Keeping GRATA’s practice of informing clients on important legal developments that might influence their business we would like to draw your attention to some important legal changes in the legislation of the Republic of Kazakhstan concerning intellectual property.

GRATA Law Firm is hereby presenting an overview on the changes in regulatory legal acts of the Republic of Kazakhstan regarding protection of intellectual property rights, which have been entered into force on 1 January 2015.

**Treaty Establishing the Eurasian Economic Union, dated 29 May 2014**

From 1 January 2015 the Treaty establishing the Eurasian Economic Union (hereinafter - the ‘EEU Treaty’), the parties to which are Russia, Kazakhstan, Belarus, Armenia and Kyrgyzstan has come into effect.

The EEU Treaty necessitates the cooperation of member-states in the area of intellectual property rights as well as protection of interests of copyright holders. The main aspects of cooperation include: protection of intellectual property rights on the Internet; protection of intellectual property rights by the customs authorities through entering information into the Unified Customs Register; and coordination of activities for combating against counterfeit products.

The EEU Treaty also introduces a registration system for Eurasian trademarks and Eurasian appellations of origin. Legal protection will be granted to trademarks/service marks of the Union throughout the territory of all member-states. The Register of Eurasian trademarks, as well as the Register of Eurasian appellations of origin shall be kept jointly by the relevant trademark authorities of member-states.

More specific provisions regulating intellectual property rights are provided in the Protocol on the Security and Protection of Intellectual Property
Rights (Appendix 26 to the EEU Treaty). In the area of protection of intellectual property rights, the Union adheres to the regional principle of exhaustion of rights. The regional principle of exhaustion of rights provides that trademark rights are deemed exhausted in the territory of the EEU when the goods are entered in circulation by the trademark owner or an authorised representative thereof within the territory of an EEU member-state.


Prior to the moratorium on inspections of small and medium-sized business entities introduced on 2 April 2014 in accordance with Presidential Decree ‘On Fundamental Measures to Improve Conditions for the Development of Business Activities’ No. 757, dated 27 February 2014, administrative liability was the most common form of responsibility for infringement of intellectual property rights. From 1 January 2015, the moratorium terminated, whereby the right holders again got the opportunity to protect their intellectual property rights in administrative and legal procedure being more efficient and time saving.

We also draw your attention to the Law of the Republic of Kazakhstan No. 236-V ‘On the Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Legislation on Administrative Offenses’ adopted on 5 July 2014, which also covers the issues on protection of intellectual property rights.

Please note that the legislator excluded administrative liability for infringements of rights for inventions, utility models, industrial designs, selection achievements, topology of integrated circuits (Article 128 of the Administrative Code, previous version), as well as for infringements of copyrights and(or) related rights (Article 129 of the Administrative Code, previous version). Previously, the Law of the Republic of Kazakhstan No. 227-V, dated 7 March 2014 ‘On the Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan on Improvement of the Criminal Law’, such infringements were classified as a criminal misconduct (Articles 198, 199 of the Criminal Code of the Republic Kazakhstan, dated 3 July 2014, No. 226-V).

Besides, the changes have affected punitive sanctions for administrative violations. First, fines have dependant on the category of the business entity, second, the previous maximum and minimum fine limits have been replaced with the maximum limit only. For example, if the illegal use of a trademark, service mark, appellation of origin or brand name (Article 158 of the Administrative Code) was previously subject to a fine on legal entities - from 50 to 100 monthly calculation index (hereinafter - MCI), then from 1 January 2015, fines are imposed on small business entities in the amount of 40 MCI, on medium business entities - 50 MCI, and on large business entities - 100 MCI.

Similar changes were made to the sanctions for unfair competition (Article 163 of the Administrative Code), which includes:
- unauthorised use of trademarks, packaging;
- unauthorised use of goods of other producer;
- copying of appearance of a product;
- sale of goods with providing unreliable information to the consumer concerning the nature, method and place of production, consumer characteristics, quality and quantity of goods and (or) its producers.

