

63

Case Involving Crime of Selling Counterfeit Goods by Beijing Meitong Jiahe Science and Technology Corporation et al.

Citation: The Beijing Haidian District People's Court's Criminal Judgment No. Haifaixingchuzi 2760/2007

Date of judgment: October 26, 2007

Procedural history

The Beijing Haidian District People's Procuratorate instituted public prosecution in the Beijing Haidian District People's Court, accusing the Beijing Meitong Jiahe Science and Technology Corporation, Zhang Shengde and Wu Ruiying of committing the crime of selling counterfeit goods.

Issue

Sentencing and conviction of the crime of selling counterfeit goods

Facts

The Beijing Meitong Jiahe Science and Technology Corporation (Meitong) began to sell Microsoft software bearing counterfeit registered mark in January 2005.

Zhang Shengde, manager of said corporation and Wu Ruiying, an employee of the Marketing Department, were mainly responsible for selling the counterfeit goods. Wu Ruiying took charge of marketing when Zhang Shengde was absent from his duty.

Between January 2005 and June 2006, Meitong's sales of the computer software bearing various counterfeit Microsoft registered mark amounted to more than RMB 220,000 yuan.

On December 14, 2006, Zhang Shengde and Wu Ruiying were arrested by the public security offi-

cers; meanwhile 80 sets of goods bearing the counterfeit Microsoft registered mark worth a total of over RMB 330,000 Yuan were recovered and seized.

Rule of law

Criminal Law of the People's Republic of China Article 214 *Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or only, be fined; if the amount of sales is huge, 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 31 *Where an entity commits a crime, 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 imposed criminal punishment.*

Where it is otherwise provided for in the Specific Provisions of this Law or in other laws, those provisions shall prevail.

Article 23 *A criminal attempt refers to a case where an offender has already started to commit a crime, but is prevented from completing it for reasons other than of his own will.*

An offender who attempts to commit a crime may, in comparison with one who completes the crime, be imposed a lighter or mitigated punishment.

Reasoning

Meitong, Zhang Shengde, main person in charge and Wu Ruiying, person directly responsible, knowingly sold the goods bearing the counterfeit Microsoft registered mark, and the amount of the sales was relatively large. Their act constituted the crime of selling goods bearing counterfeit mark, and they should be punished therefor.

Wu Ruiying took charge of the marketing when Zhang Shengde was absent from his duty, so Wu Ruiying was one of the persons directly responsible for the crime committed by the Corporation,

playing the main role in the crime. For that reason, Wu Ruiying was not an accessory.

Given that the 80 sets of software bearing the counterfeit Microsoft's registered mark recovered and seized on site by the public security officers were not sold out infringing software for the reasons other than Meitong's own will, it was an offender attempting to commit a crime; meanwhile, considering that the defendants Meitong, Zhang Shangde and Wu Ruiying confessed and showed penitence for their crimes before court, they were given a lighter or mitigated punishment than they would otherwise be imposed if they had completed the crime when sentencing.

Holding

Meitong was imposed a fine of RMB 100,000 yuan for the crime of selling counterfeit goods; Zhang Shengde and Wu Ruiying were, separately, sentenced to fixed-term imprisonment of one year, and was fined RMB 10,000 yuan.