

Domain Name Law and Practice

20 March 2005	Russian Federation	Part IV: Court Litigation
Type of update: Case Law		
	<p>1. Dorogomilovsky District Court of the city of Moscow, 6 December 2004 - fordcredit.ru</p> <p><i>Abusive Domain Name Registration</i></p> <p>In this case, the Dorogomilovsky District Court of the city of Moscow regarded the registration of the domain “fordcredit.ru” by the defendant as an infringement of the plaintiff’s (Ford Motor Company) exclusive rights to the international trade mark FORD.</p> <p>The defendant (a private individual) was willing to assign the disputed domain to the plaintiff for money. The latter rejected this offer and filed a court action.</p> <p>A short reference to the decision is available on the RU-Center website.</p>	
	<p>2. Kalininsky District Court of the city of Novosibirsk, 12 November 2004 - amway.ru, artistry.ru and nutriline.ru</p> <p><i>Case No 2-867/2004</i></p> <p><i>Abusive Domain Name Registration</i></p> <p>The suit was brought by the US companies Alticor Inc. and Amway Corp. against the Russian owner (private individual) of the domain names “amway.ru”, “artistry.ru” and “nutriline.ru”. The disputed SLD “amway.ru” was used by the defendant as a discussion forum referring to the plaintiff’s business and products. The disputed domain names “artistry.ru” and “nutriline.ru” were merely registered by the defendant but not used. The defendant had offered the domain names for sale.</p> <p>The action was based on the Russian trade marks AMWAY, ARTISTRY and NUTRILITE of the first plaintiff Alticor Inc., on the firm name of Amway Corp. and on breach of the law of unfair competition. The case was decided in favour of the plaintiff.</p> <p>First, the court held that the trade mark holder’s exclusive rights to the sign AMWAY were infringed even if the defendant used the disputed domain as a link to the discussion forum referring to the plaintiff’s business and products. The court noted that the discussion forum available at the disputed domain name was used to provide consulting services to the forum participants, ie with respect to the class of services such as business consulting for which the trade mark AMWAY was registered. The court rejected the defendant’s argument that the disputed website was not used in the course of trade because the defendant had no intention to generate a profit. The court noted that an intention to generate a profit is not a prerequisite for a trade mark infringement.</p> <p>Moreover, the court considered the defendant’s offer to sell the disputed domains as evidence of the intention to generate profit from the domain</p>	

	<p>registration and therefore in course of trade.</p> <p>Furthermore, the court also based its judgment on an infringement of Amway’s company name within the meaning of Art 54 of the Civil Code in connection with Art 8 of the Paris Convention.</p> <p>Finally, the court regarded the registration of the disputed domains by the defendant and his offer to sell the domain names as an act of unfair competition in terms of Art. 10^{bis} of the Paris Convention.</p> <p>A short summary of this decision is available on the RU-Center website.</p>
	<p>3. Moscow City Arbitration Court, 5 November 2004 - suntour.ru <i>Case No A40-34209/04-51-336</i></p> <p><i>Abusive Domain Name Registration</i></p> <p>The plaintiff, a Russian tour operator, was the owner of the Russian trade marks CAHTYP, SANTOUR and SUNTOUR registered for the Classes 39, 41 and 42 services. The defendant had registered the domain name “suntour.ru” and used it in conjunction with travel services.</p> <p>The court regarded the registration and use of the disputed domain as an infringement of the exclusive rights of the plaintiff’s trade marks and issued an injunction against the use of the domain names and ordered that the defendant reassign the disputed domains to the plaintiff and pay damages.</p> <p>The full text of the decision is available at the Suntour web page.</p>