

Legal regulation of the fight against counterfeit goods in the Russian Federation.

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1. One of the most pressing issues in the Russian Federation that have a very negative impact on the development of Russia's economy and consumer market is the production and trafficking of counterfeit goods. The problem is exacerbated by the economic circulation of counterfeit goods, because Russia's accession to the WTO requires from Russian Federation gradual reduction of customs barriers, which are one of main important barriers on a way of counterfeit goods infiltration in domestic economy.

Counterfeit goods infiltration spheres in domestic economy are very wide and there is almost no any product that can't be counterfeited in any way. The development of IT technologies allowed counterfeit goods market transformation from its physical presence to existence in virtual environment.

There are four main types of counterfeit goods into the country economic circulation: 1) original product that is imported into the country by legal persons which does not have rights to sell product of this brand; 2) products, which are produced in violation of all production and labour rules; 3) production which imitating famous and well known brands; 4) production, which composition does not correspond of what is stated on the label.

As main economic reasons which affected the increase of counterfeit goods amount in the Russian Federation, can be listed following factors:

For a large part of population retailing price is important factor, so risk to find counterfeit goods becomes higher among high-priced goods;

The proportion of "nonsystem" retailing markets is quite higher in comparison with the number of stores, which are working civilized and official;

Purposeful creation of original accessories and assembly part deficient in certain economic sectors;

Artificially inflated prices for the official vendor production.

As main legal reasons can be listed following factors:

Intellectual property rights are relatively new concept for mass consuming

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market;

is absent practice of intellectual property rights law enforcement applying by authorities;

increase threshold for criminal responsibility for violation of copyright and related rights (Article 146 of the Criminal Code³), that is a large amount of damage from 50 000 to 100 000 Russian ruble. This has led to a decrease in the number of criminal cases on violations of copyright and related rights.

it should be noted that the basis of counterfeiting (counterfeit products) is a violation of intellectual property rights. Counterfeiting is a product which is in an economic circulation with the infringement of any object contained therein intellectual property rights. The most common way used for counterfeit goods the production and sale is the deliberate illegal use of trademarks, appellations of origin, of copyright and related rights.

Because effective development of the national economy is impossible without function of a reliable protection mechanism of constitutionally guaranteed protection of intellectual property, the problem solution of counterfeit goods production and distribution in the Russian market, which displacing production of legal producers, is one of the elements to provide the economic security of the Russian Federation.

Despite the fact that the Russian economy counterfeit goods are relatively new phenomenon, however, Russian law has all required legal protection mechanisms against counterfeit goods production and trafficking. Russian legislation provides following legal ways to fight counterfeiting: civil law, administrative law and criminal law.

2. So, counterfeiting-related crime exists as a social phenomenon and causing significant economic damage and therefore requires appropriate criminal law methods to fight it.

In accordance with Article 1 of the Criminal Code, the criminal legislation of the Russian Federation consists of this Code. New laws that establishing criminal liability shall to be included in this Code. This Code is based on the Constitution of the Russian Federation⁴ and the generally recognized principles and norms of international law.

It should be noted that the Criminal Code is created with a focus on a protection priority of rights and freedoms of man and citizen. In the special part of the Criminal Code of the Russian Federation in the first place is the unit of

³ Collected Legislation of the Russian Federation, 1996, n. 25, p. 2954.

⁴ The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993), *Collected Legislation of the Russian Federation*, 2009, n. 4, p. 445.

paragraphs about protection of personality interests. And this mostly corresponds with the constitutional requirements for rights and freedoms of man and citizen priority protection.

The basis of criminal responsibility for counterfeit-related crimes about counterfeit goods producing and trafficking, are constitutional guarantees for the protection of intellectual property. Constitution of the Russian Federation guarantees freedom for literary, artistic, scientific, technical and other forms of creativity. Intellectual property is protected by law (part 1 of article 44 of the Constitution).

The system of the special part of the Criminal Code provides consolidation procedure for legal requirements that contain constituting an offense into group (sections and chapters) using features of their common generic object and serial arrangement of these groups, depending on the social value of the encroachments and place, which it take in social value hierarchy.

Copyright, related, and patent rights, as well as the illegal use of the trademark rights crimes combines of equal consequence - the application of material (economic) damage.

