

Return of “Departed” Brands: Potential Antitrust and Commercial Issues for Companies

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“Is it beneficial for us for a certain company to come? Then we should let it in. Not beneficial? We must find a thousand reasons why it shouldn’t be here...”

V. Putin

Recently, the discussion about the return to Russia of foreign brands that left the Russian market in one way or another after 2022 (the “**Departed Brands**”), has been gaining momentum.

Under the “return” of Departed Brands, we mean the following scenarios:

- resuming supplies of the Departed Brands to Russia;
- resuming production of the Departed Brands in Russia;
- resuming commercialization and promotion of the Departed Brands in Russia.

We are not touching on corporate/transactional matters related to the return of the Departed Brands (e.g., exercising an option or buying back shares/participatory interests), including obtaining relevant approvals from government authorities. Since there are no specific rules for such corporate returns, it is premature to comment on this part. Therefore, we will focus on the commercial and antitrust issues that companies may face when bringing the Departed Brands back to Russia in the sense described above.

1. Parallel import

Since May 2022, certain foreign products can be imported into Russia without the right holder’s consent via so-called “parallel import.” The list of such products is approved by the Ministry of Industry and Trade of the Russian Federation (Minpromtorg).¹ At the same time, Minpromtorg plans to shorten this list.²

If a Departed Brand is **included** in this list, it is worth considering the possibility of having it removed. For this, Minpromtorg issues an order and updates the list. The Ministry regularly reviews the list,³ including considering appeals from the Departed Brands’ manufacturers, provided that the return of such brands ensures sufficient market saturation.

If the Departed Brand is **not on the list**, its import into Russia by parallel importers is possible only with the right holder’s consent.⁴ Importantly, if the original product was imported into a member country of the Eurasian Economic Union (EAEU) with the right holder’s consent (e.g., to an authorized

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¹ See <http://publication.pravo.gov.ru/document/0001202411080016>.

² <https://iz.ru/1871753/evgeniia-pertceva/na-serom-fone-vlasti-sokrashchayut-parallelnyj-import-tovarov-v-rf>

³ <https://pravo.ru/news/259190/>.

⁴ We wrote about this in more detail in our 2019 [alert](#) on parallel import.

distributor), no further consent is required for its import into Russia, since the regional principle of exhaustion of rights applies.⁵

If the original product was not imported into an EAEU member state with the right holder's consent, then importing into Russia is possible only with such consent, which the importer must request from the right holder.

In the event such products are sold without the importer having contacted the right holder, the right holder's course of action may be as follows:

- i. Record the fact of trademark use without the right holder's consent (for example, screenshots of product listings on marketplaces where the goods are sold, or purchase of product samples with receipts);
- ii. Send a pre-trial claim to the importer demanding that the infringement cease and that the goods be withdrawn from circulation;
- iii. If there is no response to the claim and sales of the products continue, file a statement of claim with the court seeking recognition of the goods as counterfeit,⁶ prohibition of trademark use,⁷ withdrawal and destruction of the counterfeit goods,⁸ recovery of compensation;⁹ or submit the relevant reports to law enforcement and/or customs authorities.

When an importer has requested permission, the right holder must give a reasoned answer – grant or refuse. Antitrust case law shows that a direct refusal without valid grounds may be regarded as unfair competition if it restricts market access.¹⁰

To reduce such risks, the right holder should have an internal policy regulating interaction with importers, which includes criteria such as compliance with storage/transportation standards,¹¹ proper labeling,¹² and disclosure of the supply chain proving authenticity.¹³

If a Departed Brand is sold in several EAEU countries, one must be careful about restricting cross-border flows or dividing sales between territories of the EAEU member states, as this can be deemed anticompetitive by the Eurasian Economic Commission.¹⁴

Nevertheless, such practices may have an economic justification and be deemed admissible under competition law of a specific country. Therefore, instead of directly restricting the sale of products in a specific territory, it may be worth considering other legal instruments to achieve the same business objective (for example, reducing the company's marketing budget for promoting products in a particular country in proportion to the volume exported from that country, or introducing product quotas). At the same time,

⁵ See, for example, cases № A40-17526/2024, A40-202158/2023, A66-5781/2023, A40-38124/2024.

