

80

Beida Founder Group Co., Ltd. et al. v. Beijing Gaoshu Tianli Science and Technology Co., Ltd.

Citation: The Supreme People's Court's Civil judgment No. Minsantizi 1/2006

Date of judgment: August 7, 2006

Procedural history

The Beida Founder Group Co., Ltd. (Founder) and the Beijing Honglou Computer Science and Technology Institute (Honglou) sued, in the Beijing No. 1 Intermediate People's Court, the Beijing Gaoshu Tianli Science and Technology Co., Ltd. (Gaoshu Tianli) and Beijing Gaoshu Science and Technology Corporation (Gaoshu) for infringing the copyright in Founder's Century RIP software, Founder PostScript Chinese character base and Founder Wenhe V1.1 version software (the Founder's software). In the first-instance judgment, the way Founder and Honglou had used to "collect evidence in a devised trap" was accepted as legitimate with regard to the proved facts. Gaoshu Tianli and Gaoshu, dissatisfied with the judgment, appealed to the Beijing Higher People's Court, which did not accept said way of evidence collection. Then, Founder and Honglou appealed to the Supreme People's Court for review of the case.

Issue

Whether collecting evidence in a devised trap is legitimate in copyright infringement cases?

Facts

Founder and Honglou were the proprietors of the Founder software. In July and August 2001, some employees from Founder concluded a contract with Gaoshu Tianli as average consumers, and bought a set of laser prototype setting machine. They requested to install a set of pirate

Founder software on the machine (said software was installed on a computer performing the function of said software when connected to the laser prototype setting machine). The entire process of installation was notarized.

The first-instance court took the view that to obtain the evidence of the infringement by Gaoshu Tianli and Gaoshu, Founder put in a considerable amount of money in its way of collecting evidence in a devised trap, which was not prohibited under law, and should be acceptable.

Gaoshu Tianli and Gaoshu appealed, arguing that this way of evidence collection was illegal. As a result, what were notarized were also illegal, so was the notary deed. Hence, they requested to reverse the first-instance judgment.

The second-instance court held that Founder's way of collecting evidence in a devised trap was not the only way available to collect evidence of the infringement by Gaoshu Tianli and Gaoshu, and it was contrary to the principle of fairness. Once widely used, this way of evidence collection could disrupt the normal market order. For that reason, this way of evidence collection was not acceptable. Given that Gaoshu Tianli and Gaoshu did not deny their selling the pirate Founder software, however, the fact was confirmed that Gaoshu Tianli sold one set of pirate Founder software, and thus drastically lowered the amount of damages imposed in the first-instance judgment on Gaoshu Tianli and Gaoshu.

Reasoning

The issue of the legitimacy of collecting evidence in a devised trap in copyright infringement cases.

In civil litigation, the legality of an act that is not expressly prohibited under the law should be adjudged depending on its nature of legitimacy. In the present case, Founder collected the evidence showing Gaoshu Tianli's installing pirate Founder software in a devised trap and obtained the evidence and clue showing their performance of the similar infringing acts. Their purpose of doing so is not illegal, nor does the way infringe the legitimate rights and interests of Gaoshu Tianli and Gaoshu, nor impair the public interests or those of any other interested party. Besides, acts of in-

fringement of software copyright are easy to be concealed from exposure, and evidence hard to obtain. This way of evidence collection helps ease the difficulty in evidence collection in cases of the nature, and will deter and curb such infringing acts. It is in the legal spirit of the law to enhance IP protection.

Holding

In a copyright infringement case in which a rightholder collects evidence in a devised trap, the court should accept it as legitimate if his purpose is legal and does not impair the interests of any other interested party or the public as a whole.