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Case Involving Crime of Counterfeiting Registered Trademarks by Li Yade and Chen Jun

Citation: The Nantong City Intermediate People's Court's Criminal Judgment

No. Tongzhongxingerchuzi 0014/2005

Date of judgment: December 23, 2005

Procedural history

In October 2005, the Jiangsu Province Nantong City People's Procuratorate instituted public prosecution in the Nantong City Intermediate People's Court, accusing Li Yade and Chen Jun of committing a crime of counterfeiting registered marks.

Issue

Conviction and sentencing of the entity offender and its leading persons

Facts

The Nantong Balei Mila Consumer Chemicals Co., Ltd. (Mila) was incorporated on August 17, 2004 upon registration, with its approved scope of business covering making and marketing consumer cosmetics, but it was not granted the production permit or license.

Li Yade, a national of Lebanon, was a board director and one practically ran said corporation. Mila, under his management, made and marketed, without authorization from the trademark proprietor, the cosmetics bearing eight counterfeited registered marks, such as "DOVE", "NIVEA" and "BOSS HUGO BOSS", totaling \$ 155,000 in value, from December 2004 to March 2005.

In November 2004, Chen Jun went to work for Mila as a technician responsible for preparation of products, and involved in making and marketing the products with a value of \$ 118,000 and bear-

ing five counterfeited marks, such as “DOVE”, “NIVEA” and “BOSS HUGO BOSS”.

Rule of law

Article 213 of the Criminal Law *Whoever, without permission from the owner of a registered trademark, uses a trademark which is identical with the registered trademark in the same goods shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.*

Article 220 of the Criminal Law *Where an entity commits any of the crimes mentioned in Articles 213 to 219 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.*

Reasoning

Since Mila’s business was closed down when the case arose, and there was no proper person to represent it in the litigation to be criminally liable therefor, Mila was not sued as a defendant in the present case. Li Yade and Chen Jun, defendants in the present case, were only respectively held liable as the leading persons directly responsible for the business.

Since the legal representative of Mila was not involved in its production and operation, Li Yade, though not being the corporation’s legal representative, made all the business decisions. Li Yade, the person who was directly in charge of Mila and one involved in the activities of making all the decisions on and performing the act of counterfeiting other parties’ registered marks, should be held liable as a leading person directly responsible for the business.

Chen Jun provided Mila with the technology when he clearly knew that the latter was making and marketing the goods bearing the marks counterfeiting other parties’ registered marks, and made the preparation of the goods bearing the counterfeit registered marks, which was an act of playing a key role when Mila was committing the crime. Besides, since the amount of sales in the crime

he involved was huge and the circumstances of the crime especially serious, he should be held liable for what a person who was directly responsible therefor.

Holding

1. Li Yade, a board director and one actually running the business of Mila, used, without authorization from the proprietors of the registered marks counterfeited, in identical goods the marks identical with the other parties' registered marks, and the circumstances were especially serious. Li Yade's act constituted a crime of counterfeiting registered marks. Giving that he admitted his crime in a relative honest manner, he would be imposed light punishment, be sentenced to fixed-term imprisonment of four years and be fined RMB 500,000 yuan, and be deported in addition.

2. When knowing that Mila was making and marketing the goods bearing marks counterfeiting other parties' registered marks, Chen Jun still offered technical instruction for counterfeiting the marks, and was involved in the preparation of part of the goods bearing the counterfeited marks. Chen Jun's act constituted a crime of counterfeiting registered marks. Giving that he admitted his crime in a relative honest manner, he was imposed light punishment; hence he was sentenced to fixed-term imprisonment of three years, and be fined RMB 300,000 yuan.