

SPC Guiding Case No. 264: [X] Steel Co., Ltd. v. [X] E-commerce Co., Ltd. (Tort Liability Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / tort liability / enterprise data / data products / data processor

Holding

Where a data processor lawfully collects enterprise data, processes it by compilation methods that conform to the relevant standards to form data products, and reasonably uses them, and this does not cause damage to the enterprise's rights and interests, and the relevant enterprise requires the data processor to bear tort liability, the people's court shall not support the claim in accordance with the law.

Basic Facts

[X] Steel Co., Ltd. (“[X] Steel Company”) produced and distributed special steel and published its ex-factory prices every day mainly in two ways: first, it proactively published them in WeChat groups. Some WeChat groups had no admission review or identity restrictions, consisted mainly of customers, and numbered up to several hundred people; other WeChat groups consisted of [X] Steel Company and its first-tier agents. Second, it directly notified specific customers by telephone.

[X] E-commerce Co., Ltd. (“[X] E-commerce Company”) was the operator of a website and its APP, publishing various steel price indices every day. [X] E-commerce Company's business scope included internet data services, big data services, and data processing services, and it was a “typical statistical survey enterprise in the commercial circulation industry.” In order to collect steel price information, [X] E-commerce Company formed an information collection team and, through three methods — collection in public accounts and WeChat groups, telephone inquiries, and disclosure of sales contracts — collected from steel production enterprises and traders the ex-factory prices of steel products, agent prices, contract transaction prices, and the like, and, in the process of inquiring about price information from the collection subjects, simultaneously provided them with services such as market information and market analysis. [X] E-commerce Company processed the collected prices through algorithmic technology and compiled them into price indices, which it published on its website and APP. [X] E-commerce Company's price index compilation criteria were evaluated by the “Shanghai Standard” evaluation committee and the Shanghai Standardization Association, and it obtained the “Shanghai Standard” mark certificate. The data published by [X] E-commerce Company were not original ex-factory prices, but price indices, that is, the actual transaction prices or price levels of products in market circulation within a certain region (comprehensive average price indicators reflecting a certain type of commodity in a certain region and period). [X] E-commerce Company's information services adopted a membership system.

In 2019, [X] E-commerce Company began publishing on its website and APP information such as the product names, prices, and price fluctuations of [X] Steel Company's steel products. In order to use the data services and conduct brand promotion, [X] Steel Company entered into a cooperation agreement with [X] E-commerce Company on November 18, 2020, stipulating that [X] E-commerce Company would provide [X] Steel Company with data services, brand promotion, and the like, and that [X] Steel Company would pay service fees to [X] E-commerce Company. With respect to the data needed for the services, the agreement stipulated that [X] E-commerce Company would collect and promptly publish [X] Steel Company's price

information in the national market every day. Beginning on May 24, 2021, [X] Steel Company repeatedly raised objections that the prices concerning [X] Steel Company in the steel price indices published by [X] E-commerce Company differed too greatly from the product prices of other companies in the same region and of the same grade, and demanded that [X] E-commerce Company remove the relevant product price data. On November 30, 2021, the two parties terminated the cooperation agreement, but [X] E-commerce Company still continued to publish the aforesaid price data of [X] Steel Company.

[X] Steel Company brought a lawsuit over a tort liability dispute, alleging that [X] E-commerce Company had, without consent, collected, processed, or fabricated data on its own, that the collection and processing process was non-standard and unfair, and that the data thus formed and published were untrue, infringing its lawful rights and interests. On this basis, it requested the court to order [X] E-commerce Company to immediately delete all information concerning [X] Steel Company from its website and APP.

Judgment

The Baoshan District People's Court of Shanghai rendered the civil judgment (2023) Hu 0113 Min Chu No. 23152 on August 24, 2023, dismissing [X] Steel Company's claims. After the judgment was pronounced, [X] Steel Company appealed. The Shanghai Second Intermediate People's Court rendered the civil judgment (2023) Hu 02 Min Zhong No. 11028 on June 19, 2024: the appeal was dismissed and the original judgment was affirmed.

Reasoning

The focus of dispute in this case was whether [X] E-commerce Company's acts of collecting and publishing the data in issue infringed [X] Steel Company's lawful rights and interests.

