Patent Infringement Case between Niuchuike Co., Ltd. and Nanjing Niuquke Electronics Co., Ltd.

[Case Brief]

On April 26, 2006, Niuchuike Company (Niuchuike), the petitioner in the case, obtained a utility patent titled “RJ-45 Data Connector Component” (No. ZL02152420.3) and a design patent titled “Electric Coupler” (No. ZL201430019474.1). On July 3, 2020, the petitioner made a dispute resolution request to the Intellectual Property Office of Nanjing, claiming that Nanjing Niuquke Electronics Co., Ltd. (Niuquke) infringed the aforesaid two patents. The Intellectual Property Office registered the case on July 10, 2020.

Meanwhile, the two parties also had disputes over IP rights of three trademarks, three domains, and company names. The agent of Niuchuike has made several trips between Guangzhou and Nanjing to settle these disputes. Niuquke was preparing to file a request for invalidating the two patents involved in the case. The two parties failed to reach an agreement after several negotiations.

The administrative authority carefully probed into the technical facts and legal disputes in the case. When reviewing the files of the utility patent, the authority found that the petitioner, in reply to a review comment, added “RJ-45” to narrow the scope of Claim 1. After checking the products involved in the case, the authority found some products were outside the protection scope of Claim 1. Given that the two parties had a series of IPR disputes, the authority considered reconciliation as a solution. The two parties formed an intention to reconcile after in-depth communication with the authority.

[Outcome]

On October 15, 2020, mediated by the authority, the two parties reached a reconciliation agreement, settling all the disputes over two patents, three trademarks, three domains and company names. Both parties were satisfied with the results.

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

[Analysis and Comment]

IPR disputes are inevitable in a fiercely competitive market. It is the top priority and mission of judicial and

administrative authorities to efficiently solve these disputes, protect the legitimate rights and interests of rights owners, and balance the interests of parties concerned.

Involving a party domiciled in Liechtenstein, this case has international clout, and its handling process and results will affect the foreign party's confidence in China's IPR protection system. The Intellectual Property Office of Nanjing flexibly handled the case in accordance with the law. By pursuing reconciliation between the parties, it efficiently settled all IPR disputes between the parties at one go, demonstrating the advantages of China's administrative IPR protection system.

Invention Patent Infringement Case. Chia Tai Tianqing Pharmaceutical Group Co., Ltd. and Advenchen Laboratories Nanjing Co., Ltd. vs. Jiangsu Aikon Biopharmaceutical R&D Co., Ltd.

[Case Brief]

The petitioners are Chia Tai Tianqing Pharmaceutical Group Co., Ltd. (Chia Tai Tianqing) and Advenchen Laboratories Nanjing Co., Ltd. (Advenchen), the owners of the utility patent titled “Spiro Substituted Compounds As Angiogenesis Inhibitors” (No. ZL200880007358.X). The respondent is Jiangsu Aikon Biopharmaceutical R&D Co., Ltd. (Aikon). The petitioners found that the respondent posted marketing information about products associated with the aforesaid patent on www.chem960.com, an online chemical database, suspiciously infringing the petitioners’ patent rights. So the petitioners filed a dispute resolution request to the Intellectual Property Office of Jiangsu Province (the Office) in June 2020. The Office registered the case on June 30, 2020.

The petitioners claimed that Claim 1 of the patent involved in the case covers a range of compounds and their pharmaceutically acceptable salts, including

1-((4-(4-fluorin-2-methyl-1H-benzpyrole-5-oxy)-6-methoxy quinoline-7-oxy)methyl)rolicyprine. The generic name of the medicine involved in the case is “Anlotinib”, with a CAS registry number of 1058156-90-3. The product that the respondent marketed on www.chem960.com (https://chanpin.chem960.com/23608904/) corresponds only to Anlotinib, and thus falls under the protection of Claim 1 of the involved patent. Therefore, the petitioners requested that the respondent stop the infringing act.

