

Supreme People's Court's Interpretation of Several Issues Relating to Trial of Civil Cases of Unfair Competition

(Adopted at the 1412th Meeting of the Adjudication Board of the Supreme People's Court on 30 December 2006)

With a view to duly hearing civil cases of unfair competition, protecting the legitimate rights and interests of business operators and maintaining the order of market competition, this Interpretation has been formulated under the General Principles of the Civil Law of the People's Republic of China, the Unfair Competition Law of the People's Republic of China and the Civil Procedure Law of the People's Republic of China with reference to the practical experience and situation of judicial trial.

Article 1 Any goods having certain reputation in the market or being known to the relevant section of the public within the territory of China shall be established as "famous goods" provided for in Article 5 (2) of the Unfair Competition Law. In establishing famous goods, the people's court shall take into account the time, area, amount and buyers of the sale of said goods, the duration of time, degree and geographical area of any publicity of the goods, and the situation of the goods being protected as a famous goods, so as to make a comprehensive determination for the purpose. The plaintiff is under the burden to prove the reputation of his goods in the market.

Where an identical or similar name, package or trade address particular to a famous goods is used within a different geographical area and the later user may prove that his use is in good faith, the use does not constitute the act of unfair competition provided for in Article 5 (2) of the Unfair Competition Law. Where confusion is caused of the origin of his goods due to the entry of his later business activity in the same geographical area, and the prior user requests to order the later user to attach other indication sufficient to distinguish the origin of the goods, the people's court shall support the request.

Article 2 The name, package or trade dress of a goods having the distinctive feature of distinguishing the origin of

goods shall be established as the "name, package or trade dress particular to the goods" provided for in Article 5 (2) of the Unfair Competition Law. In the presence of any one of the following circumstances, the people's court shall not establish the name, package or trade dress as particular to a famous goods:

(1) The generic name, design or model of the goods;

(2) The name of goods only having direct reference to the quality, main raw material, function, intended purpose, weight, quantity or other characteristics;

(3) The shape of goods which results from the nature of the goods *per se*, the shape of goods which is necessary for it to obtain a technical result or the shape which gives substantial value to the goods; and

(4) Any other name, package or trade dress of the goods devoid of distinctive character.

Any goods provided for in preceding (1), (2) and (4) that obtains distinctive character through use may be established as the name, package or trade dress particular to the goods.

Where the name, package or trade dress particular to a famous goods contains the generic name, design or model of the goods, or has direct reference to the quality, main raw materials, function, intended purpose, weight, quantity or other characteristics of the goods, or has the name of a place, and any other party fairly uses it to objectively describe the goods, the use does not constitute an act of unfair competition.

Article 3 The overall business image with unique style composed of the decoration of an operator's business venue, the type/fashion of business facilities or the garments of business clerks may be determined as the "trade dress" provided for in Article 5 (2) of the Unfair Competition Law.

Article 4 Misleading the relevant section of the public about the origin of goods, including cases of misleading the

relevant section of the public about the existence of specific relations, such as licensed use from or association with relevant enterprises, shall be determined as “confusing the goods with that famous goods and leading the purchasers to mistake the former for the latter” provided for in Article 5 (2) of the Unfair Competition Law.

Using the name, package or trade dress identical or substantially visually indistinctive on identical goods shall be deemed to be confusing the goods with another person’s famous goods.

The identicalness or similarity of the name, package or trade dress particular to a famous goods may be determined with reference to the principle and method for determining the identicalness or similarity of trademarks.

Article 5 Where the name, package or trade dress is a sign that shall not be used as a trademark provided for in Article 10, paragraph one of the Trademark Law, and the interested party request to protect it under Article 5 (2) of the Unfair Competition Law, the people’s court shall not support the request.

Article 6 The name of an enterprise that has been registered with the competent enterprise registration authority according to law and the name of a foreign enterprise commercially used within the territory of China shall be determined as the “name of enterprise” provided for in Article 5 (3) of the Unfair Competition Law. The trade name in an enterprise name having certain reputation in the market or known to the relevant section of the public may be determined as a “enterprise name” as provided for in Article 5 (3) of the Unfair Competition Law.

