4.26 期间公布的典型案例中的商业秘密案件摘要（2020）

一、 “非晶带材”侵犯商业秘密罪案

案件来源：2019 年青岛中院知识产权司法保护十大典型案例

审理机关：青岛市即墨区人民检察院

被 告 人：姜某某、于某、孟某

案情简介：

被告人姜某某系青岛云路先进材料技术有限公司（简称云路公司）员工，与公司签订保密协议并领取保密津贴。姜某某利用在云路公司参与设备研发的工作之机，获取了该公司的非晶带材生产线中的涉密技术资料。2016 年 7 月份，经云路公司原职工即被告人于某、孟某居中联系，将其掌握的涉密技术图纸拷贝给云路公司有竞争关系的浙江兆晶股份有限公司（简称兆晶公司）。2016 年 10 月份，姜某某利用其掌握的技术秘密帮助浙江中柏新材料有限公司（简称中柏公司，该公司于 2016 年 3 月 31 日申请设立，兆晶公司为唯一股东）搭建了中柏一期非晶生产线并正式投产。于某在未办理辞职手续的情况下，私自说服原云路公司员工共 10 余人到中柏公司工作，操作设备进行非晶带材的生产。经评估，涉案技术秘密对云路公司造成的许可费损失费用为人民币 1,926 万元。青岛市即墨区人民法院审理认为，被告人姜某某行为构成侵犯商业秘密罪，判处有期徒刑四年，并处罚金；被告人于某有期徒刑一年，缓刑一年，并处罚金；被告人孟某有期徒刑一年，缓刑一年，并处罚金。青岛市中级人民法院二审维持原判。

判决要旨：

因职工离职导致的商业秘密泄露是一类较为多见的知识产权纠纷，也是企业在知识产权保护中亟待解决问题，本案一方面提醒员工在自由择业过程中应当尊重原企业知识产权，自觉履行保密义务，另一方面对企业在日常经营管理中完善措施，加强商业秘密保护也起到警示作用。本案中，法院通过刑事判决，严厉打击了侵犯商业秘密的犯罪行为，有力维护了权利人的合法权利，充分体现了知识产权刑事保护的威慑力。

二、 广州天赐高新材料股份有限公司、九江天赐高新材料有限公司与安徽纽曼精细化工有限公司等侵害技术秘密纠纷案

案件来源：2019 年广州知识产权法院服务和保障科技创新十大典型案例

审理机关：广州知识产权法院

案　　号：（2017）粤 73 民初 2163 号

案情简介：

天赐公司长期从事卡波产品研发，自称该产品配方、工艺、流程、设备构成技术秘密。2014 年 5 月，天赐公司发现安徽纽曼公司未经许可使用其技术秘密，已追究了相关人员的刑事责任。刑事案件查明，华慢作为天赐公司卡波研发负责人，将其掌握的技术秘密，披露给安徽纽曼公司使用。刘宏作为安徽纽曼公司的股东和法定代表人，与华慢合谋窃取了天赐公司技术秘密。天赐公司据此在本案中诉称上述主体构成民事侵权，要求停止侵权并赔偿损失。

裁判要旨：

广州知识产权法院裁判要旨：支持天赐公司卡波产品工艺、流程、设备构成技术秘密之主张。认定华慢违反保密义务和保密要求，将天赐公司技术秘密披露给安徽纽曼公司使用，刘宏、安徽纽曼公司在明知的情况下仍予以获取并使用，共同侵害了天赐公司技术秘密。胡泗春、朱志良提供帮助，也构成共同侵权。侵权者属恶意侵权且情节严重，安徽纽曼公司部分侵权获利为 11951095 元，支持天赐公司提出的惩罚性赔偿请求，以此为基数，综合考虑侵权持续时间、经营规模、涉案技术秘密对产品形成的关键作用，以及安徽纽曼公司无正当理由未全面提交获利数据和原始凭证构成举证妨碍等因素，确定适用 2.5 倍惩罚判决其赔偿 3000 万元，其他侵权者根据情节大小承担相应赔偿责任。

一审判决后，天赐公司、华慢、刘宏、安徽纽曼公司均上诉，案件现正在最高人民法院知识产权法庭进行二审。

案件评价：

技术秘密作为科技创新成果的重要存在形式，一旦被披露将极大损害权利主体的技术竞争力。今年 11 月中共中央办公厅、国务院办公厅印发的《关于强化知识产权保护的意见》明确指出，探索加强对商业秘密的有效保护。在法律适用上，今年新修订的反不正当竞争法规定了举证义务的转移，客观上降低了权利人对构成商业秘密要件和认定侵权等关键环节的举证责任，在立法层面上践行了强保护的理念。同时，反不正当竞争法还在侵权责任部分直接规定了 1 倍以上 5 倍

以下的惩罚性赔偿，也与《关于强化知识产权保护的意见》提出的加快引入侵权惩罚性赔偿制度相呼应。本案中，侵权者侵权获利的全部数额未能确定，在处理上没有因此放弃适用惩罚性赔偿，而是在部分数额可以确定的情况下，以此为基数进行确定。该案是广州知识产权法院首例在这两方面都进行大胆探索的案件，对类案处理具有重要参考价值。

三、 河南中联热科工业节能股份有限公司与河南某设备公司、勾某某等人侵害商业秘密纠纷案

案件来源：2019 年郑州法院知识产权司法保护十件典型案例

审理机关：河南省高级人民法院、郑州市中级人民法院

案　　号：（2019）豫知民终 450 号、（2019）豫 01 知民初 324 号

案情简介：

勾某某曾任河南中联热科工业节能股份有限公司(以下简称中联公司)总监、营销副总，负责公司销售相关工作，其在与中联公司签订的劳动合同中，约定了保守中联公司商业秘密的条款。勾某某在中联公司任职期间，代表中联公司与承德鑫澳食品有限公司（以下简称鑫澳公司）签订了烘干设备买卖合同，其掌握了相关商业信息。勾某某从中联公司离职后即加盟河南某设备公司，后河南某设备公司与鑫澳公司签订了烘干设备买卖合同。原告中联公司认为，河南某设备公司、勾某某侵犯了其商业秘密。一审法院认为，勾某某作为原告中联公司股东和曾经高管，明知其掌握的鑫澳公司的相关信息属于商业秘密，仍然违反原告关于保守商业秘密的要求，披露给河南某设备公司，河南某设备公司明知被告勾某某的违法行为，仍然使用上述客户名单，与鑫澳公司进行实际交易，二被告的行为不正当的损害了原告中联公司的竞争优势，亦侵害了原告的商业秘密。据此，判令河南某设备公司、勾某某赔偿中联公司 7 万元，2 年内停止侵犯中联公司涉案商业秘密的行为。一审宣判后，中联公司、河南某设备公司、勾某某均提出上诉。二审法院审理后维持原判。

判决要旨：

随着市场竞争日益激烈，拼抢人才资源成为企业之间竞争的主要战场。“挖墙脚”成为了捷径之一。企业之间正常的人才流动，有利于促进经济的发展，但利用跳槽员工掌握的原单位的商业秘密，抢夺他人市场的行为是法律所禁止的。实践中，因侵犯商业秘密的行为较为隐蔽，导致受侵害人搜集证据难，诉讼难度大。本案根据这一特点，采用“接触+实质性相似-合法来源”原则，合理分配举证责任，准确查明侵权事实，依法惩罚了侵权人的侵权行为，维护了权利人的权利。该判决对促进企业之间公平有序开展竞争，营造良好的营商环境起到了积极的引导作用。

四、 金华市查获周某蒙等人侵犯商业秘密案

案件来源：2019 年度浙江省知识产权保护十大典型案例（微信公众号：浙江市场监管矩阵）

案情简介：

2019 年 7 月，金华市公安局接到举报，义乌阿曼达进出口有限公司原职员周某蒙、徐某等人利用职务便利，窃取公司商业秘密的客户资料等经营性信息，造成公司客户流失，业务受损的重大损失。8 月 21 日，金华市公安局予以立案侦查。

经调，犯罪嫌疑人周某蒙自 2014 年入职义乌阿曼达进出口有限公司，系子公司义乌标冠进出口有限公司总经理。自 2017 年以来，周某蒙勾结郭某、徐某等人将其掌握的部分阿曼达公司客户转至其个人经营的义乌市明登进出口有限公司下单出货。至 2019 年案发，累计违法所得近 70 万元。**现该案 3 名犯罪嫌疑人于 2019 年 11 月 29 日已全部移送起诉。**

推荐理由：

以案说法，这个案例的典型之处在于能够给创业者的一种启示，也是对保护公司机密重要性的宣传。

五、 **“员工私制电表对外销售”侵犯商业秘密罪案**

案件来源：2019 年北京法院知识产权司法保护十大案例

案　　号：（2019）京 01 刑终 329 号/（2018）京 0108 刑初 258 号

公诉机关：北京市海淀区人民检察院

被 告 人：许某、徐某

案情简介：

许某曾系北京福星晓程电子科技股份有限公司(简称晓程公司)外贸部主管，徐某原系晓程公司生产采购部采购员。2012 年至 2014 年间，许某违反晓程公司相关保密要求，将其所掌握的含有四个核心程序源代码技术信息提供给他人，并伙同徐某等人使用上述核心程序源代码制作电表，通过其所实际控制的北京海马兴旺科贸有限公司（简称海马公司）向平壤合营公司出口销售相关电表，非法获利。其中，许某负责出口及销售电表，徐某负责采购电表元器件、加工及后续焊接等。经查，根据立项、研发等材料、非公知性鉴定、劳动合同、保密协议及相关证人证言等在案证据，足以证实晓程公司享有涉案四个核心程序源代码的电表程序技术秘密，且采取了严格保密措施。另查，晓程公司主张其涉案技术研发成本为 263 万余元；徐某自认海马公司向其进货单价是 155 元，出口单价 26 美元；在最初与许某向朝鲜制售的 2 万套电表中其个人获利 10 万元，之后其与许某合作制造了三四十万个电表。2017 年 6 月，徐某、许某先后被抓获归案。公诉机关于 2018 年 1 月 25 日向一审法院提起公诉，认为许某、徐某的行为触犯了刑法第二百一十九条第一款第三项等相关规定，构成侵犯商业秘密罪，且后果特别严重，提请依法惩处。晓程公司当庭诉称二被告人非法获利巨大，仅出口退税就获利 700 余万元，给晓程公司造成巨额经济损失。一审法院认为，许某、徐某违反晓程公司的保密要求，披露、使用或允许他人使用其所掌握的商业秘密，造成特别严重的后果，已构成侵犯商业秘密罪，应予惩处。公诉机关指控二被告人犯有侵犯商业秘密罪的事实清楚，证据确实充分，指控罪名成立。据此，一审法院判决：许某犯侵犯商业秘密罪，判处有期徒刑四年，罚金 300 万元；徐某犯侵犯商业秘密罪，判处有期徒刑四年，罚金 200 万。一审宣判后，二被告人均提出上诉。二审法院审理后驳回上诉，维持原判。

判决要旨：

本案系侵犯商业秘密罪的典型案例。随着市场竞争日益激烈，竞争对手、内部员工内外勾结获取、使用、披露权利人核心技术信息，侵犯商业秘密的情况屡见不鲜。因适用侵犯商业秘密罪的入罪要件非常严格，且受限于传统的刑事办案

思维，一定程度上影响了打击此类犯罪行为的成效。而针对侵犯商业秘密行为提起民事诉讼亦有诸多局限。本案裁判适当借鉴了民事审判规则和理论，综合考虑与“秘密性”特点相关的证据认定商业秘密；在判断技术秘密权属时，不仅局限于权利证书等传统刑事认定依据，而是结合立项、研发材料、成本投入及市场开发等相关证据，排除了存在权属争议的合理怀疑后作出认定，增强了裁判说服力。本案适当借鉴民事审判规则，充分论证被告人行为满足侵犯商业秘密罪的各项构成要件，既体现了知识产权“三合一”审判机制的优势，对严重侵犯商业秘密的行为给予有力打击，也加大了对商业秘密的保护力度。

六、 山东瀚霖生物技术有限公司、王某某侵犯商业秘密罪案

案件来源：2019 年度山东法院十大知识产权案例

公诉机关：济宁高新技术产业开发区人民检察院

被 告 人：山东瀚霖生物技术有限公司（简称瀚霖公司）、王某某

案情简介：

受害单位拥有涉案长碳链二元酸的生产技术，经山东省济宁市公安局委托鉴定为商业技术秘密。王某某为受害单位高管，其完全掌握该技术，并非法披露给瀚霖公司。瀚霖公司在明知王某某违反保密义务披露涉案生产技术的情况下，以利诱手段非法获取涉案商业秘密，并使用该商业秘密进行长碳链二元酸的生产经营，同时以申请专利的形式进行了披露。经公安机关委托鉴定，2010 年 1 月至 2015 年 3 月，瀚霖公司主营收入总额 10.15 亿元，毛利润总额 2.5 亿元。其中，出口销售额 1.2 亿元，毛利润总额 1762 万元。研发费用鉴证报告证实，受害单位投入的研发费用 1400 余万元。

法院经审理认为，瀚霖公司明知王某某系违反保密义务披露，以利诱手段非法获取涉案商业秘密，并使用该商业秘密生产经营，同时以申请专利的形式进行了披露，情节特别严重，其行为构成侵犯商业秘密罪。王某某违反保密义务将其所掌握的受害单位商业秘密披露给瀚霖公司使用，并全面负责瀚霖公司长碳链二元酸生产线建设及生产，系直接责任人员，其行为亦构成侵犯商业秘密罪。法院判令瀚霖公司犯侵犯商业秘密罪，判处罚金五百万元；王某某犯侵犯商业秘密罪，判处有期徒刑五年。

判决要旨：

本案是山东省实施知识产权民事、行政、刑事案件“三合一”审判以来影响最大的刑事案件。本案系单位与个人共同构成侵犯商业秘密罪，并涉及受害单位与瀚霖公司在全国各级法院进行的一系列专利、商业秘密等相关民事、行政诉讼，技术内容非常专业和复杂。本案的裁判，有效打击制裁了单位及个人的犯罪行为，保护了受害人的合法权益，为促进企业科技创新提供了有力的司法保护。

七、 廊坊市百越商贸有限公司与廊坊市若科玻璃有限公司、杨瑞侵害商业秘密纠纷案

案件来源：2019 知识产权司法保护状况白皮书（公布十五起知识产权司法保护典型案件）

审理机关：河北省高级人民法院、河北省廊坊市中级人民法院

案　　号：（2019）冀知民终 227 号、（2019）冀 10 民初 82 号

案情简介：

百越公司系从事玻璃马赛克、玻璃珠、碎玻璃等玻璃制品进出口业务的公司，杨瑞系百越公司职工，杨瑞与百越公司签订有《商业机密保密协议》，该保密协议约定，乙方承诺离职后承担与任职期间同样的保密义务和不能使用有关秘密信息的义务，不得利用甲方商业秘密进行新的研究和开发。杨瑞从百越公司离职，与他人共同设立了若科玻璃公司，后杨瑞将其全部股份转让给他人。百越公司认为，Celestial Fire Glass 公司（简称：CFG 公司）、SOUTHWEST BOULDER&STONE 公司（简称：MMR 公司）、Fire Glass Plus（简称：FGP 公司）公司均系百越公司的客户，曾和百越公司发生过多笔玻璃马赛克交易。根据国家税务总局廊坊市安次区税务局出具的开票信息显示：若科玻璃公司成立后，与 CFG 公司发生了 29 笔交易，与 MMR 公司发生了 3 笔交易，与 FGP 公司进行了 27 笔交易，且若科玻璃公司未能举证证明以上三个各户系其自行开发。百越公司认为若科玻璃公司的行为侵犯了其商业秘密，遂诉至法院，要求若科玻璃公司立即停止侵权，并赔偿百越公司经济损失 300 万元。

判决要旨：

法院经审理认为，首先，就百越公司主张的客户名单是否构成商业秘密，应当从秘密性、保密性和价值性三个方面去衡量。其次，关于若科玻璃公司、杨瑞是否侵犯了百越公司的商业秘密。应考虑若科玻璃公司是否实际通过杨瑞获取、使用杨瑞掌握的百越公司的商业秘密，由于若科玻璃公司、杨瑞提供的证据无法证明其具体是如何与以上三家公司建立的交易关系，且**百越公司还提交了若科玻璃公司向百越公司的其他客户发送报价邮件的证据，证明若科玻璃公司系主动与百越公司的客户联系进行交易，故可以认定若科玻璃公司与杨瑞构成共同侵犯百越公司商业秘密。**此外，关于若科玻璃公司、杨瑞停止侵权的责任问题。本案中由于客户名单不同于技术秘密，客户名单的载体通常不会通过某种方式公之于众，因此，如果要求若科玻璃公司停止侵害的时间持续到公众知悉时明显不合理，故应当由人民法院酌定侵权人停止侵权的时间和范围。二审法院判决若科

玻璃公司、杨瑞于判决生效之日起两年内停止使用百越公司的客户名单信息；若科玻璃公司、杨瑞共同赔偿百越公司经济损失 250000 元，为制止侵权的合理费用损失 50000 元。

评析：

反不正当竞争法既要保护商业秘密持有人的竞争优势，又要考虑到市场的开放性和竞争性。考虑到市场是开放的，客户名单作为商业秘密体现的价值也存在一定的期限，故本案中人民法院酌情确定杨瑞、若科玻璃公司停止使用百越公司客户名单信息的期限，而并非按照《反不正当竞争法》第十六条规定的将停止侵害的时间确定到该项商业秘密已为公众所知悉时为止。

八、 河北创迹餐饮管理有限公司与梁斌技术秘密许可使用合同纠纷案

案件来源：2019 知识产权司法保护状况白皮书（公布十五起知识产权司法保护典型案件）

审理机关：河北省高级人民法院、河北省承德市中级人民法院

案　　号：（2019）冀知民终 42 号、（2018）冀 08 民初 101 号

案情简介：

2017 年 3 月 10 日，河北创迹餐饮管理有限公司与梁斌签订了《河北创迹餐饮管理有限公司合同》，约定河北创迹餐饮管理有限公司向梁斌教授酥脆大煎饼、豆浆等产品制作“粗粮时间”加密配方，编号为：壹壹贰伍 B 号。其中第三条梁斌的义务约定，“非经河北创迹餐饮管理有限公司同意，梁斌不得泄露商业秘密，包括本项所有技术、配方等商业秘密，否则应承担 30 万元的赔偿金”。合同签订后，梁斌向河北创迹餐饮管理有限公司支付了 3980 元培训费，并在河北创迹餐饮管理有限公司处进行了学习。2017 年 9 月 19 日，河北创迹餐饮管理有限公司员工柏智伟将合同约定的“粗粮时间加密配方编号壹壹贰伍 B”等配方发送给了梁斌。

梁斌以“香酥杂粮煎饼果子”为用户名在“快手”APP 上传播煎饼果子的制作视频，并有网友与之互动。梁斌在微信中将配方及做法以 2000 元的价格转发给其他学员，从中获取利润。河北创迹餐饮管理有限公司认为其违反了双方签订的合同约定，遂将梁斌起诉至一审法院，要求判令梁斌支付违约金 30 万元。

判决要旨：

法院经审理认为，由于双方签订的《河北创迹餐饮管理有限公司合同》中明确约定了“粗粮时间”加密配方所属的各种酥脆大煎饼、养生软煎饼技术及配方为商业秘密，其配方秘密点是：如何烫面、烫面与冷面的混配比例及方法（以便实现煎饼是酥脆还是柔软），及添加不同配料的面糊以实现煎饼不同的口味。合同还约定，梁斌若违反本合同约定，河北创迹餐饮管理有限公司有权终止本合同，并收违约处罚金 30 万元等。梁斌又无相反的证据否认“粗粮时间”加密配方为商业秘密，本案应当认定各种酥脆大煎饼、养生软煎饼技术及配方，系《河北创迹餐饮管理有限公司合同》约定的技术秘密。河北创迹餐饮管理有限公司提交的视频证据、多份公证书显示，梁斌未经授权利用手机向他人教授与“壹壹贰伍 B 号”相同的技术，对外宣传了上述技术秘密，已构成违约。但梁斌向河北创迹餐饮管理有限公司支付培训费仅为 3980 元，《河北创迹餐饮管理有限公司合同》却约定要承担违约金 30 万元，明显畸高应当依法调低，法院最终判决梁斌向河北

创迹餐饮管理有限公司支付违约金 6 万元。

评析：

本案例可以告诉人们，商业秘密没有高低贵贱之分，只要符合法定条件的经营信息均可以构成商业秘密，从而打消人们对商业秘密的神秘感，学会使用法律武器更好地保护自己。

九、 厦门市杰惠祎电子商务有限公司诉厦门快先森科技有限公司、上海拉扎斯信息科技有限公司侵害经营秘密纠纷案

案件来源：2019 年福建法院知识产权司法保护十大案例

案情简介：

厦门市杰惠祎电子商务有限公司（下称杰惠祎公司）与上海拉扎斯信息科技有限公司（下称拉扎斯公司）签订《蜂鸟配送代理合作协议》，约定拉扎斯公司授权杰惠祎公司使用“蜂鸟配送”系列产品在厦门市思明区内经营“蜂鸟配送”业务。合同签订后，杰惠祎公司通过在拉扎斯公司的“饿了么”“蜂鸟团队版”配送平台注册账号、设置密码，并通过该账号进行员工管理、订单管理以及订单配送等操作。后来，该平台上原先绑定在杰惠祎公司名下的二百余名配送员信息（包括配送员姓名、身份证号码、配送手机号码）被删除，其中大部分配送员信息被陆续绑定至厦门快先森科技有限公司（下称快先森公司）在该配送平台的账号。为此，杰惠祎公司以快先森公司、拉扎斯公司侵害其经营秘密为由诉至法院。

厦门市中级人民法院一审认为，杰惠祎公司在“饿了么”的“蜂鸟团队版”配送平台上注册账号、设置密码，并通过该账号进行员工管理、订单管理以及订单配送等操作，系根据该平台的要求所进行的操作，并不能因此认定杰惠祎公司已采取了合理的保密措施，杰惠祎公司请求保护的信息不符合商业秘密的构成要件。本案纠纷实际上是杰惠祎公司内部部分成员因加盟关系破裂，离开杰惠祎公司自愿加入快先森公司并将其所掌握的信息带走所引发。一审法院据此判决驳回杰惠祎公司的诉讼请求。

福建省高级人民法院二审认为，杰惠祎公司主张涉案商业秘密是杰惠祎公司持有并通过账户密码及手机验证进行管理的公司配送人员名单等存于“饿了么”的“蜂鸟团队版”配送平台上的信息，并称该信息包括配送人员的姓名、身份证号码、手机号码等。该信息实际上是杰惠祎公司的员工名单，员工名单本身仅包含员工个人简单的基本信息，是在企业人力资源管理中自然形成的，并非杰惠祎公司通过创造性劳动所获得或积累，且员工基本信息也比较容易获得，不属于“不为公众所知悉”的经营信息。拉扎斯公司是“饿了么”的“蜂鸟团队版”配送平台的提供者，杰惠祎公司通过账号密码及手机验证方式登录“蜂鸟团队版”配送平台对配送人员进行管理、账目结算等，系根据该平台的要求进行的操作，符合杰惠祎公司与拉扎斯公司在《蜂鸟配送代理合作协议》中的约定，并非是为了防止信息泄露所采取的合理“保密措施”。所以，杰惠祎公司主张的商业秘密不能成立。据此，二审法院判决驳回杰惠祎公司的上诉，维持原判。

判决要旨：

《中华人民共和国反不正当竞争法》（1993 年）第十条第三款规定，商业秘密是指不为公众所知悉、能为权利人带来经济利益、具有实用性并经权利人采取保密措施的技术信息和经营信息。由此可见，一个信息要构成商业秘密必须同时具备秘密性、商业价值性和采取保密措施三个构成要件，该三要件缺一不可。通过配送平台进行管理的配送员信息往往仅包括配送人员的姓名、身份证号码及手机号码等，实际上属于企业的员工名单，系企业人事管理范畴。配送人员选择与哪个企业建立劳动关系是其基本权利，而且这类人员一般具有一定的团队性，只要团队中的主要人员“跳槽”，其他人员大多会跟随，故快递配送企业的配送人员名单发生变化是常态。因此，本案的“配送员信息”并不属于在经营中通过创造性劳动积累的“不为公众所知悉”的经营信息，不具有“商业秘密”意义上的“秘密性”。另外，通过账号密码和手机验证方式登录配送平台也是平台管理的惯常手段，不能认定为系采取了相应的“保密措施”。目前，随着电子商务的发展和国民消费结构的变化，快递配送行业在我国具有巨大的市场，各类管理平台应运而生，快递配送企业中配送人员流动频繁，如何进行人员管理是相关企业急需解决的问题。本案对快递配送企业如何加强员工和配送信息管理，完善平台结构等具有一定的指导意义。

十、 重庆慢牛工商咨询有限公司与谭庆、重庆亿联金汇企业管理咨询有限公司侵害商业秘密纠纷案

案件来源：2019 年中国法院 50 件典型知识产权案例/2019 年重庆法院十大知识产权案例

案　　号：（2019）渝 05 民初 1225 号

案情简介：

原告于 2018 年 5 月 21 日聘用被告谭庆在公司商务部门从事商务顾问工作，主要工作职责为负责对公司推广获得的客户信息进行跟踪，并与客户谈判、签约。2018 年 8 月至 2019 年 3 月被告谭庆在职期间，利用职务便利，多次将其掌握的原告已采取保密措施的客户名单及服务需求等信息披露给被告亿联金汇咨询公司。被告亿联金汇咨询公司利用获得的客户名单及需求信息，通过降低报价、伪装原告公司员工、电话拉客等方式为其提供代办工商营业执照等服务并收取相应费用，事后将收取费用的一定比例支付给被告谭庆作为报酬。经核算，上述二被告侵权行为造成的原告经济损失，依二被告通过微信转账方式确定成交金额计算，共计 24,710 元。

重庆市第五中级人民法院认为，被告谭庆在其任职原告公司商务代表期间，与被告亿联金汇咨询公司共同实施非法获取、披露、使用或者允许他人使用原告商业秘密的行为，情节严重，主观恶意明显，损害原告合法权益，扰乱市场竞争秩序，构成不正当竞争，依法应连带承担侵权责任。判决如下：一、被告谭庆、被告重庆亿联金汇管理咨询有限公司立即停止不正当竞争行为，不得披露、使用或允许他人使用已知悉的原告重庆慢牛工商咨询有限公司的商业秘密；二、被告谭庆、被告重庆亿联金汇管理咨询有限公司于本判决生效之日起十日内向原告重庆慢牛工商咨询有限公司连带赔偿经济损失 74 130 元；三、被告谭庆、被告重庆亿联金汇管理咨询有限公司于本判决生效之日起十日内向原告重庆慢牛工商咨询有限公司连带赔偿为制止侵权产生的合理费用 4500 元；四、驳回原告重庆慢牛工商咨询有限公司的其他诉讼请求。一审判决后，双方当事人均未提起上诉。

法院认为：本案所涉客户信息包括客户的姓名、电话、微信名片、证照、经营地址、家庭地址，以及交易的意向和需求。其中证照包括身份证、营业执照、房地产权证等，交易意向和需求包括代办工商注册登记、代办工商营业执照、代办餐饮服务许可证、代为记账、代为报税、代办刻章，以及询价、报价、成交价等商业信息。一般客户信息如姓名、地址、电话、微信号等等，通常较为容易从公开渠道获取，但是，客户有关代办工商事务和价格、费用要求等交易意向和需求，具有即时性、私密性，除非客户自己愿意公开披露交易意向和需求，客户针

对特定商家的交易意向和需求，一般不愿为其他商家所知晓，否则客户极易丧失在商家之间择优交易的机会，也可能影响到与其他商家商谈交易的优势。因此，这种带有即时性、私密性交易意向和需求的客户信息，往往不为公众所知悉。本案所涉客户信息中客户的交易意向和需求即属此类。被告抗辩认为，涉案客户信息已经通过网络渠道公开披露，无需付出代价即可轻易获取，但被告并未就此举证证明，此抗辩理由没有实施根据，本院不予采纳。

本院认为：鉴于二被告买卖原告商业秘密，通过非法交易从中牟利，共同实施侵犯原告商业秘密的不正当竞争行为的主管恶意明显，本院决定对二被告适用惩罚性赔偿标准，即以二被告买卖原告商业秘密交易金额 24,710 元作为被告因侵权所获利益，并以此为基数的三倍，确定二被告连带赔偿原告经济损失 74,130 元。

判决要旨：

在商业秘密保护中，对于客户名单、交易意向包括具体需求、价格咨询等具有即时性和私密性且能带来现实利益的商业信息应当作为商业秘密予以保护。权利人员工为谋取私利，串通同业竞争者，共同实施非法获取、披露、使用权利人商业秘密，损害权利人利益并使同业竞争者获利，情节严重，构成恶意的共同侵权，应当对员工和同业竞争者处以侵权所获利益的一倍以上五倍以下的惩罚性连带赔偿责任。

本案系《反不正当竞争法》2019 年 4 月修订后，准确界定商业秘密中“商业信息”以及对侵害商业秘密的行为适用惩罚性赔偿的第一批案件。

《反不正当竞争法》在 2019 年 4 月修订中增加了“商业信息”，2020 年 1 月 15 日《中美贸易协定》对商业秘密的约定中亦有“商业信息”的相关规定。本案结合相关证据，确定对于客户名单、交易意向包括具体需求、价格咨询等具有即时性和私密性且能带来现实利益的商业信息应当作为商业秘密予以保护，具有一定的指导价值。

实践中，公司员工与第三人里应外合侵害公司商业秘密的现象比较普遍，本案结合相关证据，认定公司员工与使用该商业秘密的他人构成共同侵权，承担连带责任，对规制公司员工与他人里应外合恶意串通损害公司商业秘密的行为，具有重要的实践意义。

《反不正当竞争法》在 2019 年 4 月修订中增加了惩罚性赔偿的规定。本案结合单位内部人员知悉商业秘密的价值，泄密的主观恶性较大，且与他人通谋，披露、使用商业秘密的后果以及对营商环境的破坏更严重，符合商业秘密惩罚性

赔偿的规定，按照侵权所得数额进行惩罚性赔偿，对探索商业秘密的惩罚性赔偿适用规则具有价值和意义。

本案一审判决后，双方当事人服从判决，且被告主动积极履行判决义务，说明裁判尺度把握得当，达到了法律效果和社会效果的高度统一。

十一、 昆山和准测试有限公司、富士和机械工业（昆山）有限公司与重庆三友机器制造有限责任公司、林信宏侵害技术秘密纠纷案

案件来源：2019 年重庆法院十大知识产权案例

案　　号：(2017)渝 01 民初 60 号、（2019）渝民终 80 号

案情简介：

林信宏（台湾居民）于 2005 年 9 月入职六和股份公司，先后在铸加开发课、F 群研发中心任工程师、资深工程师、F 群研发中心副课长职务，具体负责产品设计、分析及测试、现场产品生产等工作。2013 年 7 月起任营运总部副课长，负责管理研发中心（昆山）所有对内及对外之事务。2015 年 2 月起，林信宏入职昆山和准测试有限公司（以下简称和准测试公司），任执行经理，管理该公司所有对内及对外之事务。2015 年 3 月，林信宏从和准测试公司离职。

六和股份公司与林信宏签订的《六和机械股份有限公司员工约定书》中，有林信宏“保证基于职务上所得知之机密（包括公司经营上之各项机密及公司对他公司之保密约定）”的内容。

和准测试公司、富士和机械工业（昆山）有限公司（以下简称富士和公司）认为，林信宏非法披露、重庆三友机器制造有限责任公司（以下简称三友公司）非法获取、使用了涉案技术秘密，遂诉至一审法院，请求：1.判令三友公司、林信宏立即停止对和准测试公司、富士和公司技术秘密的侵权行为；2.判令三友公司、林信宏共同向和准测试公司、富士和公司公开赔礼致歉，并在市级以上报纸媒体刊登；3.判令三友公司、林信宏共同赔偿和准测试公司、富士和公司经济损失 990 万元；4.本案诉讼费用由三友公司、林信宏承担。

重庆市第一中级人民法院作出一审判决：驳回原告和准测试公司、富士和公司的全部诉讼请求。和准测试公司、富士和公司不服一审判决，向重庆市高级人民法院提起上诉。

重庆市高级人民法院认为：本案中，和准测试公司、富士和公司提交的用于证明涉案技术信息经权利人采取保密措施的唯一证据是六和股份公司与林信宏签订的《六和机械股份有限公司员工约定书》。然而，该证据无法证明涉案技术信息具有保密性，故相关信息不构成反不正当竞争法规定的商业秘密，理由如下：