The respondent replied that its product catalog had used the existing product data on www.chem960.com, and it overlooked Anlotinib products in the product catalog due to a lax examination of the numerous products in the catalog on www.chem960.com. The respondent argued that its online marketing of Anlotinib products was not the offering for sale, and it had asked www.chem960.com to delete the infringing product information on June 30. As a trading company, it has never used such patented technology in the R&D and production of its own products, nor received any inquiry about or sold any Anlotinib products, so there would be no material influence on the petitioners’ operation and production, the respondent said. Its main business is to supply raw materials for pharmaceutical R&D organizations in and outside China, so it only markets

sample products of 1 g or 5 g for R&D use, and never offers to sell the products in bulk for commercial purposes, the respondent added.

After a careful investigation, the Office identified the following facts: (1) The patent involved in the case is legitimate and valid; (2) The Anlotinib products marketed online fall under the protection scope of the patent; (3) The respondent displayed the Anlotinib products with a CAS registry number of 1058156-90-3 on www.chem960.com, clearly stated the manufacturer was Aikon, and provided the address and contact number of Aikon on the promotion page. The respondent showed a clear motive for selling the patented Anlotinib products involved in the case to unspecified customers, which constitutes the offering for sale.

[Outcome]

On September 27, 2020, the Office identified Aikon’s behavior as the offering for sale, which constitutes a patent infringement, and ruled that Aikon must stop its infringing act immediately.

After receiving the administrative ruling, the respondent did not file an administrative appeal to the court, and thus the ruling came into force.

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

[Analysis and Comment]

To align its patent system with the TRIPS Agreement after joining the WTO, China passed a second amendment to its Patent Law to expand the scope of patent protection. Specifically, Article 11 was amended to prohibit anyone from offering to sell patented products. It stipulates that "after the patent right is granted for an invention or a utility model, unless otherwise provided for in this Law, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method."

The "offer to sell" mentioned in the Patent Law means to show an intention to sell products by means of advertising, store window display, online display, or exhibition at trade fairs. This case involves identifying the "offer to sell" behavior specified in the Patent Law. The Office analyzed the product sales information posted online based on the facts and relevant judicial interpretations of the Supreme

People's Court, and identified the respondent’s behavior as “offer to sell” specified in the Patent Law. The administrative ruling effectively stopped the infringing act and protected the legitimate rights and interests of the patent owners.

Patent counterfeiting by Xuzhou Dongsheng Technology Co., Ltd.

[Case Brief]

The Xuzhou Municipal Market Supervision Administration (Xuzhou MSA) was tipped off that Xuzhou Dongsheng Technology Co., Ltd. (Xuzhou Dongsheng) sold counterfeit patented disposable venous indwelling needles to Xuzhou Central Hospital. Xuzhou MSA registered the case on August 17, 2020. Upon investigation, Xuzhou MSA found that Xuzhou Dongsheng purchased 36,000 “Linhwa®” disposable venous indwelling needles (batch No.: 19100486) at a unit price of RMB 42 from Suzhou Linhwa Medical Devices Co., Ltd. (the Manufacturer), and then sold all of them to Xuzhou Central Hospital at a unit price of RMB 49, with sales totaling RMB 1.764 million, from November 2019 to April 2020.

On the external package of a product with the manufacture date of October 31, 2019, utility patents were indicated, with patent numbers of ZL201310033061.3, ZL200720037665.5, ZL200720038724.0, ZL201020163241.5, and ZL201020585565.8. The two

utility patents numbered ZL200720037665.5 and ZL200720038724.0 had expired, and the products involved were suspected of counterfeiting patents.

Xuzhou Dongsheng said it did not know these patents had expired, and it could prove they were purchased from a legitimate source. The sales taxes totaled RMB 38,111.44, and the illegal gains added up to RMB 213,888.56.

[Outcome]

Xuzhou MSA (the Intellectual Property Office) held that the two utility patents numbered ZL200720037665.5 and ZL200720038724.0 have expired. The Manufacturer continued to provide patent marks on product packages after the patents expired, which constituted an act of patent counterfeiting according to Paragraph (1) of Article 84 in the *Rules for the Implementation of the Patent Law of the People's Republic of China* (the Rules).

Xuzhou Dongsheng sold counterfeit patent products, which also constituted an act of patent counterfeiting according to Paragraph (2) of Article 84 of the Rules.

