# SPC Guiding Case No. 87: Case of Guo Mingsheng, Guo Mingfeng, and Sun Shubiao for Counterfeiting Registered Trademarks

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

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## Keywords

Criminal / crime of counterfeiting registered trademarks / amount of illegal business operation / online sales / faking reputation

## Holding

The amount of illegal business operation and the amount of illegal gains in a crime of counterfeiting registered trademarks shall be determined on the basis of comprehensive consideration of evidence such as the defendants' confessions, witness testimony, victim statements, electronic data of online sales, records of the defendants' bank account transactions, delivery notes, computer system records of courier companies, and bookkeeping by the defendants. Where a defendant argues that there were false transactions of faking reputation in the online sales records, but there is no evidence to substantiate the argument, the argument shall not be adopted.

## Basic Facts

The public prosecution organ alleged that, from late November 2013 to June 2014, the defendant Guo Mingsheng, in order to seek illegal profits, together with the defendants Sun Shubiao and Guo Mingfeng, without the authorization of Samsung (China) Investment Co., Ltd., purchased in bulk counterfeit Samsung mobile phone bare units and accessories from others, assembled them, and, using the online store "Samsung Digital Counter" that he had opened on Taobao.com, advertised them as "genuine licensed goods" and publicly sold them at prices clearly below market price, selling a total of more than 20,000 counterfeit Samsung mobile phones, with a sales amount of more than 20 million yuan and illegal gains of more than 2 million yuan. They should be pursued for criminal liability for the crime of counterfeiting registered trademarks. The defendant Guo Mingsheng played a primary role in the joint crime and was a principal offender. The defendants Guo Mingfeng and Sun Shubiao played auxiliary roles in the joint crime and were accomplices, and should be given lighter punishment.

The defendants Guo Mingsheng, Sun Shubiao, and Guo Mingfeng and their defense counsel raised no objection to the criminal facts that they assembled counterfeit Samsung mobile phones without the authorization of the registrant of the "SΛMSUNG" trademark and sold them through a Taobao online store, but raised objections to the amount of illegal business operation and the illegal gains, arguing that their Taobao online store had engaged in faking reputation by hiring people, so the real transaction volume was only more than 10,000 units.

The court found upon trial: "SΛMSUNG" is a trademark registered in China by Samsung Electronics Co., Ltd., valid until July 27, 2021; Samsung (China) Investment Co., Ltd. is a company established in China by Samsung Electronics Co., Ltd. through investment and specially authorized by Samsung Electronics Co., Ltd. to be responsible for the management of intellectual property such as trademarks, patents, and copyrights under the name of Samsung Electronics Co., Ltd. and legal affairs. In November 2013, the defendant Guo Mingsheng purchased through an online intermediary a Taobao store with the owner name "Wang Liang" and account "play2011-1985," renamed it "Samsung Digital Counter," and, without the



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authorization of Samsung (China) Investment Co., Ltd., purchased in bulk counterfeit Samsung I8552 mobile phone bare units and accessories from the Yuanwang Digital Mall in Huaqiangbei, Shenzhen, and the Tongtiandi mobile phone market in Futian District, Shenzhen, for assembly, and advertised and sold them as "genuine licensed goods" on Taobao through the "Samsung Digital Counter." The defendant Guo Mingfeng was responsible for the customer service work of the online store and the management of customer service personnel, and the defendant Sun Shubiao was responsible for the purchase, packaging, and contact with courier companies for shipment of the counterfeit Samsung I8552 mobile phone bare units and accessories. By June 2014, the online store had assembled and sold a total of more than 20,000 counterfeit Samsung I8552 mobile phones, with an illegal business amount of more than 20 million yuan and illegal gains of more than 2 million yuan.

## Judgment

On September 8, 2015, the Intermediate People's Court of Suqian City, Jiangsu Province, rendered Criminal Judgment (2015) Su Zhong Zhi Xing Chu Zi No. 0004, sentencing the defendant Guo Mingsheng to five years' fixed-term imprisonment for the crime of counterfeiting registered trademarks, with a fine of RMB 1.6 million; sentencing the defendant Sun Shubiao to three years' fixed-term imprisonment with a five-year suspension of execution for the crime of counterfeiting registered trademarks, with a fine of RMB 200,000; and sentencing the defendant Guo Mingfeng to three years' fixed-term imprisonment with a four-year suspension of execution for the crime of counterfeiting registered trademarks, with a fine of RMB 200,000. After the judgment was pronounced, none of the three defendants appealed, and the judgment took effect.

## Reasoning

The court's effective judgment held that the defendants Guo Mingsheng, Guo Mingfeng, and Sun Shubiao, without the authorization of the registrant of the "SΛMSUNG" trademark, purchased mobile phone headsets and accessories bearing the counterfeit "SΛMSUNG" registered trademark, assembled mobile phones bearing the counterfeit "SΛMSUNG" registered trademark, and sold them as "genuine licensed goods" through an online store. This constituted the act of using a trademark identical to another's trademark on the same kind of goods without the permission of the owner of the registered trademark, with an illegal business amount of more than 20 million yuan and illegal gains of more than 2 million yuan, which was especially serious in circumstances and constituted the crime of counterfeiting registered trademarks. Although the defendants Guo Mingsheng, Guo Mingfeng, and Sun Shubiao argued that their online store's sales records involved faking reputation and raised objections to the amount of illegal business operation and illegal gains alleged by the public prosecution organ, the multiple confessions of the three defendants before the public security organ, together with such evidence as the delivery notes seized by the public security organ, the payment records from Alipay to the bank account of the defendant Guo Mingfeng, the payment records from Guo Mingfeng's bank account to external parties, the Taobao records of the "Samsung Digital Counter," the computer system records of courier companies, and the notebooks seized on site by the public security organ, could corroborate one another. Comprehensively considering the evidence provided by the public prosecution organ, it could be determined that the public prosecution organ's allegation that the three defendants sold a total of more than 20,000 counterfeit Samsung I8552 mobile phones, with a sales amount of more than 20 million yuan and illegal gains of more than 2 million yuan, was established. The three defendants' argument that the sales records involved faking reputation was not substantiated by evidence and was not adopted. The defendants Guo Mingsheng, Guo Mingfeng, and Sun Shubiao committed a joint crime; the defendant Guo Mingsheng played a primary role and was a principal offender; the defendants Guo Mingfeng and Sun Shubiao played auxiliary roles in the joint crime and were accomplices, and could be given lighter punishment in accordance with the law. Therefore, the above judgment was rendered in accordance with the law.

## Relevant Legal Provisions

Article 213 of the Criminal Law of the People's Republic of China.



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