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Case Involving Illegal Business Operation by Yu Bohuai

Citation: *The Shanghai No. 2 Intermediate People's Court's Criminal Judgment No. Huerzhongxingchuzi 18/2008*

Date of judgment: April 10, 2008

Procedural history

The Shanghai No.2 Branch People's Procuratorate sued Yu Bohuai in the Shanghai No. 2 Intermediate People's Court for crime of illegal business operation.

Issue

Conviction and sentencing of selling fake or inferior goods, IP infringement, and illegal business operation

Facts

From March 2006 to May 2007, the defendant Yu Bohuai, to seek illicit benefits, bought counterfeit goods bearing the "VIAGRA" mark registered by Pfizer from Xu Dong at the price of RMB 5 yuan a pill without approval by the drug supervision and administration authority and without being granted the Drug Business license, and sold them online 14,030 pills of said counterfeit drug on four occasions at the price of US\$ 1.2 to 1.5 a pill, and made the sales revenue of RMB 130,000 yuan. Yu Bohuai clearly knew that the fake drug he sold was counterfeit "VIRGRA" pills.

Yu Bohuai and his lawyer did not raise opposition to the facts about the crime accused in the Bill of Prosecution.

Rule of law

Article 225 (1) of the Criminal Law of the People's Republic of China *Whoever, in violation of*

State regulations commits any of the following illegal acts in business operation and thus disrupts market order, if the circumstances are serious, shall be sentence to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the amount of illegal benefits; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than one time but not more than five times the amount of illegal gains or his property shall be confiscated:

(1) without permission, dealing in goods that are designated by laws or administrative rules and regulations as goods to be dealt in or sold in a monopolistic way or other goods that are restricted in trade; ...

Article 10 of the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate of Several Issues Relating to Specific Application of Law to the Treatment of Criminal Cases Involving Making and Marketing Fake and Inferior Goods *Anyone committing the crime of making and marketing fake and inferior goods, and meantime constituting the crime of IP infringement and illegal business operation shall be convicted and imposed heavier punishment under the law provisions.*

Reasoning

Yu Bohuai candidly confessed the facts of the crime that he bought the counterfeit Pfizer's Viagar pills, and sold them at a higher price to seek illicit benefits. As his confessions showed, starting from March 2006, he bought the counterfeit drug from Xu Dong at the price of RMB 5 yuan a pill and by express mail or shipment, and then sold them at the price of US\$ 1.2 to 1.5 through email communication, and made sales turnover of RMB 130,000 yuan. All the evidence showed the fact that Yu Bohuai, who clearly knew these were counterfeit Viagra drug bought and sold them to seek illicit benefits. His act of selling the counterfeit drug encroached on the drug administrative system, harm the public health, and, as well, infringed the relevant IP rights. What's more, it disrupted the economic and market order. Under Article 10 of the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate of Several Issues Relating to Specific Application of Law to the Treatment of Criminal Cases Involving Making and Marketing Fake and Inferi-

or Goods, Yu Bohuai's act of selling the counterfeit Viagra drug without Drug Business License had disrupted the market order, with such serious circumstance that the act constituted the crime of illegal business operation. Since he confessed all his criminal acts, he was imposed a lesser punishment.

Holding

1. The defendant Yu Bohuai acted to illegally market counterfeit "Viagar" pills, and disrupted the market order, with serious circumstance. His act constituted the crime of illegal business operation;
2. He was sentenced to a fixed-term of imprisonment of two years, and fined RMB 150,000 yuan, and all his illicit earnings were confiscated.