Considering that Xuzhou Dongsheng did not know these patents had expired, and could prove they were purchased

from a legitimate source,

Xuzhou MSA (the Intellectual Property Office) ordered it to make rectification and confiscated its illegal gains totaling RMB 213,888.56.

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

[Analysis and Comment]

There are three things worth noting in the case. First, the products involved in the case did have the marked patents. However, they were expired at the time of production and sales. Although the seller may not be malicious, it is still deemed to have sold counterfeit patent products, and shall bear corresponding legal liabilities. Second, the seller did not know it was selling counterfeit patent products, and could prove these products were purchased from a legitimate source. So it remains ambiguous whether the seller should be held accountable. Xuzhou MSA appropriately applied the Patent Law. Third, it is tricky to deal with the higher-level legislation with different rules on how to calculate illegal gains. Xuzhou MSA calculated the seller's illegal gain equivalent to its fault, and combined

punishment with education, which reflects enforcement flexibility within the legal framework, and offers some guidance for similar cases.

Southcorp Brands Pty Limited vs. Huai'an Huaxiazhuangyuan Vintage Co., Ltd. and Hangzhou Zhengsheng Trade Co., Ltd.

[Case Brief]

The plaintiff, Southcorp Brands Pty Limited (Southcorp), is the owner of trademark "Penfolds", a famous wine brand. Since Penfolds wine entered China in the 1990s, Southcorp has been using "奔富" (pinyin: Benfu) as the Chinese name of "Penfolds". The trademark is now of great commercial value, and hence is maliciously squatted. The defendant, Huai'an Huaxiazhuangyuan Vintage Co., Ltd. (Huaxiazhuangyuan), applied to register several English trademarks similar to "Penfolds", such as "PENFOILLS" and "PENFUNILS", and used "奔富", "奔富尼澳" (pinyin: Benfu Ni'ao, a trademark obtained from a party not involved in the case), and "Penfunils" on its wine packages. Then these wine products were sold by the defendant Hangzhou Zhengsheng Trade Co., Ltd. (Hangzhou Zhengsheng). In 2011, Southcorp applied to register "奔富" as its trademark, but was rejected by the Trademark Office of the State Administration for Industry and Commerce (SAIC) because the trademark is similar to a previously registered trademark. Southcorp filed three administrative appeals against the decision, but were all rejected. In its last appeal filed in 2018, the Supreme People's Court ruled to quash the previous court decisions and ordered the Trademark Review and Adjudication Board (TRAB) of SAIC to remake its decision on the trademark "奔富".

At the request of Southcorp, TRAB invalidated the trademark "奔富尼澳", and the Trademark Office rejected the applications to register "PENFOILLS" and "PENFUNILS" as trademarks. Southcorp filed a lawsuit

against Huaxiazhuangyuan and Hangzhou Zhengsheng for infringing its trademark rights, requiring them to immediately stop the infringing act and pay RMB 1 million to compensate for its economic loss and rights protection spending.

[Outcome]
The Intermediate People's Court of Nanjing City, Jiangsu Province ordered the two defendants to immediately stop infringing Southcorp's trademark rights for "PENFOLDS" (No. 861084), "Penfolds" (No. 8376485), and "奔富", a famous trademark yet to be registered, and to pay Southcorp RMB 1 million to compensate its economic loss.

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

[Analysis and Comment]
A trademark will become famous and influential through a company's efforts to use, promote, and publicize it. Therefore, even if the trademark has not been registered, the court still can deem it as the company's famous trademark that will be protected by law. In this case, the court identified "奔富", yet to be registered, as a famous trademark of the plaintiff, and ruled it should be protected as a registered trademark, thus stopping the infringement and achieving good legal and social effects. Market players must act with integrity in competition, and create their own brands. Anyone who squats trademarks or illegally uses the goodwill of other brands will be punished by law. This is the first case concerning the protection of unregistered famous trademarks in Jiangsu province.

Shanghai Yaowan (“邀玩” in Chinese) Network Technology Co., Ltd. and Shanghai Yaowan (“要玩” in Chinese) Network Technology Co., Ltd. vs. Heze Qiusheng Network Technology Co., Ltd.