⁶ See, for example, cases № A70-14978/2024, A21-2100/2024.

⁷ See, for example, cases № A21-12122/2023, A57-14866/2023.

⁸ See, for example, cases № A21-2783/2023, A40-3338/2024.

⁹ See, for example, case № A45-25950/2021.

¹⁰ See, for example, cases of the FAS Russia against [Daimler AG](#) and [KYB Corporation](#).

¹¹ See, for example, case № A21-12122/2023 (the requirement for storage and transportation of goods was considered together with other evidence of counterfeit goods).

¹² See, for example, case № A21-2783/2023 (the requirement for product labeling as provided by law was considered together with other evidence of counterfeit goods).

¹³ See, for example, case of the Tatarstan Office of the FAS № 016/01/14.6-2227/2019 (the requirement for the importer to disclose the supply chain was considered together with other evidence of counterfeit goods).

¹⁴ See, for example, [the decision of the Antimonopoly Authority of the Republic of Belarus dated 19.04.2023 regarding OJSC "Belaruskali"](#).

we see that local regulators in EAEU member states may be receptive to a company's position on prohibiting the export of its products outside the regulator's "home" country (as this increases the volume of that country's local market) and may approve the company's approach to such situations.

2. Prevalence of products imitating / copying the original Departed Brand

During the absence of the Departed Brands in Russia, a significant amount of Russian-made products has appeared that, in one way or another, imitate the appearance of the Departed Brand.

Combating such "imitators" will likely involve a certain degree of favoritism on the part of government authorities towards domestic products. This may be connected to efforts to "demonize" foreign brands and to attract attention from the media and the public.

In this regard, before filing a complaint with the competition authority, it is advisable to go through **the pre-trial claim process**, even though it is not formally required. In practice, however, the regulator often asks the applicant whether they attempted to settle their claims amicably. Compliance with the pre-trial procedure serves as a signal to the regulator of the applicant's good faith in seeking to eliminate the alleged violation, and may be taken into account during the formal investigation.

Therefore, before approaching the competition authority, we recommend sending the relevant claim to the potential infringer. If the claim is ignored within a reasonable time, then a complaint can be filed with the competition authority.

If the parties settle the dispute amicably after the formal investigation has been initiated, the competition authority will not be able to terminate it on this basis due to the specifics of protecting the public interest, rather than solely the complainant's interests.

i. Specifics of proving unfair competition cases against "imitators"

If a company decides to file **a complaint with the competition authority** against an "imitator," it should be aware of the specifics that may arise at this stage.

First, the consideration of such cases involving the Departed Brands, given the above context, *may be unpredictable*, up to and including the need to meet a fairly high standard of proof. The applicant should prepare their position and evidence as thoroughly as possible (including consumer surveys aimed at assessing to assess whether consumers can indeed confuse the Departed Brand and that of the imitator).

Second, when preparing the complaint, the primary question is *the choice of the theory of harm*. Depending on the circumstances, the applicant may have several options:

- i. Violation of the prohibition on unlawful imitation / copying of the packaging design of the Departed Brand (violation of Part 2, Article 14⁶ of the Competition Law);
- ii. Violation of the prohibition on parasitism on the Departed Brand (violation of Article 14⁸ of the Competition Law);

- iii. Unlawful use of a registered trademark of the Departed Brand in the packaging design of the “imitator’s” products (violation of Part 1, Article 14⁶ of the Competition Law).¹⁵

Third, regardless of the chosen type of violation, the applicant must demonstrate that ordinary consumers can indeed confuse the imitations with the Departed Brand or perceive them as related products. Currently, consumers may already perceive imitations as Russian equivalents of the Departed Brands. Upon the return of the Departed Brands, such perception may create an additional barrier to proving consumer confusion. Therefore, *more complex and unconventional expert examinations and surveys* may be required (for example, consumer experiments or marketing studies), since experts previously have not been tasked with identifying consumer behaviour in the context of the return of the Departed Brands.

