

4.5-Year Prison Sentence in Shanghai for Counterfeiting of Anchor Butter

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On October 24, 2023, the Shanghai Jinshan Primary People's Court announced the sentencing of Wang XX to 4.5 years in prison and a 2 million RMB fine for the crime of counterfeiting registered trademarks for Anchor and Fonterra after a year on the run. A co-defendant Wang YY received a suspended sentence. Over several years they sold about 8 million RMB of butter and other dairy products bearing counterfeited trademarks.

On October 28, 2020, the public security agency seized 453 packages of labeled counterfeit "Anchor" butter (500g/pack), 658 packages of "Anchor" cheese shreds (500g/pack), and a large number of "Anchor-labeled information sheets, packaging films, etc., with a total value of more than 30,000 RMB.

On March 31, 2022, the co-defendant Wang YY was captured by the public security organs. He confessed the facts of his participation in the crime. On July 6 of the same year, the defendant Wang XX was arrested by the public security organs and refused to confess the facts of the crime. During the trial of the case, with the help of his family members, the defendant Wang YY voluntarily surrendered his illegal income of 13,000 RMB.

The People's Court held that the defendants Wang XX and Wang YY used the same trademark as someone else's registered trademark on the same kind of goods without the permission of the owner of the "Anchor" registered trademark, and the illegal business revenue was huge, which was considered a particularly serious circumstance, and their actions constitute the crime of counterfeiting registered trademarks.

The defendant Wang XX provided funds, purchased raw materials, customized labels, opened an online store, determined product types and production quantities, and directed others to counterfeit registered trademarks. He played a major role in the joint crime and was the principal offender. He did not surrender or confess. Probation may be applied if the criminal voluntarily withdraws his illegal gains, the circumstances of the crime are minor, and he shows repentance.

The Court reasoned, the defendant Wang YY played a secondary or auxiliary role in the joint crime and was an accessory, so he should be given a lighter or reduced punishment. He voluntarily surrendered his illegal gains, the crime is relatively minor, and he shows remorse, so he may be subject to probation.

Based on the two defendants' criminal circumstances, status, role, social harm, attitude of confession and repentance, etc., in order to maintain the socialist market economic order and protect

intellectual property rights from infringement, the Jinshan District People's Court convicted the defendant Wang XX of the crime of counterfeit registered trademarks in accordance with the law and was sentenced to four years and six months in prison and fined RMB 2 million. The defendant Wang YY was sentenced to two years and six months in prison, suspended for three years, and fined 60,000 RMB for the crime of counterfeiting a registered trademark.

Judge Li Jing stated,

I. China provides diversified legal remedies for trademark infringement

Trademark infringement damages the legitimate rights and interests of the trademark owner, reduces the competitiveness of its goods or services, and impairs its commercial reputation. The infringer shall bear civil liability. At the same time, trademark infringement causes confusion among consumers about the source of goods or services, disrupts the market economic order, and harms public interests. The infringer shall bear administrative liability, and serious counterfeiting will also bear criminal liability.

Articles 57, 60, and 63 of the Trademark Law respectively stipulate seven types of situations that infringe the exclusive right to register a trademark, the punitive measures that the industrial and commercial administrative department can take for infringement, and the method for determining the amount of compensation. Articles 213, 214 and 215 of the "Criminal Law" respectively stipulate the crime of "counterfeiting registered trademarks", "the crime of selling goods with counterfeit registered trademarks" and "illegal manufacturing and selling of illegally manufactured registered trademarks". Through diversified accountability methods, it is conducive to protecting the civil rights of trademark owners, safeguarding the legitimate rights and interests of consumers, deterring potential criminal acts, and promoting the normal operation of the market economic order.

II. To constitute the crime of counterfeiting a registered trademark, three elements must be met:

1. The perpetrator uses someone else's registered trademark without the permission of the registered trademark owner. This is a prerequisite for the crime of counterfeiting a registered trademark. If the perpetrator has obtained the permission of the owner of the registered trademark but fails to complete relevant procedures in accordance with legal procedures, it cannot be considered to constitute a crime.
2. The perpetrator objectively carried out the act of using the same trademark as someone else's registered trademark on the same kind of goods or services. "The same kind of goods and services" refers to the goods and services that are the same as the goods and services approved for use by the registered trademark. "The same trademark" means that the trademark used by the illegal perpetrator is highly consistent with the registered trademark of the right holder.
3. The above-mentioned behavior of the perpetrator only constitutes a crime if the circumstances are serious. This is the line that separates a crime from a non-criminal act. Article 1 of the "Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement" stipulates the circumstances of "serious circumstances" and "particularly serious circumstances".

The behavior of the two defendants in this case fully complied with the above conditions, constituted the crime of counterfeiting registered trademarks, and should be punished in accordance with the law.

III. Business operations should be legal and compliant and must not cross the border line

"A gentleman loves money and must acquire it wisely." In addition to civil and administrative liability,

counterfeiting of registered trademarks may also bear criminal liability. Here, the judge reminded that operators should uphold the principle of good faith, be self-disciplined, operate legally, and respect the intellectual property rights of others. They should not have the evil intention of “free riding” on famous brands, and should not “steal” other people’s intellectual property achievements at will. Otherwise, they will eventually bear corresponding legal responsibilities.

The two defendants absconded after the other co-defendants were caught. They were caught more than a year later and were eventually criminally punished. While effectively punishing the crime, it also had a deterrent effect on potential criminal behavior.

IV. Consumers are advised to choose formal channels when purchasing goods

Online shopping has gradually become the preferred method for many consumers. One-click ordering and door-to-door delivery are convenient and fast. Since there is no way to inspect the product before ordering, it is difficult to distinguish between the genuine and the fake, making it easy to be deceived. It is recommended that consumers choose regular merchants and platforms, check product information carefully, and promptly check the quality and safety of goods after receiving them. If counterfeit goods are found, actively provide evidence of illegal activity and jointly combat infringement and counterfeiting.

The full text of the announcement is available [here](#) (Chinese only).

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