

## CASE NOTE: RUSSIAN FEDERATION

CASE CITATION NO:  
**A40-19739/08-10-141**

NAME AND LEVEL OF COURT:  
**Arbitrazh Court of Moscow**

DATE OF DECISION:  
**25 June 2008**

MEMBER OF THE COURT:  
**Judge Ludmila V. Pulova**

### *Digital evidence; status of scanned copies as written evidence; contractual agreement for e-mail correspondence*

#### **Summary**

The Arbitrazh Court of Moscow accepted print-outs of e-mail correspondence as written evidence. In accordance with the provisions of article 161 of the Russian Civil Code, all contracts between the legal entities must be in writing. Article 452 further stipulates that all amendments to the contract shall be in the same form as the contract, unless otherwise provided by the law, contract or usage of trade. The general consequence for non-compliance with this requirement of form is that the contract cannot be enforced on the basis of oral evidence. However, under the provisions of article 162 of the Russian Civil Code, the parties may produce 'written and other evidence' to prove the existence and terms of a contract.

In July 2008 Media Planning Group (MPG) filed a claim with the Arbitrazh Court of Moscow against Meridian Plus (Meridian+) for agency fee and expenses to place advertisements on television. The parties entered into an agency agreement in 2007 whereby MPG undertook to place advertisements for and on behalf of Meridian+ in the mass media (television, newspapers, internet). The contract provided that the principal will separately confirm to the agent its consent to specific terms of advertising by commitment letters sent by e-mail. Meridian+ issued two such letters, confirming its consent to place advertisements on certain television channels and guaranteeing payments according to the relevant schedules.

During the hearing, MPG produced print-outs of the scanned commitment letters it received by e-mail. The letters were accompanied by affidavits sworn by MPG employees, who certified the receipt of the e-mails.

MPG further stated it could produce the original commitment letters as Microsoft Outlook files identifying the sender, addressee and time of receipt.

Meridian+ disputed the validity and admissibility of the letters, alleging that the evidence was unreliable: the documents were presented as uncertified copies; they did not bear an original manuscript signature or seal impression. However, when asked by the court if Meridian+ claimed the documents were forgeries, its representative gave no answer.

The court finally resolved that since the contract specifically provided for the commitment letters to be sent by e-mail, their form was in accordance with the agreement of the parties.

In September 2008, the Ninth Arbitrazh Court of Appeal upheld the judgment (Resolution of the 9th Arbitrazh Court of Appeal dated 15 September 2008 No. 09АП-10819/2008-ГК). The court quoted article 75(3) of the Arbitrazh Procedural Code, indicating that documents received by facsimile transmission, e-mail or other means of communication are admitted as written evidence if so prescribed by law or contract. The commitment letters were signed and sealed by the officers of Meridian+ and scanned copies of the letters were sent to MPG by e-mail in accordance with the clear terms of the agency contract.

In December 2008, the Federal Arbitrazh Court of Moscow region affirmed the resolution, stating that all evidence has been duly examined and every objection of Meridian+ had been addressed (Resolution of the Federal Arbitrazh Court of Moscow Region dated 18 December 2008 No. КГ-А40/11758-08).

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