Detailed information on the amount of fines for administrative violations under the current Administrative Code is given in the table below.
From 1 January 2015, besides judicial authorities administrative proceedings may be also initiated by the state revenue authorities in accordance with Article 158 of the Administrative Code. Now, if the state revenue authorities find signs of infringement of intellectual property rights, they can initiate administrative proceedings and draft protocols on administrative infringement in relation to the suspended product. Previously, only the judiciary and financial police authorities had the right to initiate administrative cases. In this regard, the documents of justice/financial police on arrest of goods and/or administrative court ruling on the confiscation of the goods to customs authorities were to be submitted to the customs authorities, since before the enactment of a new Administrative Code, the customs authorities might only record the fact that goods of parallel (gray) imports or counterfeit goods crossing the border.

### Criminal Code of the Republic of Kazakhstan, dated 3 July 2014, No. 226-V

As noted above, from 1 January 2015 the Criminal Code of the Republic of Kazakhstan (hereinafter – the 'Criminal Code') introduces a consent such as ‘criminal misconduct’. Criminal misconduct will be determined by two criteria: a social danger of committed act and a punishment. The punishment for criminal misconduct is provided in the form of fines and administrative arrest. Articles concerning infringements of the rights for inventions, utility models, industrial designs, selection achievements, topology of integrated circuits and infringements of copyrights and(or) related rights, which were excluded from the Administrative Code, are classified in the Criminal Code as a criminal misconduct. When the previous Administrative Code provided for fines only, then from 1 January 2015, the responsibility for the above two misconducts is provided by the Criminal Code as fines or correctional works/community service.

Criminal liability in Kazakhstan for illegal use of a trademark (Article 222 of the Criminal Code) arises only if such actions contain elements of a criminal offense. In accordance with Article 222 of the Criminal Code 'Unlawful Use of a Trademark', qualifying features are repeated nature and major damage. Major damage is determined in Article 3.38 of the Criminal Code in the amount of over 100 MCI caused by an individual, and over 1000 MCI caused by a legal entity.

From 1 January 2015, both the Criminal Code and the Administrative Code establish fines at a maximum rate only and dependant on the frequency of the committed crimes (see the table below).

<table>
<thead>
<tr>
<th>Violation (Offence)</th>
<th>Fine Size</th>
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<tbody>
<tr>
<td></td>
<td>individuals</td>
</tr>
<tr>
<td>Illegal use of other’s trademark, service mark, appellation of origin or trade name (Article 158 of the Administrative Code)</td>
<td>30 MCI</td>
</tr>
<tr>
<td>Unfair competition (Article 163 of the Administrative Code)</td>
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<tr>
<td>Unfair competition committed repeatedly within a year after the imposition of an administrative fine (Article 163 of the Administrative Code)</td>
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</tr>
</tbody>
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1 Resolution of the Government of the Republic of Kazakhstan, dated 14 August 2014, No. 933
2 Article 804 of the Administrative Code
3 From 1 January 2015 1 MCI equals to 1,982 KZT
<table>
<thead>
<tr>
<th>Violation</th>
<th>Fines</th>
<th>Correctional Works</th>
<th>Community Service</th>
<th>Arrest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infringement of copyright and(or) related rights</td>
<td>100 MCI</td>
<td>Involvement to labour at a workplace and a deduction from earnings of monetary penalties to the Treasury until the amount reaches 100 MCI</td>
<td>up to 120 hours</td>
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</tr>
<tr>
<td>The same acts, if committed in a significant amount, or caused significant damage or significant harm to the rights or legitimate interests of the author or copyright holder or committed repeatedly</td>
<td>300 MCI</td>
<td>Involvement to labour at a workplace and a deduction from earnings of monetary penalties to the Treasury until the amount reaches 300 MCI</td>
<td>up to 240 hours</td>
<td>up to 75 days</td>
</tr>
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<td>Unlawful use of a trademark</td>
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As for the powers of law enforcement authorities, a pre-trial investigation of criminal misconduct provided under Articles 198, 199 of the Criminal Code is performed not only by the bodies of internal affairs, but also by a new structural division of the State Revenue Committee MF RK - Economic Investigation Service. For the criminal misconduct that falls under Article 222 of the Criminal Code, the preliminary investigation in the protocol form is also performed by the Economic Investigation Service initiated the criminal investigation.
We hope this review will be useful for you. If you have any questions, please let us know we will be happy to assist.

Best Regards,

Intellectual Property Department
GRATA Law firm

This information is provided for your convenience and does not constitute legal advice. This information should not be acted upon in any specific situation without appropriate legal advice.