SPP Guiding Case No. 192: Supervision Case Concerning a Series of False Litigations Between Zhou Moumou and Xiang Moumou and Li Moumou over Copyright Ownership and Infringement Disputes

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Keywords

Intellectual property protection; copyright dispute; copyright registration; false litigation; digital prosecution; comprehensive performance of duties.

Holding

Impersonating an author, obtaining copyright registration by fraudulently using works created by others, and using such registration as the primary evidence to bring litigation for illegitimate gain, thereby harming the lawful rights and interests of others and impairing judicial order, constitutes false litigation. Procuratorial organs shall actively advance digital prosecution, empower innovative legal supervision models with big data, and break through the bottleneck in supervising false litigation. For false litigation cases in the intellectual property field, procuratorial organs shall initiate supervision procedures ex officio and promote comprehensive governance through supervising effective civil judgments, transferring criminal case leads and putting forward social governance opinions and suggestions.

Basic Facts

Plaintiff in the civil action: Zhou Moumou.

Defendants in the civil action: Xiang Moumou and Li Moumou.

This series of cases involved a total of 64 false litigations; the particulars of the parties in the other cases are omitted.

In October 2007, Zhou Furen and Chen Yuanlan established Hangzhou Meisu Copyright Agency Co., Ltd. (hereinafter Meisu Company), which was mainly engaged in copyright registration and copyright rights-protection business, and successively recruited Yang Baoquan, Wang Jiangmei and others as staff. Zhou Furen was responsible for the company's day-to-day management and litigation rights-protection; Chen Yuanlan was responsible for part of the company's finances and rights-protection evidence collection; Yang Baoquan was responsible for publicity and interfacing with clients on copyright registration; and Wang Jiangmei was responsible for writing fabric-pattern creation descriptions, drafting and rights-protection evidence collection. Beginning in 2008, Meisu Company illegally induced some operators in the Keqiao China Textile City market in Shaoxing to hand over textile fabric patterns created by others to the company for copyright registration and to entrust the company with rights protection. Zhou Furen, fully aware that his clients had no actual copyright, still directed Wang Jiangmei and others to fabricate the creative ideas and descriptions of the patterns and to move the creation date back one year, assisting in the agency of copyright registration. After discovering that other operators in the market were using some of these patterns, Meisu Company, under the pretext of rights protection, demanded compensation by sending lawyer's letters and filing lawsuits on the ground of infringement of its clients' copyright, with the total amount of fraud reaching over RMB 3.4 million. This involved 64 false litigations, of which the copyright ownership and infringement dispute between Zhou Moumou and Xiang Moumou and Li Moumou was one example.

In October 2012, Zhou Moumou obtained, through Meisu Company, the copyright registration of the fine art work "Graceful and Charming" (E Na Duo Zi) from the Zhejiang Provincial Copyright Bureau. In July 2014, Zhou Moumou filed a lawsuit against Xiang Moumou and Li Moumou with the People's Court of Keqiao District, Shaoxing City, Zhejiang Province (hereinafter the Keqiao Court), claiming that the "Graceful and Charming" pattern was independently created by himself, and requesting the court to order Xiang Moumou and Li Moumou to immediately cease infringement and to compensate economic losses of RMB 20,000. On December 15, 2014, the Keqiao Court rendered Civil Judgment No. 162 (2014) Shao Ke Zhi Chu Zi, finding that Zhou Moumou obtained the copyright registration certificate for the fine art work "Graceful and Charming" issued by the Zhejiang Provincial Copyright Bureau on December 10, 2012, with registration number Zhe Zuo Deng Zi 11-2013-F-14787; that Zhou Moumou later discovered that the "Modern Cloth Art" shop in China Textile City, Keqiao Subdistrict, Keqiao District was selling curtain cloth with a pattern similar to "Graceful and Charming", and entrusted Wang Jiangmei, together with a notary, to purchase curtain cloth with that pattern from the "Modern Cloth Art" shop in the capacity of ordinary consumers; and that the "Modern Cloth Art" shop was then operated by Xiang Moumou, with the curtain cloth bearing the pattern sold by Xiang Moumou purchased from Li Moumou. The court held that the "Graceful and Charming" pattern was a work completed by embodying the imagination of a natural person, that Zhou Moumou was the copyright owner of the fine art work, and that the "Modern Cloth Art" shop's sale of the curtain cloth bearing the pattern without Zhou Moumou's permission constituted infringement and should bear corresponding civil liability. Because the shop was an individually-owned business, its liability was borne by its individual operator Xiang Moumou. However, Xiang Moumou disclosed that the curtain cloth involved was purchased from Li Moumou and had a lawful source. The court therefore ordered Xiang Moumou and Li Moumou to cease selling the curtain cloth printed with the "Graceful and Charming" pattern, and ordered Li Moumou to compensate Zhou Moumou for economic losses of RMB 14,000.