[Case Brief]

The plaintiffs, Shanghai Yaowan (“邀玩” in Chinese) Network Technology Co., Ltd. and Shanghai Yaowan (“要玩” in Chinese) Network Technology Co., Ltd., are the exclusive copyright licenser of the online game “Business Life” (“全民大富豪” in Chinese), and the exclusive trademark licenser of “  ” (No. 17638285). Since 2010, the plaintiffs and their affiliates have launched four games named after “Business Life”, which all achieved good economic benefits. Business Life, a mobile game that simulated business operations, was pre-released as a WeChat mini-program in December 2018, and was removed in September 2019. During the period, the plaintiffs had been testing, fixing, and updating the game.

In June 2019, Heze Qiusheng Network Technology Co., Ltd. (Heze Qiusheng), a company wholly owned by the

defendant Zhang Xianger, illegally used the plaintiffs' company names and game copyright information of Business Life, and forged a range of documents, including the *Game Copyright Statement of Heze Qiusheng Network Technology Company*, the Authorization Letter of Shanghai Yaowan Network Technology Company Granting Game Copyright to Shanghai Yaoyu Network Technology Company, the Authorization Letter of Shanghai Yaoyu Network Technology Company Granting Game Copyright to Heze Qiusheng, the *Online Game Publication (ISBN) Approval* of the State Administration of Press, Publication, Radio, Film and Television, and the *Computer Software Registration Certificate* of the game involved in the case. The defendant submitted these documents to Huawei Software Technology Co., Ltd. (Huawei) for review and obtained approval. In this way, Heze Qiusheng misled users into believing they were playing the game developed by the plaintiffs, and profited from the game's top-up service. Meanwhile, the defendant replaced a Chinese poker game in Business Life with a gambling game of Datang Entertainment by means of hot update and embedding third-party payment systems after releasing the

infringing game. According to the background statistics of Huawei, the alleged infringing game recorded 1,286,482 downloads, 14,358 registered users, and top-up fees totaling RMB 3,997.1. The game still garnered some downloads and registered users after it was removed from the app store on September 6, 2019.

The plaintiffs requested the court to order the defendants to immediately stop the trademark infringement and unfair competition, and pay RMB 3 million in compensation to the plaintiffs for their economic loss and other reasonable fees.

[Outcome]

The Intermediate People's Court of Nanjing City, Jiangsu Province found that the two defendants infringed the plaintiffs' exclusive trademark rights, and such infringement constituted unfair competition against the plaintiffs. Applying the principles of statutory compensation and punitive damages, the court approved the plaintiffs' request for RMB 3 million in compensation.

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

[Analysis and Comment]

In recent years, the fast-growing Internet industry has boomed the online economy in China. At the same time, the competition in the Internet industry is increasing, giving rise to an endless stream of new unfair competition practices which have posed a challenge to the existing legal system. This case involves a typical unfair competition practice in mobile gaming.

A game must specify the copyright owner, publisher, approval number, publication number, software copyright registration number, and game record number on the homepage or login page to show that the game is a legitimate publication. If a game developer needs to promote its game on an online platform, it must upload the above information to the platform for review, and connect the game with the platform's payment and login entries before charging relevant fees from users. Therefore, pay-to-play online games are of great value. The defendants in the case are subjectively malignant to a great extent, their behaviors infringe the plaintiffs' trademark rights, and constitute unfair competition against the plaintiffs. Although the infringing game only garnered total top-up fees of RMB 3,997.1, the court still approved

the plaintiffs' compensation request in full according to the principle of punitive damages, showing a resolution to create a healthy environment for competition in the pay-to-play mobile game market, crack down on game infringement, and protect the legitimate interests of game copyright owners.