Crimes which infringing upon the intellectual property rights and related with copyright infringement, contiguous , and patent rights , can be considered as such when a person claims to be the author of the work or invention, and in such way assumes results of intellectual effort. The copyright and all intellectual property are property character. For example, piratical, video piracy, literary plagiarism, piracy programs, etc. - All of this qualifies as copyright infringement under Article 146 of the Criminal Code of the Russian Federation in the chapter "Crimes against the person".

However, crimes in intellectual property sphere infringing upon on the illegal use of the trademark relate to economic activities and are located in the part "Economic crimes".

Crimes related to in violation of copyright, related, and patent rights provided in Articles 146 and 147, which are in Chapter 19, «*Crimes against the constitutional rights and freedoms of man and citizen*» of Section VII «*Crimes against the person*» of the Criminal Code.

It should be noted that in accordance with the principle of territorial location of the crime, which emphasized the sovereignty of the state, a person who committed a crime on the territory of Russia is subject to criminal liability under the Criminal Code of the Russian Federation.

In accordance with the principle of legality crimes under Artt. 146, 147 and 180 of the Criminal Code of the Russian Federation are socially dangerous wrongful acts expressly prohibited by the criminal law under penalty of punishment. Criminality offenses determined only by the criminal law. Criminal

law involves the commission of crimes in sphere of counterfeit goods only guilty of a form of direct or indirect intent.

Should be especially focus that articles 146, 147 and 180 of the Criminal Code aimed at protecting public relations in the sphere of intellectual property rights of means of individualization, which are regulated by civil law. Therefore, interpretation of articles of the Criminal Code of the Russian Federation should be based on the provisions of the Civil Code.

Consider the features of Articles 146-147 and 180 of the Criminal Code, which are a means to combat crime on the production and trafficking of counterfeit (illegal) products.

3. Article 146. Violation of Copyright and Neighbouring Rights.

1. Appropriation of authorship (plagiarism), if this act has caused heavy damage to the author or another possessor of right,-

shall be punishable with a fine in an amount of two hundred to four hundred minimum rates of the remuneration of labour or in an amount of the wages or another income of the convicted person for a period of two to four months, or with obligatory work for a period of one hundred and eighty to two hundred and forty hours, or with an arrest for a period of three to six months.

2. Illegal use of objects of copyright or neighbouring rights, as well as the acquisition, storage or carriage of counterfeited copies of works or phonograms for the purpose of sale carried out on a large scale-

shall be punishable with a fine in an amount of two hundred to four hundred minimum rates of the remuneration of labour or in an amount of the wages or another income of the convicted person for a period of two to four months, or with obligatory work for a period of one hundred and eighty to two hundred and forty hours, or with deprivation of freedom for a period of up to two years.

3. Acts stipulated by Item two of this Article, if they have been committed:

a) repeatedly;

b) by a group of persons in a preliminary collusion or by an organised group;

c) on an especially large scale;

d) by a person with the use of his official position,

shall be punishable with deprivation of freedom for a period of two to five years with or without the confiscation of property.

Note. Acts stipulated by this Article shall be deemed to have been committed on a large scale if the value of the copies of the works or phonograms or the value of the rights for the use of the objects of copyright or neighbouring rights exceed a hundred minimum rates of the remuneration of labour, and

on an especially large scale - five hundred minimum rates of the remuneration of labour.

Necessary to consider that copyright law is implemented in the relations associated with the creation and use of science, literature and art, and related rights are implemented in ways related to the creation and use of phonograms, broadcasting organization programs, which are regulated by civil law.

As follows from the meaning of Art. Art. 1228, 1257 and 1259 of the Civil Code⁵ of the Russian Federation object of copyright, is a result of intellectual activity, which was created by creative work.

literary works;

dramatic, musical drama works, a scenario;

pantomimes and choreographic works;

musical compositions with or without lyrics;

audiovisual workspaintings, sculptures, graphics, graphic novels, comic books and other works of fine art; works of applied art and stage design;

works of architecture, urban planning and landscape architecture, including projects, drawings, images and models;

photographic works and works produced by processes analogous to photography; geographical, geological and other maps, plans, sketches and three-dimensional works relative to geography, topography and other sciences;

other works.

Objects of copyright and related also are computer programs, which are protected as literary works.

Objects of copyright include:

1) derivative works that is works which representing the processing of another work;

2) composite works that is works representing the reason of the selection or arrangement of their contents creative work.

