), <https://kad.arbitr.ru/Card/bc336e13-08b4-41e0-b5d3-ff4c2ef5c7ce>.

<sup>36</sup> At the time of writing, according to sources in the Russian trademark attorneys’ community, Rospatent has not (yet) followed the “unfriendly” country reasoning in its examination practices, even though it is unclear how these practices may evolve. In addition, on April 1, 2022, Rospatent issued a statement underlining that any application would undergo a formal and substantive examination and that the existence of earlier identical or similar reputable trademarks remain an obstacle for registration. See *Position of the Rospatent on Examining Applications with Signs That Are Confusingly Similar to Trademarks of Foreign Applicants*, ROSPATENT (Apr. 1, 2022), <https://rospatent.gov.ru/ru/news/poziciya-rospatenta-01042022>.

unfair advantage of, the fame and reputation of the existing Western marks.<sup>37</sup> Yet, as in all members of the Paris Convention and TRIPS, Russian trademark law expressly prohibits applications filed in bad faith and provides that, should an application filed in bad faith be registered, the registration can be canceled upon request of an interested party.<sup>38</sup>

That said, however, it is possible that Rospatent would accept these applications. Likewise, it is possible that Russian courts will continue to use the “unfriendly” countries narrative against claims of trademark infringement by foreign IP holders. Should this be the case, Russian consumers could see a growing number of unauthorized and infringing products made available on the Russian market. Of course, this “illicit trade” would harm not only the legitimate trademark holders, but also Russian consumers. In particular, should Russia really stop enforcing and nationalize foreign trademarks, will Russian consumers accept products carrying famous luxury marks made by different entities in Russia? What would be the impact of the rise of this “illicit trade” on the Russian economy and society? Of course, these authors hope this will remain a hypothetical question, yet it is still unclear what the future will bring in this respect.

Rather than becoming a pirate society, Russian distributors may prefer to turn to parallel imports—unauthorized imports of genuine products sold by their parties—to import into Russia’s original luxury goods market.<sup>39</sup> Before the onset of the war, parallel imports amounted to trademark infringement under Russian law.<sup>40</sup> Yet, these imports will soon become legal in Russia.<sup>41</sup> Moreover, a 2018 judgment by the Russian Constitutional

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<sup>37</sup> See, e.g., *supra* note 27.

<sup>38</sup> According to art. 1512(2)(6) of the Civil Code of the Russian Federation, Rospatent can invalidate the registered trademark if the rights holder’s actions in obtaining trademark rights are “in a due manner” found to constitute bad faith. See CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629). For instance, bad faith can be established in the case of challenging the Rospatent decision on refusing to invalidate a trademark. See Resolution of the Supreme Court of the Russian Federation no. 10, CONSULTANTPLUS, (Apr. 23, 2019), [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_323470](http://www.consultant.ru/document/cons_doc_LAW_323470).

<sup>39</sup> Unlike other measures adopted by Russia, this shift would not be a violation of international IP law. See TRIPS, art. 6, WORLD TRADE ORG., [https://www.wto.org/english/docs\\_e/legal\\_e/31bis\\_trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm). See, e.g., IRENE CALBOLI & SHUBHA GHOSH, EXHAUSTING INTELLECTUAL PROPERTY RIGHTS: A COMPARATIVE LAW AND POLICY ANALYSIS (Cambridge Univ. Press 2018).

<sup>40</sup> Civil Code of the Russian Federation, art. 1487, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629](http://www.consultant.ru/document/cons_doc_LAW_64629).

<sup>41</sup> At the time of writing, the Russian Parliament’s lower chamber is reported to have approved parallel imports into the country. *Viacheslav Volodin: Legalization of Parallel Imports Will Help Stabilize Prices for Goods Imported into the Country*, STATE



Court<sup>42</sup> already clarified that IP holders could demand the destruction of parallel imports only in cases of defective quality, to preserve safety or health, or to protect the environment and cultural items. The Constitutional Court also made it clear that parallel imports cannot be considered an infringement in instances of abuse of rights by trademark holders (which could include following anti-Russia sanctions under the newly adopted decrees). Finally, Russia is a member of the Eurasian Economic Union (EAEU), along with Belarus, Kazakhstan, Kyrgyzstan, and Armenia, which practice regional trademark exhaustion. Parallel imports from countries within the EAEU are already allowed under Russian law.<sup>43</sup>

Finally, in light of some recent videos released by the Kremlin, it is possible that the Russian government may decide to adopt a different strategy against foreign products. In particular, it is possible that part of the official Russian narrative may turn to an open boycott of luxury foreign goods altogether with open calls to the Russian consumers to purge the Russian market from Western luxury goods by increasingly associating these products with negative characteristics. For example, in a recent video widely broadcasted across the Internet, President Vladimir Putin contrasted those companies that continue working in Russia “despite shameless pressure from the US and its vassals” with entities that “hastened to earn illusory dividends by participating in the anti-Russia campaign.”<sup>44</sup> In his speech, the Russian President sent a clear signal about the latter for the

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DUMA (June 21, 2022), <http://duma.gov.ru/news/54670>. This change from the past position is aimed at allowing parallel imports of products from a special list of approved goods that includes brands like “HERMES” and “YVES SAINT LAURANT.” See Federal Law no. 46-FZ art. 18(1)(13) and 18(3), Mar. 8, 2022, CONSULTANTPLUS, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_411095](http://www.consultant.ru/document/cons_doc_LAW_411095). Government’s Decree no. 506, Mar. 29, 2022, CONSULTANTPLUS, [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_413173](https://www.consultant.ru/document/cons_doc_LAW_413173). Order of the Ministry of Industry and Trade no. 1532, Apr. 19, 2022, CONSULTANTPLUS, [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_416496/343227a0f7231f293415124c9c5b7237496b9008](https://www.consultant.ru/document/cons_doc_LAW_416496/343227a0f7231f293415124c9c5b7237496b9008).

