

Landlord and Tenants Jointly Liable for Trademark Infringement

On December 19, 2005, the Beijing No. 2 Intermediate Court delivered its decision to find a landlord company jointly liable for its tenant's trademark infringement.

Beijing's Xiu Shui Market (Silk Street) was notorious for its sale of fake luxury goods. There was little effective enforcement against individual vendors, who were mostly transient street traders. At the end of 2004, the market was closed down by the government. In January 2005, an in-door market called New Xiu Shui Market was opened nearby with same vendors. In the opening ceremony, the management of the market promised that it would not allow sale of counterfeit goods.

On March 23, 2005, the Beijing Municipal Administration for Industry and Commerce (Beijing AIC) issued a bulletin, banning sale of goods with 23 high profile brand names in any of the city's markets operated similarly. According to the bulletin, goods with listed brand names sold in the markets shall be deemed counterfeit and be confiscated. Repeated offenders will be punished and required to leave the market. Managements of the markets may be punished if no efficient measures against counterfeiting were taken.

In May 2005, the Quality Brands Protection Committee (QBPC) of the China Association of Enterprises with Foreign Investment, on behalf of Louis Vuitton, Gucci, Chanel, Prada and Burberry, notified landlord Beijing Xiushui Haosen Clothing Co. Ltd. of the sale of counterfeits in the market. After finding that counterfeits were still on sale, the QBPC filed a lawsuit with the Beijing No.2 Intermediate Court against the landlord and five individual vendors, claiming damages of around US\$300,000. The landlord argued that it had posted notices at the premises prohibiting the sale of counterfeits and, upon receipt of the complaint, it had stopped leasing booths to vendors QBPC found to be selling fake products.

The court found that the defendant failed to take effective measures to stop the ongoing sale of unauthorized products after the trademark owners notified it, and thus facilitated infringement. The court held that the defendant should be jointly and severally liable for the conduct of the vendors. The five plaintiff companies were each awarded damages of approximately US\$2,500.

The China Trademark Law does not have an express provision on a landlord's liability for contributory infringement. However, Article 50 of the Implementing Rules of Trademark Law states that the "provision of storage, transportation, postage, concealment and convenience to facilitate infringement of exclusive

rights to use a registered trademark" constitutes an infringement.

After issuance of this court decision, Beijing AIC imposed penalty on the same landlord on the same ground.

The defendant has appealed the court decision.

On April 18, 2006, the Beijing High People's Court issued its ruling, ordering five tenants of New Xiushui Market and the landlord of the market, Beijing Xiushui Haosen Clothing Co., Ltd. to pay 20,000 yuan (US\$ 2,470) compensation jointly to each of the five plaintiffs, Chanel, Louis Vuitton, Gucci, Prada and Burberry for trademark infringement.

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