

Interpretation by SPC and SPP on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property

Full text

To punish criminal acts of infringing on intellectual property in accordance with law and to maintain the order of the socialist market economy, some concrete problems regarding law application to handling criminal cases involving infringement on intellectual property are hereby interpreted as follows in accordance with applicable provisions of the Criminal Law of the People's Republic of China ("the Criminal Law"):

Article 1 Using an identical trademark on the same merchandise without permission of its registered owner in any of the following circumstances falls under the definition of "the circumstances are serious" stipulated in Article 213 of the Criminal Law and shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of forging registered trademarks:

- (1) the amount of illegal business volume being more than RMB 50,000 or that of illegal gains being more than RMB 30,000;
- (2) forging more than two registered trademarks, the amount of illegal business volume being more than RMB 30,000 or that of illegal gains being more than RMB 20,000;
- (3) other circumstances of a serious nature.

Whoever having any of the following acts that falls under the definition of "the circumstances are especially serious" stipulated in Article 213 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of forging registered trademarks:

- (1) the amount of illegal business volume being more than RMB 250,000 or that of illegal gains being more than RMB 150,000;
- (2) forging more than two registered trademarks, the amount of illegal business volume being more than RMB 150,000 or that of illegal gains being more than RMB 100,000;
- (3) other circumstances of an especially serious nature.

Article 2 Whoever knowingly sells commodities bearing counterfeited registered trademarks, if the amount of sales is more than RMB 50,000, and thus falls under the definition of "the amount of sales is relatively large" stipulated in Article 214 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of selling commodities bearing counterfeited registered trademarks.

Whoever selling such commodities of more than RMB 250,000 in value falls under the definition of "the amount of sales is huge" stipulated in Article 214 of the Criminal Law and shall be sentenced to

fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for the crime of selling commodities bearing counterfeited registered trademarks.

Article 3 Whoever forges or makes representations of another person's registered trademarks without authorization of the person or sells such representations in any of the following circumstances and thus falls under the definition of "the circumstances are serious" stipulated in Article 215 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined for committing the crime of illegally making registered trademarks and selling illegally-made registered trademarks:

- (1) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of other person's registered trademarks forged or made without authorization being more than 20,000 copies, or the amount of illegal business volume being more than RMB 50,000, or the amount of illegal gains being more than RMB 30,000;
- (2) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of more than two of other person's registered trademarks forged or made without authorization being more than 10,000 copies, or the amount of illegal business volume being more than RMB 30,000, or the amount of illegal gains being more than RMB 20,000;
- (3) other circumstances of a serious nature.

Whoever having any of the following acts that falls under the definition of "circumstances of an especially serious nature" stipulated in Article 215 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of illegally making registered trademarks and selling illegally-made registered trademarks:

- (1) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of other person's registered trademarks forged or made without authorization being more than 100,000 copies, or the amount of illegal business volume being more than RMB 250,000, or the amount of illegal gains being more than RMB 150,000;
- (2) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of more than two of other person's registered trademarks forged or made without authorization being more than 50,000 copies, or the amount of illegal business volume being more than RMB 150,000, or the amount of illegal gains being more than RMB 100,000;
- (3) other circumstances of an especially serious nature.

Article 4 Whoever counterfeits the patent of another person in any of the following circumstances and thus falls under the definition of "the circumstances are serious" stipulated in Article 216 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of counterfeiting the patent of another person:

- (1) the amount of illegal business volume being more than RMB 200,000 or that of illegal gains

- being more than RMB 100,000;
- (2) causing direct economic loss of more than RMB 500,000 to the owner of patent;
- (3) counterfeiting more than two patents, the amount of illegal business volume being more than RMB 100,000 or that of illegal gains being more than RMB 50,000;
- (4) other circumstances of a serious nature.

Article 5 Whoever, for the purpose of making profits, commits any of the acts of infringement on copyright mentioned in Article 217 of the Criminal Law, if the amount of illegal gains is more than RMB 30,000, and thus falls under the definition of "the amount of illegal gains is relatively large"; or whoever has any of the following acts and thus falls under the definition of "there are other serious circumstances" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of infringing on copyright:

- (1) the amount of illegal business volume being more than RMB 50,000;
- (2) reproducing and distributing more than 1,000 illegal copies of a written work, musical work, motion picture, television program or other visual works, computer software or other works without permission of the copyright owner;
- (3) other circumstances of a serious nature.

Whoever, for the purpose of making profits, commits any of the acts of infringement on copyright mentioned in Article 217 of the Criminal Law, if the amount of illegal gains is more than RMB 150,000, and thus falls under the definition of "the amount of illegal gains is huge"; or whoever has any of the following acts and thus falls under the definition of "there are other especially serious circumstances" shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of infringing on copyright:

- (1) the amount of illegal business volume being more than RMB 250,000;
- (2) reproducing and distributing more than 5,000 illegal copies of a written work, musical work, motion picture, television program or other visual works, computer software or other works without permission of the copyright owner;
- (3) other circumstances of an especially serious nature.

Article 6 Whoever, for the purpose of making profits, commits any of the acts stipulated in Article 218 of the Criminal Law, if the amount of illegal gains is more than RMB 100,000, and thus falls under the definition of "the amount of illegal gains is huge" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of selling works reproduced by infringing on the copyright:

Article 7 Whoever commits any of the acts stipulated in Article 219 of the Criminal Law to cause losses of more than RMB 500,000 to the obligee of business secrets and thus falls under the definition of "causing heavy losses to the obligee of business secrets" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of infringing on business secrets.

