SPC Guiding Case No. 70: Case of Beijing Sunshine Yibai Biotechnology Development Co., Ltd. and Xi Wenyu et al. for Producing and Selling Toxic and Harmful Food

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Keywords

Criminal / crime of producing and selling toxic and harmful food / toxic and harmful non-food raw materials

Holding

Where the substance added by an actor in the production and operation of food is not a substance in the List of Non-Edible Substances That May Be Illegally Added to Food or the List of Substances That May Be Illegally Added to Health Food published by the relevant departments of the State Council, but the substance has the same properties as the substances listed in those lists, and it can be determined, based on inspection reports and expert opinions and other relevant materials, that the substance is equally harmful to the human body, it shall be determined to be a "toxic and harmful non-food raw material" under Article 144 of the Criminal Law of the People's Republic of China.

Basic Facts

The defendant Xi Wenyu registered and established Beijing Sunshine Yibai Biotechnology Development Co., Ltd. ("Sunshine Yibai Company") in 2001, and was the actual person in charge of the company's production and operation. Since 2010, the defendant unit Sunshine Yibai Company had purchased raw materials for producing health food from the defendant Tan Guomin at a price of RMB 600 per kilogram; the raw materials were purchased by the defendant Tan Guomin from the defendant Yin Lixin at a price of RMB 2,500 per kilogram and then processed. After purchasing the raw materials, Sunshine Yibai Company processed and made them into the health food Sunshine Yibai Brand Shanqi Shen Capsules, used to assist in lowering blood sugar, and sold them at about RMB 100 per box to the Jinfuhai Health Products Store in Guangling District, Yangzhou City and many other areas nationwide. The defendant Yang Lifeng was specifically responsible for production, and the defendants Zhong Limeng and Wang Hailong were responsible for sales. From May to September 2012, the Shanqi Shen Capsules sold to Shanghai, Hunan, Beijing, and other places were respectively detected to contain buformin hydrochloride, and the food and drug supervision and administration departments informed Sunshine Yibai Company and Xi Wenyu of the test results. After learning of the test results, the defendant Xi Wenyu immediately informed the defendants Tan Guomin and Yin Lixin. Although the defendant Xi Wenyu knew that the health products produced and sold by him contained buformin hydrochloride, he still continued to purchase raw materials from the defendants Tan Guomin and Yin Lixin, and organized Yang Lifeng, Zhong Limeng, Wang Hailong, and others to produce and sell the Shanqi Shen Capsules. After learning of the test results, the defendants Tan Guomin and Yin Lixin continued to sell the raw materials to the defendant Xi Wenyu.

Buformin hydrochloride is the hydrochloride salt of buformin. At present, buformin hydrochloride has not been approved for production or import by the drug regulatory department of the State Council, and may not be produced, sold, or used in China as a drug. The expert opinion issued by Professor Ge Xiaoqun of the Medical School of Yangzhou University and the appraisal opinion of the Judicial Appraisal Institute of Nanjing Medical University proved that buformin hydrochloride has the effect of lowering blood sugar, was withdrawn from the Chinese market long ago, and long-term use of health food containing buformin

hydrochloride may produce adverse effects on the body and even endanger life.

From the end of August 2012 to the discovery of the case in January 2013, Sunshine Yibai Company's production and sales amounted to more than RMB 8 million. Among them, the amount of Shanqi Shen Capsules containing buformin hydrochloride produced and sold with the participation of Xi Wenyu, Yin Lixin, and Tan Guomin reached more than RMB 8 million; the amount of Shanqi Shen Capsules containing buformin hydrochloride produced with the participation of Yang Lifeng reached more than RMB 8 million; and the amount of Shanqi Shen Capsules containing buformin hydrochloride sold with the participation of Zhong Limeng and Wang Hailong reached more than RMB 400,000. Yin Lixin and Tan Guomin jointly and intentionally committed the crime with Sunshine Yibai Company, constituting a joint crime; Yin Lixin and Tan Guomin were accomplices who provided toxic and harmful raw materials for the production and sale of toxic and harmful food, and were both accessories in the joint crime. Xi Wenyu, together with Yang Lifeng, Zhong Limeng, and Wang Hailong, jointly and intentionally committed the crime, constituting a joint crime; Yang Lifeng, Zhong Limeng, and Wang Hailong committed the criminal act of producing and selling toxic and harmful food under the instigation of Xi Wenyu, and were all accessories. Xi Wenyu played a principal role in the joint crime and was a principal offender. Yang Lifeng and Tan Guomin voluntarily surrendered after the crime and truthfully confessed the criminal facts, constituting voluntary surrender, and voluntarily pleaded guilty at trial. Xi Wenyu, Yin Lixin, and Wang Hailong truthfully confessed the criminal facts after being brought to justice and voluntarily pleaded guilty at trial. Zhong Limeng truthfully confessed part of the criminal facts after being brought to justice and voluntarily pleaded guilty to part of the criminal facts at trial.

