Fashion TV: Bone of Contention in Russia

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Alla Naglis, Xenia Melkova
King & Spalding LLC

With two judgments delivered days apart in November 2019, the Moscow Arbitrazh Court (first instance for commercial disputes) sided with the former distributor of a Fashion TV channel in Russia in the dispute with the owner of the global brand and its local representative over the distribution rights of a worldwide television channel. This is a new chapter in the longstanding dispute, but the matter appears still far from being resolved.

Austrian Fashion TV Programmgesellschaft mbH and Russian Fashion TV LLC, its former official distributor, have been in active conflict since the brandowner terminated the channel distribution contract. As of late 2015, the two companies, along with the Austrian rightsholder's local representative Intermoda LLC, have been filing claims against each other with respect to the use of similar designations in locally registered mass media, the distributor's company name, the Russian and international trademarks and the channel's brand. The global owner and its representative have, in a number of instances, been denied protection for their designations, while the former distributor's claims have been upheld, including its 2016 claim to hold the Fashion TV WIPO-registered trademark invalid in Russia on the grounds that the owner had failed to use it (in that case, however, the court only partly satisfied the claim, ruling that the trademark remained valid for television transmission in Russia).

During the years of dispute, the channel was simultaneously distributed by both Fashion TV LLC and Intermoda LLC (under the title 'F'), causing a lot of confusion and uncertainty among Russian platforms as to the channel's ownership.

Fashion TV LLC even at some point registered in its name a trademark representing the channel's diamond-shaped logo, but in April 2018, the Russian Patent and Trademark Office cancelled Fashion TV LLC's trademark. Still, in the recent 8 November 2019 judgment, the Moscow Arbitrazh Court again rejected the claim brought by FASHION TV Programmgesellschaft mbH against Fashion TV LLC to cease violation of the claimant's rights to trademark and trade name. Only the brief resolution has been published, with no reasoned judgment available thus far. While by law, the full reasoned judgment must be published within five days of the delivery of the brief resolution, delays are not uncommon.

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Another decision issued by the same court on November 14, 2019 (and available in full) was also made in favour of Fashion TV LLC, acting, in that case, as the plaintiff against Intermoda LLC and requesting an injunction for Intermoda LLC to use the wording “Fashion TV Russia” in the TV channel name and in the mass media registration on the ground of the similarity between the channel's name and the plaintiff's company and trade name, which has been in use since 2007. The court, in its judgment, relied on the provisions of the Russian Civil Code regulating intellectual property and held that the company name, in that case, had come into use first and, as a result, the use of the wording by Intermoda LLC did infringe the previously registered company name. The court ordered Intermoda LLC to change the name of the registered mass media and to cease using the designation ‘FashionTV’ in the title of a television channel.

In practical terms, both November judgments can be appealed, so the dispute may have further rounds to go. Moreover, while Fashion TV LLC considers the two decisions mentioned above as a confirmation of its rights to the channel in Russia, Intermoda LLC points out that the channel it distributes comes up with the diamond-shaped “F” logo, and thus does not really depend on the disputed wording or registration.

This long-running dispute is a perfect example of the issues that may arise in connection with the protection and distribution of a global TV channel in Russia. Russian legislation does not allow the distribution of foreign TV channels without a local mass media registration, and at the same time, limits foreign ownership in Russian mass media to 20%. This induces foreign rightsholders to engage local companies as licensees/distributors of their channels and the holders of the Russian mass media registration and broadcasting licences. The relationship would then involve a number of critical elements (such as the company/trade name, the channel's designation and mass media registration, channel content) which are all subject to different sets of rules regarding their use and protection, potentially resulting in different interpretations, and making the foreign rightsholder's position less secure. There are no rules or established practices consistently addressing the issue of international TV channels and their correlation with mass media registrations in Russia, and while registrable rights to these designations give their owners the most certain protection against illegal distribution, the above case shows that it is difficult to completely avoid the risks.

Арбитражный суд города Москвы, Дело № A40-105820/19-27-975

http://kad.arbitr.ru/Card/344c7fc5-d887-4efd-845e-34cef6a7ac5d

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