SPC Guiding Case No. 29: Tianjin China Youth Travel Service v. Tianjin Guoqing International Travel Service (Unauthorized Use of Another's Business Name Dispute)

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

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on June 26, 2014.

Keywords

Civil / unfair competition / unauthorized use of another's business name

Holding

1. An abbreviated business name that an enterprise has used extensively and continuously in its external operations, that has acquired a certain market reputation, is known to the relevant public, and has actually come to function as a trade name, may be protected as a business name.

2. Unauthorized use, as a paid-search keyword in internet search ranking in commercial activities, of another's abbreviated business name that has actually come to function as a trade name, causing confusion and misidentification among the relevant public, constitutes an act of unfair competition.

Basic Facts

The plaintiff, Tianjin China Youth Travel Service ("Tianjin CYTS"), alleged that the defendant, Tianjin Guoqing International Travel Service Co., Ltd., illegally used the plaintiff's full business name and its abbreviation "Tianjin CYTS" on its copyrighted website pages, website source code, and search engines, in violation of the Law of the People's Republic of China Against Unfair Competition. It requested an order that the defendant immediately cease the unfair competition, publicly apologize, compensate economic losses of RMB 100,000, and bear the litigation costs.

The defendant, Tianjin Guoqing International Travel Service Co., Ltd. ("Tianjin Guoqing Travel"), argued that "Tianjin CYTS" was not registered and was not owned by the plaintiff, and that the losses claimed by the plaintiff had no factual or legal basis; it requested that the plaintiff's claims be dismissed.

The court found upon trial: Tianjin China Youth Travel Service was established on November 1, 1986, and is a state-owned enterprise engaged in domestic and inbound/outbound tourism business, directly subordinate to the Tianjin Municipal Committee of the Communist Youth League. The Committee issued a certificate stating that "Tianjin CYTS" was the abbreviated business name of Tianjin China Youth Travel Service. In 2007, media such as Jinwanbao (Tonight News) had begun to refer to Tianjin China Youth Travel Service as "Tianjin CYTS" in reports on events it organized. Tianjin CYTS used "Tianjin CYTS" as its abbreviated name in its daily business operations, including in quotations, tourism contracts, cooperation documents with other operators in the industry, invoices, and shop signs at its various business premises. Tianjin Guoqing International Travel Service Co., Ltd. was established on July 6, 2010, and is a limited liability company engaged in domestic tourism and inbound tourism reception.

At the end of 2010, Tianjin CYTS discovered that a search on the Google search engine for "Tianjin China Youth Travel Service" or "Tianjin CYTS" would show, in the first position marked as a sponsored link, "Tianjin China Youth Travel Service Online Business Hall [www.lechuyou.com] — Tianjin Guoqing Online Business Hall, your ideal choice, providing high-quality, considerate and comfortable service for your trip" or "Tianjin CYTS Online Business Hall [www.lechuyou.com] — Tianjin Guoqing Online Business Hall, your ideal choice, providing high-quality, considerate and comfortable service for your trip." Clicking the link led to a website that claimed to be the Lechuyou website of Tianjin Guoqing International Travel Service. The top of the page

displayed the words "Tianjin Guoqing International Travel Service — Youth Travel Service CYTS / Tianjin Guolü," and the content consisted of Tianjin Guoqing's tourism business information and quotations, with the website stated to be copyrighted by "Lechuyou — Tianjin Guoqing" and indicating Tianjin Guoqing's contact telephone number and business address. At the same time, Tianjin CYTS searched for "Tianjin CYTS" on the Baidu search engine, and the first result, marked as a promotional link, displayed "Welcome to Tianjin CYTS — a unit that honors contracts and keeps credibility, bringing together classic domestic and outbound tourism routes, 100% group departure, Tianjin CYTS 400-611-5253 022.ctsgz.cn." Clicking that link also led to the same website identified as the Lechuyou website of Tianjin Guoqing.

