

ELECTRONIC COMMERCE

THE LEGAL NUANCES
OF E-COMMERCE

EN There is now an extremely high level of competition in the field of electronic commerce, expressed mainly by competition to win customers. Along with that, if we speak about the Russian consumer and access to the Russian market, those participating in e-commerce must make sure that they comply with the requirements stipulated in Russian legislation.

Tatyana DVENADTSATOVA,
associate of International projects group,
VEGAS LEX law firm,
Moscow

Key aspects: The specifics of the electronic commerce market lie in the fact that it is transnational, since commercial activity is conducted via the Internet which, in effect, does not recognize national borders. Because of this, it is vitally important today for the business community, and especially for foreign businesses, to define a bit of red tape for engaging in electronic commerce in Russia.

As a rule, when online stores are involved, the main aspects that foreign sellers need to take into consideration are the following:

- Posting advertising online.
- Protecting users' personal data, and issues involving confidentiality.
- The status accorded to commentary and user feedback.

Posting advertising online: This is an unavoidable facet of electronic commerce. However, when speaking about advertising aimed toward Russian consumers, then it is worth bearing in mind the following rules in federal laws on advertising (hereinafter the "Law on advertising") (Federal Law No. 38-FZ, dated March 13th, 2006 "On advertising").

First, it is worth taking into account that the scope of where the Law on advertising is applied is restricted to the Russian Federation; having said that, where an advertisement was made does not mean anything, but rather the fact that it is disseminated inside Russian borders – and this means that it is aimed toward Russian consumers (This position was expounded, for example, in Letter No. AK/24981, dated August 3rd, 2012, written by the Federal Antimonopoly Service of the Russian Federation "On advertising alcoholic beverages online and in printed media"). From this, the conclusion follows that Russian advertising law is enforceable not only in Russia's online space, but vis-a-vis the Internet in general, if there are indications that the advertising is geared toward Russian consumers.

Second, if indications exist that advertising is aimed toward a Russian audience (for example, there is a Russian-language website, goods/services can be paid for in Russian rubles, goods/service can be delivered to Russia), then the law requires that all information in the foreign language be

duplicated in Russian, without any changes in the text's content, context, or form. In addition, the material that is posted needs to be in clear and understandable language.

Third, it makes sense to pay attention and make sure that the finer points of the advertising are appropriate (See page 5 in the Law on advertising). A considerable percentage of the disputes involving advertising and unfair competition in the field of electronic commerce arise from wrongful comparisons drawn between one advertised good and another (as a rule, similar advertised good from other manufacturers or sellers (Resolution No. 58 delivered by the Plenary Assembly of the Supreme Arbitration Court of the Russian Federation, dated October 8th, 2012 "On certain issues involving the practice of applying the Federal Law 'On advertising' by the arbitration courts" indicates that not only must information about the advertiser's goods be accurate, but also about the competitor's goods). This also means verbal comparisons using expressions like "best of all," "most popular," and "market leader," as well as using goods or brands from a competitor in advertising in the context of a wrongful comparison (As an example, see the Ruling delivered by the Chelyabinsk Department of the FAS Russia on July 12th, 2016 in case No. 88-08/2015, which declared inappropriate an advertisement posted by a competitor on the Internet, TV, and advertising structures. The issue involved an incorrect comparison between drinking water made by the advertisement's creator with other trademarked goods. A similar ruling was the Ruling made by the Volgograd Department of the FAS Russia on March 25th, 2016 in case No. 16-03-5-02/26, and a Ruling delivered by the Russian Federation Supreme Court on March 20th, 2017 in case No. 305-ЭС16-17606, A41-947/2016).

This means that foreign online store or website owners that are interested in Russian audiences need to pay attention to make sure that their advertising is accurate and objective, and that comparing their goods with competitors' goods be done only in accordance with commensurable criteria, only to the fullest extent possible, and in full keeping with their genuine characteristics.

