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## Haiying Enterprise Group Co., Ltd. v. Wuxi Xiangsheng Medical Video Co., Ltd. et al.

*Citation: The Supreme People's Court's Civil Judgment No. Zhizhongzi 3/1999*

*Date of judgment: February 23, 2001*

### **Procedural history**

The Haiying Enterprise Group Co., Ltd. (Haiying) sued, in the Jiangsu Province Higher People's Court, the Wuxi Xiangsheng Medical Video Co., Ltd. (Xiangsheng), Mo Shanjue, Wu Rongbo and Gu Aiyuan for infringement of its trade secrets. In the first-instance judgment, they were held infringing said trade secrets. Xiangsheng, et al. appealed to the Supreme People's Court.

### **Issue**

Whether “national secrets” was still protected as trade secrets after declassification?

### **Facts**

From 1987, Haiying developed and made the B-mode linear probe and B-mode diagnosing instrument, and made considerable revenue. Haiying classified the key technology and process of the B-mode probe, and took measures to keep them as such, with the term “National Secret” used in the corporate confidentiality regulations.

Mo Shanjue, Wu Rongbo and Gu Aiyuan, former employees of Haiying, responsible for the work related to the R&D of B-mode probe and B-mode main-frame left Haiying in 1996, to have put in their own money for setting up the Xiangsheng, in which they were engaged in R&D and manufacturing of the 500-model B-mode linear probe.

Haiying alleged that Xiangsheng had used, in said model, 9 technologies of probe and 3 technologies of the mainframe Haiying had developed for making the B-mode probe in 1995, and all the 12 technologies were its trade secrets.

The first-instance court found that eight of the twelve technologies asserted by Haiying were its trade secrets, the acts of Mo Shanjue, Wu Rongbo and Gu Aiyuan constituted infringement of these trade secrets.

Xiangsheng, Mo Shanjue, Wu Rongbo and Gu Aiyuan argued in their appeal that the so-called national secrets as asserted by Haiying had been declassified by 1995, and petitioned the court to rule on the non-existence of the trade secrets.

### **Rule of law**

Article 10 of the Unfair Competition Law *A business operator shall not use any of the following means to infringe trade secrets: ... (3) in violation of the agreement or against the rightholder's requirement for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets it possesses. Obtaining, using or disclosing another party's trade secrets by a third party who clearly knows or should know that the case falls under the unlawful acts mentioned in the preceding paragraph shall be deemed to be an infringement of trade secrets.*

*The "Trade secrets" mentioned in this Article refers to any technological information or business operation information which is unknown to the public, can bring about economic benefits to the rightholder, has practical applicability and about which the rightholder has adopted secret-keeping measures.*

### **Reasoning**

According to the appraisal conclusion made during the second-instance trial of the case, it was determined that nine of the twelve technologies asserted by Haiying were unknown technologies, and Haiying had taken measures to keep them confidential, and they constituted trade secrets. According to Article 1 of Haiying's Notice Concerning Further Enhancement of Work on the Confidentiality in Employment Contracts issued on October 20, 1995, Haiying included the key tech

nologies and process for making B-mode probe in the scope of matters to be kept confidential in execution of the employment contracts with all the employees, and Haiying kept the B-mode probe technologies as confidential. They would not become non-trade secrets because they were declassified as national secrets.

***Holding***

Declassified national secrets were still protected as trade secrets.