

## FIGHTING INFRINGEMENT VIA FAS



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Enforcing intellectual property rights in Russia may be done in a number of ways, depending on the nature of the infringement. The usual venues for filing lawsuits are the common, commercial and IP courts. However, as a rule, court proceedings are lengthy, expensive and require effort from the right owner.

The creation of a specialised IP court in 2013 has improved the expertise and effectiveness of the process, but court proceedings in general are not the most effective way of enforcing rights. Luckily, there is another way to fight against infringers: using the Federal Antimonopoly Service (FAS).

In some cases right owners may apply to FAS, especially when no registered rights are involved but unfair competition provisions apply. FAS is able to handle infringement actions that are related to registered IP rights but its general competence is limited compared to that of the courts. The process is very effective and plaintiff-friendly.

### Prerequisites for FAS action

The key issue before getting FAS to examine an action is identifying the infringer. Another important prerequisite is the existence of competition between the parties—namely, there must be unfair competition. The plaintiff must prove that the infringer has committed real business activities infringing the owner's rights—for example, there must be an actual sale or offer to sell. The infringing actions need to be committed in the same field of business and for similar goods/services.

As an example, there might be a claim based on the existence of websites that include infringing information, such as an identical or confusingly similar trademark, without any real business activities existing. This case would not be heard by FAS, and in such circumstances the plaintiff must apply to a court.

To succeed in the process at FAS, it is also necessary to claim that it was the infringer's intention to gain advantage of the IP owner's rights on the Russian market. In addition, claims covering losses or damages to the owner's business reputation are indeed relevant in the FAS process. These claims should be prepared by the plaintiff.

### Short and simple

The process at FAS takes about four to six months, which is quite impressive compared to court proceedings, which may last years.

Also, gathering necessary evidence has been made very simple for the plaintiff. In addition to the submitted evidence, FAS may conduct further investigations and gather additional evidence at its own discretion. In trademark cases, it is very common for the FAS to request the external comparison of trademarks in question by the trademark and patent office. It is also possible for FAS to conduct a public opinion poll or obtain information from other authorities to help with its decision-making.

FAS is straightforward in its decision-making. Where infringement has taken place, FAS orders the infringer to stop the illegal use of IP rights,

*"IN ADDITION, CLAIMS COVERING LOSSES OR DAMAGES TO THE OWNER'S BUSINESS REPUTATION ARE INDEED RELEVANT IN THE FAS PROCESS."*

and fines the infringer. The decisions of FAS are also published, which is intended to ruin the business reputation of infringers.

However, FAS is not able to order any compensation or payment of damages. These must be claimed separately at a court.

### To use FAS or not?

Infringement actions at FAS have advantages and disadvantages. The advantages are clearly the short and plaintiff-friendly process, as well as straightforward decision-making. The disadvantages include a lack of compensation and a formal approach to the case, especially when non-registered rights are infringed.

In any case, if the right owner's goal is to stop the illegal use of its IP rights without the need for any compensation, and all the prerequisites are met, the answer is to ask FAS to enforce IP rights. Using the FAS process does not prevent the possibility of taking action in court later on. ■

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