Case of Zhao et al. counterfeiting trademarks and selling counterfeit trademark products

[Case Brief]

“L'ORÉAL PARIS” and “欧莱雅” are registered trademarks of L'Oréal S.A. From September 2017 to March 2018, three defendants, surnamed Zhao, Sun, and Gu, respectively, knowingly produced, processed, and stored cosmetics with counterfeit trademarks in Xiangcheng District of Suzhou, without authorization of the trademark owner. They purchased raw materials from Guangzhou in Guangdong province, Fuyang in Zhejiang province, and Suzhou in Jiangsu province, and illegally obtained cosmetic containers, caps, and logos with counterfeit trademarks. Zhao was responsible for raw material purchase, sales, and profit distribution; Sun for labeling, plastic packaging, product movement, and quality control; and Gu for the arrangement of filling and product assembly. They produced 24 types of cosmetic products with counterfeit L'Oréal trademarks, worth more than RMB 12 million in total. Zhao sold the counterfeit products across China by

door-to-door selling and online marketing, with total sales amounting to over RMB 2.1 million. The police also seized a large number of unused containers, caps, devices, and raw materials for faking cosmetic products in the defendants' warehouse and workshop.

Most of these counterfeit cosmetics were sold to L'Oréal wholesalers and distributors. The defendants Zhang A and Zhang B, who were operators at a cosmetics wholesale marketplace in Shenyang, Liaoning province, knowingly sold these counterfeit products by wholesale and retail. They had sold over RMB 1.18 million worth of products, with over RMB 40,000 worth of products remaining unsold. The defendants Guo and Xue sold the counterfeit products by door-to-door selling and online marketing. They rented two private houses in Pizhou, Jiangsu province as their warehouses, and shipped the counterfeit products through logistics service providers to buyers in Yunnan, Anhui, Jiangsu, and other provinces. The police seized more than 20,000 boxes of over 20 types of counterfeit cosmetics worth about RMB 760,000 at their logistics sites and warehouses.

[Outcome]

The People's Procuratorate of Suzhou Industrial Park (SIP) filed a lawsuit to the court against six suspects, including Zhao and Sun, involved in counterfeiting trademarks and selling counterfeit trademark products. In January 2020, the People's Court of SIP sentenced Zhao to five years and nine months in prison, Sun to four years and six months in prison, and Gu to three years and two months in prison, and imposed penalties for the crime of counterfeiting trademarks. It also sentenced Zhang A to three years and two months in prison, Zhang B to three years and four months in prison, and Guo to one year and nine months in prison and two years on probation, and imposed penalties for the crime of selling counterfeit trademark products.

(This case is provided by Jiangsu People's Procuratorate.)

[Analysis and Comment]

To enhance IPR protection, counterfeits must be eliminated at source. This is a typical case of the crackdown on production, transportation, and sales of products passed off as famous brands. Trademark counterfeiting usually involves an “industrial chain”

consisting of a range of hidden activities. Crackdown on one activity has some legal effects, but infringement may reoccur anytime if the source of production and sales channels are not rooted out. In this case, the police destroyed the whole chain of production, transportation, and sales, and eliminated infringing products at source, protecting the IPR of brand owners and the rights and interests of consumers. This is also a typical case of protecting international brands and safeguarding a sound business environment. CPC General Secretary Xi Jinping called for deeper participation in global IPR governance on the principles of openness, inclusiveness, and balance, to build a community with a shared future for mankind. L'Oréal is a French cosmetics brand with a high global reputation. This case shows China's commitment to providing equal protection for all market entities, demonstrating China's integrity and sense of responsibility in IPR protection. This case adds a nice touch to the IPR protection efforts of SIP as a window for the reform and opening up.

Case of Chen et al. producing and selling counterfeit trademark products

[Case Brief]

In June 2020, the Economic Crime Investigation Department of Wuxi (the Department) destroyed five criminal groups which produced and sold counterfeit products, and caught more than 10 suspects including Chen. The Department found that Chen, together with Wang A and Wang B (settled in a separate action), produced and sold counterfeit sealants with trademarks including “道康宁” (pinyin: Daokangning, trademark certificate No. 6054868), “陶熙” (pinyin: Taoxi, trademark certificate No. 24291735), and “千里马” (pinyin: Qianlima, trademark certificate No. 1252029) without authorization of the trademark owners in the factories located in No. 58 Qianwei Road and No. 2 Baile Road, Qianqiao Subdistrict, Huishan District, Wuxi City, from January 2017 to June 2020. They purchased empty tubes and packaging materials of the above brands, produced counterfeit trademark sealants with cheap glue, and then sold these products by door-to-door selling and WeChat marketing. More than 8,200 boxes of the aforesaid sealants worth over RMB 1.67 million were sold to Cheng and Zhang A et

