江苏省知识产权
十大典型案件

江苏省知识产权和商标战略实施工作领导小组办公室

2022

Top10 Intellectual Property Cases of Jiangsu Province in 2022

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

序言

2022 年，党的二十大胜利召开，擘画了以中国式现代化全面推进中华民族伟大复兴的宏伟蓝图，对知识产权工作作出新的重大部署。在江苏省委、省政府的正确领导下，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，以迎接保障和学习宣传贯彻党的二十大为主线，认真贯彻党中央、国务院和省委、省政府统筹疫情防控与经济社会发展的总体要求，圆满完成“十三五”规划，顺利实施“十四五”规划，知识产权强省建设取得了显著成效，得到了党中央、国务院和省委、省政府的充分肯定，连续两年在中央知识产权保护工作检查考核中获得优秀等次，连续两年获得国务院督查激励，知识产权综合实力继续保持全国前列。

2022 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，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，省市场监管局深入开展“铁拳”和互联网领域侵权假冒专项治理行动，共查处知识产权违法案件 3258 件，罚没款 6978.16 万元；省版权和文旅等部门深入开展“剑网 2022”执法专项行动，查办侵权盗版案件 584 起，涉案 2 亿余元；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，查处林草种苗案件 41 件，罚没款 78.31 万元；南京海关有序开展“龙腾”“蓝网”“净网”等专项行动，扣留侵权货物 3525 批次，涉案货物数量 62.12 万件。在司法保护方面，全省法院共受理各类知识产权案件 37021 件；全省检察机关共办理各类知识产权案件 778 件；公安部门组织“昆仑 2022”等行动，成功侦办了一批涉及民生重特大侵权假冒案件，全年查处案件 1749 起，抓获犯罪嫌疑人 2856 人。

在第 23 个世界知识产权日来临之际，我们从省法院、检察院、版权、公安、文旅、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 2022 年江苏省知识产权十大典型案件，旨在以案说法、促进守法，以点带面、指导工作。本次入选的十大典型案件涉及著作权、专利、商标、商业秘密等领域，民事、刑事、行政案件兼备，部分案件是新领域新业态下出现的新型侵权案件，案情复杂，事实认定困难，社会影响较大，处理过程复杂，充分彰显了我省对知识产权高标准保护的能力和成效。

现将 2022 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

2023 年 4 月

PREFACE

The victorious 20th CPC National Congress convened in 2022 drew an inspiring blueprint of advancing the rejuvenation of the Chinese nation on all fronts through a Chinese path to modernization, with key strategic plans developed for intellectual property. Under the strong leadership of the CPC Jiangsu Provincial Committee and the Jiangsu Provincial People's Government, intellectual property departments in Jiangsu kept upholding Xi Jinping's Thought on Socialism with Chinese characteristics for a New Era, embracing, studying, promoting and implementing the spirit of the 20th CPC National Congress, conscientiously addressing the overall requirements of the CPC Central Committee, the State Council, the CPC Jiangsu Provincial Committee and the Provincial People's Government for coordinating pandemic control and economic and social development. The 13th 5-year plan has been successfully accomplished while the 14th 5-year plan is progressing smoothly with remarkable achievements in developing Jiangsu into a leading province in intellectual property, which has been well recognized by the CPC Central Committee, the State Council, the CPC Jiangsu Provincial Committee and the Jiangsu Provincial People's Government. For a succession of two years, Jiangsu was rated Excellent in intellectual property work led by the central government and was awarded supervisory inspection-based incentives by the State Council, ranking among the top in comprehensive intellectual property capacity nationwide.

In 2022, the members of Jiangsu Intellectual Property and Trademark Strategy Implementation Leading Group made continuous efforts according to their respective duties on strengthening administrative law enforcement with increasing deterrent effect and judicial protection of intellectual property. They worked together to establish a coordinated mechanism for the enforcement of intellectual property rights. In terms of administrative law enforcement, Jiangsu Provincial Administration for Market Regulation carried out "Iron Fist Action" and crackdown campaign of internet-based infringement and counterfeiting. 3,258 cases of intellectual property violations were investigated with an amount of RMB 69.7816 million in fines and confiscation; provincial authorities of copyright and culture & tourism implemented "Sword 2022 Campaign" where 584 cases of infringement and piracy were investigated involving an amount of over RMB 200 million; Jiangsu Provincial Department of Forestry has included cracking down the production and distribution of fake or sub-standard forestry and grassland seedlings and infringement of new plant varieties as its routine work, having investigated 41 cases related to forestry and grassland seedlings and an amount of RMB783,100 in fines and confiscation; Nanjing Customs launched specialized initiatives such as "Soaring Dragon", "Blue Web" and "Clean Web" in a well-coordinated way, seizing 3,525 batches of infringing goods which involved 621,200 items. In terms of judicial protection, 37,021 intellectual property cases of various types were accepted by courts throughout Jiangsu Province and 778 cases were resolved by procuratorates. Campaigns such as "Kunlun 2022" launched by the public security authorities successfully handled numerous criminal cases of infringement and counterfeiting with major impact on people's livelihood. 1,749 criminal cases were investigated throughout the year and 2,856 suspects were caught.

As the World Intellectual Property Day 2023 approaches, we have compiled a collection of ten typical cases selected from the cases handled by Jiangsu High People's Court, Jiangsu People's Procuratorate, Jiangsu Provincial Copyright Administration, Public Security Department of Jiangsu Province, Jiangsu Provincial Department of culture and tourism, Jiangsu Provincial Administration for Market Regulation, Intellectual Property Office of Jiangsu Province, and Nanjing Customs.. This collection aims to provide case studies of effective legal solutions, raise public awareness of the rule of law, and guide the province's intellectual property work. The ten typical cases include civil, criminal and administrative cases related to copyright, patent, trademark, trade secrets and other fields.. Some of them are new infringement cases that emerged with the new disciplines and new business forms. They feature complex case details, difficult fact-finding, a complicated handling process and great social impact. Their inclusion in the collection demonstrate the capacity and achievement of Jiangsu Province in intellectual property protection in compliance with high standards.

The Collection of 2022 Ten Typical Intellectual Property Cases in Jiangsu Province are hereby compiled to our readers.

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

April 2023

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01 南京恒生制药有限公司与南京市知识产权局、拜耳知识产权有限责任公司专利行政裁决纠纷案

案情介绍

拜耳知识产权有限责任公司（以下简称拜耳公司）系“取代的噁唑烷酮和其在血液凝固领域中的应用”的发明专利权利人。被诉侵权的南京恒生制药有限公司（以下简称恒生公司）在其官网和相关展会上展示“利伐沙班片”“利伐沙班片原料药”，配有包装盒、包装瓶图片并印制有恒生公司的注册商标。拜耳公司认为该公司许诺销售的上述产品落入涉案专利权的保护范围，构成专利侵权，提出专利侵权纠纷处理请求。南京市知识产权局作出行政裁决，责令恒生公司删除官方网站上侵权宣传信息，停止许诺销售行为。该公司不服，认为其展示涉案产品的行为属于针对计划开发利伐沙班仿制药企业的定向投送，涉案产品并未处于可以销售的状态，因此不构成许诺销售。而且，其注明了涉案产品的原研药公司为拜耳公司，展板上也印有专利法 Bolar 例外的相关条款，即使构成许诺销售，其行为也符合专利法关于药品和医疗器械行政审批例外的规定，不构成专利侵权，故向法院提起行政诉讼。

处理结果

法院认为，许诺销售行为既可以针对特定对象，也可以针对不特定对象；既可以是发出邀约，也可以是发出要约邀请。恒生公司通过网站、展会向不特定对象作出销售涉案产品的意思表示明确、具体，构成许诺销售行为。关于许诺销售是否属于药品和医疗器械行政审批例外，应从抗辩主体及其具体行为等方面进行分析认定。首先，药品和医疗器械行政审批例外条款包含两种类型的主体，一是为了获得仿制药品和医疗器械行政审批所需要的信息而实施专利的行为人；二是为该行为人专门实施专利的行为人。恒生公司既不是申请利伐沙班药品需要进行行政审批的主体，也没有事实表明其仅向准备申请注册利伐沙班产品的特定企业进行了宣传，不符合药品和医疗器械行政审批例外抗辩的主体条件。其次，药品和医疗器械行政审批例外条款所调整的行为是，为提供行政审批所需要的信息，为自己申请行政审批而实施“制造、使用、进口”行为，以及专门为前一主体申请行政审批而实施“制造、进口”行为，均不包括许诺销售行为。恒生公司未经许可实施不属于药品和医疗器械行政审批例外情形的许诺销售行为，可能导致不特定对象推迟向专利权人购买专利产品等后果，实质上削弱对专利权人合法权益的保护。据此，一审法院判决驳回恒生公司诉讼请求。当事人不服上诉，最高法院二审维持。

（本案由江苏省高级人民法院省知识产权局提供）

分析点评

本案是涉及专利法 Bolar 例外条款适用的典型案例，对 Bolar 例外条款作了细化解释，明确了适用条件以及许诺销售行为不属于专利法关于药品和医疗器械行政审批的侵权免责情形（Bolar 例外）。判决指出，在适用专利法关于药品和医疗器械行政审批例外的规定时，要注意平衡专利权人和仿制药企之间的利益，既要保障社会公众在专利权届满后及时获得价格低廉的药品和医疗器械，也要避免削弱对专利权人合法权益的保护，对于鼓励医药领域发明创造、维护医药市场创新发展具有积极指引作用。

01 Nanjing Hencer Pharmaceutical Co., Ltd. v. Nanjing Municipal Intellectual Property Office and Bayer Intellectual Property GmbH: Case of Dispute over Administrative Decision on Patent

Case Brief

Bayer Intellectual Property GmbH (hereinafter referred to as “Bayer”) is the holder of the invention patent “substituted oxazolidinones and their use in the field of blood coagulation”. The defendant Nanjing Hencer Pharmaceutical Co., Ltd. (hereinafter referred to as “Hencer”) displayed “Rivaroxaban Tablets” and “Rivaroxaban Tablet APIs” on its official website and in relevant exhibitions, with pictures of packaging boxes and bottles bearing the registered trademark of Hencer. Believing that the aforesaid products that Hencer offered for sale fell into the scope of protection of the patent involved and constituted a patent infringement, Bayer filed a request for resolving the dispute over patent infringement. Nanjing Intellectual Property Office rendered an administrative decision, ordering Hencer to delete the infringing propaganda information on its official website and cease the offer for sale. Hencer refused to accept the decision, as it believed that its display of the products involved was a targeted advertising for the enterprises planning to develop generic drugs of rivaroxaban, and the products involved were in a non-saleable state, thus its acts did not constitute an offer for sale. Moreover, it mentioned Bayer as the original drug of the products involved, and there was Bolar provision of the patent law on the display boards. Hence, Hencer’s acts did not constitute a patent infringement due to compliance with the provisions of the patent law on exemptions from administrative examination and approval of drugs and medical devices, even if they constituted an offer for sale. Therefore, Hencer filed an administrative action with the court.