Fourth, recent court practice in unfair competition cases has formed the position that *a price difference* of more than 10% between two comparable products may be considered a presumption of the absence of competitive relations between companies.¹⁶ This, in turn, makes it impossible to pursue a case for unfair imitation and copying of appearance and trademarks. It is likely that imitations will be priced more than 10% lower than the Departed Brands. Therefore, the applicant will additionally need to prove interchangeability between specific SKUs and the existence of competitive relations.

Fifth, another essential element of unfair competition is *the issue of damages* suffered or potentially suffered by the Departed Brand due to the sale of imitations in the Russian market. What damages could the Departed Brand have suffered if it was absent from the Russian market altogether? On this issue, the applicant will also need to develop their position more thoroughly and present evidence of possible damages to the Departed Brand (for example, calculations, presentations showing the company’s intention to produce and sell original products in Russia, and other evidence).

Thus, the antitrust investigation against “imitators” of a Departed Brand is likely to be more complex and unconventional than the regulator’s current practice for similar unfair competition cases.

- ii. Options for protecting Departed Brands if the “imitator” situation becomes widespread

Separately, let us consider the options for protecting Departed Brands if **the “imitator” situation becomes widespread** — that is, if there is a significant number of such products in the market.

First option: Choose the most “obvious” / easy violation involving one SKU, obtain an adverse decision from the competition authority against the infringer, and use it as a precedent for subsequent proceedings, including in negotiations with sellers of “imitator” products, such as retailers.

Second option: Submit a complaint to the competition authority under Article 14⁸ of the Competition Law, which allows the authority to issue a warning to a company before initiating a case. This is a faster way to influence the “imitator,” but not ideal, since the seller of the “imitator” product may make only minor changes to the packaging to comply with the warning, which the authority may consider adequate compliance. As a result, the case will not be

¹⁵ Choosing this course of action may not always be effective. It is important to check whether the “imitator” has any registered trademarks that it uses in the packaging design of its products which, in the applicant’s view, imitate the Departed Brand. If such trademarks exist and have not been challenged, this may complicate the consideration of the case by the antitrust authority.

¹⁶ See, for example, case N^o A66-7775/2024.

initiated because the warning was fulfilled, yet the original Departed Brand will remain unprotected against slightly altered designs of the “imitator’s” product.

Third option: Prepare a complaint to the competition authority regarding imitation of an entire product line of the company. This option is also not ideal, as there are very few such precedents in practice, and the standard of proof for imitation of a product line is high.¹⁷ Therefore, the applicant will need to prepare evidence much more carefully.

Thus, there are various ways to combat “imitators,” and they largely depend on whether the problem has become widespread.

3. Prices and assortment

When the Departed Brands return (and given they are generally more expensive than the brands that have remained in the market), their presence will expand. At the same time, the manufacturer will reduce the presence of cheaper brands, which may be local brands that never left or that appeared in the company’s portfolio after the withdrawal of the Departed Brands from the market (the “**Local Brands**”).

i. Price changes resulting from assortment changes

Such situations can lead to changes in both **the price and the assortment** of products.

First, upon the return of the Departed Brands, the weighted average price of the entire product portfolio may increase even if wholesale prices remain unchanged. This is because the Departed Brands typically have higher production costs and, accordingly, higher wholesale prices. Therefore, in the overall product mix, the higher price of the Departed Brand will result in an increase in the weighted average price of the portfolio.

Second, amid heightened demand for the Departed Brands, their prices may rise, or the products may be sold only at wholesale prices without discounts.

