江苏省知识产权和商标战略实施工作领导小组办公室

2023 Top 10 Typical IP Cases in Jiangsu Province

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江苏省知识产权十大典型案件

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General Office of Jiangsu Provincial Leading Group on the Implementation of Intellectual Property and Trademark Strategy

# 序言

2023 年，是全面贯彻党的二十大精神的开局之年，是疫情防控平稳转段、各项工作恢复发展的第一年，也是江苏知识产权事业发展史上具有里程碑意义的一年。全省知识产权工作坚持以习近平新时代中国特色社会主义思想为指导，全面贯彻党的二十大和二十届二中全会精神，认真落实省委、省政府和国家知识产权局工作部署要求，顺利实施“十四五”规划，纵深推进“五区五高”知识产权强省建设，为中国式现代化江苏新实践贡献知识产权力量。自中央开展知识产权保护工作检查考核以来，我省连续三年获评优秀等次，连续二年获得国务院督查激励表彰，知识产权综合实力继续保持全国前列。

2023 年，省知识产权和商标战略实施工作领导小组以及各成员单位各司其职，坚决扛起“走在前、做示范”重大使命，持续增强知识产权行政执法震慑效果和加大知识产权司法保护力度，协力构建江苏知识产权“大保护”格局。在行政执法方面，全省市场监管系统查处知识产权违法案件 3896 件，罚没款 7001.12 万元，其中商标违法案件 3378 件，罚没款 6670.58 万元，专利违法案件 515 件，罚没款 306.96 万元；全省版权、文旅系统查办侵权盗版案件 599 起，其中行政案件 223 起，刑事案件 95 起，调解案件 281 起；全省药监系统查处药品领域生产环节侵权假冒案件 666 件，货值金额 21676.15 万元，移送司法机关查办涉嫌犯罪案件 35 件；省林业局将打击制售假劣林草种苗和侵犯植物新品种权工作列入常规工作；南京海关等部门开展“铁拳”“青少年版权保护季”“剑网”“龙腾行动”“蓝网行动”“净网行动”等知识产权保护专项执法行动，严厉打击侵犯知识产权行为。在司法保护方面，全省法院新收知识产权案件 34505 件，共受理各类知识产权案件 39000 件，审结案件 33855 件，结收案比达 98.12%；全省检察机关受理审查逮捕侵犯知识产权犯罪 151 件 234 人，受理审查起诉侵犯知识产权犯罪 655 件 1860 人，受理民事检察监督案件 43 件，审结各类知识产权案件 763 件；全省公安部门共立案侦办侵犯知识产权领域犯罪案件 2058 起，破案 1628 起，抓获犯罪嫌疑人 5585 名，破获部督案件 30 起。

在第 24 个世界知识产权日来临之际，省知识产权和商标战略实施工作领导小组办公室从省法院、检察院、版权、公安、司法、市场监管、知识产权和南京海关等部门处理的诸多案件中遴选了 2023 年江苏省知识产权十大典型案件，供研究参考、指导工作。本次入选的十大典型案件涉及著作权、专利、商标、商业秘密、不正当竞争等领域，民事、行政、刑事案件兼备，其中有全国法院对侵害商业秘密行为判决最高赔偿额案件，目前国内查获规模最大的非法制造香烟注册商标标识案，滥用知识产权制度全方位“围追堵截”真正权利人不正当竞争案等，部分案件是新领域新业态下出现的新型侵权案件，在相关领域具有较强的代表性、典型性和指导性，为今后该类型案件的处理提供了思路和参考。

现将 2023 年江苏省知识产权十大典型案件汇编成册，以飨读者。

江苏省知识产权和商标战略实施工作领导小组办公室

2024 年 4 月

# PREFACE

2023 is the opening year for fully implementing the spirit of the 20th National Congress of the Communist Party of China (CPC), and the first year for stabilizing the national pandemic control and getting social development back on track. It is also a fruitful year for the development of Jiangsu intellectual property(IP).Jiangsu provincial IP authorities follow the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, and fully implement the spirit of the 20th National Congress of the CPC and the spirit of the second plenary session of the 20th Central Committee of the CPC, and carry out the requirements proposed at the provincial party committee, provincial government, and National Intellectual Property Administration. Specifically, they set in motion the "14th Five-year Plan" and press ahead with a goal of developing into an IP powerhouse in China, pulling their weight in exploring local ways to pave a Chinese path to modernization. Since the central government carried out inspection and assessment of IP protection work, our province has been rated excellent for three consecutive years, and has been recognized and awarded by the State Council for supervision and encouragement for two consecutive years. The comprehensive strength of IP continues to be at the forefront of the country.

In 2023, the Jiangsu Provincial Leading Group of IP and Trademark Strategy Implementation and various member organizations took on their own responsibilities and led from the front in beefing up administrative enforcement of IP laws and stepping up juridical protection of IPs, in a joint effort to create a favorable environment of "massive protection" of IPs. In administrative enforcement, the provincial market supervision system investigated and dealt with 3,896 cases of IP rights violations, with fines and forfeitures of RMB 70,011,200, including 3,378 cases of trademark violations with fines and forfeitures of RMB 66,705,800, and 515 cases of patent violations with fines and forfeitures of RMB 3,069,600. The provincial copyright and cultural and tourism systems investigated and handled 599 cases of copyright infringement and piracy, including 223 administrative cases, 95 criminal cases and 281 mediation cases. The provincial drug supervision system investigated and dealt with 666 cases of infringement and counterfeiting in the field of drug production, with a value of RMB 216,761,500, and transferred 35 suspected criminal cases to judiciary organs for investigation. The provincial Forestry Bureau puts the fight against the production and sale of fake and shoddy forest and grass seedlings and the infringement of new plant variety rights into regular work. Nanjing Customs and other departments waged a series of IP rights protection special actions, such as Iron Fist, Youth Copyright Protection Season, Sword Net, Flying Dragon, Blue Net, and Net Purifying to crack down on IP rights infringement.

With the 24th World Intellectual Property Day approaching, the Jiangsu Provincial Leading Group Office of IP and Trademark Strategy Implementation have selected 2023 top 10 typical IP cases handled by Jiangsu authorities such as the Jiangsu Higher People's Court, the Jiangsu Provincial People's Procuratorate, public security organs, judicial organs, market supervision administrations, and Nanjing Customs. These cases are used as a reference for research. The top 10 typical cases relate to fields of copyright, patent, trademark, trade secret, unfair competition, etc. There are civil, administrative, and criminal cases, including a case about the highest amount of compensation for infringement on trade secrets in China, a case about counterfeiting of registered cigarette trademark logos, which was the largest-ever case of its kind handled in China, and an unfair competition case in which the IP rights system was abused against rights holders.Some cases are new types of infringement cases emerging in new fields and new forms of business, which are strongly representative, typical, and instructive in related fields, providing ideas and references for handling this type of case in the future.

We hereby select the 2023 top 10 typical IP cases in Jiangsu for readers' reference purpose.

Office of the Jiangsu Provincial Leading Group of IP and Trademark Strategy Implementation

April 2024

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# 01 圣奥化学科技有限公司与陈某刚、运城晋腾化学科技有限公司侵害技术秘密纠纷案

## 案情介绍

“硝基苯法合成 RT 培司工艺”（以下简称为 RT 培司工艺）和“利用 RT 培司生产橡胶防老剂 4020 工艺”（以下简称为 4020 工艺）最早由山东圣奥化工股份有限公司（以下简称为山东圣奥）自主研发。后山东圣奥将该技术全部转让给圣奥化学科技有限公司（以下简称为圣奥公司），并由圣奥公司不断优化完善。2007 年至 2012 年期间，陈某刚与其实际控制的山西翔宇化工有限公司（以下简称为翔宇公司）等主体窃取圣奥公司涉案技术秘密，并利用涉案技术秘密改造、新建 RT 培司工艺和 4020 工艺防老剂生产线（以下简称为涉案生产线）。江苏省高级人民法院于 2018 年 12 月 28 日作出（2013）苏知刑终字第 0006 号刑事裁定书，认定陈某刚、翔宇公司非法窃取、利用圣奥公司所有的 RT 培司工艺、4020 工艺防老剂全套技术秘密，翔宇公司构成侵犯商业秘密罪，陈某刚被另案处理。刑事案件案发后，陈某刚、翔宇公司并未停止侵权行为，一直由翔宇公司使用涉案生产线继续生产侵权产品。2017 年，陈某刚又另行设立运城晋腾化学科技有限公司（以下简称为晋腾公司），由晋腾公司及其临猗分公司在翔宇公司的厂房内继续使用涉案生产线以及涉案技术秘密生产侵权产品。圣奥公司认为，陈某刚、晋腾公司的行为侵害了其技术秘密，构成共同侵权，请求法院判令停止侵权，销毁被诉侵权生产设备，连带赔偿圣奥公司经济损失 2.0154 亿元及合理开支 46.9542 万元。

## 处理结果

法院认为，圣奥公司在本案中所主张的 22 个密点及对应的载体，均与其在之前刑事案件中的主张完全一致。圣奥公司对涉案技术信息采取了合理的保密措施，涉案技术信息不为公众所知悉，具有商业价值，构成反不正当竞争法规定的技术秘密。陈某刚、翔宇公司以盗窃手段获取涉案技术秘密并使用，晋腾公司作为翔宇公司的接替者，明知涉案侵权设备系翔宇公司通过盗窃手段获取涉案技术秘密制造完成，仍获取并使用涉案技术秘密，均构成侵权；而陈某刚为延续其侵权行为设立晋腾公司，应对晋腾公司继续使用涉案技术秘密的行为承担连带责任。最后，法院判决陈某刚、晋腾公司停止侵权，对圣奥公司主张的赔偿额（包含经济损失 2.0154 亿元及合理开支 46.9542 万元）予以全额支持。