Judgment

On January 10, 2014, the Guangling District People's Court of Yangzhou City, Jiangsu Province rendered the criminal judgment (2013) Yang Guang Xing Chu Zi No. 0330: The defendant unit Beijing Sunshine Yibai Biotechnology Development Co., Ltd. committed the crime of producing and selling toxic and harmful food and was sentenced to a fine of RMB 15 million; the defendant Xi Wenyu committed the crime of producing and selling toxic and harmful food and was sentenced to fixed-term imprisonment of fifteen years, deprivation of political rights for three years, and a fine of RMB 9 million; the defendant Yin Lixin committed the crime of producing and selling toxic and harmful food and was sentenced to fixed-term imprisonment of twelve years, deprivation of political rights for two years, and a fine of RMB 1 million; the defendant Tan Guomin committed the crime of producing and selling toxic and harmful food and was sentenced to fixed-term imprisonment of eleven years, deprivation of political rights for two years, and a fine of RMB 1 million; the defendant Yang Lifeng committed the crime of producing toxic and harmful food and was sentenced to fixed-term imprisonment of five years and a fine of RMB 100,000; the defendant Zhong Limeng committed the crime of selling toxic and harmful food and was sentenced to fixed-term imprisonment of four years and a fine of RMB 80,000; the defendant Wang Hailong committed the crime of selling toxic and harmful food and was sentenced to fixed-term imprisonment of three years and six months and a fine of RMB 60,000; the illegal gains of RMB 8 million were to be recovered from the defendant unit Beijing Sunshine Yibai Biotechnology Development Co., Ltd., the illegal gains of RMB 671,500 were to be recovered from the defendant Yin Lixin, and the illegal gains of RMB 1.32 million were to be recovered from the defendant Tan Guomin; and the seized Shanqi Shen Capsules and granules containing buformin hydrochloride were to be confiscated. After the judgment was pronounced, the defendant unit and all defendants appealed. On June 13, 2014, the Intermediate People's Court of Yangzhou City, Jiangsu Province rendered the criminal ruling (2014) Yang Xing Er Zhong Zi No. 0032: The appeal was dismissed and the original judgment was affirmed.

Reasoning

The effective judgment held: Article 144 of the Criminal Law provides: "Whoever, in food produced or sold, adulterates toxic or harmful non-food raw materials, or knowingly sells food adulterated with toxic or harmful non-food raw materials, shall be sentenced to fixed-term imprisonment of not more than five years and a

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fine; where the act causes serious harm to human health or there are other serious circumstances, the sentence shall be fixed-term imprisonment of not less than five years but not more than ten years and a fine; where death is caused or there are other especially serious circumstances, the sentence shall be imposed in accordance with Article 141 of this Law." Article 20 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases Endangering Food Safety provides: "The following substances shall be determined to be 'toxic and harmful non-food raw materials': (1) substances that laws and regulations prohibit from being added to or used in food production and operation activities; (2) substances in the List of Non-Edible Substances That May Be Illegally Added to Food and the List of Substances That May Be Illegally Added to Health Food published by the relevant departments of the State Council; (3) pesticides, veterinary drugs, and other toxic and harmful substances that are prohibited from use by announcements of the relevant departments of the State Council; and (4) other substances that harm human health." Article 21 provides: "Where it is difficult to determine whether a case is 'sufficient to cause a serious food poisoning incident or other serious food-borne disease' or a 'toxic or harmful non-food raw material,' the judicial organ may make the determination based on inspection reports combined with expert opinions and other relevant materials. Where necessary, the people's court may, in accordance with the law, notify relevant experts to appear in court to provide explanations." In this case, buformin hydrochloride was a chemical substance that had not been approved for production or import by the drug regulatory department in China, could not be produced, sold, or used in China as a drug, and was also not a food additive. Buformin hydrochloride did not belong to the substances provided for in items (2) and (3) of Article 20 of the Interpretation. According to the expert opinion issued by Professor Ge Xiaoqun of the Medical School of Yangzhou University and the appraisal opinion of the Judicial Appraisal Institute of Nanjing Medical University, buformin hydrochloride had the same properties and the same harm as the other hypoglycemic western drugs (metformin hydrochloride and phenformin hydrochloride) in the List of Substances That May Be Illegally Added to Health Food under item (2) of Article 20 of the Interpretation. Long-term use of the "Sunshine Yibai Brand Shanqi Shen Capsules" containing buformin hydrochloride had the risk of producing toxic side effects on the human body, affecting human health and even endangering life. Therefore, buformin hydrochloride should be determined, in accordance with item (4) and Article 21 of Article 20 of the Interpretation, to be a "toxic and harmful non-food raw material" under Article 144 of the Criminal Law.

The defendant unit Sunshine Yibai Company and the defendant Xi Wenyu, as the directly responsible supervisors for Sunshine Yibai Company's production and sale of the Shanqi Shen Capsules, and the defendants Yang Lifeng, Zhong Limeng, and Wang Hailong, as the directly responsible persons for Sunshine Yibai Company's production and sale of the Shanqi Shen Capsules, knowing that the health food Shanqi Shen Capsules produced and sold by Sunshine Yibai Company contained the nationally prohibited component buformin hydrochloride, still produced and sold them; the defendants Yin Lixin and Tan Guomin, knowing that the raw materials containing the nationally prohibited component buformin hydrochloride they provided were used by the defendant Xi Wenyu to produce the health food Shanqi Shen Capsules and sell them, still provided the raw materials to Xi Wenyu. Therefore, the above unit and defendants all constituted the crime of producing and selling toxic and harmful food in accordance with the law. Among them, the conduct of the defendant unit Sunshine Yibai Company and the defendants Xi Wenyu, Yin Lixin, and Tan Guomin constituted the crime of producing and selling toxic and harmful food; the conduct of the defendant Yang Lifeng constituted the crime of producing toxic and harmful food; and the conduct of the defendants Zhong Limeng and Wang Hailong constituted the crime of selling toxic and harmful food. The judgment was rendered as above based on the criminal circumstances and criminal amounts of the defendant unit and each defendant, comprehensively considering the positions and roles of each defendant in the joint crime, voluntary surrender, attitude toward guilt, and other sentencing circumstances.

Relevant Legal Provisions

Article 144 of the Criminal Law of the People's Republic of China.

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