

Judicial practice on the application of RF Law on mass media is now more streamlined

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Goltsblat BLP advises that Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 "On application of the Russian Federation Law 'On Mass Media' by courts", dated 15 June 2010 (hereinafter "the Resolution" and "the Law") streamlining a number of rules applying to mass media cases has been adopted.

Developments deserving special attention include:

1. *The editorial team of a website registered as a mass medium shall not be liable for readers' comments posted on the site without prior editing* (clause 5, part 1, article 57 of the Law; clause 23 of the Resolution). Comments left by readers of website materials shall be treated as copyrighted work published without any prior recording. At the same time, if Roskomnadzor comes up with a statement that comments posted on a website constitute an abuse of freedom of mass media, the editorial team may either remove or edit them. Otherwise, if website users can still access the comments, the liability exemption will not apply.

The editorial body is not, therefore, obliged to pre-edit readers' comments but is responsible for their content if, given the above Roskomnadzor statement, the comments were not removed or edited.

2. According to clause 10 of the Resolution, *it is unlawful to refuse to register a mass medium on the grounds that its name does not correspond to reality*. Names should not be judged in terms of correspondence to reality because they are used as a means of identification on the mass media market. A name may only be evaluated to determine whether or not it constitutes an abuse of freedom of mass media in the context of part 1, article 4 of the Law.

3. Another important point is the opinion on possible refusal to register a mass medium pursuant to clause 4, part 1, article 13 of the Law, i.e., if a different mass medium has already been registered under the same name, with the same form of distributing mass information. Clause 10 of the Resolution states that, according to the Law, the same name means a name that literally coincides with but is not confusingly similar to a previously registered one. This means that *registering authorities may not refuse to register a mass medium whose name is similar but not identical to an already existing one*. The problem of misrepresentation to consumers should be resolved in the manner envisaged in the effective legislation (by applying to antimonopoly authorities or a court).

4. In connection with the above, clause 10 of the Resolution accentuates *the difference between the form and type of mass information*. For example, a printed periodical, a radio, television or video programme, or a newsreel constitute different forms of mass media, whereas a newspaper, magazine, collection, almanac or bulletin represent various types of the same form of mass media – the printed periodical. That means, for instance, that a newspaper and almanac with the same names cannot coexist.

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5. Clause 6 of the Resolution pertaining to application of article 27 of the Law to websites clarifies that, under the effective legislation, websites are not subject to compulsory registration as mass media. At the same time, *if a website is registered at the founder's discretion the requirement to include an impressum (editorial information) specifying the name of the registering authority and registration number, shall apply*. If this requirement is not met, the persons disseminating mass information via a website registered as a mass medium may be held liable for violation of the regulations on disclosure of editorial information pertaining to mass media.

6. The Resolution also touches upon application of the advertising legislation to mass media activities. Pursuant to clause 6 of the Resolution, *the provisions of the Federal Law "On advertising" regarding television and radio advertising do not apply to websites*. So, if a conflict arises, articles 14 and 15 of the above Federal Law will be inapplicable. Nevertheless, *with regard to websites registered as mass media the general rules on advertising in mass media set by the Federal Law "On advertising" shall apply in consideration of the specifics of information dissemination via telecommunication networks*. Specifically, it is important to bear in mind the provisions of article 5 of the Federal Law with regard to advertising activities conducted on websites with the official status of mass media.