

Customs register of intellectual property as a tool for the protection of copyright and related rights

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In the Russian Federation, among the components of the state system for protecting the rights of rightholders, there are customs authorities (CA) that ensure the protection of rights to intellectual property (RIP) in the customs territory of the Eurasian Economic Union (EAEU). Thus, by the end of 2020, domestic customs officials were able to prevent damage to RIP copyright holders in the amount of 4.7 billion rubles. More than 13 million units of counterfeit goods were identified.

The subjects of offenses were often toys, clothing, confectionery, car parts, alcoholic and tobacco products, and medication (M). In the first quarter of 2021, CA installed more than 2 million units of counterfeit products and was able to prevent damage to copyright holders in excess of RUB 750 million. [1]

The key areas of the FCS of the Russian Federation in activities related to the fight against the circulation of counterfeit products are the digitalization of the tools used to protect IP rights and the integration of promising technologies to improve customs operations with goods containing RIP. The effective tools for protecting the rights of trademark owners were TRIPS, the risk management system, and the suspension of the release date for goods with signs of counterfeit.

The above mechanisms help in identifying counterfeit products in various areas of CA's activities, incl. for customs declaration, sending goods in international mail, customs control after the release of goods. All of the above allows us to judge the relevance of the topic under consideration in this article.

TRIPS contains information about all objects of related and copyright, trademarks (TM) and places of origin of products, the release of which is suspended by the decision of the federal authorities. This is an open and constantly updated database, which protects the interests of rightholders who have entered their TM in the register. TRIPS maintenance is subject to the federal executive body, which implements the functionality associated with control and supervision in the field of customs (FoC).

Entry into the customs register (CR) is carried out free of charge. TRIPS is intended to enter objects of copyright and related rights, TM (service marks) and appellations of origin, if:

- they are controlled and supervised by federal executive bodies in the field of FoC;
- there is a decision on their inclusion in the CR;

- there is a preliminary decision on the introduction of RIP into the CR, subject to compliance with the conditions reflected in parts 13 and 14 of art. 328 of the Federal Law of 03.08.2018 N 289-FZ (as amended on 24.02.2021) "On customs regulation in the Russian Federation and on amendments to certain legislative acts of the Russian Federation" [2].

The federal executive body that implements the functions of control and supervision in the field of FoC establishes:

- 1) the procedure for maintaining TRIPS;
- 2) the form and procedure for filling it out;
- 3) the format and structure of the electronic form of a number of documents, including:

- a statement on the inclusion of RIP in the CR;
- an appeal to change the data reflected in the application for the inclusion of the RIP in the CR or the documentation attached to it;
- a statement on prolongation of the period of inclusion of RIP in CR;
- a statement on the exclusion of RIP from the CR;
- notification of the decision made regarding the inclusion/rejection of the inclusion of RIP in the CR;
- notification of the decision made regarding the introduction of changes/refusal to amend the CR;
- notification of the decision made regarding the prolongation of the period of RIP inclusion in CR;
- notification of the decision to exclude RIP from CR.

The federal executive body exercising control and supervision in the field of FoC posts CR information on the official website on the Internet in accordance with the approved procedure.

The Commission maintains the Unified Customs Register of Intellectual Property Objects (UCRIPO) of the EAEU Member States. At the request of the copyright holder or a person who represents his interests or the interests of several copyright holders, it includes RIPs, which are protected by each EAEU member country. If there are several copyright holders similar to RIP, one of them, by agreement, may represent common interests.

Among the RIPs, the following countries can be admitted to the UCRIPO:

- objects of copyright;

- objects of related rights;
- TM service ;
- appellations of origin of goods.

The copyright holder has the right to submit an application for the inclusion of RIP in the UCRIPO of the participating countries (hereinafter referred to as the application), if he has sufficient grounds to prove a violation of his rights to RIP, which are provided for by international treaties and acts within the framework of EAEU law, and/or the legislation of the countries -participants, in cases:

- transportation of goods across the EAEU customs border;
- in the course of performing other actions with goods controlled by CA.

