



LENINGRAD OFAS

Workshop on “Observing the antimonopoly law in industry”

4-8 April 2016

Kazan, Russia



General characteristics of the Leningrad region

- Area – 83,900 km²
- Population - 1.778 million
- Borders with – Finland, Estonia
- Neighbouring provinces of Russia –
the Republic of Karelia, Vologda, Novgorod,
Pskov regions, St.Petersburg



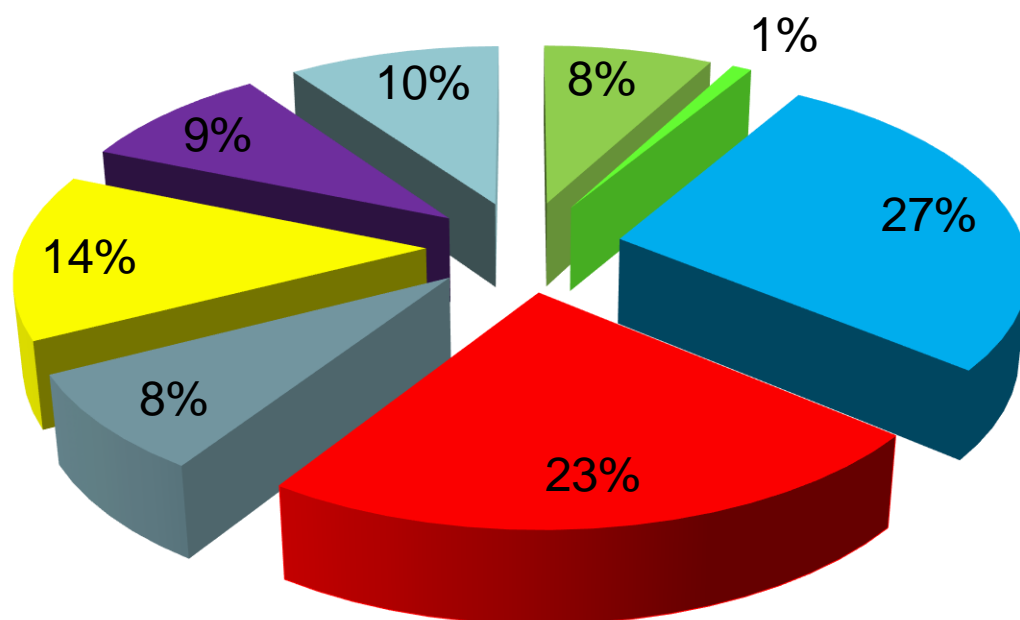
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Basic macro-economic indices of the Leningrad region

- GRP ~ 713,915 million RUB (data for 2014)
- GRP per capita ~ 420,000 RUB
- Industrial capacity: the share of industry workers in the total number of the employed – around 29%.



GRP sectoral structure for the Leningrad region

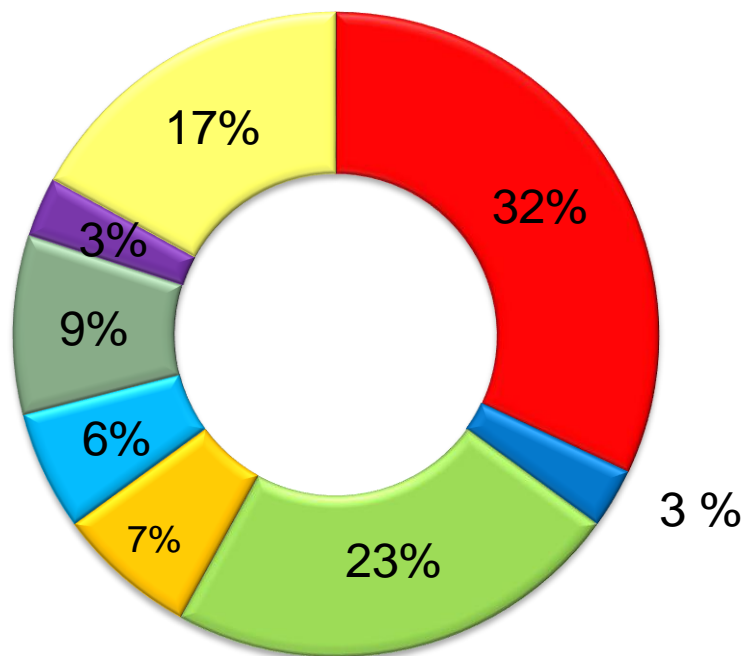


- Сельское хозяйство, охота, лесное хозяйство, рыболовство, рыбоводство - 8%
- добыча полезных ископаемых - 1%
- обрабатывающие производства - 27%
- производство и распределение электроэнергии, газа, воды, деятельность в области транспорта и связи, предоставление прочих коммунальных, социальных и персональных услуг - 23%
- строительство - 8%
- оптовая и розничная торговля ; ремонт автотранспортных средств, мотоциклов, бытовых изделий и предметов личного пользования, гостиницы и рестораны - 14%
- операции с недвижимым имуществом, аренда и предоставление услуг, финансовая деятельность - 9%
- государственное управление и обеспечение военной безопасности, обязательное социальное обеспечени, образование, здравоохранение - 10%