Procuratorial Performance

Discovery of leads. In early 2020, the People's Procuratorate of Keqiao District, Shaoxing City, Zhejiang Province (hereinafter the Keqiao Procuratorate) discovered in the course of performing its duties that there was a phenomenon of professionalized rights protection over textile pattern copyrights in the Keqiao textile market, and suspected malicious litigation, so it initiated an investigation into the relevant litigation. The procuratorial organs mainly carried out the following work: First, they visited industry associations such as the district's curtain cloth association, embroidered cloth association and printing and dyeing association to understand the problem of malicious rights protection over pattern copyrights. Second, through the "intelligent supervision system for civil judgment documents" of the Shaoxing Municipal People's Procuratorate, they retrieved and analyzed cases of "copyright ownership and infringement disputes" heard by the Keqiao Court, retrieving a total of 2,916 cases. Third, they reviewed whether the plaintiffs in the cases enjoyed copyright over the patterns involved. The Keqiao Procuratorate retrieved the textile patterns involved in the 2,916 cases and, through the textile pattern "AI intelligent review system", conducted data retrieval and comparison of the textile patterns involved, discovering that some of the patterns involved had long been circulating in the market, so that whether they were independently created by the plaintiffs was doubtful, and the relevant cases might be false litigation. Fourth, they sorted and screened out 601 civil litigation cases represented by the same law firm, and, based on the case outcomes, removed 481 cases such as those concluded by withdrawal or dismissal of claims, further focusing the review on 120 cases concluded by judgment or mediation. Fifth, they further focused the leads through big data collision. Upon inquiry into the bank accounts through which some defendants paid infringement compensation to the plaintiffs, it was found that all the infringement compensation received by the plaintiffs flowed into Zhou Furen's bank account. Data analysis of this account also unearthed Chen Yuanlan, Wang Jiangmei and Yang Baoquan as persons closely connected with Zhou Furen's funds. Through the enterprise industrial and commercial information inquiry system, it was confirmed that Zhou Furen was the actual controller of Meisu Company.

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Acceptance and transfer of leads. On January 12, 2021, the Keqiao Procuratorate initiated ex officio the civil supervision procedure for the series of copyright ownership and infringement dispute cases including this case, and on May 13, 2021 transferred the lead that Zhou Furen and others were suspected of crimes to the Keqiao Branch of the Shaoxing Municipal Public Security Bureau (hereinafter the Keqiao Branch), which on the same day filed and investigated Zhou Furen and others for the crime of extortion.

Review. In conjunction with the investigation of the relevant criminal cases, the procuratorial organs focused their review on the basis of Zhou Moumou's copyright. It was ascertained that Zhou Moumou had selected the pattern elements he needed from existing patterns on the market, handed them to a plate-making company for combination and modification, and paid corresponding remuneration (about RMB 300). Without signing an entrusted creation contract with the plate-making company or agreeing on the ownership of the copyright, Zhou Moumou entrusted Meisu Company, on the ground that the pattern was independently created by himself, to obtain the copyright registration of the fine art work "Graceful and Charming" (registration number 11-2013-F-14787) from the Zhejiang Provincial Copyright Bureau. Moreover, the "Graceful and Charming" pattern involved in this case was pieced together from existing patterns and did not meet the requirement of "originality" for a work under the Copyright Law, and should not be recognized as a work under the Copyright Law. Zhou Moumou's impersonation of the author to bring this lawsuit should be recognized as false litigation.