<sup>42</sup> Resolution of the Constitutional Court of the Russian Federation no. 8-Ī, CONSULTANTPLUS, (Feb. 13, 2018,) [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_290909](http://www.consultant.ru/document/cons_doc_LAW_290909).

<sup>43</sup> See JEROME H. REICHMAN ET AL., *THE WTO COMPATIBILITY OF A DIFFERENTIATED INTERNATIONAL EXHAUSTION REGIME PROPOSED BY THE EURASIAN ECONOMIC COMMUNITY* (Research Paper Series, Skolkovo-HSE International Laboratory for Law & Development, 2014) (on file with author).

<sup>44</sup> See *Meeting on Socio-Economic Support for Regions*, KREMLIN (Mar. 16, 2022), <http://kremlin.ru/events/president/news/67996>.

Russian people, adding that these entities “cowardly betrayed their partners” in Russia.<sup>45</sup>

In summary, it remains hard to predict what will happen to trademark rights in Russia and if, and to what extent, Russia will decide to enforce the rights of foreign luxury fashion houses, and Western companies in general. Hence, this uncertainty raises the following questions: should Russia decide to disregard established and internationally harmonized trademark principles, what remedies, if any, would foreign trademark holders have to defend their rights in Russia? In particular, even if the current events have highlighted the fast rise of a Russia that could easily put aside the rule of law, could the international framework of IP protection offer foreign trademark holders relevant instruments to prevent abuses against their legitimate trademark rights in Russia? Unfortunately, at least for the time being, there does not seem to be a satisfactory answer to these questions.

Still, despite bombastic public statements and even a national bill to withdrawal from it,<sup>46</sup> Russia remains a member of the World Trade Organization and, as such, is theoretically obliged to follow the principles provided in TRIPS, including trademark protection, based upon the principle of national treatment or non-discrimination against foreign entities.<sup>47</sup> Any violation of these standards would represent a violation of TRIPS, which could lead to a claim and a proceeding in front of the dispute settlement mechanism of the WTO.<sup>48</sup> Yet, while possible, such proceedings would be lengthy and would not bring an immediate solution to trademark owners. Moreover, a WTO dispute could only be raised by states (*e.g.*, the EU or the U.S.), which again would not bring immediate relief to trademark owners.<sup>49</sup> Accordingly, a WTO proceeding would not expeditiously resolve any of the issues that could arise should Russian courts decide to widely disregard claims of trademark (and other IP rights) infringement brought by foreigners from “unfriendly” countries or should Rospatent accept the currently pending applications despite the existence of earlier rights because these rights belong to entities which do not have a presence in the country, albeit temporarily. Foreign companies could fight for their recognition in Russian

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<sup>45</sup> *Id.*

<sup>46</sup> Bill no. 91393-8, Legislative Support System of the Russian Federation, <https://sozd.duma.gov.ru/bill/91393-8>.

<sup>47</sup> TRIPS, art. 3, WORLD TRADE ORG., [https://www.wto.org/english/docs\\_e/legal\\_e/31bis\\_trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm) [<https://perma.cc/CFE6-VSZ2>].

<sup>48</sup> *Id.* at art. 64.

<sup>49</sup> See, *e.g.*, *The Process – Stages in a Typical WTO Dispute Settlement Case*, WORLD TRADE ORG., [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlemt\\_cbt\\_e/c6s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlemt_cbt_e/c6s1p1_e.htm) [<https://perma.cc/6484-43JD>].

courts, but again, the outcome of litigation would be highly unpredictable considering the increasingly political approach that the Russian government is taking against entities from “unfriendly” countries.

In conclusion, the recent war against Ukraine is the unfortunate confirmation of the madness of war under all perspectives. IP and trademark law are certainly subjects of much lesser concern compared to the loss of lives, destruction of cities, and refugee crisis. Still, the potential disregard for IP rights by Russia is an additional demonstration of the dangers of not respecting established legal norms. Luxury fashion houses, and most Western companies, did not have much choice and were forced to leave Russia. Their temporary departure does not violate any legal principle under IP law. Now these companies find themselves entangled in an IP war in which the Russian authorities seem to flagrantly disregard national and international IP law. Yet, this outcome is not unavoidable. These authors are hopeful that Russian IP judges, Rospatent’s trademark examiners, and Russian IP experts in general would follow the existing legal principles, and unlike the Peppa Pig court, continue to uphold the international obligations to which Russia has committed. This course of action is in the best interest of all: Russia, the international community, and the rule of law.