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The structure of manufacturing activities in the Leningrad region



■ производство пищевых продуктов, включая напитки и табака - 32%

■ обработка древесины и производство изделий из дерева - 3%

■ производство кокса и нефтепродуктов - 23%

■ химическое производство - 7%

■ производство резиновых и пластмассовых изделий - 6%

■ производство прочих неметаллических минеральных продуктов - 9%

■ металлическое производство и производство готовых металлических изделий - 3%

■ производство машин, оборудования, транспортных средств - 17%



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The most developed industry sectors

- Oil refining (the largest company – “Kirishinefteorgsintez” Production Association” Ltd.)
- Chemical Industry (“Fosforit” Production Group” Ltd., “Volkhov Chemical Works” CJSC)
- Tyre and rubber industry (“Nokian Tyres” Ltd.)
- Shipbuilding (the largest company – “Vyborg Shipyard” PJSC)
- Car manufacturing and machine-building (“Tikhvin Railway Car Building Works” JSC, “Ford Motor Company” CJSC, “Ariston Termo Rus” Ltd.)

Antimonopoly enforcement practice in industry: No. 6-02-10081-A/15 case

- Claimant - “Kerama Marazzi” Ltd.
(one of the top five ceramic tile manufacturers in Russia)
- Respondent - “Nefrit Keramika” CJSC
(a ceramic tile manufacturer)
- Alleged violation: **Article 14.5 of No.135-FZ Federal Law: prohibits unfair competition associated with results of intellectual activity**

Case circumstances

The Claimant holds the exclusive rights for the design of “Loise” tile (developed by STILE GRAFICO snc di Guerzonu Loredana e C. of Italy)

The Claimant had a contract with “Razvitie territorii “Peterburgskaya nedvizhimist “ [“Area Development “Petersburg Real Estate”] CJSC (a member of the “Setl Group” Financial-and-industrial Holding) for supplying ceramic tile, including “Loise”, for one of the 12 start-up facilities of “London” Housing Complex and agreed upon signing appendices for each separate start-up facility of the Construction project at the fine finish stage.

Supplying tiles to the 11 start-up facility of the Construction project, the Claimant discovered ceramic tiles visually similar to the “Loise” series. According to the packaging label, the tile in question was made by “Nefrit-Keramika” OJSC as “Kenzo 2”. It was used for interior finish at the Construction project.

Comparing the tiles of the Claimant and the Respondent

Tiles of
“Kerama-
Marazzi” Ltd. -
the Claimant



Tiles of “Nefrit-
Keramika”
OJSC – the
Respondent



Comparing the tiles of the Claimant and the Respondent

Tiles of
“Kerama-
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OJSC – the
Respondent

Parties' cases and arguments

The Claimant (“Kerama Marazzi” Ltd.)

- “Nefrit Keramika” Ltd. used the “Loise” design of the tiles manufactured by “Kerama Marazzi” Ltd., owned by the Claimant in accord with No. 01-12-2012/SKG Service Contract of 28 December 2012 and No. 01-12-2012/SKG Agreement for transferring exclusive rights of 28 December 2012;
- The copyright of the Claimant is a graphic composition image: a pattern in the form of stylized depiction of leaves and flowers on stems in gray, beige and dark red against the light beige background with subtle irregular beige stripes;
- Article 2 of the Berne Convention for the Protection of Literary and Artistic Works of 09.09.1886 (the version of 28.09.1979) specifies that the term “Literary and Artistic Works” applies, in particular, to any products in the field of literature, science and art, regardless of the form of expression, including: books, booklets and other written works; drawings, paintings, works of architecture, sculpture, engraving and lithography; applied art works; illustrations, maps, plans, sketches and plastic works related to geography, topography, architecture or sciences
- Under Clause 4 Article 1259 of the Civil Code of the Russian Federation, registration of pieces of work or observing any formalities are not required to originate and protect the author’s right;
- The tile in question was exhibited at Mosbuild 2014 International Exhibition, where the Respondent also participated.

Parties' cases and arguments

The Respondent (“Nefrit-Keramika” OJSC

- The basic design of “Kenzo” tile, manufactured by “Nefrit-Keramika” OJSC, catalogue No. 00-00-1-09-00-21-24x40 (background tile, primary tile, companion tile) was developed and presented in 2009 in the product catalogue of “Nefrit-Keramika” OJSC (No. 99-00-21-54) and is a separate design object, on which later, in April 2015, upon a request from a developer - “Area Development “Petersburg Real Estate” CJSC, a pattern different from the “Kenzo” collection was put. The design with a changed pattern was named “Kenzo 2” (catalogue No. 00-00-1-09-00-21-131, design passport of 09.04.2015).
- “Loise” ceramic tile is not registered by the Claimant as a design solution; thus, the tile design is not subject to protection.
- When “KM Group” OJSC was reorganized in “Kerama Marazzi” Ltd., the Claimant lost the intellectual right for the conceptual developments of the product appearance since these data probably are not included in the Transfer Deed.

