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## Case Involving Crime of Illegally Making Representations of Registered Mark by Luo Xinfu

*Citation: The Yiwu City People's Court's Criminal Judgment No. Yixingchuzi 693/2007*

*Date of judgment: May 10, 2007*

### **Procedural history**

The Yiwu City People's Procuratorate instituted the prosecution in the Yiwu City People's Court on the ground that Luo Xinfu had committed the crime of illegally making registered mark representations.

### **Issue**

Determination of “especially serious circumstances” in the crime of illegally making registered mark representations.

### **Facts**

Luo Xinfu, renting a workshop, illegally printed and made “邦迪” (the Chinese word for “BAND-AID” pronounced as “bang di”) brand mark, and produced the counterfeit “BAND-AID” brand adhesive bandages with the machines and raw materials provided by other parties. What were seized and detained included 2.64 million pieces of small-sized package paper for the adhesive bandages bearing the representations of the registered mark “邦迪” brand and “BAND-AID” he made, and 48,000 finished products of the “邦迪” brand he had made.

### **Rule of law**

Article 215 of the Criminal Law *Anyone who forges or makes, without authorization from another party, representations of his registered trademark or sells such representations shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years,*

*criminal detention or public surveillance, 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 3 of the Interpretation by the Supreme People's Court and Supreme People's Procuratorate of Several Issues Relating to Application of the Specific Laws to Trial of Criminal Cases of Infringement of Intellectual Property Rights *Whoever forges or makes, without authorisation, representations of another party's registered trademark or sells such representations in the presence of one of the following circumstances, he or it has done an act with the "serious circumstances" provided for in Article 215 of the Criminal Law, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall also, or shall only, be fined for the crime of illegally making or selling illegally made representations of registered trademarks:*

*(1) the number of representations of the registered trademarks forged or made without authorisation or that of sales of such representations forged or made without authorisation reaches 100,000 pieces or more, or the illegal business turnover is more than RMB 250,000 yuan, or the illegal profit is more than RMB 150,000 yuan;*

*(2) the number of representations of the registered trademarks forged or made without authorisation or that of sales of such representations forged or made without authorisation reaches 50,000 or more, or the illegal business turnover is more than RMB 50,000 yuan, or the illegal profit is more than RMB 100,000 yuan; and*

*(3) there are other serious circumstances.*

### **Holding**

Violating the Chinese trademark law and regulations and forging representations of another party's registered mark to seek illicit benefits by Luo Xinfu was a crime with the especially 'erious circumstances, and constituted the crime of illegally making registered mark representations. He was sentenced to fixed-term imprisonment of four years, and fined RMB 50,000 yuan.