

# Internet advertising and use of trademarks in Russia

**Marina Fotyakhedtinova, Trademark Attorney at Gorodissky & Partners, explains recent legislative changes that are reshaping the online advertising market, emphasizing the importance of trademark use and compliance with new regulatory requirements.**

**F**ollowing increasing online sales in Russia, advertising is moving to the digital sphere.

Despite certain unfavorable conditions, like the departure of foreign advertising platforms, the online advertising market in Russia showed growth in 2024, and forecasts for 2025 remain optimistic.

Market analysis shows that the online advertising market for small and medium businesses grew by 23% in monetary terms compared to 2023. The number of new advertisers grew by 3%.

The digitalization of trade involves changes in legislative regulations.

Federal Law No. 347-FZ "On Amendments to the Federal Law "On Advertising" dated 02.07.2021 introduced important amendments to the Federal Law N° 38-FZ "On Advertising" dated 13.03.2006 ("Law On Advertising") which came into effect on September 1, 2022, and set additional requirements for advertising on the Internet: mandatory ads



Marina Fotyakhedtinova

labeling and accounting of advertising on the Internet.

The new rules (Article 18.1) prescribes that advertising distributed on the Internet (except for advertising in TV/ radio programs and broadcasts) must contain an "advertising" (in Cyrillic) mark, as well as an indication of the advertiser and (or) a resource on the Internet containing information about the advertiser.

Labeling involves assigning a token/a unique ID (so-called "erid") to an ad.

Advertising campaign data must be transferred to the Unified Register of Internet Advertising.

Violation of these requirements threatens the infringer (advertiser, advertising producer, or advertising distributor) with an administrative fine.

Competence of the Federal Antimonopoly Service (the "FAS RF") of Russia in this area include the following issues: 1) attribution of information to advertising, which must have marking; 2) control over the presence of the mark "advertising"; 3) control over the availability of information about the advertiser.

The Federal Service for Supervision of Communications, Information Technology and Mass Media ("Roskomnadzor") exercises control over assigning tokens and reporting information about advertising.

The measures should ensure traceability of advertising in RuNet and increase budget revenues through income from online advertising.

The Federal Law N° 479-FZ "On Amendments to the Federal Law "On Advertising" and Certain Legislative Acts of the Russian Federation" dated 26.12.2024 supplemented the Law on Advertising with Article 18.2 "Compulsory Deductions for the

## Résumé

**Marina Fotyakhedtinova, Trademark Attorney, Senior Lawyer**

Marina joined Gorodissky & Partners in 2008.

Marina has more than 20 years of experience in IP and deals with various IP matters, including trademark and patent law, copyright and related rights, advertising and unfair competition, domain disputes, customs law, and anti-counterfeiting.

She represents clients in cases of protection of rights against illegal use of IP objects on the Internet, in litigation against decisions of the Russian PTO in courts, and in cases of cancellation of trademarks for non-use. She advises clients on support for IP transactions, such as licenses, assignments, and pledge agreements.

Distribution of Advertising on the Internet". Starting from April 1, 2025, the new rule provides for the obligation for advertising distributors and advertising system operators who distribute advertising on the Internet, aimed at attracting the attention of consumers located in the territory of Russia, to make mandatory contributions to the federal budget in the amount of 3% of income received from the sale of services for the distribution of advertising on the 'Internet'.

The advertiser pays the so-called "advertising tax" only if they place advertisements on foreign resources and distribute to users from Russia. The advertiser is responsible for calculating and withholding from funds paid to a foreign contractual party for advertising.

The function of control over the calculation of compulsory deductions and the completeness and timeliness of payment is vested in Roskomnadzor.

In light of these modifications, distinguishing between advertising and informational content on the Internet has become an urgent issue.

In each individual case, one should refer to the definition set out in Paragraph 1 of Article 3 of the Law on Advertising.

Although most ads are obviously recognizable as advertising by virtue of their content and context in which they appear, classifying some materials on the Internet as advertising may not be obvious.

The FAS RF, from time to time, issues guidelines aimed at helping users understand what constitutes advertising.

The FAS RF clarified the meaning of "indefinite circle of persons" as persons who cannot be determined in advance as recipients of advertising information. Advertising refers to non-personalized information aimed at promoting a specific product or service, even when sent to a targeted address list. Based on this, information can be regarded as an advertisement even if it is placed in closed Internet channels/groups/communities.

The FAS RF also provided examples of advertising and information. Unlike other information, advertising should distinguish a product from similar products in order to generate interest and promote sales, influence the consumer's motivation when choosing a product, and encourage them to buy the product. For example, the following is not advertising:

- 1) Information about the goods sold by different manufacturers posted on official website/pages on social networks/ in official applications for mobile devices of the seller of these goods (marketplaces, stores, dealers, etc.), informing visitors about range of goods, terms of their purchase, prices and discounts, rules of use, if it is made in a regular, uniform style and informs about the seller itself and the goods sold. Such information is considered for reference

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purposes only and is not recognized as advertising. The same rule applies to information on marketplaces about products sold by different sellers. However, if the information about products visually stands out from a general presentation of information and stimulates or supports special interest in a certain product (e.g., a pinned banner placed on each page of website unchanging when moving to another page, or a banner that repeatedly "pops up" on one page or when moving to different pages of the site), such information may be recognized as advertising.