First, [X] Steel Company and [X] E-commerce Company respectively enjoyed different data rights and interests. As a steel producer, [X] Steel Company generated a series of price data in the course of producing and selling various models of steel. As a data processor, [X] E-commerce Company collected and aggregated original data including the ex-factory prices and agent prices of [X] Steel Company's products, and formed data products after processing them through algorithmic technology. In this regard, the rights and interests enjoyed by the various participants in the data should be properly delineated according to the source and generation characteristics of the data: (1) The ex-factory price of a product is data generated by [X] Steel Company in the course of operating its main business, and [X] Steel Company enjoys the rights and interests of holding and using it; however, the steel trading market is a market with relatively sufficient competition, the ex-factory price of the product has already been made public, and [X] Steel Company cannot prohibit others from lawfully and reasonably collecting and using it. (2) Because the agent price is generated in the downstream trading chain after [X] Steel Company's products leave the factory, and there is no evidence that [X] Steel Company directly participated in the generation or publication of this data, it is difficult to find that [X] Steel Company enjoys the right and interest to restrict others from collecting and using the agent price. (3) According to the relevant provisions of the National Development and Reform Commission on the administration of price index conduct, enterprises, public institutions, organizations, and other organizations lawfully established within the territory of the People's Republic of China may compile and publish price indices. Accordingly, [X] E-commerce Company could compile and publish steel price indices. The relevant price indices were formed by [X] E-commerce Company through technical analysis after collecting original price data, and belonged to data products. With respect to these data products, [X] E-commerce Company enjoyed operational interests.

Second, [X] E-commerce Company's acts of collecting and processing the data were legitimate. Data information is non-exclusive. Generally speaking, data information that does not belong to state secrets, personal information, or trade secrets should be allowed to flow freely, and should not be excessively controlled absent statutory grounds, so as to prevent the formation of "data barriers" and "information closure." In this case, the ex-factory prices of the products in issue were information freely circulating in the

public market, did not involve trade secrets such as product cost or technology, and collecting and using such information to compile industry price indices did not violate laws or regulations. Specifically: first, [X] Steel Company claimed that the ex-factory prices of its products constituted trade secrets. Under the Anti-Unfair Competition Law of the People's Republic of China, for information to constitute a trade secret, it must satisfy three conditions: not being known to the public, having commercial value, and being subject to confidentiality measures. Under item 5 of paragraph 1 of Article 4 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets (Fa Shi [2020] No. 7), where "relevant personnel in the field can obtain the information from other public channels," the people's court may find that the information is known to the public. [X] Steel Company proactively published product ex-factory prices in WeChat groups with several hundred members that had no admission review, and did not prohibit group members from further disseminating them. It can thus be seen that [X] Steel Company did not take effective confidentiality measures, and its product ex-factory prices had been made public to a certain extent, not satisfying the "not known to the public" element of a trade secret. Therefore, [X] Steel Company's claim that the data in issue constituted trade secrets could not be established. Second, the purpose of [X] Steel Company's cooperation agreement with [X] E-commerce Company was to purchase [X] E-commerce Company's relevant services, not to authorize [X] E-commerce Company to collect, process, or use the ex-factory prices; therefore, the contractual relationship in issue was not a necessary condition for the legality of [X] E-commerce Company's collection of ex-factory prices. Third, according to the relevant provisions of the National Development and Reform Commission on the administration of price index conduct, [X] E-commerce Company formed an information collection team and independently collected data through methods such as collection in public accounts and WeChat groups, telephone inquiries, and disclosure of sales contracts, and did not adopt methods such as misleading, fraud, coercion, or theft; its information sources were lawful.

Third, there was no evidence that [X] Steel Company's data rights and interests had been damaged. [X] E-commerce Company's acts of legitimately obtaining and reasonably using the data in issue did not actually affect or deprive [X] Steel Company of its rights and interests to hold and use the ex-factory price data, and did not cause economic loss to [X] Steel Company; therefore, [X] E-commerce Company did not damage [X] Steel Company's data rights and interests. Of course, if there were evidence that the data quality had problems, [X] Steel Company could claim against [X] E-commerce Company relevant liability including compensation for damage. However, in this case there was no evidence that the data quality had problems. [X] E-commerce Company lawfully collected [X] Steel Company's price data, and its compilation methods conformed to the relevant standards, so there was no problem with the basic data or the compilation methods; and [X] Steel Company claimed that the data products were untrue, non-objective, and unfair, but failed to provide sufficient evidence to prove this.

In summary, [X] E-commerce Company's acts of collecting and processing data did not infringe [X] Steel Company's data rights and interests, and it could not be found on the basis of the evidence in the case that the quality of the data products had problems. The people's court did not support [X] Steel Company's claim that [X] E-commerce Company's collection and processing of data to form data products infringed its lawful rights and interests, in accordance with the law.

Relevant Legal Provisions

Article 1165 of the Civil Code of the People's Republic of China.

Article 7 of the Data Security Law of the People's Republic of China.

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