Copyright applies to both the published and unpublished works by expressed in an objective form, including written, oral form (in the form of a public utterance, public performance and other similar form), in the form of images, in the form of sound - or video, in three-dimensional form.⁶

In accordance with Art. 1304 of the Civil Code related rights are: 1) the execution of performers and conductors, staging director - producer performances (performance), if these performances are expressed in a form that

⁵ The Civil Code of the Russian Federation (Part Four) on December 18, 2006 n. 230, FZ, *Collected Legislation of the Russian Federation*, 2006, n. 52, p. 5496.

⁶ The Civil Code of the Russian Federation (Part Four) from December 18, 2006 n. 230, FZ, *Collected Legislation of the Russian Federation*, 2006, n. 52, p. 5496.

allows them to reproduce and spread with the help of technical means; 2) phonogram, all exclusively sound recordings of performances or other sounds, or the representations thereof, except for sound recordings included in the audiovisual work; 3) broadcasts messages by broadcasting organizations or cable distribution, including transmission, created by the organization of air or cable broadcasting or on its instructions and its funds, other organization; 4) database in a meaning of their protection from unauthorized removal and reuse the materials constituting their content; 5) works of science, literature and art, made public after their transition into the public domain, in terms of protecting the rights of publishers of such works⁷.

Victims of crimes under Art. 146 of the Criminal Code of the Russian Federation, other than the author of the work (a natural person who has created a creative work) or holders of related rights (performers, producers of phonograms, broadcasting organizations and cable broadcasting) may be other persons (both physical and legal) that copyright or related rights owned by the Act, shall be inherited or under contract (employer, heirs copyright).

In order to determine the actions of a person in the composition of offenses established in Artt. 146, 147 and 180 of the Criminal Code, it is necessary to take into account the civil law that the use of the results of intellectual activity (science, literature and the arts, programs for computers (computer program), database performance, phonogram, on air or radio or television (broadcast by broadcasting or cable distribution), utility models, industrial designs, selection achievements, brand names, trademarks and service marks, etc.) and equivalent means of individualization of a legal person that are the subject of exclusive rights (intellectual property) may be carried out by third parties only with the consent of the copyright holder.

Action envisaged in part 1 of article. 146 of the Criminal Code, may consist in declaration himself as the author of someone else's work, another release of the product (in its entirety or in part) under the name, edition under the name of a work created in collaboration with others, without specifying their name.

In determining guilt of a person in the commission of a crime under Article 146 of the Criminal Code, it is necessary to establish 1) what author or copyright hold has been violated as a result of the crime, 2) which norm of the Civil Code of the Russian Federation protects violated rights, 3) what exactly was that actions which violated rights of creators and their heirs, executors, producers of phonograms and broadcasting organizations cable broadcasts, and

⁷ The Civil Code of the Russian Federation (Part Four) from December 18, 2006 n. 230, FZ, *Collected Legislation of the Russian Federation*, 2006, n. 52, p. 5496.

other holders of those rights.

Because relations that arise in connection with creation and use of science, literature and art, phonograms, performances, broadcasts by broadcasting or cable distribution is governed by civil law, the unlawful within the meaning of Part 2 of Article 146 of the Criminal Code should be considered intentional use of copyright and related rights in violation of the provisions of the Civil Code.

Considering disposition of part 2 of article 146 of the Criminal Code, a necessary condition for criminal responsibility for the acquisition, storage, transportation of infringing copies of works or phonograms is the commission of these acts for the purpose of sale.

Envisaged in parts 2 and 3 of Article 146 of the Criminal Code of illegal use of copyright or related rights, as well as the acquisition, storage, transportation of infringing copies of works or phonograms for the purpose of sale to be considered a completed crime of the commission of such acts on a large scale or a large scale regardless of the occurrence of the criminal consequences in the form of actual damage the right holder.

As can be seen from the Resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark» actions that may be violation of copyrights are: reproduction committed without the consent of the author or holder of related rights (and production of one or more copies of a work or part thereof in any material form, including the recording of a work or phonogram in PC memory to the hard disk of the computer), sale, lease, make copies of works or phonograms, public display or public performance of a work, the promulgation of works, phonograms, performances to the public through their broadcasting on radio or television, sharing on the Internet, works translation and its remaking, phonograms remastering, modification of a computer program or a database, as well as other acts performed without clearance in accordance with the law of the contract or agreement.