最高人民法院于 2023 年 12 月 27 日作出二审判决，对以上判决内容予以维持。

（本案由江苏省高级人民法院提供）

## 分析点评

案涉技术是我国在世界领先的橡胶防老剂技术秘密，行为人侵权情节极其恶劣，法院判令其停止侵权，并全额支持权利人 2.0154 亿元的赔偿请求，创下全国法院对侵害商业秘密行为判决赔偿额的最高纪录，充分彰显了人民法院依法严格保护知识产权，激发全社会创新创造活力的决心和态度。

本案一些裁判规则具有指导意义。本案判决确立了密点的审查标准；细化了普遍知悉和容易获得的认定情形，有助于厘清非公知性的审查标准。尤其是明确了销毁侵权设备适用情形及限度，指出“销毁”并非指物理意义上的消灭，而是指将设备所附技术秘密去除，将依法应当予以保护的权利人的技术秘密从侵权设备的实体上剥离，使得设备不再具有技术秘密载体的属性；在此过程中，还需要平衡在涉案侵权设备上同时存在的权利人的知识产权和案外人的物权之间的利益冲突，为实践中如何判令销毁作为技术秘密载体的侵权设备提供了指导。

# 01 Sennics Chemical Technology Co., Ltd. vs Chen Xgang and Yuncheng Jinteng Chemical Technology Co., Ltd. in dispute over technical secret infringement

## About the case

The “Nitrobenzene Synthesis of RT Base Technology” (hereinafter referred to as the “RT Base Technology”) and the “Utilization of RT Base to Produce Rubber Anti-aging Agent 4020 Process” (hereinafter referred to as the “4020 Process”) were first developed by Shandong Sennics Chemical Co., Ltd. (hereinafter referred to as the “Shandong Sennics”). Later, Shandong Sennics transferred all the technologies to Sennics Chemical Technology Co., Ltd. (hereinafter referred to as the “Sennics”), and Sennics continued to optimize and improve them. From 2007 to 2012, Chen Xgang, together with Shanxi Xiangyu Chemical Co., Ltd. (hereinafter referred to as the “Xiangyu”) and other entities under his actual control, stole the technical secrets involved in the case and used the technical secrets in question to renovate the RT Base Technology and the 4020 Process, and build a new anti-aging agent production line. According to a criminal ruling ((2013), SZXZZ No. 0006) made by the Jiangsu Higher People’s Court on December 28, 2018, Chen Xgang and Xiangyu were accused of stealing and using the complete set of technical secrets

for the RT Base Technology and the 4020 Process owned by Sennics. Xiangyu was convicted of infringing trade secrets and Chen Xgang was dealt with in a separate action. After the conviction, Chen Xgang and Xiangyu did not stop the infringement, and Xiangyu continued to produce the infringing products using the production line in question. In 2017, Chen Xgang separately established Yuncheng Jinteng Chemical Technology Co., Ltd. (hereinafter referred to as the "Jinteng"). Jinteng and its Linyi branch continued to use the production line and the technical secrets in question to produce the infringing products at the factory of Xiangyu. Sennics argued that the act of Chen Xgang and Jinteng had infringed its technical secrets and constituted joint infringement. It requested a court decision to order the infringers to stop their infringement, destroy the infringing production line, and pay Sennics compensation of RMB 201.54 million for its economic loss and RMB 469,542 as reasonable expenses incurred.

## Final verdict

According to the court, all the 22 secret points and corresponding carriers claimed by Sennics in the case were totally in line with what it had claimed in a previous criminal case. Sennics had taken reasonable security measures for technology information involved in the case. The information has its commercial value as it was unknown to the public, and therefore constitutes a technical secret under the Anti-Unfair Competition Law. Chen Xgang and Xiangyu stole and used the technical secrets in question, and Jinteng, as a replacement for Xiangyu, obtained and used the technical secrets in question even if it was fully aware that the production line in question was built by Xiangyu using the stolen technical secrets, and therefore it also constituted an infringement. In addition, Chen Xgang established Jinteng to continue his infringing act, therefore he shall bear joint liability for the act that Jinteng continued to use the technical secrets in question. At last, the court ordered Chen Xgang and Jinteng to stop the infringement and upheld Sennics' claim for compensation (including RMB 201.54 million for an economic loss and RMB 469,542 as reasonable expenses).

The Jiangsu Higher People's Court handed down the second-instance verdict on December 27, 2023, and affirmed the foregoing verdict.

(Recommended by: the Jiangsu Higher People's Court)

## Comments

The technical secrets involved in the case relate to China's world-class technology for rubber anti-aging agents. The infringers' act constitutes extraordinarily serious infringement. The court ordered the infringers to stop the infringement and upheld the rights holder's claim for compensation of RMB 201.54 million, which has been so far the highest compensation amount upheld by a Chinese court in a trade secret infringement case. The case has fueled social support for innovation and creativity.

Some court rules in the case are instructive. The verdict of the case established proper standards for examining secret points and refined the fact-finding standards that are publicly known or easily accessible, which can help straighten out non-public examination standards. Particularly, the verdict specifies applicable scenarios and limitations for destroying the infringing equipment and points out that "destroying" does not mean destroying the equipment physically, but means eliminating the accompanying technical secrets and stripping off the infringing equipment the technical secrets vested in the rights holder who is subject to protection according to law, so that the equipment can no longer be a carrier of the technical secrets. In this process, the verdict takes into account a conflict of interest between the IP rights holder and the equipment owner not involved in the case, which provides a guide for how a court should give a verdict in the destruction of infringing equipment serving as a carrier of technical secrets.

# 02 吴某然等十二人非法制造注册商标标识案

## 案情介绍

2022 年 3 月初至 2022 年 6 月底,被告人吴某然、李某怡、李某等人合谋后,在未经中华、南京(炫赫门)、利群(新版)、牡丹、红塔山等香烟注册商标所有权人许可授权的情况下,由被告人吴某然提供资金用于租赁厂房,联系购买部分机器设备、原材料,招募核心技术人员、安排监督人员,被告人李某怡、李某负责制造由被告人吴某然指定生产的假冒各品牌注册商标标识的香烟烟盒。

被告人吴某然、李某怡、李某、刘某、程某花、廖某兴、苏某斌共非法制造假冒中华、南京(炫赫门)、利群(新版)、牡丹、红塔山等香烟注册商标标识共计 1600 万余件;被告人刘某阳非法制造假冒利群(新版)、红塔山等香烟注册商标标识共计 930 万余件;被告人周某辉非法制造假冒中华、南京(炫赫门)、利群(新版)、牡丹、红塔山等香烟注册商标标识共计 1200 万余件;被告人任某生非法制造假冒利群(新版)、红塔山香烟注册商标标识共计 94 万余件;被告人张某、廖某非法制造假冒利群(新版)香烟注册商标标识共计 33 万余件。经鉴定,上述涉案品牌香烟包装标识均为假冒注册商标产品。

## 处理结果

2022 年 9 月 30 日,江苏省无锡市公安局惠山分局(以下简称为惠山分局)以被告人吴某然、李某怡、李某、刘某、周某辉、刘某阳、程某花、廖某兴、苏某斌、任某生、张某、廖某涉嫌非法制造注册商标标识罪向无锡市惠山区人民检察院(以下简称为惠山区检察院)移送审查起诉。2022 年 11 月 14 日,惠山区检察院以上述十二名被告人构成非法制造注册商标标识罪向江苏省无锡市惠山区人民法院(以下简称为惠山区法院)提起公诉。

2023 年 3 月 30 日,惠山区法院作出一审判决,以非法制造注册商标标识罪分别判处被告人吴某然、李某怡、李某、刘某、周某辉、刘某阳、程某花、廖某兴、苏某斌、任某生、张某、廖某有期徒刑五年九个月至一年不等,对被告人刘某、周某辉、刘某阳、程某花、廖某兴、苏某斌、任某生、张某、廖某适用缓刑,并对十二名被告人各处罚金 1 万元至 7 万元不等。该判决已生效。

(本案由江苏省人民检察院提供)

## 分析点评

本案系目前国内查获规模最大的非法制造香烟注册商标标识案,商标权利人为大众熟知的利群、红塔山、中华等知名香烟注册商标品牌,社会影响很大。检察机关在提前介入环节,通过实地查看扣押物品,提出了科学认定商标标识数量的标准以及抽样鉴定的办案思路,为案件的办理筑牢证据根基。同时,严格审查涉案人员的主观明知及在犯罪中所起作用,坚持对老板、股东、各制作环节工人进行全面打击,有效惩治犯罪行为。本案的成功办理,获公安部、国家烟草专卖局打击制售假烟网络工作领导小组办公室贺信。

本案坚持罪责刑相适应,分层次科学打击犯罪。通过对参与程度不同的涉案人员进行分层次分类别打击,做到“轻重相宜”,既惩罚又挽救,严格落实罪责刑相适应原则,取得良好的法律效果和社会效果。

# 02 Counterfeiting of registered cigarette trademark logos by 12 defendants

## About the case

From the beginning of March 2022 to the end of June 2022, defendants including Wu Xran, Li Xyi, and Li X conspired together to counterfeit cigarette packets printed with registered trademark logos of brands such as Zhonghua, Nanjing (Xuanhemen), Liqun (new edition), Mudan, and Hongtashan, without authorization from owners of these registered trademarks. Wu Xran rented a plant, purchased some equipment and raw materials, recruited core technical personnel, and arranged inspection personnel. Li Xyi and Li X were responsible for manufacturing cigarette packets printed with registered trademark logos of brands specified by Wu Xran.