Outcome

The court held that an offer for sale can be aimed at either specific objects or unspecific objects, and can be either an offer or an invitation for offer. In this case, Hencer showed a clear and specific intention to sell the products involved to unspecific objects through its website and exhibitions, constituting an offer for sale. A judgement as to whether exemptions from administrative examination and approval of drugs and medical devices apply to an offer for sale shall be made by analyzing the defendant and its specific acts. First of all, exemptions from administrative examination and approval of drugs and medical devices cover two types of subjects, including perpetrators engaged in patent exploitation in order to obtain the information needed for administrative examination and approval of generic drugs and medical devices and actors assigned by the perpetrators for patent exploitation. Hencer is not a subject that is subject to administrative examination and approval in applying for rivaroxaban drugs, and there is no evidence to show that it only publicized the products involved to specific enterprises planning to apply for registration of rivaroxaban products. Therefore, Hencer could not be determined as a subject of defense for exemptions from administrative examination and approval of drugs and medical devices. Second, the acts regulated by exemptions from administrative examination and approval of drugs and medical devices are acts of "manufacture, use and import" for providing information needed for administrative examination and approval and for own application for administrative examination and approval, and acts of "manufacture and import" for the application for administrative examination and approval by the former subject, which do not include offers for sale. Hencer's offer for sale without permission, to which exemptions from administrative examination and approval of drugs and medical devices do not apply, may lead to a delay of unspecific objects in purchasing patented products from the patentee, and substantially weaken the protection for the legitimate rights and interests of the patentee. Accordingly, the court of first instance dismissed all claims of Hencer. Later, Hencer filed an appeal against the first-instance judgment, and the Supreme Court made a second instance judgment, ruling that the original judgment shall be maintained.

(This case is provided by Jiangsu High People's Court, and the Intellectual Property Office of Jiangsu Province)

Analysis and Comment

This case is a typical case involving the application of the Bolar exception in the patent law. It provides a detailed explanation of the Bolar exception, and clarifies the applicable conditions of the Bolar exception and the fact that exemptions from administrative examination and approval of drugs and medical devices in the patent law (Bolar exception) do not apply to an offer for sale. The judgment held that when applying the provisions of the patent law on exemptions from the administrative examination and approval of drugs and medical devices, an individual or entity must pay attention to balancing the interests between the patentee and generic drug companies, not only to ensure that the public can have access to low-priced drugs and medical devices promptly after the expiration of patent rights, but also to avoid weakening the protection for the legitimate rights and interests of the patentee. This case plays a positive guiding role in encouraging pharmaceutical inventions and maintaining the innovation and development of the pharmaceutical market.

02 无锡中工热控科技有限公司、陆某昌、司某律、徐某侵犯商业秘密案

案情介绍

苏州汇科机电设备有限公司(以下简称汇科公司)拥有不为公众所知悉的技术信息、经营信息，分别建立了文件管理制度、保密制度等制度规范，按照内容不同，把公司的秘密划分为绝密、机密、秘密三个等级，将属于公司秘密的文件、资料和其他物品的制作、收发、使用、复制、摘抄、保存、销毁以及采用电脑技术存取、处理、传递的公司秘密设置专人负责保密，并且在相关秘密的使用以及场所等方面，采取了不同的保密措施。

2000 年，陆某昌入职汇科公司，后任售后经理；2011 年，司某律入职汇科公司，任网络管理员。陆某昌、司某律入职后与汇科公司分别签署了保密及竞业禁止协议，汇科公司也按月分别向其支付了保密津贴。

无锡中工热控科技有限公司（以下简称中工公司）2017 年 3 月成立后，因缺乏相关技术人才，不断以高薪或入股等方式，从汇科公司招揽人才。经陆某昌介绍，中工公司法定代表人徐某联系司某律，承诺许以好处费，引诱司某律利用职务上的便利，非法向中工公司提供汇科公司的高端电子元件气氛烧成炉设计图等秘密资料。此后，司某律将汇科公司服务器中多份采取保密措施、载有技术信息的图纸等资料解密后拷贝给中工公司徐某，徐某向司某律支付人民币 8 万元及价值人民币 8 万元的中工公司 2% 的股份作为好处费。另外，司某律以解密费名义向徐某收取人民币 6.8 万元。

2018 年 2 月，陆某昌从汇科公司离职后加入中工公司担任副总经理，并于 2019 年 8 月接替徐某担任法定代表人，后徐某将存储有上述技术信息等资料的移动硬盘交给陆某昌。

2020 年 6 月，司某律受让徐某 42% 的股份，成为中工公司占股 51% 的隐名大股东。此后，司某律利用其网络管理员权限，不断向中工公司陆某昌提供汇科公司的经营信息等采取保密措施的资料。

中工公司利用从汇科公司获取的上述载有技术信息等内容的秘密资料后，生产并向汇科公司客户销售与汇科公司窑炉设备高度近似产品，给汇科公司造成损失达人民币 500 余万元。

处理结果

法院认为，中工公司以贿赂等不正当手段获取权利人的商业秘密，陆某昌、徐某系直接负责的主管人员，被告人司某律违反保密义务披露其所掌握的商业秘密，情节特别严重，均构成侵犯商业秘密罪。中工公司与司某律系共同犯罪。陆某昌、司某律、徐某在犯罪中均起主要作用，均系主犯，均应当按照其所参与的全部犯罪处罚。根据被告单位及各被告人的犯罪情节，判决认定中工公司犯侵犯商业秘密罪，判处罚金人民币 450 万元；陆某昌、司某律、徐某犯侵犯商业秘密罪，判处有期徒刑三年六个月至三年不等并处罚金等。

（本案由江苏省高级人民法院、省检察院、省市场监督管理局提供）

分析点评

本案是适用《刑法修正案（十一）》的典型案例。修正案修改了侵犯商业秘密罪的入罪标准，将《刑法》第 219 条中“给商业秘密的权利人造成重大损失”修改为“情节严重”。如何认定“情节严重”“情节特别严重”，司法解释尚未出台。判决明确，给受害人造成重大损失仍是衡量侵犯商业秘密罪“情节严重”等的重要因素，从而认定被告单位及被告人均构成侵犯商业秘密罪，对被告单位判处罚金人民币 450 万元，对各被告人分别判处有期徒刑并处罚金。同时，被告单位与受害单位员工内外勾结侵犯技术秘密和经营秘密，情节恶劣。法院判决体现了从严打击知识产权犯罪的决心，有利于维护公平竞争的市场秩序，激励市场主体创新热情。检察机关针对被害单位保密制度漏洞制发《检察建议书》，被害单位采纳并予以整改后成为知识产权保护示范点。

02 Case of Infringement on Trade Secrets Related to Wuxi Zhonggong Thermal Control Technology Co., Ltd., Lu XXchang, Si XXlu and Xu XX

Case Brief

Suzhou Huike Equipment Co., Ltd. (hereinafter referred to as “Huike”) has technical information and business information unknown to the public, and has formulated regulations such as document management regulations and confidentiality regulations, according to which its secrets are divided into three security levels by content: top secret, secret and confidential. It has specific persons responsible for the confidentiality of the production, receipt, distribution, use, reproduction, extraction, preservation and destruction of its secrets, including documents, materials and other items, as well as the secrets stored, processed and transmitted by the computer technology, and takes various confidentiality measures in terms of secret uses and places.

In 2000, Lu XXchang joined Huike, and later served as the after-sales manager; in 2011, Si XXlu joined Huike as a network administrator. Lu XXchang and Si XXlu signed a non-disclosure and non-compete agreement with Huike respectively after they joined the company, and Huike paid each of them confidentiality allowances on a monthly basis.

Wuxi Zhonggong Thermal Control Technology Co., Ltd. (hereinafter referred to as "Zhonggong") was established in March 2017. Due to the lack of technical talents, Zhonggong constantly recruited talents from Huike by advantage of high salary or equity stake after its inception. Through the middle man Lu XXchang, Xu XX, the legal representative of Zhonggong, contacted Si XXlu and induced him with benefits to take advantage of his position to illegally provide Zhonggong with Huike's secrets such as the design drawings of atmosphere furnace, a high-end electronic component. Subsequently, Si XXlu decrypted a number of drawings containing technical information and subject to confidentiality measures in the server of Huike and copied them to Xu XX. In return, Xu XX paid Si XXlu RMB 80,000 and 2% shares of Zhonggong worth RMB 80,000. Further, Si XXlu charged Xu XX RMB 68,000 as decryption fee.

Lu XXchang joined Zhonggong as the deputy GM in February 2018 after leaving Huike, and succeeded Xu XX as the legal representative in August 2019. Later, Xu XX handed over the mobile hard disk containing the aforesaid technical information and other materials to Lu XXchang.

In June 2020, Si XXlu acquired 42% shares in Zhonggong from Xu XX, becoming a dormant majority shareholder with 51% shares in Zhonggong. After that, Si XXlu continuously provided Lu XXchang of Zhonggong with Huike's business information and other confidential information by taking advantaging of his authorities as a network administrator.

By using the aforesaid secrets containing technical information obtained from Huike, Zhonggong produced products highly similar to Huike's kiln equipment and sold them to Huike's customers, which caused losses of over RMB 5 million to Huike.

Outcome

The court held that Zhonggong obtained the trade secrets of the right holder by improper means such as bribery, and that Lu XXchang and Xu XX were the directly responsible persons, and the defendant Si XXlu disclosed the trade secrets in his possession in serious violation of confidentiality obligations, which constituted an infringement of trade secrets. Zhonggong and Si XXlu committed a joint crime. Each of Lu XXchang, Si XXlu and Xu XX played a major role in the crime. They were all principal criminals and shall be given punishments according to all crimes they committed. According to the circumstances of the defendant entity's and the defendants' crimes, the judgment held that Zhonggong committed the crime of infringement on trade secrets and shall be fined RMB 4.5 million; Lu XXchang, Si XXlu and Xu XX committed the crime of infringement on trade secrets and shall be sentenced to a fine and a fixed-term imprisonment ranging from three years to three years and six months.