By copy the product should be understood a copy of product which produced in any form, including as information recorded in a computer readable medium (CD-and DVD-ROM, MP3-media, etc.). An instance is a copy of a phonogram on any physical medium, made directly or indirectly from a phonogram and incorporating all the sounds or part of the sounds fixed in that phonogram (sound recordings of performances or other sound)⁸.

⁸ Resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «*About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws,*

Copies of works or phonograms shall be considered counterfeit when the manufacture, distribution or any other use, as well as the importation of such copies violates copyright and related rights, protected by the civil legislation of the Russian Federation.

In resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «*About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark*» emphasizes that to resolve the question of whether a counterfeit copy of a work, it is necessary to evaluate all the circumstances of the case, in particular circumstances, and source of acquisition by a person of the specified instance, the legal basis of its manufacture or import, the existence of the contract on transfer (providing) the right to use (for example, copyright or licensing agreement), compliance with appropriate use of the work conditions of the contract (payment of interest, circulation, etc.), the conclusion of the examination of the seized copies of the work.

Acquisition of infringing copies of works or phonograms is getting them by a person as a result of any transaction for the transfer of property rights, economic or operational control (for example, as a result of purchase and sale, exchange or receipt of these items as a reward for work done, services rendered or as a means to meet its financial obligations). Any deliberate actions related actual possession of them (in the warehouse, in the places of trade, manufacture or hire, a home, hiding, etc.) are the storage of infringing copies of works or phonograms, and them deliberate movement of any kind of transport from one location to another, including within the same locality, is transportation of counterfeit copies of works or phonograms.

Sales and Distribution of counterfeit copies of works or phonograms is their deliberate consideration or free provision to other persons by any means (e.g. by sale, rental, free distribution for advertising, gift, placing products on the Internet). The presence of person intent to sell can be confirmed by finding the seized counterfeit items in shopping areas, rental locations, warehouses, etc., of the said items.

In accordance with Article 1259 of the Civil Code, copyright does not apply to ideas, concepts, principles, methods, processes, systems, means, solutions of technical, organizational and other problems, discoveries, facts, programming languages. Therefore, they do not apply under Art. 146 of the Criminal Code criminal-law protection. Objects of copyright shall not include: 1) official documents of state government agencies and local government agencies and municipal formations, including laws, other legal texts, judicial decisions,

and also about illegal use of the trademark», Russian newspaper, n. 95, 2007

other materials of legislative, administrative and judicial character, official documents of international organizations, as well as their official translations; 2) state symbols and signs (flags, emblems, orders, banknotes, and the like), as well as symbols and signs of municipal formations; 3) works of folk art (folklore), which do not have specific authors; 4) news reports on events and facts, which have a purely informational character (daily news reports, television programs, transportation schedules, and the like). Therefore, their reproduction, distribution or any other use not in any way constitute a crime under Art. 146 of the Criminal Code.

4. Article 147. Violation of Inventor's Rights and Patent Rights.

1. Illegal use of an invention, useful model, or industrial design, disclosure of the essence of an invention, useful model, or industrial design, without the consent of its author or applicant and before the official publication of information about them, the illegal acquisition of authorship, or the compelling of co-authorship, if these acts have inflicted damage to a person, shall be punishable by a fine in the amount of 200 to 400 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to four months, or by compulsory works for a term of 180 to 240 hours, or by deprivation of liberty for a term of up to two years.

2. The same deeds committed repeatedly by a group of persons under a preliminary conspiracy or by an organized group, shall be punishable by a fine in the amount of 400 to 800 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of four to eight months, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to five years.⁹.

In Art. 147 of the Criminal Code of the Russian Federation subject to the criminal law are to the creation and use of inventions, utility models and industrial designs related relationships, which are regulated by civil law. To ensure results of this intellectual activity subject under criminal and legal protection, they must meet the conditions of patentability under Art. Art. 1350 - 1352 of the Civil Code. In addition, rights to inventions, utility models and industrial designs must be patent. It should be assumed that in accordance with Articles 1347 and 1348 of the Civil Code, the author of an invention, utility model or industrial design is a citizen whose creative work is created corresponding to the results of intellectual activity. Citizens, who have created an invention, utility model or industrial design, the joint creative work, are

⁹ Criminal Code of the Russian Federation dated June 13, 1996 n. 63, FZ, *Collected Legislation of the Russian Federation*, 1996, Article number 25, p. 2954.

considered as co-authors.

