

39

Guangzhou City Yuexiu District Northeastern Cuisine Dumpling Restaurant v. Song Weihe

Citation: The Guangdong Province Higher People's Court's Civil Judgment No. Yuegaofazhizhongzi 63/2001

Date of judgment: April 12, 2002

Procedural history

Song Weihe (Song), keeper of the Haikou City Northeastern Restaurant (NR) sued the Guangzhou City Yuexiu District Northeastern Cuisine Dumpling Restaurant (NCDR) in the Guangzhou Intermediate People's Court for unfair competition. The first-instance court decided that the latter's act constituted unfair competition, and it then appealed to the Guangdong Higher People's Court.

Issue

Whether use of venue designs, including trade name typeface, restaurant decoration, and waitresses' clothing patterns and advertising phrases, similar to those of another restaurant constituted unfair competition?

Facts

From 1995, the NR designed and began to use a visual identification system, including, among other things, the fixed calligraphic typeface of its trade name, use of bright red as the main color of the utensil and design in the restaurant, use of red, phoenix-peony pattern on the waitresses' work clothing, tablecloth, the menu covers, use of works of window paper cut of the Chinese character of double happiness and farm produce, large wine jug, adobe "kang", dustpan with the Chinese character "Fu" (meaning "blessings") put upside down and strings of corn as the interior dec-

oration of the restaurant, and use of the fixed advertising phrase “course grain, edible wild herbs, dumpling: fantastic food!” on waitresses’ clothing. From 1997, the NR licensed the Guangdong Northeasterner Enterprise Co., Ltd. (GNEC) to use its “Northeasterner” mark and the entire restaurant venue design.

When it started its business in 1999, the NCDR used the “Guangzhou City Yuexiu District Northeastern Cuisine Dumpling Restaurant” as its enterprise name, in which the trade mark “Northeasterner” was highlighted use. Its typeface was identical with that of the NR, and it was later changed into the present name. Besides, it was substantially identical with the NR in the restaurant arrangement, decoration, style, menu, and on the waitresses’ clothing was used the NR’s advertising phrase.

The first-instance court held that the NR had developed its own unique corporate furnishing style by incorporating local features in its business through global design. Its special design and advertising had made it competitive. The NR and NCDR were both restaurants providing food of the northeastern cuisine, and competitors in the market. In its choice of the local special features, the NCDR was very much identical with, or similar to, the NR in content and the decorative expressions, and its intention to imitate another party’s image in the mind of the consumers was obvious. This act of imitation was likely to create confusion on the part of consumers. Accordingly, its act constituted one of unfair competition.

The NCDR argued in its appeal that the NR’s identification system included decorations of the folk customs in the Northeastern regions. They were local cultural heritage, and not exclusively owned by the NR. Besides, the system was not susceptible to the protection under the IP laws.

Rule of law

Article 2 of the Unfair Competition Law *A business operator shall, in his market transaction, follow the principles of voluntariness, equality, fairness, honesty and credibility, and observe the generally recognized business ethics.*

The “unfair competition” mentioned in this Law refers to a business operator’s acts violating the

provisions of this Law, infringing the lawful rights and interests of another business operator, and disrupting the socio-economic order.

Reasoning

The NR's visual identification system involved typeface of its trade name, patterns of its decoration and work cloth and its advertising phrase, which all resulted from its intellectual efforts. The system incorporated the elements of the folk costume and cultural features in Northeast China, but not exact copy or imitation thereof. The system represented the designer's intellectual creation and developments of its own style. As a competitor in the same industry, the NCDR used a trade name identical with that of the NR, with the typeface also identical and used in a noticeable manner. Besides, the NCDR had also used the same clothing and ornaments, similar menu, and identical advertising phrase. All these showed that it was subjectively intentional to take a ride along with another successful restaurant business. Its act was contrary to the principles of fairness, honesty and credibility, and constituted one of unfair competition.

Holding

The use of the entire design similar to that of the NR constituted an act of unfair competition.