Whoever causes losses of more than RMB 2.5 million to the obligee of business secrets and thus falls under the definition of "the consequences are especially serious" stipulated in Article 219 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven

years and shall also be fined for committing the crime of infringing on business secrets.

Article 8 "Identical trademarks" as stipulated in Article 213 of the Criminal Law refers to the trademarks either identical to the registered trademarks infringed on, or showing no notable visual difference from the trademarks infringed on and thus being misleading to the public.

"Use" as stipulated in Article 213 of the Criminal Law refers to such acts as applying registered trademarks or counterfeited registered trademarks to commodities, commodity packing and containers, commodity user guides and commodity transaction documents, or using registered trademarks or counterfeited registered trademarks for advertisement, publicity, exhibitions and other business activities.

Article 9 "Amount of sales" as stipulated in Article 214 of the Criminal Law refers to all the illegal incomes gained or ought to be gained by selling commodities bearing counterfeited registered trademarks.

Any of the following circumstances shall be regarded as falling under the definition of "knowingly" stipulated in Article 214 of the Criminal Law:

- (1) Knowing that the registered trademarks on the commodities that he/she sells have been altered, replaced or covered;
- (2) Selling the same commodities for which one has already been given administrative penalty or has borne civil responsibilities for selling commodities bearing counterfeited registered trademarks;
- (3) Counterfeiting or altering the authorization documents of the registrant or knowing such documents have been counterfeited or altered;
- (4) Other circumstances in which the fact that the registered trademarks borne by the commodities are counterfeited is known.

Article 10 Any of the following acts falls under the definition of "counterfeiting patent of another person" stipulated in Article 216 of the Criminal Law:

- (1) Citing patent number on the commodities or the packing of the commodities one produces or sells without permission of the owner of the patent;
- (2) Citing patent number in advertisement or other publicity materials without permission of the owner of the patent so as to make people think that the involved technology is the patented technology of another person;
- (3) Citing patent number in contract without permission of the owner of the patent so as to make people think that the involved technology in the contract is the patented technology of another person;
- (4) Counterfeiting or altering the patent certificates, patent documents or patent application documents of another person.

Article 11 The circumstances of charging directly or indirectly by such means as publishing paid advertisement fall under the definition of "for the purpose of making profits" stipulated in Article 217 of the Criminal Law.

"Without permission of the copyright owner" as stipulated in Article 217 of the Criminal Law refers to the

circumstances where authorization of the copyright owner is not obtained, the authorization documents of the copyright owner are altered or the authorization scope is exceeded.

Distributing a written work, musical work, motion picture, television program or other visual works, computer software or other works to the public by information network falls under the definition of "reproducing and distributing" stipulated in Article 217 of the Criminal Law.

Article 12 "Illegal business volume" as stipulated in the Interpretation refers to the value of the products produced, stored, transported and sold by the doer in the course of infringing on intellectual property. Value of the products produced by infringing on intellectual property shall be computed according to the prices at which such products are actually sold. Value of the products produced by infringing on intellectual property produced, stored, transported, and those not sold shall be computed according to the labeled prices or the actual prices found to be sold at after investigation. Value of the products produced by infringing on intellectual property without labeled prices or whose actual prices are impossible to be ascertained shall be computed according the middle market prices of such products.

Values of illegal business volume, illegal gains and amount of sales shall be computed cumulatively in cases of repeatedly infringing on intellectual property where such acts have not yet been given administrative penalty or have not so far initiated criminal procedures.

"Copies" as stipulated in Article 3 of the Interpretation refers to one piece of representation of the complete logo of the trademark.

Article 13 Committing the crime of counterfeited registered trademarks stipulated in Article 213 of the Criminal Law while selling commodities bearing such counterfeited registered trademarks and thus constituting a crime shall be convicted and punished in accordance with provisions of Article 213 of the Criminal Law for committing the crime of counterfeiting registered trademarks.

To whoever that commits the crime of counterfeiting registered trademarks stipulated in Article 213 of the Criminal Law while knowingly selling commodities bearing registered trademarks counterfeited by another person and thus constituting a crime, a combined punishment for several crimes shall be applied.

Article 14 Committing the crime of infringing on copyright stipulated in Article 217 of the Criminal Law while selling commodities produced by infringing on copyright and thus constituting a crime shall be convicted and punished in accordance with provisions of Article 217 of the Criminal Law for committing the crime of infringing on copyright.

To whoever that commits the crime of infringing on copyright stipulated in Article 217 of the Criminal Law while knowingly selling works reproduced by infringing on the copyright and thus constituting a crime, a combined punishment for several crimes shall be applied.

Article 15 Where a unit commits any of the crimes stipulated in the Articles 213 through 219 of the Criminal Law, it shall be convicted and sentenced according to the criteria that are as three times higher as those for convicting and sentencing individuals committing same crimes according to the

Interpretation.

Article 16 Whoever knowingly provides loans, funds, bank accounts, invoices, certificates, licenses, production and operation places, as well as facilities and assistance in producing, storing and import-export agency services shall be deemed an accomplice in the crime of infringing on intellectual property.

Article 17 Should discrepancies arise between the Interpretation and other legal interpretations promulgated previously regarding infringement on intellectual property, the previously promulgated interpretations shall not be applied after the Interpretation goes into effect.