

SPC Guiding Case No. 279: Xi [X] Industrial Software Co., Ltd. v. Guangzhou Wo [X] Mold Co., Ltd. (Computer Software Copyright Infringement Dispute)

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

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Keywords

Civil / infringement of computer software copyright / substantial similarity / obstruction of evidence preservation / adverse consequences / damages

Holding

1. In a dispute over infringement of computer software copyright, where the software copyright owner is able to adduce evidence proving that the alleged infringing software shares the same unique information — such as the name, version number, and rights-holder information — as the software in issue, or that the software interface designs are highly similar, the people's court may generally find that the two programs constitute substantial similarity without conducting a software code comparison, unless the alleged infringer produces contrary evidence sufficient to rebut the finding.

2. In an intellectual property infringement dispute, where the alleged infringer obstructs the people's court's evidence preservation by violence, threats, or other means, the people's court may draw a factual inference adverse to that party in accordance with the law, including finding that the products that could not be preserved constitute infringement, and may take the obstruction of evidence preservation into account as a circumstance of the infringement when determining the specific amount of damages.

Basic Facts

Xi [X] Industrial Software Co., Ltd. ("Xi [X] Software") alleged that it was the copyright owner of the NX series of computer software (the "Software in Issue"). That series is computer software oriented to the manufacturing industry and can be used for 3D design, digital simulation testing, and computer-aided manufacturing. Guangzhou Wo [X] Mold Co., Ltd. ("Wo [X] Mold") is principally engaged in the manufacture of mold products. Without authorization, Wo [X] Mold reproduced and commercially used the Software in Issue, thereby infringing Xi [X] Software's copyright in the Software in Issue, and should bear legal liability for ceasing the infringement and compensating for losses. Xi [X] Software claimed that its actual loss should be determined by multiplying the number of infringing software installations by the price of the genuine Software in Issue. It accordingly brought a lawsuit in the Guangzhou Intellectual Property Court, requesting an order that Wo [X] Mold cease the infringement and compensate for economic losses and reasonable rights-protection expenses totaling RMB 2,712,827 (same currency hereinafter).

Pursuant to an application by Xi [X] Software, the Guangzhou Intellectual Property Court conducted evidence preservation at Wo [X] Mold, and explained in detail to the management personnel present the preservation measures to be taken and the legal consequences of refusing to cooperate with evidence preservation. An on-site count showed that there were 26 computers in Wo [X] Mold's office. After the Guangzhou Intellectual Property Court had preserved 17 computers, of which 9 were shown to have 13 sets of NX series software installed, Wo [X] Mold suddenly took confrontational measures, obstructing the evidence preservation by refusing to open some of the computers and by cutting off power, causing the court's evidence preservation to be forced to a halt and the remaining 9 computers to be left unpreserved.

During the first-instance trial, the Guangzhou Intellectual Property Court admonished Wo [X] Mold for obstructing evidence preservation, and Wo [X] Mold submitted a written self-criticism to the court, reviewing and apologizing for its obstruction of the evidence preservation.

Judgment

On October 17, 2019, the Guangzhou Intellectual Property Court rendered Civil Judgment (2018) Yue 73 Min Chu No. 1099: (1) Wo [X] Mold shall immediately cease the acts infringing Xi [X] Software's copyright in the Software in Issue; (2) Wo [X] Mold shall compensate Xi [X] Software for economic losses of RMB 500,000 and reasonable rights-protection expenses of RMB 100,000; and (3) the remaining claims of Xi [X] Software were dismissed. After the judgment was pronounced, both parties appealed. On November 19, 2020, the Supreme People's Court rendered Civil Judgment (2020) Zui Gao Fa Zhi Min Zhong No. 155: (1) the first item of Civil Judgment (2018) Yue 73 Min Chu No. 1099 was affirmed; (2) the third item of that judgment was revoked; and (3) the second item was modified so that Wo [X] Mold shall compensate Xi [X] Software for economic losses of RMB 2,612,827 and reasonable rights-protection expenses of RMB 100,000. Wo [X] Mold was dissatisfied and applied to the Supreme People's Court for retrial. On November 18, 2021, the Supreme People's Court rendered Civil Ruling (2021) Zui Gao Fa Min Shen No. 4246, dismissing Wo [X] Mold's retrial application.

Reasoning

This case had two focal points of dispute: first, whether Wo [X] Mold had infringed the copyright in the Software in Issue; and second, how to determine the number of infringing software installations and the amount of damages.

