

Legislative Tracking



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16 January 2016

E-justice: catalogue of arbitrational cases

<http://kad.arbitr.ru/Card/837554e8-24a2-4cde-a55f-babf9107c22f>

Supreme Court declines to consider Oriflame Cosmetics, LLC's appeal of lower court decision on the deduction of licensing payments

The Russian Supreme Court ruling in the case of Oriflame Cosmetics, LLC has been published. The ruling, No. [305-KG15-11546](#) of 14 January 2016 on case No. A40-138879/2014, resolved a dispute between Oriflame Cosmetics, LLC and the tax authorities concerning the legality of the deduction of license payments and the corresponding recovery of VAT for the use of trademarks and other intellectual property items according to a franchise agreement with a foreign affiliate.

The tax authorities disputed the deduction of licence payments on the basis that the taxpayer's activities on Russian territory cannot be considered independent and are in fact the activities of the foreign affiliate's permanent establishment for which the obligation to make licence payments does not arise.

The Supreme Court declined to pass the appeal to the Court's Chamber for Commercial Disputes for consideration. However, the wording of the Court's Ruling has a softer character than those of the lower courts. According to the Russian Supreme Court, the court rulings were consistent with the approaches set out in Plenum of the Russian Supreme Commercial Court Resolution No. 53 "On the Evaluation of the Grounds for Taxpayers' Receipt of Preferential Tax Terms by Commercial Courts" of 12 December 2006, which gave the taxpayer the burden of demonstrating sound economic reasons for concluding a franchise agreement, as well as explaining the reasons the license payments were established at the particular amount. In this case, the Court ruled, the taxpayer did not submit the necessary and sufficient explanations and proof. The Court's Ruling does not contain any direct indication that the activities of the Russian daughter company of the foreign organization constitute the formation of a permanent establishment of the foreign organization in Russia.

The Supreme Court also effectively recognized the right of a tax agent to recover overpaid VAT, declining to satisfy the claim regarding additional VAT charges paid by the company as a tax agent because a mechanism exists in the legislation on taxes and levies that allows a tax agent to recover tax overpaid to the budget.

The total amount of additional charges exceeded RUB 580 million.

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