



How to enter the Russian online
consumer marketplace
without setting foot in Russia

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For companies interested in entering the Russian market but reluctant to establish a physical presence there, online presence can be a viable alternative.

The legal requirements for selling goods online to Russian customers are not all that different from the requirements of other countries. For sellers outside of Russia, a threshold question is what law should apply: Can online terms and conditions simply specify that the seller's law applies? The answer is that Russian mandatory requirements (especially related to IP rights, personal data protection, advertising and consumer protection laws) will apply if information on the website is targeted at Russian consumers.

Domain names, trademarks, and company names

To a greater extent than in many other countries, domain names and trademarks are intertwined in Russia. A foreign company intending to sell in Russia via a Russian-language website will need to do a thorough search for Russian-registered domain names, trademarks, and entity names that are identical or similar to the name the company wants to use in Russia. If there is no conflict, the company will need to coordinate its domain name registration(s) and its trademark registration(s) in Russia – the former via a registrar and the latter either directly via the Russian Trademark Office ROSPATENT or via WIPO. Russia applies the principle of first come, first served to all domain name and trademark registrations. There are no specific rules for foreign investors.

Data localization requirement

Apart from purely trademark issues related to selecting a domain name in Russia, one should also consider various other regulatory requirements which need to be met. One of the major ones is the regulation regarding personal data. Due to the recent data localisation law, the collection of personal data from Russian consumers, from placing the order to further storage in a database located abroad, is no longer permitted.

The personal data of Russian consumers must be stored and processed using databases located in Russia. The Russian data protection authority is currently monitoring compliance with the data localisation law specifically in the e-commerce sector. The relevant requirements can be complied with by locating the website database containing personal data in a Russia-based data centre or server, for instance.

Advertising

Russian law requires that advertising targeted at Russia or done within Russia be in the Russian language. Sometimes, of course, it is desirable to use English-language phrases; in such cases English can be used without restriction as long as whatever appears in English also

appears in Russian, with identical content, sound and form. In practice, when English phrases are used it is common for the Russian version to be displayed in a much smaller font size. There are a few exceptions to this dual-language requirement such as the display of foreign company names and trademarks.

Russian law also provides that consumers must be informed in a clear and accessible manner, in Russian, about the full company name of the seller and its address.

Comparative advertising is allowed as long as it is factually correct. General characterizations such as “*the best*”, “*leader*”, or “*number one*” should include a reference to objective evidence of such superiority. Disparagement of competing goods or services is generally not permitted, especially if it is based on false, inaccurate or distorted information.

In general, the antimonopoly authority which is responsible for enforcing advertising laws does not consider the information published on a company’s own website to be advertising. The antimonopoly authority views a company’s website as being intended to inform visitors about the company’s commercial activities, goods, terms of purchase, prices, discounts and privacy policies, and as such the advertising regulations do not apply. Only if the website is designed so as to attract the attention of end users of specific products and distinguish them from competing goods, or to attract attention to the company itself (e.g. pop-up banners) would the information be considered an advertisement.

The fact that fair advertising laws do not apply to a company’s website does not mean that anything goes; statements that constitute unfair competition are also prohibited. Examples include dissemination of false or inaccurate information that disadvantages another company; dissemination of information that misleads consumers about the company’s products; using another company’s intellectual property or trade secrets; or creating confusion regarding a competitor’s business or products.

Search engine advertising, including keyword purchases, is common in Russia. The use of a competitor’s trademark as a search engine keyword is generally permissible. The keywords themselves are a form of search technology and are not seen by the consumer. Thus, unlike trademarks, keywords cannot identify any goods or services. If, however, competitors’ trademarks are not only used as keywords and but also displayed on a website, in contextual/search engine advertising, in the title of the HTML code or even in photos of similar products displayed on the website, then such use constitutes unfair competition and trademark infringement.

Electronic Marketing

Online merchants in Russia can use a wide variety of advertising channels, both targeted and untargeted, to reach their intended audience. For targeted electronic ads, Russia takes the “opt-in” approach. A consumer may be deemed to consent to opting in as part of a website’s terms and conditions.