根据《中华人民共和国反不正当竞争法》（1993 年施行）第十条第三款、《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十一条规定，采取保密措施的主体应为商业秘密权利人，以体现权利人的保密意愿。本案中，和准测试公司、富士和公司主张系商业秘密权利人，但该两公司提交的关于

保密措施的证据仅为案外人六和股份公司与林信宏签订的《六和机械股份有限公司员工约定书》，而未提交以该两公司作为主体采取保密措施的证据。即使和准测试公司、富士和公司能够证明六和股份公司系涉案技术信息的原始权利人且采取了保密措施，但在相关技术信息资料由原始权利人转移至和准测试公司之后，和准测试公司仍应举证证明在其持有相关信息期间也采取了保密措施，以确保在正常情况下涉密信息不会泄漏。否则，本院无法认定涉案技术信息经权利人采取了保密措施。

并且，仅就六和股份公司采取的保密措施而言，也不足以被认定为反不正当竞争法第十条第三款规定的“保密措施”。六和股份公司与林信宏签订的《六和机械股份有限公司员工约定书》中虽然有“保证基于职务上所得知之机密（包括公司经营上之各项机密及公司对他公司之保密约定）”的保密条款，但由于该条款对于林信宏负有保密义务的信息并无明确指向，与涉案技术信息无法形成对应关系，从而导致林信宏较难知悉需要保密的技术信息的具体内容和范围。因此，在正常情况下该保密条款并不足以防止涉密信息泄漏，即不符合《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十一条规定的要求。故和准测试公司、富士和公司的上诉请求不能成立，应予驳回；一审判决认定事实清楚，适用法律正确，应予维持。二审法院判决如下：驳回上诉，维持原判。

判决要旨：

1.侵害商业秘密纠纷案件中，原告主张其继受取得的商业秘密具有保密性的，应提供证据证明原告及原权利人均采取了保密措施；

2.原告将签订保密协议作为其唯一的保密措施时，该协议应对需要保密的信息有明确指向，使保密义务主体知悉需要保密的信息的具体内容和范围。

商业秘密保护是2020年1月《中美贸易协定》的重要内容之一，也是2019年《中华人民共和国反不正当竞争法》修订的主要内容之一。修订后的《中华人民共和国反不正当竞争法》对商业秘密保密性的要求没有改变，并且，在增加的第三十二条中明确规定商业秘密权利人应提供初步证据证明其已经对所主张的商业秘密采取保密措施。由此可见，保密性始终是商业秘密的必要条件之一。

对于商业秘密保密性的认定，《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十一条作了较为详细的规定。但是，司法实践中总会遇到新情况、新问题。本案对继受取得商业秘密以及将保密协议作为唯一保密措施这两种情形下，该如何认定商业秘密保密性的问题进行了分析论证。本案虽适用《中华人民共和国反不正当竞争法（1993）》进行审理，但对修法之后商业秘密纠纷案件审判仍具有重要的参考借鉴价值。

十二、 上海境业环保能源科技股份有限公司与河南某化肥有限公司发明专利和技术秘密纠纷案

案件来源：2019 年河南法院十大知识产权案例

审理机关：郑州市中级人民法院

案　　号：(2019)豫 01 知民初 670、671 号民事调解书

案情简介：

2017 年 7 月上海境业环保能源科技股份有限公司(以下简称上海境业环保公司)与河南某化肥有限公司(以下简称某化肥公司)签订合作研发除尘设备协议，约定研发除尘设备方法的专利归双方共有，除尘设备的专利归上海境业环保公司所有。协议还约定了任何一方不得擅自泄露技术秘密，否则违约方将丧失方法专利的共有权。某化肥公司未经上海境业环保公司允许，2018 年 5 月单方申请了名称为“一种塔式造粒尾气除尘装置及其除尘方法”的发明专利。上海境业环保公司以某化肥公司侵犯技术秘密和侵犯发明专利权为由，向郑州市中级人民法院提起诉讼，请求判令专利申请权归其所有、某化肥公司停止侵犯技术秘密，并赔偿损失 1000 万元。庭审过程中，**双方达成调解：第一，涉案专利归双方共有，某化肥公司支付上海境业环保公司设备采购款 405 万和 260 万元补偿费。第二，双方进行战略合作，上海境业环保公司签订的除尘项目，设备原则上从某化肥公司采购。**

判决要旨：

上海境业环保公司是拥有 30 多项专利，具有丰富的尾气治理成功经验的高新技术企业。某化肥公司是业内知名的化肥生产企业，拥有雄厚的石化装备生产安装能力。随着我国的经济社会发展，雾霾等生态环境问题日益凸显，环保市场需求日益加大，此案的成功调解弥合了双方合作中的裂痕，实现案结事了，对于充分发挥双方各自在环保领域和石化领域的优势，做到强强联合，减少废气排放和煤炭等资源的消耗，实现资源的回收再利用，做到经济效益和社会效益的统一具有积极意义。

十三、 周某侵犯商业秘密罪案

案件来源：杭州检察机关打击知识产权犯罪情况和典型案例

公诉机关：杭州市人民检察院

案情简介：

周某，男，1969 年 10 月 25 日出生，浙江某科技有限公司（以下简称某科技公司）发动机事业部技术总监。

浙江某动力股份有限公司(以下简称某股份公司)是一家专业从事全地形车、竞技摩托车等产品的研发、制造、销售的高新技术企业，并对自主研发的 2V91 系列发动机技术采取了保密措施。

2004 年，被告人周某应聘进入某股份公司从事发动机技术研发工作。期间，被告人周某和某股份公司签订保密协议及含有保密条款的劳动合同，双方约定在劳动期间及合同关系终止后，周某仍有保密义务。2014 年 2 月 24 日至 3 月 1 日，某股份公司发动机研究所负责人郭某某因公出差，将该所指定邮箱审核权限授权给周某。被告人周某利用该授权权限，私自将公司研发的 2V91 系列发动机等技术资料从公司涉密内网邮箱发送至自己的外网邮箱。

2014 年 8 月，周某向某股份公司提出辞职。2015 年 3 月，某股份公司同意周某辞职。被告人周某随即应聘到某集团有限公司（以下简称某集团）控股的某科技公司工作，主持研发发动机。在研发过程中，被告人周某将从某股份公司获取的上述 2V91 发动机项目的技术信息用于某科技公司的 2V91X 发动机项目的研发。

2017 年 5 月至 2018 年 1 月，某科技公司给某集团 2V91X 发动机共计 314 台，开票金额 323.215 万（含税），不含税金额 276.25 万。其中 300 台发动机已经配装到某集团生产的 DUNE900 全地形车辆，并且外销到欧美等市场，销售总数 300 台，销售总金额 153 万余美元。被告人周某的行为给某股份公司造成损失数额 83.8861 万元。经审计，某股份公司 2V91 系列发动机至 2014 年 12 月的研发成本是 914.15 万元人民币。经审查，某股份公司未将涉案发动机技术许可他人使用过。

2018 年 3 月 7 日，某集团、某科技公司与某股份公司达成和解协议，同意停止侵权并赔偿 300 万元人民币。

判决要旨：

侵犯商业秘密罪，一个较为突出的难题就是如何准确认定侵犯商业秘密行为

导致的损失数额。实践中，一般有成本说、价值说、利润说、损失说四种计算方式，因依据不同的计算方法所得出的损失结果往往差别很大，导致实践中在计算方法的选择上分歧很大。具体采用哪种方式计算及在确定方法后如何进行计算，均应根据案情严谨分析。

十四、 南京小树苗知识产权服务有限公司侵犯他人商业秘密案

案件来源：江苏省市场监督管理局 2019 年知识产权保护十大典型案例

处理机关：南京市市场监督管理局

案情简介：

北京东灵通知识产权服务有限公司南京分公司成立于 2009 年，经营一直比较顺利，每年利润有近 500 万元。

但去年初，公司遇到了一件离奇的事：原来分公司全部的 40 名左右员工突然集体辞职，导致分公司瞬间“消失”。他们调查后发现，这些辞职的员工竟然都跳槽到南京小树苗知识产权服务有限公司去了，而且还窃用了东灵通公司原来的客户资料。去年 6 月，东灵通公司向市市场监管局举报，要求查处小树苗公司非法行为。

南京市市场监管局执法人员介绍，因案情复杂，执法人员进行了连续数月的深入调查取证。调查显示，小树苗公司是 2017 年 12 月 1 日刚成立的，法定代表人葛某原是某房产中介公司职员，并不实际参与公司的日常经营。小树苗公司的日常经营主要在邵某、朱某、张某等人的管理下进行。该公司 40 名左右的员工，几乎全为原东灵通公司的成员，包括邵某、张某等人。

东灵通公司与邵某、张某等人的原劳动协议中，均含有保密内容的条款，与张某、朱某等人还另外签有保密协议。公司本身也制定了完善的保密规定和措施，包括离职时文件、资料交接等。但执法人员在小树苗公司的多台员工电脑及工作 QQ 群中，发现了《南京客户档案客服》文件，内容显示是经过整理的客户资料，包括合同号、客户联系人、联系方式、东灵通公司对接员工名单等内容。

另查明，小树苗公司从成立至今年 1 月 7 日，在国家市场监管总局商标局网站上显示的商标注册信息有 1506 条。其中，有 456 条商标注册信息涉及的 118 个客户是东灵通公司的原有客户。

虽然小树苗公司辩称，客户资料不属于商业秘密，可通过公共软件在公共渠道获取。但执法人员调查后指出，东灵通公司的《南京客户档案客服》文件是服务签约客户后记载的客户的详细信息，具有确定性、真实性和集中性，其他公司和个人无法从公开渠道获得上述整体信息。东灵通公司的《南京客户档案客服》文件中的客户信息存在秘密性。

最终，南京市市场监管局认定，小树苗公司的行为违反了《反不正当竞争法》第九条第二款规定：第三人明知或者应知商业秘密权利人的员工、前员工或者其

他单位、个人实施前款所列违法行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为侵犯商业秘密。该局依法责令小树苗公司停止违法行为，并罚款 50 万元。

十五、 华阳新兴科技（天津）集团有限公司与麦达可尔（天津）科技有限公司、王成刚、张红星、刘芳侵害商业秘密纠纷案

案件来源：2019 年中国法院 50 件典型知识产权案例

审理机关：最高人民法院

案　　号：（2019）最高法民再 268 号

再审法院认为：《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十三条规定到：“商业秘密中的客户名单，一般是指客户的名称、地址、联系方式以及交易的习惯、意向、内容等构成的区别于相关公知信息的特殊客户信息，包括汇集众多客户的客户名册，以及保持长期稳定交易关系的特定客户。客户基于对职工个人的信赖而与职工所在单位进行市场交易，该职工离职后，能够证明客户自愿选择与自己或者其新单位进行市场交易的，应当认定没有采用不正当手段，但职工与原单位另有约定的除外。”据此，受商业秘密保护的客户名单，除由客户的名称地址、联系方式以及交易的习惯、意向、内容等信息所构成外，还应当属于区别于相关公知信息的特殊客户信息，并非是指对所有客户名单的保护。

本院认为，根据华阳公司提交的证据，华阳公司对其客户名单采取了保密措施，也进行了相关的交易，但其是否属于反不正当竞争法保护的商业秘密，判断要件应根据法律和司法解释进行判断。本案中，根据麦达可尔公司提供的公证书，前述 43 家客户信息可以通过网络搜索得到。根据华阳公司提供的 43 家被侵权客户名单（2012-2015），客户名单主要内容为：订单日期，单号，品名，货品规格、单位（桶或个），销售订单数量，单价，未税本位币，联系人，电话，地址。根据该客户名单，该表格为特定时间段内华阳公司与某客户的交易记录及联系人。本院认为，首先，在当前网络环境下，相关需求方信息容易获得，且相关行业从业者根据其劳动技能容易知悉，其次，关于订单日期，单号，品名、货品规格，销售订单数量、单价、未税本位币等信息均为一般性罗列，并没有反应某客户的交易习惯、意向及区别于一般交易记录的其他内容。在没有涵盖相关客户的具体交易习惯、意向等深度信息的情况下，难以认定需方信息属于反不正当竞争法保护的商业秘密。

华阳公司称其 43 家客户名单交易信息能够反映不同客户的特殊产品需求和交易习惯。根据华阳公司提供的证据，华阳公司 43 家被侵权客户名单（2012-2015），其销售的产品品名及货品规格为 SK-221(25L)、奥科斯-1（25L）、9600 塑料喷壶（600ml）、SK-237（25L）、速可洁-I（25L）、涤特纯-III（20L）、SK-632（20L）、斯帕克（25L）等；43 家客户中既有 xxx 厨卫用具厂等制造生产类企业，

也有宁波市 xxx 有限公司等经营文具礼品类的公司，对于经营文具礼品类企业而言，难以说明采购的产品反映了客户的特殊需求。此外，根据前述证据，以 SK-221（25L）和速可洁-I（25L）为例，购买 SK-221(25L)产品的有 xxx 厨卫用具厂等。购买速可洁-I（25L）的有宁波 xxx 公司等。以速可洁-I 产品为例，在华阳公司列出的 43 家客户中就有 30 家购买，占比 69.76%，难以证明其销售的产品反映了客户的特殊产品需求，更难以证明其反映了客户的特殊交易习惯。

此外，根据麦达可尔公司提供的对比表，43 家客户名单中重要信息相关联系人及电话号码，与华阳公司请求保护的均不相同的占比约 86%，联系电话不同的占比约 93%，且 26 家客户提交证明其自愿选择麦达可尔公司进行市场交易。考虑本案双方均为工业清洗维护产品研发、生产和销售的企业。产品范围主要包括清洁剂、润滑剂、密封剂等工业化学品，由于从事清洗产品销售及服务的行业特点，客户选择与哪些供方进行交易，不仅考虑相关产品的性能、价格等信息，也会考虑清洗服务的质量，在联系人、联系电话较大比例不相同的情况下，也难以认定麦达可尔公司使用了华阳公司 43 家客户名单相关信息进行市场交易。

鉴于前述分析，结合华阳公司未与王成刚、张红星、刘芳签订竞业限制协议的事实，麦达可尔公司并不承担相关竞业禁止义务。因此，在王成刚、张红星、刘芳既没有竞业限制义务，相关客户名单又不构成商业秘密，且相关联系人、联系电话较大比例不相同的情况下，本院难以认定麦达可尔公司、王成刚等人之行为构成侵犯华阳公司商行也秘密。在既没有竞业限制义务，王成刚、张红星、刘芳又不侵犯华阳公司商业秘密的情况下，运用其在原用人单位学习的知识、经验与技能，无论是从市场渠道知悉相关市场信息还是根据从业经验知悉或判断某一市场主体需求相关产品和服务，可以在此基础上进行市场开发并与包括原单位在内的其他同行业市场交易者进行市场竞争。虽然与原单位进行市场竞争不一定合乎个人品德的高尚标准，但其作为市场交易参与者，在不违反法律禁止性规定又没有合同义务的情况下，从事同行业业务并不为法律所禁止。如果在没有竞业限制义务亦不存在商业秘密的情况下，仅因为某一企业曾经与另一市场主体有过多次交易或稳定交易即禁止前员工与其进行市场竞争，实质上等于限制了该市场主体选择其他交易主体的机会，不仅禁锢交易双方的交易活动，限制了市场竞争，也不利于维护劳动者正当就业、创业的合法权益，有悖反不正当竞争法维护社会主义市场经济健康发展，鼓励和保护公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益之立法本意。

综上，麦达可尔公司相关再审申请理由成立，一、二审法院认定麦达可尔公司使用了华阳公司 43 家客户名单，侵犯华阳公司商业秘密认定事实、适用法律均有错误，本院予以纠正。判决如下：一、撤销天津市第一中级人民法院（2017）

津 01 民初 50 号民事判决；二、撤销天津市高级人民法院（2018）津民终 143 号民事判决；三、驳回华阳新兴科技（天津）集团有限公司诉讼请求。

十六、 新丽传媒集团有限公司与北京派华文化传媒股份有限公司侵害商业秘密纠纷案

案件来源：2019 年中国法院 50 件典型知识产权案例

审理机关：北京市朝阳区人民法院

案　　号：（2017）京 0105 民初 68514 号

案情简介：

原告新丽公司与被告派华公司就涉案电影《悟空传》音频后期制作事宜签订《电影<悟空传>音频制作委托合同》，合同设置保密条款，约定双方均应永久保守因履行上述合同从对方获得的秘密，包括但不限于涉案电影内容、新丽公司向派华公司提供的素材及其他未公开的信息（包括但不限于涉案电影内容、剧情、演职员名单等）等。后新丽公司发现涉案电影全片素材（包括视频文件、音频文件、特效镜头文件等）被公开于百度网盘，普通用户无需提取密码即可获取。原告认为涉案电影全片素材等文件属于公司的商业秘密，派华公司的行为侵犯了其公司商业秘密，造成了损失，遂诉至法院，要求赔偿 9900 万元，法院最终判决被告向原告赔偿经济损失 300 万元。

判决要旨：

法院认为，本案中，虽然派华公司提到服装、道具及场景等已经为公众所知悉，但电影作品并非所有服装、道具及场景等素材的简单结合，即使其组成部分已经属于公有领域或者已经为公众所知悉，但只要各个部分相互组合取得全新的意义，即可作为商业秘密得到保护。涉案素材除未包含片头、片尾完整字幕及部分特效内容外，完整展现了涉案电影的全部内容，在电影公开放映之前，该等信息当然不为其经营领域内的相关人员所普遍知悉，且电影凝结了演员、导演、摄像等众多人员的创造性劳动，对该等信息的获得具有极大难度，故涉案素材具有秘密性。关于价值性，即商业秘密能为权利人带来现实的或潜在的经济利益。涉案素材已基本涵盖了即将上映影片的全部内容，其必将为权利人带来经济利益。关于保密性，《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十一条第三款规定：“具有下列情形之一，在正常情况下足以防止涉密信息泄漏的，应当认定权利人采取了保密措施：……（五）签订保密协议；……”本案中，新丽公司与派华公司签署的《电影<悟空传>音频制作委托合同》中有关于保密义务的专门约定，且其中已经明确《悟空传》电影内容、新丽公司提供的素材及包括剧情、制作进程等在内的其他未公开之信息均属于保密义务范围内的秘密。此外，新丽公司在涉案电影拍摄的其他各环节均签订有保密条款。故应当

认定新丽公司对涉案素材已经采取了适当的保密措施。因此，涉案素材构成反不正当竞争法保护的商业秘密。本案中，根据《电影投资合作协议》《授权书》《声明书》等，新丽公司系涉案素材的权利人，依法享有提起本案诉讼的权利。

关于赔偿的具体数额，我国反不正当竞争法第二十条规定，经营者违反本法规定，给被侵害的经营者造成损害的，应当承担损害赔偿责任，被侵害的经营者的损失难以计算的，赔偿额为侵权人在侵权期间因侵权所获得的利润；并应当承担被侵害的经营者因调查该经营者侵害其合法权益的不正当竞争行为所支付的合理费用。《最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释》第十七条规定，确定第十条规定的侵犯商业秘密行为的损害赔偿额，可以参照确定侵犯专利权的损害赔偿额的方法进行。因侵权行为导致商业秘密已为公众所知悉的，应当根据该项商业秘密的商业价值确定损害赔偿额。商业秘密的商业价值，根据其研究开发成本、实施该项商业秘密的收益、可得利益、可保持竞争优势的时间等因素确定。本案中，新丽公司提交的证据无法证明其因涉案不正当竞争行为所受到的实际损失，故本院将综合考虑涉案素材的商业价值，新丽公司对涉案电影的投资情况，派华公司的主观过错程度、其不正当竞争行为的性质、情节、持续时间、造成后果的严重程度等因素酌情确定。（300 万元）

十七、 **林义翔、叶晏呈、郑博鸿侵害商业秘密罪案**

案件来源：2019 年中国法院 50 件典型知识产权案例

审理机关：广东省惠州市中级人民法院

被 告 人：林义翔、叶晏呈、郑博鸿

案　　号：（2018）粤 13 刑终 361 号刑事判决书

案情简介：

TCL 集团股份有限公司是深圳市华星光电技术有限公司（以下简称华星公司）的母公司，2016 年 1 月，TCL 公司的网络专业员工在公司总部通过网络服务器监控到有人通过网络泄露华星公司的商业秘密。

被告人林义翔、叶晏呈、郑博鸿入职华星公司时均签订了知识产权保密协议。华星公司与重庆市惠科金渝光电科技有限公司（以下简称惠科公司）为同业竞争对手。2015 年 10 月 24 日，华星公司员工叶晏呈在明知林义翔已从华星公司离职，并入职惠科公司的情况下，将包含附件“2016 预算评估报告（对比 2015）-TEST 部-Ver.08”的邮件发送给对方，以供林义翔在惠科公司使用。另林义翔还将包含了附件“TBNAN 新建厂设备评估报告 20140506”的邮件发送给惠科公司多名同事，以供其在惠科公司生产经营中使用。经鉴定，以上附件包含了华星公司“液晶显示屏在线监测”及“液晶显示屏阵列玻璃基板设计”的技术信息，以上内容不为公众所知悉。

因惠科公司产品实验有异常，郑博鸿要查询该公司产品实验异常的原因，王青（另案处理）得知该情况后，于 2017 年 3 月 24 日将其在华星公司获取的未公开的《PI 不沾-CFITO 改善报告》中包含的 PI 不沾生产工艺技术信息，以名为“PI 不沾经验”的文件在郑博鸿所在部门的微信群内共享，郑博鸿则将该文件保存至其本人邮箱，并将该技术信息在查询惠科公司产品实验异常中进行使用。经鉴定，以上附件《PI 不沾-CFITO 改善报告》中的四个方面技术信息属于“不为公众所知悉的技术信息”。2019 年 12 月 31 日,广东省惠州市中级人民法院依法对林某翔等三人侵犯商业秘密罪案作出二审判决,三被告人的行为均已构成侵犯商业秘密罪。

二审判决认为原审判决对各被告人定罪准确，但认定部分事实不清，对各被告人量刑不当,对林义翔、叶晏呈、郑博鸿分别改判有期徒刑三年至三年六个月，并处罚金。

判决要旨：

本案争议焦点为被告人侵犯商业秘密犯罪行为导致被害人的损失认定问题。侵犯商业秘密犯罪案件中，被告人侵犯商业秘密行为导致被害人损失的认定向来是案件的焦点与难点问题。

对此，司法机关一般做法是依据有鉴定资质的司法鉴定机构出具的关于秘点的《司法鉴定意见书》及关于造成损失的《司法会计鉴定报告》进行认定，但往往容易忽略秘点司法鉴定意见与损失司法会计鉴定意见之间及鉴定意见与案件的待证事实之间的关联性分析论述，容易导致以鉴代审，受到诟病。

本案合议庭严格依据《最高人民法院关于适用〈中华人民共和国刑事诉讼法〉的解释》第八十四条规定，对鉴定意见与案件待证事实之间是否存在关联性进行了着重审查，在全面细致甄别、比对大量原始证据的基础上认定案件事实，确定被告人侵犯商业秘密行为导致被害人的损失数额。本案裁判文书在证据采信、说理分析、法律适用等方面具有典型性及参考借鉴意义。

十八、 北京田某某侵犯商业秘密罪案

案件来源：2019 年度检察机关保护知识产权典型案例

审理机构：北京市门头沟区人民检察院/门头沟区人民法院

案情简介：

2017 年 2 月至 3 月间，被告人田某某从北京精雕科技集团有限公司（以下简称“北京精雕公司”）离职前，利用该公司数据管理系统漏洞，从精雕科技服务器数据库下载文件共计 162 次，以网络共享传输的方式从个人办公电脑拷贝文件到公用电脑共计 7 万余次，后用 U 盘、移动硬盘等设备将所下载文件窃走，其中涉及非田某某参与设计文件 3.3 万余个。被告人田某某到深圳创世纪机械有限公司(以下简称深圳创世纪公司)工作后，以玻璃机项目副总经理的身份使用其窃取的北京精雕公司型号为 JDLVG600 设备的图纸和技术方案，设计、生产出型号为 B-600A-B 设备并出售，给北京精雕公司造成经济损失 215 万余元。

2018 年 6 月 12 日，北京精雕公司派员到北京市公安局门头沟分局报案，称该公司原职工田某某违规下载公司设计图纸，非法窃取该公司商业秘密，给公司造成重大经济损失。2018 年 7 月 30 日，门头沟分局对田某某涉嫌侵犯商业秘密案立案侦查。2018 年 8 月，门头沟分局就田某某涉嫌侵犯商业秘密案邀请门头沟区人民检察院提前介入引导侦查。门头沟区人民检察院第一时间选派检察人员与侦查人员赴广东、河北调取关键证据，并启动北京市专业同步辅助审查办案机制，及时借助外脑补强专业知识。2019 年 1 月 22 日，门头沟分局以田某某涉嫌侵犯商业秘密罪提请门头沟区人民检察院批准逮捕。1 月 29 日，门头沟区人民检察院对其批准逮捕。3 月 21 日，门头沟分局以田某某涉嫌侵犯商业秘密罪移送起诉。在审查起诉阶段，为准确定性，检察机关组织召开专家论证会。检察官还通过自行侦查补充证据，并释法说理，促使田某某认罪认罚。7 月 1 日，门头沟区人民检察院以田某某犯侵犯商业秘密罪提起公诉。7 月 18 日，门头沟区人民法院采纳检察机关量刑建议并当庭宣判，判决被告人田某某犯侵犯商业秘密罪，判处有期徒刑一年十个月，并处罚金十万元。被告人田某某未上诉，判决已生效。

评析意见：

本案的权利人北京精雕公司是北京市百强民营企业、国家火炬计划重点高新技术企业、中国机械工业百强企业，也是国内数控雕刻机床制造行业的龙头企业。本案中，权利人由于原内部员工侵犯商业秘密，导致遭受重大经济损失。门头沟区人民检察院立足检察职能，为高新技术企业排忧解难，对数据时代侵入计算机信息系统窃取技术信息的法律适用、权利人损失的认定等司法难题提出解决方案。

同时，通过制发检察建议、开展“定制式”普法课等延伸检察职能，实现社会综合治理。

（一）发挥审前主导责任，平等保护民营企业的合法权益。一是积极引导侦查，促使案件侦查程序顺利推进。门头沟区人民检察院在案件侦查初期即应公安机关邀请介入侦查，先后列明 40 余条引导侦查意见，经过深挖细查，使全案得以突破。二是自行侦查，严密证据体系。检察官多次赴案发企业进行现场调查核实，查证窃取数据库文件路径，了解系统漏洞所在，为有力指控犯罪提供保障。三是准确认定权利人经济损失，合理确定损失计算方法。结合本案证据情况，在无法查明被侵权产品利润率，也无法确定侵权人利润时，检察官按照中国机床工具工业协会根据 105 家行业企业报的网络统计数据出具的行业平均利润率，对侵权产品的销售金额进行计算，最终认定权利人的经济损失数额，该损失计算方法得到判决认可。四是证据运用求极致，各方均感受到公平正义。检察官以扎实的证据为基础，对被告人积极开展教育感化工作，促使其认罪认罚，被告人田某某当庭表示将认真接受改造，争取早日回归社会，用自己的技术为社会创造价值。北京精雕公司对门头沟区人民检察院平等保护民营企业的做法表示认可。

（二）邀请专业人员辅助办案，解决专业难题。一方面启动北京市专业同步辅助审查办案机制。由于案件涉及大量电子数据且对定案具有关键作用，在引导侦查初期，检察官就邀请北京市人民检察院技术人员为电子数据的提取、保存等提供专业意见。另一方面借助外脑补强相关行业知识。针对机床设备的相关技术信息等专业知识，引导公安机关向该行业领域内的专家证人调取证言，邀请专家证人对案件专业知识进行详细解读，确保全面查明案情并在庭审中有力指控犯罪。

（三）厘清数据“身份”，准确适用法律。数据时代，大量的技术信息都是以数据的形式存在，本案在罪名上涉及侵犯商业秘密罪和非法获取计算机信息系统数据罪的分歧。针对该问题，检察机关组织召开专家论证会并达成共识，要从存储在计算机信息系统的数据性质、行为人主观故意内容、客观行为等方面综合判断所侵犯的法益。由于本案除了侵犯商业秘密外，并没有将数据用作其他用途，相关数据也不具有其他特殊性质，故不能认定为非法获取计算机信息系统数据罪。最终该定性意见被法院采纳。

（四）延伸检察职能，推进社会综合治理。门头沟区人民检察院针对北京精雕公司在保密等方面存在的问题制发检察建议，帮助其查疏堵漏。该企业收到建议后认真整改并回复，强化了对企业核心数据的保护工作。根据权利人需求，检察院还开展“定制式”普法课，全面提升企业和员工的风险防范意识。

十九、 浙江金某某侵犯商业秘密罪案

案件来源：2019 年度检察机关保护知识产权典型案例

审理机关：浙江省温州市瑞安市人民法院/温州市中级人民法院

案情简介：

温州明发光学科技有限公司（下称“明发公司”）主要生产销售光学塑料显微镜、望远镜、太阳能聚光透镜、充电器，经多年研究掌握了菲涅尔超薄放大镜生产技术。被告人金某某在明发公司工作期间，先后担任业务员、销售部经理、副总经理，并与明发公司签订了保密协议。2011 年初，被告人金某某从明发公司离职，并成立温州菲涅尔光学有限公司，到明发公司的供应商处购买相同类型设备、材料等，使用相同的方法生产与明发公司同样的菲涅尔超薄放大镜进入市场销售，造成明发公司经济损失 120 万余元。经鉴定，菲涅尔公司制作菲涅尔超薄放大镜的工艺与明发公司工艺实质相同，且涉及的“三合一”塑成制作方法属于“不为公众所知悉”的技术信息。

浙江省温州市平阳县公安局接明发公司报案，于 2016 年 10 月 27 日对金某某以涉嫌侵犯商业秘密罪立案侦查，并于 2017 年 2 月 24 日将案件移送温州市公安局。2018 年 1 月 23 日，温州市公安局将该案移送起诉，温州市人民检察院交由瑞安市人民检察院办理。瑞安市人民检察院于 2018 年 3 月 15 日、5 月 25 日两次退回公安机关补充侦查，并自行补充调取部分书证、证人证言。同年 8 月 16 日瑞安市人民检察院提起公诉，瑞安市人民法院于 2019 年 2 月 14 日作出判决，认定被告人金某某犯侵犯商业秘密罪，判处有期徒刑一年六个月，并处罚金七十万元。被告人金某某上诉，温州市中级人民法院裁定驳回上诉，维持原判。

评析意见：

本案属于典型的“违约使用型”侵犯商业秘密案件，且被告人不认罪，事实认定和定性难度较大。瑞安市人民检察院将引导公安机关侦查和自行侦查相结合，构建完整证据体系，合理认定犯罪数额，有力指控犯罪行为，充分保护民营企业知识产权，激发了民营企业干事创业的积极性。

（一）引导侦查和自行侦查并重，严把案件事实关、证据关。检察机关坚持“以审判为中心”的诉讼理念，严格把握起诉证据标准。针对被告人提出的辩解，多次与公安机关沟通探讨，确定取证方向并拟定详细可行的补查提纲，引导公安机关及时收集、固定关键证据。同时，本着亲历性原则，瑞安市人民检察院询问部分关键证人，调取有关书证。通过工作形成了完整的证据锁链，为指控犯罪夯实了证据基础。

（二）突破“零口供”办案难点，理顺认定犯罪证明思路。本案犯罪嫌疑人拒不认罪，检察机关认真梳理全案证据，理顺指控犯罪的证明思路，有力指控犯罪行为。检察官根据被告人与明发公司的保密协议，论证其明知具体保密的内容包括涉案技术信息和经营信息；根据被告人在明发公司从业务员到副总经理的任职经历和 2010 年底离职的情况，结合两公司员工、客户、供应商的证人证言、菲涅尔公司 2011 年成立和变更登记的书证等，论证其具备接触并掌握涉案技术秘密和经营信息的条件且是菲涅尔公司的实际控制人；通过多份鉴定意见论证其使用的生产工艺与权利人的生产工艺实质性相同；**结合审计没有发现菲涅尔公司任何研发资金投入且未发现有证明菲涅尔公司工艺合法来源于他人的证据，从正反两方面综合论证侵犯商业秘密行为系由被告人实施**，得到法院支持。

（三）明确损失认定方法，合理界定违法所得。在被害人无法对损失举证、无法核算研发成本的情况下，检察机关确定以侵权人违法所得，即已经获得或应得的非法收入来认定犯罪数额。同时，考虑到被告人在生产、销售中支出的合理成本，在销售金额中对该部分予以扣减，即违法所得=销售毛利=产品销售金额-产品销售成本（材料、工资、制造费用、电费）。而公司管理人员工资、社保、福利费、房租、固定资产折旧费等管理费用，即便没有生产侵权产品也需要支出，系公司的整体经营成本，而非因侵权行为产生的必要成本，不予扣减。