Third, the weighted average price of the portfolio may also rise due to the reduced presence of the Local Brands. This may be caused by the need to free up production and storage capacity and to reallocate trade and marketing investments needed for the reintroduction of the Departed Brands.

Fourth, in addition to an increase in the weighted average price of the portfolio, there may also be an increase in *the initial maximum prices* of products sold in the public procurement channel (if applicable to the Departed Brand). This may raise questions from the competition authority, especially if the company holds a dominant market position and/or if the regulators monitor prices for products in the category that includes the Departed Brands.

Therefore, when responding to regulator’s inquiries, it is important to emphasize that the company is expanding its product range and that the nominal price increase is related to changes in the product mix rather than to increases in wholesale prices. Changes in the product mix reflect demand for the company’s various brands.

ii. Changes in trade / marketing investments

¹⁷ See, for example, [Decision of the FAS Russia in case No. 1-14-137/00-08-17 dated 10.05.2018](#).

Another issue requiring close attention when the Departed Brands return is **the volume of trade/marketing investments**, which may include various payments to retail chains, payments to agencies, discounts, rebates, or a combination of these (the “**Investments**”).

The return of the Departed Brands may lead to a reallocation of the Investments in their favour, and consequently to a reduction of the Investments in the company’s Local Brands.

If the Investments are given in the form of discounts, this will lead to higher prices for the Local Brands, which may draw the attention of regulators and carry the risk of establishing an excessive price for the product if the company is dominant.

It is important to remember that if the product range supplied to counterparties differs significantly (for example, one counterparty carries more Departed Brands and another more Local Brands), different levels of the Investments may widen differences in trading conditions for counterparties, raising the risk of discrimination.

To minimize such risks, it is important to have justification for this allocation of the Investments. For example, a valid reason for granting more Investments to the Departed Brands may be the recovering demand for them.

This may serve as a basis for justifying a reduction in discounts for the Local Brands: discounts on one product are reduced while discounts on another are increased depending on demand. Another justification for the differing Investments may be the fact that the company’s promotional activity for different products depends on demand for them, and the total Investments depend on the share of the respective products in the counterparty’s portfolio.

iii. Allocation of the Departed Brand product volumes

When the Departed Brands return, companies may face the problem of **distributing limited product volumes**.

This problem may arise both in relation to the Departed Brands, whose supply or production may be limited, and to the Local Brands (likely cheaper ones), whose presence may decline as the Departed Brands’ presence increases.

Companies may also offer the Departed Brands as an exclusive assortment. This raises numerous questions: to which counterparty or types of counterparties should the products be supplied? How should the Departed Brand deliveries be prioritized? Can the company refuse to supply a Departed Brand to a counterparty? All these issues need to be addressed in advance, as they involve potential risks of discrimination and unjustified refusal to supply, especially given retailers’ heightened sensitivity to these matters.

Therefore, it is advisable to have justification for the limited volume itself. For example, it may be due to the unpredictability of demand for the Departed Brand or the Local Brand at the time the Departed Brand reappears.

One may use a justified quota system for supplying products with increased demand — for example, a system proportional to the brand’s past sales volumes. The company’s commercial policy can formalize approaches to quota allocation, prioritization, order fulfillment, counterparty selection, and pricing during periods of heightened demand upon the return of the Departed Brands.

4. Retail presence

When the Departed Brands return, companies will face the issue of ensuring their presence in the retail channel.

First, there is the question of how to determine what **share of shelf space** for the Departed Brands is fair. Given that shelf space in traditional retail is limited, ensuring a certain share for the Departed Brands will inevitably reduce the share allocated to other brands. This raises the question of how, and on what data basis, a company should calculate a fair/justified shelf share for the Departed Brands.

The standard approach to determining shelf share is to look at the company's market share. However, in the case of the Departed Brands, this approach poses challenges: these brands have not been sold in Russia for a long time, so the market share calculation will likely rely on historical data from previous periods, which may not objectively reflect the current market situation.