The defendants Wu Xran, Li Xyi, Li X, Liu X, Cheng Xhua, Liao Xxing, and Su Xbin counterfeited more than 16 million cigarette packets printed with registered trademark logos of brands such as Zhonghua, Nanjing (Xuanhemen), Liqun (new edition), Mudan, and Hongtashan. The defendant

Liu Xyang counterfeited more than 9.3 million cigarette packets printed with registered trademark logos of brands such as Liqun (new edition) and Hongtashan. The defendant Zhou Xhui counterfeited more than 12 million cigarette packets printed with registered trademark logos of brands such as Zhonghua, Nanjing (Xuanhemen), Liqun (new edition), Mudan, and Hongtashan. The defendant Ren Xsheng counterfeited more than 940,000 cigarette packets printed with registered trademark logos of brands such as Liqun (new edition) and Hongtashan. The defendants Zhang X and Liao X counterfeited more than 330,000 cigarette packets printed with the registered trademark logo of the brand Liqun (new edition). The aforesaid trademark logos were confirmed to be passed off as registered trademark logos.

## Final verdict

On September 30, 2022, the Huishan Subbureau of Wuxi Public Security Bureau (hereinafter referred to as the "Huishan Subbureau") transferred the defendants Wu Xran, Li Xyi, Li X, Liu X, Zhou Xhui, Liu Xyang, Cheng Xhua, Liao Xxing, Su Xbin, Ren Xsheng, Zhang X, and Liao X who were suspected of counterfeiting registered trademark logos to the Huishan People's Procuratorate. On November 14, 2022, the Huishan People's Procuratorate instituted a public prosecution in the Huishan People's Court for the crime of counterfeiting registered trademark logos committed by the aforesaid 12 defendants.

On March 30, 2023, the Huishan People's Court pronounced the first-instance verdict. The defendants Wu Xran, Li Xyi, Li X, Liu X, Zhou Xhui, Liu Xyang, Cheng Xhua, Liao Xxing, Su Xbin, Ren Xsheng, Zhang X, and Liao X were sentenced to one year to five years and nine months in prison and imposed fines of RMB 10,000 to RMB 70,000. The defendants Liu X, Zhou Xhui, Liu Xyang, Cheng Xhua, Liao Xxing, Su Xbin, Ren Xsheng, Zhang X, and Liao X were given a suspended sentence. The verdict had been effective.

(Recommended by: the Jiangsu Provincial People's Procuratorate)

## Comments

This case has been so far the largest one of its kind handled in China. The case has great social significance as the trademark owners are well-known brands such as Liqun, Hongtashan, and Zhonghua. In the stage of early intervention, the procuratorate organ proposed a standard for scientifically identifying the number of trademark logos and an idea of sampling identification through on-the-spot investigation into the detained goods. This laid a solid foundation of evidence for the handling of the case. In the meantime, the procuratorate organ strictly examined the subjective knowledge of the suspects and the role thereof in the crime and insisted on bringing to justice anyone involved in the case, including the boss, stakeholders, and workers, in a sign of its determination to fight crime. The authorities that cracked the case received congratulatory letters from the Ministry of Public Security and the Office of Leading Group for Cracking Down on Cigarette Counterfeiting Network of the State Tobacco Monopoly Administration.

The case follows the principle of suiting punishment to crime and the principle of hierarchically and scientifically fighting crime. That means hierarchical measures are taken against offenders who play different roles in the case, so that punishment can fit the crime. The criminals are not only punished, but also rescued. Strict implementation of the principle of suiting punishment to crime can achieve a good legal and social effect.

# 03 被告人张某侵犯著作权、销售侵权复制品案

## 案情介绍

一、侵犯著作权

2020 年 6 月以来，被告人张某以营利为目的，在未经著作权人及出版社许可情况下，委托印刷厂非法印制时下热销的中小学课外读物，如《淘气包马小跳》《艾青诗选》《朝花夕拾》《西游记》《红楼梦》《红星照耀中国》《白洋淀纪事》《昆虫记》等图书以及《亮点给力大试卷》等教辅材料，被告人张某还提供部分图书电子版、纸张等给印刷厂用于印制图书。其中，被告人张某通过宋某忠联系印刷厂非法印制 80 余万册图书，支付价款 420 万余元；通过史某彪联系印刷厂非法印制 270 余万册图书，支付价款 1369.2 万元（含支付给史某彪工资 8 万元）；通过刘某的印刷厂非法印制 7 万余册图书，支付价款 38.87 万元。以上共计支付价款 1828 万余元，非法印制图书 357 万余册。上述委托印制的盗版图书，除被公安机关查扣的图书外，其他均由被告人张某在其盗版图书平均成本 5 元的基础上，加价 0.1-0.3 元销售给他人。

二、销售侵权复制品

2020 年 6 月以来，被告人张某以营利为目的，明知所购中小学课外读物等图书系侵犯著作权的盗版图书，仍从郭某影处购进 10 万余册，支付价款 75.16 万元，后全部对外销售。

另查明，公安机关从被告人张某处查扣《淘气包马小跳》《法治的细节》等 79 种图书，共计 11665 册。经鉴定，被扣押图书均为非法出版物。

## 处理结果

法院认为，被告人张某以营利为目的，未经著作权人许可，复制发行著作权人文字作品，涉案复制品数量达 350 余万册，非法经营数额达 1820 万余元，情节特别严重，其行为已构成侵犯著作权罪；以营利为目的，明知系未经著作权人许可复制发行的侵权复制品仍购进并销售，销售数额达 75 万余元，情节严重，其行为已构成销售侵权复制品罪。被告人张某一人犯数罪，依法予以数罪并罚。被告人具有坦白、认罪认罚、退出部分款项等从轻、从宽处罚情节，依法予以从轻处罚。被告人张某被公安机关扣押的 3 万元，用于折抵罚金。法院判决：一、被告人张某犯侵犯著作权罪，判处有期徒刑五年四个月，并处罚金人民币 400 万元；犯销售侵权复制品罪，判处有期徒刑七个月，并处罚金人民币 40 万元。决定执行有期徒刑五年六个月，并处罚金人民币 440 万元。二、扣押在案的涉案盗版图书 11665 册予以没收，由扣押机关予以销毁；扣押的作案工具手机 2 部、优盘 2 个予以没收，由扣押机关上缴国库。

一审于 2023 年 10 月 30 日判决后，被告人未上诉，检察机关未抗诉，该判决已生效。

（本案由江苏省版权局、江苏省公安厅、江苏省高级人民法院提供）



## 分析点评

本案系省“扫黄打非”工作领导小组办公室、省公安厅治安警察总队联合挂牌督办案件，涉案盗版图书达 357 万余册，非法经营数额达 1800 余万元，严重侵犯著作权人的合法权益及国家的著作权管理制度。本案对被告人判处 5 年以上刑罚，有效打击了图书市场版权犯罪，充分发挥司法保护知识产权的主导作用，引导社会各界加强和重视对知识产权的保护，规范图书市场经营秩序，维护图书市场积极向上健康有序发展。

本案涉及行为人委托印刷厂印制盗版图书以及另行从其他印刷厂直接购买盗版图书并对外销售两种行为，是以侵犯著作权罪一罪处罚还是以侵犯著作权罪与销售侵权复制品罪数罪并罚在司法实践及理论中均存在争议。经研究，结合两个罪名的联系与区别，结合目前司法理念、精神，认为对于侵犯著作权罪中的“复制发行”应指既复制又发行，对于另外其他印刷厂直接购买盗版图书并销售的行为构成犯罪的，应以销售侵权复制品罪数罪并罚。本案的审理为两种罪名的区别与认定确立了司法实践标准。

另外，在认定违法所得数额时，因图书销售范围广、数量大，公安机关客观上难以做到一一取证，导致在认定图书实际销售金额、采购成本等方面存在障碍。刑事案件的审理应严格坚持证据裁判原则，避免以单方口供为认定依据，同时知识产权刑事案件应体现财产刑惩罚力度，在判处罚金时综合考量非法经营数额、销售时间、销售数额等因素依法判处。本案的审理为该类案件违法所得数额认定方面提供了思路和参考。

# 03 Infringement of copyright and sale of infringing reproductions by Zhang X

## About the case

I. Infringement of copyright

Since June 2020, the defendant Zhang X, for the purpose of seeking profits, had been entrusting printing houses to illegally print hot-selling extracurricular books for primary and secondary schools, such as Naughty Boy Ma Xiaotiao, Selected Poems of Ai Qing, Dawn Blossoms Plucked at Dusk, Journey to the West, A Dream of Red Mansions, Red Star Over China, A Chronicle of Baiyangdian Lake, and Souvenirs Entomologiques, as well as auxiliary materials such as Liangdian Geili Exam Papers, without authorization from the copyright owners and the publishing houses. Zhang X also provided the electronic versions of some of the aforesaid books and printing paper to the printing houses to facilitate printing. With the help of Song Xzhong, Zhang X contacted a printing house to illegally print over 800,000 books and paid a printing fee of

over RMB 4.2 million. On the recommendation of Shi Xbiao, Zhang X approached another printing house and paid it RMB 13.692 million for printing over 2.7 million pirated books (including the remuneration of RMB 80,000 paid to Shi Xbiao). Zhang X also entrusted a printing house owned by Liu X to illegally print over 70,000 books and paid a printing fee of RMB 388,700. Zhang X paid total printing fees of over RMB 18.28 million and had over 3.57 million books printed illegally. Except for those detained by the public security organ, the remaining part of the aforesaid pirated books were sold out at a cost price plus RMB 0.1-0.3.

II. Sale of infringing reproductions

Since June 2020, defendant Zhang X, for the purpose of seeking profits, had been knowingly purchasing pirated extracurricular books for primary and secondary schools from Guo Xying. He had purchased more than 100,000 pirated books for RMB 751,600. All these books were sold out.

The public security organ detained 79 types of pirated books at the den of Zhang X, including Naughty Boy Ma Xiaotiao and Details for Rule of Law, with the total number of books reaching 11,665. All these detained books were illegal publications.