Judgment

On October 24, 2011, the Tianjin No. 2 Intermediate People's Court rendered Civil Judgment (2011) Er Zhong Min San Zhi Chu Zi No. 135: (1) the defendant Tianjin Guoqing International Travel Service Co., Ltd. shall immediately cease the infringing acts; (2) the defendant shall, within thirty days of the judgment taking effect, publish a statement of apology on its company website, to remain for 15 days; (3) the defendant shall compensate the plaintiff Tianjin China Youth Travel Service economic losses of RMB 30,000; and (4) the remaining claims of the plaintiff were dismissed. After the judgment was pronounced, Tianjin Guoqing Travel appealed. On March 20, 2012, the Tianjin Higher People's Court rendered Civil Judgment (2012) Jin Gao Min San Zhong Zi No. 3: (1) affirming items 2, 3, and 4 of the above first-instance judgment; (2) modifying item 1 from "the defendant shall immediately cease the infringing acts" to "the defendant Tianjin Guoqing International Travel Service Co., Ltd. shall immediately cease using the words 'Tianjin China Youth Travel Service' and 'Tianjin CYTS' and cease using them as search-link keywords for the website of Tianjin Guoqing International Travel Service Co., Ltd."; and (3) dismissing the remaining appeal claims of the defendant.

Reasoning

The effective judgment held: According to Article 6, paragraph 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition, "a business name lawfully registered by the enterprise registration authority, as well as the business name of a foreign (regional) enterprise commercially used within China, shall be determined to be a 'business name' under Article 5(3) of the Law Against Unfair Competition. The trade name within a business name that has a certain market reputation and is known to the relevant public may be determined to be a 'business name' under Article 5(3) of the Law Against Unfair Competition." Therefore, an abbreviated business name that an enterprise has long used extensively in its external operations, that has a certain market reputation, is known to the relevant public, and has actually come to function as a trade name, shall likewise be protected as a business name. "Tianjin China Youth Travel Service" is the business name continuously used by the plaintiff since its establishment in 1986, and the plaintiff enjoys the exclusive right to the business name. "Tianjin CYTS," as its abbreviated business name, had already been widely used in its business activities since 2007; relevant publicity reports and customers also referred to Tianjin China Youth Travel Service as "Tianjin CYTS." Through years of use and publicity in its business activities, it has acquired a certain market reputation, is known to the relevant public, has established a stable association with Tianjin China Youth Travel Service, and has commercial sign significance capable of identifying the business operator. Accordingly, "Tianjin CYTS" may be protected together with "Tianjin China Youth Travel Service" as a business name.

Article 5(3) of the Law of the People's Republic of China Against Unfair Competition provides that business operators shall not engage in market transactions by improper means such as unauthorized use of another's business name, misleading others into believing it is their goods, thereby harming competitors. Accordingly, where a business operator, without authorization, uses another's business name or abbreviation as a keyword for paid ranking in internet search, causing confusion and misidentification among the public and exploiting another's reputation and goodwill to publicize and promote itself, such conduct constitutes an act

of unfair competition and shall be prohibited. Tianjin Guoqing Travel, as a business operator engaged in tourism services, without the permission of Tianjin CYTS, set keywords related to Tianjin CYTS's business name in relevant search engines and used them in website source code, so that when the relevant public searched for "Tianjin China Youth Travel Service" and "Tianjin CYTS," the website link of Tianjin Guoqing Travel was directly displayed, leading them to enter Tianjin Guoqing Travel's website to arrange tourism business, thereby achieving the effect of seizing potential customers through the initial confusion of internet users. Subjectively, it had the intent to cause the relevant public to be misled in internet searches and inquiries; objectively, it used "Tianjin China Youth Travel Service" and "Tianjin CYTS" without authorization, exploited the business reputation of Tianjin CYTS, and harmed the lawful rights and interests of Tianjin CYTS. Its conduct constitutes unfair competition and shall be prohibited in accordance with law. Tianjin Guoqing Travel, as a competitor in the same industry as Tianjin CYTS, knowingly used the name without authorization despite being aware that Tianjin CYTS's business name and abbreviation enjoyed high reputation, with obvious subjective malice in seeking improper benefits through another's name. In accordance with Article 120 of the General Principles of the Civil Law of the People's Republic of China, Tianjin Guoqing Travel shall bear the legal liability of ceasing the infringement, eliminating the effects, and compensating for losses. As for the words "Youth Travel Service CYTS" displayed at the top of Tianjin Guoqing Travel's website page, those were not within the scope of protection of the plaintiff's business name and did not constitute an act of unfair competition against the plaintiff.

Relevant Legal Provisions

Article 120 of the General Principles of the Civil Law of the People's Republic of China.

Article 5 of the Law of the People's Republic of China Against Unfair Competition.

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