(This case is provided by Jiangsu High People's Court, Jiangsu People's Procuratorate and Jiangsu Provincial Administration for Market Regulation)

Analysis and Comment

This case is a typical case to which the Amendment (XI) to the Criminal Law applies. The Amendment revised the criteria for the conviction of the crime of infringement on trade secrets, and modified "bringing significant losses to the owner of trade secrets" in Article 219 of the Criminal Law to "serious violation". However, there has been no judicial interpretation on how to determine "serious violation" and "especially serious violation". The judgment held that significant losses caused to victim(s) were still an important factor to measure the "seriousness" of a crime of infringement on trade secrets. Therefore, it was determined that both the defendant entity and the defendants committed a crime of infringement on trade secrets, and that the defendant entity shall be fined RMB 4.5 million, and each defendant shall be sentenced to a fixed-term imprisonment and a fine. Moreover, the defendant entity infringed on the know-hows and trade secrets of the victim entity in collusion with the employees of the victim entity, which constituted a flagrant violation. The court's decision reflects the determination to crack down on intellectual property crimes, which is conducive to maintaining a fair market order and inspiring the enthusiasm for innovation of market players. The procuratorial organ issued the "Suggestions from Prosecutorial Organs" for the loopholes in the confidentiality system of the victim entity. After making rectification as per the suggestions, the victim entity became a demonstration site for intellectual property protection.

03 吕某龙等侵犯冬奥会吉祥物“冰墩墩”著作权案

案情介绍

2022 年 2 月，扬州市公安民警在工作中发现有人通过网络渠道在扬州等地兜售冬奥会吉祥物“冰墩墩”系列产品，产品定价远低于官网正版定价，具有高度涉案可疑，随即对上述情况开展调查。经侦查发现，在扬州市销售的多名嫌疑人员均通过无锡赵某批发购进假冒“冰墩墩”产品并在网上进行销售。赵某的货源是购自浙江的吕某龙和朱某强，涉案产品数量巨大。

2022 年 2 月 10 日，扬州市公安局立案侦查。2022 年 3 月 8 日，扬州市公安局食药环侦支队联合多警种部门与市文化市场综合执法支队，共出动 50 余名执法人员，对浙江、江苏多地进行同步收网，全链条打击“生产 - 批发 - 销售”假冒侵权冬奥会吉祥物“冰墩墩”系列产业的不法产业链条，抓获生产、销售假冒“冰墩墩”系列产品犯罪嫌疑人 10 人，捣毁生产加工窝点 2 个，储藏批发窝点 3 个，现场查获制假模具 1 套，成品 1 万余个，半成品、配件及包材若干。已查明赵某、吕某龙、朱某强等人销售假冒“冰墩墩”系列产品且数量巨大，涉及江苏、浙江、山东、江西等多地省市。其中吕某龙团伙销售金额达 70 余万元，赵某销售金额达 50 余万元，朱某强等团伙销售金额达数万元。

处理结果

该案已由扬州市广陵区人民法院判决生效，以吕某龙为首的 7 人被以侵犯著作权罪判处刑事处罚，另有 2 人被扬州市文化市场综合执法支队处以行政处罚。

（本案由江苏省公安厅、省文旅厅、省版权局提供）

分析点评

本案被中宣部、公安部、文旅部、广电总局、网信办等五部委列为联合挂牌督办案件。2022 年北京冬奥会、残奥会的举办使得吉祥物“冰墩墩”及其衍生品广受追捧，出现一“墩”难求的现象。一些不法分子利用消费者“求墩心切”的心理，实施制售侵权假冒的奥运会特许商品等违法犯罪行为。经过细致的线索摸排、案件调查工作后，扬州市文化市场综合行政执法支队与扬州市公安局食药环侦支队开展联合行动，成功斩断制售假冒侵权“冰墩墩”形象系列产品的不法产业链。本案不仅有力震慑打击了冬奥会著作权侵权违法犯罪行为，有效维护了权利人的合法权益，还避免了不良社会影响，维护了我国严格保护知识产权的良好形象。

03 Case of Infringement on Copyrights of Mascot “Bing Dwen Dwen” of Olympic Winter Games Related to LYU XXlong et al.

Case Brief

In February, 2022, the public security officers of Yangzhou found that someone was selling the Olympic Winter Games Mascot “Bing Dwen Dwen” series products in Yangzhou and other places through online channels at a price far lower than the price of genuine products on the official website, which was highly suspicious. Consequently, they conducted an immediate investigation. Upon the investigation, it was found that a number of suspects in Yangzhou bought counterfeit “Bing Dwen Dwen” products through Zhao XX in Wuxi and sold them online. Zhao XX’ s counterfeit “Bing Dwen Dwen” products were purchased from Lyu XXlong and Zhu XXqiang in Zhejiang. There were a huge number of products involved in this case.

On February 10, 2022, Yangzhou Public Security Bureau filed a case for investigation. On March 8, 2022, the Food, Drug and Environment Crime Investigation Detachment under Yangzhou Public Security Bureau, in conjunction with several police departments and the Comprehensive Law Enforcement Detachment of Cultural Market of Yangzhou City, dispatched more than 50 law enforcement officers to arrest the suspects in Zhejiang and Jiangsu simultaneously, in an effort to crack down on the whole illegal industrial chain of “producing-wholesaling-selling” counterfeit “Bing Dwen Dwen” series products. They arrested 10 suspects who produced and sold counterfeit products, destroyed 2 dens for producing and processing counterfeit products and 3 dens for storing and wholesaling counterfeit products, and seized 1 set of moulds used for producing counterfeit products, more than 10,000 finished products, and a number of semi-finished products, accessories and packaging materials. It was found that Zhao XX, Lyu XXlong, Zhu XXqiang et al. sold counterfeit “Bing Dwen Dwen” series products in huge quantities in many provinces and cities including Jiangsu, Zhejiang, Shandong and Jiangxi. The illegal gains of the criminal gang led by Lyu XXlong were more than RMB 700,000, those of the criminal gang led by Zhao XX were more than RMB 500,000, and those of the criminal gang led by Zhu XXqiang were tens of thousands of yuan.

Outcome

This case has been heard and decided by Guangling District People' s Court of Yangzhou City. Seven persons, led by Lyu XXlong, were sentenced to criminal punishments for copyright infringement, and two person were given administrative punishments by the Comprehensive Law Enforcement Detachment of Cultural Market of Yangzhou City.

(This case is provided by the Public Security Department of Jiangsu Province, Jiangsu Provincial Department of Culture and Tourism, and Jiangsu Provincial Copyright Administration)

Analysis and Comment

This case was handled under the joint supervision of the Publicity Department of the CPC Central Committee, the Ministry of Public Security, the Ministry of Culture and Tourism, the National Radio and Television Administration, and the Office of the Central Cyberspace Affairs Commission. Beijing 2022 Olympic Winter Games and Paralympic Winter Games made the mascot "Bing Dwen Dwen" and its derivatives widely sought after and hard-to-get. Some outlaws manufactured and sold counterfeit Olympic-licensed goods by advantage of people' s eagerness for "Bing Dwen Dwen". Upon thorough search for clues and investigation, the Comprehensive Law Enforcement Detachment of Cultural Market of Yangzhou City and the Food, Drug and Environment Crime Investigation Detachment under Yangzhou Public Security Bureau conducted a joint action, successfully cutting off the illegal industrial chain of manufacturing and selling counterfeit "Bing Dwen Dwen" series products. This case effectively deterred and cracked down on the crimes of infringement on copyrights of the Olympic Winter Games, safeguarded the legitimate rights and interests of the patent owner, avoided adverse social impact, and preserved China' s good image of strict protection of intellectual property rights.

04 陈某辉等被告人侵犯著作权罪案

案情介绍

网易（杭州）网络有限公司（以下简称网易公司）系《大话西游游戏软件》计算机软件著作权人。2018 年底，被告人段某明、王某彬、黄甲、郝某、黄乙、吴某来以营利为目的，商量合作开发《大话西游》网络游戏“私服”，并联系被告人陈某辉提供技术支持，双方约定被告人陈某辉分得游戏利润的 30%，被告人段某明、王某彬、黄甲、郝某、黄乙、吴某来分得游戏利润的 70%（后将利润的 60% 分给游戏代理）。后被告人段某明、王某彬、黄甲、郝某、黄乙、吴某来共同出资从网络上购买《大话西游》的人物、地图、宠物等素材资源，发送给被告人陈某辉。被告人陈某辉安排被告人宋某飞、梁某强、吴某全负责“私服”游戏的开发与维护、升级，并命名为《遮天西游》，被告人段某明、王某彬、黄甲、郝某、黄乙、吴某来负责游戏的日常运营。2019 年 2 月，上述被告人在未取得网易公司授权的情况下开始运营《大话西游》游戏“私服”《遮天西游》，并通过玩家充值获利。运营期间，被告人段某明、王某彬、黄甲、郝某负责服务器租赁、利润结算、帮助反馈解决玩家技术问题等，被告人黄乙、吴某来参与分成。自 2019 年 2 月至 2020 年 6 月间，该游戏累计非法经营数额为 1574.9 万余元。

2019 年 4 月起，被告人刘某杰为谋取非法利益，明知系侵权的游戏，仍缴纳代理费 9 万元，担任该游戏的总代理，全面负责推广、传播该游戏“私服”，先后发展多名二级代理，通过快手、微信、QQ 等方式推广上述游戏、吸引玩家充值，并将游戏利润的 50%-60% 转给二级代理。经查，被告人刘某杰违法所得为 496 万元，个人获利人民币 25.8 万元。

被告人王某霞、李某莎、刘某富、李某、李某旋、张某、秦某、刘某先、卢某波为谋取非法利益，明知系侵权游戏仍担任被告人刘某杰的二级代理，通过多种渠道推广上述游戏、吸引玩家充值。经鉴定，《遮天西游》游戏与网易公司《大话西游》手游具有实质同一性。

处理结果

法院认为，被告人陈某辉等诸多被告人以营利为目的，未经著作权人许可，复制发行他人作品，通过信息网络向社会公众传播并运营“私服”游戏，均已构成侵犯著作权罪，故判处被告人陈某辉有期徒刑四年四个月，并处罚金人民币 650 万元；判处其余被告人三年九个月至七个月不等的有期徒刑，并处罚金；对其中 14 名犯罪情节较轻的被告人判处缓刑。一审判决后，被告人均未提出上诉，案件已经生效。

（本案由江苏省高级人民法院、省检察院、省公安厅提供）

分析点评

本案被中宣部、全国“扫黄打非”办公室、公安部、最高检察院等四部委列为联合挂牌督办案件，是游戏私服类著作权犯罪中的一种新型犯罪形式。本案特殊性在于，被告人自行编写了相关游戏代码，但未经授权使用了原版游戏中的人物形象、地图关卡等素材，架设了和原版游戏几乎一样的私服游戏，其运行后的动态游戏画面与权利游戏画面一致。法院将此种行为认定为对权利游戏的复制发行，是一种认定侵犯著作权罪的全新路径，也为加大网络游戏知识产权保护提供了实践探索。同时，本案非法经营数额达人民币 1500 余万元，情节特别严重。法院对主犯判处四年多实刑，对其他被告人判处不等刑罚，体现了通过刑罚严厉打击知识产权犯罪行为的鲜明导向。

04 Case of Copyright Infringement Related to Chen XXhui, et al.

Case Brief

NetEase (Hangzhou) Network Co., Ltd. (hereinafter referred to as “NetEase”) is the copyright owner of the “Journey to the West”（《大话西游》） game software. At the end of 2018, the defendants Duan XXming, Wang XXbin, Huang Jia, Hao XX, Huang Yi and Wu XXlai conspired to jointly develop a “private server” of the “Journey to the West” online game for making profits, and then contacted the defendant Chen XXhui for technical support. They agreed that 30% of the game profits would be allocated to the defendant Chen XXhui, and 70% to the defendants Duan XXming, Wang XXbin, Huang Jia, Hao XX, Huang Yi and Wu XXlai (60% allocated to the game agent afterwards). Later, the defendants Duan XXming, Wang XXbin, Huang Jia, Hao XX, Huang Yi and Wu XXlai jointly purchased the characters, maps, pets and other material resources of the “Journey to the West” online and sent them to the defendant Chen XXhui. The defendant Chen XXhui arranged for the defendants Song XXfei, Liang XXqiang and Wu XXquan to take full responsibility for the development, maintenance and upgrade of the “private server” game, which was named “遮天西游”. The defendants Duan XXming, Wang XXbin, Huang Jia, Hao XX, Huang Yi and Wu XXlai were responsible for the daily operation of the game. In February 2019, the aforesaid defendants started to operate the private server “遮天西游” of the “Journey to the West” without the authorization of NetEase, and make profits through player top-up. During the operation, the defendants Duan XXming, Wang XXbin, Huang Jia and Hao XX were responsible for leasing the server, settling profits, and feeding back and solving players’ technical troubles, and the defendants Huang Yi and Wu XXlai participated in profit sharing. From February 2019 to June 2020, the game created illegal gains totaling more than RMB 15.749 million.