## Final verdict

According to the court, defendant Zhang X, for the purpose of seeking profits, had over 3.5 million books replicated and published without authorization from the copyright owners and achieved revenue of RMB 18.2 million. The circumstances were particularly serious, so his act constituted the crime of copyright infringement. In addition, he knowingly purchased and sold the infringing reproductions, with sales reaching over 750,000. The circumstances were serious, so his act constituted the crime of selling infringing reproductions. Defendant Zhang X was subject to simultaneous punishment for multiple crimes. However, the defendant confessed, pleaded guilty, accepted punishment, and returned some illegal gains, which met the condition for lenient punishment. Therefore, Zhang X was finally given a lesser punishment. The RMB 30,000 detained by the public security organ was used to offset part of the fine imposed on the defendant Zhang X. Court decisions: 1. The defendant Zhang X was sentenced to five years and four months in prison and imposed a fine of RMB 4 million for the crime of copyright infringement. Defendant Zhang X was sentenced to seven months in prison and imposed a fine of RMB 400,000 for the crime of selling infringing reproductions. Defendant Zhang X was finally sentenced to five years and six months in prison and imposed a fine of RMB 4.4 million. 2. The detained 11,665 pirated books were confiscated and destroyed by the organ that detained them. The detained tools for criminal purposes, namely, two mobile phones and two flash disks, were confiscated and turned over to the national treasury by the organ that detained them.

The first-instance verdict was pronounced on October 30, 2023, and took effect as the defendant did not appeal and the procuratorial organ did not lodge a protest.

(Recommended by: the Jiangsu Provincial Copyright Administration, the Jiangsu Provincial Public Security Department, and the Jiangsu Higher People's Court)

## Comments

This case was supervised and handled by the Office of Jiangsu Provincial Leading Group for Fighting Pornography and Illegal Publications and the Security Police Corps of the Jiangsu Provincial Public Security Department. The number of pirated books involved in the case reached over 3.57 million, with the business revenue hitting over RMB 18 million. The infringing act has seriously damaged the legitimate interest of the copyright owners and undermined the national copyright management system. The criminal penalty of sentencing the defendant to over five years in prison has effectively curbed copyright infringement in the publication market, gave play to the leading role of the juridical force in IP protection, raised the public awareness of IP protection, redressed the disorder of the book market, and promoted a healthy development of the book market.

The case relates to two criminal acts: (1) The defendant entrusted printing houses to print pirated books; (2) the defendant directly purchased pirated books from other printing houses and sold the pirated books. There are two possible verdicts: (1) The defendant was convicted of the crime of copyright infringement alone; (2) the defendant was convicted of both the crime of copyright infringement and the crime of selling infringing reproductions. However, both the two verdicts remain in dispute in juridical practices and theory. Taking into consideration the connection and differences between the two charges, as well as the present juridical principle and spirit, the court upheld that the "replication and publication" involved in the crime of copyright infringement should mean that the defendant not only have the books replicated but also have them published. As for the other charge, the defendant shall be convicted of the crime of selling infringing reproductions. The final verdict of the case has established a standard for identifying and distinguishing between the two charges in juridical practices.

In addition, during the identification of the amount of illegal gains and the purchasing cost, it was challenging for the public security organ to collect evidence, because a multitude of pirated books were sold to a wide range of buyers. The handling of a criminal case should strictly follow the evidence referee principle and avoid using the oral confession of only one party as a basis of identification. Meanwhile, an IP-related criminal case should underline the property-oriented penalties. When imposing a fine, the court should take into account the amount of illegal gains, sale periods, sales revenue, and other factors. This case has provided a reference for identifying an amount of illegal gains in similar cases.

# 04 苏州胡某侵犯商业秘密案

## 案情介绍

苏州工业园区某生物制药有限公司系全国头部生物制药企业，拥有不为公众所知悉的多项药品研发、制药工艺相关的技术信息。为保障商业秘密安全，公司一方面与员工签订保密协议，建立《商业秘密等级分类规定》《信息安全管理规定》等管理制度，另一方面部署了信息网络安全防护措施，采取了管理制度与技术手段相结合的保密措施。

2021 年 10 月，公司在某部门经理胡某离职审查期间发现其存在未经公司同意对外传输涉密文件的行为，遂向苏州工业园区公安分局报案。经公安机关立案侦查，在苏州市吴江区抓获嫌疑人胡某，现场查获作案用手机 2 台、笔记本 1 台、网络附属存储器 1 台。经查，胡某在 2021 年初有离职意向后，多次通过不同途径尝试将公司内部的机密文件从保密电脑中拷贝复制，但公司网络防护技术措施封禁了常规传输手段，于是胡某利用技术手段找到公司防护措施漏洞，将包括公司产线设计方案、制药工艺流程等重要涉密的研发项目数据传输至自己私人的网络附属存储器中保存。截至案发，胡某共非法获取 11000 余条数据，总量超过 33GB，部分文件涉及公司重要商业秘密，价值巨大。结合其非法获取的数据和公司提供的材料显示，其中有 8 项重要商业秘密涉及公司主要收益来源的一款药品，数据一旦泄露，行业竞争对手可完全跳过研发环节完整复制相关药品，使得公司在前期药品研发过程中投入的人力物力财力付诸东流，对公司造成毁灭性打击。

由于胡某暂未将非法获取的数据进行披露、使用，也未交由他人使用，因此公安机关为确定涉案商业秘密价值，委托评估公司对涉案 8 项技术信息进行评估，最终确定许可使用费为 9.78 亿元。

## 处理结果

胡某在离职前未经公司同意获取非工作职责应当接触数据的行为最终被检察院、法院一致认定为“以不正当手段获取商业秘密”的行为，由于相关商业秘密未被披露、使用，因此最终权利人的损失数根据合理许可使用费确定为 9.78 亿元。2023 年 1 月，胡某因犯侵犯商业秘密罪被判处有期徒刑四年，并处罚金 18 万元。该判决已生效。

（本案由江苏省公安厅提供）



## 分析点评

本案在办理初期由于报案企业并未第一时间发现嫌疑人获取的数据里含有公司商业秘密，因此前期侦办过程中以“非法获取计算机信息系统数据罪”立案侦查，公安机关在侦查过程中发现嫌疑人犯罪情节与手段符合“侵犯商业秘密罪”的基本构成要件，办案单位及时转变思路，最终以“侵犯商业秘密罪”成功办理本案，对公安机关今后在受理类似企业报案过程中第一时间明确案件侦办方向提供重要指引。

本案是以“不正当手段”获取商业秘密,并以“合理许可使用费”认定商业秘密价值的典型案例，且数额巨大。公检法部门一致认定，嫌疑人通过利用技术手段将涉密数据传输至私人网络附属存储器中，而上述涉密数据并非其工作岗位应当知悉的内容，该行为应当认定为“不正当手段”，突破了以往“盗窃、贿赂、欺诈、胁迫”等常规的认定不正当手段获取商业秘密方式。

# 04 Trade secret infringement by Hu X from Suzhou

## About the case

A biopharmaceutical company in Suzhou Industrial Park is a leading one of its kind in China. It owns several technologies related to drug R&D and pharmaceutical processes unknown to the public. To protect its trade secrets, the company has signed non-disclosure agreements with its employees, established a series of relevant management systems such as Trade Secret Classification Rules and Information Security Regulations, taken information network security measures, and introduced technological means to empower security management.

In October 2021, during the period of resignation examination, Hu X, a department manager at the company, was found to have transferred the company’s confidential documents without authorization. The company then reported the case to the public security subbureau in Suzhou Industrial Park. After initiating an investigation into the case, the subbureau arrested Hu X in Wujiang District and ferreted out two mobile phones, one laptop computer, and one network attached storage used for the suspect’s criminal purposes. According to the police, Hu X tended to leave the company at the beginning of 2021, and then he made several attempts to

replicate the company’ s internal confidential documents through different channels. However, the company’ s cybersecurity measures defied replication through conventional ways. In view of this, Hu X leveraged some technological means to exploit loopholes in the security system. Consequently, Hu X managed to transfer important confidential documents, including production line design solutions, pharmaceutical processes, and R&D project data, into his personal network attached storage. As of the date when the investigation was initiated, Hu X had illegally obtained over 11,000 pieces of data, with the volume reaching over 33 GB. Some of these documents involved the company’ s important trade secrets of huge value. According to the company, in the illegally obtained data, eight important trade secrets related to a drug that was a main contributor to the company’ s revenue. Once these trade secrets were leaked, the company’ s competitors might be able to replicate the drug without any R&D efforts. That would deal a devastating blow to the company, as its previous investment in drug R&D would go down the drain.

Fortunately, Hu X had yet to disclose or use or let others use the data he had illegally obtained. To determine the value of these trade secrets, the public security organ entrusted an evaluation company to evaluate the aforesaid eight trade secrets. Finally, the royalties on these trade secrets were determined to be RMB 978 million.

## Final verdict

Before his resignation, without authorization, Hu X obtained the company’ s confidential data he was not supposed to access for purposes beyond his job responsibilities. The court and the procuratorate unanimously upheld that Hu X’ s act was to “obtain trade secrets by improper means.” However, the illegally obtained trade secrets had not been disclosed or used. Therefore, the economic loss of the right holder was determined to be RMB 978 million based on reasonable royalties. In January 2023, Hu X was sentenced to four years in prison and imposed a fine of RMB 180,000 for the crime of trade secret infringement. The verdict had been effective.

(Recommended by: the Jiangsu Provincial Public Security Department)



## Comments

In the early stage of the case handling, the public security organ initiated an investigation by seeking an indictment on the “crime of illegally obtaining data from the computer information system”, as the company was not aware that the data obtained by the suspect contained the company’ s trade secrets. Subsequently, the public security organ found that the circumstances of the crime committed by the suspect met the basic constitutive requirement of “the crime of trade secret infringement” and then shifted the investigation direction before finally charging the suspect with “the crime of trade secret infringement.” This case gave helpful guidance for determining the right investigation direction the first time when the public security organ accepted a similar case.

This is a typical case in which the suspect obtains trade secrets “by improper means,” and the public security organ, based on “reasonable royalties”, determines the value of trade secrets, which is huge. The public security organ, the procuratorial organ, and the court unanimously upheld that the suspect’ s act of transferring confidential data, which he was not supposed to access for the purpose beyond his job responsibilities, to his personal network attached storage was “improper means.” This is different from conventional improper means of obtaining trade secrets, such as theft, bribery, fraud, and coercion.