（四）制发检察建议，做好知识产权延伸保护。瑞安市人民检察院结合办案开展调研，深入分析发案成因，针对被害单位在员工法治教育、保密意识、保密措施等方面存在的问题，及时制发检察建议书，一揽子提出完善管理的意见。被害单位采纳了检察机关建议，及时整改堵塞公司管理漏洞，定期邀请法律人士为公司管理人员授课，弥补了自身短板，进一步增强了企业竞争力。

二十、 李警、周晓源、詹文杰侵犯商业秘密罪案

案件来源：2018-2019 年福州法院知识产权司法保护十大案例

审理机关：福州市鼓楼区人民法院

被 告 人：李警、周晓源、詹文杰

案情简介：

被告人李警原系 A 公司销售经理，被告人周晓源原系 A 公司技术研发人员，被告人詹文杰原系 A 公司装配工人。2017 年 6 月，被告人李警从 A 公司离职，投资成立 B 公司，李警担任 B 公司总经理兼法定代表人，聘请被告人周晓源担任技术研发人员、被告人詹文杰担任副厂长负责日常行政管理及机械装配。2017 年 9 月，被告人李警、周晓源利用从 A 公司带出的“香菇套袋机”和“冲孔贴胶机”的设计图纸，生产出与 A 公司具有同样功能的“香菇套袋机”和“冲孔贴胶机”先后销往四川、河北等地，被告人詹文杰明知李警、周晓源利用 A 公司的设计图纸进行设计，仍组织工人装配生产。

经鉴定，A 公司的“香菇套袋机生产线”（包括“香菇套袋机”和“冲孔贴胶机”）部分设计图纸中所记载的设计尺寸、公差配合、表面粗糙度、特殊工艺、特定材质、部件分级以及零件的名称及编号等具体技术参数的组合、香菇套袋机下制袋撑抓机构设计属于《中华人民共和国反不正当竞争法》所称的“不为公众所知悉”的技术信息。B 公司食用菌包装机图纸与 A 公司香菇套袋机图纸比对，相同或实质相同的比例约为 74%；与 A 公司相比，B 公司冲孔贴胶机中的技术信息构成相同或实质相同，B 公司的食用菌包装机下制袋撑抓机构构成实质相同。

经审计，A 公司 2017 年度平均每台全自动食用菌培养料袋生产线销售价格为 188513.51 元。

经审计，B 公司自成立起至 2018 年 3 月 1 日，已与其他公司签订销售香菇套袋机、冲孔贴胶机合同 31 台，已实际销售 6 台香菇套袋机和 5 台冲孔贴胶机，已履行合同给 A 公司造成的合同销售额毛利润影响金额为 460729.1 元；已签约尚未履行合同给 A 公司造成的合同销售额毛利润影响金额为 780354.5 元。

法院认为，构成刑法第二百一十九条侵犯商业秘密罪要满足以下条件：第一，相关信息属于商业秘密；第二，被告人实施了侵犯商业秘密的行为；第三，给权利人造成的损失达到五十万元以上。就上述三个条件分析认为：涉案技术信息不为公众所知悉，能为权利人带来经济利益并有实用性，且 A 公司采取了合理保密措施，涉案技术信息属于商业秘密。三被告人主观上存在故意，明知或应知可能会侵犯商业秘密，客观上实施了侵犯商业秘密的行为，利用从 A 公司带出的设计

图纸，生产出与 A 公司具有同样功能的“香菇套袋机”和“冲孔贴胶机”，构成对涉案商业秘密的非法获取、使用。在权利人损失的认定上，法院根据案件实际情况，客观分析被告人行为给 A 公司造成的直接损失，部分采纳审计报告的结论，全面评估 A 公司两方面损失：一是侵权人实际履行合同对 A 公司销售额毛利润影响，二是因侵权人竞争导致特定订单差价损失，A 公司损失共计 747918.24 元。最终法院判决李警、周晓源有期徒刑一年，缓刑一年六个月，各并处罚金 200000 元；詹文杰有期徒刑十个月，并处罚金 100000 元。法院判决后，各被告人均未提起上诉，该判决已经发生法律效力。

评析意见：

商业秘密具有秘密性、价值性、保密性和实用性等特征，是企业在生产、经营中形成的经营信息或技术信息。不同于专利权、商标权等典型知识产权，企业持有的商业秘密，公众不能轻易获取，具有独特的保护价值。商业秘密一旦被他人窃取、泄露、使用，就会导致企业遭受巨大的损失。在审理侵犯商业秘密罪中，应当按照犯罪构成审理被害单位主张保护的信息是否属于商业秘密、被害单位是否采取了保密措施、被告人是否实施了侵害商业秘密的行为。构成侵害商业秘密罪的入刑标准为造成权利人损失达 50 万元，在审判实践中，应当以直接损失为计算依据，直接损失应包括行为人非法使用他人商业秘密获取的利益以及在商业活动中直接与被害单位竞争造成被害单位的利润损失。本案的审理，为厘清侵犯商业秘密罪中被害单位损失计算的问题，提供了思路。

在大众创业、万众创新的当下，许多企业的高级管理人员和技术人员积极响应政府号召，离职创业，在创业的过程中，应当脚踏实地，时刻牢记法律红线，通过自己努力收获创业成果，切莫窃取、泄露、使用他人的商业秘密。同时，本案也为创新型民营企业敲响警钟，企业自身要加强对商业秘密及相关知识产权的保护意识，对涉密技术信息严格管理，强化商业秘密的保护措施，有效保护企业知识产权。

二十一、 内蒙古某实业公司诉内蒙古某化工公司、宁夏某工贸公司、三门峡某高新公司、青海某重型公司侵害商业秘密纠纷案

案件来源：青海省 10 起知识产权审判典型案例

审理机关：青海省西宁市中级人民法院

案情简介：

2016 年 11 月，内蒙古某化工公司向宁夏某工贸公司、三门峡某高新公司发出邀标书，拟对公司 2 万吨金属钠项目的电解槽阴极和槽基座进行招标。邀标书第五部分为招标货物清单、技术规格及要求，并附有电解槽阴极和槽基座的相关图纸。2016 年 12 月，内蒙古某化工公司分别与宁夏某工贸公司、三门峡某高新公司签订协议，约定两公司分别为内蒙古某化工公司提供 130 台电解槽基座和 130 台电解槽阴极。其后，宁夏某工贸公司与青海某重型公司签订技术协议，约定由青海某重型公司完成 130 台电解槽槽基座的制作安装。之后，三门峡某高新公司、青海某重型公司开始分别进行加工生产。2017 年 6 月，内蒙古某实业公司分别向河南省三门峡中院和青海省大通县法院申请诉前证据保全，要求对上述合同、邀标书、图纸及相应加工制作物进行证据保全，两地法院均采取了保全措施。

2008 年至 2009 年，内蒙古某实业公司退休人员张某某、温某某等涉嫌侵犯商业秘密罪，经内蒙古阿拉善盟中级人民法院判决，认定张某某、温某某等人构成侵犯商业秘密罪，判处不同的刑罚。刑事案件审理过程中，该案涉及的金属钠电解槽底座、阴极等设备中的部分设计经鉴定，属于不为公众知悉的技术信息，被认定为商业秘密。

裁判结果：

西宁中院经审理认为，案涉合同系承揽合同，宁夏某工贸公司、三门峡某高新公司、青海某重型公司为承揽人，案涉图纸最终源自于内蒙古某化工公司，承揽人对此并无较多的审查注意义务，也无法依据提供的图纸审查判断出相关信息属于商业秘密，三公司承揽相关设备的制造并无过错，其行为未构成对内蒙古某实业公司的侵害。张某某等人侵犯商业秘密犯罪一案中的电解槽底座、阴极、基座总装图与本案所涉设备和图纸相同。如果相关技术信息至 2017 年仍属于秘密，表明该技术信息早在 2006 年就已经出现泄密，而内蒙古某实业公司对是否消除泄密影响及消除的效果并未提交相关证据。内蒙古某实业公司 2017 年才购买取得该技术信息使用权，内蒙古某化工公司在 2016 年 11 月已经开始邀标定做相关设备，表明内蒙古某实业公司并非唯一知悉该信息的公司，其购买已被他人

知悉的技术信息作为自己的商业秘密，应承担由此带来的商业风险，内蒙古某化工公司并不构成对内蒙古某实业公司权利的侵害。据此判决驳回内蒙古某实业公司的诉讼请求。

典型意义：

商业秘密是指不为公众所知悉、能为权利人带来经济利益，具有实用性并经权利人采取保密措施的技术信息和经营信息。商业秘密的前提是不为公众所知悉，它是一项相对的权利，商业秘密的专有性不是绝对的，不具有排他性。如果其他人以合法方式取得了同一内容的商业秘密，他们就和第一个人有着同样的地位。商业秘密权利人为防止信息泄露应积极采取与其商业价值等具体情况相适应的合理保护措施，力争把侵权风险降至最低，这是保密措施在商业秘密构成中的价值所在，也是本案判决呈现的典型意义所在。

二十二、 沈阳美盈教育信息咨询有限公司与王某、沈阳童乐教育咨询有限公司景星街分公司侵害经营秘密纠纷案

案件来源：沈阳中院 2019 年度知识产权十大典型案例

审理机关：沈阳市中级人民法院

案情简介：

原告沈阳美盈教育信息咨询有限公司（以下简称美盈公司）与被告王某于 2016 年 12 月 29 日签订劳动合同，被告王某受聘于原告美盈公司担任教师工作，合同期限为 2016 年 12 月 30 日至 2018 年 12 月 31 日。双方于 2016 年 12 月签订了保密合同，约定被告王某对原告美盈公司所有的包括学员名册在内的营业秘密在其任职期间及离职后均负有保密义务。后双方签订了第二份劳动合同，合同期限自 2018 年 12 月 31 日至 2020 年 12 月 31 日，但未实际履行。2019 年 1 月王某到被告沈阳童乐教育咨询有限公司景星街分公司（以下简称童乐景星街分公司）处工作。原告美盈公司有学员陆续要求退费，并至被告童乐景星街分公司处上课，原告美盈公司认为系王某将原告美盈公司学员信息泄露给被告童乐景星街分公司，导致其学员流失，被告童乐公司应对其分公司的侵权行为承担责任，故诉至法院。

原告美盈公司主张的客户名单包括 19 名授课对象的学员名单，具体包括家长及学员姓名、家长联系电话、学习课程、学员年龄等学员基本信息。

另查明，原告美盈公司于 2014 年 11 月 12 日注册成立，法定代表人为张某，注册资本为 500 万，经营范围为教育信息咨询、文化艺术交流活动策划。被告童乐景星街分公司于 2014 年 5 月 22 日注册成立，负责人为魏某某，经营范围为教育信息咨询、儿童智力开发、教育软件技术开发、计算机系统集成。被告童乐公司于 2013 年 5 月 27 日注册成立，法定代表人为魏某某，注册资本为 100 万，经营范围与被告童乐景星街分公司相同。

典型意义：

本案系侵害客户信息的经营秘密纠纷，属于侵害商业秘密案件的常见类型。是否构成商业秘密、证明责任的分配及侵权行为的认定是此类案件审理的难点。本案所涉情况又与近几年的员工跳槽及客户名单有关，认定分歧较大。法院结合原告获取客户信息的投入情况、难易程度、与公知信息的区别及可能给原告带来的竞争优势，认定涉案客户名单具备秘密性和商业价值性。由于原告没有采取防止信息泄漏且与其商业价值等具体情况相适应的合理保护措施，认定不符合保密性要件，原告亦未举证证明被告王某掌握了涉案经营信息并将其泄露给本案

被告童乐景星街分公司，故驳回其诉讼请求。本案遵循逐段审理的思路，明确审查重点，同时考虑教育培训机构的特点，对客户名单是否构成商业秘密采取了较为宽泛的标准，对于今后此类案件的审理及权利人如何加强商业秘密保护明确了导向。

法官建议：应采取对涉密信息载体加锁、标识保密标志、与涉密员工签订保密协议等有效的保密措施。

二十三、 江苏赛尚新材料科技有限公司与许某、邹某商业秘密案

案件来源：2019 年无锡法院知识产权司法保护典型案例

审理机关：无锡市中级人民法院

案情介绍：

江苏赛尚新材料科技有限公司（以下简称赛尚公司）主要从事 PVC 地板的研发、生产、销售及出口业务，通过参加国外展会等渠道建立、维护其外贸客户群。该公司在经营中与员工签订了保密协议，并通过技术措施给予相关人员不同的接触境外客户信息的权限。该公司外贸部经理许某、外贸部专员邹某向公司境外客户发送申明，谎称某商贸公司（法定代表人为许某的丈夫）为赛尚公司新设的公司，负责销售赛尚公司的产品，并促成某商贸公司与七家境外客户签订了订单并收取货款。

法院经审理认为，涉案七家境外客户的联系人、联系电话、电子邮箱、产品型号、交易条件等信息体现了客户的独特交易习惯，赛尚公司也以签订保密协议及设置信息接触权限等方式采取了保密措施，涉案客户信息构成经营秘密。**许某等主张涉案客户信息可从相关网络信息查询系统查询得到，属于公知信息，但上述相关网络信息查询系统是对各国海关公布的数据进行收集、整理而形成的，并且需要付费进入，查询信息量直接与费用挂钩，故该查询系统中的信息需要付出一定的代价才可获取，反而说明其为法律规定的非公知信息。**据此判决许某、邹某及某商贸公司停止侵害并赔偿损失 30 万元。

典型意义：

（1）“商业秘密保护难”是长期困扰企业的法律问题，该案涉及的企业客户名单的商业秘密认定是其中的难点之一。该案判决结合赛尚公司对于涉案外贸客户信息的获取方式及采取了限制接触对象范围等方面的保密措施等事实，准确认定了涉案信息的非公知性。对于许某等提出的其中部分信息能从相关查询系统中获取的主张，该案判决通过查明的相关登录查询方式，准确地认定了该查询系统具有封闭性、有偿性等特点，查询所得信息具有不易获得的特点，从而认定侵权人关于公知信息抗辩的主张不成立，在裁判中确立了公知信息与非公知信息的区分界限，对于此类的案件审理具有裁判指导意义。同时，该案的正确判决，对于企业更好地保护经营信息也提供了有力的指引，有效地规范了市场经济的竞争秩序。

（2）企业在对外贸易中获得的境外客户信息采取保密措施的，依法构成经营信息秘密。

二十四、 金华恒发工贸有限公司与徐某侵害商业秘密纠纷案

案件来源：2019 年金华法院十大知识产权典型案例

审理机关：金华市中级人民法院、金华市婺城区人民法院

案　　号：（2018）浙 07 民终 5280 号、（2017）浙 0702 民初 15198 号

案情简介：

金华恒发工贸有限公司（以下简称恒发公司）成立于 2011 年 8 月 5 日，经营范围为劳动防护用品制造、销售，货物及技术的进出口。徐某、叶某于 2011 年 11 月入职恒发公司，从事业务员工作。2014 年，恒发公司曾与徐某签订《聘用协议》一份，约定徐某应严格保守恒发公司的商业秘密，同时明确应保密的相应技术信息和经营信息；徐某不得直接或间接向企业内外部无关人员及非职责人员和本协议以外的其他人泄露（包括本人使用），不得复制、披露包含企业商业秘密的文件及文件副本等。叶某、徐某先后于 2015 年 3 月、4 月从恒发公司离职，并带离存储于公司电脑中的部分客户信息、销售合同等资料，2015 年 6 月入职托普公司并成为股东，后两人分别与恒发公司客户资料中的客户进行了交易。恒发公司认为徐某、叶某的行为侵犯了公司的商业秘密，给恒发公司造成巨大损失。一审法院判决驳回恒发公司的诉讼请求。二审法院向工商管理部门调取了查扣的相关资料、信息、客户名单、产品报价、供应商、生产商信息，经审查认为涉案客户信息属于能够反映客户的特殊需求、价格策略、偏好的深度信息，能给恒发公司带来竞争优势，具有商业价值，且恒发公司采取了与徐某签订保密协议、安装监控系统等保密措施，涉案客户信息构成商业秘密，故认定徐某侵犯了恒发公司的商业秘密，赔偿十五万元。

典型意义：

商业秘密案件中，公司的离职员工侵犯原工作单位的商业秘密，是职员人才流动中的常见侵权现象。但公司维权时，往往存在秘密范围难以确定、侵权手段隐秘、经济损失难以计算等困难。二审中，法院向工商管理部门调取了查扣的相关资料，甄别筛选后确定涉案信息属于深度信息，具有商业价值，构成商业秘密，最终认定徐某构成侵权。在加大知识产权司法保护的政策语境下，本案审理对如何发挥司法能动作用、如何把握经营信息的构成要件等方面，具有一定的借鉴意义。

二十五、 于成岩、万某公司等侵犯商业秘密罪案——非替代关系产品市场下可将侵权人获利认定为犯罪金额

案件来源：2015-2020 普陀法院知识产权保护十大案例

审理机关：上海市普陀区人民法院

案情简介：

被害单位恩某某公司（恩坦华汽车部件有限公司）经关联方授权，获得涉案汽车天窗相关技术信息用于生产经营，并采取的相应的保密措施。经鉴定，上述技术信息属于不为公众所知悉的技术信息。2012 年 4 月至 2014 年 2 月被告人于某某（于成岩）在恩某某公司担任产品工程师，参与天窗项目工作，曾接触上述技术信息。2014 年 3 月其离职后入职被告单位万某公司，负责全景天窗的研发工作。期间，于某某借从境外个人处购买天窗技术图纸之名，违反与恩某某公司之间的保密约定，向万某公司提供了带有恩某某公司标识及项目代号的技术信息资料，用于产品研发。万某公司在应知可能存在非法披露他人技术秘密的情况下，仍未予以谨慎审查，即将相关技术信息资料用于相关汽车天窗产品的研发及生产销售。于某某、万某公司法定代表人贾某某还以共同研发人身份，对部分技术申请实用新型专利。经鉴定，万某公司部分汽车天窗产品、实用新型专利及计算机内部分电子数据与涉案技术信息实质相同或具有同一性，2015 年 9 月至 2018 年 6 月期间销售上述相关天窗产品净利润为 1298 余万元。公诉机关指控，被告人于某某、被告单位万某公司及其实际经营负责人贾某某构成侵犯商业秘密罪。于某某及其辩护人作无罪辩护，对指控的犯罪事实及罪名均表示异议。万某公司及贾某某（贾永和）对指控的犯罪事实及罪名均无异议，但认为计算犯罪金额时应考虑技术信息贡献度和占比，进行相应折算。审理期间，万某公司、贾某某与恩某某公司就侵犯商业秘密达成和解协议，共计赔偿 778.8 万元，并获恩某某公司谅解。

裁判理由：

法院认为，鉴定意见就涉案技术的查新范围和鉴定方法合理，涉案技术信息属于不为公众所知悉的信息，具备价值性、实用性的特征，且权利人采取了相应的保密措施，构成商业秘密。于某某接触涉案技术秘密，违反与权利人的保密约定，披露、使用、允许万某公司使用其所掌握的商业秘密，属于侵犯商业秘密的行为。万某公司虽有向案外人购买图纸之名，但获取来源为竞争对手的前员工，实际交易状态中合同签订、付款方式等均不符合一般商业惯例，商业秘密载体包含竞争对手商业标识，可认定其应知于某某的侵权行为，仍获取、使用及披露涉案商业秘密，主观上具有明显故意，亦构成侵犯商业秘密的行为。本案中，被告

单位将权利人商业秘密申请了相关专利，致使商业秘密沦为公众知悉的信息而丧失秘密性，势必给权利人造成了损失，但因涉案技术秘密本身具有技术迭代升级的特性，较难准确评估其自身价值，因此采取从权利人损失或侵权人获利的角度评价犯罪数额，更具客观性、合理性。考虑到该案的商业场景，未有证据显示万某公司的客户与权利人的客户具有重合交叉关系，汽车天窗产品的供应市场亦非权利人独占，因此认定侵权产品与权利人产品未形成非此即彼的直接替代关系，故采取侵权人获利的计算方式更为客观。该案中，被告单位在非法使用技术秘密之前，并不具有生产相应天窗产品的能力，因此可以认定该技术秘密构成体现天窗产品技术功能和效果的关键部件，处于产品核心地位。审计鉴定并非指向整车，而是已剥离出天窗部分净利润，作为整体天窗成品，仅作整体销售，并不会脱离关键部件而拆分并单独销售玻璃、封条、线束等零部件。经鉴定侵权天窗产品已覆盖全部机械组技术秘点，因此以侵权天窗产品整体净利润 1200 余万元计算犯罪数额，不再考虑贡献度及占比而进行比例折算。法院以侵犯商业秘密罪判处于某某有期徒刑五年，并处罚金五十万元；以侵犯商业秘密罪判处万某公司罚金四百万元；以侵犯商业秘密罪判处贾某某有期徒刑三年，缓刑三年，并处罚金人民币三十五万元；违法所得依法予以追缴。

专家点评：

本案法律适用方面的价值主体表现在两个方面：一是侵犯商业秘密罪“共同犯罪”的认定。根据我国刑法第二十五条的规定，二人以上共同故意犯罪构成共同犯罪。本案中，被告人于某某违反与原公司的保密协议，虚构从境外人员处购买技术图纸的名义，向被告单位万某公司出售原公司技术秘密图纸并非法获利，侵犯商业秘密的直接故意十分明显；而被告单位万某公司及其实际经营负责人贾某某明知于某某曾在权利人公司任职，且所购买的技术资料带有权利人公司标识及项目代号的情况下，仍予以购买并用于产品研发，具有放任犯罪结果发生的间接故意。本案裁判表明，直接故意和间接故意的行为人在侵犯商业秘密罪刑事案件中可以构成共同犯罪，为今后处理同类法律问题提供了现实案例的支撑。二是侵犯商业秘密罪“重大损失”的认定。侵犯商业秘密罪“重大损失”一般参照商业秘密民事侵权损失计算方法予以认定，遵循权利人损失、侵权人获利以及秘密被公开时研发成本等方法依序适用。本案因权利人产品在市场上具有替代品，侵权人销售一定数量产品未必代表权利人必然销售同等数量产品，且产品的销售并不代表着秘密的公开，故以侵权人获利计算更为妥当。而涉案技术秘点构成了侵权产品利润的主要来源，故以其产品销售净利润作为获利依据并无不当，可以作为同类案件审理时的参考。

（点评人：唐震，三级高级法官，上海市高级人民法院知识 产权庭副庭长）

二十六、 杭州市余杭区市场监管局查处侵犯阿莱西澳商业秘密案

案件来源：余杭区知识产权保护十大典型案例

案情简介：

区市场监管局根据杭州阿莱西澳机械制造有限公司的反映，经过调查发现杭州阿司特智能机械有限公司通过非法手段窃取阿莱西澳的设备图纸为其公司生产设备使用，最终区市场监管局认定杭州阿司特智能机械有限公司侵犯了阿莱西澳的商业秘密，对其罚款 10 万元。

二十七、 杭州市余杭区市场监管局查处侵犯中旺科技商业秘密案

案件来源：余杭区知识产权保护十大典型案例

案情简介：

区市场监管局根据杭州中旺科技有限公司的反映，经过调查发现杭州卓祥科技有限公司通过非法手段窃取了杭州中旺科技有限公司包括但不限于客户名单、行销计划、采购资料、定价政策、财务资料、进货渠道、法务、人力资源等各类资料，并为其经营使用。最终，区市场监管局认定杭州卓祥科技有限公司侵犯中旺科技的商业秘密，对其罚款 10 万元。

二十八、 杭州市余杭区法院调解浙江凌久进出口有限公司、朱斌侵犯杭州中艺实业有限公司商业秘密案

案件来源：余杭区知识产权保护十大典型案例

审理机关：杭州市余杭区人民法院

案情简介：

朱斌为杭州中艺实业有限公司原员工，担任业务三部部门负责人，在浙江凌久进出口有限公司的邀请下，窃取了中艺大量的客户信息等商业秘密，挖客户，抢订单，导致中艺公司损失110万元。区法院经调解，达成如下协议：一、朱斌、凌久公司停止侵犯中艺公司的商业秘密，朱斌赔偿中艺29万元，凌久公司赔偿中艺29万元。

二十九、 王某某、曹某、姚某侵犯商业秘密罪案

案件来源：海淀检察院保护知识产权十大典型案例

审理机关：北京市海淀区人民法院

案情简介：

被告人王某某案发前系万步公司销售总监，肖某某（另案处理）、张某（另案处理）案发前系万步公司销售经理，被告人曹某系万步公司销售人员；被告人姚某案发前系得实公司（万步公司母公司）的研发总监。2015 年 6 月，被告人王某某伙同肖某某、张某共同出资成立了北京储辰科技有限公司。（储辰公司）。

2016 年 7 月至 12 月，被告人王某某、肖某某、张某在代表万步公司开展团队健步走业务的过程中，擅自决定由储辰公司与商务部及其下属单位开展该活动，并指使姚某为储辰公司研发“健康 121”网站及“商务同行”IOS 手机客户端软件。姚某在研发过程中使用了得实公司、万步公司的技术信息。后王某某、肖某某、张某安排曹某使用上述网站及软件开展该活动，并收取商务部及其下属单位活动费用共计人民币 754200 元，事后进行分赃。经鉴定，储辰公司“健康 121”网站及“商务同行”IOS 手机客户端软件与万步公司、得实公司 DTBL 万步网团队健步走 IOS 手机客户端软件、万步网数据接口的相关源代码具有同一性，服务端数据库中表结构相同的数据库表共计 373 个，占储辰公司研发软件的数据库表的 94%。

另查明两起职务侵占的犯罪事实：（1）2016 年 1 月，被告人王某某伙同肖某某、李某在万步公司山东项目业务中利用王某某担任销售总监审批销售专项费用报销的职务便利，将公司的销售专项费用共计人民币 159576 元据为己有；（2）2013 年 9 月，被告人王某某在万步公司中石化等项目业务中利用其担任销售总监审批销售专项费用报销的职务便利，将公司的销售专项费用共计人民币 594805 元据为己有。

海淀区检察院于 2018 年 3 月 13 日以王某某、姚某、曹某构成侵犯商业秘密罪，王某某构成职务侵占罪向海淀区法院提起公诉。海淀区法院于 2018 年 7 月 25 日判决王某某犯侵犯商业秘密罪，判处有期徒刑一年一个月，并处罚金人民币二十五万元，王某某犯职务侵占罪，判处有期徒刑二年六个月，决定执行有期徒刑三年；姚某犯侵犯商业秘密罪，判处有期徒刑一年，并处罚金人民币五万元；曹某犯侵犯商业秘密罪，判处有期徒刑八个月，缓刑一年，并处罚金人民币三万元。被告人未上诉，检察机关未抗诉，判决已生效。

案件评析：

商业秘密是市场经济发展的重要产物，也是高新技术企业赖以生存的智慧成果。近年来，随着侵权手段日益隐蔽化、智能化，侵犯商业秘密类违法犯罪已经成为严重扰乱市场经济秩序的主要不法因素。本案的成功诉判对于突破“立案难、取证难、成案率低”的侵犯商业秘密案办理困境，有着指导性意义。

1. 审查引导侦查，借助专家咨询体系解决专业技术难题。

本案系一起保护民营企业商业秘密的典型案件。涉案计算机软件涉及数据导入、分析与输出等多个结构环节，如何科学、合理地挑选核心技术信息进行同一性鉴定对于案件定性至关重要。检察官借助专家咨询体系，启动专业化同步辅助审查机制，多次与源代码、数据库、汇编语言等多领域技术专家召开论证会，并结合专家意见，决定对数据库表结构、IOS 客户端软件、数据接口源代码三个关键性技术信息进行同一性比对，及时修正侦查思路，并申请鉴定人出庭，通过鉴定人当庭对送检方式、鉴定依据、鉴定流程等问题进行说明，强化对专业问题的证明力度，取得良好的庭审效果。

2. 发挥检察专业化职能，落实鉴定人出庭制度有力指控犯罪。

由于记步型 app 软件的核心密点涉及数据导入、分析与输出等多个结构环节的关键性技术信息，故鉴定意见体现出较强的专业性。为有力指控犯罪，承办检察官在庭审中积极推进鉴定人出庭制度。通过鉴定人当庭从专业角度对送检方式、鉴定依据、鉴定流程等相关问题进行专业而细致的说明，强化了检察机关对专业问题的证明力度，取得了良好的庭审效果。同时，承办检察官充分利用“随案引入”的工作机制，与本案的鉴定专家建立长期联系，充分整合资源，完善专家智库，“搭平台、扩智库、提素质”，有效推动“专业平台、专业工具、专业素质”的“三位一体”检察专业化建设。

3. 及时立案监督，精准追诉漏犯漏罪。

检察官在审查起诉中，发现了王某某涉嫌职务侵占的两起犯罪事实，通过及时补充侦查、调取相关证据，最终依法追诉王某某的遗漏犯罪事实，并获法院判决。同时，检察官发现李某涉嫌职务侵占罪的共同犯罪、网店的经营者涉嫌伪造公司印章罪，及时移送立案监督线索 2 件，实现高效监督、精准追诉。

4. 加强企业权益保护，发出检察建议取得成效。

在办案过程中，检察官针对完善技术信息安保措施、规范财务审批流程、强化法制宣教等方面，向权利公司提出检察建议，切实帮助企业构建预防犯罪的风险防控体系，避免企业经济损失。

三十、 上海豪申化学试剂有限公司、上海美墅化学品有限公司与朱佳佳、上海黎景贸易有限公司侵害经营秘密纠纷案

案件来源：2019 年上海法院加强知识产权保护力度典型案件

审理机关：上海市杨浦区人民法院

案　　号：（2019）沪 0110 民初 1662 号民事判决

基本案情：

原告上海豪申化学试剂有限公司（以下简称豪申公司）与原告上海美墅化学品有限公司（以下简称美墅公司）系关联公司。被告朱佳佳在原告豪申公司处担任产品销售工作,于 2017 年 10 月离职。在职期间，豪申公司与朱佳佳约定了商业秘密保护义务。在朱佳佳入职前，两原告与 24 家客户建立业务关系，在朱佳佳入职后，两原告与另外 18 家客户建立业务关系。朱佳佳在职期间以业务员身份与上述 42 家客户进行接洽，掌握每笔业务的销售日期、送货单号、物资名称及规格、销售数量、单价、销售金额和客户名称等业务明细。被告上海黎景贸易有限公司（以下简称黎景公司）成立于 2017 年 9 月，朱佳佳从豪申公司离职后入职黎景公司，担任产品销售。2017 年 12 月起，被告黎景公司与上述 42 家客户中的 41 家企业进行了业务交易，这些交易中包含有较多这些客户原先从两原告处采购的产品，且价格亦低于两原告提供给这些客户的产品价格。

两原告向法院起诉称：原告掌握的大量客户信息已经构成经营秘密。朱佳佳故意违反保密规定向黎景公司披露并与黎景公司共同使用其所掌握的两原告客户名单信息，给两原告造成巨大损失，侵犯了两原告的商业秘密。请求法院判令被告停止侵权,赔偿两原告经济损失 990,500 元及合理开支 75,500 元。审理中，两被告辩称其中 24 家企业为自愿与朱佳佳和黎景公司发生交易往来，是基于双方信任的市场经济行为。

裁判结果：

一审法院认为，本案的商业密点为 42 家客户名单，包括客户名称、联系方式以及每笔业务的产品名称、数量、金额、单价等“不为公众所知悉”的特殊客户信息。上述信息可以为两原告带来经济利益，具有一定的商业价值,且两原告采取了保密措施，属于《反不正当竞争法》所保护的客户名单经营秘密。朱佳佳实际接触到了两原告主张的客户名单经营信息，但违反与两原告的保密约定，向黎景公司披露并使用上述客户信息，并实际与其中 41 家企业发生了业务交易，黎景公司明知或应知朱佳佳的上述违法行为仍然使用该经营信息,两被告的行为均侵害了两原告的商业秘密。对于两被告提出个人信赖的抗辩，因上述客户系朱

佳佳在原告处入职后基于两原告所提供的物质和其他条件才获得了与客户进行联络和交易的机会，并非基于朱佳佳的个人投入和付出，且其无法证明这些客户系主动与被告发生交易。因此法院对两被告主张个人信赖的抗辩不予采纳。遂判决两被告停止侵权并赔偿两原告经济损失60万元及合理开支73,000元。一审判决后，原、被告均未提起上诉。