In April 2019, the defendant Liu XXjie paid an agency fee of RMB 90,000 for making illegal profits, knowing that “遮天西游” was an infringing game. He served as the general agent of the game who was fully responsible for the promotion of the game, and successively developed a number of secondary agents to promote the aforesaid game through Kuaishou, WeChat, QQ and other channels and attract player top-up. Meanwhile, he transferred 50%-60% of the game profits to the secondary agents. Upon investigation, the defendant Liu XXjie obtained RMB 4.96 million of illegal gains, and his personal profits were up to RMB 258,000.

In order to make illegal profits, the defendants Wang XXxia, Li XXsha, Liu XXfu, Li XX, Li XXxuan, Zhang XX, Qin XX, Liu XXxian and Lu XXbo served as the secondary agents of the defendant Liu XXjie to promote the aforesaid game and attract player top-up, knowing that it was an infringing game. Upon verification, the game “遮天西游” is substantially identical to the “Journey to the West” mobile game operated by NetEase.

Outcome

The court held that the defendant Chen XXhui et al. reproduced and distributed others’ works without the permission of the copyright owner, and disseminated and operated the “private server” game to the public through information networks, which constituted a crime of copyright infringement. Therefore, the defendant Chen XXhui was sentenced to a fixed-term imprisonment of four years and four months and a fine of RMB 6.5 million; other defendants were respectively sentenced to a fixed-term imprisonment ranging from seven months to three years and nine months, and a fine. Among them, 14 defendants with minor violation were granted a reprieve. After the first instance judgment, none of the defendants filed an appeal. The judgment has come into force.

(This case is provided by Jiangsu High People’s Court, Jiangsu People’s Procuratorate and the Public Security Department of Jiangsu Province)

Analysis and Comment

This case was handled under the joint supervision of the Publicity Department of the CPC Central Committee, the Office of the National Working Group for Combating Pornography and Illegal Publications, the Ministry of Public Security, and the Supreme People's Procuratorate, and it involves a new type of copyright crime related to "private server" game. The particularity of this case lies in that the defendants wrote their own game codes, but they used the characters, maps and other materials of the original game without permission, and set up a private server game that was almost the same as the patented game, with substantially identical dynamic game screen. The court identified these acts as reproduction and distribution of the patented game, which is a new way to identify copyright infringement crimes, and provides practical exploration for intensifying the protection for intellectual property rights of online games. Meanwhile, the amount of illegal gains involved in this case exceeded RMB 15 million, which constituted an especially serious violation. The principal criminal was sentenced to a fixed-term imprisonment of more than four years, and other defendants were respectively given substantial punishments, reflecting a clear orientation of severely cracking down on intellectual property crimes through punishments.

05 德禄产业与发展有限责任两合公司、德禄国际有限公司、德禄（太仓）家具科技有限公司诉德禄家具（上海）有限公司、德禄家具（南通）有限公司等侵害商标权及不正当竞争纠纷案

案情介绍

“德禄”“raumplus”商标由德禄产业与发展有限责任两合公司（以下简称德禄两合公司）在家具类商品上注册，后被授权德禄国际有限公司（以下简称德禄国际公司）、德禄（太仓）家具科技有限公司（以下简称德禄太仓公司）使用，已成为德国知名定制家具品牌，荣获红点奖、iF 设计奖、德国国家设计奖等多项国际大奖，在家具领域具有良好声誉和极高知名度。

德禄国际公司与案外人先后合资成立德禄家具（上海）有限公司（以下简称德禄上海公司）、德禄家具（南通）有限公司（以下简称德禄南通公司），约定合资企业在合资期内有权使用“德禄”“raumplus”商标，合资终止后不得再使用该商标及字号。2011 年，德方退出合资公司，但德禄上海公司、德禄南通公司仍在家具商品及发货单、宣传册、设计图纸、店铺装潢、门头、展会展厅、投标文件等处大量使用上述商标、字号及“德禄家居 raumplus”“德禄家具”“DELU”等字样；将自有品牌宣传为德禄旗下高端定制品牌，刻意使用德禄两合公司等品牌发展历史及知名度宣传；抢注“德禄”“DELU”等相关商标及“德禄 .com”域名，使用“德禄”等相关文字作为微信公众号、微信群、官网名；在全国大规模开设经销门店，大批量承接工程项目等。德禄两合公司等遂诉至法院，请求判令德禄上海公司、德禄南通公司停止侵权并赔偿损失人民币 5000 万元。诉讼期间，德禄南通公司向国家知识产权局申请宣告德禄两合公司拥有的涉案“德禄”商标无效，被驳回申请。

处理结果

法院认为，两被告公司在合资关系结束后，仍在经营中大量使用“德禄”“raumplus”商标、字号及相关文字生产、销售家具产品，进行关联宣传，并大规模开设门店，参加展会，大批量承接工程项目，造成市场混淆与误认，严重损害德禄品牌的市场利益，构成商标侵权及不正当竞争。针对两公司故意侵权、情节严重情形，法院最终在精细化计算侵权获利的基础上，依法适用惩罚性赔偿，全额支持权利人人民币 5000 万元的赔偿请求，并判决两公司停止商标侵权及不正当竞争、变更企业名称、刊登声明消除影响、将域名转移至德禄太仓公司等。

（本案由江苏省高级人民法院提供）

分析点评

本案系国际知名高端家居品牌在中外合作结束后遭遇严重知识产权侵权被严厉惩治的典型案例，也是迄今为止外资企业在华获得判赔金额最高的商标侵权案件。审理中，法院积极适用证据提供令和举证妨碍制度，针对被告有能力提供而未能如实、完整提交其持有的侵权产品销量、利润率、全国加盟店等财务资料及其他证据，适用举证妨碍规则，作出对其不利推定。本案判决精准细化了赔偿额的计算方式以及惩罚性赔偿适用条件和考量因素，最终全额支持权利人人民币 5000 万元赔偿主张，彰显了江苏法院平等保护中外当事人知识产权的理念，受到社会各界广泛关注和高度评价，在国内外产生深远影响，有力推动形成市场化法治化国际化一流营商环境，实现三个效果的有机统一。

05 raumplus Besitz-und Entwicklungs - GmbH & Co.KG., raumplus GmbH and Delu (Taicang) Furniture Technology Co., Ltd. v. Delu Furniture (Shanghai) Co., Ltd., Delu Furniture (Nantong) Co., Ltd. et al.: Case of Dispute over Trademark Infringement and Unfair Competition

Case Brief

The trademarks “德 禄 (Delu)” and “raumplus” were registered with respect to furniture products by raumplus Besitz-und Entwicklungs - GmbH & Co.KG. (hereinafter referred to as “raumplus Besitz-und Entwicklungs”), and later licensed to raumplus GmbH and Delu (Taicang) Furniture Technology Co., Ltd. (hereinafter referred to as Delu Taicang). With a good reputation and a high fame in the furniture industry, raumplus has become a well-known German custom-made furniture brand, and won many international awards including Reddot Award, iF Product Design Award and German Design Award.

raumplus GmbH and an outsider successively established Delu Furniture (Shanghai) Co., Ltd. (hereinafter referred to as “Delu Shanghai”) and Delu Furniture (Nantong) Co., Ltd. (hereinafter referred to as “Delu Nantong”) based on the agreement that the joint ventures had the right to use the trademarks “德 禄 (Delu)” and “raumplus” in the duration of joint venture relationships, and shall cease the use of the trademarks and trade names after the termination of joint venture relationships. In 2011, raumplus GmbH withdrew from the joint ventures. However, Delu Shanghai and Delu Nantong continued to use the aforesaid trademarks, trade names and the words “德禄家居 raumplus”, “德禄家具” and “DELU” on their furniture products, shipping orders, brochures, design drawings, store decorations, storefront signboards, exhibition halls and bidding documents; promoted their own brands as high-end custom-made furniture brands under raumplus, and deliberately conducted propaganda activities by taking advantage of the brand development history and popularity of raumplus Besitz-und Entwicklungs; preemptively registered the related trademarks such as “德禄” and “DELU” and the domain name “Delu. com”, and used the related words such as “德 禄 (Delu)” in the names of their WeChat official accounts, WeChat Groups and official websites; set up a large number of stores and undertook large quantities of projects in China. Consequently, raumplus Besitz-und Entwicklungs filed a lawsuit with the court, requesting the court to order Delu Shanghai and Delu Nantong to cease the infringement and compensate raumplus Besitz-und Entwicklungs for its losses totaling RMB 50 million. During the litigation, Delu Nantong applied to China National Intellectual Property Administration for invalidating the trademark “德禄 (Delu)” owned by raumplus Besitz-und Entwicklungs, which was rejected.

Outcome

The court held that after the termination of the joint venture relationships, the two defendant entities continued to produce, sell and promote furniture products, set up a large number of stores, participate in exhibitions and undertake large quantities of engineering projects by using the trademarks and trade names of “德 禄 (Delu)” and “raumplus” and related words, which caused market confusion and misunderstanding, seriously damaged the market interests of raumplus, and constituted trademark infringement and unfair competition. In view of the intentional infringement and serious violation of the two companies, the court finally applied punitive damages according to law on the basis of fine calculation of the profits from infringement, supported the claim for damages of RMB 50 million filed by the copyright owner, and ordered the two companies to cease trademark infringement and unfair competition, change the company name, make public announcements to eliminate the adverse impact, and transfer the domain name to Delu Taicang.