A natural person’s name used in the business operation of a goods shall be determined as the “name” provided for in Article 5 (3) of the Unfair Competition Law. The pen name or stage name of a natural person having certain reputation in the market or known to the relevant section of the public may be determined as the “name” provided for in Article 5 (3) of the Unfair Competition Law.

Article 7 The commercial use within the territory of China, including the use of the name, package or trade dress particular to a famous goods, or an enterprise name or a person’s name on goods, package of goods or in goods transaction documents, or in advertisement and publication, exhibition or other business activities, shall be determined as the “use” provided for in Article 5 (2) and (3) of the Unfair Competition Law.

Article 8 Where a business operator conducts any of

the following acts, which is sufficient to cause confusion on the part of the relevant section of the public, the act may be determined as one of making false or misleading publicity provided for in Article 9 (1) of the Unfair Competition Law:

- (1) making biased publicity or comparison of goods;
- (2) making publicity of goods by using a scientifically inconclusive view or phenomenon as an established fact; or
- (3) making publicity of goods with ambiguous wording or in any other misleading manner.

Publicity of goods in evident exaggeration which is not sufficient to mislead the relevant section of the public is not an act of making false or misleading publicity.

The people’s court shall determine the acts of making false or misleading act on the basis of the daily life experience, average attention paid by the relevant section of the public, fact of misunderstanding, and audience of publicity.

Article 9 The related information that is generally unknown or not readily accessible to those relevant in the act shall be determined as the “information that is unknown to the public” provided for in Article 10 (3) of the Unfair Competition Law.

Under any one of the following circumstances, it may be determined that the related information does not constitute information that is unknown to the public:

- (1) said information is part of the general knowledge of those in the technical or economical field or common practice in the industry;
- (2) said information relates to such information as the size, structure, material or simple composition of parts of a product that is directly available to the relevant section of the public by way of observation after the product is put on the market;
- (3) said information has been disclosed in publications or in other media;
- (4) said information has been disclosed at a public meeting for report or exhibition;
- (5) said information is otherwise openly accessible; or
- (6) said information is easily accessible without costs.

Article 10 The related information which has real or potential commercial value and can bring competitive edge to the rightholder shall be determined as that which “can bring economic benefits to the rightholder and has its utility” provided for in Article 10, paragraph three of the Unfair Competition Law.

Article 11 Reasonable measures which a rightholder has adopted to keep information from being divulged and

which are due under the specific circumstances with respect to the commercial value shall be determined as the “measures of confidentiality” provided for in Article 10 paragraph three of the Unfair Competition Law.

The people’s court shall determine whether or not a rightholder has adopted measures of confidentiality on the basis of such factors as the character of information carrier, the rightholder’s willingness to keep it confidential, the identifiability of the measures of confidentiality and its accessibility to others in a fair manner.

Under one of the following circumstances, it shall be determined that the rightholder has adopted sufficient measures to keep the secret information from being divulged under normal circumstances:

(1) Where the confidential information is made known within a limited circle, with the content of the information made known only to the those who need to know about it;

(2) Where, in respect of the carrier of confidential information, preventive measures, such as locking, have been adopted;

(3) Where the carrier of confidential information is marked to show its confidentiality;

(4) Where cipher or code is used for the information kept secret;

(5) Where agreement on confidentiality is concluded;

(6) Where visitors are restricted from visiting, or required to keep confidential when visiting machine, plant or workshop that should be kept confidential; or

(7) Where other due measures have been taken to ensure the confidentiality of the information.

Article 12 The trade secret obtained from one’s own R&D or reverse engineering shall not be determined as the act of infringement of trade secret provided for in Article 10 (1) and (2) of the Unfair Competition Law.

The “reverse engineering” as mentioned in the preceding paragraph refers to the technological information of a product obtained from disassembling, surveying and drawing, or analysing the product by technical means and through open channel. Where an interested party, after knowing another party’s trade secret by unfair means, claims that his/its act of obtainment is legal on the ground of reverse engineering, the people’s court shall not support the claim.

Article 13 The customers list in trade secret generally refers to the special customers’ information which is different from the relevant known information composed of the name, address, way of communication and manner of transaction,

intent or content, including the customers’ roster in which a lot of customers are put on the list, and special customers of long, stable business relations.