典型意义：

本案系侵害客户名单商业秘密案中涉及个人信赖抗辩认定的典型案件，为加大权利人商业秘密保护提供了类似判决参考。法院明确了仅凭客户基于离职员工个人信赖与其进行交易的说明不足以认定构成个人信赖，在审查个人信赖抗辩时需综合考虑如下因素：1.客户的开发是基于个人技能为主还是原单位的物质、技术条件为主；2.离职员工是否采用诋毁、价格竞争等不正当手段主动引诱客户与其产生交易；3.离职员工与原公司之间是否签订过竞业限制协议。

三十一、 魏某、袁某、左某三人侵犯商业秘密罪案

案件来源：章丘法院2019年十大知识产权典型案例

审理机关：山东省济南市章丘区人民法院

案情简介：

魏某曾担任我区S公司研究所某甲课题组负责人，袁某与魏某因生意往来而熟识，袁某遂让魏某帮其寻找配方，魏某找到时任公司乙课题组负责人左某给出提议。左某违反公司保密要求，将其保管的某技术配方交给魏某，魏某又转交袁某。袁某得到配方后生产S公司同类产品1000余吨谋利，并给予魏某、左某“好处费”。案发后，公安机关侦查人员从袁某电脑中提取配方、生产记录。工业和信息化部**知识产权司法鉴定所根据材料及S公司密点，作出非公知性及同一性鉴定，袁某生产的产品与S公司非公知性密点具有同一性。经资产评估有限公司评估，认定袁某获利100余万元。

法院审判：

任何人未经权利人许可，不得以盗窃、贿赂、欺诈、胁迫、电子侵入或者其他不正当手段获取权利人的商业秘密，披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密，违反保密义务或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密，教唆、引诱、帮助他人违反保密义务或者违反权利人有关保守商业秘密的要求，获取、披露、使用或者允许他人使用权利人的商业秘密。

权利人主张的技术信息能够为其带来经济利益，具有实用性，采取了较完善的保密措施，并且在案件审理中明确的密点经鉴定处于非公知状态。法院依法认定三被告人行为构成侵犯商业秘密罪，追究了侵权人的刑事责任。

案件评析：

商业秘密是指不为公众所知悉，能为权利人带来经济利益，具有实用性并经权利人采取保密措施的技术信息和经营信息。商业秘密权是指权利人享有的对其商业秘密的占有、使用、收益和处分的权利，其属于法律赋予商业秘密持有人的一项知识产权。根据《中华人民共和国刑法》第二百一十九条规定，侵犯商业秘密罪是指以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密，披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密，违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密，给商业秘密的权利人造成重大损失的行为。侵犯他人商业秘密，侵权人应当承担以下责任：1.停止侵害、消除影响、赔礼道歉；2.给权利人造成损失的，

承担损害赔偿责任；3.承担权利人因维权而支出的合理费用；4.行政部门根据情节处以1万元以上20万元以下的罚款；5.触犯刑法的，承担刑事责任。

三十二、 山东禹王生态食业有限公司、哈尔滨市宾县禹王植物蛋白有限公司与郭坤商业秘密纠纷案

案件来源：2019 年德州法院知识产权审判十大典型案例

审理机关：山东省德州市中级人民法院

案情简介：

郭坤是山东禹王公司的技术员，曾在山东禹王公司关联企业哈尔滨禹王公司任职，后升任山东禹王公司技术主管。山东禹王公司与郭坤签订的《劳动合同》约定郭坤有保守商业秘密的义务。郭坤离职后，山东禹王公司、哈尔滨禹王公司请求法院判决郭坤停止商业秘密侵权行为，赔偿经济损失及合理支出。

法院经审理认为，**郭坤提交相关教科书等证据对 13 份工艺规程是公知技术进行抗辩，山东禹王公司、哈尔滨禹王公司提交的证据无法证明 13 份工艺规程属于商业秘密，**驳回山东禹王公司、哈尔滨禹王公司的诉讼请求。

案件评析：

商业秘密，是指不为公众所知悉、具有商业价值并经权利人采取相应保密措施的技术信息和经营信息。商业秘密应具有秘密性、实用性和保密性。经营者应注重保护企业经营过程中形成的商业秘密，但也要注重区分商业秘密和公知信息。所谓公知信息，包括：所属技术或者经济领域的人的一般常识或者行业惯例，或者该技术无需付出一定的代价而容易获得的信息；仅涉及产品的尺寸、结构、材料的简单组合等内容，进入市场后相关公众通过观察产品即可直接获得的信息；已经在公开出版物或者在媒体、报告会、展览等公开渠道公开披露的信息。

三十三、 山东茂施生态肥料有限公司与刘朋、蔡小伶、山东多益成肥料科技有限公司侵害商业秘密纠纷案

案件来源：临沂市法院知识产权审判十大案例

审理机关：山东省临沂市中级人民法院

案情简介：

茂施公司于 2011 年 3 月 3 日设立，刘朋、蔡小伶系股东之一，经营范围为生产、销售控释肥、掺混肥、复混肥等。茂施公司主张其把控释肥的生产原料、生产工艺及生产设备作为技术秘密予以保护，把生产原料、生产设备的供货渠道及客户名单作为经营秘密予以保护，蔡小伶、刘朋、多益成公司披露、使用其商业秘密，起诉要求蔡小伶、刘朋、多益成公司立即停止侵害原告商业秘密，连带赔偿原告经济损失人民币 10000000 元（含维权合理费用人民币 500000 元）。

临沂中院认为：茂施公司所主张的商业秘密，包括经营秘密和技术秘密。经营秘密包括客户名单和生产原料、生产设备的供货渠道，技术秘密又包括生产原料、生产工艺、生产设备。茂施公司举证证明其对商业秘密采取了保密措施，其采取的保密措施是否与该技术能带来的商业价值等具体情况相适应存疑。茂施公司不能证明其所主张的经营信息和技术信息属商业秘密，主张侵权依据不充分，要求刘朋、蔡小伶、多益成公司连带赔偿经济损失及合理费用，缺乏事实和法律依据，判决驳回原告诉讼请求。原、被告均不服判决提起上诉，二审法院维持了一审判决。

案件评析：

本案系侵害商业秘密案件。商业秘密纠纷案件存在举证难、保密难等特点，人民法院审理商业秘密侵权纠纷首先需要做的工作就是由原告固定商业秘密的范围，人民法院根据原告固定后的商业秘密范围进行审理和裁判。采取保密措施是相关信息能够作为商业秘密受到法律保护的必要条件。认定是否构成商业秘密，属于人民法院司法审判权的行使范围。临沂中院依法认定商业秘密的构成要件，准确界定商业秘密的保护范围，加强侵犯商业秘密案件的审理，探索制约商业秘密有效保护的实体和程序问题的解决途径，切实保护企业的商业秘密权益，引导企业建立健全商业秘密管理制度。本案的审理，促使企业增强对商业秘密的保护意识，规范和完善保密措施，积极营造良好的贸易投资环境。

三十四、 浙江杭州富阳区市场监管局查处某艺术培训机构侵犯商业秘密行政处罚案件

案件来源：国家市场监督管理总局网站（19.11.28 日发布）

审理机关：浙江省杭州市富阳区市场监督管理局

案情简介：

在案件调查中发现，一些对学生有影响力的艺术培训机构或老师通过影响力将学生介绍到专门面向艺术生文化课的培训机构，后者则会向介绍生源的单位或个人支付的数额较大的“渠道生佣金”，该“渠道生佣金”按照学生培训费的一定比例计算。这些“渠道生佣金”间接导致了居高不下的培训费用，学生成为了艺术培训机构及老师之间的“香饽饽”，再转手还能赚取一笔高昂的“佣金”。查处 A 培训机构利用 B 培训机构离职员工带走的学生信息进行营销活动，并为以离职员工李某为首的营销团队单独安排办公场所，参与具体招生经营活动。A 培训机构因侵犯商业秘密被处 30 万元罚款。

三十五、 仿制原公司手游产品牟利，游戏公司员工侵犯商业秘密被罚

案件来源：嘉兴市市场监督管理局（20.4.26 发布）/浙江“亮剑 2019”保护知识产权综合执法行动发布十大典型案例

审理机关：浙江省嘉兴市市场监督管理局

案情简介：

2018 年 8 月，A 公司副总张某找到了副总丁某，要求丁某为其参照 A 公司仿制一款新的手游产品。此后，丁某授权公司的技术人员使用 A 公司的游戏源代码制作了一款新的手游。2018 年 8 月，张某找到 A 公司离职员工陈某，让陈某使用他人身份证成立了 B 公司。

张某在公司成立后，邀请 A 公司员工宋某和张某某成为 B 公司的共同合伙人，并以 B 公司为平台推出新的手游。在未经 A 公司同意的情况下，宋某和张某某擅自将属于 A 公司的浙江区域两大代理商引导至 B 公司，并从中获利。经查明，张某、丁某、宋某和张某某构成了侵犯商业秘密的不正当竞争的违法行为，市场监管部门对上述四人分别罚款 20 万、15 万、13 万和 12 万。

由嘉兴市市场监管局经开分局查办的张某等人侵犯商业秘密系列案，不仅为企业挽回了巨大损失，同时为打造优质的知识产权竞争环境、促进招商引资起到了积极作用，获评全国十佳案件。近年来，嘉兴市场监管局经开分局高度重视知识产权保护工作，通过宣传引导、品牌打造、商业秘密保护指导站（点）建设和严厉查处商标、商业秘密违法行为等形式，不断推进知识产权保护工作。

三十六、 洪某、帆拓公司侵犯商业秘密案

案件来源：国家市场监管总局《反不正当竞争执法暨“百日行动”典型案件评审活动》十佳案件

审理机关：厦门市海沧区市场监督管理局

案情简介：

近来，厦门市海沧区市场监管局查处一起盗用客户名单案件。涉案人员洪某，在 2012 到 2018 年间，担任威圣公司的石材外贸业务员。2017 年 9 月，仍在任职期间的洪某，以自然人独资的形式成立了帆拓公司。2017 年 12 月，洪某在明知其身为帆拓公司法定代表人的情况下，仍在威圣公司的办公场所内记录下威圣公司的 7 家石材外贸客户的联系人、电子邮件等信息，以便再次从事石材外贸业务。其中 4 家是美国客户。2018 年 1 月，洪某从威圣公司离职。2018 年 1 月至 4 月，帆拓公司与上述 7 家外贸客户中的 4 家（美国客户）进行了石材外贸交易，经营额 46.96 万元。威圣公司察觉到异常的业务波动，便向市场监管部门举报该情况。对此，帆拓公司提出申辩，认为其行为应当属于《厦门经济特区反不正当竞争条例》第二十条第一款第（一）项所称的徇私竞业行为，即自己经营或者为他人经营所任职的单位同类的业务。针对侵权人的狡辩海沧区市场监管局的办案人员柔性释法，渐进感化了侵权人使其配合调查。最后侵权人帆拓公司主动为权利人威圣公司挽回客户、登报道歉并协议赔偿损失。经调查，市场监管部门认定帆拓公司以盗窃手段获取并使用威圣公司的客户名单，扰乱市场竞争秩序，违反了《反不正当竞争法》第九条第一款第（一）、（二）项的规定，构成侵犯商业秘密行为。根据《反不正当竞争法》第二十一条的规定，同时鉴于帆拓公司具有诸多从轻处罚情节，决定对其减轻处罚，罚款 6.9 万元。

案件评析：

厦门市海沧区市场监管局杨达认为：本案在查办过程中，办案人员通过电子取证软件“现勘精灵”，对威圣公司的电脑进行“重要文件搜索”，发现洪某曾通过威圣公司向某一美国客户公司发出电子邮件，邮件内容翻译为中文：“我即将离开威圣，新公司会给你更好的价格和质量，我相信你会对新公司满意。”这足以证明洪某具有侵犯威圣公司商业秘密的主观动机。

客观行为方面，洪某盗窃并使用了威圣公司的客户名单，在盗窃时，洪某明知自己已经是帆拓公司的法定代表人，这些信息也由帆拓公司在石材外贸业务中使用，故帆拓公司是本案的适格当事人，其行为侵犯了商业秘密拥有者威圣公司的合法权益，扰乱了市场竞争秩序，构成侵犯商业秘密行为。

三十七、 青岛森特瑞进出口有限公司诉许红星、青岛鸿世通进出品有限公司、李龙梅、赵晓庆侵害商业秘密纠纷

案件来源：2019 全国律协知产委年会年度十佳案例

审理机关：山东省高级人民法院

案情简介：

青岛森特瑞进出口有限公司（以下简称森特瑞公司）是一家专业从事室内外艺术装饰材料生产及出口业务的贸易公司，被告许红星与被告李龙梅于 2014 年 2 月至 2015 年 7 月同在森特瑞公司工作，且系夫妻关系。许红星离职后不到一个月的时间，于 2015 年 8 月 7 日独资设立被告青岛鸿世通进出口有限公司（以下简称鸿世通公司），李龙梅担任法定代表人。鸿世通公司的六个客户均为许红星与李龙梅在森特瑞公司工作时负责联系的企业，其中五个客户在两被告在职时未与森特瑞公司产生实际交易关系。

法院审理认为，根据《反不正当竞争法解释》规定，当事人主张保护的客户名单主要分为两类，一类是区别于相关公知信息、具有深度信息的客户名单，另一类是保持长期稳定交易关系的特定客户。两类客户信息是否构成商业秘密对是否与客户发生交易关系的要求并不同，第一类客户信息只要区别于相关公知信息，且符合《反不正当竞争法》第十条第三款规定的要件，即使权利人还没有利用该信息与客户发生交易关系，该特殊的客户信息仍可以构成商业秘密予以保护；而第二类则需要与客户发生了交易，并且还要保持长期稳定的交易关系。

因此，法院认定许红星、李龙梅、鸿世通公司抢夺公司客户的行为侵犯了森特瑞公司的商业秘密行为，并判决各被告连带赔偿森特瑞公司经济损失 100 万元。

典型意义：

（一）法院首次在裁判文书中明确客户名册与特定客户构成商业秘密的要件存在不同。

本案的典型意义在于，法院首次在裁判文书中明确前述客户信息构成商业秘密的要件存在不同，即深度信息的客户名单，只要区别于相关公知信息，且符合《反不正当竞争法》第十条第三款规定的要件，即使权利人还没有利用该信息与客户发生交易关系，该特殊的客户信息仍可以构成商业秘密予以保护；而保持长期稳定交易关系的特定客户构成商业秘密不仅需要与客户发生了交易，并且还要保持长期稳定的交易关系。

（二）明确没有发生交易的客户名单也可构成商业秘密。

本案之前，山东法院针对客户名单构成商业秘密的普遍司法观点为，权利人应当与涉案客户保持长期稳定的交易关系，唯有如此才能构成不正当竞争法所要保护的经营信息。而长期稳定交易关系的认定，则主要从交易持续时间、交易金额、交易数量等因素考量。

本案中，山东高院改变了之前关于客户名单构成商业秘密的裁判标准，首次明确没有发生实际交易的客户名单，只要符合商业秘密三要件，构成具有深度信息的特征，也可被认定为权利人的商业秘密。

（三）该判决体现的裁判理念有利于塑造公平有序的市场竞争环境，营造良好的营商环境，规范创业创新，也更符合民众对司法的期待。

区分客户名单中的客户名册与特定客户，进而明确两者构成商业秘密的要件的不同，而不一味强调长期稳定的交易关系，更符合商业运营和交易实践、更符合民众对司法的期待，更有利于保护商业秘密，更从而有利于塑造公平有序的市场竞争环境，营造良好的营商环境，规范创业创新。

三十八、 被告人黄礼强、钱振鹏等四人侵犯商业秘密罪案

案件来源：广东检察机关依法办理打击侵犯知识产权犯罪案件典型案例

审理机关：广东省广州市天河区人民法院

案情简介：

北京麒麟合盛科技有限公司（下简称麒麟合盛科技公司）是麒麟合盛网络技术股份有限公司(原北京麒麟合盛网络技术有限公司,下简称麒麟合盛网络公司)的全资子公司。麒麟合盛网络公司亦派驻员工至麒麟合盛科技公司工作。麒麟合盛科技公司、麒麟合盛网络公司（下合称 APUS 公司）设计开发手机安卓系统清理软件,并有 APUS Launcher、TurboCleaner、Power+Launcher 等产品投入市场。

被告人黄礼强、钱振鹏、李娴、裴智松曾受雇于麒麟合盛科技公司、麒麟合盛网络公司。黄礼强曾任 APUS Launcher、TurboCleaner、Power+Launcher 等产品的产品经理，负责产品设计，有接触产品文档、设计文档权限；钱振鹏曾任 TurboCleaner、Power+Launcher 等产品的开发工程师,负责相关产品的源代码开发,有接触产品文档、设计文档和源代码的权限;裴智松曾任 Power+Launcher 等产品的开发工程师，负责相关产品的源代码开发，有接触产品文档、设计文档和源代码的权限；李娴曾任商业化运营负责人，负责公司商业化运营工作，掌握公司商业化思路、策略、经营分析成果等。被告人黄礼强、钱振鹏、李娴、裴智松合谋，利用在公司工作掌握的产品源代码、商业运营资料等商业秘密，研发与公司类似的手机安卓系统清理软件产品营利，并在离职前将相关资料保存带走。2016 年下半年，黄礼强、钱振鹏、李娴、裴智松筹备设立新公司，利用在公司工作时掌握的商业秘密，开发设计手机安卓系统清理软件。2016 年 10 月 26 日，上海厚乘信息技术有限公司（下简称厚乘公司）成立，后以广州市天河区太古汇 1 座 38 层为办公地点。被告人黄礼强是厚乘公司实际控制人之一，负责产品设计及公司运作；李娴是厚乘公司商业化负责人；钱振鹏、裴智松等人是程序员，进行程序设计。厚乘公司营利性业务为手机安卓系统清理软件，包括 Color Booster、Color Cleaner-Clean Memory 等产品，上述软件基本功能相同。

经鉴定，Color Booster 软件源代码中，至少存在 67 个函数，与北京麒麟合盛科技有限公司 Power+Launcher、Turbo Cleaner 软件源代码相同或实质相似。上述 67 个函数的源代码技术信息属于不为公众所知悉的技术信息。经查，自 2016 年 8 月 9 日起，通过上传到互联网应用市场供用户下载使用，并通过与各知名平台合作的广告费用营利，厚乘公司账户获利共计 98975.3 美元，以抓获当日人民币对美元汇率中间价 6.871 计算，约合人民币 680059.29 元。

诉讼过程：

2017 年 2 月 9 日，被告人黄礼强、钱振鹏、裴智松、李娴被抓获归案。广州市天河区检察院分别于 2018 年 1 月 16 日、2019 年 3 月 21 日以各被告人构成侵犯商业秘密罪向广州市天河区人民法院起诉、变更起诉（部分事实变更）。同年 5 月 16 日，天河区人民法院作出判决，以各被告人构成侵犯商业秘密罪，判处二年四个月十五日至二年三个月十五日不等的有期徒刑，并处二十四万元至十五万元不等的罚金，对各被告人及其公司上海厚乘信息技术有限公司违法所得人民币 680059.29 元予以没收并上缴国库。

案件评析：

本案是典型的离职员工窃取“前东家”商业秘密犯罪案件。涉案被害民营企业是入选科技部榜单的市值达 10 亿元的“独角兽”公司，其开发的安卓手机清理软件等产品市场占用率高，在国内乃至国际都有较强的竞争力。本案发生在企业准备上市之际，且涉案被侵权的安卓手机清理软件又是企业的重要商业秘密，案件办理的效果对企业的生存、发展有至关重要的影响。该案的成功办理，不但使被害企业保住了其核心技术和竞争力，**也为解决互联网企业知识产权保护面临的侵权鉴定、损失计算等难题提供了可借鉴经验，**法制日报、搜狐网等媒体对该案进行了报道，案件办理取得了良好的法律效果和社会效果。

在案件办理中，检察机关及时调整思路，引导侦查取证，解决侵权鉴定、损失计算等难题。本案核心的争议焦点是被告人是否侵犯及如何侵犯了被害单位的商业秘密。检察官采用核心代码比对替代传统的全代码比对，解决鉴定工作量大、耗时长、费用高的问题；从非法获利方面着手，解决侵权损失计算难的问题。本案的成功办理为侵犯互联网、科技类企业商业秘密犯罪的取证、鉴定、指控提供了示范样本，更好地帮助企业维权、指引司法办案，为保护民营经济保驾护航。

三十九、 深圳黄沛瑜、王鹏侵犯商业秘密罪案

案件来源：广东检察机关依法办理打击侵犯知识产权犯罪案件典型案例

审理机关：深圳市南山区人民法院

案情简介：

2002 年至 2017 年 1 月，被告人黄沛瑜就职于中兴通讯公司，担任过射频工程师、无线架构师、RRU 芯片产品经理等职务；2008 年 4 月至 2016 年 10 月，被告人王鹏就职于中兴通讯公司西安研究所，担任过 RRU 部门研发工程师、有源天线 A8808 项目负责人等职务。2014 年年中，被告人黄沛瑜接受了某研究所 5G 有源天线原型机的技术外包项目。被告人黄沛瑜将项目挂靠在深圳森博兴业科技有限公司，与上述研究所先后签订了四份《项目技术研发外包合同书》，合同总金额为人民币 235 万元。被告人黄沛瑜将该项目交给被告人王鹏负责技术落地。黄沛瑜作为项目总负责人，负责合同谈判和签订、财务，参与需求论证等工作；王鹏作为项目技术负责人，负责射频设计以及统筹汇总其他人员提交的技术文档、硬件、软件等工作。研发完成后按照合同约定分阶段向上述研究所交付了一台 5G 有源天线原型机和相关技术文档。并在 2015 年到 2017 年期间分 5 次收取了项目经费人民币 235 万元。

经鉴定，被告人王鹏通过电子邮箱 bruewangp@163.com 交付的技术文档与中兴通讯公司的《有源天线接收链路指标分解-LTE FDD》文档具有同一性，被告人王鹏通过电子邮箱 bruewangp@163.com 向已离职人员雷红发送的“逻辑.7z”技术文档与中兴通讯公司的《3228 FGPA 设计方案 A》文档具有同一性。

经鉴定，《3228 FGPA 设计方案 A》和《有源天线接收链路指标分解-LTE FDD》文档属于不为公众所知悉的技术信息。中兴通讯公司通过制定《公司业务信息安全管理规定》、《商业秘密保护管理规范》等多个保密制度，与员工签订《保密协议》、《信息安全承诺书》，对文档进行集中加密存储等方式，对公司上述技术信息采取了保密措施。中兴通讯公司上述技术信息已应用在 R8862、R8862A 等 RRU 产品的设计与研发中，产品已商用并，在海内外销售，能够给中兴通讯公司带来经济利益，具有实用性。经评估，上述文档商业秘密的评估值为人民币 430 万元。

诉讼过程：

2019 年 6 月 28 日，深圳市南山区检察院以被告人黄沛瑜、王鹏涉嫌侵犯商业秘密罪向深圳市南山区人民法院提起公诉。同年 12 月 5 日，深圳市南山区人民法院作出判决，被告人黄沛瑜、王鹏构成侵犯商业秘密罪，均被判处有期徒刑

三年，缓刑四年，并处罚金人民币 15 万元。两被告人认罪认罚，均未上诉。

案件评析：

本案系国内首宗涉及 5G 技术侵犯知识产权刑事案件。检察机关在审查逮捕和审查起诉阶段，积极发挥主导作用，精准引导侦查。针对涉案商业秘密的来源、流转途径、保存方式、犯罪嫌疑人的获利情况等方面列明了十余条补充侦查提纲，精准引导公安机关开展取证工作，调取了多份关键证言，理清了涉案商业秘密的用途特点以及泄漏途径，为准确指控犯罪打下了坚实的基础。

检察机关没有“就案办案”，而是积极作为，充分发挥检察职能，依法平等保护民营企业的合法权利。在本案办理过程中，检察机关了解到被告人黄沛瑜在中兴通讯公司工作十余年，系公司通讯技术领域的专家级人才，其在 2016 年离职，创立深圳希诺麦田公司进行无人机图像传输技术自主研发，系公司的大股东和法定代表人，公司拥有多个发明专利，并且属于国家级高新技术企业。因涉本案导致公司经营困难。为此，检察机关专门向中兴通讯公司调查座谈了解情况，中兴公司反馈黄沛瑜在工作期间为公司做出了很大贡献，离职创业后没有使用到中兴公司的技术，只要黄沛瑜认罪悔罪并赔偿损失，公司愿意对其谅解。经过释法说理，最终两被告人赔偿了中兴通讯公司损失，并取得了谅解。检察机关及时建议侦查机关对两名被告人改变强制措施，深圳希诺麦田公司得以继续经营，有效地避免了“案件办了，企业垮了”。最后，检察机关综合两名被告人属于初犯偶犯，未造成严重后果，并且认罪认罚、赔偿被害人损失并取得谅解，提出适用缓刑的量刑建议，被法院采纳，两被告人认罪服法。案件办理取得法律效果、社会效果的统一。

四十、 东莞喻福先侵犯商业秘密罪案

案件来源：广东检察机关依法办理打击侵犯知识产权犯罪案件典型案例

审理机关：广东省东莞市第三人民法院

案情简介：

被告人喻福先于 2004 年进入东莞市清溪镇重河村明门（中国）幼童用品有限公司系有限责任公司工作，任设计中心资深协理，负责设计中心一课的管理及产品设计打样，新产品的结构构思、提案及改善等工作，掌握明门公司相关的商业秘密，并与公司签订了《商业秘密保护与竞业限制协议书》等保密协议。2017 年 5 月左右，喻福先与公司外人员苏佩崇商量共同开发婴儿电动摇椅、婴儿床等产品，用于销售谋利。喻福先利用其职务便利，先后从明门公司设计中心窃取婴儿电动摇椅、婴儿床零部件等幼童产品及零配件，其中包括明门公司未上市销售的研发产品零件，并通过微信聊天、邮件等方式将上述产品的设计半成品和成品图片等内容发送给苏佩崇，并参照该公司未上市的幼童产品设计信息及零配件，私自绘图设计，利用窃取所得的零配件进行打样，生产出样品，准备与苏佩崇合作进行生产、销售。后喻福先被公安机关抓获。

经鉴定，明门公司的 NU103（升级版摇椅）、BB1709（多层床边床）等产品的 3D 图、设计图纸与从喻福先等人处查获对应产品的 3D 图、设计图纸及实物具有完全同一性或高度同一性。以上明门公司多种产品的技术信息（产品的整体设计图纸），均同时具有“非周知”和“非易获得性”，属于“不为公众所知悉的技术信息”。经审计，明门公司技术专案 BB1709 研发成本 2 万余元、明门公司技术专案 NU103 的研发成本共计 83 万余元。

诉讼过程：

2018 年 11 月 1 日，东莞市第三市区检察院以被告人喻福先涉嫌侵犯商业秘密罪向东莞市第三市区人民法院提起公诉。2019 年 5 月 17 日，东莞市第三市区人民法院作出判决，认定喻福先犯侵犯商业秘密罪，判处有期徒刑六个月二十天，并处罚金人民币 80000 元。被告人喻福先未提出上诉。

案件评析：

本案系一起司法机关“抓早抓小”，于实际损害发生之前成功查办案件，保护权利人权益的成功范例。同时，该案件的办理也为侵犯商业秘密罪行中的损失认定等难题提供了借鉴。检察机关切实做到依法保护民营企业知识产权，为民营企业发展营造良好的法治环境和营商环境，保障民营业企业健康发展。

本案中，检察机关通过释法说理、补强证据体系，推动这一侵犯商业秘密未遂案的成功判决。因喻福先获取相关商业秘密后，尚未大规模生产，对权利人造成的损失未能以显著方式体现出来，因而犯罪数额的认定存有一定争议。检察机关经深入研究相关法律规定及全国典型案例，提出喻福先使用权利人商业秘密的行为足以认定对权利人的经济造成重大损失，相关商业秘密的研发成本应直接认定为权利人的经济损失，其行为属于犯罪未遂的意见，认为相关犯罪具有刑事打击的必要，否则对花费 80 余万元研发产品的明门公司而言并不公平。为了加强指控，检察机关注重与民营企业沟通协作，引导明门公司补充提供因本案发生而额外必须支出的费用等证据，以完善证据体系，充分有力地指证本案犯罪事实。相关意见得到法院采纳，具有一定的参考意义。

此外，检察机关主动作为，针对企业保护知识产权的漏洞，发出相关检察建议，推动民营企业健康发展。在办理该案过程中，检察机关经到明门公司实地沟通走访，发现明门公司在保护知识产权方面还存在不足之处，如涉密工作部门及区域安保管理存在漏洞、涉密载体的监管保护力度不够等。经研究，向明门公司发出东莞第三市区检察院 2019 年第 3 号检察建议，建议明门公司对其保护知识产权的上述措施漏洞进行整改，如合理确定保密范围，积极申请专利保护；加强公司内部涉密硬件载体和电子网络载体的防护；建立市场有效监控，明示侵权法律风险等。相关建议得到明门公司的采纳与感谢，取得良好收效。

四十一、 临海查处王某侵犯企业商业秘密案

案件来源：浙江“亮剑 2019”保护知识产权综合执法行动发布十大典型案例

审理机关：浙江省台州市临海市市场监督管理局

案情简介：

2019 年 9 月 29 日，浙江省临海市市场监督管理局对王某侵犯浙江某科技有限公司商业秘密的违法行为作出行政处罚，及时防止了企业商业秘密的外泄。

经查明：王某在浙江某科技公司任职期间，与公司签订过保密协议。但从该公司离职后，未经权利人同意，擅自拷贝了权利人的技术信息和客户信息等商业秘密资料。在权利人明确要求当事人在离职前将其擅自拷贝的公司技术信息和客户信息删除或交还公司后，当事人表面上向权利人表示已删除相关信息，而实际上却将从权利人处拷贝的商业秘密信息保存移动硬盘和 U 盘内。当事人从权利人处离职后，前往权利人的竞争对手处任职，使权利人的商业秘密处于危险状态，对权利人的市场竞争构成了直接的威胁。

王某在已与权利人公司签订了保密协议的情况下，仍以不正当手段获取并保存权利人的企业技术信息和经营信息等商业秘密的行为，违反了《中华人民共和国反不正当竞争法》（1993）第十条第一款第一项的规定，属于以其他不正当手段获取权利人商业秘密的违法行为，临海市市场监督管理局依据《中华人民共和国反不正当竞争法》第二十五条的规定，对当事人的违法行为予以处罚。

四十二、 广东喜粤知识产权有限公司诉邓小兰、佛山市烙嘉知识产权服务有限公司侵害商业秘密纠纷案

案件来源：佛山法院 2019 年知识产权民事案件典型案例

审理机关：广东省佛山市中级人民法院

案　　号：(2019)粤 06 民终 2768 号

裁判要旨：

判定客户名单是否构成商业秘密，除需要具备商业秘密构成要件的秘密性、商业价值性和保密性外，客户名单还应包括客户名称、联系人、联系方式、交易价格、需求类型和需求习惯、潜在的交易意向、客户对商品价格的承受能力等特殊客户信息即深度内容。广东喜粤知识产权有限公司主张的客户名单中记载的信息仅有客户名称、联系方式等简单信息，缺乏构成商业秘密的深度内容；广东喜粤知识产权有限公司提交的证据仅能反映广东喜粤知识产权有限公司与该五个客户之间存在交易往来，无法证明双方之间已经形成长期稳定的交易关系，也未能证明其对主张权利的客户名单采取了合理有效的保密措施，故广东喜粤知识产权有限公司所请求保护的客户名单不构成商业秘密。

四十三、 济南华重公司诉焦某侵害商业秘密纠纷案

案件来源：济南律协十大知识产权案件 20.5.6

审理机关：山东省济南市中级人民法院

案　　号：（2019）鲁 01 民终 2546 号

案情简介：

被告焦某自 2012 年 5 月来原告公司工作，工作期间负责维护客户，被告于 2013 年 5 月从原告处不辞而别，带走移动硬盘等重要数据资料，被告离职后加入山东集鑫汽车销售有限公司，该公司系与原告同行竞争对手，被告进入该公司后与其在原告公司获取信息的客户联系后，并与多个客户形成订单，主要为菲律宾 Ichiban 公司，根据双方签订的保密协议合同，请求法院判决被告停止侵权并赔偿经济损失及合理开支共计 30 万，一审法院判决被告焦某赔偿原告济南华重机械设备有限公司经济损失 20 万元，双方上诉至二审法院，二审法院认为焦某在本职工作中实际代行的是经营者的职责，其与经营者应视为统一整体。焦某认为其并非经营者，不符合侵害商业秘密行为主体身份的上诉理由，本院不予支持。综合焦某自华重公司离职后 Ichiban 公司即与华重公司中断合作、Ichiban 公司与集鑫公司进行业务合作和焦某不能提供集鑫公司获知 Ichiban 公司信息的合法来源等事实和情节，本院认为，焦某侵害华重公司涉案商业秘密的事实具有高度可能性，足以认定。二审法院最终判决维持原判。