al. The police seized more than 220 boxes of counterfeit sealants of the above brands, and packages and empty tubes of these brands on site, which were worth RMB 49,000. Cheng and Zhang A knowingly purchased the counterfeit sealants of “道康宁” (pinyin: Daokangning) and “千里马” (pinyin: Qianlima) from Chen and sold them to customers via WeChat and Taobao. More than 5,190 boxes of counterfeit sealants were sold to Li, Shen, Zhang B, Miao, and Xu et al, with total sales of over RMB 1,259,000 and an illegal gain of about RMB 196,000.

[Outcome]

Five suspects were prosecuted. The three primary suspects Chen, Cheng, and Zhang A were imposed a prison sentence and a penalty of RMB 1 million, RMB 600,000, and RMB 80,000 respectively.

(This case is provided by the Public Security Department of Jiangsu Province.)

[Analysis and Comment]

China has attached great importance to the crackdown on food, drug, and environmental crime, and that is why it has set up the Food and Drug Crime Investigation Department in the public security authority. The Department has

significantly pushed the crackdown on food, drug, and environment crime, and improved the professional skills of the public security authority to fight crime. In this case, the public security authority found the involved products are widely used in buildings, and therefore are closely related to people's living environment. Counterfeit products of poor quality threaten the life and health of people. The case fully demonstrates the advantages of professional investigation departments, and the significance of IPR protection to the health of people.

Selling Counterfeit registered Trademarks Products Case of Jianming Branch of Nantong Yidantang Pharmacy Chain Co., Ltd.

[Case Brief]

On January 31, 2020, the Rudong County Market Supervision Administration of Nantong City (Rudong MSA) received a tip-off that the Jianming Branch of Nantong Yidantang Pharmacy Chain Co., Ltd. sold counterfeit disposable masks under the brand of “Piao’an”. On the same day, Rudong MSA seized one bag of counterfeit disposable “Piao’an” masks in Jianming Branch, but the pharmacy manager argued that the masks were abandoned by someone else and not for sale. He denied selling infringing masks in the subsequent three inquiries. Rudong MSA then checked drug sales ledgers of Jianming Branch during the pandemic, surveillance videos from the security monitors around the pharmacy, and car recorders of witnesses who bought the infringing masks. And it finally found that Jianming Branch sold counterfeit disposable “Piao’an” masks infringing the trademark right of the brand owner, with sales amounting to RMB 510. A *Notice of Hearing on Administrative Penalty* was served on Jianming

Branch on March 11, 2020, and a public hearing was held on March 25.

Rudong MSA held that Jianming Branch must strictly adhere to applicable regulations and laws on the sale of masks and other anti-epidemic materials during the fight against COVID-19, because these materials were closely related to people's health and safety. During the investigation, Jianming Branch refused to disclose where the masks were from, hindering the crackdown on the producer of these counterfeit masks. It not only violated the *Trademark Law of China* but also hindered the fight against COVID-19, and therefore should be severely punished according to law.

[Outcome]

According to Paragraph 2 of Article 60 in the *Trademark Law of China*, Rudong MSA ordered Jianming Branch to immediately stop its infringing act, confiscated the counterfeit disposable "Piao'an" masks (20 pieces) seized on site, and imposed a penalty of RMB 200,000.

(The case is provided by Jiangsu Provincial Administration for Market Regulation.)

[Analysis and Comment]

This case involves IPR protection and epidemic prevention, demonstrating the majesty of law, protecting the safety of people, and safeguarding the order of the medical devices market. The outbreak of COVID-19 has affected all aspects of people's work and life. To protect people's life and health and safeguard social stability, China has poured tremendous resources into epidemic prevention and control. Everyone is duty-bound to be part of the fight against COVID-19. Market entities that produce or sell fake masks not only infringe the IPR of rights owners, but also pose a threat to public health and safety. Therefore, such entities must be severely punished according to law.