The application is submitted to the Commission for one type of RIP. If the copyright holder does not have a permanent establishment in the customs territory of the EAEU, it can be submitted through persons registered in the territory of one of the participating countries. The application is accompanied by documentation that indicates the existence of the right to RIP in each participating country (certificates, agreements, including the transfer of rights and licensing, other documentation confirming the rights to the RIP of the copyright holder or a person representing his interests in each country - participant in accordance with its legislation) and documentation that confirms the information reflected in the application.

It is accompanied by product samples that testify to the violation of the rights of the copyright holder or the person who represents the interests of the copyright holder (several copyright holders) on the RIP. When submitting an application by a person who represents the interests of the copyright holder (several copyright holders), the application must be accompanied by a power of attorney (powers of attorney) received from the copyright holder (several copyright holders) and relevant for the entire EAEU territory. If different copyright holders have rights to similar RIPs in the territories of the participating countries, the application must be accompanied by a power of attorney from each of them.

The documentation package must be in Russian or another language. In the latter case, their translation into Russian is attached. In addition, an obligation must be provided by the rightholder (several rightholders) regarding compensation for property damage that may be incurred by the declarant, owner, recipient of goods or other persons if its release is suspended.

If different rightholders have rights to similar RIPs in the territories of the participating countries, obligations to compensate for property damage from each of them are presented. The Commission establishes the regulations [3] for the conduct of the UCRIPO of the Member States, which include:

- requirements for registration and consideration of the application;

- requirements for the composition of the submitted data and documentation;
- the term and procedure for considering the application;
- the order of inclusion in UCRIPO;
- the procedure for exclusion from UCRIPO RIP;
- the procedure for making changes (additions) to UCRIPO;
- the procedure for extending the established period of protection of the rights of copyright holders to RIP;
- the procedure for interaction between CA and the Commission when RIP is included in the UCRIPO of the participating countries;
- the procedure for conducting UCRIPO (hereinafter referred to as the regulations).

To guarantee the fulfillment of the obligation in accordance with paragraph 9 of art. 385 of the EAEU Customs Code [4], the copyright holder must, within 1 month from the date of notification of the possibility of including RIP in the UCRIPO of the participating countries, submit to the Commission an agreement(s) of liability insurance for property damage to persons related to the suspension of the release of goods or other agreement(s) that reflect the enforcement of this obligation, which is relevant for all participating countries. The insured amount or the amount of security for the fulfillment of the obligation must be equivalent to at least 10 thousand euros in accordance with the current exchange rate at the time of the conclusion of the contract(s) of liability insurance or other contract(s), as well as the implementation of amendments to them.

International practice presupposes the right of the importer to receive goods, the release of which is suspended, if the amount of security has been paid, sufficient to protect the interests of the copyright holder. Then the amount of collateral is set according to the parameters of a certain batch of goods. Such a measure ensures the protection of the interests of importers and minimizes the possible negative commercial consequences of the application of the procedure in relation to the imported goods. But in the Russian customs legislation, such a rule does not appear.

Power of attorney (powers of attorney) to represent the interests of the rightholder (several rightholders) in CA or other documentation that proves the powers, obligations under clause 9 of art. 385 of the EAEU Customs Code [4], and contracts must be duly executed in accordance with the first paragraph of clause 11. art. 385 of the EAEU Customs Code [4]. Otherwise, the RIP cannot be included in the UCRIPO of the participating countries, about which the applicant notifies in the manner and terms according to the regulations. The inclusion of RIP in the UCRIPO of the participating countries is free of charge.

The information available in the UCRIPO of the participating countries is reflected on the official websites [5] of the EAEU and CA on the Internet. According to art. 386 of the EAEU Customs Code [4], the authorities of the participating countries maintain NTROIS, the rights to which are protected by CA in the territories of the participating countries. The conditions and procedure for the inclusion [6] and maintenance of NTROIS are stipulated by the legislation of the participating countries on customs regulation.

References

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