裁判要旨：

近年来，随着我国的经济发展和科技进步，商业秘密作为知识产权保护体系中的一环，在企业的经营和市场竞争中发挥着重要的作用，然而激烈残酷的竞争、频繁的人才流动，又给企业的商业秘密带来各种各样的风险。据统计，检索近五年公开的裁判文书，以判决结案的商业秘密侵权案件全国法院每年平均不足 100 件，且原告胜诉的不足三成，如何准确理解和适用法律，为企业的商业秘密提供强有力的司法保护，是目前知识产权审判工作中较为重要的问题。

商业秘密案件在知识产权审判中有其独特的判断思路和司法判断规则，法院在审理此类案件中，商业秘密构成要件；举证责任分配；抗辩事由认定等问题亦存在不同观点。2019 年 4 月 23 日施行的《中华人民共和国反不正当竞争法》扩大侵犯商业秘密主体范围、行为类型、通过完善证据分配规则降低权利人的举证负担及增加商业秘密侵权赔偿额度及行政处罚额度等方面均作出了修订，从立法层面上加强了对商业秘密权利人的保护。但与此同时，新法之下法院的自由裁量空间也更大，如何正确理解和适用新法，仍需在具体案件中进一步研究分析。

四十四、 **许某、李某、张某侵犯瑞合肥雪化工科技有限公司商业秘密罪案**

案件来源：合肥市检察院 20.4.26 发布的微信公众号内容

审判法院：安徽省合肥市高新区人民法院

案情简介：

合肥瑞雪化工科技有限公司（以下简称瑞雪公司）是一家从事墨水研制的企业。自 2006 年以来，该公司研发团队致力于一款摩摩擦墨水（又称热敏可擦墨水）的研发，历时 6 年，耗资 600 余万元终有所成。2012 年，该产品研制成功并批量生产投放市场。

2013 年 2 月至 2015 年 4 月期间，许某、李某在担任瑞雪公司业务员过程中，利用职务之便，谎称公司收款账户变更，侵占公司资金 161990 元。2018 年 4 月 4 日，高新区检察院以许某、李某涉嫌职务侵占罪向高新区法院提起公诉。同年 7 月，高新区法院一审以职务侵占罪对两人作出判决。判决后，许某、李某不服提起上诉。同年 8 月 23 日，该案经合肥市中级人民法院裁定，发回重审。重审期间，高新区检察院经审查，发现许某、李某还涉嫌侵犯商业秘密罪。经补充侦查后，于 2019 年 6 月向高新区法院追加起诉许某、李某、张某涉嫌侵犯瑞雪公司的商业秘密。

高新区检察院指控：许某、李某在摩摩擦墨水的巨大利益诱惑下，决定瞒着瑞雪公司自己生产摩摩擦墨水销售给客户，并以承诺给予股份的形式，从该公司能接触到的摩摩擦墨水详细流程配方的张某手中拿到工艺配方单。随后，许某、李某购置大型生产设备，先后在义乌、合肥、六安等地生产摩摩擦墨水，直至 2017 年 7 月案发。期间，三人侵犯商业秘密的行为给瑞雪公司造成损失达 650 多万元。

案件评析：

侵犯商业秘密罪案件在实务中较少，此案是高新区检察院专案组成员第一次办理类似案件，许多问题无以往判例参考。办理工程中，承办检察官咨询了多家专业机构、以往办过类似案件的检察机关，并根据本案特点形成意见。

侵犯商业秘密案件专业性强，就本案而言涉及化学领域诸多问题，如何理解并运用到实际办案中，对承办检察官来说，是巨大的考验。承办检察官不得不边学习边研究，并多次向专业人士求证分析。

本案证据材料繁杂，各方观点各异，为充分保障辩方诉讼权利，承办检察官共计询问犯罪嫌疑人 8 次，认真听取其辩解及意见。办案期间，承办检察官还会

见辩护人、犯罪嫌疑人家属十余次，接受律师书面辩护意见 4 份，其他证据材料 20 余份。

2020 年 3 月，高新区法院依法对该案作出一审判决：许某因侵犯职务侵占罪、侵犯商业秘密罪，两罪合并，被判处有期徒刑 5 年，并处罚金 240 万元。李某因职务侵占罪、侵犯商业秘密罪，两罪合并，被判处有期徒刑 5 年，并处罚金 240 万元。张某因侵犯商业秘密罪，判处有期徒刑 4 年，并处罚金 180 万元。

四十五、 深圳徕越生物技术有限公司员工雷某、李某侵犯商业秘密案

案件来源：广东省市场监督管理局公布反不正当竞争执法典型案例

审判机关：深圳市市场监督管理局

案情简介：

经查明，深圳徕越生物技术有限公司的法人代表雷某利用在投诉人深圳市某生命科技有限公司任职的工作机会，用自己的账户登陆了投诉人公司系统，截屏了投诉人公司的客户信息和供应商信息38541条，下载投诉人公司产品设计图纸1559张；使用了60张投诉人公司脑立体定位仪设计图纸，20张小鼠及幼大鼠适配器图纸，制成产品后销售给某动物所和某生物科技有限公司，销售金额共计27300元。当事人的员工李某用U盘下载了投诉人公司的客户信息，入职当事人公司后用这些客户信息群发了5次邮件，投诉人的原客户有23家主动联系当事人购买了88139元的产品。

当事人的法定代表人雷某，员工李某违反了与投诉人签订的保密协议，利用在职期间所掌握的投诉人的产品技术（图纸）资料、供应商信息、客户信息等商业秘密，采取不正当竞争的方式，损害投诉人的合法权益，违反了《中华人民共和国反不正当竞争法》第九条第一款第（三）项规定，构成侵犯商业秘密行为。在案件调查过程中，当事人积极主动配合办案人员调查、取证，认错态度良好，在案发时立即停止了侵权活动，并取得投诉人的谅解，双方达成赔偿协议。执法机关责令当事人停止违法行为，并处罚款10万元。

写给经营者的话：根据《中华人民共和国反不正当竞争法》第九条规定，商业秘密是指不为公众所知悉、具有商业价值并经权利人采取相应保密措施的技术信息、经营信息等商业信息。商业秘密是知识产权的重要组成部分，企业自身采取保密措施是商业秘密行政保护和司法保护的前提。经营者要强化商业秘密保护意识，采取必要的保护措施，建立完善相关的保护制度，对可能接触商业秘密的人员，要及时签订保密协议、竞业禁止协议等，在发生商业秘密被侵犯时才能及时有效维权。经营者加强商业秘密保护的有关措施可以参考日前发布的《广东省市场监督管理局关于企业商业秘密保护指引》。

四十六、 广州联骋光电科技有限公司诉广州欧浦莱特电子科技有限公司、被告夏斐侵害商业秘密纠纷案

案件来源：广州市越秀区2015-2019年涉不正当竞争纠纷案件十大典型案例

审判机关：广东省广州市越秀区人民法院

案情简介：

原告是从事光电照明及汽配用品贸易的公司。被告夏斐于2012年2月16日入职该公司外贸部。双方签有《劳动合同》及《保密协议》，订明被告夏斐在工作期间应当保守商业秘密，包括但不限于技术信息、经营信息及客户名单，不得泄露、公布、传授、转让等方式使第三方知悉属于原告的技术秘密或商业秘密，给原告造成损失的，还应赔偿原告的经济损失等”。

被告夏斐在工作期间以其个人名义注册了被告广州欧浦莱特电子科技有限公司（以下简称欧浦莱特公司），并担任法定代表人，该公司主要从事与原告相同的汽配及照明业务。被告夏斐在履行职务期间向被告欧浦莱特公司提供原告的客户名单，抢夺原告的商机和订单。2014年7月29日，原告针对被告夏斐违反劳动合同的行为向广州市越秀区劳动人事争议仲裁委员会申请仲裁，仲裁委员会裁决被告夏斐向原告支付违约金10000元。原告针对被告欧浦莱特公司及被告夏斐侵犯商业秘密提起本案侵权诉讼。

一审法院判令两被告停止侵权，共同赔偿原告经济损失51650元。二审法院维持原判决。

典型意义：

侵害商业秘密案件的审理难度较大，且因存在不同的法律依据，故在审理该类型案件中存在不同的裁判思路，容易出现裁判标准不一的情况。本案在审理过程中同样存在分歧，即被告夏斐基于劳动合同关系已承担了违约责任后，原告再主张其侵权责任是否违反了一事不二诉原则。

对于上述分歧，实务界和理论界存在不同观点。成因是我国合同法第一百二十二规定，因当事人一方的违约行为，侵害对方人身、财产权益的，受损害方有权选择要求其承担违约责任或依据其他法律要求承担侵权责任，故传统的民事裁判逻辑是要求权利人在违约和侵权两大法律关系中选择救济的方法。此外，在法律适用上，侵害商业秘密有不同的法律规定，如（1）《反不正当竞争法》对商业秘密的定性及法律责任。（2）《劳动合同法》第23条对保密协议和竞业限制条款的规定及法律责任。（3）《公司法》第147条对董事、监事、高级管理人员的忠实和勤勉义务以及法律责任。由于存在不同的法律规定，注定了裁判逻辑和论述

角度上的分歧。所以在审理该类型案件时，必须要正确厘清竞业限制和侵害商业秘密的关系，竞业限制协议是保护商业秘密的重要手段，对商业秘密分级管理，避免职工掌握企业的核心机密起到保护作用；而商业秘密则具有独立性，即使没有竞业限制协议，职工任职期间及离职后到有竞争关系的企业任职或者自办有竞争关系的企业，也负有不泄露和不使用他人商业秘密的义务。

《最高人民法院知识产权案件年度报告（2009）》收录的最高人民法院（2008）民三终字第 9 号民事裁定书指出，对于因劳动者与用人单位之间的竞业限制约定引发的纠纷，如果当事人以违约为由主张权利，则属于劳动争议，依法应当通过劳动争议处理程序解决；如果当事人以侵犯商业秘密为由主张权利的，则属于不正当竞争纠纷，人民法院可以依法直接予以受理。此外，《最高人民法院关于充分发挥知识产权审判职能作用推动社会主义文化发展大繁荣和促进经济自主协调发展若干问题的意见》（法发[2011]18 号），明确规定原告以侵犯商业秘密为由提起侵权之诉，不受已存在竞业限制约定的限制。据此，本案原告提起违约之诉，又提起侵权之诉并没有违背一事不二诉原则。

四十七、 锦丰科技(深圳)有限公司与陈国玲、陈志平、深圳市欧瑞丰科技有限公司、艾比模具工程有限公司侵害商业秘密纠纷案

审理机关：广东省深圳市中级人民法院

案　　号：（2017）粤03民再138号（2019.6.20）

裁判要旨：

二审法院认定涉案五家客户的经营信息不构成锦丰公司的商业秘密，既不符合本案的法律事实，也没有考虑到电子邮件作为商业秘密载体的特殊性，适用法律错误，应依法改判。锦丰公司与涉案五家客户保持较为长期稳定的交易关系，邮件所涉及的客户工程师的私人手机、成本价格底线、交货时间规律、客户独特需求，我们认为足以覆盖商业秘密的保护范围。二审法院在判决中认为电子邮件作为的载体，不构成商业秘密。在数据化大时代，商业秘密载体也呈现多样化。涉案客户经营信息系锦丰公司通过参加国外展会、公司现场洽谈等多种方式开发而来，是在长期交易过程中付出相应的智力劳动和运营成本而获取的，通过公开渠道难以获知，并不为其他竞争者普遍知悉和容易获得，具有秘密性。该客户信息包括客户公司主管负责人名字、联系电话、邮箱、客户报价、客户交易习惯、产品需求等信息，欧瑞丰公司所称的使用电脑搜索是不可能得到这些信息，其附加的商业价值和承载的信任关系亦使得锦丰公司更具有竞争优势，为锦丰公司带来经济利益；同时锦丰公司亦通过与员工签署《保密协议》、电脑设密、不得私自携带公司电脑离开公司方式采取了相应的保密措施，应认定包括涉案五家客户名单构成锦丰公司的商业秘密。

本院认为，客户名单商业秘密的使用，应当是指侵权人使用客户名单的信息与名单中的客户进行交易，从实践来说，应当是侵权人与名单中的客户进行了交易。侵权人与名单中的客户进行交易肯定会使用客户的名称、地址、联系方式等基本信息，但在主张作为商业秘密保护的客户名单应不限于客户的名称、地址、联系方式等基本信息的情况下，要求权利人去证明侵权人是否使用了基本信息之外的深度信息，往往不太现实，而实际上如果侵权人获取了权利人客户名单的深度信息，其在交易中一般是会使用的。因此，结合本案事实，欧瑞丰公司与客户名单中的客户进行了交易，从常理出发可推定其使用了包括深度信息在内的客户名单商业秘密。对被申请人的上述抗辩，本院再审不予采纳。

Summary of trade secret cases in typical cases published during 4.26 (2020)

1. Case of the crime against trade secrets - “Amorphous strip”

Case source: 2019 Top 10 Typical Cases of Intellectual Property Judicial Protection in Qingdao Intermediate Court

Trial authority: Qingdao Jimo District People's Procuratorate

Defendants: Jiang Yorou, Yu X, Meng X

Synopsis of the case:
The defendant Jiang X is an employee of Qingdao Yunlu Advanced Materials Technology Co. (referred to as Yunlu), and the company signed a confidentiality agreement and Received a confidentiality allowance. Jiang used the opportunity of working at Cloud Road, where he was involved in equipment development, to obtain classified technology in the company's amorphous strip production line Information. in July 2016, the former employees of the cloud road company, that is, the defendant Yu, Meng center contact, will be in possession of classified technology Graphical copy to Yunlu's competing company, Zhejiang Zhaocheng Co. (Zhaocheng). october 2016 Ltd. (Zhongbai, which was founded in 2016), Jiang used his mastery of technology secrets to help Zhejiang Zhongbai New Materials Co. (March 31, 2009, the application for the establishment of the company, Mega Crystal Corporation as the only shareholder) built a production line in Cypress and officially put into production. Yu X in the absence of resignation procedures, privately persuade the former Yunlu employees a total of more than 10 people to work in China Cypress Company, operating equipment. To carry out the production of amorphous strips. After evaluation, the cost of the license fee loss caused by the technical secret in question to Yunlu was RMB 19.26 million. The Qingdao Jimo District People's Court held that the defendant Jiang's conduct constituted the crime of violating trade secrets and sentenced him to four years' imprisonment and fined; defendant Yu was sentenced to one year's imprisonment, suspended for one year, and fined; defendant Meng was sentenced to one year's imprisonment, suspended for one year, and fined. The court also imposed a fine. The Qingdao Municipal Intermediate People's Court upheld the original verdict in the second instance.

The main thrust of the verdict:
Due to the departure of employees caused by the leakage of trade secrets is a more common type of intellectual property disputes, but also enterprises in intellectual property protection. On the one hand, this case reminds employees that they should respect the intellectual property rights of the original enterprise in the process of free choice of employment, and consciously perform confidentiality. Obligations, on the other hand, the enterprise in the daily management of perfect measures, strengthen the protection of commercial secrets also play a warning role. In this case, the court cracked down on the criminal infringement of commercial secrets through the criminal verdict, effectively safeguarding the legitimate rights of the right holder. It fully demonstrates the deterrent effect of criminal protection of intellectual property rights.

2. Guangzhou Tianci High-tech Materials Co., Ltd., Jiujiang Tianci High-tech Materials Co., Ltd. and Anhui Newman Fine Chemical Co., Ltd., et al., dispute over infringement of trade secrets

Case source: 2019 Guangzhou Intellectual Property Court Top 10 Typical Cases of Serving and Safeguarding Scientific and Technological Innovation

Trial Authority: Guangzhou Intellectual Property Court

Case No.: (2017) Yue 73 Minchu 2163

Synopsis of the case:

Tinci has been engaged in research and development of Capo products for a long time, claiming that the product formula, process, flow and equipment constitute a technical secret. 2014 In May, Tinci found that Anhui Newman company without permission to use its technical secrets, has pursued the criminal liability of relevant personnel. The criminal case found that, as the person in charge of the research and development of Cabo, Huayao disclosed the technical secrets to Anhui Newman Company. Use. Liu Hong as Anhui Newman company's shareholders and legal representatives, and Hua slow conspiracy to steal the technology secrets of the company. Accordingly, Tianci Company sued the above subject in this case constitutes a civil tort, and demanded to stop the infringement and compensation for damages.

Judgment Key Points.

Guangzhou intellectual property court ruling purpose: to support the technology, process, equipment and technology secrets of the company's Capo products constitute a claim. Determined that Huayao violated the obligation of confidentiality and confidentiality requirements, will Tianci company technology secrets disclosed to Anhui Newman company to use, Liu Hong, Anhui Newman company. Newman knowingly obtained and used it, and jointly infringed on Tianci's technical secrets. Hu Si Chun, Zhu Zhiliang to help, also constitutes common infringement. The infringer is a malicious infringement and the circumstances are serious, Anhui Newman company part of the profits for the infringement of 11951095 yuan, support Tianci company The request for punitive damages is based on the duration of the infringement, the scale of the business, the impact of the technical secrets involved on the product, and the number of hours of work. critical role in the formation and that Anhui Newman's failure to fully submit profitability data and original documents without good cause constituted an evidentiary obstacle. Factors, determine the application of 2.5 times the penalty judgment of 30 million yuan, other infringers according to the size of the case to bear the corresponding compensation Responsibility.

After the first instance verdict, Tianci, Hua slow, Liu Hong, Anhui Newman company all appealed, the case is now in the Supreme People's Court of intellectual property court for the second trial.

Case evaluation:

Technology secrets as an important form of scientific and technological innovation achievements, once disclosed will greatly damage the technical competitiveness of the right subject. In November this year, the General Office of the CPC Central Committee and the General Office of the State Council issued the Opinions on Strengthening the Protection of Intellectual Property Rights, which

clearly states. Explore ways to strengthen the effective protection of trade secrets. In terms of the application of the law, this year's newly amended Anti-Unfair Competition Law provides for the shifting of the burden of proof, objectively reducing the right holder's right to know what constitutes a trade secret. The key elements of trade secrets and the burden of proof in determining infringement, etc., put into practice the concept of strong protection at the legislative level. At the same time, the Anti-Unfair Competition Law also directly provides for punitive damages of more than one times and less than five times in the tort liability section, also in line with the The Opinions on Strengthening the Protection of Intellectual Property Rights echoes the accelerated introduction of a punitive damages system for infringement. In this case, the full amount of the infringer's profits from infringement could not be determined, and the application of punitive damages was not waived in the treatment of the When part of the amount can be determined, this is used as the base for determination. This case is the first case in which the Guangzhou IP Court boldly explored both aspects, which has important reference value for the handling of class cases.

3. Henan Zhonglian Thermal Industrial Energy Conservation Co., Ltd. and a Henan equipment company, Gou Youmou, et al., dispute over infringement of trade secrets

Case source: ten typical cases of judicial protection of intellectual property rights in Zhengzhou courts in 2019

Hearing authority: Henan Provincial High People's Court, Zhengzhou Intermediate People's Court

Case No.: (2019) Yu Zhimin Final No. 450, (2019) Yu 01 Zhimin Chu No. 324

Synopsis of the case:

(hereinafter referred to as CUMC), was director and vice president of marketing of Henan Zhonglian Thermal Industrial Energy Conservation Co. Sales-related work, and in the employment contract it signed with CUMC, it agreed to a clause to keep CUMC's trade secrets. During his tenure at Zhonglian, Gou, on behalf of Zhonglian, signed an employment contract with Chengde Xin'ao Food Co. Drying equipment business contract, it has the relevant business information. hooks from the CU company after leaving the company that is to join a equipment company in Henan, after Henan equipment company and Xin'ao company signed a drying equipment Purchase and sale contract. The plaintiff Zhonglian believed that a Henan equipment company and hook had violated its trade secrets. The court of first instance held that, as a shareholder and former officer of the plaintiff Zhonglian Company, hook, knowing that the information related to Xin'ao Company in its possession belongs to the trade secrets, still violated Plaintiff's requirement to keep trade secrets and disclosed them to a Henan equipment company, and Henan equipment company knowingly The second defendant hooked the unlawful conduct of the defendant, still using the aforementioned list of customers, to conduct actual transactions with XINAO The damage to the plaintiff CU company's competitive advantage, also infringed the plaintiff's trade secrets. Accordingly, ordered a equipment company in henan, hook, 70,000 yuan, 2 years to stop infringing on the trade secrets of the company, Zoomlion Company. The conduct. After the verdict was pronounced in the first instance, Zhonglian, a Henan equipment company and Mr. Gou all appealed. The court of second instance upheld the original verdict after hearing.

Gist of the verdict:

With the increasingly fierce competition in the market, the fight for human resources has become the main battlefield of competition between enterprises. "Tapping the wall" has become one of the shortcuts. The normal flow of talent between enterprises is conducive to promoting the development of the economy, but the use of job-hopping employees to master the original unit of trade secrets. The act of robbing the market of others is prohibited by law. In practice, because of the infringement of trade secrets is more covert, resulting in the infringement of evidence collection, litigation difficulty. This case according to this characteristic, using "contact + substantial similarity - legal source" principle, reasonable allocation of the burden of proof, accurate ascertaining The fact of infringement punished the infringer according to law and safeguarded the rights of the right holder. The verdict has played a positive guiding role in promoting fair and orderly competition among enterprises and creating a good business environment.

4. Jinhua seizes Zhou Yumeng and others for violating trade secrets

Case source: 2019 Top 10 Typical Cases of Intellectual Property Protection in Zhejiang Province (WeChat Public: Zhejiang Market Regulation Matrix)

Synopsis of the case:

In July 2019, the Jinhua Public Security Bureau received a report that former employees of Yiwu Armada Import and Export Co. A person who uses his or her position to steal the company's trade secrets, such as customer data and other business information, resulting in the loss of customers and damage to the company's business. Significant losses. 21 August, Jinhua City Public Security Bureau to be investigated.

The investigation, the suspect Zhou X Meng since 2014 to join Yiwu Amanda Import and Export Co. Ltd. general manager. Since 2017, Zhou Meng has colluded with Guo and Xu to transfer some of the Amanda customers in his possession to his personal business' Yiwu Mingdeng Import and Export Co. placed an order for shipment. To the 2019 case, the accumulated illegal income of nearly 700,000 yuan. Now all three suspects in the case have been transferred for prosecution on November 29, 2019.

Reasons for recommendation:

In case by case, what is typical about this case is the kind of insight that can be given to entrepreneurs and the promotion of the importance of protecting company secrets.

5. Violation of commercial secrets by "employees selling electricity meters to the outside world"

Case source: 2019 Top 10 Cases on Judicial Protection of Intellectual Property Rights in Beijing Courts

Case No.: (2019) Beijing 01 Criminal Final No. 329 / (2018) Beijing 0108 Criminal Choru No. 258 Public Prosecution: Beijing Haidian District People's Procuratorate

Defendants: Xu X, Xu X

Synopsis of the case:

Xu X was the supervisor of the foreign trade department of Beijing Foxing Hioclean Electronic Technology Co. Production Purchasing Department purchaser.Between 2012 and 2014, Mr. Xu violated the relevant confidentiality requirements of the Xiao Cheng Company by transferring the information in his possession to the procurement department. Contains four core program source code technical information provided to others, and in conjunction with Xu and others use the above core program source code to make meters Ltd. (SHP), which it effectively controls, to the Pyongyang JV Company. Electricity meters, illegal profit. Among them, Mr. Xu was responsible for the export and sale of electricity meters, Mr. Xu was responsible for the purchase of meter components, processing and subsequent welding. After investigation, according to the project, research and development and other materials, non-information appraisal, labor contracts, confidentiality agreements and relevant witness testimony and other evidence on the case. This is sufficient to confirm that the company enjoys the technical secrets of the meter program of the four core program source codes involved in the case, and has taken strict confidentiality measures. In addition, Xiaocheng Company asserted that the cost of research and development of its technology involved in the case was more than 2.63 million yuan; Xu X admitted to himself that the unit price of sea horse company to its purchase of goods is 155 yuan, the export unit price of $26; his personal profit of $100,000 in the 20,000 sets of electricity meters he initially manufactured and sold to North Korea with Xu. It then cooperated with Xu to manufacture 300,000 to 400,000 meters.In June 2017, Xu and Xu were arrested and brought to justice. The public prosecution organ filed a complaint with the court of first instance on January 25, 2018, arguing that Xu and Xu's actions had violated articles Article 219, paragraph 1, subparagraph 3 and other related provisions, constitutes the crime of violating trade secrets, and the consequences are particularly serious, to be punished according to law. Xiaocheng Company complained in court that the two defendants illegally made huge profits, only export tax rebates to profit more than 700 million yuan, causing a huge amount of Xiaocheng Company. Economic losses. The Court of First Instance held that Xu X and Xu X violated the confidentiality requirements of Xiaocheng by disclosing, using or allowing others to use the information in their possession. The commercial secrets, which caused particularly serious consequences, constituted the crime of infringement of trade secrets and should be punished. The facts of the charges brought by the Public Prosecution against the two defendants were clear, the evidence was indeed sufficient, and the charges were substantiated. Accordingly, the court of first instance ruled that Xu X was guilty of infringing on trade secrets and was sentenced to four years' imprisonment and a fine of 3 million yuan; Xu X was guilty of infringing on For the offence of trade

secrets, he was sentenced to four years' imprisonment and a fine of 2 million yuan. After the verdict was pronounced at first instance, both defendants appealed. The court of second instance dismissed the appeal and upheld the original verdict.

Gist of the verdict:

This case is a typical example of the crime of violating trade secrets. As market competition became increasingly fierce, competitors and internal and external employees colluded to obtain, use and disclose the right holder's core technical information. Infringement of trade secrets is commonplace. Because the application of the incriminating elements of the crime of infringement of trade secrets is very strict, and is limited by the traditional criminal case thinking, to a certain extent, affecting the The effectiveness of the fight against such crimes. But for the infringement of trade secrets, civil litigation also has many limitations. This case ruling appropriate reference to the civil trial rules and theory, comprehensive consideration and "secret" characteristics of evidence related to trade secrets identified. When judging the ownership of technological secrets, not only limited to the traditional criminal basis such as the certificate of rights, but also combined with the project, research and development materials. Cost input and market development and other relevant evidence to eliminate reasonable doubts about the existence of ownership disputes, enhancing the persuasiveness of the decision. . This case appropriate reference to the rules of civil trial, fully justify the defendant's behavior to meet the crime of infringement of trade secrets of the constituent elements of the crime, both reflects the The advantages of the "three-in-one" trial mechanism of intellectual property rights, a strong crackdown on serious violations of trade secrets, but also increased the The strength of protection of trade secrets.

6. Violation of commercial secrets by Shandong Hanlin Biotechnology Co. Ltd. and Wang XX

Case source: 2019 Top 10 IP Cases in Shandong Courts

Public Prosecution： Jining High-tech Industrial Development Zone People's Procuratorate

Defendants: Shandong Hanlin Biotechnology Co.

Synopsis of the case:

The victim entity owned the production technology of the long carbon chain dibasic acid in question, which was identified as a commercial technology secret by the Jining Public Security Bureau of Shandong Province. Mr. Wang, a senior executive of the victim company, had full control of the technology and illegally disclosed it to Hanlin. Knowing that Wang had violated his obligation of confidentiality and disclosed the production technology, Hailin Company illegally obtained the information by means of inducement. trade secrets and used the trade secrets for the production and operation of long carbon chain dibasic acid and disclosed them in the form of a patent application. The public security authorities commissioned an appraisal that from January 2010 to March 2015, Hanlin's main revenue totaled $1.015 billion The gross profit totaled 250 million yuan. Of which, export sales of 120 million yuan, the gross profit total of 17.62 million yuan. The R & D expense forensic report confirmed that the aggrieved unit invested more than 14 million yuan in R & D expenses.

The court held that Hanlin knew that Wang was disclosing in violation of the duty of confidentiality and illegally obtained the trade secrets in question by means of inducement. And the use of the trade secrets production and operation, and at the same time to apply for a patent in the form of disclosure, the circumstances are particularly serious, his behavior constitutes an infringement of Trade Secret Crime. Wang violated his duty of confidentiality by disclosing the trade secrets of the victimized entity in his possession for use by Hanlin, and was fully responsible for Hanlin's The person directly responsible for the construction and production of the long carbon chain dibasic acid production line also constituted the crime of violating trade secrets. The court ruled that Hanlin had committed the crime of violating trade secrets and sentenced it to a fine of five million yuan; Wang had committed the crime of violating trade secrets and was sentenced to a fine of five million yuan. Five years in prison.

Gist of the verdict:

This case is the most influential criminal case in Shandong Province since the implementation of the "three-in-one" trial of civil, administrative and criminal intellectual property rights. This case is a joint crime of infringement of trade secrets by an entity and an individual, and involves the victim's cooperation with Hanlin in the national courts at all levels. A series of patents, trade secrets and other related civil and administrative litigation, technical content is very professional and complex. The decision of this case, effectively combat sanctions unit and individual criminal behavior, to protect the legitimate rights and interests of the victims, to promote enterprise technology Innovation provides strong judicial protection.

7. Disputes over infringement of trade secrets between Langfang Baiyue Trading Co., Ltd. and Langfang ruoke Glass Co., Ltd. and Yang Rui

Case source: 2019 white paper on judicial protection of intellectual property (15 typical cases of judicial protection of intellectual property have been published)

Trial organ: Hebei Higher People's court, Langfang intermediate people's court

Case No.: (2019) jizhiminzhong No. 227, (2019) ji10 No. 82 of the Republic of China

Synopsis of the case:

The company is engaged in the import and export business of glass mosaic, glass beads, broken glass and other glass products. , Yang Rui has a "Trade Secret Confidentiality Agreement" with Biyue, which provides that you undertake to assume, after separation from service, the same responsibilities as the The same obligation of confidentiality and obligation not to use the confidential information in question during the term of office, and not to use our trade secrets for new research and Development. Yang Rui separated from Biyue and co-founded Wakko Glass, which Yang Rui later transferred all of his shares to others. Baiyue believes that Celestial Fire Glass Company (CFG), Inc. SOUTHWEST BOULDER & STONE, Inc. (MMR, Inc.), Fire Glass Plus (FGP) were both customers of Biyoshi, and had a number of transactions with Biyoshi. Glass mosaic transaction. According to the invoicing information issued by the Anji District Taxation Bureau of Langfang City, the State Administration of Taxation, Wakko Glass Company was established and CFG Corp. 29 transactions, 3 with MMR and 27 with FGP, and Wakko Glass The company failed to provide evidence to prove that the above three households were developed by itself. Baiyue Company considered that Ruoke Glass Company's behavior had violated its trade secrets, so it sued the court and demanded Ruoke Glass Company to immediately stop the development of the above three households. infringement, and to compensate Biyoshi for economic losses of $3 million.

Gist of the verdict:

The court held, first, that the question of whether the customer lists claimed by Bacchus constituted trade secrets should be considered in terms of secrecy, confidentiality and Value is measured in three ways. Secondly, whether Ruo Ke Glass and Yang Rui infringed the trade secrets of Baiyue. It should be considered whether Wakoke Glass actually obtained and used the trade secrets of Baiyue through Yang Rui, as Wakoke Glass and Yang Rui had the trade secrets of Baiyue. The evidence provided by the Company and Yang Rui does not demonstrate exactly how it entered into the trading relationship with the three companies, and Biyoshi also submitted Evidence that Wakefield Glass Company sent quotation emails to other customers of Baiyue, proving that Wakefield Glass Company had initiated a dialogue with Baiyue. It can be concluded that Ruoque Glass Company and Yang Rui jointly infringed on Baiyue's trade secrets. In addition, regarding the responsibility of Ruoke Glass Company and Yang Rui to stop the infringement, the customer list in this case is different from technical secrets, and the carrier of the customer list usually will not be publicized in some way. In this case, because the customer list is different from technical secrets, the carrier of the customer list usually does not make it public in some way. If it is clearly unreasonable to require Wakko Glass to cease the infringement until the time of public knowledge, it should be left to the

discretion of the People's Court. The time and scope of the infringer's cessation of infringement. The court of second instance ruled that Wakefield Glass Company and Yang Rui should cease using the customer list information of Baiyue within two years from the effective date of the judgment. Wakefield Glass Company and Yang Rui jointly compensate Baiyue for $250,000 in economic damages for reasonable expenses incurred to stop the infringement. 50,000.

Commentary:

The Anti-Unfair Competition Law protects the competitive advantage of trade secret holders while taking into account the open and competitive nature of the market. Considering the market is open, the customer list as a trade secret embodies the value of a certain period of time, so the people's court in this case. discretion to determine the period of time during which Yangrui and Wakefield Glass would cease to use the customer list information of Biyue, rather than in accordance with the Anti-Unfair Competition The time for cessation of infringement under article 16 of the Law is set at the time when the trade secret has become known to the public.