This is a typical case of severe punishment. To further implement President Xi's instructions on epidemic prevention and control, and the major decisions of the CPC Central Committee and the State Council, the State Administration for Market Regulation (SAMR) issued the *Opinion on Strict and Fast Crackdown on Violations during COVID-19 Prevention and Control*, requiring that violators hindering COVID-19 prevention and control should be punished severely, and those who produce or sell counterfeit anti-epidemic products such as masks should be given the maximum penalty to the extent permitted by law. The *Provisions of Jiangsu Province on Severe*

Punishment on Serious Violations in Market Regulation prepared by Jiangsu Provincial Administration for Market Regulation demands that all violators that break the bottom line on safety, threaten people's life and property safety, or damage fair market competition are subject to the most stringent standards, strictest supervision, maximum punishment, and severest accountability. During the pandemic, masks, essential for epidemic prevention, are related to public health and safety, so mask production and sale should be the top priority of regulation. Relevant authorities have introduced several documents to toughen the regulation in this regard. Although the pharmacy involved in the case only gained RMB 510 from illegal business, the regulatory authority imposed a hefty penalty of RMB 200,000 because the pharmacy flagrantly sacrificed public safety for its own good during the special period of COVID-19.

Cases in the joint crackdown by Nanjing Customs and the judiciary on export of infringing products

[Case Brief]

In September 2020, a Zhejiang-based company declared 316,800 unbranded glasses for export (worth USD 18,906.25) at Lianyungang Customs, subordinate to Nanjing Customs. In November 2020, a Shenzhen-based company declared 521 unbranded handbags (worth USD 7,768.11) at the customs.

During on-site inspections, the customs found that the above products used marks including “Royalex”, “CNHTC” and the corresponding logo, “SINOTRUK”, “BOTTEGA VENETA”, “HERMES” and the corresponding logo, without authorization of the trademark owners. The two cases meet the criteria for registration as criminal cases of trademark counterfeiting. While carrying out an administrative investigation, Lianyungang Customs reported the cases to local public security authorities.

[Outcome]

Both companies placed the trademarks involved in the case in prominent positions on products and external

packages, and therefore are considered using these trademarks according to the Trademark Law. The goods using the trademarks involved in the case are the same as the products for which the trademark owners have registered the trademarks at the Intellectual Property Office and the National Intellectual Property Administration in terms of text, order of letters, elements, and form of expression. Therefore, the companies are deemed to have used the trademarks without authorization of the trademark owners.

The Customs found that the Shenzhen-based company used “MICHAEL KORS”, “BOTTEGA VENETA”, “HERMES” and the corresponding logo identical to those registered by the trademark owners without authorization of the trademark owners. These handbags infringed the exclusive trademark rights of the owners according to Paragraph (1) of Article 57 of the *Trademark Law of China*. The company is deemed to have exported products infringing the exclusive trademark rights of others. The Customs decided to confiscate the infringing products and impose a penalty of RMB 2,600 on the Shenzhen-based company according to Article 91 of the *Customs Law of China*, and Paragraph 1 of Article 25 of the *Regulations of China on Implementing Customs Administrative Penalty*.

The Customs found that the Zhejiang-based company used the “Royalex” mark identical to that registered by the trademark owner without authorization of the trademark owner. These glasses infringed the exclusive trademark rights of the owner according to Paragraph (1) of Article 57 of the *Trademark Law of China*. The company is deemed to have exported products infringing the exclusive trademark rights of others. The Customs decided to confiscate the infringing products and impose a penalty of RMB 6,600 on the Zhejiang-based company according to Article 91 of the *Customs Law of China*, and Paragraph 1 of Article 25 of the *Regulations of China on Implementing Customs Administrative Penalty*.

(The case is provided by Nanjing Customs.)

[Analysis and Comment]

The two cases offer some guidance for future similar cases.