(This case is provided by Jiangsu High People’s Court)

Analysis and Comment

This case is a typical case in which an internationally renowned high-end furniture brand suffered serious intellectual property infringement after the termination of Sino-foreign cooperation and the infringers were severely punished, and also a trademark infringement case in China involving the highest amount of compensation for foreign-funded enterprises so far. In the trial, the court applied the evidence adducing order and the "obstruction of evidence" rule. In view of the fact that the defendants were able to but failed to submit the truthful and complete financial information and other evidence of infringing products, such as sales volume, profit rate and franchised stores nationwide, the court applied the "obstruction of evidence" rule and made a presumption against the defendants. The judgment of this case accurately refined the calculation method of compensation and the conditions and considerations for application of punitive damages, and supported the claim for damages of RMB 50 million filed by the copyright owner. This case demonstrates the concept of Jiangsu courts regarding equal protection for intellectual property rights of Chinese and foreign entities, and has received extensive attention and high praise from all walks of life, which has resulted in a far-reaching impact at home and abroad, effectively promoted the construction of an international first-class, laws-based and market-oriented business environment, and realized the integration of the three effects.

06 稳健医疗用品股份有限公司与苏州稳健医疗用品有限公司、苏州航伟包装有限公司、滑某侵害商标权及不正当竞争纠纷案

案情介绍

稳健医疗用品股份有限公司（以下简称稳健股份公司）成立于 2000 年，业务覆盖医用敷料、医用卫生材料等领域，在口罩等商品上注册“winner”“稳 健”“稳健医疗”等诸多商标。稳健股份公司在业内具有极高知名度及影响力，为我国抗疫工作作出突出贡献。苏州稳健医疗用品有限公司（以下简称苏州稳健公司）成立于 2020 年，在生产销售的口罩产品图片、参数、详情、包装箱、合格证、价签、包装袋以及经营环境、公众号、网站等处使用“SW”“WJ”以及“品牌：苏稳、品牌：稳健、品牌：Winner/ 稳健、生产企业：苏州稳健医疗用品有限公司”“稳健医疗、SW 苏稳、WJ 稳健医疗、苏州稳健医疗”“苏州稳健公司”“苏州稳健医疗用品有限公司”等字样。

滑某分别持有苏州稳健公司、苏州航伟包装有限公司（以下简称航伟公司） 99%、91.6667% 股份。苏州稳健公司在航伟包装工业园内办公，口罩包装袋上标注航伟公司官网地址，销售收据加盖航伟公司公章。航伟公司官网中大篇幅介绍苏州稳健公司产品及企业信息，网店销售苏州稳健公司口罩，并自称“自有工厂”“源头厂家”。滑某将航伟公司网店口罩收入纳入个人账户。

稳健股份公司认为上述行为苏州稳健公司、航伟公司、滑某共同侵害其商标权，构成不正当竞争，要求停止侵权并连带赔偿。

处理结果

法院认为，涉案注册商标及企业字号知名度极高。苏州稳健公司在口罩产品及其网站、网店、公众号使用与涉案注册商标相同或近似的标识，擅自注册、使用“稳健”字号及企业名称，开展相同经营活动，具有明显攀附稳健股份公司商誉的目的，造成混淆误认，构成商标侵权及不正当竞争。苏州稳健公司、航伟公司高度关联。滑某为两公司绝对控股股东，个人与公司财产混同。在滑某策划与控制下，两公司分工合作，共同侵权，三者承担连带责任。

苏州稳健公司、航伟公司、滑某明知涉案商标及字号在业内知名度极高，使用侵权字号注册公司，有组织、有分工实施侵权，且在稳健股份公司两次举报后仍继续侵权，并向市场监管部门不实陈述，严重违反诚实信用原则和商业道德。同时，本案侵权商品为疫情防控物资，未经检验程序即向公众销售，质量堪忧，极大损害了稳健股份公司商誉，严重危及公众健康。侵权渠道多样，侵权规模较大、时间跨度长，当事人拒绝根据法院要求提交财务账册等证据。因此，苏州稳健公司、航伟公司、滑某侵权情节严重，主观故意明显，法院对于可以查明的侵权获利部分，适用四倍惩罚

性赔偿；对于无法查明具体销量的部分，适用法定赔偿确定赔偿额。据此，法院判决苏州稳健公司、航伟公司、滑某立即停止侵权行为，苏州稳健公司立即停止使用企业名称；三者共同赔偿稳健公司损失及维权合理费用人民币 1021655 元。

（本案由江苏省高级人民法院提供）

分析点评

稳健股份公司是知名医用卫生材料生产企业，商标及企业字号在业内知名度极高。国务院疫情联防联控机制医疗物资保障组、团中央青年志愿者行动指导中心、湖北省疫情防控指挥部等单位先后致信感谢，称其为当之无愧的抗疫“军工厂”。行为人故意以侵权字号注册企业，生产销售口罩产品，有组织、有分工地实施严重商标侵权及不正当竞争。对此，法院判决适用四倍惩罚性赔偿、加大赔偿力度、认定共同侵权、责令停止使用字号等予以严厉惩治，诠释了江苏法院最严格知识产权保护理念，有力保护了知识产权，维护了公众生命健康安全、抗疫大局和防控物资市场的稳定，实现了政治效果、法律效果和社会效果有机统一，是服务保障疫情防控和经济社会发展的典型案例。

06 Winner Medical Co., Ltd. v. Suzhou Winner Medical Co., Ltd., Suzhou Hangwei Packaging Co., Ltd. and Hua XX: Case of Dispute over Trademark Infringement and Unfair Competition

Case Brief

Founded in 2000, Winner Medical Co., Ltd. (hereinafter referred to as “Winner”) is mainly engaged in medical dressings and medical sanitary materials, and has registered many trademarks such as “winner” “稳 健” “稳健医疗” with respect to its main products such as marks. Winner has a high reputation and significant influence in the industry, and has made a prominent contribution to epidemic prevention and control in China. Suzhou Winner Medical Co., Ltd. (hereinafter referred to as “Suzhou Winner”, founded in 2020, used trademarks such as “SW” and “WJ” and words such as “品牌: 苏稳、品牌: 稳健、品牌: Winner/ 稳健、生产企业: 苏州稳健医疗用品有限公司”, “稳健医疗、SW 苏稳、WJ 稳健医疗、苏州稳健医疗”, “苏州稳健公司” and “苏州稳健医疗用品有限公司” on the pictures, parameters, details, packaging boxes, certificates, price tags and packaging bags of the marks produced and sold, and the premises, WeChat official account and website.

Hua XX held 99% and 91.6667% shares of Suzhou Winner and Suzhou Hangwei Packaging Co., Ltd. (hereinafter referred to as “Hangwei”) respectively. Suzhou Winner operated in Hangwei Packaging Industrial Park, the packaging bags of masks sold were marked with the official website of Hangwei, and the sales receipts were affixed with the official seal of Hangwei. Hangwei’s official website introduced in details the products and enterprise information of Suzhou Winner, and Hangwei’s online store sold masks produced by Suzhou Winner, calling itself “own factory” and “source manufacturer”. Hua XX incorporated the income from mark sales on Hangwei’s online store into his personal account.

Winner believed that the aforesaid acts of Suzhou Winner, Hangwei and Hua XX jointly infringed on its trademarks, and constituted unfair competition. Therefore, Winner required them to cease infringement and assume joint and several liability for compensation.

Outcome

The court held that the registered trademark and trade name involved in the case have great popularity. Suzhou Winner used the same or similar logo as the registered trademark involved on its mask products, website, online store and WeChat official account, registered and used the trade name “稳健 (Wenjian)” without permission, and carried out the same business activities as Winner, which reflected an obvious intention of clinging to Winner, resulted in confusion and misunderstanding, and constituted trademark infringement and unfair competition. Suzhou Winner and Hangwei were highly corelated. Hua XX was the absolute controlling shareholder of the two companies, with his personal assets commingled with the company assets. Under the planning and control of Hua XX, the two companies worked together to commit a joint infringement. Hence, Hua XX and the two companies shall bear joint and several liability.

Suzhou Winner, Hangwei and Hua XX registered companies using the infringing trade name, and committed trademark infringement in an organized manner, knowing the great popularity of the trademark and trade name involved in this case. Further, they did not cease the infringement after being reported against by Winner twice, and even made false statements to the market supervision authority, which seriously violated the principle of good faith and the business ethics. The infringing products involved in this case were anti-epidemic materials. They were sold to the public without inspection procedures, which

greatly damaged the goodwill of Winner and severely endangered public health. The defendants committed an infringement through diverse channels, in large scale and in a long time span, and refused to submit evidence such as financial books as required by the court. Therefore, in view of the serious and intentional infringement by Suzhou Winner, Hangwei and Hua XX, the court applied punitive damages of four times for the profits from infringement that can be ascertained, and applied statutory damages for the sales volume that cannot be ascertained. Accordingly, the court ruled that Suzhou Winner, Hangwei and Hua XX shall immediately cease the infringement, Suzhou Winner shall immediately cease the use of the company name, and the three parties shall jointly compensate Winner for its losses and reasonable expenses for rights protection totaling RMB 1,021,655.

(This case is provided by Jiangsu High People's Court)

Analysis and Comment

Winner is a well-known manufacturer of medical and sanitary materials, and its trademark and trade name are well-known in the industry. The Supplies Guarantee Group of the State Council's Joint Epidemic Prevention and Control Mechanism, the Youth Volunteer Action Guidance Center of the Central Committee of the Communist Youth League, and Hubei Epidemic Prevention and Control Headquarters sent letters of thanks to Winner successively, calling it a well-deserved "army factory" for epidemic prevention and control. The perpetrators deliberately registered companies with the infringing trade name, produced and sold mask products, and committed serious trademark infringement and unfair competition in an organized manner. In view of this, the court applied punitive damages of four times, increased the amount of compensation, determined perpetrators' acts as joint infringement, and ordered perpetrators to cease the use of the infringing trade name, which reflected the strictest protection of Jiangsu courts for intellectual property rights, effectively protected intellectual property rights, safeguarded the public health and safety, stabilized the situation of epidemic prevention and control and the anti-epidemic materials market, and realized the integration of political, legal and social effects. This case is a typical case that guarantees the epidemic prevention and control and the economic and social development.