8. Dispute case between Hebei chuangji Catering Management Co., Ltd. and Liang Bin on licensing contract of technical secrets

Case source: 2019 white paper on judicial protection of intellectual property (15 typical cases of judicial protection of intellectual property have been published)

Trial organ: Hebei Higher People's court, Hebei Chengde intermediate people's court

Case No.: (2019) Ji Zhi min Zhong No. 42, (2018) Ji 08 min Chu No. 101

Synopsis of the case:
On March 10, 2017, Hebei Traces Restaurant Management Co. and Liang Bin signed a contract between Hebei Traces Restaurant Management Co. Ltd. to teach Liang Bin how to make crunchy pancakes, soy milk and other products. The encrypted recipe, No. One II-B. The third of which, Liang Bin's obligation stipulates that "Liang Bin shall not disclose trade secrets without the consent of Hebei Chuangzhi Restaurant Management Co. including all the techniques, recipes and other trade secrets of this item, or else shall be liable for 300,000 yuan in damages". After the contract was signed, Liang Bin paid a training fee of $3,980 to Hebei Chuangzhi Restaurant Management Co. Ltd. conducted a study. on September 19, 2017, Hebei Chuangzhi Restaurant Management Co. employee Pao Zhiwei will be contracting The company's products have been sold in the U.S. and abroad for more than a decade.
The video of how to make the pancake and fruit was spread on the "Quick Hands" app, using the username "crispy mixed grain pancake and fruit". The interaction. Liang Bin forwarded the recipe and its practice to other students in WeChat at a price of 2,000 RMB, from which he made a profit. The company sued Liang Bin for violating the contract between the two parties. Liang Bin was ordered to pay liquidated damages of $300,000.

Gist of the verdict:
The court held that, as the contract between the parties "Hebei Chuangzhi Catering Management Co., Ltd." expressly provided for "coarse food time" The technology and recipe for the various crispy pancakes and healthy soft pancakes of the encrypted formula are trade secrets. The mixing ratio and method of mixing hot and cold noodles (to achieve a crispy or soft pancake), and adding different ingredients to the batter to achieve a crispy or soft pancake. Different flavors of pancakes. The contract also stipulates that if Liang Bin violates this contract, Hebei Chuangtou F&B Management Co., Ltd. has the right to terminate this contract and collect the breach of contract. Fines of 300,000 yuan, etc. Liang Bin also has no evidence to the contrary to deny that the encrypted formula of "Grain Time" is a trade secret. The soft pancake technology and recipe are the technical secrets agreed in the contract of Hebei Chuangzhi F&B Management Co. The video evidence submitted by Hebei Chuangzhi Catering Management Co. The same technology and "One II-5 B", publicized the secrets of the above technology, has constituted a breach of contract. But Liang Bin to Hebei Chuangtou Restaurant Management Co., Ltd. to pay training fees of only 3980 yuan, "Hebei Chuangtou Restaurant Management Co. But the contract was agreed to bear 30 million yuan of liquidated damages, which is obviously too high and should be lowered according to the law, the court finally ruled that Liang Bin to Hebei Chuangtou catering Management Ltd. to pay a liquidated

damages of $60,000.

Commentary:

This case can tell people, business secrets no high and low, as long as the legal conditions of business information can constitute a business secret, thus dispelling the mystery of business secrets, learn to use legal weapons to better protect themselves.

9. Xiamen jiehuiyi e-commerce Co., Ltd. v. Xiamen kuaixiansen Technology Co., Ltd. and Shanghai lazas Information Technology Co., Ltd. for infringement of business secrets

Case source: 2019 Top 10 Cases on Judicial Protection of Intellectual Property Rights in Fujian Courts

Synopsis of the case:

Xiamen JieHuiYi Electronic Commerce Co. (Company) signed the "Hummingbird Distribution Agency Cooperation Agreement", agreed Lazarus company authorized Jiehuiyi company to use "Hummingbird Distribution" In the past few years, the company has been able to provide a wide range of products in Xiamen Siming District, operating "Hummingbird delivery" business. After the signing of the contract, JieHuiYi company through the Lazarus company's "Hungry" "Hummingbird team version" delivery platform to register an account, set up password, and the account was used for employee management, order management, and order delivery. Later, the platform was originally tied to the more than two hundred delivery staff in the name of Jie Huiyi company information (including delivery staff name, ID number). (hereinafter referred to as "FMCG") was deleted, and most of the delivery staff information was gradually bound to Xiamen FMCG Technology Co. (Sennison) account on that distribution platform. This, JHUY company to fast Qian Sen company, Lazarus company infringement of its operating secrets for the court.

Xiamen Intermediate People's Court in the first instance that, JieHuiYi company in the "hungry" "hummingbird team version" of the delivery platform registration account. Set up a password and use the account to manage employees, orders and deliveries, as required by the platform. operations, it does not therefore follow that Gehuiyi has taken reasonable measures to maintain confidentiality and that the information Gehuiyi seeks to protect does not Consistent with the elements of trade secrets. This dispute is actually part of the internal members of JieHuiYi company due to the breakdown of the relationship, leaving JieHuiYi company voluntarily joined the fast xiansen company and was triggered by the removal of the information in its possession. Accordingly, the court of first instance ruled to reject JieHuiYi company's claims.

The Fujian Provincial Higher People's Court of the second instance that Jiehuiyi company claims that the commercial secrets in question are held by Jiehuiyi company and through account password and Information stored on the Hummingbird Team Edition delivery platform, such as a list of company delivery personnel managed by mobile phone verification. It also states that the information includes the name, ID number, and cell phone number of the delivery person. The information is actually a list of employees at Jiehuiyi, and the employee list itself contains only simple basic information about the individual employee, which is in the corporate It is a natural part of human resources management, not acquired or accumulated through creative labor by Jiehuiyi Company, and the basic information of the employees also It is relatively easy to obtain, and does not fall into the category of "not known to the public" business information. Lazas was the provider of the "Hungry" "Hummingbird Team Edition" delivery platform, and Jiehuiyi used the account password and mobile phone to provide the information. Authentication method login "Hummingbird Team Edition" distribution platform for distribution personnel management, account settlement, etc., according to the requirements of the platform. The operations carried out are consistent with the agreement between Jay Huey and Lazarus in the Hummingbird Distribution Agent Cooperation Agreement and are not intended to be Reasonable "confidentiality measures"

taken to prevent disclosure of the information. Therefore, the trade secrets claimed by JHWY could not be established. Accordingly, the court of second instance decided to reject JHUY's appeal, and upheld the original judgment.

Gist of the verdict:

Article 10, paragraph 3, of the Law of the People's Republic of China on Combating Unfair Competition (1993) stipulates that a commercial secret means a secret that is not open to the public. Know, can bring economic benefits to the right holder, has the practicality and the right holder to take confidentiality measures of technical information and business information. Thus, an information to constitute a trade secret must at the same time have secret, commercial value and take confidentiality measures of the three constitutes One of the three essential elements is missing. The information about the delivery person managed through the distribution platform often includes only the name, ID number and mobile number of the delivery person. In fact, it belongs to the company's employee list, which is the category of the company's personnel management. It is the basic right of distribution personnel to choose the enterprise with which to establish an employment relationship, and such personnel generally have a certain degree of teamwork, provided that The main personnel in the team "jumped", most of the other personnel will follow, so the delivery of express delivery companies to change the list of delivery personnel are This is the norm. Therefore, the "information on delivery personnel" in this case does not fall into the category of "business information not available to the public" that is accumulated through creative work in the course of business. The information is not "secret" in the sense of "trade secret". In addition, logging in to the distribution platform through account passwords and mobile phone verification is a common means of platform management, and cannot be considered to be a "secret" measure. Corresponding "confidentiality measures". At present, with the development of e-commerce and changes in the structure of national consumption, express delivery industry in China has a huge market, all kinds of With the advent of the management platform, the frequent flow of distribution personnel in express delivery enterprises, how to manage personnel is the urgent need for related enterprises to solve Problem. This case has some guidance for express delivery companies on how to strengthen employee and delivery information management and improve the platform structure.

10. Disputes over infringement of business secrets between Chongqing slow cow industrial and Commercial Consulting Co., Ltd. and Tan Qing, Chongqing Yilian Jinhui Enterprise Management Consulting Co., Ltd

Case source: 50 Typical IP Cases in Chinese Courts 2019 / Top 10 IP Cases in Chongqing Courts 2019

Case No.: (2019) Yu 05 Minchu No. 1225

Synopsis of the case:

Plaintiff hired Defendant Tan Qing on May 21, 2018 to work as a business consultant in the Company's commercial department, with the following primary duties and responsibilities Responsible for following up on customer information obtained from company promotions, and negotiating and contracting with customers.August 2018 to March 2019 The defendant Tan Qing, during the month of April, took advantage of his position, repeatedly will its possession of the plaintiff has taken confidentiality measures of customer lists and service needs The defendant Yilian Jinhui Consulting Company disclosed the information to the defendant, Yilian Jinhui Consulting Company. The defendant Yilian Jinhui Consulting Company used the customer list and demand information obtained by the defendant to lower its quotation, disguise itself as an employee of the plaintiff's company, make telephone calls to the plaintiff's employees, and provide information about the plaintiff's business. The company will provide services, such as soliciting for clients, and charge a fee for the services, and pay a certain percentage of the fee afterwards. The defendant Tan Qing as remuneration. The accounting, the two defendants caused by the infringement of the plaintiff economic losses, according to the two defendants through the WeChat transfer to determine the transaction amount calculated and a total of $24,710.

The Fifth Intermediate People's Court of Chongqing Municipality held that the defendant Tan Qing, during his employment as a commercial representative of the plaintiff company, and the defendant Yilian Jinhui Consulting Co. The Company jointly committed the act of unlawfully obtaining, disclosing, using or allowing others to use Plaintiff's trade secrets, with serious circumstances and subjective malice Obviously, damage to the legitimate rights and interests of the plaintiff, disturbing the order of market competition, constitutes unfair competition, shall jointly and severally bear the tort liability. The verdict is as follows: first, the defendant Tan Qing, the defendant Chongqing Yilian Jinhui management consulting Co. Ltd. to disclose, use or allow others to use the trade secrets known to the plaintiff, Chongqing Slow Bull Business Consulting Co. The defendant Chongqing Yilian Jinhui Management Consulting Co., Ltd. shall, within ten days from the date of this judgment, give the plaintiff Chongqing Slow Bull Business Consulting Co. 3, the defendant Tan Qing, the defendant Chongqing Yilian Jinhui management consulting Co. Within ten days from the effective date, Plaintiff Chongqing Jiuniu Business Consulting Co., Ltd. shall be compensated jointly and severally for 4500 reasonable expenses incurred to stop the infringement. Yuan; fourth, reject the plaintiff Chongqing slow cattle industrial and commercial consulting company limited other claims. After the first instance judgment, both parties did not appeal.

The court held that: the customer information involved in this case includes the customer's name, telephone, WeChat business card, license, business address, home address. As well as the intent and demand of the transaction. The licenses include ID cards, business licenses, real estate title deeds,

etc., and the transaction intentions and needs include registering business and industry on behalf of the agent. Business license, food service license, bookkeeping, tax return, seal engraving, inquiry, quotation and transaction price Business information such as name, address, phone number, micro signal, etc., is usually easier to obtain from public sources. General customer information such as name, address, phone number, micro-signal, etc., is usually easier to obtain from open sources, but customer information about the Transactional intentions and needs such as business affairs and prices and fee requests on behalf of the client are immediate and private, unless the client himself wishes to disclose them Disclose transaction intentions and needs, which customers target at specific merchants and generally do not want to be known by other merchants, or else Customers can easily lose the opportunity to trade on merit between merchants and may also lose the advantage of negotiating deals with other merchants. As a result, customer information of an immediate, private nature, with the intent and need to trade, is often not available to the public. The customer information at issue in this case contains the customer's trading intentions and needs that are of such a nature. The defendant argued that the customer information in question had been publicly disclosed through online channels and was easily accessible without cost, but that the defendant And this proof, this defense, no implementation, the court does not adopt.

This court believes that: in view of two defendants buy and sell the plaintiff's trade secrets, through illegal trade, common implementation of the unfair competition infringement of the plaintiff's trade secrets in charge of malice is obvious, this court decided to apply punitive damages, namely to two defendants buy and sell the plaintiff's trade secrets transaction amount of 24,710 yuan as the defendant because of infringement, and this base for three times, determine two defendants jointly and severally compensate the plaintiff economic losses 74,130 yuan.

Gist of the verdict:

In the protection of trade secrets, customer lists, trading intentions including specific needs, price inquiries, etc. are immediate and private and can be. Commercial information that brings real benefits should be protected as commercial secrets. The right holder's employees, for personal gain, colluded with competitors in the same industry to unlawfully obtain, disclose and use the right holder's commercial secrets to the detriment of the right holder. rights holder's interests and to benefit a competitor in the same industry is so serious that it constitutes malicious contributory infringement and should be punishable against the employee and the competitor by This case is a joint and several liability for punitive damages of not less than one times but not more than five times the profits gained from the infringement.

This case is the first batch of cases in which the Anti-Unfair Competition Law was amended in April 2019 to precisely define "commercial information" among trade secrets and apply punitive damages for infringement of trade secrets.

The Anti-Unfair Competition Law added "commercial information" in the April 2019 amendment, and the January 15, 2020 China-US Anti-Unfair Competition Law added "commercial information" in the January 15, 2020 China-US Anti-Unfair Competition Law added "commercial information" in the April 2019 amendment, and the January 15, 2020 China-US Anti-Unfair Competition Law added "commercial information" in the April 2019 amendment, and the January 15, 2019 China-US Anti-Unfair Competition Law added "commercial information" in the April 2019 China-US Anti-Unfair Competition Law added "commercial information" in the April 2019 China-US Anti-Unfair Competition Law. The trade agreement on trade secrets also contains relevant provisions on

"commercial information". This case, combined with relevant evidence, determined that the customer list, trade intentions, including specific needs, price inquiries, etc., are instantaneous and private. And can bring real benefits of commercial information should be protected as commercial secrets, has certain guiding value.

In practice, the company employees and the third person inside and outside the infringement of the company's commercial secrets is more common, this case combined with relevant evidence, the company employees and the use of the commercial secrets of others constitute joint infringement, joint and several liability, to regulate the company employees and others inside and outside the malicious conspiracy to harm the company's commercial secrets, has important practical significance.

The Anti-Unfair Competition Law increased the provisions of punitive damages in the April 2019 amendment. This case combines the value of the unit's internal personnel knowledge of trade secrets, the subjective malignancy of the leak is greater, and conspired with others to disclose and use the The consequences of trade secrets and the more serious damage to the business environment qualify for punitive damages for trade secrets, according to the proceeds of infringement The amount of punitive damages is of value and significance in exploring the rules applicable to punitive damages for trade secrets.

After the first instance verdict, both parties obeyed the verdict, and the defendant actively fulfilled his obligations, which means that the judgment was properly grasped, and achieved a high degree of unity of legal and social effects.

11. Disputes over infringement of technical secrets by Kunshan hezhun Testing Co., Ltd., fujiwa machinery industry (Kunshan) Co., Ltd., Chongqing Sanyou Machinery Manufacturing Co., Ltd. and Lin Xinhong

Case source: Top 10 intellectual property cases of Chongqing court in 2019

Case No.: (2017) Yu 01 min Chu No. 60, (2019) Yu Min Zhong No. 80

Synopsis of the case:

Mr. Lin Hsin-Hung (Taiwan resident) joined Lioho Corporation in September 2005, and has been working in the Casting and Development Division, Group F R&D Center. Engineer, senior engineer, deputy director of F-groups R&D center, specifically responsible for product design, analysis and testing, on-site product production. Since July 2013, he has been the Deputy Director of Operations Headquarters, responsible for managing all internal and external affairs of the R&D Center (Kunshan). In February 2015, Mr. Lin joined Kunshan Hejin Testing as Executive Manager of Hejin Testing Co. In March 2015, Lin Hsin-Hong left the company to manage all internal and external affairs of the company.

The "Agreement for Employees of Rokkasho Machinery Co., Ltd." signed between Rokkasho and Lin Xinhong contained a clause stating that Lin "guarantees to keep the secrets (including various secrets of the company's operation and the company's confidentiality agreement with other companies) that he learns from his position.

(hereinafter referred to as Fujiwa) believed that Lin had unlawfully disclosed the contents of the "Employee Agreement". Ltd. (hereinafter referred to as Sanyou) illegally obtained and used the technical secrets involved in the case, and therefore sued the company. The Court of First Instance, requesting: 1. an order that Sanyu and Lin Hsinhong immediately cease the technical secrets of Hwachimoku and Fujiwa Infringement; 2. Ordered that Sanyu and Lin Hsin-Hong jointly apologize publicly to Hazen Test Company and Fujiwa, and that the Municipal 3. Order Sanyu and Linxinhong to jointly compensate for the economic losses incurred by Hazen Testing and Fujiwa. 9.9 million yuan; 4. The litigation costs of the case were borne by Sanyou and Lin Xinhong.

The Chongqing First Intermediate People's Court made the first instance verdict: rejected all the plaintiff's claims against Hejingyuan Testing Company and Fujiwa Company. The court appealed to the Chongqing Higher People's Court against the judgment.

The Chongqing Municipal Higher People's Court held that, in this case, the technical information submitted by Hejin Testing Company and Fujiwara Company to prove that the technical information in question had been verified by the competent authorities of the People's Court of Chongqing. The only evidence that the right holder has taken confidentiality measures is the "Employee Agreement of Liuhe Machinery Co. The Book. However, this evidence does not prove that the technical information in question is confidential, and therefore the information does not constitute an unfair competition under the Unfair Competition Act. Trade secrets, for the following reasons.

According to Article 10(3) of the Law of the People's Republic of China on Combating Unfair Competition (which came into force in 1993), the Supreme People's Court Decision on Article 11 of the Interpretation of Several Issues on the Application of Law in the Trial of Civil Cases of Unfair Competition provides that the subject of confidentiality measures shall be. The right holder of trade secrets to reflect the right holder's desire for confidentiality. In the present case, Wakamatsu and

Fujiwa claimed to be trade secret rights holders, but the two companies submitted a request for confidentiality measures. The evidence is only the "Agreement of Employees of Liuhe Machinery Co., Ltd." signed by the outsider Liuhe AG and Lin Xinhong. Evidence of confidentiality measures taken by the two companies as subjects. Even if Wakamatsu and Fujiwa could prove that Rokkazu Co. is the original owner of the technical information in question and that confidentiality measures were taken. measures, but after the relevant technical information has been transferred from the original right holder to the parametric testing company, the parametric testing company should still prove that the Confidentiality measures were also taken while the information was in their possession to ensure that the confidential information would not be disclosed under normal circumstances. Otherwise, the Court could not find that the technical information in question had been kept confidential by the right holder.

In addition, the confidentiality measures taken by Liuhe is not enough to be considered as a measure against unfair competition under Article 10.3 of the Unfair Competition Law. The "confidentiality measures" stipulated. In the "Agreement for Employees of Liuhe Machinery Co., Ltd." signed between Liuhe and Lin Hsinhong, there is a provision that "the company shall guarantee the secrecy of its employees based on their duties. The Company shall not be bound by any confidentiality clause which would otherwise be applicable to the Company's confidential information (including its business secrets and confidentiality agreements with other companies). The article does not clearly point to the information that is subject to the duty of confidentiality of Lin Hsin Hong, and cannot be correlated with the technical information in question. It was difficult for Lin Hsinhong to know the specific content and scope of the technical information that needed to be kept confidential. Therefore, under normal circumstances, the confidentiality clause is not sufficient to prevent the disclosure of confidential information, i.e., it does not comply with the Supreme People's Court's Rules on the Trial of Unclassified Technical Information. Article 11 of the Interpretation of Several Issues Concerning the Application of Law in Civil Cases Involving Fair Competition provides that the appeals of Hwajin and Fujiwa shall be rejected. Therefore, the appeals of Hejin Testing Company and Fujiwa Company shall be rejected; the first-instance verdict found that the facts were clear and the applicable law was applicable. It is correct and should be upheld. The judgment of the court of second instance is as follows: the appeal is dismissed and the judgment is affirmed.

Gist of the verdict:

1) infringement of trade secrets dispute case, the plaintiff claims that it succeeds the acquisition of trade secrets with confidentiality, should provide evidence to prove that (a) Confidentiality measures were taken by both the plaintiff and the plaintiff's rights.

2) when the plaintiff enters into a confidentiality agreement as its sole measure of confidentiality, the agreement shall be clearly directed to the information to be kept confidential, so that the The subject of the duty of confidentiality knows the specific content and scope of the information to be kept confidential.

The protection of trade secrets is one of the key elements of the January 2020 CTA and the 2019 One of the main elements of the revision of the Law of the People's Republic of China Against Unfair Competition. The amended Law of the People's Republic of China Against Unfair Competition does not change the requirement of confidentiality of trade secrets and, with the added Article 32 explicitly states that the trade secret right holder shall provide prima facie evidence that he has kept the asserted trade secret confidential. measures. Thus, confidentiality is always one of

the necessary conditions for commercial secrets.

For the recognition of the confidentiality of business secrets, the Supreme People's Court's Opinions on Several Issues Concerning the Application of Law in Hearing Civil Cases of Unfair Competition. Article 11 of the Interpretation provides in some detail. However, judicial practice will always encounter new circumstances, new problems. This case on the successive acquisition of trade secrets and the confidentiality agreement as the only confidentiality measures in these two cases, how to identify trade secrets The issue of confidentiality was analyzed and argued. Although this case is governed by the Law of the People's Republic of China Against Unfair Competition (1993), it is noteworthy that after the amendment of the law, the issue of commercial secrets has been discussed. The trial of the dispute case still has important reference value.

12. Dispute case of invention patent and technical secret between Shanghai Jingye environmental protection energy technology Co., Ltd. and a chemical fertilizer Co., Ltd. in Henan Province

Case source: Top 10 intellectual property cases of Henan court in 2019

Hearing authority: Zhengzhou intermediate people's court

Case No.: (2019) No. 670 and No. 671 civil mediation statement of yu01 zhimingchu

Synopsis of the case:
In July 2017, Shanghai Real Estate Environmental Energy Technology Co. (hereinafter referred to as Shanghai Real Estate Environmental Company) and a Henan fertilizer (hereinafter referred to as a fertilizer company) signed an agreement on cooperation in the research and development of dust extraction equipment, and agreed that the patent of the method of research and development of dust extraction equipment belonged to The two parties share, the patent of the dust removal equipment belongs to Shanghai Jingye Environmental Protection Company. The agreement also agreed that neither party shall divulge technical secrets without authorization, otherwise the offending party will lose the common right of method patent. A fertilizer company without the permission of Shanghai Real Estate Environmental Protection Company, in May 2018 unilaterally applied for the name of "a tower granulation exhaust The invention patent of "dust removal device and dust removal method". Shanghai Jingye environmental protection company to a fertilizer company infringement of technical secrets and infringement of patent for the invention, to Zhengzhou Intermediate People's Court The lawsuit, a request to order the patent application right belongs to it, a fertilizer company to stop infringing technology secrets, and compensation for damages 10 million yuan. In the course of the court hearing, the two sides reached mediation: first, the patent in question belongs to both sides, a fertilizer company to pay Shanghai real estate environmental protection company equipment 4.05 million for procurement and 2.6 million for compensation. Second, the two parties engaged in strategic cooperation, Shanghai Real Estate Environmental Protection Company signed the dust removal project, equipment in principle from a fertilizer company procurement.

Gist of the verdict:
Shanghai Jingye Environmental Protection Company is a high-tech enterprise with more than 30 patents and a wealth of successful experience in exhaust treatment. A chemical fertilizer company is a well-known fertilizer manufacturer in the industry, with strong production and installation capacity of petrochemical equipment. With China's economic and social development, smog and other ecological and environmental issues are increasingly prominent, environmental market demand is increasing, the success of this case The mediation bridged the gap in the cooperation between the two sides and settled the case, which is important for making full use of their respective expertise in the environmental and petrochemical sectors. Advantage, achieve strong alliance, reduce exhaust emissions and coal and other resources consumption, to achieve resource recovery and reuse, to achieve economic benefits. It is positive to unify the benefits to society.

13. Criminal case of infringement of trade secrets by Mr. Zhou

Case source: Hangzhou Procuratorate's Fight against Intellectual Property Crime and Typical Cases

Public prosecutor: Hangzhou People's Procuratorate

Synopsis of the case:

Zhou X, male, born on October 25, 1969, is the technical director of the engine division of Zhejiang X Power Co. (hereinafter referred to as X Power Co.).

(hereinafter referred to as a joint-stock company) is a high-tech enterprise specializing in the research and development, manufacturing and sales of all-terrain vehicles, competitive motorcycles and other products, and took measures to keep the technology of the independently developed 2V91 series engine confidential.

In 2004, the defendant Zhou X was recruited into a joint-stock company engaged in engine technology research and development work. During the period, the defendant Zhou X and a joint stock company signed a confidentiality agreement and a labor contract containing confidentiality clauses, the two sides agreed that during the labor and After the termination of the contractual relationship, Zhou was still under a duty of confidentiality.From February 24 to March 1, 2014, a joint-stock company engine The person in charge of the research institute, Guo X, was on a business trip, the institute designated mailbox audit authority to Zhou X. The defendant Zhou X use the authorized authority, private company research and development of 2V91 series engine and other technical information from the company's confidential intranet Email sent to his own extranet email address.

In August 2014, Zhou submitted his resignation to a certain joint stock company. in March 2015, a certain joint stock company agreed to Zhou's resignation. Defendant Zhou was then hired to work at a technology company held by a certain group of companies (hereinafter referred to as a certain group), presiding over the research and development engine. During the development process, defendant Zhou used the technical information obtained from a joint stock company on the above 2V91 engine project for a technology The company's 2V91X engine program was developed.

From May 2017 to January 2018, a technology company gave a total of 314 2V91X engines to a group, billed The amount is $3,323,215,000 (including taxes) and the amount excluding taxes is $2,762,500,000. Of which 300 engines have been installed in the DUNE900 all-terrain vehicles produced by a group and exported to Europe and the United States and other markets. The total number of units sold was 300, and the total amount of sales was more than $1,530,000. The defendant Zhou's conduct caused losses to a joint stock company in the amount of 838,610,000 yuan. The audit, a joint-stock company 2V91 series engine through December 2014, the research and development cost is 9,141,500 Yuan RMB. Upon review, a certain joint stock company had not licensed the engine technology in question to others.

On March 7, 2018, a group, a technology company and a joint stock company reached a settlement agreement, agreeing to stop the infringement and compensation of RMB 3 million.

Gist of the verdict:

Violation of trade secrets crime, a more prominent problem is how to accurately identify the infringement of trade secrets caused by the loss amount. In practice, generally have cost, value,

profit, loss, said four kinds of calculation method, because of the different calculation method based on different The results of the losses often vary greatly, leading to great disagreement in practice over the choice of method of calculation. The specific method of calculation to be used and how it is to be carried out after the method has been determined should be rigorously analyzed on the basis of the facts of the case.

14. Infringement of trade secrets by Nanjing Sapling Intellectual Property Services Ltd.

Case source: 2019 Top 10 Typical Cases of Intellectual Property Protection by Jiangsu Province Market Supervision Administration

Disposition authority: Nanjing Municipal Market Supervision Bureau

Synopsis of the case:

Established in 2009, the Nanjing branch of Beijing Donglingtong IP Services Co., Ltd. has been operating smoothly with an annual profit of nearly 5 million yuan.

However, at the beginning of last year, the company encountered a strange thing: all the 40 or so employees of the original branch suddenly resigned en masse, resulting in The branch company "disappeared" in an instant. After investigation, they found that all the resigned employees had moved to Nanjing CP Sapling IP Services Co. The theft of East Haven's original customer data. In June last year, Dong Lingtong reported to the city's Market Supervision Bureau to investigate and deal with the illegal behavior of the small sapling company.

The law enforcement officers of the Nanjing Market Supervision Bureau introduced the case and conducted an in-depth investigation and evidence collection for several months due to the complexity of the case. The investigation showed that the small sapling company was just established on December 1, 2017, and the legal representative, Ge, was formerly a real estate brokerage company employees and are not actually involved in the day-to-day operations of the company. The day-to-day operations of Saplings are primarily under the management of Shao, Zhu, and Zhang. The company's 40 or so employees, almost all of whom are members of the former Dong Lingtong, include Shao, Zhang, and others.

The original labor agreements between Dong Lingtong Company and Shao, Zhang, and others all contained confidentiality clauses, and with Zhang, Zhu, and others also additionally Confidentiality agreements are in place. The company itself has also developed comprehensive confidentiality regulations and measures, including the handover of documents and information when leaving the company. However, law enforcement officials found the "Nanjing Customer File Customer Service" document on multiple employee computers and work QQ groups at Sapling. The content is displayed as collated customer data, including contract number, customer contact, contact details and a list of East Link's interfacing staff. etc.

It was also ascertained that from its inception to January 7 of this year, the trademark registrations shown on the website of the Trademark Office of the State Administration of Market Supervision (SAMSCO) There are 1506 messages. Of these, 456 of the trademark registration information relate to 118 customers who were original customers of Torino.

Although Saplings argued that customer information was not a trade secret and could be obtained through public software in public channels. However, law enforcement officials investigated and pointed out that East Link's "Nanjing Customer File Customer Service" file was a record of customers after the service contract was signed Detailed information is definitive, authentic and centralized, and other companies and individuals cannot obtain the above overall information from public sources. The customer information in Donglington's "Nanjing Customer File Customer Service" file was secret.

Ultimately, the Nanjing Market Supervision Bureau determined that Sapling's conduct violated

Article 9(2) of the Anti-Unfair Competition Law, which states. A third party knows or should know that an employee, former employee, or other entity or individual of the trade secret right holder has committed the illegal act listed in the preceding paragraph. Anyone who still obtains, discloses, uses or allows others to use the trade secret is deemed to have violated the trade secret. The bureau ordered Sapling to stop its illegal activities and fined the company 500,000 yuan.

15. Disputes over infringement of trade secrets between Huayang Xinxing Technology (Tianjin) Group Co., Ltd. and medacor (Tianjin) Technology Co., Ltd., Wang Chenggang, Zhang Hongxing and Liu Fang

Case source: 50 typical intellectual property cases of Chinese courts in 2019

Trial organ: Supreme People's court

Case No.: (2019) Supreme faminzai 268

The Court of Re-examination held that: Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Cases Involving Unfair Competition. It states: "The list of customers in trade secrets generally refers to the customer's name, address, contact information, as well as trading habits and intentions. This includes special customer information that differs from publicly available information, such as customer lists with a large number of customers, as well as information that is different from the publicly available information. A specific customer in a long-term stable trading relationship. A customer enters into a market transaction with an employee's employer on the basis of his or her personal trust in the employee, and after the employee leaves his or her job, can prove that the customer voluntarily If the employee chooses to engage in market transactions with himself/herself or his/her new employer, it shall be determined that no unfair means were used, but the employee and the former employer have other options. except by agreement." Accordingly, the list of customers protected by trade secrets consists of the customer's name and address, contact information, and the habits, intentions, and content of the transaction, except for In addition to information constituted by the information in the list, it should also be special customer information that is different from the relevant public information and does not refer to the list of all customers. protection.

This Court finds that, based on the evidence submitted by Huayang, Huayang took measures to keep its customer list confidential and also conducted relevant transaction, but whether it belongs to the commercial secrets protected by the Anti-Unfair Competition Law, the elements of judgment should be based on laws and judicial interpretations. In this case, according to the notarized certificate provided by Medacor, the information of the aforementioned 43 customers can be obtained through Internet search. According to the list of 43 infringed customers provided by Huayang (2012-2015), the main contents of the customer list are as follows: order Date, item number, name, item size, unit (drum or unit), sales order quantity, unit price, untaxed local currency, contact person. Phone, Address. According to the customer list, the form is a record of transactions and contacts between Huayang and a customer during a specific period of time. The Court finds, first, that in the current online environment, the relevant demand-side information is easily accessible and that the relevant industry employees, based on their labor The skills are easy to know, and secondly, about the order date, order number, product name, item specifications, sales order quantity, unit price, and untaxed local currency. It does not reflect a customer's trading habits, intentions and other contents that are different from general trading records. In the absence of in-depth information on the specific trading habits and intentions of the relevant customers, it is difficult to conclude that the demand-side information is an anti-negative. Trade secrets protected by legitimate competition laws.