Supervision opinion. On September 26, 2022, the Shaoxing Municipal People's Procuratorate lodged a protest with the Shaoxing Intermediate People's Court in respect of this case, holding that Zhou Moumou did not enjoy copyright over the pattern "Graceful and Charming" involved, and that his impersonation of the author to bring the lawsuit constituted bringing litigation by fabricating facts, impairing judicial order and harming the lawful rights and interests of others, which constituted false litigation. At the same time, the Shaoxing Municipal People's Procuratorate lodged protests in respect of 11 other false litigations of similar circumstances, and the Zhejiang Provincial People's Procuratorate lodged protests with the Zhejiang Provincial High People's Court in respect of 2 cases. Earlier, on April 28, 2022, the Keqiao Procuratorate had issued retrial procuratorial suggestions to the Keqiao Court in respect of 50 cases involving false litigation, suggesting that the court conduct retrials.

Supervision result. The Shaoxing Intermediate People's Court rendered a civil ruling instructing the Keqiao Court to conduct a retrial of this case. On November 28, 2022, the Keqiao Court rendered Civil Judgment No. 67 (2022) Zhe 0603 Min Zai, adopting the procuratorial organs' protest opinion, determining that false litigation was constituted, revoking the original judgment and dismissing Zhou Moumou's litigation claims. The retrials of the remaining 63 cases all determined that false litigation was constituted, and revised the judgments to dismiss the original plaintiffs' litigation claims.

During the handling of the case, the procuratorial organs sorted out and analyzed the problems existing in the copyright registration stage, actively signed a "Memorandum of Cooperation on Strengthening Copyright Protection Work" with the functional departments for copyright administration, established a long-term mechanism for coordinated protection, and transferred the leads on copyright registrations that should be revoked, discovered during case handling, to the copyright administration functional departments for revocation.

Handling of criminal cases. Between August and November 2021, the Keqiao Procuratorate approved the arrest of Zhou Furen, Chen Yuanlan, Yang Baoquan and Wang Jiangmei for the crime of fraud. On April 21, 2022, Yang Baoquan and Wang Jiangmei were released on bail pending trial. On May 5, 2022, the Keqiao Procuratorate initiated public prosecution against the defendants Zhou Furen, Chen Yuanlan, Yang Baoquan and Wang Jiangmei with the Keqiao Court for the crime of fraud.

During the trial, defendant Zhou Furen and some defenders raised the following defense opinions: Zhou Furen and others did not knowingly know that the clients had no actual copyright, and they had no professional ability or legal obligation to substantively review the originality and ownership of the works; in

the circumstances of joint works, commissioned works and works made for hire, some applicants, as the commissioners, assignees and collaborators of the works, could apply for copyright registration; and the fabrication of completion time and the ghostwriting of creation descriptions only meant that the application documents were defective, and using a defective copyright registration certificate to litigate could not be found to be fraud by fabricating facts and concealing the truth. The public prosecutor responded: the patterns involved were obtained by the applicants through low-price purchase, or by entrusting third parties to modify them, or by cooperating with third parties, while the sellers and third parties obtained them by simply modifying existing public patterns, which lacked the originality required by the Copyright Law. Applications for copyright registration must submit materials in accordance with the law; where it was a cooperative, commissioned or sale relationship, relevant contracts and work ownership certification materials must be attached. Zhou Furen had long been engaged in the copyright registration agency business, was familiar with the creation of patterns in the local market, and, fully aware that the applicants did not have the right to apply for copyright registration, still directed the co-offenders to write pattern creation ideas and descriptions, forge the creation time, and sign the copyright guarantee letter on behalf of others, and then applied for copyright registration. After obtaining the copyright certificates, they obtained the "rights protection" business of the copyright registrants and demanded that the victims pay compensation through sending lawyer's letters and filing lawsuits and other "rights protection" methods, which met the constitutive elements of the crime of fraud by fabricating facts and concealing the truth to defraud others of property.

