



Case:

The Highest Damages Awarded for Trade Secret Infringement in PRC Judicial History

On February 26, 2021, the PRC Supreme People’s Court held that two PRC companies infringed “Vanillin” trade secret of another PRC company. The decision stands out and causes wide attention because it awarded 159,321,671 RMB, which is the highest damages for trade secret infringement in PRC judicial history. It is reported that the decision shows the trend of strengthening trade secrets protection in China.

The background of the case is: Jiaxing Zhonghua Chemical Co., Ltd (“Jiaxing”), a major vanillin manufacturer in the world, cooperated with Shanghai Xincheng New Technology Co., Ltd (“Xincheng”) to develop new technology/knowhow for producing vanillin. A former employee of Jiaxing disclosed their trade secret¹ to Wang Long Group Co., Ltd (“Wang Long”) and consequently Wang Long gained huge profit. Jiaxing and Xincheng filed a lawsuit against Company Wang Long alleging Wang Long infringed their trade secret.

We select a few interesting points in the court’s decision for your reference.

(1) The technology constituted trade secret²

First, the technology was unknown to the public and was obtained from extensive research, development, and inspection, which was non-available and non-visible in the market or any kinds of public channels.

Second, the technology possessed high commercial value. Jiaxing had used the technology in production line and consequently created huge global market advantages.

Third, Jiaxing adopted strict protective measures, such as building a set of document control procedures, training on employees, signing confidential clause with the transaction counterparty, etc.

(2) The defendants committed infringement conducts³

The court determined that: the suspected infringing trade secret disclosed through illegal disclosure by an employee who joined Wang Long from Jiaxing; further, Wang Long and its affiliated entities, Ningbo Wanglong Technology Co., Ltd (“Ningbo Wanglong”) and Xifu Shiwanglong Spices (Ningbo) Co., Ltd (“Xifu Shiwanglong”), used the disclosed trade secret producing vanillin for sale; therefore, the disclosing employee, Wang Long, legal representative of Wang Long, Ningbo Wanglong, and Xifu Shiwanglong committed joint torts actions.

(3) Damages

The court adopted the method of sale profits calculation to determine the damages. Wang Long refused to provide accounting books and materials, therefore, the court calculated the profits of Wang Long, Ningbo Wanglong, and Xifu Shiwanglong (the defendants) by referring to the sale price and profit margin for vanillin produced by Jiaxing (the plaintiff). The total profit of defendants from 2011 to 2017 is 155,829,455 RMB. Adding the lawyer fee and notary fee, the damages was determined as 159,321,671 RMB. The court held that the extremely high amount of compensation was reasonable because tort was outrageous.

Should you want to know more details about this case or how to protect your trade secret in China, please feel free to send a request at asiallians@asiallians.com.

https://wenshu.court.gov.cn/website/wenshu/_181107ANFZ0BXSK4/index.html?docId=e2b36878c51e4f6f843dacde0122d989

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1. The technology refers to 287 equipment drawings and 25 process piping and instrument flow diagrams.
2. The case was adjudicated according to PRC Anti-unfair Competition Law (2017) (the “Applicable Law”), which was revised in 2019. Under the Applicable Law, trade secret has to be unknown to the public, possess commercial value and subject to confidential measures.
3. Under the Applicable Law, one of the infringement actions is obtaining and/or using trade secret illegally disclosed by employee/former employee of another company with the knowledge of illegal disclosure.


Feel free to contact asiallians@asiallians.com for more information.

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