Fourth, frequently the website where there is information on the manufacturer/service provider, the list of goods or services that are provided, price lists, or contact information is not viewed by the regulatory

authorities as an advertisement. For example, the opinion held by the FAS Russia is that this information is intended for the sole purpose of informing visitors to the website about the company's activity and the goods or services that it sells (As an example, see the letter from the FAS Russia dated August 28th, 2015 in case No. AK/45828/15 «On advertising in the 'Internet'»). This means that the provisions in the Law on advertising do not apply to information and knowledge that is posted on the company's website for purely informational purposes. Exceptions will certainly be made for information that is posted to attract attention to various goods – for example, pop-up advertising banners or a mini promotional video posted on the site. This is explained by the fact that in this case the site not only fulfills an informational function, but an advertising one, meaning that the information is supposed to attract information to the object being advertised, and shape or maintain interest in it and helping promote it on the market.

Protecting users' personal data, and issues involving confidentiality: These go hand in hand when the issue is electronic commerce. The rules for processing users' personal data is what those who own websites and online stores need to remember, including foreigners. Despite the fact that Federal Law 152-FZ, dated July 27th, 2006 and entitled "On personal data" (hereinafter the Law on personal data), allows processing information if it is necessary to execute a contract where one party is the subject of the personal data – or to sign a contract initiated by the subject of the personal data – the existence of consent given by the subject to this kind of processing is the key rule that governs the processing of personal information. In addition, the consent granted to having personal information processed must be specific, informed, and deliberate, since it is the duty of the operator to prove that such consent was granted.

Those who engage in electronic commerce and wish to enter the Russian market should keep in mind the regulations that were adopted fairly recently concerning the localization of personal data, which stipulate that the preliminary processing of personal data for Russian citizens needs to occur in Russia. Because of this, foreign companies that are involved in this preliminary processing need to use databases that are located inside Russian borders. The cross-border transmission of Russian citizens' personal data, if the preliminary processing was accomplished in Russia, is possible under the condition that the country where the data is being transmitted has sufficient personal data protection mechanisms in place.

Roskomnadzor is the agency that monitors compliance with requirements con-

cerning the localization of personal data and transmitting that kind of information across borders. In addition, special attention is focused on those engaging in electronic commerce, where personal data processing occurs throughout every stage in the process – from registration on a website or online store to filling out an order form to entering information when paying for goods/services.

It is worth paying particular attention to the tougher liability laws in relation to non-compliance with personal data legislation, as part of which an entire seven new *corpora delicti* were introduced, with an increase in the size of the fines (See the review of changes prepared by the VEGAS LEX law firm: https://www.vegalex.ru/en/analytics/analytical_reviews/personal_data_how_increased_penalties_in_2017/). Owing to this, it is recommended that a few preventive measures be adopted that will minimize the risk of violating Russian personal data legislation, especially if the foreign company does not, in the legal sense, do business in Russia. These measures could include, for example, developing policies regarding personal data processing, designating an employee who is responsible for that processing, working out a consent form for personal data processing, and making sure to receive a person's consent to have his/her personal data processed in every instance that Russian legislation stipulates.

The status accorded to commentary and user feedback: Nowadays, feedback and comments that are left by users about goods enjoy tremendous popularity. Leaving feedback on a good or service has become such an everyday phenomenon that sometimes these comments and feedback substitute advertising. This is exactly the source of the risks that feedback posted on a producer's website, or in a regular online store, might contain inappropriate or inaccurate information. As a rule, we are speaking about positive responses specially posted on a website or an online store that have a great chance of misleading the consumer. This feedback will, of course, be both false and illegal, but the liability for it being posted will be borne by the advertiser.