I. Wo [X] Mold infringed the copyright in the Software in Issue

Under Article 10 and Article 48 of the Copyright Law of the People's Republic of China (2010 Amendment), the right of reproduction is the right to make one or more copies of a work by means of printing, photocopying, rubbing, sound recording, video recording, dubbing, remake, or remastering. Anyone who reproduces a work without the permission of the copyright owner shall, unless otherwise provided, bear civil liability such as ceasing the infringement, eliminating the effects, making an apology, and compensating for losses.

In this case, based on the evidence preservation, the Guangzhou Intellectual Property Court had ascertained that, of the 17 computers preserved at Wo [X] Mold, 9 computers displayed 13 sets of NX series software with copyright and version information; some of the software displayed Xi [X] Software as the copyright owner; and the displayed version numbers were 8 sets of NX8, 2 sets of NX10, 2 sets of NX11, and 1 set of NX12. Where the existing evidence could prove that the alleged infringing software was highly similar to the Software in Issue (including having the same name, version number, and copyright-owner information), it could be presumed, without a software code comparison, that Wo [X] Mold had reproduced the Software in Issue in which Xi [X] Software held the copyright, at which point Wo [X] Mold was required to adduce contrary evidence in rebuttal. However, Wo [X] Mold did not adduce evidence proving that it had purchased the Software in Issue, nor did it provide evidence or a reasonable explanation of any difference between the alleged infringing software it had installed and the Software in Issue; moreover, Wo [X] Mold admitted that the alleged infringing software had been downloaded by its employees from the internet. In sum, it could be found that Wo [X] Mold had reproduced the Software in Issue without Xi [X] Software's permission, thereby infringing Xi [X] Software's copyright.

II. Determination of the number of infringing software installations and the amount of damages

Evidence preservation is an important component of civil litigation and an important means by which the people's court exercises its judicial power. Where a litigant participant or another person obstructs evidence preservation by violence, threats, or other means, he or she not only seriously violates the fundamental

principle of good faith in litigation but also commits a serious act obstructing civil proceedings, and shall bear the corresponding adverse consequences. Article 95 of the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings (Fa Shi [2001] No. 33, 2019 Amendment) provides: "Where a party controlling evidence refuses to submit it without justifiable reasons, and the party bearing the burden of proof as to the fact to be proved asserts that the content of the evidence is unfavorable to the controlling party, the people's court may find that assertion established." Upon review, during the evidence preservation, after the Guangzhou Intellectual Property Court had already explained to Wo [X] Mold that obstructing evidence preservation would lead to a presumption that it had installed the infringing software and that it would bear the corresponding adverse consequences, Wo [X] Mold still took confrontational measures — refusing to open some computers and cutting off power — to obstruct the evidence preservation, causing the court to be unable to complete preservation of the other 9 computers. Where it had already been confirmed that some of the preserved computers had the Software in Issue installed, pursuant to the above judicial interpretation, it should be presumed that the 9 unpreserved computers also had the Software in Issue installed, and this should be taken into account in determining the amount of infringement damages.

In this case, the facts such as the number of infringing software installations and the price of the genuine software were relatively clear, so the damages could be calculated on the basis of the actual loss suffered by the copyright owner from the infringement. In the calculation, the following factors were mainly considered: (1) The number of infringing installations. It was presumed that the 9 unpreserved computers all had the Software in Issue installed, so Wo [X] Mold reproduced at least 22 sets of the Software in Issue — a relatively large number. (2) The reputation and price of the Software in Issue. Xi [X] Software's Software in Issue is applicable to industrial manufacturing, enjoys a certain reputation, and is of relatively high economic value. (3) The circumstances of Wo [X] Mold's infringement. Wo [X] Mold obstructed the court's evidence preservation, which was a relatively serious circumstance. Taking the above factors together, the evidence in the case could prove that Xi [X] Software's actual loss clearly exceeded the statutory compensation ceiling of RMB 500,000 under Article 49 of the Copyright Law, and that the amount of damages it claimed had a factual basis and legal basis; therefore, Xi [X] Software's claim for damages was fully supported. Xi [X] Software's attorney fees and other reasonable expenses objectively existed, and the amounts claimed did not exceed a reasonable scope; those were also fully supported.

Relevant Legal Provisions

Articles 10, 53, and 54 of the Copyright Law of the People's Republic of China (2020 Amendment) (the case applied Articles 10, 48, and 49 of the Copyright Law of the People's Republic of China, 2010 Amendment).

Article 95 of the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings (Fa Shi [2001] No. 33, 2019 Amendment).

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