In any case, to reduce the risk of violating antitrust laws, the company should have a justification for the shelf share it intends to allocate to the Departed Brands. For example, a benchmark could be the shelf share previously held by a Local Brand that the Departed Brand will replace.

Second, in addition to determining a fair shelf share, companies will face the issue of **retail pricing for the Departed Brands**.

For retailers, a possible benchmark price could be the price of parallel imports of the Departed Brands. While companies may be interested in setting the retail price of the Departed Brands lower than that of parallel imports (in order to displace parallel import volumes), such a strategy could lead to accusations from parallel importers of dumping when the brand returns to Russia. To avoid such accusations, the Departed Brands should not be sold at a price below cost.

Furthermore, upon the return of the Departed Brands — whose products may quickly become among the most popular and in demand with consumers — price wars between retailers may begin. This could result in situations where retailers independently set the lowest retail price for the Departed Brand to attract more customers to their stores. Such situations could lead to potential complaints from retailers to the supplier, requesting action to influence the market and control pricing. Therefore, it is advisable to prepare the supplier's sales team in advance, remind them of the risks of price coordination, and develop and implement communication templates for handling such situations.

5. Regulatory rules for the Departed Brands' return

The Departed Brands' return is associated not only with commercial and antitrust issues but also with regulatory requirements that could impose significant restrictions on companies.

For example, at present, there is a **special procedure for the fulfillment of monetary obligations** by Russian residents to certain categories of foreign right holders under the conditions of sanctions pressure and restrictions introduced since 2022.¹⁸ Also currently in effect is a set of measures **granting priority to domestic products** in public procurement

¹⁸ See Decree of the President of the Russian Federation No. 322 of 27.05.2022 "On the Temporary Procedure for Fulfilling Obligations to Certain Right Holders".

under Federal Law No. 44-FZ and Federal Law No. 223-FZ,¹⁹ which establish restrictions and prohibitions on the procurement of certain foreign products and provide advantages for the Russian ones.

In addition to the existing rules, **draft laws** aimed at introducing new, stricter regulations for the foreign companies' returning are being actively discussed.

For instance, Draft Law No. 879812-8 proposes creating a register of foreign trademarks and trade names whose operations in Russia were discontinued for foreign policy reasons (sanctions, voluntary withdrawal, etc.).²⁰

Draft Law No. 879837-8 provided for an increased profit tax rate of 35% for legal entities using in their business activities trademarks and trade names included in the register introduced by Draft Law No. 879812-8.²¹ Although this initiative has recently been rejected, the possibility of introducing a similar bill should not be excluded, particularly given the ongoing relevance of the proposal to establish such a register.

There is also public discussion of a draft law prepared by the Ministry of Industry and Trade (Minpromtorg) to set a minimum share of Russian-made products that must be maintained in retail chains and to ensure priority placement of domestic goods in search results on online marketplaces (the so-called "Russian Shelf" draft law).²² This draft law has not yet been formalized and is undergoing interagency coordination; however, it is expected to be submitted to the State Duma for consideration later this year.²³

We will continue monitoring and keeping you informed of further developments on the issues surrounding the return of the Departed Brands.

This information letter is for general informational purposes only and should not be construed as containing recommendations for specific actions to be taken by your business.

¹⁹ See Resolution of the Government of the Russian Federation No. 1875 of 23.12.2024 "On Measures to Provide National Treatment in the Procurement of Goods, Works, and Services for State and Municipal Needs, and in the Procurement of Goods, Works, and Services by Certain Types of Legal Entities".

²⁰ https://sozd.duma.gov.ru/bill/879812-8#bh_histras

²¹ https://sozd.duma.gov.ru/bill/879837-8#bh_histras

²² <https://www.interfax.ru/russia/1028020>

²³ <https://www.interfax.ru/russia/1033903>