Furthermore, when applying of Art. 147 of the Criminal Code, the applicant of the invention essence, utility model, industrial design, other than the author may be an employer who, in accordance with the Civil Code of the Russian Federation shall have the right to obtain a patent for an invention, utility model or industrial design created by an employee (author) due to performing their job duties or specific tasks of the employer (the service invention, service utility model, industrial design office) if the contract between him and the employee (author) provides otherwise.

In resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark» indicates that the violation and patent rights, the responsibility for which is provided in Article 147 of the Criminal Code, as expressed in the illegal use of an invention, utility model or industrial design may consist, in particular, to use these facilities without the consent of the owner thereof (except in cases where civil Code of the Russian Federation such use is permitted without the consent of the patent owner), expressed in a registered copyright or licensing agreement , as well as in violation of the purpose and conditions of the contract. By the use of these items may include, for example, their importation into the territory of the Russian Federation, the manufacture, use, offer for sale , sale, otherwise introducing into circulation or possession for the purpose of the product, in which a patented invention or utility model, or product in a patented industrial design , as well as the commission of such acts in respect of a product obtained directly by that process , committing the same action on device, the functioning (operation) which, in accordance with its purpose automatically involves a patented process , the implementation of a process in which use the patented invention . In cases where the use of the establishment (in the product, article, etc.) guilty of another's invention, utility model or industrial design requires expertise in the area of science, engineering or craft in which each set of protected objects, the investigation and the court must have the appropriate expert conclusion or opinion¹⁰.

However, when considering the presence of an offense provided for in art. 147 of the Criminal Code should take into account the provisions of Art. 1359 of the Civil Code of the Russian Federation on the actions of non-

¹⁰ Resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark», *Russian newspaper*, n. 95, 2007.

infringement of the exclusive right to an invention, utility model or industrial design. Therefore, the use of a person objects and patent rights without the consent of the author or the applicant is not illegal and, therefore, does not entail criminal liability in accordance with Article 147 of the Criminal Code.

As it can be followed from resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark», applying Article 147 of the Criminal Code, the disclosure of the essence of the invention, utility model, industrial design tradition involves details on the objects of intellectual property publicized in any way (for example, through the publication of the invention, the basic design of the provisions in the media, transferable utility model claims by telephone).

Appropriation of authorship as a way of infringement and patent rights involves ad himself the author of another's invention, utility model or industrial design, patent by a person not made a personal creative contribution to the creation of these objects of intellectual property, including a person who has had the author only technical, organizational or financial assistance or have only contributed to the legal rights to them and use them.

Forcing to co-authorship can be in influencing in any way (including by means of violence, threats of adverse consequences for the victim) in order to obtain his consent to the inclusion of other persons (not made a personal creative contribution to the instructions given in this article for intellectual property) into co-author of finished or proposed invention, utility model or industrial design that is a contract that allows them get the copyright. In cases where co-authorship is accompanied by violence, consisting of acts against the life, health or liberty of the victim, which are punishable under the relevant articles of the Special Part of the Criminal Code, the criminal conduct should be characterized for multiple offenses provided for by Part 1 of Article 147 of the Criminal Code, and, depending on the circumstances of the case and of consequences - under the relevant articles of the Criminal Code of the Russian Federation¹¹.

5. Article 180. Illegal Use of a Trademark.

1. Illegal use of a trademark or service mark, name of the place of origin of goods, or similar designations for homogeneous goods, if this deed has been

¹¹ Resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «*About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark*», *Russian newspaper*, n. 95, 2007.

committed repeatedly or has caused substantial damage, shall be punishable by a fine in the amount of 200 to 400 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to four months, or by compulsory works for a term of 180 to 240 hours, or by corrective labour for a term of up to two years.

2. Illegal use of special marking in respect to a trademark which is not registered in the Russian Federation, or the name of the place of origin of goods, if this deed has been committed repeatedly or has inflicted sizable damage, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by compulsory works for a term of 180 to 240 hours, or by corrective labour for a term of up to one year.

