

2023 Top 10 Typical IP Cases in Jiangsu Province

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

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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right to exclusive use of
bearing trademarks 错误!未
定义书签。

09. Suzhou Sanical Protective
Product Manufacturing Co.,
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10. Siemens AG and Siemens
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签。

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. 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. 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.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. 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. 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. 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. 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. 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. 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.