There also exist risks that entities participating in electronic commerce will be declared Internet information dissemination organizers in the event that the website or online store provides consumers the possibility of leaving commentaries in forums or chats. The owner of this resource must comply with the requirements outlined in Russian Federation government Resolution No. 746, dated July 31st, 2014 – one of these is storing information detailing the acceptance, transmission, and delivery/processing of voice information, text, images, sounds, or other electronic messages from other Internet users for six months inside Russian borders (See Section 3, Article 10.1 in Federal Law 149-FZ, dated July 27th, 2006, entitled "On information, information technologies, and protecting data.").

An additional obligation borne by Internet information dissemination organizers is registering in the national register by submitting notification to Roskomnadzor and cooperating with Russian law enforcement agencies. Non-compliance with requirements outlined in counterterrorism amendments that were introduced in 2014 can result in both access being blocked to the Internet resource (See Article 15.4 in Federal Law 149-FZ, dated July 27th, 2006, entitled "On information, information technologies, and protecting data.") and administrative liability (See Article 13.31 in the Russian Federation Code of Administrative Offenses) that can only be disputed through the courts. ↘

ПРЕСС-РЕЛИЗЫ

ВСЕРОССИЙСКАЯ
КОНФЕРЕНЦИЯ
ДЛЯ БЮДЖЕТНЫХ
УЧРЕЖДЕНИЙ

В Москве 16–17 ноября состоится Всероссийская конференция «Учет и отчетность, правовые и финансовые вопросы деятельности бюджетных, казенных и автономных учреждений», организатором которой выступила компания «Гарант».

В программе:

- учет и отчетность в госсекторе: федеральные стандарты, бюджетная классификация, подготовка отчетности за 2017 год;
- внутренний и внешний государственный (муниципальный) финансовый контроль: проблемы, перспективы развития нормативной базы;
- практика применения КоАП РФ в части нарушений в финансово-бюджетной сфере;
- типичные ошибки в бухгалтерской (бюджетной) отчетности. Анализ практики привлечения к административной ответственности за нарушение требований к учету и отчетности;
- НДС/П: сложные вопросы;
- практика реализации Федерального закона от 08.05.2010 № 83-ФЗ, планирование финансово-хозяйственной деятельности государственных (муниципальных) учреждений.

Возможно посмотреть прямую трансляцию.

Подробнее о конференции и об условиях участия: www.gos.garant.ru/.

SKOLKOVO LEGALTECH
ИЩЕТ ЛИДЕРА

С 1 сентября по 20 октября 2017 года осуществляется сбор заявок на участие в Skolkovo Legaltech Leader – конкурсе на звание самого технологичного и эффективного правового департамента или юридической компании в области автоматизации процессов.

Конкурс проходит в рамках Skolkovo LegalTech – крупнейшей в России и СНГ конференции по современным технологиям и проектам LegalTech для юристов.

Основной целью премии Skolkovo Legaltech Leader является выделение наиболее интересных проектов правовых департаментов и юридических подразделений, показавших отличные результаты в оптимизации процессов, эффективном внедрении технологических решений, автоматизации юридической работы в целом и отдельных направлений деятельности. «Руководители юридических служб все чаще стали думать об эффективности. Какой КРП у юристов? Равномерна ли нагрузка? Как оценить результаты работы? Как измерить успех юридической функции? И это можно сделать, внедрив технологии в работу юристов», – отмечает А. Пелевин, CEO & Founder «Право.ру».

Принять участие в конкурсе лидеров Legaltech могут российские юридические компании, правовые департаменты и юридические подразделения, готовые поделиться своими успешными результатами и показателями эффективности внедрения IT-решений с членами экспертного совета. В жюри войдут ведущие специалисты в области права, информационных технологий и смежных областей. Экспертный совет выберет лучшую юридическую компанию и правовой департамент в области внедрения технологических решений и автоматизации работы юристов. Официальная церемония награждения состоится на конференции Skolkovo LegalTech 1 декабря 2017 года. Организаторы премии: «Право.ру» и Инновационный центр «Сколково». Подать заявку на участие в конкурсе: legaltechleader.pravo.ru. Подробнее: legaltech.sk.ru.