Consumer comments and reviews

When allowing users to comment on the goods or adding any other comment function, the online store operator should always consider the relevant risks associated with user comments. For instance, the relevant website use rules should address the issue of publishing offensive or otherwise illegal comments to ensure that the online store operator avoids potential issues with being associated with the relevant comments. Therefore, pre-moderation of comments, including user-generated product reviews, before they are published on the website is generally advisable.

A separate issue would be the risk of being subject to anti-terrorism regulations. In May 2014 the Russian parliament adopted the law which introduced the definition of an organiser of dissemination of information on the internet (the “Organiser”). Due to the current version of the definition, there is a risk that even online stores with a comment function (e.g. comments on products) may be considered Organisers. So far this has not been the case in practice and the relevant register of Organisers only lists web chat services, social media and other similar applications. Therefore, it is unlikely that an online store would be required to comply with this requirement. However, the relevant practice of the authorities should be monitored.

Web-Shop Terms and Conditions

(i) Sales Conditions

Russian consumer protection law and distance selling provisions contain the following mandatory rules for online sales:

The offer of goods on a website addressed at an indefinite number of consumers is regarded as a public offer. Consequently, a sale and purchase agreement is deemed to be concluded once a consumer shows an intention to buy the relevant goods, including by placing an order on the website.

Merchants selling to Russians are required to offer a cash payment option. For online sales this means that the product must be shipped before payment is made, and the customer pays cash to the delivery person. Alternatively, an advance payment method via the Russian post may be used.

Limitation of damages in relationships with consumers to the foreseeable damages is not permitted. The seller's liability towards consumers arises irrespective of its fault and can be excluded only in cases of force majeure.

In accordance with the distance selling regulations a customer can return or exchange a product of satisfactory quality within seven days, but if a seller has not informed a customer in writing about this rule, this term can extend to three months.

Furthermore, under Russian consumer protection law, in the case of defective products a consumer may demand one of the following remedies:

- a. free of charge repair;
- b. free of charge replacement with the same product;

- c. free of charge replacement with similar product of another model (with recalculation of price);
- d. full refund; or
- e. reduction of the price.

No limitation of these rights by the sales policy is allowed. The defect claims can be lodged by the consumers if the defects are discovered within the warranty period or, if the warranty period is shorter than two years, within two years of the delivery date.

However, if any significant defects (e.g. defects which cannot be removed or reappear after elimination) are discovered after expiry of the warranty period, but within the service life or, if no service life is established, within 10 years of the delivery date, the consumer may demand free-of-charge repair of such significant defects.

(ii) Privacy Policy

Standard European or US law-based privacy policies are usually not acceptable under Russian law and require substantial amendments.

As in most countries, consumers' personal data in Russia may be collected, stored and used only with the consent of the such consumers. Since foreign online stores normally require the personal data of their consumers to be transferred abroad (especially when the online store does not want to have any presence on Russian soil), the relevant rules of Russian data protection law should be considered. The relevant privacy policy will need to contain the specific consent language.

One of the most important provisions for a foreign online store is related to cross-border data transfer. It should be ensured, however, that no data recipients are located in a country which is not considered to provide adequate protection for personal data, since in this case consent cannot be obtained electronically (i.e. accepting the privacy policy on the website would not be sufficient) and the online store operator would need to collect handwritten consent forms from the buyers.

/ Your Contacts



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Recommended for TMT by major reputable legal rankings The Legal 500 EMEA, Chambers Europe, Who's Who Legal, Best Lawyers and Kommersant.



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Dr. Natalya Babenkova has substantial experience in advising major western and Russian companies regarding the protection and structuring of their IP portfolios (protection of trademarks, domain grabbing, licensing, franchising, etc.), as well as in IP due diligence in Russia. She also specialises in E-commerce and Internet law.

Recommended for IP by major reputable legal rankings The Legal 500 EMEA, Chambers Europe, Chambers Global, Who's Who Legal and Best Lawyers.