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Ningxia Zhengyang Produce Import and Export Co. Ltd. v. Ningxia Fumin Vegetable Dehydration Group Co., Ltd.

Citation: The Supreme People's Court's Civil Judgment No. Minsanzhongzi 1/2007

Date of judgment: March 6, 2002

Procedural history

The Ningxia Zhengyang Produce Import and Export Co. Ltd. (Zhengyang) sued, in the Ningxia Hui Autonomous Region Higher People's Court, the Ningxia Fumin Vegetable Dehydration Group Co., Ltd. (Fumin) for infringement of its trade secret. In the first-instance judgment Fumin was found infringing Zhengyang's trade secret. Both Zhengyang and Fumin appealed to the Supreme People's Court.

Issue

Whether clients information was trade secret?

Facts

Over the yeas, Zhengyang exported dehydrated vegetable, and took measures to keep its clients information secret.

Ma Hongdong and Lin Jun, its former employees, went to work for Fumin also for exporting dehydrated vegetable after they quit from Zhengyang, and used Zhengyang's clients information in the business activities at Fumin.

The first-instance court held that Zhengyang's clients information included the information concerning the process and technique of negotiation with its foreign clients, such as names, specification, quality, quantity, place of production and price of the goods, and information concerning its actual export operation, such as the sales price and order placed by its clients. Showing the features of its corporate business, the clients information was confidential, and not easily accessible to the average members working in the industry. Besides, Zhengyang worked out a system for keeping the clients information confidential. Zhengyang carried on business with its many foreign clients in dehydrated vegetable using its clients information over the years, and made certain economic benefits. Thus, Zhengyang's clients information, having its practical use and value, was its trade secret susceptible to the protection under the law.

Fumin argued in its appeal that Zhengyang did not own the trade secret in the meaning of the law. Its emails were substantially offers for sale, having no value particular to trade secret, nor was there evidence showing that the plaintiff had done any substantial business with these clients.

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:*

- (1) obtaining a rightholder's trade secret by stealing, luring, intimidation or any other unfair means;*
- (2) disclosing, using or allowing another person to use the trade secret obtained from the rightholder by the means mentioned in the preceding paragraph;*
- (3) violating the agreement or 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 person's trade secret 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 the trade secrets.

The 'trade secrets' mentioned in this Article refers to any technological information or business operation information which is unknown to the public, and capable of bringing economic benefits

to the rightholder and practically applicable and about which the rightholder has adopted secret-keeping measures.

Reasoning

A clients list in trade secret should not simply contain names of clients. It should include other in-depth information, such as the names, addresses, mode of contact of the clients, and customs, intention and contents of business transaction. As a whole it covered the names of many clients and included long-term, stable trade clients. The business information in suit, such as the list of clients, was the correspondence of business transaction with foreign clients Zhengyang had accumulated in the years of its export business of dehydrated vegetable. Unlike clients data in the public domain, it contained not only the names, addresses, mode of contact of the clients, but also the customs of trade, way of payment, intent of purchase of the clients in its exportation, and their special demands. They constituted in-depth information. While the involved seven overseas clients were accessible online, the information and data, such as their email addresses for export business, specification of package, names and quality of goods needed and their special demands were unknown to the people concerned in the line of business, and somewhat difficult to get hold of. The value of the clients list and business information in suit was embodied in the accompanied increase in trade opportunity, channel of sales and sales profits. The business information could bring with it advantage in terms of time and improved competitiveness in foreign trade, create economic value, and generate real and potential competitive edge, so it had the value particular to trade secrets. Besides, Zhengyang had adopted due measures to keep them confidential, which was sufficient to keep the confidential information from being divulged under normal circumstances. Zhengyang had acted in compliance with the requirement for the management of trade secret. Further, Fumin could not present evidence showing the legitimate source of the clients list and business information in suit. Accordingly, the list and information were trade secret.

Holding

Any clients information that was unknown, commercially valuable and kept secret with secret-keeping measures was trade secret susceptible to the protection under the Unfair Competition Law.