# 05 荷兰某百年企业为股东的 D 公司侵害南京某医药科技公司商业秘密纠纷案

## 案情介绍

南京 H 医药科技公司是初创型生物医药研发类企业，创始研发团队于二十年前开始研发某抗癌药。因为这种抗癌药是从天然植物中进行提取，相对于当时的西药化疗药而言，对人体亲和度更好，所以更容易被中国患者接受，市场前景和经济价值巨大。研发成果问世后，为了更快速地投入生产销售，省去投资建厂的负累，2004 年，南京 H 公司经过广泛考察最终选定了股东为荷兰百年企业 D 公司作为合作对象，签订了 20 年的相关技术独家合作协议。协议采取了“独家生产 + 指定销售模式”的合作模式，既保护了技术秘密不外泄，又很好地控制了前期投入成本，避免盲目扩产带来的产能浪费。合作 6 年后，D 公司提出因生产排放等不符合政府政策要求终止合作协议。

两年后，南京 H 公司发现市场上出现了另一家公司生产销售 H 公司当时研发的药品，遂怀疑 D 公司泄露了相关技术秘密。在委托某律师进行案情分析以及证据保全后，向南京市中级人民法院提起诉讼。

## 处理结果

南京市中级人民法院一审支持 H 公司全部诉讼侵权，判决 D 公司构成侵权。D 公司不服判决上诉至江苏省高级人民法院，江苏省高级人民法院以一审认定事实不清为由裁定发回重审。南京市中级人民法院重新组成合议庭后，经过审理，再次认定 D 公司构成侵权。D 公司不服判决，上诉至最高人民法院。最高人民法院经过两年的审理，于 2023 年 11 月 23 日作出判决，最终认定 D 公司构成商业秘密侵权，需赔偿 H 公司全额 2000 万元赔偿款，并支付全部诉讼费。

（本案由江苏省司法厅、江苏省高级人民法院提供）



## 分析点评

本案侵权方为外商投资企业，股东为荷兰百年企业以及其关联公司，为大型集团公司。权利人为初创型企业，双方实力差距巨大，加之侵权行为较为隐蔽，相关证据获取难度较高。

本案涉及的技术秘密有一定的复杂性，侵权人也举出数十个证据组合试图证明案涉技术秘密为公知技术,经过权利人团队扎实的行业技术分析以及与法官深入浅出的事实分析和说理,最终，法院在不依赖鉴定的情况下作出公正的裁判全额支持赔偿请求。

# 05 Company D in which a Dutch century-old enterprise holds a stake vs a Nanjing-based pharmtech company in a dispute over trade secret infringement

## About the case

Pharmtech Company H is a Nanjing-based startup dedicated to biopharmaceutical R&D. The company’s founding R&D team started to develop an anti-cancer drug 20 years ago. The drug featured some extracts from natural plants, which turned out to be more compatible with the human body than the existing chemotherapeutic drugs back then. Its popularity among Chinese patients proclaimed the drug to be a blockbuster with a broad market prospect and huge economic value. The drug was put into production immediately after it was successfully developed, which obviated the investment in building a factory. In 2004, after an extensive study, Company H selected Company D that had a Dutch shareholder as its partner, and then they signed a 20-year agreement on exclusive cooperation in the relevant technology. The agreement specified a cooperation model of “exclusive production + designated marketing,” which stipulated non-disclosure of technical secrets, better controlled the initial investment cost, and helped avoid waste of production capacity caused by blind expansion. Six years later, Company D proposed to terminate their cooperation on the grounds that the production and emissions failed to comply with relevant government policies.

Two more years later, Company H found another company was producing and marketing the cancer drug it had developed years ago. It began to suspect that Company D might have leaked the relevant technical secrets. After entrusting a lawyer to analyze the case and conserve evidence, Company H brought the case to the Nanjing Intermediate People’s Court.

### Final verdict

In the first trial, the Nanjing Intermediate People' s Court ruled in favor of Company H and pronounced that Company D constituted an infringement. Company D appealed the decision to the Jiangsu Higher People' s Court, which then remanded for a retrial on the grounds that the fact-finding was unclear in the first trial. The Nanjing Intermediate People' s Court formed a new collegiate panel for a retrial. However, it still ruled that Company D constituted an infringement. Company D appealed the retrial decision to the Supreme People' s Court. After trying the case for two years, the Supreme People' s Court made a ruling on November 23, 2023, upholding the decision of the Nanjing Intermediate People' s Court, and ordered Company D to pay Company H compensation of RMB 20 million and all legal fees.

(Recommended by: the Jiangsu Provincial Department of Justice and the Jiangsu Higher People' s Court)

### Comments

The infringing party in this case is a Chinese conglomerate in which a Dutch century-old enterprise holds a stake. The right holder in the case is just a startup company that is not in the conglomerate' s league. In addition, the infringing act was covert. Therefore, it was quite challenging to collect relevant evidence.

The technical secrets involved in the case were somewhat complex, as the infringer provided tens of portfolios of evidence trying to prove that the technical secrets in question were the prior art. In the wake of solid industry technology analysis and the judge' s skillful factual analysis, the court made a fair ruling in favor of the rights holder without depending on authentication.



## 06 常州市御尊酒业有限公司侵犯注册商标专用权案

### 案情介绍

2023 年 3 月 31 日，根据常州市公安局提供线索，常州市市场监管局执法人员会同公安部门对常州某酒业公司经营场所进行检查，现场发现包装好的茅台酒 4 箱、普通纸箱装茅台酒 80 箱，纸箱、条形码捆箱带、识别器、合格证等有“茅台”商标的包材 50 箱。2023 年 4 月 17 日，常州市市场监管局收到常州市公安局水上分局的《案件移送通知书》，将本案件移交常州市市场监管局处理。经鉴定，上述茅台酒均为正品，纸箱、条形码捆箱带、合格证等有“茅台”商标的包材为侵犯注册商标专用权的产品。经查，当事人通过在进购的外箱上打印生产日期、合格证后，销售假冒包材并用假冒包材包装正品茅台酒销售赚取差价，当事人违法经营额为 869.369 万元。

### 处理结果

当事人侵犯注册商标专用权的行为违反了《商标法》第五十七条第四项、第七项的规定。依据《商标法》第六十条第二款的规定，常州市市场监督管理局责令当事人立即停止侵权行为，作出没收侵权商品及商标标识、用于制作侵权注册商标标识的工具，罚款 88.1485 万元的行政处罚。目前，当事人已不再开展经营活动。

（本案由江苏省市场监督管理局提供）

### 分析点评

本案当事人对茅台外箱进行加工、销售并利用整箱茅台与散装茅台的差价谋取不法利益的行为，是非典型意义上的商标侵权行为，“酒是真的，包装是假的”。此类行为同样应当予以严厉打击，这不仅损害了消费者的权益，还侵占了正品整箱茅台酒的市场份额，扰乱了茅台酒正常市场经营秩序，损害了商标权利人的商誉，同时造成行业内的不正当竞争。“贵州茅台”为知名白酒，在全

国范围内有极高的知名度和良好的商誉，本案涉案金额巨大，社会影响力大，本案的办理一方面能对白酒行业中制造、销售假冒产品的经营者产生较强的震慑、教育作用，有利于规范高端白酒市场的竞争秩序和交易秩序；另一方面也保护了商标权利人和消费者的合法权益。

本案是公安机关向行政执法部门移交的知识产权保护行刑衔接典型案例。案件办理的过程中，市场监管部门与公安机关协作联动，畅通衔接渠道，通过共同研讨，信息共享等方式进一步凝聚打击合力，提升执法办案水平，共同维护和净化市场消费环境，是知识产权协同保护和大保护工作格局的良好体现。

## 06 Changzhou Yuzun Liquor Co., Ltd. infringing the right to exclusive use of a registered trademark

### About the case

On March 31, 2023, based on clues provided by the Changzhou Public Security Bureau, the Changzhou Market Supervision Administration and the public security organ raided a local liquor company. At the premises of the company, the law enforcement officers seized four packaged boxes of Moutai liquor, 80 boxes of Moutai liquor packed in ordinary cartons, and 50 boxes of packaging materials printed with the trademark of Moutai, such as cartons, barcode tapes, recognizers, and certificates of conformity. On April 17, 2023, the Changzhou Market Supervision Administration received a case transfer notice from the Shuishang Subbureau of the Changzhou Public Security Bureau. Upon authentication, the aforesaid Moutai liquor products were all genuine, but the packaging materials printed with the trademark of Moutai, such as the cartons, barcode tapes, and certificates of conformity, were products that infringed the right to exclusive use of a registered trademark. Upon investigation, after printing the production date and certificate of conformity on the purchased cartons, the infringer sold these counterfeited cartons, as well as genuine Moutai liquor packed in these cartons, to make money from price differences. The infringer had achieved business revenue of RMB 8.69369 million.

### Final verdict

The act of infringing the right to exclusive use of a registered trademark violated Subparagraph 4 and Subparagraph 7 in Article 57 of the Trademark Law. In accordance with Paragraph 2 in Article 60 of the Trademark Law, the Changzhou Market Supervision Administration ordered the infringer to cease the infringing act, confiscated the infringing products, counterfeited trademark logos, and tools used for producing the counterfeited trademark logos, and imposed an administrative fine of RMB 881,485. Up to now, the infringer has not engaged in the aforesaid business any more.

