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Case Involving Marketing Counterfeit Goods by Zhang Yongzu et al.

Citation: The Lanzhou City Chengguan District People's Court's Criminal Judgment

No. Chengxingchuzi 478/2008

Date of judgment: August 20, 2008

Procedural history

The Lanzhou City People's Procuratorate instituted a public prosecution in the Lanzhou City Chengguan District People's Court, accusing Zhang Yongzu (Zhang), Li Xianzhi (Li), Zuo Boan (Zuo), Zhou Shengjun (Zhou), Ma Xiuying (Ma) and Yang Wenyuan (Yang) of committing the crime of marketing counterfeit goods.

Issue

Conviction and sentencing of marketing fake and shoddy products

Facts

Zhang transported the counterfeit cigarettes of the famous Chinese brands, such as "Zhonghua", "Jixiang Lanzhou", "Hongtashan", "Honghe", "Hademen" and "Lanzhou", and sold them to Li, Zuo, Ma and Yang, et al, for them to sell the goods to seeking illicit profits in Lanzhou City. During the period, Li, Zuo, Zhou, Ma and Yang, et al, remitted successively to Zhang a total of over RMB 1.31million yuan as the revenue made from the sales of the counterfeit cigarettes. Besides, the counterfeit cigarettes worth a total of over RMB 1.25 million yuan Zhang sold were seized, and also seized were the counterfeit cigarettes worth a total of over RMB 200,000 yuan Zhang delivered and intended to sell.

Zhou transported counterfeit cigarettes to others' places as Zhang instructed, and obtained and re

mitted to Zhang more than RMB 90,000 yuan made from the sales of the counterfeit cigarettes. Also at Zhou's place and other places were seized the counterfeit cigarettes worth a total of over RMB 370,000 yuan.

Li bought, from Zhang, counterfeit cigarettes of some famous brands, such as "Zhonghua" brand, to sell them to seek illicit profits, the total sales of which reached as much as RMB 640,000 yuan. Besides, the counterfeit cigarettes worth over RMB 300,000 yuan were seized at Li's and some other places.

Zuo bought, from Zhang, counterfeit cigarettes of some famous brands, such as "Jixiang Lanzhou" brand, to sell them to seek illicit profits, the total sales of which was as much as RMB 140,000 yuan. Besides, the counterfeit cigarettes worth over RMB 840,000 yuan were seized at Zuo's and some other places.

Ma bought, from Zhang, counterfeit cigarettes of some famous brands, such as "Jixiang Lanzhou" brand, to sell them to seek illicit profits, the total sales of which was as much as RMB 280,000 yuan. Besides the counterfeit cigarettes worth over RMB 10,000 yuan were seized at Li's and some other places.

Yang bought, from Zhang, counterfeit cigarettes of some famous brands, such as "Jixiang Lanzhou" brand, to sell them to seek illicit profits, the total sales of which was as much as RMB 120,000 yuan. Besides, the counterfeit cigarettes worth over RMB 20,000 yuan were seized at Li's and some other places.

Rule of law

Article 140 of the Criminal Law *Any producer or seller who mixes impurities into or adulterates the products, or passes a fake product off as a genuine one, a defective product as a high-quality one, or a substandard product as a standard one, if the amount of revenue from sales is more than RMB 50,000 yuan and less than RMB 200,000 yuan, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention, and shall also, or only, be fined not less than half, but not more than two times the amount of the revenue made from sales; if the amount*

of revenue made from sales is more than RMB 200,000 yuan, but less than RMB 500,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than two years, but not more than seven years, and shall also be fined not less than half, but not more than two times the amount of revenue made from sales; if the amount of revenue made from sales is more than RMB 500,000 yuan, but less than RMB 2,000,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than seven years, and shall also be fined not less than half, but not more than two times the amount of revenue made from sales; if the amount of revenue made from sales is more than RMB 2 million yuan, he shall be sentenced to fixed-term imprisonment of fifteen years or life imprisonment, and shall also be fined not less than half, but not more than two times the amount of revenue made from sales, or be sentenced to property confiscation.

Reasoning

Zhang transported, in large quantity, the counterfeit cigarettes of the famous brands, such as “Zhonghua” and “Jixiang Lanzhou”, and employed Zhou to sell them to Li, Zuo, Ma and Yang to seek illicit profits; the latter, again, sold to other buyers the counterfeit cigarettes of such famous brands as “Zhonghua” and “Jixiang Lanzhou” they had bought from Zhang. The acts of all the defendants, Zhang, Li, Zuo, Zhou, Ma and Yang, had constituted the crime of selling counterfeit goods. Li and Zuo, who had been once punished with fixed-term imprisonment for committing crimes, committed the crimes again within five years after serving their sentences, so they were recidivists, and should be given a heavier punishment. Li, Zuo, Zhou, Ma and Yang did not sell out all the counterfeit cigarettes seized from their places for reasons other than their own will, which was an uncommitted crime, and they should be given a lighter punishment. Zhang, Li, Zuo, Ma and Yang transported and sold the counterfeit cigarettes to other buyers, and played a major role in the crimes they had jointly committed, so they were principal offenders, and should be given a heavier punishment; Zhou was introduced to, and followed Zhang’s arrangement to send the counterfeit cigarettes to Li, Zuo, Ma and Yang, and played an contributory role in the crimes, so he was an accessorial criminal, and should be given a lighter punishment. Li, Ma, Yang and Zhou had paid, to the court, part of the fines imposed respectively, so they might be deemed to have demonstrated repentance, and should be imposed a lighter punishment at the court’s discretion.

Holding

Zhang Yongzu, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of fifteen years, and was fined RMB 1.4 million yuan.

Li Xianzhi, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of eleven years, and was fined RMB 500,000 yuan.

Zuo Boan, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of eleven years, and was fined RMB 500,000 yuan.

Zhou Shengjun, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of three years, and was fined RMB 250,000 yuan.

Ma Xiuying, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of three years with a four-year reprieve, and was fined RMB 150,000 yuan.

Yang Wenyuan, having committed the crime of selling counterfeit goods, was sentenced to fixed-term imprisonment of one year and six months with a two year reprieve, and was fined RMB 80,000 yuan.