07 项维仁与李某罡、姑苏区探花玉雕工作室著作权侵权纠纷案

案情介绍

项维仁系中国美术家协会会员、中国连环画研究会理事、国家一级美术师，其创作的绘画作品《貂蝉拜月》收录于天津杨柳青画社 2008 年 1 月出版的《项维仁人物线描画稿》，作品署名为"维仁"，并加盖了印章。李某罡系浙江省玉雕大师，中国海派玉雕文化协会副会长，经营了姑苏区探花玉雕工作室，并注册了微博账号"探花玉府"。2020 年 10 月，李某罡的玉雕作品《四大美女》获评第十四届中国神工奖"特别金奖"并参加了相应展览。微博账号"探花玉府"发布文章，展示了《四大美女》玉雕成品照片及雕塑前玉石上的草稿图案，并对《貂蝉拜月》作品进行了解析。经比对，玉雕作品与绘画作品《貂蝉拜月》整体构图相似，部分线条简化，部分元素删除。此外，项维仁还主张玉雕作品《四大美女》中的王昭君、杨贵妃也使用了其画作。项维仁诉至江苏省苏州市虎丘区人民法院，请求判令李某罡、探花玉雕工作室停止侵犯其著作权的行为，赔偿人民币 30 万元并登报道歉。

处理结果

江苏省苏州市虎丘区人民法院一审认为，李某罡制作玉雕并非简单复制项维仁的画作，而是属于艺术再创作行为，其实质上是对画作《貂蝉拜月》的改编，侵犯了项维仁对其作品《貂蝉拜月》的改编权。《四大美女》玉雕作品的价值既部分来源于项维仁画作《貂蝉拜月》，亦来源于李某罡进行了不同表达方式的新的创造性艺术加工，故法院综合考虑项维仁在绘画界的知名度、李某罡在玉雕行业的知名度、原画作的艺术造诣、玉雕作品的独创性程度及价值来源、玉雕创作演绎所付出的艺术加工等因素酌情确定李某罡、探花玉雕工作室分别赔偿人民币 8 万元和人民币 2 万元。

李某罡、探花玉雕工作室不服一审判决，上诉至江苏省苏州市中级人民法院。经法院主持调解，当事人自愿达成调解协议，本案纠纷及未诉争议实现了一揽子解决。

（本案由江苏省版权局提供）

分析点评

本案是非物质文化遗产传承发展再创作过程中著作权保护的典型案件。玉雕作为国家级非物质文化遗产，是中国最古老的雕刻品种之一。工艺师在制作玉雕过程中，如事先未获得权利人

的许可，且未支付报酬，以他人受著作权保护的画作作品作为底稿创作，可能构成对画作作品著作权的侵犯，但具体是对其复制权还是改编权的侵犯是侵权认定的难点。本案法院考虑到玉雕需要工艺师经过玉石选料、剥皮、设计、粗雕、细雕、修整和抛光等种种工序，精心设计、反复琢磨、融入雕工，才能雕制成，据此认定其并非是简单的对画作的复制，而是已经形成新的表达，属于艺术再创作行为，其实质上是对画作的改编，构成对作品改编权的侵犯。本案判决充分秉持玉雕再创作作品构成创新性表达的裁判理念，在释法明理的基础上积极发挥审判职能，促成当事人就已诉及未诉争议一揽子达成和解，在兼顾原作品权利人和手工艺人利益诉求的同时，推动了传统文化创造性转化和创新性发展。

07 Xiang Weiren v. Li XXgang and Gusu District Tanhua Jade Carving Studio: Case of Dispute over Copyright Infringement

Case Brief

Xiang Weiren is a member of China Artists Association, a member of China Strip Cartoon Society and a national first-class artist. His painting “Diao Chan Bai Yue (《貂蝉拜月》)” was included in the Xiang Weiren Figure Line Drawings (《项维仁人物线描画稿》) published by Tianjin Yangliuqing Painting Society in January 2008. This work was published in the name of “Weiren” and affixed with Xiang Weiren’s seal. Li XXgang, a master of jade carving in Zhejiang Province, is the vice chairman of China Shanghai-style Jade Carving Culture Association. He runs the Gusu District Tanhua Jade Carving Studio and registered the Weibo account “Tanhua Yufu (探花玉府)”. In October 2020, Li XXgang’s jade carving work “Four Beauties (《四大美女》)” won the “Special Gold Award” in the 14th Shengong Awards of China and participated in the relevant exhibitions. Later, the Weibo account “Tanhua Yufu (探花玉府)” published an article, showing the photos of the finished jade carving work “Four Beauties (《四大美女》)” and the drafts on jade before carving, and analyzing the work “Diao Chan Bai Yue (《貂蝉拜月》)”. By comparison, it was found that the jade carving work has similar overall structure with the painting “Diao Chan Bai Yue (《貂蝉拜月》)”, with some lines simplified and some elements deleted. In addition, Xiang Weiren claimed that the characters Wang Zhaojun and Yang Yuhuan in the jade carving “Four Beauties (《四大美女》)” were also created with reference to his painting. Therefore, Xiang Weiren filed a lawsuit with the People’s Court of Huqiu District, Suzhou City, Jiangsu Province, requesting the court to order Li XXgang and Tanhua Jade Carving Studio to cease their copyright infringement, make a compensation of RMB 300,000 to Xiang Weiren and apologize to Xiang Weiren in the newspaper.

Outcome

The first-instance judgment rendered by the People’s Court of Huqiu District, Suzhou City, Jiangsu Province held that the jade carving work created by Li XXgang is not a simple reproduction of Xiang Weiren’s painting, but an artistic re-creation and essentially an adaptation of the painting “Diao Chan Bai Yue (《貂蝉拜月》)”, which infringed on Xiang Weiren’s right of adaptation in his work “Diao Chan Bai Yue (《貂蝉拜月》)”. The value of the jade carving work “Four Beauties (《四大美女》)” comes partly from Xiang Weiren’s painting “Diao Chan Bai Yue (《貂蝉拜月》)”, and partly from Li XXgang’s creative artistic processing in another way of expression. Therefore, the court ruled that Li XXgang and Tanhua Jade Carving Studio shall make a compensation of RMB 80,000 and RMB 20,000 respectively to Xiang Weiren by taking into full account Xiang Weiren’s popularity in the painting circle, Li XXgang’s popularity in the jade carving industry, the artistic attainments of the original painting, the originality and value source of the jade carving work, and the artistic processing for the jade carving work.

Li XXgang and Tanhua Jade Carving Studio filed an appeal with Suzhou Intermediate People’s Court against the first-instance judgment. Upon the mediation by the court, the parties involved reached a voluntary mediation agreement, and found package solutions to the litigation and non-litigation disputes in this case.

(This case is provided by Jiangsu Provincial Copyright Administration)

Analysis and Comment

This case is a typical case involving copyright protection in the process of inheritance, development and re-creation of intangible cultural heritage. Jade carving is a state-level intangible cultural heritage, and also one of the oldest carving varieties in China. A jade carving work based on other’s patented painting without the prior permission of the

copyright owner and the payment of compensation may constitute an infringement of the copyright of the painting. However, it is of great difficulty to determine whether the right of reproduction or the right of adaption is infringed. In this case, considering that jade carving includes various complicated processes such as jade selection, skinning, design, rough carving, fine carving, trimming and polishing, the court determined that the jade carving work was not a simple reproduction of the painting, but a new expression, artistic re-creation, and adaptation of the painting, which constituted an infringement on the right of adaption. The judgment of this case upholds the philosophy that re-creative jade carving constitutes innovative expressions, gives full play to the judicial function on the basis of law interpretation, and helps the parties to reach packaged solutions to litigation and non-litigation disputes in this case, which promotes the creative transformation and innovative development of traditional culture while balancing the interests of the original work owners and craftsmen.

08 江苏省长丰医疗实业有限公司等企业遭遇美国“337 调查”案

案情介绍

2021 年 7 月 9 日，意大利 Copan Italia S.p.A. 和 Copan Industries 公司（以下合称“Copan”）向美国国际贸易委员会（“ITC”）对“特定植绒拭子及其下游产品和方法”提出“337 调查”立案调查申请，请求下达有限排除令及普遍排除令。8 月 27 日 ITC 正式立案，启动 337 调查，包括江苏省长丰医疗实业有限公司（以下简称长丰公司）、无锡耐思生命科技股份有限公司、百泰克生物技术有限公司等 3 家江苏企业在内 6 家中国企业被列名被告。之后于 2021 年 12 月 6 日将中国湖南润美基因技术有限公司为缺席被告、2022 年 1 月 6 日将中国深圳市华晨阳科技有限公司为本案第三人。

2021 年 7 月 13 日，江苏省知识产权保护中心（以下简称江苏保护中心）在监测到这一美国“337 调查”案后，第一时间对接企业需求，组织专家研讨，确定了本案的争议焦点为：权利要求重点是垂直于杆子头部的表面设置纤维，速裁裁决动议中关于 Ordered ／oriented 不侵权立场作为有力应诉点。制定了“三步走”应对策略，即专利无效、和解谈判和不侵权抗辩。同时，江苏保护中心指导涉案企业寻求反制手段，对原告在中国的某一专利提起无效请求，进一步坚定涉案企业的应诉信心。

江苏保护中心持续跟进案件进展，联合地方中心实地走访涉案企业，现场进行应对指导，建议由长丰公司牵头其他被告联合应诉，积极号召未被列名被告的企业加入诉讼，形成除湖南润美基因技术有限公司外 5 家企业在内的联合应诉联盟。

处理结果

在江苏保护中心的专业指导和海外知识产权纠纷应对指导美国科文顿律师事务所冉瑞雪专家的大力支持下，百泰克生物技术有限公司成功无效 Copan 公司在中国的一件专利。

2022 年 10 月 28 日，美国国际贸易委员会发布终裁：认定三项涉案专利有效，被诉五家中国企业生产的植绒拭子产品未侵犯原告的三项专利。

（本案由江苏省知识产权局提供）

分析点评

根据美国《1930 年关税法》（Tariff Act of 1930）第 337 节（简称“337 条款”）及相关修正案的规定，针对进口产品侵犯美国知识产权的行为以及进口贸易中的其他不公平竞争行为，美国国际贸易委员会（“ITC”）都可以进行行政调查，简称为 337 调查。337 调查有着立案容易、处罚严、周期短等特点，近年来，针对中国企业的 337 调查数量呈上升趋势。

本案五家中国企业敢于主动应诉，并最终取得有利的胜诉裁决，为涉案中国企业重新赢得了美国市场，平均一年挽回 12.8 亿美元美国市场出口额。另一中国被告湖南润美基因技术有限公司缺席被告而错失机会，以及其他国家（如韩国、美国）多个被告与原告达成和解并让渡部分权利。对于长丰公司来讲，若本案败诉，平均一年损失大约 7.67 亿人民币，约合 1.2 亿美元，同时，由于涉案企业采取了联合应诉，每家企业节省约一半诉讼费，折 200 万美元，本案 5 家企业共节约应对成本大约 1000 万美元。

本案是在江苏保护中心的有力指导和海外纠纷应对指导专家的大力支持下取得了最终有利的结果，主要工作有：1、对接企业需求、制定应对策略、坚定应诉信心；2、组织“现身说法”、举办公益培训、提供经验借鉴；3、深入企业调研、组建应对联盟、凝聚应对合力。同时被诉企业积极应对，主动出击，展示了海外知识产权纠纷应对的决心和能力，是中国企业积极应诉和主动防御的典范，对中国企业应对美国“337 调查”具有重要的借鉴作用。

08 Jiangsu Changfeng Medical Industry Co., Ltd. et al.: Case of U.S. “Section 337 Investigations”

Case Brief

On July 9, 2021, Copan Italia S.p.A. and Copan Industries (hereinafter collectively referred to as “Copan”) filed an application to the U.S. International Trade Commission (ITC) for “Section 337 Investigations” on “Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same”, requesting a limited exclusion order and a general exclusion order. On August 27, ITC officially filed a case and instituted Section 337 investigations. Six Chinese enterprises including three enterprises in Jiangsu, i.e., Jiangsu Changfeng Medical Industry Co., Ltd. (hereinafter referred to as “Changfeng”), Wuxi NEST Biotechnology Co., Ltd. and BioTeke Corporation were listed as defendants. On December 6, 2021, Hunan Runmei Gene Technology Co., Ltd. was listed as a defendant in absentia, and on January 6, 2022, Shenzhen HCY Technology Co., Ltd. became the third party in this case.

