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## Wang Yuewen v. Wang Yuewen (former Wang Lishan) et al.

*Citation: The Changsha Intermediate People's Court's Civil Judgment*

*No. Changzhongminsanchuzi 221/2004*

*Date of judgment: December 14, 2004*

### **Procedural history**

Wang Yuewen sued, in the Hunan Province Changsha City Intermediate People's Court, Ye Guojun, Wang Yuewen (former Wang Lishan), the Beijing Zhongyuan Ruitai International Cultural Communication Co., Ltd. (Zhongyuan) and the Hualing Publishing House (Hualing) for infringement of his copyright and for unfair competition.

### **Issue**

1. Whether a writer might be a competitor under the regulation of the Unfair Competition Law.
2. Whether use of the repute of another writer of the identical name in the cultural market to misleadingly advertise his own work and cause confusion about its origin on the part of consumers constituted unfair competition.
3. Whether acts of changing one's name into one identical with a famous writer and indicated it on a work infringed the famous writer's right of authorship.

### **Facts**

The plaintiff Wang Yuewen (Wang) was a State first-rank writer of relatively high renown in the nation for his novel depicting officialdom. His representative work entitled "Guo Hua" (meaning

“Chinese painting”) created in 1999 was known as one of the ten classic anti-corruption novels in the “China Readership Website”. In 2004, Hualing published a novel entitled “Guo Feng” (meaning “Chinese wind”), with the name “Wang Yuewen” indicated on the cover thereof as the author of the book. Also, on the inside back cover was printed, in smaller characters, a profile of the author: “Wang Yuewen, male, 38 years old, born in Zunhua, Hebei Province, professional writer, has published works of nearly one-million words, and his novel touched upon a sensitive topic causing heated debate nationwide.” The distributor of the novel was Zhongyuan, which gave dealers large-size color printed material for advertisement of the novel “Guo Feng”, on which was printed, in large bold face, the words: “Wang Yuewen’s Latest Novel”; “Read ‘Guo Feng’” after reading “Guo Hua”, “Grant Release of Hualing” and “The No. 1 Bestseller Nationwide”. Defendant Wang Yuewen’s former name was Wang Lishan, he changed his former name into the present one in 2004. Before the publication of the novel Guan Feng, he did not publish any literary works at all, Ye sold the novel in his Yeyang Bookstore.

The plaintiff Wang Yuewen argued that he, as a professional writer earning his living mainly by writing novels, was a market player; the defendant’s act constituted unfair competition against him. The defendant Wang Yuewen, who did not receive much formal education and did coal business, was not able to write novels. Accordingly, the novel Guo Feng was not written by him, He changed his name into Wang Yuewen in bad faith and had performed the act of passing off it as the plaintiff’s name together with the other defendants, which constituted an infringement of the right of authorship in his copyright.

The defendant argued that the plaintiff Wang Yuewen was not a business operator defined in the Unfair Competition Law, and the defendants’ act did not constitute unfair competition. The defendant Wang Yuewen wrote the novel in his own name, and indicated thereon the words: “He was born in Zunhua, Hebei Province”. He had the legitimate right to indicate his name on his own work “Guo Feng”; hence his act did not constitute an infringement of the plaintiff’s copyright.

### **Rule of law**

Article 2 of the Unfair Competition Law “*Unfair competition*” mentioned in this Law refers to a business operator’s acts violating the provisions of this Law, infringing the lawful rights and inter-

*ests 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 provision of goods or profit-making service (the “goods” referred to hereinafter includes the services).*

### **Reasoning**

1. The Unfair Competition Law aims at maintaining the competition order, that is, the market in which competition goes on is under the regulation of the Law. In the present period, besides the conventional market for the distribution of goods, there have emerged the new markets, such as the cultural and technology markets. A writer realizes his value in the exchange by selling the right of publication and distribution in his work. Then, the work was goods. As a market player in the cultural market, the writer meets the requirement as a market competitor under the Unfair Competition Law. In the case, The plaintiff Wang Yuewen was a professional writer earning his living mainly by writing and publishing novels; the defendant Wang Yuewen labled himself as a writer, Hualing was a publisher, dealing in cultural products, such as books, Yue a private book retailer, and Zhongyuan distributor of the novel “Guo Feng” in suit. With their own action, these players in the cultural market were all in a position to have their impact on the result of the competition in the cultural market, so they were subject to the regulation of the Unfair Competition Law.

2. When choosing works, consumers mainly consider the factors of title and author of a work. As a player in the cultural market, a writer spreads his name by virtue of authorship, making his name one of the signs facilitating and leading consumers to choose a particular work. The indicative function of a writer’s authorship made it likely for his name to be used, imitated, attached to, or diluted by other parties, and empowered him to claim against acts of unfair competition performed by them. In the case, the plaintiff Wang Yuewen was renowned for his former of published works. The defendants’ act to put the false publicity of the work in suit had something to do with one defendant’s act to change his name to lead the consumers to associate his work with the plaintiff Wang Yuewen to take advantage of his reputation in the marketplace and cause confusion about the work and author on the part of consumers. Accordingly, the defendants’ act was contrary to the principles of honesty and credibility, and constituted unfair competition against the plaintiff.

3. When defendant Wang Lishan changed his name into Wang Yuewen after the plaintiff Wang Yuewen became famous, his act of changing his name was not contrary to the law provision, and he enjoyed the right of his own name under the law. Besides, a citizen's profession and educational background had no impact on his independent creation of a work. In the case no evidence showed that the defendants had fabricated the facts; hence he did not infringe the right of authorship.

### ***Holding***

1. As a market player in the cultural market, the writer meets the requirement as a market competitor under the Unfair Competition Law.
2. Acts of taking advantage of the reputation of another writer of the same name in the marketplace, carrying on misleading publicity of one's own work, and causing confusion about the source of work on the part of consumers were contrary to the principles of honesty and credibility, and constituted unfair competition.
3. A citizen who legitimately changes his name enjoyed the right in his name. Where he did not pass off his name as another person's, his authorship on his independently created work did not infringe the right of authorship.

### ***Additional remarks***

One of the defendants, Ye Guojun, a book retailer, who obtained his goods from lawful channel and began to market the book in suit after securing the relevant entrustment, had met his obligation to pay due attention as book dealer. He was not subjectively at fault for the unfair competition consequence in the case, so was not liable for the damages, but he should cease and desist from marketing the book in suit.