

TYPES OF INTELLECTUAL PROPERTY RIGHTS USED IN FRANCHISING AGREEMENTS IN RUSSIA



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> 22

countries of presence



> 31

years of experience



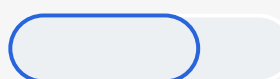
> 250

professionals



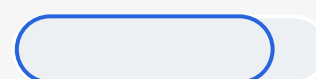
> 15

practice areas



7 700+

clients



15 000+

projects

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◀ INTRODUCTION

- ▶ Franchising is a successful business model that allows companies to expand their market presence while maintaining control over the quality of the products or services they offer.

A commercial concession agreement, which is exactly what a franchise is called in Russian law, is an agreement under which a set of rights to intellectual property objects is transferred, which is the basis of such interaction between the franchisor and the franchisee. In Russia, the most common of them are trademarks, patents and copyrights, know-how.

**Let's move
on to each
of them.**

TRADEMARKS

A trademark is a unique mark or symbol that identifies and distinguishes the goods or services of one manufacturer from those of another.

The right to a trademark arises from the right holder from the moment of its registration by Rospatent. Valid for 10 years, while protection can be extended an unlimited number of times, also for 10 years. The right to a trademark is valid on the territory of the entire Russian Federation, and can be extended beyond its borders (according to the Madrid system).

In addition to the possibility to conclude a commercial concession agreement, registration of trademarks has a lot of advantages, such as: the right holder acquires the exclusive right to the designation on the territory of Russia (that is, no one will be able to use the registered logo); the right holder receives protection from unfair competition; after registering a trademark, the right holder acquires the tools to hold accountable those who violated his rights; trademarks are a separate tangible asset that can be put on the balance sheet of an organization. In addition, the right holder acquires the opportunity to use contractual institutions for the transfer of rights: license agreements, commercial concession agreements, and others.



Please note that trademarks are a key element of any franchise agreement. In other words, a commercial concession agreement cannot be considered as such if it does not include trademark rights.

In the context of franchising, the franchisor grants the franchisee the right to use its trademarks. This allows franchisees to enjoy brand recognition and reputation, which is one of the main reasons why franchising is so attractive as a business model.

- ☰ Please note that when registering an agreement with Rospatent, the Office pays special attention to trademarks. So separately attention is drawn to the territory of use of the trademark, the scope and purpose of use, the possibility of its transfer to third parties.

PATENTS



Patents, as a form of intellectual property, grant the exclusive right to invent or improve a product or process.

Patents can be for an invention (a technical solution in any field related to a product (in particular, a device, a substance, a strain of a microorganism, a plant or animal cell culture) or a method (the process of performing actions on a material object using material means), including including the use of the product or method for a specific purpose); utility model (technical solution related to the device); on an industrial design (decision of the appearance of the product).

If the franchisor owns patents that are important to its business, it may assign the rights to use those patents to its franchisees as part of a franchise agreement.



Please also note that the right to a patent arises only after state registration. Valid for a certain amount of time (depending on the type of patent) and requires maintenance. Therefore, before concluding a commercial concession agreement, it is quite important to check the validity of the patent, it must be relevant at the time of the conclusion of the agreement.

In addition, the legal nature of a patent implies that the “Owner” and the “Author” of a patent may be different persons. In order to minimize risks, before concluding an agreement, attention should be paid to the regulation of relations between these persons.

Copyrights protect original works of literature, art, music, software, and other forms of creativity.



In the context of franchising, copyright can refer to various elements: logos, packaging designs, promotional materials, documentation, software, and other materials that can be used to start a business.

One of the main advantages of franchising copyright is the ability to use ready-made and verified copyright objects. This allows the franchisee to save time and resources on developing their own copyright objects.

- ⚠ However, before franchising copyrights, you need to make sure that the franchisee will use these rights only as agreed between the parties.
- ⚠ It is also necessary to make sure that the franchisee will follow all the rules for using copyright objects in order to avoid possible sanctions from the copyright holder.

Know-how is information of any nature (industrial, technical, economic, organizational, and others) about the results of intellectual activity that has actual or potential commercial value due to their unknown to third parties, if third parties do not have free access to such information on a legal basis and the owner of such information takes reasonable measures to maintain its confidentiality, including by introducing a trade secret regime.

In Russian legislation, know-how is more often referred to as a secret of production, while the range of information that can be considered as such is not specifically limited. Know-how may include unique production methods, technologies, recipes, sales and marketing strategies, and other proprietary information, but which must not be publicly available.

Proper registration of a production secret on its own has a number of advantages for business: keeping information valuable for business secret from competitors, the possibility of holding violators accountable, obtaining grants and funding, and, finally, monetization of information by transferring valuable information, including through the conclusion of commercial concession agreements .

In the context of franchising, know-how is an extremely valuable element of the agreement. It allows the franchisee to quickly launch into a new market, bypassing many of the difficulties that he might face when trying to start a business from scratch.

Know-how transfer usually occurs at the beginning of the relationship between the franchisor and the franchisee and includes training, advice and the provision of specific materials such as operating manuals.

- ✓ Training can take place both at the place of the franchisor and at the location of the franchisee's business . This usually includes all aspects of running a business, from management to sales . In practice, this condition is one of the key when concluding a commercial concession agreement.

Note that consultations can be provided throughout the duration of the franchise agreement. The franchisor, as a carrier of information valuable to the business, can provide ongoing support in matters of management, marketing, personnel management and other aspects of the business.

The transfer of know-how can be done by providing an operating manual - documents that contain detailed instructions for running a business. They can include everything from management principles to customer service standards and marketing strategies.

Franchise agreements in Russia use different types of intellectual property rights. These rights are granted to the franchisee as part of the agreement and allow the franchisee to use the unique features of the franchisor's brand and business model.

Thus, the protection and management of intellectual property is an important component of the success of franchising. Franchisors must be mindful of their obligations to protect these rights in order to provide their brand with maximum protection and market exposure.



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