SPC Guiding Case No. 224: [X]mei (Tianjin) Image Technology Co., Ltd. v. Henan [X]lu Apiculture Co., Ltd. (Infringement of the Right to Network Dissemination of Works)

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Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 15, 2023.

Keywords

Civil litigation / infringement of the right to network dissemination of works / ownership / burden of proof

Holding

Where the ownership of copyright is disputed, the ownership of the copyright in the works cannot be determined merely on the basis of a watermark or a statement of rights; the party claiming the copyright shall adduce further evidence to prove it, otherwise it shall bear the adverse legal consequences.

Basic Facts

A third party, Company G, authorized [X]mei (Tianjin) Image Technology Co., Ltd. ("[X]mei Image") to display, sell and license others to use the Company's "Getty Images" brand images within China, and [X]mei Image had the right to bring lawsuits in its own name against infringing acts. [X]mei Image discovered that Henan [X]lu Apiculture Co., Ltd. ("[X]lu Apiculture") had used four of the above brand images without permission. [X]mei Image therefore brought a lawsuit on the ground of copyright infringement, requesting an order that [X]lu Apiculture compensate for economic losses and reasonable rights-protection expenses. In support of its claims, [X]mei Image submitted evidence such as an authorization confirmation letter issued by Company G and a website statement of rights, and the images in question bore a watermark with the content "Getty Images®". [X]lu Apiculture contended that the upper-right corner of the watermark on the images in question was the trademark registration symbol "®", which did not indicate the author's identity as a creator's signature; below the watermark there was additionally a photographer's signature and another brand name, showing that the copyright in the images belonged to the author rather than to [X]mei Image or Company G. [X]lu Apiculture also inquired of Company G by email about the ownership of the images in question, and received the reply that the images in question were submitted by photographers, that the company sold them externally in its own name and then paid royalties to the photographers, but that the photographers retained the copyright in the images. On this basis, [X]lu Apiculture contended that, because the submitting persons retained the copyright, neither Company G nor [X]mei Image enjoyed the copyright in the images in question, and [X]mei Image's claims should be dismissed.

Judgment

On September 17, 2019, the Tianjin Third Intermediate People's Court rendered Civil Judgment (2019) Jin 03 Zhi Min Chu No. 73, ordering [X]lu Apiculture to compensate [X]mei Image a total of RMB 8,000 for economic losses and reasonable expenses, and dismissing the remaining claims of [X]mei Image. [X]lu Apiculture was dissatisfied with the first-instance judgment and appealed. On July 16, 2020, the Tianjin Municipal High People's Court rendered Civil Judgment (2020) Jin Min Zhong No. 311, dismissing the appeal and affirming the original judgment. [X]lu Apiculture was dissatisfied and applied to the Supreme People's Court for retrial. The Supreme People's Court ruled to retry the case, and on December 20, 2021, rendered Civil Judgment (2021) Zui Gao Fa Min Zai No. 355, revoking the first-instance and second-instance judgments and dismissing all of the claims of [X]mei Image.

Reasoning

The Supreme People's Court held that, in addition to bearing the "Getty Images®" watermark, the images in question were separately marked with a photographer's signature and another brand name, and the trademark registration symbol "®" immediately followed "Getty Images"; therefore, the copyright in the images in question could not be found to belong to Company G merely on the basis of this watermark. In addition, [X]mei Image also submitted the authorization confirmation letter issued by Company G and the website statement of rights, but the authorization confirmation letter could only prove the fact that Company G authorized [X]mei Image, and was not evidence that Company G enjoyed the copyright in the images in question. The statement of rights was a unilateral statement, and in the absence of corroboration by other evidence, the ownership of copyright could not be determined merely on the basis of the statement of rights. Under these circumstances, [X]mei Image should further bear the burden of proof that Company G enjoyed the copyright in the images in question, but it failed to adduce evidence to prove this. On the contrary, according to the rebuttal evidence such as the reply email of Company G submitted by [X]lu Apiculture, Company G confirmed that the submitting photographers still retained the copyright in the images in question. Therefore, [X]mei Image's claim that Company G owned the copyright in the images in question could not be established, and its relevant claims in this case should not be supported.

Relevant Legal Provisions

Article 12 of the Copyright Law of the People's Republic of China (2020 Amendment) (this case applied Article 11 of the Copyright Law of the People's Republic of China, 2010 Amendment).

Article 7 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Copyright Disputes (2020 Amendment).

Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (2022 Amendment) (this case applied Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, 2020 Amendment).

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