

**By the Judgement of 24 July 2020 No. 40-II the Constitutional Court of the Russian Federation appraised constitutionality of Article 1515, para. 4, subpara. 2 of the Civil Code of the Russian Federation.**

The challenged provision was the subject of consideration to the extent that it stipulates the limits of the court's powers in case of application of liability measures for violation of the exclusive right to a trademark by an individual entrepreneur in his entrepreneurial activity, if the right holder uses as a means of protection the demand to pay compensation in double size of the price of the right to use the trademark, determined on the basis of the price which, under comparable circumstances, is usually charged for the legitimate use of the trademark.

The Constitutional Court recognised the challenged provision as inconsistent with the Constitution of the Russian Federation to the extent that it, in systemic connection with the general provisions of the Civil Code of the Russian Federation on the protection of exclusive rights, including para. 3 of its Article 1252, does not allow the court in the above situation to reduce (taking into account the factual circumstances of a particular case) the total amount of compensation if this amount is many times higher than the amount of losses caused to the right holder (despite the fact that the losses can be calculated with a reasonable degree of certainty, and their excess must be proved by the defendant) and if, in such a situation, the circumstances of a particular case indicate, in particular, that the offense was committed by an individual entrepreneur for the first time and that the use of intellectual property objects (the rights to which belong to other persons) in violation of these rights was not an essential part of his entrepreneurial activity and was not rude.

The Constitutional Court also established that, pending the introduction of relevant amendments to the civil legislation, the courts cannot be deprived of the opportunity to take into account all the circumstances significant for the case, including the nature of the violation committed and the difficult financial situation of the defendant, and, if there is a corresponding application from the defendant, reduce the amount of compensation below the amount established by Article 1515, para. 4, subpara. 2 of the Civil Code of the Russian Federation. At the same time, the amount of such compensation may be reduced by the court by no more than half (i.e. it cannot be less than the value of the right to use the trademark). Moreover, a decrease in the amount of compensation for violation of an exclusive right cannot be substituted for both the establishment of the circumstances of the case under consideration by the court, and its examination of the evidence relating

to the violation and the conditions for the lawful use of the trademark, the value of which the plaintiff refers to.