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Fujian Tianlong Electric Motor Co., Ltd. v. Ningbo Huaneng International Economy and Trading Co., Ltd.

Citation: The Fujian Province Higher People's Court's Civil Judgment No. Minminzhongzi 283/2004

Date of judgment: August 20, 2004

Procedural history

The Ningbo Huaneng International Economy and Trading Co., Ltd. (Huaneng) sued, in the Ningde City Intermediate People's Court, Fujian Province, the Fujian Tianlong Electric Motor Co., Ltd. (Tianlong) for its act of unfair competition by passing off its registered bar code. It was decided, in the first-instance judgment, that Tianlong's act constituted an infringement. Tianlong appealed to the Fujian Province Higher People's Court.

Issue

Whether unauthorized use of another party's registered bar code constituted unfair competition?

Facts

The commodity bar code was an indication or representation of some information for computer identification, and the information covered the names of manufacturer and product. Huaneng was a member of the China Commodity Bar Code System, who had registered its commodity bar code containing the manufacturer's identification code information. On January 24, 2002, the enforcement officials from the Fujian Province Quality Supervision Bureau discovered, at Tianlong, that the number of the bar code Tianlong used on the pumps it made was the Huaneng's manufacturing identification code. Accordingly, they made the decision to impose the administrative penalty. Based on this, Huaneng sued Tianlong for unfair competition.

It was decided, in the first-instance judgment, that Huaneng enjoyed the exclusive right to use its registered bar code. Said right was inseparable from the commodity, and was the same as the right to use a mark protected under the law. Tianling's use of said bar code was an act of infringing Huaneng's legitimate rights and interests, and as well infringing the lawful rights and interests of another business and disrupting the socio-economic order" under Article 2 of the Unfair Competition Law.

Tianlong argued in its appeal that the bar code was created to facilitate commodity circulation or distribution. The Commodity Bar Code Administration Measures for standardizing the administration and spread of bar codes did not provide for any civil liability, and the exclusive right to use a bar code was not the personal right, property right or IP right mentioned in the law and regulations. The acts of unfair competition mentioned in Article 2 of the Unfair Competition Law was limited to the 11 acts enumerated in Chapter Two of the Law. Besides, any acts other than the eleven acts should not be established as acts of unfair competition. The product information in a commodity bar code mainly functioned to facilitate administration or management, and all bar codes, extremely similar in form, were not distinguishable to the relevant sector of the public or consumers. Consumers were not capable of differentiating the commodity information, nor would they confuse goods due to identical bar codes; hence its act did not constitute one of unfair competition.

Rule of law

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

"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.

"A business operator" mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services ("commodi

ties” referred to hereinafter includes such services).

Article 5 (3) of the Unfair Competition Law *Using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person;*

Reasoning

Under the Commodity Bar Code Administration Measures, any entity or individual person was required to secure its or his bar code through registration thereof. Such a manufacturer or registrant enjoyed the exclusive right to use its identification code and the corresponding commodity bar code. The commodity bar code was a commodity indication containing specific registered enterprise name and information of goods, in which the specific enterprise enjoyed the exclusive right. Use of a bar code would certainly generate corresponding civil right. Huaneng had lawfully secured its commodity bar code, and its exclusive right therein was protected under the law. While a commodity bar code generally did not have any impact on the average consumers, it was of great significance to an enterprise (say, one of commodity wholesales, transport, warehouse, supermarket, etc.) under the environment of computer-aided management.

Tianlong’s passing off and use of Huaneng’s commodity bar code was contrary to the administrative regulations, created confusion about the source of goods on the part of the special consumers group in specific situation, and grabbed the market of the proprietor of the exclusive right to use its commodity bar code. In a particular situation, such use, equivalent to use of Huaneng’s enterprise name, was contrary to the principles of honesty and credibility in market transactions, and disruptive of the market order for fair competition. It was an act of unfair competition under Articles 2 and 5 (3) of the Unfair Competition Law.

Holding

Tianlong’s acts of passing off and using the bar code constituted an act of unfair competition against Huaneng.