Where a customer does business with an entity of an individual employee because of his trust in said employee, and said individual employee, upon his leaving the entity, can prove that the customer has willingly chosen to do business with him or his new entity, it shall be determined that no unfair means has been adopted, except otherwise agreed upon between the employee and his former entity.

Article 14 Any interested party who accuses another party of infringing his/its trade secret shall be under the burden of proving the facts that his/its trade secret is in compliance with the statutory condition, the other party’s information is identical or substantially identical with his/its trade secret or the other interested party has used unfair means. The evidence that trade secret is in compliance with the statutory condition includes, among other things, the carrier of trade secret, concrete content, commercial value and specific measures to keep said trade secret confidential.

Article 15 Where a licensee of a solely exclusive licensing contract for use of a trade secret institutes proceedings against an infringement of the trade secret, the people’s court shall accept the case.

Where a licensee of an exclusive licensing contract for use of a trade secret and the rightholder jointly institute proceedings or the licensee does so alone where the rightholder does not, the people’s court shall accept the case.

Where a licensee of a non-exclusive licensing contract for use of a trade secret and the rightholder jointly institute proceedings or the licensee does so alone with the authorization in writing from the rightholder, the people’s court shall accept the case.

Article 16 Where the people’s court decides to impose the civil liability for ceasing infringement of a trade secret, the time for ceasing the infringement generally lasts until said trade secret becomes known to the public.

Where the decision made under the preceding provision on the time for ceasing infringement is obviously unjustifiable, it may be decided that the infringer stops using said trade secret within certain time limit or scope under the circumstance of protecting the competitive edge of the rightholder with said trade secret under the law.

Article 17 The amount of the damages caused because of the infringement of a trade secret under Article 10 of the Unfair Competition Law may be determined with reference to

Supreme People's Court's Several Provisions on the Issue of Application of Specific Laws to Cases of Dispute Arising from Infringement of the Right of New Variety of Plants

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No. Fashi 1/2007

With a view to duly hearing cases of dispute arising from infringement of the right of new variety of plants, these Provisions on the specific law application have been hereby set forth below under the General Principles of the Civil Law of the People's Republic of China and the Civil Procedure Law of the People's Republic of China and with reference to the practical experience and situation of trial of cases of dispute arising from infringement of the right of new variety of plants.

Article 1 Where an owner of the right in a new variety of plant (hereinafter referred to as a variety right owner) or an interested party believes that his right of new variety of plant is infringed, he may institute proceedings in the People's Court.

The interested parties mentioned in the preceding paragraph include licensees of contracts for exploiting new vari-

ety of plants and lawful heirs in title of the variety property right.

how the amount of damages caused because of the infringement of the patent right is determined; the amount of the damages caused because of the infringement of a trade secret under Articles 5, 9 and 14 of the Unfair Competition Law may be determined with reference to how the amount of damages caused because of the infringement of the exclusive right to use a trademark is determined.

Where an infringing act renders a trade secret known to the public, the amount of damages shall be determined on the basis of the commercial value of said trade secret. The commercial value of a trade secret shall be determined by taking into account of the factors, such as the cost of its R&D, revenue from exploiting it, its obtainable benefits, and the time when it keeps its competitive edge.

ety of plants and lawful heirs in title of the variety property right.

A licensee of a contract for solely exclusive exploitation of a new variety of plant may solely institute proceedings in the People's Court; a licensee of a contract for exclusive exploitation of a new variety of plant may institute proceedings in the People's Court with the variety right owner, or does so when the variety right owner does not; and a licensee of a contract for non-exclusive exploitation of a new variety of plant may alone institute proceedings in the People's Court with express authorisation of the variety right owner.

Article 2 The People's Court shall establish, as infringement of the right of a new variety of plant, acts of making or marketing propagating material of the granted variety for commercial purposes without authorisation of the variety right owners or acts of repeated use of a granted propagat-

Article 18 The first-instance civil cases of unfair competition under Articles 5, 9, 10 and 14 of the Unfair Competition Law shall generally be under the jurisdiction of the intermediate people's courts.

A higher people's court may authorize a grassroots people's court to accept the first-instance civil cases of unfair competition according to the practical circumstances of the region under its jurisdiction and upon approval by the Supreme People's Court. A grassroots people's court that has been authorised to hear civil intellectual property cases may continue to do so.

Article 19 This Interpretation shall come into effect on 1 February 2007. ■