3. The actions specified in Parts 1 or 2 of the present article committed by a group of persons by a preliminary collusion or by an organised group shall be punishable by a fine at a rate of 400 to 800fold minimum wage rate or at the rate of the wage or other earnings of the convict for a period of four to eight months or arrest for a term of four to six months or imprisonment for a term of up to five years.

Criminal liability under Art. 180 of the Criminal Code sets for an act that was committed repeatedly or caused major damage. Within the meaning of Part 1 of Art. 180 of the Criminal Code, a person repeatedly involves the commission of two or more acts, consisting of unlawful use of a trademark, service mark, appellation of origin or similar designations for similar goods. (This may be the case as the repeated use of the same means of individualization of goods (services), as well as the simultaneous use of two or more other people's trademarks, or other means of identification for one unit of product). As it showed in resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark», applied to paragraph 2 of Article 180 of the Criminal Code of the Russian Federation repeated the commission of two or more times the illegal use of warning labels in relation to a trademark or appellation of origin which are not registered in the Russian Federation.

According to Part 3 of Article 180 of the Criminal Code, the subject of crime is another's trade mark, service mark, and the appellation of origin or similar designations used for similar goods.

In accordance with Art. 1477, 1492 of the Civil Code, trademark and service mark are the symbol of individualized goods, works or services to entities or persons. As a trademark can be registered verbal, visual, dimensional and other designations or their combination. The owner of an exclusive right to a

trademark may be a legal entity or individual entrepreneur. No one can use the protected in the Russian Federation trademark (service mark) without the permission of the copyright holder. The priority of a trademark (service mark) and the exclusive right to it shall be certified by a certificate which is issued to a trademark or service mark registered with the Federal executive authority on intellectual property. For the application of Part 1 of Art. 180 of the Criminal Code for unlawful use of a trademark, service mark or similar designations for similar goods should be based on Art. 1484 of the Civil Code, which specifies how the legal placement of the trademark: 1) on goods, including labels and packaging products are manufactured, offered for sale, sold, displayed at exhibitions and fairs, or otherwise introduced into circulation in the territory of the Russian Federation, or stored or transported for this purpose, or imported on the territory of the Russian Federation; performing works and services;

3) on the documentation relating to the goods put into circulation;

4) The proposals for the sale of goods, performance of works, rendering of services, as well as in ads, on billboards and in advertising;

5) on Internet, including in the domain name and other means of addressing.

Therefore use of the trademark by the above methods without permission is illegal.

In resolution number 14 of the Plenum of the Supreme Court on April 26, 2007 «*About practice of consideration by courts of criminal cases about violation of author's, related, inventive and patent laws, and also about illegal use of the trademark*» stated that counterfeit goods should be recognized, labels, packaging of these products, which illegally used trademark (service mark) or similar to it to the point of confusion. In this case, the registration of a trademark does not give the holder the right to prohibit the use of the trademark by others in relation to goods which have been put into circulation in the territory of the Russian Federation by the right holder or with his consent. Consequently, these products cannot be considered in cases of counterfeit use in respect of such goods registered trademark of a person other than the owner. To establish the corpus of signs of illegal use of an appellation of origin, must take into consideration that the name can be registered by one or more natural or legal persons. Appellation of origin which enjoy legal protection is a symbol that represents or contains historical or contemporary, formal or informal, full or abbreviated name of the country, urban or rural settlement areas or other geographic area, as well as a designation derived from the name of the and became known as a result of its use in relation to a particular product, the special properties which are exclusively or mainly determined by the geographical area in natural conditions and (or) human factors. The

use of the appellation of origin should be considered as applying it to a product, labels and packaging of goods that are manufactured , offered for sale , sold, displayed at exhibitions and trade fairs , or otherwise introduced into circulation in the territory of the Russian Federation or stored or transported for these purposes, or imported into the territory of the Russian Federation as well as the use of the appellation of origin in advertisements, brochures , invoices , forms, and other documents related to the introduction of the product into circulation . In this case, the license holder is not entitled to grant a license to use the appellation of origin to other persons. Should recognize the illegal use of the registered appellation of origin is a person without evidence, even if it the genuine place of origin or the name is used in translation or accompanied by terms such as “kind”, “type”, “imitation” or the similar, and the use of similar notation for any goods that could mislead consumers as to the place of origin and specific properties of the product. With this in mind, counterfeit goods are recognized, labels, packaging products, which illegally used appellation of origin or a designation similar to them to the point of confusion used for similar goods. Illegal reference to paragraph 2 of Article 180 of the Criminal Code of the Russian Federation is the use of warning labels in relation to a trademark or place of origin of the goods that are not registered in the Russian Federation.