First, Nanjing Customs established the first tripartite cooperation mechanism for IPR protection among the administrative department, the criminal department, and the risk management department in China. The mechanism allows relevant authorities to share their case

information such as clues and penalties. For cross-regional crime, crime with novel means, and crime involving a large amount of money, this mechanism enables the customs and public security authorities to promptly discuss important clues and launch co-investigation.

Second, the synergy between administrative protection and judicial protection is enhanced. Subordinate customs of Nanjing Customs cooperated with local public security authorities by promptly reporting relevant information, handing over relevant materials on site, and briefing them on case details to help them better understand the cases. The customs also assisted local public security authorities in relevant data retrieval, case analysis, and investigation.

Third, case information feedback is achieved. The customs participated in case clue analysis and investigation to crack down on IPR infringement at source. They also analyzed the high infringement risks disclosed by public security authorities and worked out relevant risk control measures.

Copyright infringement case of Ma A and Ma B et al.

[Case Brief]

Ma A and Ma B et al. have been making pirated copies of films for profits since June 2016. They illegally obtained film keys by “cloning” servers, copied films with high-definition camcorders, and sold these pirated copies to theaters after watermarking and encryption, without the permission of copyright owners. At the beginning of 2017, Ma A and Ma B convinced Wen C and Lu D et al. to join them, gradually forming a large criminal group with fixed core members. Ma A took charge of the overall reproduction and distribution of pirated copies of films, Ma B was responsible to make pirated copies, maintain equipment, and find theaters to which they would sell the pirated copies, and Wen C and Lu D were also responsible to find theaters that would buy the pirated copies. In September 2018, Wen C and Lu D left the criminal group. Wen C coopted new partners to make and distribute pirated copies of films by the aforesaid method. Lu D obtained pirated copies from Wen C, and recruited members to sell these pirated copies. Before the Spring Festival 2019, Ma A, Ma B, and Wen C et al. made and

distributed pirated copies of several new films, including The Wandering Earth and Crazy Alien. As a result, these big films were leaked on the Internet before their official release, causing a bad social impact. The prosecution and investigation authorities determined the accurate number of films each criminal group had copied by reviewing the list of films played by each projector, master disk lists, video production software lists, uploads to Baidu cloud disk, video files sent in WeChat groups, and other relevant data. They also calculated the accurate amount of money involved based on the time and amount of each payment, and the transaction details provided by banks, Alipay, and Tenpay.

As of February 2019, Ma A and Ma B had made and distributed pirated copies of about 400 films, raking in over RMB 7.77 million in total. Ma A pocketed over RMB 4.04 million, and Ma B over RMB 550,000. Wen C had made and distributed pirated copies of over 120 films, racking up total revenue of around RMB 1.86 million, with an illegal profit of over RMB 1.03 million. Lu D sold pirated copies of films, generating revenue of over RMB 8.14 million and an illegal profit of over RMB 5.36 million.

[Outcome]

The Intermediate People's Court of Yangzhou City, Jiangsu Province sentenced Ma A to six years in prison, and imposed a penalty of RMB 5.5 million for the crime of copyright infringement; Ma B four years in prison and a penalty of RMB 600,000 for the crime of copyright infringement; Wen C four years in prison and a penalty of RMB 1.2 million for the crime of copyright infringement; and Lu D five years in prison and a penalty of RMB 5.5 million.

(This case is provided by Jiangsu Provincial Copyright Administration, Jiangsu People's Procuratorate, and Jiangsu High People's Court.)

[Analysis and Comment]

The case is a typical crime of copyright infringement. Different from common copyright infringements, this case involves an organized criminal group featuring a clear division of labor. The defendants colluded with theater staff to obtain the master tape and key of a film, made pirated copies of the film with high-definition camcorders, and sold the pirated copies after watermarking and encryption, forming a complete criminal chain. The four defendants pirated The Wandering Earth and other films which were supposed to be released during the Spring Festival 2019,

and spread the pirated copies over the Internet, causing a bad social impact. The defendants in this case were severely punished, in a sign of a clear and firm commitment to the strictest IPR protection and crackdown on copyright infringement. This crackdown serves as a powerful deterrent to criminals and has a profound significance to the film copyright protection and the healthy development of the film and television industry.