(Recommended by: the Jiangsu Provincial Market Supervision Administration)

### Comments

The infringer in this case processed and marketed the outer carton for Moutai liquor and made money from price differences between the liquor products sold loose and those sold in cartons. This is an act of trademark infringement of atypical significance. “The liquor is genuine, but the package is fake.” Counterfeiting of packages also should not be tolerated, as it not only damages consumers’ rights, but also erodes the market share of Moutai liquor in genuine cartons, undermines the liquor market order, impairs the goodwill of the trademark owner, and spawns unfair market competition. As a well-known liquor brand, “Kweichow Moutai” boasts sky-high public awareness and goodwill nationwide. The case involved a whopping amount of money and had a great social influence. The final verdict on the case deters counterfeiters in the liquor market, helps restore the high-end liquor market order, and protects the legitimate interest of trademark owners and consumers.

This is a typical IP case featuring coordination between administrative law enforcement and criminal justice transferred by the public security organ to the administrative law enforcement department. In the process of handling the case, the market supervision authority and the public security organ joined forces and achieved a synergistic effect by sharing information and studying the case together. The coordinated effort has ensured a favorable consumer market and created a pattern of coordinated IP protection and “massive protection.”

## 07 南京市知识产权局处理“一种新型的截污式环保雨水口”实用新型专利侵权纠纷案

### 案情介绍

请求人安徽亚井雨水利用科技有限公司（以下简称为亚井公司）于 2020 年 3 月 24 日取得名称为“一种新型的截污式环保雨水口”的实用新型专利权，专利号为 ZL201920377144.7。2023 年 6 月，亚井公司向南京市知识产权局提出行政处理请求，诉被请求人江苏帕德新材料有限公司（以下简称为帕德公司）侵犯其涉案专利权。

2023 年 7 月 26 日，南京市知识产权局合议组就本案与另一关联案件（请求人为亚井公司，被请求人为南京南宇环保设备工程有限公司，以下简称为南宇公司，涉案专利与本案相同）进行了合并口头审理。亚井公司当庭请求追加南宇公司为本案被请求人并提交了请求书，南宇公司未提出异议，合议组准许追加。

### 处理结果

合议组经审理后认为：被控侵权产品落入涉案专利权利要求的保护范围，不属于《专利法》第六十七条规定的现有技术。

南宇公司在主观上未作出与帕德公司共同制造被控侵权产品的意思表示，在客观上也未帮助或教唆其制造被控侵权产品，故制造和销售被控侵权产品的行为系帕德公司独立实施，南宇公司不承担连带责任。推荐性地方标准文件，并不构成对其它地区的生产同类产品的强制力，不能认为是对涉案专利的默示许可。

2023 年 10 月 19 日，南京市知识产权局作出行政裁决，裁定帕德公司未经专利权人许可，为生产经营目的制造、销售落入 ZL201920377144.7 号实用新型专利权利要求保护范围的雨水口产品，构成对该专利权的侵害。责令帕德公司停止侵权行为，并驳回亚井公司的其他请求。

（本案由江苏省知识产权局提供）

### 分析点评

本案的处理涉及专利侵权判定、专利共同侵权行为认定、专利进入推荐性地方标准是否构成专利默示许可等专利侵权纠纷处理的复杂疑难问题。本案中办案机关在对涉案专利的技术特征进行充分分析、理解的前提下，正确运用对专利权利要求的解释方法，认定被控侵权产品与涉案专利存在一定区别的技术特征属于等同技术特征，从而认定被控产品落入涉案专利的保护范围，对请求人的专利权给予有效保护。

同时，本案对构成专利共同侵权的要件进行了充分分析说理，还对专利进入推荐性地方标准是否构成默示许可问题进行了分析说理，最终认定被控产品生产、销售及使用不构成对涉案专利的默示许可，并得出被请求人的行为构成专利侵权的结论，体现了专利行政执法人员较高的业务素质。

## 07 Dispute over infringement of a utility model patent “a novel pollutant-intercepting gutter inlet” handled by the Nanjing Intellectual Property Office

### About the case

On March 24, 2020, Anhui Yajing Rainwater Utilization Technology Co., Ltd. (hereinafter referred to as “Yajing”) obtained a utility model patent titled “a novel pollutant-intercepting gutter inlet” (patent No.: ZL201920377144.7). In June 2023, Yajing filed a petition with the Nanjing Intellectual Property Office for administrative adjudication on the alleged infringement of its patent by Jiangsu Pade New Material Co., Ltd. (hereinafter referred to as “Pade”)

On July 26, 2023, the collegial panel of the Nanjing Intellectual Property Office combined this case with a correlative case (where the petitioner is Yajing and the respondent is Nanjing Nanyu Environmental Equipment Engineering Co., Ltd., hereinafter referred to as Nanyu, and the patent involved therein is the same as the patent herein) and held a joint oral hearing. Yajing filed a petition for inclusion of Nanyu as another respondent in this case. The collegial panel approved the petition, as Nanyu did not raise an objection.

### Final verdict

Upon hearing, the collegial panel upheld that the alleged infringed product fell into the protection scope of the claims of the patent involved in this case and did not belong to the prior art stipulated in Article 67 of the Patent Law.

Subjectively, Nanyu did not indicate that it had manufactured the alleged infringed product in collaboration with Pade, and objectively, Nanyu did not help or incite Pade to manufacture the alleged infringed product. Therefore, the act of manufacturing and marketing the alleged infringed product was committed by Pade alone, and Nanyu did not bear joint liability. Recommended local standards did not constitute coercion on manufacturing the same kind of products in other regions, and therefore should not be considered as an implied license of the patent involved in this case.

On October 19, 2023, the Nanjing Intellectual Property Office made an administrative adjudication, ruling that Pade had, for the purpose of production and operations, manufactured and marketed gutter inlet products that fell into the protection scope of the claims of the utility model patent numbered ZL201920377144.7 without authorization from the patentee, and therefore constituted an infringement on the patent right. The Office ordered Pade to cease its infringing act and dismissed other claims of Yajing.

(Recommended by: the Intellectual Property Office of Jiangsu Province)

### Comments

This case relates to patent infringement determination, joint infringement determination, and whether the inclusion of a patent into recommended local standards constitutes an implied license of the patent, and other complex issues in dispute over patent infringement. In this case, on the premise of fully analyzing and understanding the technical features of the patent in question, the authority, by properly utilizing the means of interpretation, upheld that the technical features of the infringing product that had some differences from those of the patented product were equivalent technical features. Therefore, the authority determined that the infringing product fell into the protection scope of the patent in question and ruled in favor of the petitioner.

After a full analysis of the constitutive elements of the joint infringement and whether the inclusion of a patent into recommended local standards constitutes an implied license of the patent, the authority finally determined the manufacturing, marketing, and use of the infringing product did not constitute an implied license of the patent, and drew a conclusion that the act of the respondent constituted patent infringement. The conclusion showcased the high professional quality of the administrative law enforcement officers in the patent field.



## 08 南京海关查处出口侵犯商标专用权轴承案

### 案情介绍

2023 年 9 月 19 日，宁波某贸易有限公司以一般贸易方式向海关申报一批轴承，申报价格为 C&F117685.3 美元。南京海关隶属常州海关运用大数据分析，认为该批货物具有较高侵权嫌疑，后经查验发现，实际货物中，共有 5597 套轴承涉嫌侵权。其中，5557 套轴承本体上标有“SKF”标识，10 套轴承本体上标有“NSK”标识，10 套轴承本体上标有“TIMKEN”标识，20 套轴承外包装上标有“EMERSON 及图形”标识。经查询海关知识产权保护备案系统，上述商标均属有效备案，海关依法分别与权利人 SKF 公司、日本精工株式会社、铁姆肯公司和艾默生电气公司联系。权利人确认上述轴承均为侵权商品，并向海关申请采取保护措施并提交足额担保金。10 月 17 日，海关依法对 5597 套侵权嫌疑轴承实施扣留并立案调查。

### 处理结果

经调查，当事人在向海关申报货物出口时，将实际标有“SKF”、“NSK”、“TIMKEN”、“EMERSON 及图形”等商标标识的轴承申报为“无中英文品牌”，且未经商标权人许可，无法提供合法使用证明，涉案货值约合人民币 84.72 万元，涉嫌构成犯罪，根据《行政执法机关移送涉嫌犯罪案件的规定》《公安部、海关总署关于加强知识产权执法协作的暂行规定》等相关规定，常州海关于 10 月 18 日向常州市公安局通报了涉嫌侵犯知识产权违法犯罪线索。11 月 21 日，常州市公安局告知海关本案涉嫌销售假冒注册商标的商品罪，已于 11 月 20 日立案侦查。11 月 24 日常州海关依法将案件移送公安机关。

（本案由南京海关提供）

### 分析点评

本案中，海关以“大数据”理念为核心，依托智慧海关数据运用分析平台，根据公安部门反向通报的信息，自主研发构建知识产权侵权货物风险研判模型，聚焦重点商品、重点区域加强单证分析，运用“大数据 + 人工智能 + 专家智慧”，不断提升精准打击侵权商品的执法效能。

本案中，海关持续优化行刑衔接工作，与地方公安在信息共享、案件会商、执法互助等环节加强协作交流，实现侵权货物境内流通环节保护与进出口环节保护的无缝衔接，为健全衔接顺畅、快速高效的协同保护机制进行了有益的探索。

## 08 Nanjing Customs handling infringement on the right to exclusive use of bearing trademarks

### About the case

On September 19, 2023, a trading company in Ningbo declared a batch of bearings to the customs in normal trade mode, with the declared C&F value of US$117,685.3. Upon big data analysis, Changzhou Customs, which is affiliated with Nanjing Customs, considered that such batch of goods were highly suspected of infringement. The customs then inspected the goods and found that a total of 5,597 bearings were suspected of infringement. Specifically, 5,557 bearings were labeled with the logo of SKF, 10 with the logo of NSK, 10 with the logo of TIMKEN, and 20 with the logo of EMERSON (a wordmark plus an icon). After querying its IP production filing system, the customs found that all the aforesaid trademarks had been registered and valid. Subsequently, the customs contacted the corresponding trademark owners. They all confirmed that the aforesaid bearings were infringing products. They also applied for protection measures and requested the customs to collect a full amount of the customs bond from the trading company. On October 17, 2023, the customs detained the 5,597 bearings suspected of infringement and initiated an investigation in accordance with the law.