6. One element of protection of exclusive rights to results of intellectual activity and means of individualization is the confiscation of counterfeit goods. Confiscation of counterfeit goods provided both civil and criminal law. In applying the consideration of criminal cases under Art. Art. 146 and 147 of the Criminal Code must include provisions for the confiscation of counterfeit civil law. In accordance with Part 4 and 5, Art. 1251 of the Civil Code when manufacturing, distribution or other use of, as well as import, transport or storage of physical media in which the result of intellectual activity or means of individualization, lead to the infringement of the exclusive right to such a result of such means such material carriers considered counterfeit and the decision of the court shall be removed from circulation and destroyed without any compensation was, if other effects not covered by this Code. Equipment, and other equipment and materials, primarily used or intended for the commission of violations of the exclusive rights to results of intellectual activity and means of individualization by the court shall be removed from circulation and destroyed at the expense of the infringer, unless the law provides for their appeal to the revenue of the Russian Federation. According to Art. 104, 1 of the Criminal Code of the Russian Federation 1. Confiscation of property is compulsory uncompensated seizure and turned over to the state on the basis

of a conviction following property : a) money, valuables and other property derived from the commission of crimes referred to in Articles 146, 147 of the Criminal Code, and any income from this property for excluding property and income from it, to be returned the rightful owner , and b) money, valuables and other property in which the property received as a result of at least one of the offenses referred to in Articles referred to in paragraph “a” of this part, and the income from this property have been partially or completely transformed or converted , d) tools , equipment or other instrumentalities of crime belonging to the accused .

2. If the property received as a result of the crime, and (or) the income from this property have been intermingled with property acquired legally, be liable to confiscation of the property, which corresponds to the value of the intermingled assets and income from it.

3. Property specified in the first and second parts of this Article, transferred prisoners to another person (organization) shall be subject to confiscation if the person who received the property knew or should have known that it was obtained as a result of criminal acts.

Therefore money, valuables and other property received as a result of the crimes stipulated in Articles 146 and 147 of the Criminal Code, and any income from this property confiscated by the court, except for the property and the income from it, to be the return of the rightful owner. The guns and other tools belonging to the accused of the crime, in particular equipment, devices and other materials used in the manufacture of infringing copies of works or phonograms are also subject to forfeiture. It is necessary to take into account the above provisions of the Civil Code of the Russian Federation on the confiscation of counterfeit goods. Criminal law provides in Art. 104, 2 forfeiture of money or other property in return for items included in the property referred to in Article 104, 1 of the Criminal Code. If at the time the court makes an order for forfeiture of the subject is not possible due to its use , sale, or for any other reason , the court shall decide on the confiscation of a sum of money corresponding to the value of this item. In case of absence or insufficiency of funds subject to confiscation in return items included in the property specified in Article 104.1 of this Code, the court shall order the confiscation of other property the value of which corresponds to the value of the object to be confiscated, or comparable to the cost of this item, with the exception of property which, in accordance with the civil Procedure law of the Russian Federation may not be levied. Of particular interest is paid attention to redress the legitimate owner. According to Art. 104, 3 of the Criminal Code in deciding whether the confiscation of property in accordance with Articles 104, 1 and 104, 2 of this Code should first be resolved the question of

compensation for damage to its rightful owner. In the absence of a guilty person other property which may be levied, except as indicated in the first and second parts of Article 104.1 of this Code shall be reimbursed the cost of the damage it caused to the rightful owner, and the rest goes to the state. In accordance with item 8 of Part 1 of Art. 73 of the Criminal Procedure Code of the Russian Federation in the criminal proceedings shall be subject to proof of circumstances showing that the property subject to confiscation in accordance with Article 104.1 of the Criminal Code of the Russian Federation obtained through the commission of a crime or is the income from this property. According to Art. 81 of the Criminal Procedure Code of the Russian Federation in sentencing, and the ruling or decision to dismiss the criminal case evidence: money, valuables and other property referred to in paragraphs "a" - in first part of Article 104.1 of the Criminal Code of the Russian Federation shall be confiscated in the manner prescribed by the Government of the Russian Federation, with the exception of the seized during the pre-trial proceedings, but not recognized by the physical evidence items, including electronic media, and the documents to be returned to the persons from whom they were seized¹².