- 2) Information and advertisements about products posted on websites/ communities on social networks shared as news of the professional community. If the advertisements about products themselves are posted as a list in a uniform style and are related to the subject of the website/community, such information is considered a catalog and not advertising.
- 3) A review of several products from different manufacturers in a video or blogger's post, if its main purpose is not to promote a specific product on the market or it does not focus on a particular product.
- 4) Information on a personal page of a social network user that does not generate interest in any product and represents their personal opinion or attitude towards any product.
- 5) Customer reviews of products posted in special sections, since reviews contain the personal opinions of customers. If, at the same time, a product is compared with another product that is described with a positive emotional coloring that encourages a purchase, the review can turn into advertising.
- 6) Blogger integration is not advertising if information about the product is naturally integrated into the content of the blog and does not stand out, and is presented neutrally, without an emphasis on positive characteristics. Examples of organic integration include mentions of new cosmetics in videos or posts by beauty bloggers, as well as the usual consumption and use of products by bloggers for their intended purpose, such as food, clothing, and tableware in videos.

The new Article 18.2 also vests the Government of the Russian Federation with the right to define criteria for classifying information distributed on certain information resources on the Internet as advertising.

In this regard, the FAS RF developed a draft "Decree of the Government of the Russian Federation on approval of criteria for classifying information distributed on certain information resources in the network Internet as advertising," aimed to help distinguish information on marketplaces, search engines, and aggregators from advertising of goods and services. For these Internet resources, the issue of advertising classification is most relevant.

The FAS RF proposes to consider information published on these sites as advertising if it complies with the definition of advertising provided for in Paragraph 1 of Article 3 of the Law on Advertising and meets the following criteria in total:

- 1) Is addressed to an indefinite number of persons;
- 2) Is aimed at drawing attention to a product (work, service), a means of individualization of a legal entity and (or) a product, a manufacturer or seller of a product, the results of intellectual activity or an event and the formation or maintenance of interest in them and their promotion on the market;
- 3) Does not relate to reference and information or analytical materials (the draft provides a definition of "reference and information or analytical materials").

When advertising deals with trademarks, specific requirements of intellectual property legislation should be observed.

According to Paragraph 1 of Article 1484 of the Civil Code of the Russian Federation, the right to use a trademark by any means (not contrary to the law) is exclusive and belongs to its owner.

Paragraph 2 of Article 1484 of the Civil Code of the Russian Federation identifies advertising as a separate method of using a trademark.

Use of a trademark in advertising requires permission from the rights holder.

According to the law, it can be granted in the form of a license or franchise agreement.

However, practice is moving towards simplifying the process of obtaining such permissions. The Supreme Court of the Russian Federation stated that the rights holder can exercise its right to a trademark by providing a third party with written consent to use the trademark in advertising. This approach was confirmed in the Ruling of the Supreme Court of the Russian Federation No. 305-ES21-23755 dated April 5, 2022, in case No. A41-13514/2020.

Without such permission, claims regarding illegal use of a trademark in advertising may be made by both the rights holder and its exclusive licensee, if the latter obtained broad rights to use the trademark, including in advertising. Exclusive license grants the licensee a sole right to use the



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trademark, often to the exclusion of the trademark owner unless otherwise provided by agreement. Article 1254 of the Civil Code allows an exclusive licensee to enforce trademark rights violations by unauthorized users independently, regardless of the rights holder.

Judicial practice has developed a few examples where use of a third-party's trademark in advertising without consent of the rights holder does not constitute a violation from the point of view of Article 1484 of the Civil Code. These include the following cases:

- 1) Use of a trademark by third parties in advertising their own commercial activities for the sale of the right holder's goods. Such use is permitted provided that the goods have been lawfully introduced into civil circulation, the trademark rights have been exhausted, and consumers perceive such advertising as advertising by an independent service provider (i.e. the consumer does not have the false impression that the advertiser is the manufacturer of the goods and the owner of this trademark). This approach was made in Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation of 08.10.2012 No. 58 "On Certain Issues of the Practice of Application of the Federal Law "On Advertising" by Commercial Courts".
- 2) Use of a trademark as a keyword in contextual targeting, if it is not part of the advertisement itself, not part of its content, and not shown to users, is, in general, permissible. Keywords are considered a technical parameter established by the advertiser in the interface of the advertising campaign. However, such use by an advertiser when placing contextual advertising on the Internet as a criterion for showing an advertisement of keywords (phrases) that are identical or similar to the point of confusion with a third party's trademark, taking into account the purpose of such use, may be recognized as an act of unfair competition. This approach was made in Paragraph 172 of the Resolution of the Plenum of the Supreme Court of the Russian Federation as of April 23, 2019, No. 10 "On the application of Part Four of the Civil Code of the Russian Federation".

Legislation on advertising is still in the process of perfection, and perhaps, digitalization of trade and new forms of advertising will also lead to modifications to the trademark law.

## Contact

**Gorodissky & Partners**

**Tel:** +7 495 9376116  
pat@gorodissky.com  
www.gorodissky.com