

83

Beijing Higher Education Audio-video Publishing House et al.

v.

Hubei Education Publishing House

Citation: The Hubei Province Higher People's Court's Civil Judgment No. Erminsanzhongzi 8/2005

Date of judgment: June 13, 2005

Procedural history

The Hubei Education Publishing House (HEPH) sued, in the Wuhan City Intermediate People's Court, the Beijing Higher Education Audio-video Publishing House (BEPH) and the Huizhou Dongtian Audio-video Co., Ltd. (Dongtian) for infringement of its rights of reproduction and distribution in the VCD products Family Album, U. S. A.. In the first instance judgment, it was held that the infringement was constituted. The BEPH and Dongtian appealed to the Hubei Province Higher People's Court.

Issue

Whether determination of the validity of the source of the right could be made merely on the basis of a contract involving a foreign party in licensing copyright in the foreign audio and video products?

Facts

In early 1993, BEPH was authorized by the Maxwell Macmillan International Publishing Group, the original producer, to adapt and produce the recordings of, and broadcast on TV, the teaching video film of the Family Album, U. S. A..

In December 2002, HEPH was authorized by the Peisheng Education Group (Peisheng) to exclu

sively adapt, publish and distribute the CD and books of the Family Album U.S.A. for English teaching in mainland China, and the relevant authorization contract was examined by, and registered with, the Beijing Press and Publication Bureau.

The first-instance court held that under the circumstance where the HEPH's authorization contract was examined by, and registered with, the administrative authority, it could be determined that HEPH's right was of legitimate source and valid; accordingly, it was decided that BEPH and Dongtian's reproduction and distribution of the VCD of the Family Album, U. S. A. had infringed the HEPH's exclusive right to reproduce and distribute the VCD of the Family Album, U. S. A..

The BEPH and Dongtian appealed, arguing that the first-instance judgment was made with erroneous ascertainment of the basic facts of the case, and with no evidence showing that Peisheng had been licensed the copyright in the work in suit. For that matter, the exclusive right HEPH claimed to reproduce and distribute the work in suit in mainland China was legally groundless.

During the hearing of second instance, the HEPH furnished to the court several pieces of new evidence, the most important of which was the notarized explanation of the copyright file of the work in suit from the US Copyright Office, proving that, the copyright in the work in suit was assigned to Peisheng in November 1993 by the Maxwell Macmillan Group.

Reasoning

Whether the HEPH enjoyed the exclusive right to reproduce and distribute the VCD of the Family Album, U. S. A. in mainland China depended on whether the source of the right was legitimately based and supported with evidence. According to the new evidence the HEPH produced in the second-instance hearing, Peisheng enjoyed the copyright in the work in suit under the law, and the other presented evidence showed that the HEPH possessed the exclusive right to reproduce and distribute the work in suit in mainland China.

Although the BEPH once obtained the right to adapt and produce the recordings of, and broadcast on TV, the teaching video film of the Family Album, U. S. A., it never obtained the right to reproduce and distribute the VCD of the Family Album, U. S. A.. For this reason, the BEPH's publica-

tion of the Family Album, U. S. A. in the form of VCD fell outside the scope of authorization, and the relevant contract of importation and publication could not serve as the basis for the right to publish the sound-recordings and video recordings of the Family Album, U. S. A. in the form of VCD. The BEPH and Dongtian's acts of reproducing and distributing the VCD of the Family Album, U. S. A. constituted an infringement, and they should be held civilly liable accordingly.

Under the circumstance where the BEPH submitted the evidence that the Maxwell Macmillan Group was the applicant for registration of the copyright in the work in suit, and without making clear the source of Peisheng's right, the first-instance court directly decided that Peisheng was the rightholder of the work in suit in the present case, and made the judgment based thereon, with erroneous ascertainment of the fact, and the error in the judgment should be rectified under law.

Holding

Under the circumstance where a right authorized under a contract and the rightholder thereof were questionable, it was undue to presume that the right was of legitimate source and valid on the basis of a contract involving a foreign party and reviewed by the administrative authority.