Further, in accordance with Art. 230 of the Criminal Procedure Code, the judge in the criminal proceedings at the request of the victim, civil plaintiff, or their representatives, or the prosecutor may rule on the adoption of measures to ensure compensation for the harm caused by the crime, or possible confiscation of property. The Criminal Procedure Code of the Russian Federation provides for the reimbursement of the rehabilitated property damage in cases of confiscated or turned in favour of the state on the basis of a judgment or decision of the court of his property (Article 135 of the Criminal Procedure Code of the Russian Federation of December 18, 2001 n. 174, FZ). It should be noted that in relation to a person who has committed an offense under paragraphs 1 and 2 of Art. 146, Art. 147 or Parts 1 and 2 of Art. 180 of the Criminal Code, if it is reconciled with the victims and make amends for the harm them, on the basis of Articles 25 and 28 of the Criminal Procedure Code, the court may decide to dismiss the criminal case on the basis of Article 76 of the Criminal Code of the Russian Federation or to discontinue the criminal prosecution of a person on the basis of Article 75 of the Criminal Code in relation to the active repentance.

When deciding to dismiss the court must ensure that the victim suffered harm as a result of the crime really smoothed out, and the guilty party should

¹² The Criminal Procedure Code of the Russian Federation of December 18, 2001 n. 174, FZ, *Collected Legislation of the Russian Federation*, 2001, 52, p. 4921.

explain the consequences of such a decision, and the right to object to the termination of the criminal case or criminal prosecution.

Foreign natural and legal persons shall enjoy the protection of violation of their rights to results of intellectual activity and means of individualization same way as natural persons and legal entities of the Russian Federation by virtue of international treaties of the Russian Federation or the principle of reciprocity.

In the Russian Federation fight against counterfeiting provided by federal authorities of executive power.

In accordance with the presidential decree of March 1, 2011 n. 248 "Issues of the Ministry of Internal Affairs of the Russian Federation" (with the "Regulations of the Ministry of Internal Affairs of the Russian Federation")¹³ counterfeiting combating authority is the Ministry of Internal Affairs of the Russian Federation, which has its regional offices in the regions of the Russian Federation. The Ministry of Internal Affairs Main Department of Economic Security and Anti Corruption provides enforcement powers in the area of economic security and powers to combat on economic and corruption focused crimes. "K" bureau of the Ministry of Internal Affairs of the Russian Federation shall exercise the powers to detect and prevent violations of copyright and related rights in the information technology.

Together with Ministry of Internal Affairs of Russia combating transnational movement of counterfeit products implementing Federal Customs Service of Russia. In accordance with the Decree of the President of Russia on May 11, 2006 n. 473 "Issues of the Federal Customs Service"¹⁴, the Russian Federation Government Decree of 26 July 2006 n. 459 "On the Federal Customs Service"¹⁵ Federal Customs Service is protecting intellectual property through the identification of counterfeit products.

Seems to that the problem of counterfeiting is complex, and its solution should be interdisciplinary economic and legal approach.

Because intellectual property rights protection and fight against counterfeiting is transnational in nature, it is necessary to develop international cooperation in this field.

¹³ Presidential Decree of March 1, 2011 n. 248 «*Issues of the Ministry of Internal Affairs of the Russian Federation*» (with the «*Regulations of the Ministry of Internal Affairs of the Russian Federation*»), *Collected Legislation of the Russian Federation*, 2011, n. 10, p. 1334.

¹⁴ Decree of the President of Russia on May 11, 2006 n. 473 «*Issues of the Federal Customs Service*», *Collected Legislation of the Russian Federation*, 2006, n. 20, p. 2162.

¹⁵ Government Decree of 26 July 2006 n. 459, «*On the Federal Customs Service*», *Collected Legislation of the Russian Federation*, 2006, n. 32, p. 3569.

Necessary to improve the national legislation for the protection of intellectual property, to seek a common understanding and the homogeneous standards of national and supranational level, while balancing the protection of intellectual property rights, and economic development of the country.