

98

Case of Appeal Involving Trade Secret Infringement by Xing Fafen

Citation: The Hanjiang Intermediate People's Court's Criminal Judgment No. Hanxingzhongzi 9/2008

Date of Judgment: May 20 2008

Procedural history

The Qianjiang City People's Procuratorate instituted public prosecution in the Qianjiang City People's Court, accusing Xing Fafen of committing a crime of trade secret infringement. The crime was held to be constituted in the first-instance judgment. Dissatisfied with the judgment, Xing Fafen appealed to the Hubei Province Hanjiang Intermediate People's Court.

Issue

Conviction and sentencing of the crime of trade secret infringement

Facts

The technology for designing and making the tri-roller cone drill bit owned by the Hanjiang Oil Drill Bit Co., Ltd (HJDB) was assigned from the Huston Instrument Corporation, Taxis, the U. S., and acquired after years of R&D. Under the relevant agreement, the HJDB kept the technology as a trade secret, adopted necessary measures to keep it as such, and never assigned it to any other party.

Xing Fafen, former leading technician of the HJDB who had had the knowledge of the technology in suit and been instructed to keep said technology secret, did knew that said technology was HJDB's technical secret.

In 2001, Xing Fafen went to work for the Tianjin Lilin Oil Machinery Co., Ltd. (LLOM), taking

some data of said secret technology obtained from HJDB, and served as head of the Technology Department of the Tianjin Lilin Drill Bit Co., Ltd. (Lilin) affiliated to the LLOM, in charge of development of the roller cone drill bit products and the relevant enterprise technical standards and testing regulations.

When working for Lilin, Xing Fafen designed, and guided other technicians of the company, to have designed the drawings of four types of roller cones and head section bearing used in the Lilin's making the four types of roller cones. As the appraisal made by the IP Affairs Center under the Ministry of Science and Technology showed, said roller cones and head section bearing drawings were similar to the technical information shown on the HJDB's identical drawings. Besides, said technical information, such as that of the roller cones, the tolerance of fit of the head section bearing and technical requirements were all HJDB's trade secret.

Xing Fafen also prepared documents of the technical standards and testing regulations for said technology, such as the O-shape energy supply ring used in making the product of tri-roller cone drill bit. In said documents, the requirements of the quality and performance of the O-shape energy supply ring and sealing ring were substantially identical with, and the technical indicator was similar to, those in the HJDB's documents of the standards of the similar kind; the technical information was HJDB's trade secret.

It was proven in the judicial appraisal conclusion drawn by the Wuhan Yinhe Accounting Evaluation and Judicial Appraisal Institute that, by June 30, 2006, Xing Fafen's illicit use of HJDB's secret technology has caused direct economic losses to HJDB of over RMB 10.69 million yuan.

Rule of law

Article 219, paragraph one of the Criminal Law *Whoever commits any of the following acts infringing trade secret and thus causes heavy losses to the rightholder of said trade secret shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:*

- (1) obtaining a rightholder's trade secret by stealing, luring, coercion or any other unfair means;*
- (2) disclosing, using or allowing another party to use the trade secret obtained from the rightholder of said trade secret by an means mentioned in the preceding paragraph; or*
- (3) violating the agreement or the requirements of the rightholder of said trade secret for, keeping said trade secret, disclosing, using or allowing another party to use the trade secret he has at his disposal.*

Reasoning

In respect of the arguments made by Xing Fafen and the lawyer thereof that the HJDB's technology for designing and making the tri-roller cone drill bit and the shape and size of the drawings of the roller cone drill bit bearings were not trade secrets, the second-instance court held that the technical information in suit was not widely known, nor easily accessible, to those of ordinary skill in the art, so they were not publicly known. The HJDB used said technology to make the tri-roller cone drill bits and its business revenue. This showed that the technology had practical applicability. Besides, the HJDB had taken the necessary measures to keep them secret. Accordingly, it was decided that the technology for designing and making the tri-roller cone drill bits and the technical information included in the enterprise standards and the drawings showing the roller cones and head section bearing were HJDB's trade secrets.

In respect of Xing Fafen's appellant grounds that the decision made on the HJDB's economic losses in the first-instance judgment was based on false and insufficient grounds, the second-instance court confirmed that the judicial appraisal procedure was due, the calculation made in the appraisal sufficiently based on law, and the appraisal conclusion made by the appraisal experts that Xing Fafen caused economic losses to the HJDB of over RMB 10 million yuan well and sufficiently based on the grounds.

Holding

The first-instance judgment was upheld whereby Xing Fafen was sentenced to fixed-term imprisonment of six years and fined RMB 50,000 yuan for committing the crime of trade secret infringement.