### Final verdict

Upon investigation, the customs found that during declaration, the trading company had declared the bearings labeled with logos of SKF, NSK, TIMKEN, EMERSON (a wordmark plus an icon), etc. as “no Chinese or English brands.” The trading company had not obtained authorization from corresponding trademark owners and could not provide any certificate of legitimate use of these trademarks, and these infringing products were worth RMB 847,200, which meant the company was suspected of constituting a crime. In accordance with the Provisions on Transferring Suspected Criminal Cases by Administrative Organs for Law Enforcement, the Interim Provisions of the Ministry of Public Security and the General Administration of Customs of China on Strengthening Cooperation in IP Law Enforcement, and other relevant regulations, Changzhou Customs submitted clues about the IP infringement case to the Changzhou Public Security Bureau on October 18, 2023. On November 21, 2023, the Changzhou Public Security Bureau informed Changzhou Customs that the case was suspected of the crime of selling commodities with counterfeited registered trademarks, and it had initiated an investigation on November 20, 2023. On November 24, 2023, Changzhou Customs transferred the case to the Changzhou Public Security Bureau in accordance with the law.

(Recommended by: Nanjing Customs)

### Comments

In this case, the customs strengthened document analysis of key commodities in key regions based on a “big data” mindset and by using the intelligent customs data analysis platform, the information provided by the public security organ, and an infringing goods risk evaluation model developed independently. Powered by a model of “big data + AI + think tank,” the customs is able to continuously improve its efficiency in cracking down on infringing acts.

In this case, the customs continued to optimize the coordination between administrative law enforcement and criminal justice and enhanced cooperation with the local public security organ in information sharing, case consultation, mutual assistance in law enforcement, etc. These efforts have achieved a seamless connection between the domestic cargo movement link and the import and export link, paving the way for coordinated IP protection in a smooth, rapid, and efficient manner.

# 09 苏州世康防护用品有限公司诉上海源时信息科技有限公司、徐某、行立供应链管理（上海）有限公司不正当竞争纠纷案

## 案情介绍

原告苏州世康防护用品有限公司（以下简称为世康公司）是 2011 年 2 月成立的一家专业呼吸防护用品生产企业，拥有“MASkin”和“BENEHAL/ 必利好”等品牌的防护口罩。2012 年 2 月，上海源时信息科技有限公司（以下简称为源时公司）（被告一）就“MASkin”品牌防护口罩与原告开展合作，在合作期间，源时公司抢注了第 10519462 号“MASkin”商标。双方合作破裂后，自 2015 年 8 月起，源时公司依据前述“MASkin”商标标识，针对原告发起了 3 起著作权侵权、商标侵权等知识产权诉讼，3 次以上向市场监督管理局、行业协会等投诉，23 次向阿里巴巴、天猫、淘宝等电商平台投诉等恶意维权行为。与此同时，源时公司还抢注了“MASkin”“BENEHAL”微信公众号名称。源时公司的法定代表人及控股股东徐某（被告二）在相关公众号上发表了针对原告的误导性言论，并多次利用抢注的商标与世康公司法定代表人进行威逼利诱式谈判。此外，在第 10519462 号“MASkin”商标在口罩相关商品上的注册被商标评审委员会宣告无效的前后，源时公司及其关联公司行立供应链管理（上海）有限公司（以下简称为行立公司）（被告三）还围绕原告的商标、企业字号持续抢注了超过 16 枚的“MASkin”“苏世康”“州世康”“BENEHAL”和“必利好”等商标。上述行为导致原告对相关防护口罩产品的经营陷入困难，且为维权支付了大量的时间、人力和物力成本。世康公司向法院起诉三被告，要求停止涉案不正当竞争行为，且连带赔偿原告经济损失及合理开支共计人民币 300 万元。

## 处理结果

法院认为：被告恶意提起知识产权诉讼、行政（行业）投诉、电商平台投诉构成滥用知识产权的不正当竞争行为；被告将 MASkin 和 BENEHAL 作为微信公众号名称构成不正当竞争行为；被告在微信公众号上发布不实文章构成对原告的商业诋毁；被告注册和使用与原告“maskin”、“BENEHAL”、“必利好”商标以及“世康”企业字号相同或近似的商标构成不正当竞争行为。三被告构成共同侵权，应依法承担停止侵权、消除影响的法律责任；关于损害赔偿，法院综合考虑了涉案不正当竞争行为的性质、不正当竞争行为造成的损害后果，以及行为人的主观恶意等因素，全额支持了原告 300 万元损害赔偿的诉请。

（本案由江苏省高级人民法院提供）

## 分析点评

本案是国内罕见的一起集恶意提起知识产权诉讼、恶意行政（行业协会）投诉、电商平台恶意投诉、不正当注册微信公众号、商业诋毁、恶意抢注和囤积商标等为一体的综合性不正当竞争纠纷案件。法院判决有效地规制了被诉侵权人借商业合作之名对真正权利人进行全方位围追堵截，进而“洗白”自己的行为。本案的判决坚决捍卫了“法不能向不法让步”的法治精神，对以表面合法的形式进行大量恶意维权的行为说“不”，切实维护了诚实守信的市场交易秩序，弘扬了社会主义核心价值观。同时，本案的判决做实了最严格知识产权保护，在法定赔偿的框架下对损害赔偿金额进行了充分说理，全额支持商标权利人 300 万元赔偿请求，“不仅受害者权益得以挽回，更让侵权者付出更重代价”。而且，本案的判决不仅仅立足当下的惩恶扬善、定分止争，更是对商标权人请求停止实施商标抢注等行为予以有力支持，判令侵权人变更微信公众号，停止恶意诉讼、恶意投诉、恶意抢注对未来有可能发生的不正当竞争行为进行了很好的预防和规制。本案的判决依法惩治知识产权制度滥用行为，有利于充分发挥司法裁判对市场交易的评价、规范、引导功能，引导市场主体合理正当维权、良性开展竞争，维护商标注册管理秩序和公平竞争的市场秩序，营造良好的营商环境和创新环境。

# 09 Suzhou Sanical Protective Product Manufacturing Co., Ltd. vs Shanghai Yuanshi Information Technology Co., Ltd., Xu X, and Xingli Supply Chain Management (Shanghai) Co., Ltd. in dispute over unfair competition

## About the case

Founded in February 2011, plaintiff Suzhou Sanical Protective Product Manufacturing Co., Ltd. (hereinafter referred to as “Sanical”) is dedicated to manufacturing professional respiratory protection products. It owns several protective mask brands, such as MASkin and BENEHAL. In February 2012, Shanghai Yuanshi Information Technology Co., Ltd. (hereinafter referred to as “Yuanshi”) (the first defendant) established a partnership with the plaintiff on MASkin protective masks. During the cooperation period, Yuanshi preemptively registered the trademark MASkin (No. 10519462). After their cooperation was terminated, and since August 2015, Yuanshi had maliciously filed three IP lawsuits against Sanical, including a copyright lawsuit and a trademark lawsuit, lodged over three complaints to the market supervision administration, the industry association, etc., and made 23 complaints to e-commerce platforms such as Alibaba.com, Tmall, and Taobao. All these lawsuits and complaints were about the so-called

infringement on the aforesaid trademark MASkin. Meanwhile, Yuanshi had also preemptively applied for WeChat official accounts MASkin and BENEHAL. Xu X (the second defendant), the legal representative and the controlling shareholder of Yuanshi, had published misleading posts about the plaintiff on the relevant WeChat official accounts, and leveraged the preemptively registered trademark to hold several rounds of negotiations with his counterpart at Sanical in a coercive manner. Moreover, before and after the trademark MASkin (No. 10519462) preemptively registered for mask-related commodities was invalidated by the Trademark Review and Adjudication Board, Yuanshi and its affiliated company, namely, Xingli Supply Chain Management (Shanghai) Co., Ltd. (hereinafter referred to as "Xingli") (the third defendant), also preemptively registered over 16 trademarks based on the plaintiff's trademarks and enterprise name, such as MASkin, 苏世康, 州世康, BENEHAL, and 必利好. The aforesaid infringing act dealt a heavy blow to the plaintiff's protective mask business. In addition, the plaintiff had spent a lot of time and money protecting its rights. Sanical brought a suit against the aforesaid three defendants in court, petitioned for cessation of unfair competition, and claimed for RMB 3 million as compensation for its economic loss and reasonable expenses incurred.

## Final verdict

According to the court decision, the defendant's act of maliciously filing IP lawsuits, lodging complaints to the administrative organ and the industry association, and making complaints to e-commerce platforms constituted abuse of IP rights for unfair competition; the defendant's act of using the words MASkin and BENEHAL as the names of its WeChat official accounts constituted unfair competition; the defendant's act of publishing misleading articles on its WeChat official accounts constituted business discrediting; and the defendant's act of registering and using trademarks that were the same as or similar to those of the plaintiff constituted unfair competition. The three defendants committed joint infringement, and therefore they shall cease the infringing act and eliminate the harmful effect on the plaintiff. As for the damages, the court took into consideration the nature of the unfair competition, consequences of the unfair competition, the subjective malice of the infringer, and other factors, and therefore upheld the plaintiff's claim for damages of RMB 3 million.