On July 28, 2022, the Keqiao Court rendered a first-instance judgment, sentencing defendant Zhou Furen to fixed-term imprisonment of 11 years and 6 months and a fine of RMB 200,000 for the crime of fraud; sentencing defendant Chen Yuanlan to fixed-term imprisonment of 3 years with a 5-year suspended sentence and a fine of RMB 80,000; sentencing defendant Yang Baoquan to fixed-term imprisonment of 3 years with a 5-year suspended sentence and a fine of RMB 20,000; and sentencing defendant Wang Jiangmei to fixed-term imprisonment of 3 years with a 4-year suspended sentence and a fine of RMB 10,000. It also ordered the confiscation of the tools of crime such as computers and mobile phones, and that the defendants jointly compensate the victims' losses. Zhou Furen, Chen Yuanlan, Yang Baoquan and Wang Jiangmei appealed. On September 13, 2022, the Shaoxing Intermediate People's Court ruled to dismiss the appeals and affirm the original judgment.

Guiding Significance

(1) Impersonating an author, obtaining copyright registration by fraudulently using works created by others, and using such registration as the primary evidence to bring litigation for illegitimate gain, harming the lawful rights and interests of others and impairing judicial order, constitutes false litigation. The copyright registration certificate, as preliminary proof of copyright ownership, is one of the most common pieces of evidence in copyright ownership and infringement disputes. However, copyright registration does not substantively examine whether the relevant work was created by the applicant and whether it has originality, making it objectively difficult to prevent malicious copyright registration. Deliberately submitting false application materials to obtain copyright registration by fraudulently using others' works or works in the public domain, and then using the fraudulently obtained copyright registration certificate to bring litigation for illegitimate gain, is a relatively typical type of false litigation in the intellectual property field. When handling civil litigation supervision cases of copyright ownership and infringement disputes, procuratorial organs shall, in addition to reviewing the copyright registration certificate, focus on reviewing evidentiary materials such as creation drafts and originals, and investigate and verify facts such as whether the work was created by others and whether it already existed before the completion date stated in the registration certificate, so as to comprehensively determine copyright ownership.

(2) Procuratorial organs shall actively advance digital prosecution, empower innovative legal supervision models with big data, and break through the bottleneck in supervising false litigation. Intellectual property cases are highly specialized, and the discovery, identification and determination of false litigation leads are

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more difficult than in other cases. In judicial practice, procuratorial organs shall effectively strengthen digital concepts and thinking, empower legal supervision with big data, and strive to break through the bottleneck in handling false litigation cases. On the one hand, they shall do a good job in the collection and management of data resources, paying attention to the aggregation and management of various procuratorial business data, and broadening the channels of data sources through cross-departmental big data collaborative case-handling mechanisms, so as to strengthen the sharing of relevant data such as administrative law enforcement and judicial case handling. On the other hand, they shall promptly summarize the case-handling experience of false litigation in the intellectual property field, grasp the characteristics and rules of cases, and build legal supervision models for intellectual property cases. In specific case handling, for cases or leads suspected of false litigation, attention shall be paid to selecting elements such as litigation claims, intellectual property ownership certificates, defenses, and information on the parties and agents for collision, comparison and analysis, so as to accurately identify false litigation.

(3) For false litigation cases in the intellectual property field, procuratorial organs shall initiate supervision procedures ex officio and promote comprehensive governance through supervising effective civil judgments, transferring criminal case leads and putting forward social governance opinions and suggestions. Where parties to false litigation forge evidence, fabricate intellectual property infringement relationships or unfair competition relationships, and file civil lawsuits to seek illegal gains, harming the lawful rights and interests of others and impairing judicial order, they shall be cracked down upon in accordance with the law. In judicial practice, where procuratorial organs discover leads of false litigation cases, they shall initiate supervision procedures ex officio, and, comprehensively taking into account factors such as the determination of case facts, the application of law and the effectiveness of case handling, coordinate the use of protests, procuratorial suggestions and other means for supervision. At the same time, in respect of criminal leads discovered during case handling, they shall promptly transfer them to the public security organs; and in respect of social management loopholes reflected in the cases, they shall promptly put forward social governance opinions and suggestions to strengthen comprehensive judicial protection.

Relevant Legal Provisions

Article 266 and Article 307-1 of the Criminal Law of the People's Republic of China (as amended in 1997).

Article 215(2) of the Civil Procedure Law of the People's Republic of China (as amended in 2021).

Article 11 of the Copyright Law of the People's Republic of China (as amended in 2010).

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