Huayang claimed that the transaction information of its 43 customer lists could reflect the special

product needs and trading habits of different customers. According to the evidence provided by Hwayang, Hwayang's 43 infringed customer lists (2012-2015), the sales of its Product name and product specifications are SK-221(25L), OXX-1(25L), 9600 plastic spray cans(25L). (600ml), SK-237(25L), Soclean-I(25L), Polyester Pure-III(20L). SK-632 (20L), Sparks (25L), etc.; 43 customers include xxx kitchen and bathroom appliance factories and other manufacturing companies. Class companies, and also companies such as Ningbo xxx Co. for operating stationery and gift items. It is difficult to show that the products purchased reflect the particular needs of the customer. In addition, based on the foregoing evidence, the purchase of SK-221 (25L) and Speed-Clean-I (25L), for example, is not a good example of a purchase of SK-221. 221(25L) was purchased from xxx Kitchen Appliance Factory. Those who bought Soclean-I (25L) include Ningbo xxx company. For example, of the 43 customers listed by Huayang, 30 bought the product, accounting for 69.76%. It is difficult to prove that the products it sells reflect the particular product needs of its customers, and even more difficult to prove that they reflect the particular trading habits of its customers.

In addition, according to the comparison table provided by McDacor, the contacts and telephone numbers associated with important information in the 43 customer lists, with the Huayang requested protection for about 86% of all different, about 93% of different contact numbers, and 26 customers submitted Demonstrate that it voluntarily selected Medacore for market transactions. Consider the fact that both parties in this case are engaged in the development, manufacture and sale of industrial cleaning and maintenance products. The product range mainly includes industrial chemicals such as cleaning agents, lubricants, sealants, etc., and since the industry engaged in the sale and service of cleaning products Features, customers choose which suppliers to deal with, considering not only information about the performance and price of the product in question, but also cleaning services of quality, it is also difficult to conclude that Medacor used Hwayang when the larger percentage of contacts and contact numbers are not the same. 43 customer list-related information for market trading.

In light of the foregoing analysis, and in light of the fact that Huayang did not enter into non-compete agreements with Wang Chenggang, Zhang Hongxing, and Liu Fang, Medacor Inc. and did not bear the relevant non-competition obligations. Therefore, in the case of Wang Chenggang, Zhang Hongxing, and Liu Fang, there is neither a non-competition obligation, nor does the relevant customer list constitute a trade secret, and the relevant If the contact person and telephone number are not the same in a large proportion, it is difficult for the Court to conclude that the acts of Mydacor, Wang Chenggang and others constituted The infringement of Hwayang Company's firm also secret. Without any obligation of non-competition, Wang Chenggang, Zhang Hongxing, and Liu Fang did not infringe on the trade secrets of Huayang Company, and used their rights and privileges in the original firm. The knowledge, experience and skills acquired by the employer, whether from market sources with relevant market information or from experience in the field, or Determine the demand for relevant products and services by a particular market participant, on the basis of which market development can be undertaken and cooperation with others, including the original unit, can be undertaken. Market competition with market traders in the same industry. Although competing in the market with one's originating unit may not be consistent with the high standards of personal integrity, as a participant in a market transaction, without violating the It is not prohibited by law to engage in business in the same industry if it is prohibited by law and there is no contractual obligation to do so. Where there is no obligation of non-competition and no trade secrets, it is not prohibited by law to engage in business in the same industry simply because an enterprise has had

a prior relationship with another market participant. Multiple trading or stable trading, i.e., prohibiting former employees from competing in the market with them, essentially restricts that market participant from choosing other transactions The opportunity for the subject not only imprisons the trading activities of both parties to the transaction and restricts market competition, but also is not conducive to the maintenance of proper employment of workers, the the legitimate rights and interests of entrepreneurship, contrary to the Anti-Unfair Competition Law, which safeguards the healthy development of the socialist market economy and encourages and protects fair competition. The legislative intent to stop unfair competition and protect the legitimate rights and interests of operators and consumers.

In summary, the relevant reasons for McDuckel's application for retrial were established, and the court of first and second instance found that McDuckel had used Huayang's 43 Home customer list, infringement of Huayang's business secrets to determine the facts and applicable laws are wrong, this court corrects. The verdict is as follows: first, revoke the Tianjin First Intermediate People's Court's (2017) civil judgment No. 50 of Jin 01; second, revoke the Tianjin Higher People's Court (2018) Jinmin Final Civil Judgment No. 143; Third, reject the Huayang Emerging Technology (Tianjin) Group Limited Liability Company Claims.

16 Dispute over infringement of trade secrets between Xinli Media Group Co., Ltd. and Beijing Paihua Culture Media Co., Ltd.

Case source: 50 Typical IP Cases in Chinese Courts in 2019

Hearing authority: Beijing Chaoyang District People's Court

Case No.: (2017) Jing 0105 Minchu 68514

Synopsis of the case:
The plaintiff Xinli Company and the defendant Paihua Company signed the agreement on the post-production of the audio of the movie <The Legend of Wukong>. Production Commission Contract", which contains a confidentiality clause stipulating that each party shall permanently keep the secrets obtained from the other party as a result of the performance of the said contract. including, but not limited to, the content of the film in question, material provided by Sunrise to Paihua, and other undisclosed information (including, but not limited to) The content of the film, plot, cast and crew list, etc.). After the Xinli company found that the entire material of the film in question (including video files, audio files, special effects shots files, etc.) was released on Baidu.com. Disk, ordinary users can obtain without extracting the password. The Plaintiff thought that the whole film and other documents belonged to the company's trade secrets, and that Paihua's behavior had violated its trade secrets. Caused losses, and then to the court, asked for 99 million yuan, the court finally ruled that the defendant to the plaintiff for economic losses 300 $10,000.

Gist of the verdict:
The court held that in this case, while Piper's references to costumes, props and sets were already public knowledge, the film work was not A simple combination of all materials such as costumes, props and scenery, even if their components are already in the public domain or are already available to the public. The material in question, with the exception of the complete subtitles and some of the special effects, is shown in its entirety, and is protected as a trade secret, provided that the combination of the parts acquires an entirely new meaning. The material in question shows the entire content of the film in question, except for the complete subtitles and some special effects, which are not included in the opening and closing credits of the film. Such information is certainly not generally known to those involved in its field of operation prior to the public screening of the film, and the film condenses the actors, actors and producers of the film. The creative work of many people, such as directors and cameramen, makes it extremely difficult to obtain such information, so the material in question is of a secret nature. Regarding value, that is, trade secrets can bring real or potential economic benefits to the right holders. The material in question has basically covered all the contents of the film to be released, which will certainly bring economic benefits to the right holder. With regard to confidentiality, article 11 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition. Paragraph 3 stipulates: "The right holder shall be deemed to have taken any of the following measures that would normally be sufficient to prevent the disclosure of classified information. (e) signing a confidentiality agreement; ... "In this case, the film <Wukong> signed between Sunrei and Paihua, Inc. The audio production contract has a specific agreement on the

obligation of confidentiality, and it has been clearly stated that the content of the movie "The Legend of Wukong", its content, and the content of the movie "The Legend of Wukong" are not to be disclosed. Materials and other non-public information provided by Sunnice, including the plot and production process, are subject to confidentiality obligations. Secrets. In addition, Sunnice signed confidentiality clauses in all other aspects of the filming of the film in question. Therefore, it should be concluded that the material in question had been subject to appropriate confidentiality measures taken by Shinih Company. Therefore, the material in question constitutes a commercial secret protected by the Anti-Unfair Competition Law. In this case, according to the "Film Investment Cooperation Agreement", "Authorization", "Declaration", etc., the Xinli Company is the right holder of the material in question. The right to bring the case in accordance with the law.

With regard to the specific amount of compensation, article 20 of China's Anti-Unfair Competition Law stipulates that an operator who violates the provisions of this Law shall pay compensation to the injured party. If the operator causes damage, he shall be liable for damages, and if it is difficult to calculate the loss of the injured operator, the amount of compensation shall be the infringer's Profits earned as a result of the infringement during the period of infringement; and shall be liable to the aggrieved operator for the non-compliance of the investigation into the infringement of his legitimate rights and interests by the operator. (b) Reasonable expenses paid for the conduct of legitimate competition. Article 17 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Cases of Unfair Competition provides that it is determined that The amount of damages for infringement of trade secrets under Article 10 may be determined by reference to the method of determining damages for infringement of patent rights The amount of damages shall be determined according to the commercial value of the trade secret. If the trade secret has become known to the public as a result of the infringement, the amount of damages shall be determined according to the commercial value of the trade secret. The commercial value of a trade secret is determined on the basis of the cost of research and development, the profitability of the trade secret, the benefits to be derived, the ability to maintain competition, and the value of the trade secret. The time of advantage is determined by factors such as the timing of the advantage. In this case, the evidence submitted by Sunnice cannot prove the actual damages it suffered as a result of the unfair competition in question, so the Court will combine the Consideration of the commercial value of the material in question, the circumstances of New Regency's investment in the film in question, the extent of Paihua's subjective fault, its lack of The nature, circumstances, duration, and severity of the consequences of the legitimate competitive conduct are determined as appropriate. (3 million yuan)

17. Lin Yixiang, Yeh Yencheng and Zheng Bohong for infringement of trade secrets

Case source: 50 Typical IP Cases in Chinese Courts in 2019

Hearing authority: Huizhou Intermediate People's Court, Guangdong Province

Defendants: Lin Yixiang, Ye Yanchen, Zheng Bohong

Case No.: (2018) Guangdong 13 Criminal Final 361 Criminal Judgment

Synopsis of the case:

TCL Group Corporation, the parent company of Shenzhen Huaxing Optoelectronic Technology Co. (hereinafter Huaxing), in January 2016, TCL's network professional employees at the company's headquarters monitored someone leaking Huaxing's trade secrets through a network server.

Defendants Lin Yixiang, Ye Yancheng, and Zheng Bohong all signed an intellectual property confidentiality agreement when they joined Huaxing. (hereinafter referred to as Huaxing) were competitors in the same industry. 2015 On October 24, Huaxing employee Yann Yeh was presented with knowledge that Lin Yixiang had left Huaxing and had joined Hueco. Email to be sent with attachment "2016 Budget Assessment Report (vs. 2015) - Department of TEST - Ver. 08" Lin Yixiang also sent the email containing the attachment "TBNAN New Plant Equipment Evaluation Report 20140506" to the other party for use by Huike. In addition, Lin Yixiang also sent an email containing the attachment "TBNAN New Plant Equipment Evaluation Report 20140506" to Huike. The above attachments contain the following information about Huaxing's "Online monitoring of liquid crystal display" and "Design of glass substrate for liquid crystal display array". The above attachments include the "LCD online monitoring" and "LCD array glass substrate design" of Huaxing Company. Technical information, the above content is not known to the public.

Because of the abnormalities in the product experiments of Huike, Zheng Bohong wanted to inquire about the reasons for the abnormalities in the company's products, and Wang Qing (another case) learned that the After the circumstances, on March 24, 2017, he sent the undisclosed PI Non-Staining-CFITO Improvement obtained by Star of China, Inc. The technical information on the PI nonstick manufacturing process contained in the report is available in a document called "PI Nonstick Experience" at the department of Mr. Cheng Bo-hung. WeChat was shared within the group, while Zheng Bohong saved the file to his own email address, and the technical information was used in querying Huike's product experiments Use in anomalies. It has been determined that the four areas of technical information in the attached "PI Non-Staining - CFITO Improvement Report" are "not available to the public". The technical information of knowledge. "On December 31, 2019, Guangdong Province Huizhou Intermediate People's Court according to law, Lin Xxiang and three others The second trial verdict was handed down in the case of infringement of trade secrets, and the actions of the three defendants constituted the crime of infringement of trade secrets. The second instance verdict held that the original verdict was accurate in convicting each defendant, but found some of the facts unclear, and imposed inappropriate sentences on each defendant, and commuted the sentences of Lin Yixiang, Ye Yancheng, and Zheng Bohong to fixed-term imprisonment of three years to three years and six months, and a fine.

Gist of the verdict:

This case controversy for the defendant infringement of trade secrets crime caused the victim's loss identified problem. Violation of trade secrets, the criminal case, the defendant infringement of trade secrets caused the victim's loss is always the focus of the case and Difficult issues.

In this regard, the general practice of the judicial organs is based on the identification of qualified judicial appraisal agencies issued on the secret point of the "judicial appraisal opinion" and on the loss of "judicial accounting appraisal report" to identify, but often easy to ignore the secret point of judicial appraisal opinion and loss of judicial accounting appraisal opinion and the correlation between the opinion and the facts of the case to be proved between the analysis and discussion, easily lead to forensics instead of trial, criticized.

This case collegial court strictly based on the "Supreme People's Court on the application of the Criminal Procedure Law of the People's Republic of China" interpretation of article 84. The regulations focus on examining whether there is a correlation between the expert opinion and the facts to be proven in the case, and in a comprehensive and careful screening, comparing On the basis of a large amount of original evidence to determine the facts of the case, to determine the amount of the defendant's infringement of trade secrets resulting in the victim's losses. The decision documents in this case are typical and have reference and reference significance in terms of evidence admissibility, reasoning analysis and legal application.

18. Case of infringement of trade secrets by Tian Yanyou in Beijing

Case source: 2019 Typical Cases of Intellectual Property Protection by Prosecution Authorities

Trial organization: Beijing Mentougou District People's Procuratorate/Mentougou District People's Court

Synopsis of the case:

Between February and March 2017, Defendant Tian received from Beijing Jingdiao Technology Group Co. "), prior to leaving his employment, exploited a vulnerability in the company's data management system to download files from Jingdiao Technology's server database a total of 162 times to Network sharing transfer from the personal office computer copy files to the public computer more than 70,000 times, and then with U disk, mobile hard disk, etc. Equipment will be downloaded files stolen, which involves non-Tian XX involved in the design of more than 33,000 files. Ltd. (hereinafter referred to as Shenzhen Chuangji Company) after the defendant Tian XX to work, to glass machine project As vice general manager, he used his stolen drawings and technical plans of Beijing Jingdiao's model JDLVG600 equipment to design the and produced the model B-600A-B equipment and sold it, causing economic losses of more than 2.15 million yuan to Beijing Jingdiao Company.

On June 12, 2018, Beijing Jingdiao Company sent an officer to the Beijing Municipal Public Security Bureau Mentougou Branch to report the case, saying that the company's former employee Tian A certain person illegally downloaded the company's design drawings, illegally stole the company's trade secrets, causing significant economic losses to the company.7, 2018 On August 30, 2018, the Mentougou Branch opened a case on Tian's alleged violation of trade secrets. A suspected violation of trade secrets case invited Mentougou District People's Procuratorate early intervention to guide the investigation. Mentougou District People's Procuratorate first time to send prosecutors and investigators to Guangdong, Hebei to obtain key evidence, and start Beijing Professional synchronization to assist in reviewing the case mechanism, in time with the use of external brains to supplement professional knowledge.January 22, 2019, Mentougou branch office to Tian XX suspected of violating trade secrets to Mentougou District People's Procuratorate approved the arrest.January 29, Mentougou District The People's Procuratorate approved its arrest.March 21, Mentougou Branch to Tian X suspected of violating trade secrets and transferred to the prosecution. At the review and prosecution stage, quasi-certainty, the procuratorate organized an expert demonstration. Prosecutors also through their own investigation to add evidence, and interpretation of the law reasoning, prompting Tian to plead guilty to punishment. July 1, Mentougou District People's Procuratorate to Tian XX guilty of violating trade secrets.July 18, Mentougou District People's Court adopted the procuratorate Sentencing recommendation and sentencing in court, convicting defendant Tian of violating trade secrets and sentencing him to one year and ten months in prison, plus a fine 100,000. Defendant Tian did not appeal, and the judgment is entered.

Commentary:

The right holder of this case, Beijing Jingdiao Company, is one of Beijing's top 100 private enterprises, a key high-tech enterprise under the National Torch Plan, a China Machinery Company, a China National High-Tech Company, and a China National Development and Reform Commission.

Top 100 industrial enterprises, but also the domestic CNC engraving machine tool manufacturing industry leading enterprises. In this case, the rights holder due to the former internal employee violation of trade secrets, resulting in significant economic losses. Mentougou District People's Procuratorate based on the prosecutorial function, for high-tech enterprises to solve problems, the data era invasion of computer information systems Solutions have been proposed to such judicial difficulties as the application of the law on the theft of technical information and the identification of losses incurred by right holders. At the same time, by issuing procuratorial recommendations and carrying out "customized" legal literacy courses, it extends its procuratorial functions to achieve comprehensive social governance.

(A) play a leading pre-trial responsibility, equal protection of the legitimate rights and interests of private enterprises. First, actively guide the investigation, to promote the smooth progress of the case investigation process. Mentougou District People's Procuratorate in the early stages of case investigation that shall be invited by the public security organs to intervene in the investigation, has set out more than 40 articles to guide the investigation opinions. , after a deep investigation, so that the whole case can be broken. The second is self-investigation, tight evidence system. The prosecutor went to the scene of the incident many times to investigate and verify, verify the theft of the database file path, understand the vulnerability of the system, for strong Allegations of crimes provide safeguards. Third, it accurately identifies the economic loss of the right holder and reasonably determines the method of calculating the loss. In combination with the evidence in this case, when it is impossible to identify the profit margin of the infringed product or to determine the infringer's profit, the prosecutor, in accordance with China's The Machine Tool Industry Association's average industry profit margin, based on online statistics reported by 105 industry companies, for infringing products' The sales amount was calculated and the amount of economic loss of the right holder was finally determined, and the method of calculating the loss was approved by the judgment. Fourth, the use of evidence to the utmost, and all parties felt that justice was done. The prosecutor based on solid evidence, the defendant actively carry out education and probation work, prompting it to admit guilt and admit punishment, the defendant Tian XX The court said it will accept rehabilitation seriously, and strive to return to society as soon as possible, using its own technology to create value for society. Beijing Jingdiao Company recognizes the equal protection of private enterprises by the Mentougou District People's Procuratorate.

(2) Invite professionals to assist in handling cases and solve professional problems. On the one hand, start Beijing professional synchronous auxiliary review of case handling mechanism. As the case involves a large amount of electronic data and has a key role in the determination of the case, in the early stage of leading the investigation, the prosecutor invited the Beijing Municipal People's Procuratorate to invite the Beijing Municipal People's Procuratorate to assist in the investigation of the case. The technical staff of the People's Procuratorate provides professional advice on the extraction and preservation of electronic data. On the other hand, it uses external brains to strengthen relevant industry knowledge. For expertise such as technical information about machine tools and equipment, the public security organs are guided to obtain testimony from expert witnesses in the field. Expert witnesses are invited to provide detailed explanations of case expertise to ensure that the facts of the case are fully established and that the crime is vigorously prosecuted in court.

(3) Clarifying the "identity" of data and applying the law accurately. In the data age, a large amount of technical information exists in the form of data. Computer information system data crime disagreement. In response to this problem, the prosecutor's office organized a meeting of experts

and reached a consensus on the nature of the data stored in computer information systems. The legal interests infringed by the actor's subjective and intentional content and objective behavior are judged comprehensively. Since this case did not use the data for other purposes besides violating trade secrets, and the relevant data did not have other special properties, it was not possible to make a comprehensive judgment on the infringement of legal interests. The crime of unlawful access to computer information system data could not be found. In the end, this qualitative opinion was adopted by the court.

(iv) Extending prosecutorial functions to promote comprehensive social governance. Mentougou District People's Procuratorate for Beijing Jingdiao company in the confidentiality of the existing problems issued by the procuratorial recommendations to help it investigate and plug leaks. The enterprise received the recommendations after serious rectification and reply, strengthening the protection of corporate core data. In accordance with the needs of rights holders, the Procuratorate also carried out "customized" legal literacy courses, comprehensively enhancing the awareness of enterprises and employees of risk prevention.

19. Zhejiang Jin's case of infringement of trade secrets

Case source: 2019 Typical Cases of Intellectual Property Protection by Prosecution Authorities

Hearing authority: Wenzhou Rui'an City People's Court/Wenzhou Intermediate People's Court, Zhejiang Province

Synopsis of the case:

(hereinafter referred to as "Mingfa") mainly produces and sells optical plastic microscopes, binoculars, solar microscopes, and other optical devices. Concentrating lens, charger, after years of research mastered the Fresnel ultra-thin magnifier production technology. Defendant Jin worked at Mingfa as a salesman, sales manager, vice general manager, and signed a At the beginning of 2011, the defendant Jin left the company from Mingfa, and set up Wenzhou Fresnel Optical Co. Purchase the same type of equipment, materials, etc. from Minfa's suppliers and use the same methods to produce the same Fresnel as Minfa. The ultra-thin magnifying glass entered the market, causing Mingfa's economic loss of more than 1.2 million yuan. It was identified that Fresnel's process of making Fresnel ultra-thin magnifier was substantially the same as that of Mingfa, and the "three-in-one" The production method of molding belongs to the technical information "not known to the public".

The Public Security Bureau of Pingyang County, Wenzhou City, Zhejiang Province, received a report from Mingfa, and on October 27, 2016, it filed a complaint against Jin for allegedly violating the The crime of trade secrets was investigated and the case was transferred to the Wenzhou Public Security Bureau on February 24, 2017.January 23, 2018 Day, Wenzhou City Public Security Bureau transferred the case to the prosecution, Wenzhou City People's Procuratorate to Rui'an City People's Procuratorate. Rui'an City People's Procuratorate on March 15, 2018 and May 25, 2018 twice returned to the public security organs for additional investigation, and supplemented their own Called some of the documentary evidence, witness testimony. On August 16 of the same year, the Rui'an City People's Procuratorate filed a public indictment, and the Rui'an City People's Court issued a judgment on February 14, 2019. The defendant Jin was found guilty of violating trade secrets, and was sentenced to one year and six months in prison, and fined 700,000 yuan. The defendant Jin appealed, and the Wenzhou Intermediate People's Court ruled to reject the appeal and maintain the original sentence.

Commentary:

This case belongs to the typical "breach of contract use type" infringement of trade secrets, and the defendant did not plead guilty, fact finding and characterization of the greater difficulty. Ruian City People's Procuratorate will guide the public security organs to investigate and self-investigation, building a complete system of evidence, reasonable determination of the amount of crime. (a) The Government is vigorously prosecuting criminal acts, fully protecting the intellectual property rights of private enterprises, and stimulating the enthusiasm of private enterprises for entrepreneurship.

(a) to guide the investigation and self-investigation of equal emphasis, strict case facts, evidence off. The procuratorial authorities adhere to the "trial-centered" concept of litigation, strictly grasp the standard of evidence for prosecution. In response to the arguments put forward by the defendants, they have communicated with the public security authorities on numerous occasions to determine

the direction of evidence collection, and have drawn up detailed and feasible outlines of supplementary investigations. The public security organs were guided to collect and fix key evidence in a timely manner. At the same time, in line with the principle of personal experience, the Rui'an City People's Procuratorate questioned some key witnesses and retrieved relevant documentary evidence. Through the work to form a complete chain of evidence, for the charge of crime and solidified the evidence base.

(2) breakthrough "zero confession" case difficulties, straighten out the identification of crime proof ideas. The suspect in this case refused to confess to the crime, and the procuratorial authorities carefully sorted out the evidence in the case, straightened out the lines of proof for the alleged crime, and forcefully accused the defendant of being a criminal. Criminal Conduct. The prosecutor argued, based on the defendant's confidentiality agreement with Minfa, that he knew that the specific confidentiality included the technical information involved and the business information; based on Defendant's tenure at Minfa from salesman to vice president and his departure at the end of 2010, combined with the two Witness testimonies of the company's employees, customers and suppliers, as well as documentary evidence of Fresnel's establishment and change of registration in 2011, etc., arguing that its Have access to and possess the technical secrets and business information in question and be the de facto controller of Fresnel; pass a number of expert opinions. argues that it uses a production process that is substantially the same as the rightful owner's production process; combined with the fact that the audit did not identify any Fresnel R&D financial investment and found no evidence that Fresnel's process was legally derived from others, a combination of positive and negative arguments for and against infringement. The trade secret act was committed by the defendant and supported by the court.

(3) Clearly identify the method of determining loss and reasonably define the illegal gains. In the event that the victim is unable to prove the loss or account for the cost of research and development, the procuratorial authority determines that the infringer's illegal gains, that is, the illegal gains that have been made by the infringer, should be used as the basis for the determination. The amount of the offence is determined by the amount of illegal income obtained or due to the defendant. At the same time, taking into account the reasonable costs incurred by the defendant in the production and sale, a deduction is made from the amount of the sale, i.e., the amount of the illegal Proceeds = gross profit on sales = amount of product sales - cost of product sales (materials, wages, manufacturing costs, electricity). And overhead costs such as company management salaries, social security, benefits, rent, depreciation of fixed assets, etc., even if no infringing products are produced Also need to spend, is the overall operating costs of the company, rather than the necessary costs arising from the infringement, not deductible.

(D) the production and issuance of prosecutorial recommendations, do well to extend the protection of intellectual property rights. Ruian City People's Procuratorate combined with the case to carry out research, in-depth analysis of the causes of the case, in order to victimize the unit in the staff of the rule of law education, secrecy, and the protection of intellectual property rights. Awareness, confidentiality measures and other aspects of the existing problems, timely issuance of the procuratorial proposal, a package of ideas to improve management. The victim unit adopted the procuratorial recommendations, timely rectification and plugging company management loopholes, regularly invited legal professionals for the company's managers. Teaching, to make up for their own shortcomings and further enhance the competitiveness of enterprises.

20. Li Police, Zhou Xiaoyuan and Zhan Wenjie for infringement of trade secrets

Case source: 2018-2019 Fuzhou Court Top 10 Cases of Intellectual Property Judicial Protection

Hearing authority: Fuzhou Gulou District People's Court

Defendants: Li Police, Zhou Xiaoyuan, Zhan Wenjie

Synopsis of the case:

Defendant Li Police was formerly a sales manager of Company A, Defendant Zhou Xiaoyuan was formerly a technical research and development employee of Company A, Defendant Zhan Wenjie was formerly a sales manager of Company A, Defendant Zhou Xiaoyuan was formerly a technical research and development employee of Company A, and Defendant Zhan Wenjie was formerly a technical research and development employee of Company A. Company assembly workers. in June 2017, the defendant, Li Police, left Company A and invested in Company B. Li Police served as Company B's General Manager and Legal Representative, employing Defendant Zhou Xiaoyuan as a technical research and development staff and Defendant Zhan Wenjie as a deputy factory manager in charge of daily Administration and mechanical assembly.In September 2017, the defendants Li Police and Zhou Xiaoyuan used the "mushroom bagging machine" brought out from Company A. and "Punch and Glue Machine" to produce "Mushroom Sacking Machine" and "Punch and Glue Machine" with the same function as A Company. It was sold to Sichuan, Hebei and other places successively, and the defendant Zhan Wenjie knew that Li Police and Zhou Xiaoyuan used the design drawings of Company A to design, but still Organize workers to assemble the production.

The design drawings of "mushroom bagging machine production line" (including "mushroom bagging machine" and "punching and gluing machine") of Company A have been appraised. The design dimensions, tolerance fits, surface roughness, special processes, specific materials, part classifications, and part designations and specifications listed in the The combination of specific technical parameters such as the number, the design of the bag making and gripping mechanism of the mushroom bagging machine belongs to the "People's Republic of China Anti-unfair competition". The drawing of Company B's mushroom packing machine is compared with the drawing of Company A's mushroom bagging machine, which is "not known to the public" under the Act. Yes, the proportion of identical or substantially identical is about 74%; the composition of technical information in the perforating and gluing machine of company B is the same compared to that of company A. or substantially the same, Company B's edible mushroom packaging machine under the bag making support grip mechanism constitutes substantially the same.

As audited, the average sales price per fully automatic edible mushroom culture bag production line of Company A in 2017 was 188513.51.

As audited, Company B has entered into contracts with other companies to sell mushroom bagging machines, punch and glue machines since its inception until March 1, 2018 The contract was for 31 units, and the actual sales of 6 mushroom bagging machines and 5 punching and gluing machines have been made. Gross profit impact on sales amounted to $460,729.1; contracted sales to Company A resulting from contracted and unperformed contracts The gross profit impact amounted to $780,354.5.

The court held that the following conditions had to be met to constitute the crime of infringement

of trade secrets under Article 219 of the Criminal Law: first, the relevant information belonged to trade secrets; second, the defendants committed an infringement of trade secrets; and third, the loss to the right holder amounted to half a million dollars Above. The analysis of the above three conditions concluded that: the technical information in question is not known to the public, can bring economic benefits to the right holder and is practical. And Company A took reasonable confidentiality measures, and the technical information in question was a trade secret. The three defendants subjectively existed intentionally, knew or should have known that they might infringe trade secrets, and objectively committed acts of infringement of trade secrets. Using the design drawings from Company A, we produced the "Mushroom Bagging Machine" and "Punching and Gluing Machine" with the same functions as those of Company A. The defendant's actions constituted illegal acquisition and use of the trade secrets in question. On the determination of the right holder's loss, the court objectively analyzed the direct loss caused to Company A by the defendant's conduct, based on the actual circumstances of the case. Adopting in part the findings of the audit report, a comprehensive assessment of Company A's losses in two areas: first, the impact of the infringer's actual performance of the contract on Company A's sales and second, the impact of the infringer's actual performance of the contract on Company A's sales. Gross profit impact, the second is due to the infringer's competition resulting in the loss of the difference in price of specific orders, Company A losses a total of $747,918.24. The court ultimately sentenced Li Police and Zhou Xiaoyuan to one year's imprisonment, suspended for one year and six months, and each to a concurrent fine of RMB 200,000; Zhan Wenjie Ten months' imprisonment and a fine of RMB 100,000 were imposed. After the court's verdict, none of the defendants appealed, and the verdict has taken legal effect.

Commentary:

Trade secrets have secret, value, confidentiality and practicality features, is the enterprise in production, operation in the formation of management information or Technical information. Unlike typical intellectual property rights, such as patents and trademarks, trade secrets held by companies, which cannot be easily accessed by the public, have unique Protected Value. Once a trade secret is stolen, leaked or used by others, it will cause the enterprise to suffer huge losses. In the trial of the crime of infringement of trade secrets, should be considered in accordance with the composition of the crime whether the victim unit claims to protect the information is a trade secret. Whether the victim unit has taken confidentiality measures, whether the defendant has committed an act of infringement of trade secrets. Constitutes the crime of infringement of trade secrets for the standard of entry to cause the rights holder losses of up to 500,000 yuan, in the trial practice, should be in direct losses for the The basis of calculation of the direct loss should include the benefit obtained by the perpetrator through the unlawful use of another person's trade secret and the direct relationship with the victim in the course of the commercial activity. Unit competition caused the loss of profits of the victim unit. The trial of this case provides ideas for clarifying the calculation of the victim unit's loss in the crime of infringing trade secrets.

In the mass entrepreneurship and innovation of the present, many senior managers and technical staff of enterprises to respond positively to the call of the government, leave their jobs to start a business In the process of starting a business, you should be down-to-earth, always keep the red line of the law in mind, reap the fruits of your own efforts, and never steal, steal, or use your own money. Disclosure and use of other people's trade secrets. At the same time, this case also sounds a warning

for innovative private enterprises, enterprises themselves to strengthen the protection of trade secrets and related intellectual property rights awareness In addition, the company strictly manages confidential technical information, strengthens measures to protect business secrets, and effectively protects the intellectual property rights of enterprises.

21. Inner Mongolia Industrial Company v. Inner Mongolia Chemical Company, Ningxia Industry and Trade Company, Sanmenxia High-Tech Company, Qinghai Heavy Industry Company, infringement of trade secrets dispute.

Case source: 10 Typical Cases of Intellectual Property Trial in Qinghai Province

Hearing authority: Xining Intermediate People's Court, Qinghai Province

Synopsis of the case:

In November 2016, a chemical company in Inner Mongolia issued an invitation to bid to a Ningxia industrial and trade company and a Sanmenxia high-tech company to The Company invited tenders for the electrolysis cell cathodes and cell bases for its 20,000 ton sodium metal project. Part V of the Invitation to Tender was a list of goods to be tendered, technical specifications and requirements, together with relevant drawings of the electrolytic cell cathodes and cell bases. In December 2016, a chemical company in Inner Mongolia signed agreements with a Ningxia industrial and trade company and a Sanmenxia high and new technology company, respectively, agreeing to The two companies supplied 130 electrolytic cell bases and 130 electrolytic cell cathodes respectively to a chemical company in Inner Mongolia. Afterwards, a Ningxia industrial and trade company signed a technical agreement with a Qinghai heavy-duty company, agreeing that a Qinghai heavy-duty company would complete 130 sets of electrolytic cells and 130 sets of electrolytic cathodes. The fabrication and installation of the electrolysis tank base. After that, Sanmenxia a high-tech company, Qinghai a heavy-duty company began to process and produce respectively.In June 2017, Inner Mongolia a The Industrial Company applied to the Sanmenxia Intermediate Court in Henan Province and Datong County Court in Qinghai Province for pre-litigation evidence preservation, requesting the above contract, invitation of Tenders, drawings and corresponding processing and production materials for the preservation of evidence, the courts in both places have taken preservation measures.

