

**By the Judgement of 14 December 2023 No.57-II, the Constitutional Court assessed constitutionality of Article 1252 (item 3) and Article 1515 (sub-item 2 of item 4) of the Civil Code of the Russian Federation**

These legal provisions were the subject of consideration since they serve as a basis for resolving the issue of collecting compensation for violation of the exclusive right to a trademark in double amount of the goods price on which the trademark is unlawfully placed, if earlier, at the request of another copyright holder, compensation was collected from the infringer in connection with the placement of the same mark on the product for violation of the exclusive right to a confusingly similar trademark, calculated at twice the value of the same goods, including in the case when the copyright holders are affiliated persons.

The contested legal provisions were found to be inconsistent with the Constitution to the extent that they do not allow to courts to reduce the amount of compensation or to refuse it in the mentioned circumstances.

Until appropriate changes are made, the courts, when considering such cases cannot be deprived of the opportunity to take into account all the circumstances of the case, including the nature of the violation and its consequences for the rightholder, the presence of affiliation of the rightholders, and if the amount of compensation contradicts (including taking into account the amount previously recovered from the claim of another copyright holder) the requirement of fairness and equality based at the the defendant's request to reduce the amount of compensation below the established amount in such a way to find a reasonable balance between the fairness (proportionality) of the total amount of compensation from the infringer and the comparability between each other received by the copyright holders, at least if they have rights to these means of individualization that are not related to their affiliation. If the court establishes that there is an affiliation between these rightholders for the purpose of using such copyright solely as a method of enrichment, court can refuse compensation. In any case, this does not exclude the recovery of damages from the infringer that can be calculated with a reasonable degree of reliability for each copyright holder.