On July 13, 2021, Jiangsu Intellectual Property Protection Center (hereinafter referred to as “JIPPC”) noticing this “Section 337 Investigations” case in the United States promptly communicated the enterprises involved about their needs, and determined the focus of dispute in this case after expert discussion: the focus of claims was to set fibers on the surface perpendicular to the pole head, and the standpoint of ordered/oriented non-infringement in the rapid ruling motion could be a powerful point of response. JIPPC formulated the “three-step” response strategy, namely, patent invalidity, settlement negotiation and non-infringement defense. Further, JIPPC instructed the enterprises involved to seek countermeasures and file requests for invalidation of the plaintiff’s patents in China, thus further strengthening the confidence of the enterprises involved in responding to the lawsuit.

JIPPC constantly tracked the progress of the case, and visited the enterprises involved together with local centers to provide on-site guidance on response. It was suggested to set up a joint response alliance led by Changfeng and consisting of the five enterprises except Hunan Runmei Gene Technology Co., Ltd., and to encourage enterprises that were not listed as defendants to participate in the lawsuit.

Outcome

With the professional guidance of JIPPC and the great support of Ran Ruixue, an expert in response to overseas intellectual property disputes and a lawyer of Covington & Burling LLP, BioTeke Corporation successfully invalidated a patent of Copan in China.

On October 28, 2022, ITC made a final determination: the three patents involved were found to be valid, and the flocked swab products produced by the five Chinese enterprises did not infringe on the plaintiff’s three patents.

(This case is provided by the Intellectual Property Office of Jiangsu Province)

Analysis and Comment

According to Section 337 of the Tariff Act of 1930 (hereinafter referred to as “Section 337”) and related amendments, ITC can initiate administrative investigations on violations

of US intellectual property rights by imported products and other acts of unfair competition in import trade, which are referred to as “Section 337 Investigations”. Section 337 Investigations feature easy filing, strict punishment, and short cycle. In recent years, the number of Section 337 investigations against Chinese enterprises has shown an upward trend.

The five Chinese enterprises involved in this case dared to respond to the lawsuit, and finally won the lawsuit, thus winning back the U.S. market, with an average annual export of USD 1.28 billion. Another Chinese defendant, Hunan Runmei Gene Technology Co., Ltd., missed the opportunity due to absence, and several defendants from other countries (e.g., South Korea and the U.S.) reached a compromise with the plaintiff and alienated some rights. If losing the lawsuit, Changfeng would suffer losses of about RMB 767 million or about USD 120 million per year on average. The joint response action reduced the legal costs of each enterprise by half, i.e., about USD 2 million. Hence, the five enterprises involved totally saved about USD 10 million of legal costs.

With the professional guidance of JIPPC and the great support of experts in response to overseas intellectual property disputes, the Chinese enterprises achieved favorable results in this case. The main work includes: 1. Communicating with the enterprises involved about their needs, developing response strategies, and increasing the confidence in responding to the lawsuit; 2. Holding “experience sharing” meetings, organizing public welfare training and providing experience for reference; 3. Conducting in-depth investigation on the enterprises, setting up a response alliance, and enhancing the cohesion. The defendant enterprises took the initiative to respond to the lawsuit and make active defense, demonstrating their determination and ability to deal with overseas intellectual property disputes. This case is a model for Chinese enterprises to actively respond to lawsuits and make active defense, and provides an important reference for Chinese enterprises to cope with the “Section 337 Investigations” in the U.S.

09 南通海关查获跨境电商侵犯 2022 北京冬奥会（冬残奥会）特殊标志专有权钥匙扣案

案情介绍

2022 年 2 月 18 日，南京海关所属南通海关根据布控指令对跨境电商渠道申报出口至日本的商品进行自主人工风险研判时，发现其中一票申报品名为钥匙扣、钥匙圈的商品具有较高侵权风险。根据查处侵权案件经验及北京冬奥会期间南京海关综合业务处下发的知识产权执法小贴士的风险提示，现场关员对该票货物进行人工布控。经开拆查验，发现该票商品中有 253 件钥匙扣使用了 2022 年北京冬奥会会徽、吉祥物“冰墩墩”图案标志和 2022 北京年冬残奥会吉祥物“雪容融”图案标志，另有 612 个钥匙圈使用了 2022 年北京冬奥会会徽和吉祥物“冰墩墩”图案标志，当事人无法提供合法授权使用证明以及合法渠道购买证明。

处理结果

经权利人北京冬奥组委（以下简称“权利人”）鉴定，确认上述钥匙扣、钥匙圈未经授权使用了海关总署公告 2021 年第 62 号备案保护的 2022 北京冬奥会（冬残奥会）特殊标志。南通海关根据权利人申请，对上述侵权嫌疑商品予以扣留，并经调查认定当事人出口上述商品构成《奥林匹克标志保护条例》第十四条规定的“进出口货物涉嫌侵权奥林匹克标志专有权”的行为，该关遂依法对侵犯权利人北京冬奥组委奥林匹克标志专有权的 253 件钥匙扣、612 件钥匙圈予以没收并处罚款。

（本案由南京海关提供）

分析点评

奥林匹克标志传递着奥运会的历史和文化内涵，是奥林匹克运动的精神财富，也是包括国际奥委会在内的奥林匹克权利人享有的重要权利。中国一贯重视该领域的知识产权保护，海关部门也采取了一系列措施予以保障。南京海关的这次行动具有以下意义：

一、该案是中国海关保护奥林匹克标志、提升全民知识产权保护意识的成功范例。2022 年北京冬奥会（冬残奥会）的举办，是我国展现国家形象、振奋民族精神、促进经济发展的重要契机。即是 2022 年北京冬奥会开幕以来江苏口岸跨境电商渠道查处的首个进出口侵犯奥林匹克标志

专有权案件，也是 2022 年北京冬奥会期间全国海关在跨境电商渠道查获的侵犯 2022 年北京冬奥会（冬残奥会）特殊标志专有权商品数量最多的一起案件，对保护奥林匹克标志专有权、通过奥运会影响力提升全社会保护知识产权的意识具有重要意义。

二、该案是中国就保护奥林匹克标志专有权兑现国际承诺、检验知识产权保护机制的成功尝试。2022 年北京冬奥会吉祥物“冰墩墩”、冬残奥会吉祥物“雪容融”收获了一众海内外粉丝，“一墩难求”“一户一墩”等词条频上热搜，全球人民对北京冬奥会吉祥物关注热情空前高涨。2021 年 8 月 19 日，海关总署发布相关公告，对“北京 2022 年冬残奥会吉祥物雪容融图案标志及文字”、“北京 2022 年冬奥会吉祥物冰墩墩图案标志及文字”等相关标志实施全面、有效的海关保护。展现了中国政府兑现国际承诺，尊重和保护知识产权的决心和能力，全方位提升了中国的国际形象。

三、该案是南京海关重视知识产权保护工作的成果展示。南京海关在关区建立知识产权风险防控协作组，充分发挥综合业务处、风险防控分局、现场海关在各自领域管控侵权风险的职能优势和作用面对跨境电商出口商品申报类型零散繁杂的特点，对进出口商品类别、贸易国别、历史查发情况、境外反向通报等业务数据开展风险研判，迅速查获该批侵犯奥林匹克标志专有权的钥匙扣、钥匙圈。

本案中，南京海关在成功拦截侵权钥匙扣、钥匙圈后，得到海关总署的及时指导，确保第一时间能够与北京冬奥组委取得联系，对涉案货物进行了鉴定，有效检验了自身知识产权保护机制的运作成效。

09 Case of Infringement on Exclusive Rights of Special Symbols of Beijing 2022 Olympic Winter Games (Paralympic Winter Games) in Cross-Border E-commerce: Nantong Customs Seized Infringing Key Chains

Case Brief

On February 18, 2022, Nantong Customs, under the jurisdiction of Nanjing Customs, conducted an independent manual risk assessment on the goods declared for export to Japan through cross-border e-commerce channels according to the inspection instructions, and found that a consignment of the goods declared as key chains and key rings had a high risk of infringement. According to the experience in investigating infringement cases and the tips of intellectual property law enforcement issued by the General Business Office of Nanjing Customs during the Beijing Olympic Winter Games, the on-site customs officers manually inspected the goods. After unpacking and inspection, 253 key chains bearing the official emblem and mascot “Bing Dwen Dwen” of Beijing 2022 Olympic Winter Games, and the mascot “Shuey Rhon Rhon” of Beijing 2022 Paralympic Winter Games, and 612 key rings bearing the official emblem and mascot “Bing Dwen Dwen” of Beijing 2022 Olympic Winter Games were found. The entities concerned could not provide proof of legal authorization and proof of legal purchase.

Outcome

After verification, the Beijing Organizing Committee for the 2022 Olympic and Paralympic Winter Games (hereinafter referred to as “copyright owner”) affirmed that the aforesaid key chains and key rings had used the special symbols of Beijing 2022 Olympic and Paralympic Winter Games (hereinafter referred to as “Olympic Symbols”) listed in Announcement No. 62 [2021] of the General Administration of Customs without permission. Upon the request of the copyright owner, Nantong Customs detained the aforesaid suspected infringing goods, and determined after investigation that the export of the aforesaid goods constituted an act that “the imported and exported cargoes were suspected of infringing the exclusive rights of the Olympic Symbols” as stipulated in Article 14 of the Regulations on the Protection of Olympic Symbols. Therefore, Nantong Customs forfeited 253 key chains and 612 key rings infringing the exclusive rights of the Olympic Symbols of the copyright owner, and imposed a fine.