Evidence

- Notary Protocol of Inspection and Examination of Material Evidence of 20 October 2015
- Notary Protocol of Site Inspection
- Expert opinion with regard to similarity between the products of “Nefrit-Keramika” OJSC and the products of “Kerama Marazzi” Ltd. of 19 November 2015 drawn up by General Director of “Volinik” Patent Bureau” Ltd., No. 369 RF patent counsel M. Fedotova
- Leningrad OFAS survey of economic entities operating on the market of ceramic tile production
- Legal analysis presented by the parties, documentation.

Expert opinion

Expert conclusions

- The design of “Kenzo 2” tile produced by “Nefrit-Keramika” OJSC is not simply similar but identical with the “Loise” tile design manufactured by “Kerama Marazzi” Ltd.
- The pattern differences between the tiles of “Kerama Marazzi” Ltd. and “Nefrit-Keramika” OJSC are 2.6% of the overall tile area
- Using “Loise” tile design (“Kerama Marazzi” Ltd.) by “Nefrit-Keramika” OJSC directly violates the author’s rights.

The findings of the survey on the companies operating on the market of ceramic tile manufacturing

- **“Keramin St Petersburg” CJSC:** ceramic tile design is not only a graphic image. Primary (background / main) tiles do not have a separate design, tiles without graphics and basic graphics do not have a separate design.
- **“Ceramic Granite Works” CJSC:** considers that ceramic tile design is a graphic image on the main (primary / background) tiles. Most of the main (primary / background) tiles have separate design. Tiles without basic graphics and graphic image do not have a separate design.
- **“Lasselsberger” Ltd.:** believes that ceramic tile design is a graphic image on the main (primary) tile. Primary tiles can have or not have a separate design. Tiles without basic graphics and graphic image can have or not have a separate design.

Elements of unfair competition

- ✓ “Kenzo 2” ceramic tile is designed by (“Nefrit-Keramika” OJSC) upon a request from “AD “Petersburg Real Estate” CJSC while both the Claimant and the Respondent have valid contracts with the Developer for supplying products
- ✓ The Respondent, being a competitor of “Kerama Marazzi” Ltd., also took part in Mosbuild 2014 exhibition, where “Loise” tile (“Kerama Marazzi” Ltd.) was also exhibited. Making public the “Loise” tile design is also confirmed by the product catalogue of the Claimant for 2014
- ✓ The Respondent is a person who possesses information that the analyzed design as a copyright object belongs to the Claimant, particularly, because the Claimant supplied “Loise” tiles (with the trademark of “Kerama Marazzi” Ltd.) to the Developer before “AD “Petersburg Real Estate” CJSC asked to change the pattern and to design “Kenzo 2”
- ✓ Apartments in the Construction project are sold with interior finish. If there are any issues with the quality of “Kenzo 2” tiles (“Nefrit-Keramika” OJSC) the end consumers are unable to obtain information about the tile manufacturer referring to the trademark because it is located on the back side of the tiles and typically becomes illegible when tiles are torn down.

Conclusions reached by Leningrad OFAS

- The Commission concluded that ceramic tile design means the totality of all elements attainable to design as a copyright object, in spite of the fact that ceramic tiles with basic (primary, background) design may or may not have a separate design
- The subject matter of the analyzed exclusive right is tile design, as a copyright object, made available to public in 2014 product catalogue and at Mosbuild 2014 exhibition on a material object – ceramic tiles, as well as graphics and drawings in a material form – design
- Legal protection covers the results of intellectual activity when they are made available to the public (Article 1339 of the Civil Code of the Russian Federation, Clause 1 Part 1 Article 1338 of the Civil Code).

Conclusions by Leningrad OFAS Commission

- Making changes to the “Kenzo” collection, and manufacturing and selling “Kenzo 2” ceramic tiles, the Respondent unlawfully used the following objects of the Claimant’s exclusive right:
 - Graphics used developing “Kenzo 2” for the tiles with the basic “Kenzo” design, identical with the graphics on “Loise” tiles
 - Colored drawings put on the tile with the basic “Kenzo” design” in the course of developing “Kenzo 2”, identical with the “Loise” tile pattern
 - Design as a copyright object that is identical to the “Loise” tile design.



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Case stage

At the time of making the report, the Commission adjourned until 20.04.2016 to send a determination on the case circumstances to the parties to the case.



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Семинар «Соблюдение Антимонопольного
Законодательства в Сфере Промышленности»



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