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Siemens wins China TM case against uncooperative defendant

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On 22 April 2024, China's Supreme People's Court (SPC) announced the beginning of IP Week. It released 10 important IP cases and 50 typical IP cases of the Chinese courts and the Chinese Courts' Judicial Protection of Intellectual Property in 2023.

In the case No. 2022 SPC Minzhong 312, concerning the trademark SIEMENS, the SPC granted high damages mainly based on the plaintiff's evidence. This decision may deter uncooperative infringers.

Case summary

Ningbo Qishuai Electric Appliances Co., Ltd., the defendant, registered outside China a company called Shanghai Siemens Electric Appliances Co., Ltd. It used the corporate name as a business sign extensively on products such as washing machines that it made and sold, product packaging, and relevant promotional activities.

The plaintiff Siemens sued Ningbo Qishuai for trademark infringement and unfair competition. The first-instance court upheld the petition for unfair competition, but rejected the trademark infringement claim concerning the defendant's use of the corporate name on products.

The court ordered Ningbo Qishuai to immediately stop its unfair competition and granted damages of CNY100 million (€13 million) plus the reasonable expense of CNY163 thousand (€21 thousand).

Ningbo Qishuai appealed. The SPC ruled that, as it was aware of the fame of the trademarks SIEMENS in Latin and Chinese characters, Ningbo Qishuai willfully used the corporate name on washing machines and caused consumer confusion. This constituted trademark infringement and the use on the product packaging and the relevant promotional activities constituted unfair competition.

The evidence was insufficient to prove either Siemens' actual loss or the defendant's profit but sufficient to prove the defendant's profit has obviously exceeded the maximum statutory damage of CNY3 million as prescribed in the applicable laws.

Under these circumstances, as Ningbo Qishuai refused to provide the relevant accounting data, which constituted an obstruction of evidence, the SPC upheld the damages decided in the first instance ruling and rejected the appeal.

Analysis

This case is significant in three respects:

1. The defendant, which did not cooperate in disclosing the accounting evidence in its care, has to face the unfavorable result under Article 63.2 of the Chinese Trademark Law. As China does not have an evidence discovery procedure like the USA, this provision and precedent is particularly helpful.
2. Although the laws have set the maximum statutory damage, when it is evident that the trademark owner's loss or the infringer's profit has exceeded the maximum, the courts may grant higher damages accordingly.
3. The SPC confirmed that the unauthorized use of others' famous marks in a corporate name may constitute trademark infringement if the corporate name is attached to products and has the function of identifying the source of goods. However, in this case the mark SIEMENS in Latin and Chinese characters is very distinctive and famous in and outside China. If a mark in question is less distinctive or famous, the ruling might be different.