(Recommended by: the Jiangsu Higher People's Court)

## Comments

This is a rare case of dispute over unfair competition that integrates several infringing acts, such as maliciously filing IP lawsuits, maliciously lodging complaints to the administrative organ and the industry association, maliciously making complaints to e-commerce platforms, maliciously registering WeChat official accounts, discrediting others, and maliciously registering and hoarding trademarks. The court decision has dashed infringers' hopes to entrap rights holders under the guise of commercial cooperation and whitewash their infringing acts. Meanwhile, the court decision has defended the spirit of the rule of law: lawlessness must yield to law, called on everyone to say no to any act of maliciously filing lawsuits in a seemingly legal manner, safeguard a market order of honesty and trustworthiness, and carried forward the core socialist values. Moreover, the court decision has showcased the strictest-ever IP protection measures. The court fully demonstrated the amount of damages under the framework of legal compensation and upheld the trademark owner's claim for compensation of RMB 3 million. As a result, the victim's legitimate interest was safeguarded, and the infringer paid a heavy price. The court decision not only aims to reward the good, punish the evil, and settle the dispute, but also strongly upholds the trademark owner's petition for cessation of malicious acts. The court finally ordered the infringer to change the WeChat official accounts and cease the acts of filing malicious lawsuits, making malicious complaints, and maliciously registering trademarks, which can effectively curb unfair competition in the future. The court decision can deter infringers from abusing the IP system, fully demonstrate how judicial adjudication evaluates, regulates, and guides market transactions, encourage market entities to safeguard their reasonable and legitimate rights and compete fairly, improve trademark registration management, maintain a market order for fair competition, and create a favorable business and innovation environment.

# 10 西门子股份公司、西门子（中国）有限公司与宁波奇帅电器有限公司、昆山新维创电器有限公司等侵害商标权及不正当竞争纠纷案

## 案情介绍

“SIEMENS”和“西门子”既是西门子股份公司（以下简称为西门子公司）及西门子（中国）有限公司（以下简称为西门子中国公司）的注册商标，也是其字号。两原告主张，经过多年的使用及宣传，该商标和字号已经具有极高的知名度和影响力。宁波奇帅电器有限公司（以下简称为奇帅公司），不规范使用其注册商标“SiMBMC”，将其中的“i”变为“I”，使得其与涉案商标“SIEMENS”更加相近。以“上海西门子电器有限公司”名义大量生产被诉侵权产品，并标注“SIMBMC”商标。百度贴吧、新浪股吧等网络平台中，有用户发帖表示因为混淆和误认是西门子公司的产品，购买了被诉侵权洗衣机。2013 年至 2018 年间，全国多地行政机关对当地市场销售的“上海西门子电器有限公司”洗衣机进行了行政查处，产品销售范围包括江苏、云南、重庆、贵州、陕西、河南、湖南、江西、广西等地的数十个城市。昆山新维创电器有限公司（以下简称为新维创公司）系被行政查处的销售者之一。相关新闻报道显示，奇帅公司宣传其年产值达到 15 亿，渠道网络在国内市场已经基本没有空白领域，上千家的代理客户。奇帅公司 2015 年营销峰会 3 个小时实现 4.2 亿元签约额。2016 年营销峰会 3 个小时达到 3 亿元的签约额，2017 年一天订单金额达到 3.2 亿元。奇帅公司在当地购有四块工业用地，面积分别为 1.37、1、1.828、1.505 公顷，建有二分厂、三分厂。龚某其和王某为夫妻关系，二人作为股东共同设立和经营奇帅公司。两原告主张奇帅公司侵权规模巨大、侵权持续时间长，请求判决各被告停止侵权，并赔偿经济损失 1 亿元。

## 处理结果

法院认为，本案中奇帅公司虽然将“西门子”商标作为企业名称在相同商品上使用，但其并未突出使用“西门子”或“上海西门子”字号，故其行为不属于商标法第五十七条第七项规定的“给他人的注册商标专用权造成其他损害的”行为。奇帅公司将“SIMBMC”与“上海西门子电器有限公司”一起使用的行为弱化了涉案商标“SIEMENS”的识别性，属于商标法第五十七条第七项规定的“给他人的注册商标专用权造成其他损害的”行为，构成商标侵权。同时，被诉侵权行为构成对西门子公司、西门子中国公司企业名称的不正当竞争行为。

法院判决：新维创公司、奇帅公司立即停止侵害涉案商标专用权及不正当竞争行为，即停止在生产和销售的洗衣机、产品包装、产品宣传册、合同文书、互联网页面上使用“上海西门子电器有限公司”名称；奇帅公司、龚某其、王某自判决生效之日起三十日内，连带赔偿西门子公司、西门子中国公司经济损失 1 亿元及合理开支 16.3 万元；新维创公司、新维创公司经营者武某志就上述款项在 50 万元范围内承担连带赔偿责任；奇帅公司自判决生效之日起三十日内，在《法治日报》刊登公告以消除影响（内容需经一审法院审核），逾期未登载的，由一审法院选择媒体刊登判决书内容，所需费用由奇帅公司负担。

奇帅公司等不服提出上诉，二审法院于 2023 年 7 月 27 日作出终审判决，驳回上诉，维持原判。

（本案由江苏省高级人民法院提供）

## 分析点评

本案是严厉打击恶意仿冒、混淆行为的典型案例。本案中，通过恶意使用商标及企业名称等方式，对国际知名品牌“西门子”进行恶意仿冒、混淆，侵权行为恶劣，情节特别严重，获利巨大。法院判决侵权人赔偿 1 亿，有力保护了权利人的知识产权，提高了侵权代价，体现了平等保护、严格保护的原则，有助于营造良好的法治化、国际化一流营商环境。

# 10 Siemens AG and Siemens China vs Ningbo Qishuai Electrical Appliance Co., Ltd. and Kunshan Xinweichuang Electric Appliance Co., Ltd. in dispute over trademark infringement and unfair competition

## About the case

SIEMENS and 西门子 are both registered trademarks and enterprise names of Siemens AG and Siemens China. According to Siemens AG and Siemens China, the two plaintiffs in the case, after years of use and marketing, the aforesaid trademarks and enterprise names have gained enormous popularity and influence. Ningbo Qishuai Electrical Appliance Co., Ltd. (hereinafter referred to as “Qishuai”) used its own registered trademark SiMBMC in an improper way. To be specific, it changed the lowercase letter “i” to the uppercase one “I”, to make the trademark look more like SIEMENS. Then, Qishuai manufactured the alleged infringing products in large quantities under the name of 上海西门子电器有限公司, and labeled these products with the trademark SIMBMC. According to some posts on Internet platforms such as Tieba.baidu.com and Guba.sina.com.cn, some users said they had purchased the infringing washing machines because they mistook these washing machines as products from SIEMENS. From 2013 to 2018,

administrative organs in a number of cities investigated washing machines of 上海西门子电器有限公司 marketed in the local markets. These infringing products were available in tens of Chinese cities, including Chongqing, as well as many in Jiangsu, Yunnan, Guizhou, Shaanxi, Henan, Hunan, Jiangxi, Guangxi, etc. Kunshan Xinweichuang Electric Appliance Co., Ltd. (hereinafter referred to as "Xinweichuang") was one of the marketers subject to administrative investigation and punishment. According to a relevant report, Qishuai proclaimed that its annual output value had reached RMB 1.5 billion, its marketing channels had covered every corner of the country, and it had over 1,000 agent clients. At a marketing summit in 2015, Qishuai announced that it recorded sales of RMB 420 million in the first three hours. The three-hour sales stood at RMB 300 million at the marketing summit in 2016, and the daily order value in 2017 hit RMB 320 million. Qishuai has four local industrial estates, covering an area of 1.37 hectares, 1 hectare, 1.828 hectares, and 1.505 hectares, respectively, where it had built its second and third factories. Qishuai was founded by Gong Xqi and his wife, Wang X, who were also shareholders and operators of the company. The aforesaid two plaintiffs claimed that Qishuai had infringed a massive range of their products and continued the infringement for a long time. They petitioned for cessation of the infringement and claimed for RMB 100 million as compensation for economic losses.

## Final verdict

According to the court, in this case, Qishuai used the trademark 西门子 on the same product as an enterprise name, but it did not highlight 西门子 or 上海西门子. Therefore, Qishuai's act shall not be considered an act that "causes other harm to another person's right to exclusive use of a registered trademark," as set out in Subparagraph 7 in Article 57 of the Trademark Law. Qishuai's act of using SIMBMC and 上海西门子电器有限公司 together weakened the identifiability of the trademark SIEMENS, which shall be deemed as the act that "causes other harm to another person's right to exclusive use of a registered trademark" as set out in Subparagraph 7 in Article 57 of the Trademark Law, and therefore constituted trademark infringement. Meanwhile, the infringing act constituted unfair competition against the enterprise names of Siemens AG and Siemens China.

The court ruled that Xinweichuang and Qishuai shall immediately cease the infringement on the right to exclusive use of the registered trademark and the unfair competition, to be specific, cease using the name 上海西门子电器有限公司 on their washing machines, product packages, product brochures, contract documents, and any Internet pages; Qishuai, Gong Xqi, Wang X shall pay economic damages of RMB 100 million and reasonable expenses of RMB 163,000 to Siemens AG and Siemens China within 30 days upon the effective date of the ruling; Xinweichuang and the Xinweichuang operator Wu Xzhi shall bear joint and several liability for compensation within a range of RMB 500,000 regarding the aforesaid amount; Qishuai shall publish a notice (which shall be subject to review by the court of first instance) on Legal Daily within 30 days upon the effective date of the ruling to eliminate the negative impact, and if it fails to do so before the deadline, the court of first instance will publish the court verdict on a media agency it selects, and the fees incurred shall be borne by Qishuai.

Qishuai and other defendants appealed the decision. The court of the second instance made a final judgment on July 27, 2023, dismissing the appeal and upholding the original verdict.

(Recommended by: the Jiangsu Higher People's Court)

## Comments

This is a typical case of crackdown upon the act of maliciously imitating a registered trademark and misleading consumers. In this case, the infringer imitated the registered trademark of the world-renowned brand Siemens and misled consumers by maliciously using a trademark and enterprise name, and raked in huge illegal gains. The infringing act is egregious and the circumstances are particularly serious. The court finally ordered the infringer to pay compensation of RMB 100 million, which not only protected the IP of the rights holder, but also raised the infringement cost. The court decision embodies the principle of equal protection and strict protection, and helps create a favorable business environment featuring the rule of law and internationalization.