(This case is provided by Nanjing Customs)

Analysis and Comment

The Olympic Symbols, carrying the historical and cultural connotations of the Olympic Games, are the spiritual wealth of the Olympic movement, and also important rights owned by Olympic copyright owners including the International Olympic Committee. China has always attached importance to the protection of intellectual property rights in this field, and China’s customs department has taken a series of measures to protect the rights. This action of Nanjing Customs has the following positive significance:

I. This case is a successful example of China Customs in protecting the Olympic

Symbols and raising the public awareness of intellectual property protection. Hosting Beijing 2022 Olympic Winter Games (Paralympic Winter Games) is an important opportunity for China to show the national image, raise the national spirit and promote economic development. This case is the first import and export case involving infringement on the exclusive rights of Olympic Symbols in the cross-border e-commerce channels at Jiangsu Port since the opening of Beijing 2022 Olympic Winter Games, and the case in the cross-border e-commerce channels that involves the largest number of goods infringing the exclusive rights of the Olympic Symbols during Beijing 2022 Olympic Winter Games. It is of great significance to protecting the exclusive rights of the Olympic Symbols and enhancing the public awareness of intellectual property protection by virtue of the influence of the Olympic Games.

II. This case is a successful attempt by China to fulfill its international commitment to protect the exclusive rights of the Olympic Symbols and test its intellectual property protection mechanism. The mascots "Bing Dwen Dwen" and "Shuey Rhon Rhon" of Beijing 2022 Olympic and Paralympic Winter Games attracted a lot of fans at home and abroad, and the terms such as "Hard-to-Get Bing Dwen Dwen" and "One Bing Dwen Dwen for One Household" were frequently searched. People all over the world paid unprecedented attention to the mascots. On August 19, 2021, the General Administration of Customs issued an announcement, requesting comprehensive and effective customs protection for relevant symbols such as "the logo and characters of the mascot Shuey Rhon Rhon of Beijing 2022 Paralympic Winter Games" and "the logo and characters of the mascot "Bing Dwen Dwen" of Beijing 2022 Olympic Winter Games. It shows the determination and ability of the Chinese government to fulfill its international commitments and respect and protect intellectual property rights, and enhances the international image of China in an all-round way.

III. This case demonstrates the achievements of Nanjing Customs in attaching importance to intellectual property protection. Nanjing Customs set up a Cooperative Group for Prevention and Control of Intellectual Property Risks in the customs area, giving full play to the functional advantages and roles of the General Business Office, the Risk Prevention and Control Sub-Bureau and the on-site customs in controlling the risks of infringement in their respective fields. Faced with the scattered and cumbersome cargoes declared for export, Nanjing Customs conducted risk assessment on business data such as imported and exported commodity categories, countries of trade, historical investigation records, and overseas notification, and quickly seized the key chains and key rings that infringed the exclusive rights of the Olympic Symbols.

In this case, after successfully intercepting the infringing key chains and key rings, Nanjing Customs promptly got in touch with the Beijing Organizing Committee for the 2022 Olympic and Paralympic Winter Games under the timely guidance of the General Administration of Customs to verify the goods involved, effectively checking the operation effects of its intellectual property protection mechanism.

10 被告人王某犯假冒注册商标罪案

案情介绍

2020 年 10 月至 2021 年 11 月，被告人王某伙同另案被告人吴某经事先共谋，租赁加工窝点，由被告人王某负责进购麦丽素、可可粉等原料及外包装，由被告人吴某负责进购坚果等原料，并雇佣被告人王某某负责发货，组织工人利用低价批量购入的坚果等原材料，灌装至标有“KIRKLAND／柯克兰”“MALTESERS／麦提莎”“STARBUCKS”“ROYCE”“NAMA CHOCOLATE”等注册商标的外包装盒中，生产假冒上述注册商标的混合坚果、腰果、麦丽素、可可粉、生巧、巧克力豆等商品。尔后，上述人员将上述假冒注册商标的商品出售给另案处理的其他被告人，并通过淘宝店对外出售上述假冒注册商标的商品。被告人王某参与销售金额计人民币 1817 万余元。

2021 年 11 月 19 日，公安机关在王某、吴某等人租赁加工点内查获假冒“KIRKLAND／柯克兰”混合坚果 1873 件，假冒“KIRKLAND／柯克兰”腰果 62 件，假冒“KIRKLAND／柯克兰”巧克力豆 951 件，假冒“MALTESERS／麦提莎”麦丽素 1663 件，假冒“STARBUCKS”可可粉 355 件，假冒“ROYCE”“NAMA CHOCOLATE”生巧 6638 件，假冒“KIRKLAND／柯克兰”商标 152900 张、瓶盖 17740 只、瓶身 7600 只，假冒“MALTESERS/ 麦提莎”商标 5 卷、桶盖 6160 只、桶 1450 只、包装纸盒 300 只，假冒“STARBUCKS”可可粉罐 16 只、罐盖 24 只，假冒“ROYCE”“NAMA CHOCOLATE”生巧塑料盖 9600 只、包装纸盒 928 个，麦丽素巧克力原料 380 箱，坚果原料 338 箱，激光喷码机 1 台及打标机 1 台等，上述假冒注册商标的商品成品价值人民币 44 万余元。

处理结果

法院认为，被告人王某未经许可，在同一种商品上使用与其注册商标相同的商标，情节特别严重，构成假冒注册商标罪，且与他人共同犯罪，王某在共同犯罪中起主要作用，系主犯。其认罪认罚，依法可以从宽处理。综合被告人王某的犯罪事实、犯罪性质与情节、对于社会的危害程度、到案后的认罪悔罪表现等因素，法院决定对被告人王某予以从轻处罚。据此，判决被告人王某犯假冒注册商标罪，判处有期徒刑六年，并处罚金人民币 1000 万元。宣判后，被告人未提出上诉，公诉机关亦未抗诉，判决已发生法律效力。

（本案由江苏省高级人民法院提供）

分析点评

本案系食品领域知识产权犯罪系列案中的一件典型案例，犯罪情节极其严重。涉及众多国际知名品牌，涉案金额巨大，多名被告人共同犯罪，上下游产业链条完整，通过网络向不特定消费者销售与公众健康关联密切的食品，影响广泛，法院最终对被告人全部适用实刑，对本案主犯判处六年有期徒刑，是近年来涉及食品安全犯罪金额特别巨大的案件。本案从严判处体现了加强源头治理，加大对重点行业、重点领域刑事打击力度，及时有效阻遏侵权行为的决心，以及实施最严格知识产权司法保护、平等保护中外权利人的理念，为投资者加大在华投资注入强心剂，为公众食品安全提供有力保障。同时，本案对被告人非法经营数额的认定，对类案审理也具有一定参考价值。

10 Case of Crime of Counterfeiting Registered Trademark Related to Defendant Wang XX

Case Brief

During October 2020 to November 2021, the defendant Wang XX colluded with the defendant Wu XX (handled in a separate case), to lease a processing den. The defendant Wang XX was responsible for purchasing such raw materials as Melissa chocolate and cocoa powder and outer packaging boxes; the defendant Wu XX was responsible for purchasing raw materials such as nuts, hiring the defendant Wang XXXX to deliver goods, and organizing workers to fill the raw materials such as nuts purchased in bulk at low prices into the outer packaging boxes bearing registered trademarks such as “KIRKLAND/ 柯克兰”, “MALTESERS/ 麦提莎”, “STARBUCKS”, “ROYCE” and “NAMA CHOCOLATE”, to produce mixed nuts, cashew nuts, Mylikes chocolates, cocoa powder, chocolate beans and other commodities with counterfeit registered trademarks. Later, the aforesaid persons sold the goods with counterfeit registered trademarks to other defendants (handled in a separate case), and also sold them through Taobao shops. The sales amount Wang XX contributed to was up to RMB 18.17 million.

On November 19, 2021, the public security organ seized the following counterfeit products, raw materials and packaging materials in the den leased by Wang XX and Wu XX: 1,873 pcs of counterfeit “KIRKLAND/ 柯克兰” mixed nuts, 62 pcs of counterfeit “KIRKLAND/

柯克兰” cashew nuts, 951 pcs of counterfeit “KIRKLAND/ 柯克兰” chocolate beans, 1,663 pcs of counterfeit “MALTESERS/ 麦提莎” chocolate, 355 pcs of counterfeit “STARBUCKS” cocoa powder, and 6,638 pcs of counterfeit “ROYCE” and “NAMA CHOCOLATE” raw chocolate; 152,900 labels, 17,740 caps and 7,600 bottles with counterfeit “KIRKLAND/ 柯 克 兰” trademark; 5 volumes of labels, 6,160 pail lids, 1450 pails, and 300 packaging cartons with counterfeit “MALTESERS/ 麦 提 莎” trademark; 16 cocoa powder cans and 24 cans lids with counterfeit “STARBUCKS”; 9,600 plastic lids and 928 packaging cartons with counterfeit “ROYCE” and “NAMA CHOCOLATE” trademarks; 380 cases of Melissa chocolate raw materials, 338 cases of nut raw materials, 1 laser inkjet printer, 1 marking machine, etc. The aforesaid finished products with counterfeit registered trademarks are worth more than RMB 440,000.

Outcome

The court held that the defendant Wang XX used trademarks that are identical with or similar to the registered trademarks on the same or similar goods without permission, which constituted especially serious violation, and a joint crime of counterfeiting registered trademarks. Wang XX played a major role in the joint crime, thus being determined as the principal criminal. Due to a good attitude toward admission of guilt, Wang XX could be punished leniently according to law. By taking into account the fact, nature, circumstances and social harm of Wang XX’ s crime and the attitude of Wang XX towards admission of guilt, the court decided to impose a lenient sentence on the defendant Wang XX. Accordingly, the defendant Wang XX was convicted of a crime of counterfeiting registered trademarks, and sentenced to a fixed-term imprisonment of six years and a fine of RMB 10 million. After the judgement was rendered, the defendant did not file an appeal, and the public prosecution agency did not lodge a protest. The judgment has come into force.

(This case is provided by Jiangsu High People’ s Court)

Analysis and Comment

This case is a typical case of intellectual property crimes in the food industry, involving extremely serious violation. It involves many internationally renowned brands, many defendants who committed joint crimes, and a complete industrial chain in which foods closely related to public health were sold to unspecific consumers through the Internet, with a huge amount of money involved and a wide influence. Therefore, the court applied substantial punishments to all the defendants, and sentenced the principal criminal in this case to a fixed-term imprisonment of six years. This is a case of food safety crime involving a particularly large amount of money in recent years. The severe sentence in this case reflects the determination to strengthen the source control, intensify the crackdown on crimes in key industries and key fields, and promptly and effectively curb acts of infringement, and the philosophy of strictest judicial protection of intellectual property rights and equal protection of Chinese and foreign copyright holders. Hence, this case provides a boost for investors’ investment in China and a strong guarantee for public food safety. Besides, it provides a reference for the determination of the defendant’ s illegal gains in this case and the handling of similar cases.