From 2008 to 2009, Zhang and Wen, retired from an industrial company in Inner Mongolia, were suspected of violating trade secrets, after the The Inner Mongolia Alashan League Intermediate People's Court ruled that Zhang and Wen were guilty of violating trade secrets, sentencing them to different Penalty. During the criminal trial, some of the designs in the equipment involved in the case, such as the base of the sodium metal electrolyzer and the cathode, were identified as not being for Technical information that is known to the public is deemed to be a trade secret.

Gist of the verdict:

Xining Intermediate Court hearing that the contract in question is a contracting contract, Ningxia, an industrial and trade company, Sanmenxia, a high-tech company, Qinghai a heavy-duty The company was the contractor, and the drawings in question ultimately originated from a chemical company in Inner Mongolia, which the contractor had no greater duty of care to examine, and It is not possible to determine from the review of the drawings provided that the information is a trade secret, and that the three companies are not at fault for undertaking the manufacture of the relevant equipment. The conduct did not constitute an infringement of an industrial company in Inner Mongolia. The drawings of the electrolytic cell base, cathode and base assembly in the case of infringement of trade secrets by Zhang XX and others were identical to the equipment and drawings

involved in this case. . If the relevant technical information is still secret as of 2017, it indicates that the technical information was leaked as early as 2006. An industrial company in Inner Mongolia did not submit evidence on whether it eliminated the impact of the leak and the effect of the elimination. An industrial company in Inner Mongolia only purchased the right to use the technical information in 2017, and a chemical company in Inner Mongolia only purchased the right to use the technical information in November 2016. The fact that a company in Inner Mongolia was not the only one with knowledge of the information and that its purchase had already been approved by a tender process that had begun in April 2011 indicates that the company was not the only one in Inner Mongolia. The technical information known to others as their own business secrets, should bear the business risks arising from this, a chemical company in Inner Mongolia does not constitutes an infringement of the rights of a certain Inner Mongolia industrial company. Accordingly, the judgment rejects the claim of a certain industrial company in Inner Mongolia.

Typical significance:

Trade secrets are not known to the public, can bring economic benefits to the right holder, has the practicality and the right holder to take measures to keep confidential Technical information and business information. The premise of a trade secret is not known to the public, it is a relative right, the exclusivity of trade secrets is not absolute, does not have the Exclusivity. If other persons have legally obtained a trade secret of the same content, they have the same status as the first person. Trade secret rights holders should actively take reasonable protection measures appropriate to their commercial value in order to prevent the disclosure of information, and strive to Minimize the risk of infringement, this is the value of confidentiality measures in the composition of trade secrets, but also the case presented the typical significance of the decision Location.

22. Shenyang Meiying Education Information Consulting Co., Ltd. and Wang X, Shenyang Tongle Education Consulting Co., Ltd. Jingxing Street Branch infringement of business secrets dispute

Case source: Shenyang Intermediate Court Top 10 Typical Intellectual Property Cases of 2019

Hearing authority: Shenyang Intermediate People's Court

Synopsis of the case:

Plaintiff Shenyang Meiying Educational Information Consulting Co. (hereinafter referred to as Meiying) and Defendant Wang on December 29, 2016 entered into an employment contract in which Defendant Wang was employed by Plaintiff Mei Ying as a teacher for a term of December 30, 2016 to December 31, 2018. The parties entered into a confidentiality contract in December 2016, agreeing that Defendant Wang would be responsible for all of Plaintiff Mei Ying's, including the roster of students' The business secrets of the parties are subject to a duty of confidentiality both during their employment and after leaving the company. Subsequently, the parties entered into a second employment contract for the period from December 31, 2018 to December 31, 2020. But did not actually perform. 2019 January Wang to the defendant Shenyang Tongle Education Consulting Co. (Tongle Jingxing Street branch) work. The plaintiff MeiYing company has students have asked for refunds, and to the defendant children's music JingXing street branch office, the plaintiff MeiYing company believes that the WangX leaked Plaintiff Mei Ying's trainee information to Defendant Child's Kingston Street branch, resulting in the loss of its trainees, and Defendant Child's should have The branch company was liable for the infringement, so the case was brought to court.

The customer list claimed by the plaintiff Mei Ying Company included a list of 19 instructional subjects, specifically including the names of parents and students, parents' contact telephone numbers, study courses, age of students and other basic information of students.

In addition, the plaintiff MeiYing company was incorporated on November 12, 2014, the legal representative is Zhang X, the registered capital is 5 million, with a business scope of educational information consultation and cultural and artistic communication activity planning. The defendant children's music Jingxing Street branch was incorporated on May 22, 2014, the person in charge is Wei XX, the scope of business is educational information Consulting, children's intellectual development, educational software technology development, and computer system integration. Defendant Children's Music was incorporated on May 27, 2013, with a legal representative, Mr. Wei, and a registered capital of 1,000,000. The scope of business is the same as that of Defendant Child's Kingston Street Branch.

Typical significance:

This case is a dispute over the infringement of customer information business secrets, belongs to the common type of infringement of trade secrets cases. Whether constitutes a trade secret, the distribution of the burden of proof and the identification of infringement is the difficulty of such cases. The case and the situation involved in recent years and the employee jumped ship and the customer list, find that the difference is large. The court took into account the plaintiff's investment in acquiring the customer information, the degree of difficulty, the difference from the public

knowledge and the competition it might bring to the plaintiff. Advantage, it was found that the customer list in question was secret and commercially valuable. Because the plaintiff failed to take reasonable measures to protect the information from disclosure and appropriate to its specific circumstances, such as its commercial value, it was found to be inconsistent with the Confidential elements, the plaintiff also did not prove that the defendant Wang X mastered the business information involved in the case and leaked it to the defendant in this case, Tongle Jingxing Street Branch, and therefore dismissed the case. The case follows a paragraph-by-paragraph approach, with a clear focus on the review, while taking into account the characteristics of the education and training institution, to determine whether the client list constitutes a Trade secrets have adopted a broader standard for the future of such cases and how rights holders can strengthen trade secret protection.

The judge suggested that effective confidentiality measures should be taken such as adding locks to classified information carriers, marking confidential signs, and signing confidentiality agreements with classified employees.

23. Jiangsu Saishang New Material Technology Co., Ltd. and Xu, Zou business secret case

Case source: 2019 Typical Cases of Intellectual Property Judicial Protection in Wuxi Courts

Hearing authority: Wuxi Municipal Intermediate People's Court

Synopsis of the case:

Ltd (hereinafter referred to as Saison) is mainly engaged in the research and development, production, sales and marketing of PVC flooring. The export business builds and maintains its foreign trade customer base by participating in foreign exhibitions and other channels. The company has signed confidentiality agreements with its employees in its operations, and through technical measures gives the relevant personnel different access to foreign customer information Authority. The company's foreign trade department manager Xu X, foreign trade department commissioner Zou X sent a statement to the company's foreign customers, falsely claiming that a trading company (legal representative) (who is Xu's husband) is a new company set up by Cezanne to sell Cezanne's products and to facilitate a trading company's dealings with seven The offshore customers signed orders and received payment for the goods.

The court held that the contact person, telephone number, e-mail address, product model, trading conditions and other information of the seven overseas customers involved in the case Reflecting the unique trading habits of its clients, Saison also adopts confidentiality by signing confidentiality agreements and setting access rights to information. Measures, the customer information involved constitutes a business secret. Xu X and other claims involved in customer information can be obtained from the relevant network information query system, belongs to the public knowledge information, but the above-mentioned relevant network information query system is not a secret. The information search system is the result of the collection and collation of data published by the customs authorities of various countries, and requires a fee for access. directly tied to a fee, so the information in this search system is available at some cost, instead indicating that it is a legal Non-public information. Accordingly, a judgment was issued against Xu, Zou and a trading company to stop the infringement and pay damages of 300,000 yuan.

Typical significance:

(1) "trade secret protection is difficult" is a long-troubled enterprise legal problems, the case involved in the enterprise customer list of trade secrets identified It is one of the difficult points. The judgment was based on the fact that Syson Company had restricted the access to the information of foreign trade customers and had taken measures to restrict the scope of contacts. Measures and other facts, accurately determined the non-knowledgeable nature of the information in question. As to the claim of Xu X and others that some of the information can be obtained from the relevant search system, the judgment of the case, through the identification of the relevant registration system, found that the information in question is non-public. The search method accurately identifies that the search system is closed and paid, and that the information obtained from the search is not easily accessible. characteristics, thus finding the infringer's claim regarding the public knowledge information defense unavailing, and establishing in the decision the public and non-public information The distinction between boundaries has a guiding significance for the adjudication of such cases. At the same time, the correct verdict of this case also provides a strong guideline for

enterprises to better protect their business information, effectively regulating the competitive order of the market economy.

(2) If an enterprise adopts confidentiality measures for information on foreign customers obtained in foreign trade, it shall constitute business information secret according to law.

24. Jinhua Hengfa Industry and Trade Co., Ltd. and Xu X infringement of trade secrets dispute case

Case source: 2019 Jinhua Court Top 10 Typical IP Cases

Hearing Authority: Jinhua Intermediate People's Court, Jinhua Wucheng District People's Court

Case No.: (2018) Zhe 07 Min Feng 5280, (2017) Zhe 0702 Min Chu 15198

Synopsis of the case:
(hereinafter referred to as Hengfa) was established on August 5, 2011, with the business scope of labor. Protective articles manufacturing, sales, import and export of goods and technology. Xu X and Ye X joined Hengfa Company in November 2011, engaged in salesman work. 2014, Hengfa Company had and Xu X Signed "employment agreement" one, it is agreed that Mr Xu should strictly guard Hengfa company's business secrets, at the same time clear should be confidential corresponding technology Information and business information; Xu shall not directly or indirectly provide information to unrelated personnel and non-duty personnel inside or outside the enterprise and other people outside this agreement. Disclosure (including personal use), shall not copy or disclose documents and copies of documents containing corporate trade secrets. Ye and Xu successively left Hengfa in March and April 2015 and took away some of the customers stored in the company's computer information, sales contracts, etc., and joined Topper in June 2015 and became a shareholder, the next two with HLF respectively The customers in the customer profile conducted the transaction. Hengfa Company believed that Xu X and Ye X's behavior had violated the company's trade secrets and caused huge losses to Hengfa Company. The court of first instance ruled to reject Hengfa Company's litigation claim. The court of second instance retrieved relevant materials, information, customer lists, product quotations, suppliers, manufacturers from the business administration department. After examination, it is considered that the customer information involved in the case belongs to the depth of information that can reflect the customer's special needs, pricing strategy, preferences, and can give the Hengfa company brings competitive advantage, has commercial value, and Hengfa company took and Xu X signed a confidentiality agreement, the installation of monitoring system, etc. Confidentiality measures, the customer information involved in the case constitutes a trade secret, so that Xu was found to have violated the trade secrets of Hengfa Company and compensated 150,000 yuan.

Typical significance:
In trade secret cases, a company's departing employees violate the trade secrets of their former work unit, which is a common tort phenomenon in employee turnover. . But the company to protect their rights, there is often a secret scope is difficult to determine, the infringement means hidden, economic losses are difficult to calculate and other difficulties. In the second trial, the court to the business administration department of the seizure of relevant information, screening screening to determine the information involved in the case is depth of information. It has commercial value, constitutes a commercial secret, and finally found that Xu X constitutes infringement. In the policy context of increasing judicial protection of intellectual property rights, the trial of this case had a great impact on how to play the role of judicial initiative and how to grasp the business information.

It is of some relevance in terms of composition elements, etc.

25. Violation of trade secrets by Yu Chengyan, Wanmou Company, etc. - Profits made by infringers may be recognized as criminal amount under the market for products without substitution relationship.

Case source: 2015-2020 Putuo Court Top Ten Cases on Intellectual Property Protection

Hearing authority: Shanghai Putuo District People's Court

Synopsis of the case:
The victim unit, N'tanhua Auto Parts, was authorized by a related party to obtain technical information related to the sunroof of the car in question for production and operation, and the corresponding confidentiality measures taken. The above-mentioned technical information was identified as technical information not available to the public. from April 2012 to February 2014, the defendant Yu (Yu Chengyan) was working as a product engineer at Enmax Company and was involved in the skylight project work and had access to the above technical information. In March 2014 he left his job and joined the defendant unit Wanmou Company, responsible for the development of the panoramic skylight. During the period, Yu took the excuse of buying skylight technical drawings from individuals outside the country, violated the confidentiality agreement between En and Wanmou Company, and gave Wanmou The company provided technical information materials with the logo and project code of the N's company for product development. Wanmou, knowing that there might be unlawful disclosure of others' technical secrets, still failed to carefully review the relevant technical information The information is used in the development and production and sales of relevant automotive sunroof products. Yu so-and-so, Wanmou company legal representative Jia so-and-so also as a joint research and development, part of the technology to apply for utility model patents. After identification, Wanmou company part of the sunroof products, utility model patents and computer part of the electronic data and the substance of the technical information in question Same or identical, net profit from the sale of the relevant skylight products described above for the period September 2015 to June 2018 was More than 12.98 million yuan. The Public Prosecution alleges that the defendant Yu XX, the defendant unit Wanmou Company and its actual business person in charge of Jia XX constitute the crime of violating trade secrets . Yu and his defense counsel pleaded not guilty to the alleged facts and charges of the offense. Wan and Jia (Jia Yonghe) pleaded not guilty to the facts and charges of the alleged crime, but argued that the calculation of the amount of the crime should consider the The contribution and percentage of technical information is discounted accordingly. During the trial, Wan, Jia, and En, Inc. reached a settlement agreement on trade secret infringement, awarding a total of 778,000 million yuan, with the understanding of the En Company.

Rationale for the ruling:
The court held that the scope of the appraisal opinion on the scope and method of the appraisal of the technology in question was reasonable, and that the technical information in question was not available to the public. The information, which has the characteristics of value and practicality, and the rightholder has taken corresponding confidentiality measures, constitutes a commercial secret. Yu contacted the technical secrets involved, violated the confidentiality agreement with the rightholder, and disclosed, used, and allowed Wanmou to use its mastery of the Trade secrets, a

violation of trade secrets. Although Wanmou company has the name of purchasing drawings from outsiders, but access to the source of a competitor's former employees, the actual state of the contract signed in the transaction The payment methods are not in line with general business practices, trade secret carriers contain competitors' commercial logos, can be identified as it should be known in a certain In addition to the infringement of trade secrets, the acquisition, use and disclosure of trade secrets, subjectively with obvious intention, also constitutes an infringement of trade secrets. conduct. In this case, the defendant unit will be the right to apply for a relevant patent commercial secrets, resulting in the loss of trade secrets into the public knowledge of information and secret, is bound to cause a loss to the right holder, but because the technical secret itself has the characteristics of technical iteration and upgrading, it is more difficult to accurately :: Assessing its own value, so that it is more objective and reasonable to evaluate the amount of the crime in terms of the loss to the right holder or the gain to the tortfeasor. . Given the business scenario of the case, there was no evidence that Wan's customers had an overlapping cross-relationship with the rightholder's customers, the auto The market for the supply of the skylight product is not exclusive to the right holder, and therefore there is no direct substitution between the infringing product and the right holder's product. relationship, so take the infringer's profit is more objective calculation method. In this case, the defendant unit in the illegal use of technical secrets, and does not have the ability to produce the corresponding skylight products, so it can be found that the Technology secrets constitute the key components that reflect the technical function and effect of sunroof products, and are in the core position of products. The audit appraisal does not point to the whole car, but has been stripped out of the sunroof part of the net profit, as a whole sunroof finished product, only for the whole sale, and Will not be separated from the key components and separate sales of glass, seals, wiring harness and other parts. The identification of infringing skylight products have covered all the mechanical group technology secret point, so the overall net profit of more than 12 million yuan to infringe the skylight products. Calculate the amount of the crime, no longer consider the contribution and proportional discounting. The court sentenced Yu to five years in prison and a fine of $500,000 for the crime of violating trade secrets, and Wan The company fined four million yuan; sentenced Jia to three years' imprisonment with three years' probation for violating trade secrets, and fined RMB Thirty-five million yuan; the illegal income is recovered according to law.

Expert Comment:

The main body of value in the application of the law in this case is manifested in two aspects: first, the crime of infringement of trade secrets "joint crimes". According to the provisions of article 25 of China's criminal law, more than two people jointly intentional crime constitutes a common crime. In this case, the defendant Yu XX violated the confidentiality agreement with the original company, a fictitious purchase from overseas personnel in the name of technical drawings, to the defendant Unit Wanmou company sold the original company technical secret drawings and illegal profit, infringement of trade secrets directly intentional very obvious; and the defendant Unit Wanmou Company and its actual business manager, Jia X, knew that Yu had worked for the rightholder company and that the technical information purchased by the The purchase and use in the development of a product bearing the logo of the right holder and the project code has the effect of allowing the criminal result to occur. Indirect intent. The decision of this case shows that the direct and indirect intentional perpetrators of the crime of infringement of trade secrets in a criminal case can constitute a joint crime, for the The future handling of similar legal issues provides the support

of realistic cases. Second is the crime of infringement of trade secrets "significant loss" identified. Infringement of trade secrets crime "significant loss" general reference to trade secrets civil infringement loss calculation method to be identified, follow the right to loss In this case, the methods such as the profit of the infringer, the profit of the infringer and the cost of research and development when the secret is disclosed are applied in order. In this case, since there are substitutes for the right holder's products in the market, the fact that the infringer sells a certain number of products does not necessarily mean that the right holder sells the same number of products. The number of products, and the sale of products does not represent the disclosure of secrets, so it is more appropriate to calculate the infringer's profits. And the technical secret point in question constitutes the main source of profit of the infringing product, so it is not improper to take the net profit of its product sales as the basis of profit. It can be used as a reference in similar cases.

26. Investigation and Handling of the Violation of Commercial Secrets of Alessio by the Market Supervision Bureau of Yuhang District, Hangzhou City

Case source: Yuhang Top Ten Typical Cases of Intellectual Property Protection

Synopsis of the case:

The District Market Supervision Bureau according to Hangzhou Alessio Machinery Manufacturing Co., Ltd. reflected that after investigation, it was found that Hangzhou Astute Intelligent Machinery Co., Ltd. through illegal means to steal Alessio's equipment drawings for its company to produce equipment to use, and finally the District Market Supervision Bureau determined that Hangzhou Astute Intelligent Machinery Co., Ltd. violated the business secrets of Alessio, and fined it 100,000 yuan.

27. Yuhang District Market Supervision Bureau of Hangzhou investigated and dealt with the case of infringement of commercial secrets of Zhongwang Technology.

Case source: Yuhang Top Ten Typical Cases of Intellectual Property Protection

Synopsis of the case:

The District Market Supervision Bureau based on the reflection of Hangzhou Zhongwang Technology Co. Ltd. including but not limited to customer lists, marketing plans, purchasing information, pricing policies, and Financial information, purchase channels, legal affairs, human resources and other types of information for its business use. In the end, the District Market Supervision Bureau found that Hangzhou Zhuoxiang Technology Co., Ltd. violated the commercial secrets of Zhongwang Technology and fined it 100,000 yuan.

28. Mediation by the Yuhang District Court of Hangzhou in the case of Zhejiang Lingjiu Import & Export Co., Ltd. and Zhu Bin for infringement of trade secrets of Hangzhou Zhongyi Industry Co., Ltd.

Case source: Yuhang Top Ten Typical Cases of Intellectual Property Protection

Hearing authority: Hangzhou Yuhang District People's Court

Synopsis of the case:

Zhu Bin is a former employee of Hangzhou Zhongyi Industry Co. Invited, stole a large number of customers' information and other trade secrets of Zhong Yi, digging for customers and stealing orders, causing Zhong Yi to lose 1.1 million yuan. . After mediation, the District Court reached the following agreements: First, Zhu Bin, Lingjiu company to stop infringing on the trade secrets of the company, Zhu Bin compensation in the Arts 290,000, and Lingjiu compensated Zhong Yi $290,000.

29. Violation of trade secrets by Wang XX, Cao XX and Yao XX

Case source: Haidian Procuratorate Top Ten Typical Cases of Intellectual Property Protection

Hearing authority: Beijing Haidian District People's Court

Synopsis of the case:

The defendant Wang was a sales director of Wanbu before the incident, and Xiao (another case) and Zhang (another case) were Wanbu before the incident. The defendant Cao X was a salesman of Wambu; the defendant Yao X was a salesman of Deshi Corporation (the parent company of Wambu) before the incident.) director of research and development.In June 2015, the defendant Wang, together with Xiao and Zhang, jointly funded the establishment of Beijing Storage Chen Technology Ltd. (Storage Chen Corp.).

From July to December 2016, Defendants Wang, Xiao, and Zhang, while conducting team walking business on behalf of Wanbu, Inc. process, made the unauthorized decision that the activity would be carried out by Storage Chen with the Ministry of Commerce and its subordinate units, and instructed Yao to develop for Storage Chen " Health 121" website and "Business Companion" IOS mobile client software. In the process of research and development, Mr. Yao used the technical information of Deshi Corporation and Wanbu Corporation. After Wang so-and-so, Xiao so-and-so, Zhang so-and-so arranged for Cao so-and-so to use the above website and software to carry out the activity, and received the Ministry of Commerce and its subordinate units. The total activity expenses were RMB 754,200 yuan, and the proceeds were divided afterwards. It was appraised that the "Health 121" website and the "Business Companion" IOS mobile client software of Chu Chen Company were in close cooperation with Wanbu, Deshi, and the company. The source code of DTBL Wambu Web team's IOS mobile client software and Wambu Web data interface is identical. The total number of database tables with the same table structure in the server-side database is 373, accounting for 94% of the database tables in the software developed by Storage Hour .

In addition to identify two criminal facts of encroachment: (1) in January 2016, the defendant Wang XX, together with Xiao XX and Li XX in the Shandong project business of Wanbu company, using Wang XX as sales director to approve sales special expenses reimbursement of the job convenience, the company's sales special expenses a total of RMB 159,576 yuan for their own; (2) in September 2013, the defendant Wang XX in Wanbu company Sinopec and other projects in the business of using his position as sales director to approve sales special expenses reimbursement of the job convenience, the company's sales special expenses a total of RMB 59,4805 yuan for their own.

Haidian District Procuratorate on March 13, 2018, with Wang, Yao and Cao constituting the crime of violating trade secrets, and Wang constituting the crime of The crime of official encroachment was filed with the Haidian District Court. On July 25, 2018, the Haidian District Court convicted Wang of the crime of infringement of trade secrets and sentenced him to one year and one month of imprisonment, and fined RMB 250,000, and Wang was convicted of misappropriation of office and decided to serve two years and six months in prison. three years; Yao was convicted of violating trade secrets and sentenced to one year in prison and fined RMB 50,000; Cao was convicted of violating trade secrets and sentenced to one year in prison and fined RMB 50,000; Cao was convicted of violating trade secrets and sentenced to one year in prison and fined RMB 50,000; Cao was convicted of violating trade secrets and sentenced to one year in prison and fined RMB 50,000.

The defendant was sentenced to eight months' imprisonment, suspended for one year, and a fine of RMB 30,000. The defendant did not appeal, the procuratorate did not protest, and the sentence has come into effect.

Commentary:

Trade secrets is an important product of the development of market economy, is also a high-tech enterprises rely on the survival of the wisdom of the results. In recent years, along with the infringement means increasingly covert, intelligent, infringement of trade secrets class crime has become a serious disturbance market economy Order of the main illegal factors. The success of this case for the breakthrough "difficult to file, difficult to obtain evidence, low rate of infringement of trade secrets," the plight of dealing with cases, has guiding Significance.

(1) review to guide the investigation, with the help of expert consulting system to solve professional technical problems.

This case is a typical case of protecting commercial secrets of private enterprises. The computer software involved in the case involves data import, analysis and output and other structural links, how scientific and reasonable selection of core technical information The identification of homogeneity is crucial to the characterization of the case. The Prosecutor, with the help of an expert advisory system, has initiated a specialized simultaneous and supportive review mechanism, repeatedly working with multiple sources, including source code, databases, assembly language, etc., to determine the identity of the case. Technical experts in the field held a demonstration meeting, and combined expert opinion, decided to database table structure, IOS client software, data interface Source code three key technical information for homogeneity comparison, timely revision of investigative ideas, and application for expert witness appearance through the expert The court on the way to send the inspection, appraisal basis, appraisal process and other issues to explain, strengthen the professional issues of the proof of strength, get a good The effect of court hearings.

(2) play the professional function of the prosecution, the implementation of the expert court system strong charge crime.

As the core secret point of the step-type app software involves key technical information of multiple structural links such as data import, analysis and output. Therefore, expert opinions reflect a strong sense of professionalism. In order to charge the crime, the prosecutor actively promote the appraisal system in the trial. Through the appraisers in court from a professional point of view on the delivery method, the basis of appraisal, appraisal process and other related issues, professional and detailed instructions. It has strengthened the procuratorial authorities' efforts to prove professional issues and achieved good results in court. At the same time, the prosecutor responsible for the case made full use of the "introduction with the case" working mechanism to establish long-term contacts with the case's appraisal experts, and fully integrated the "introduction with the case" working mechanism. Resources, improve the expert think tank, "build a platform, expand the think tank, improve quality", effectively promote "professional platform, professional tools, professional quality "The "trinity" prosecution professional construction.

(3) timely filing supervision, precise pursuit of missed crimes and omissions.

Prosecutors in the review and prosecution, found the two criminal facts of Wang suspected of encroachment, through timely supplementary investigation, transfer of relevant Evidence, and eventually pursued Wang's omission of criminal facts in accordance with the law, and was sentenced by the court. At the same time, prosecutors found Li suspected of common crimes of official

occupation, the operator of the online store suspected of forging the company seal, and promptly transferred Case supervision clues 2 pieces, to achieve efficient supervision and accurate prosecution.

(4) Strengthening the protection of the rights and interests of enterprises and issuing prosecutorial recommendations have achieved results.

In the process of handling cases, prosecutors improve technical information security measures, standardize the financial approval process, strengthen the legal system, such as education and other aspects of the right to put forward procuratorial recommendations to the company, and effectively help enterprises to build crime prevention risk prevention and control system to avoid economic losses.

30. Disputes over infringement of business secrets between Shanghai Haoshen Chemical Reagent Co., Ltd., Shanghai Meishu Chemical Co., Ltd., Zhu Jiajia and Shanghai Lijing Trading Co., Ltd

Case source: 2019 Typical Cases in Shanghai Courts to Strengthen Intellectual Property Protection

Hearing authority: Shanghai Yangpu District People's Court

Case No.: (2019) Hu 0110 Minchu 1662 Civil Judgment

Synopsis of the case:
(hereinafter referred to as Haoshen) and Plaintiff Shanghai Meishu Chemical Co. (Meishu Company) is an affiliated company. Defendant Zhu Jiajia worked as a product salesperson at Plaintiff Haoshen, and left the company in October 2017. During her employment, Haoshen and Zhu Jiajia agreed on a trade secret protection obligation. Before Zhu Jiajia joined the Company, the two Plaintiffs established business relationships with 24 customers, and after Zhu Jiajia joined the Company, the two Plaintiffs established business relationships with another 18 customers Establishing Business Relationships. During her time on the job, Chu Jiajia approached the 42 customers mentioned above as a salesperson, keeping track of each business's sales date, delivery order number, and Business details such as names and specifications of materials, sales quantities, unit prices, sales amounts and customer names. Defendant Shanghai Lijing Trading Co. (hereinafter referred to as Lijing) was established in September 2017, and Zhu Jiajia left Haoshen's company After joining Lai King as a product salesperson, from December 2017, Defendant Lai King and 41 of the 42 customers mentioned above The business transactions, which included a greater number of products that these customers had originally purchased from the two plaintiffs and at a price The price of the products was lower than the prices provided by the plaintiffs to these customers.
The two plaintiffs to the court said: the plaintiff mastered a large number of customer information has constituted business secrets. Zhu Jiajia intentionally breached the confidentiality provisions to Lijing Company and used with Lijing Company the information in its possession of the two plaintiffs' customer lists. The defendant caused huge losses to the plaintiffs and infringed their trade secrets. The court ordered the defendants to stop the infringement, and compensate the plaintiffs for economic losses of 990,500 yuan and reasonable expenses of 75,500 yuan. At the trial, the two defendants argued that 24 of the enterprises were voluntarily and Zhu Jiajia and Li Jing had transactions with the company, based on the trust of both parties Market Economy Behavior.

Gist of the verdict:
The court of first instance held that the commercial secret in this case was a list of 42 customers, including their names, contact details and the name of each business. Product name, quantity, amount, unit price, etc. "not known to the public" of special customer information. The above-mentioned information can bring economic benefits to the plaintiff, has certain commercial value, and the plaintiff has taken confidentiality measures, belongs to the "anti-customer information". The customer list operating secrets protected by the Unfair Competition Law. Zhu Jiajia had actual access to the customer list operating information claimed by the two plaintiffs, but breached the confidentiality agreement with the two plaintiffs by providing Lijing Company with disclosing and

using the customer information described above and actually transacting business with 41 of them, Lai King knew or should have known that Chu Jia Jia of the above illegal acts still use the business information, the two defendants' actions have infringed the trade secrets of the two plaintiffs. For the two defendants to raise the defense of personal reliance, because the above-mentioned customer is Zhu Jiajia after the plaintiff joined the company based on the two plaintiffs provided material and The opportunity to contact and transact with customers was obtained on other conditions, not on the basis of Zhu Jiajia's personal input and dedication, and her inability to It was proved that these customers were actively dealing with the defendant. Therefore, the court of two defendants to claim personal reliance on the defense is not accepted. Judgment for both defendants and the plaintiff to stop infringement and compensation for economic losses 600,000 yuan and reasonable expenses 73,000 yuan. After the first instance judgment, the original and the defendant did not appeal.

Typical significance:

This case is a typical case of infringement of customer list trade secrets involving personal trust defense, in order to increase the protection of trade secrets of the right holder. provides a reference to a similar decision. The court made it clear that a mere statement by a customer that a transaction with a departing employee was based on the personal reliance of the employee was not sufficient to constitute personal reliance, and in reviewing the case, the court found that the customer's statement was not sufficient. The following factors must be taken into account when pleading personal trust: 1. Whether the client's development is based on personal skills or the material, material, and material of the original organization. Technical conditions mainly; 2. Whether the departing employee used unfair means such as slander and price competition to actively induce customers to have transactions with him. 3. whether there is a non-competition agreement between the departing employee and the former company.

31. Violation of trade secrets by Wei X, Yuan X and X

Case source: 2019 Top 10 Typical Intellectual Property Cases in Zhangqiu Court

Hearing authority: Zhangqiu District People's Court, Jinan City, Shandong Province

Synopsis of the case:
Wei X had served as the head of the research institute of our area S Corporation, a subject group, Yuan X and Wei X because of business contacts and acquaintance, Yuan X then let Wei X help The search for the formula, wei mou found when the company b subject group leader left to give proposals. Left in violation of the company's confidentiality requirements, will be its custody of a technical formula to wei mou, wei mou and transferred to yuan mou. Yuan mou get formula after production s company similar products more than 1000 tons of profit, and give wei mou, left mou "benefit". After the incident, the public security organs investigators from Yuan's computer to extract the formula, production records. The Intellectual Property Judicial Appraisal Institute of the Ministry of Industry and Information Technology (MIIT)** made a non-information and identity appraisal on the basis of the materials and Company S's secret point. The product produced by Yuan is identical with the non-knowledgeable secret point of S Company. The Asset Appraisal Limited Company assessed that Yuan made a profit of more than 1 million yuan.

Gist of the verdict:
Without the permission of the rightholder, no one shall, by means of theft, bribery, fraud, coercion, electronic intrusion or other improper means, obtain the rightholder's trade secrets, disclose, use or allow others to use the rightholder's trade secrets obtained by the previous means, violate the obligation of confidentiality or violate the requirement of the rightholder to keep trade secrets, disclose, use or allow others to use the trade secrets in their possession, abet, induce or help others to violate the obligation of confidentiality or violate the requirement of the rightholder to keep trade secrets, obtain, disclose, use or allow others to use the rightholder's trade secrets.
The technical information claimed by the rightholder can bring economic benefits to it, has practicality, adopts better confidentiality measures, and is The secret points identified in the trial were identified as being in a state of non-knowledge. The court found that the three defendants' actions constituted the crime of infringement of trade secrets and held the infringer criminally liable.

Commentary:
Trade secrets are not known to the public, can bring economic benefits to the right holder, has the practicality and the right holder to take measures to keep confidential Technical information and business information. The right to trade secrets is the right of the right holder to the possession, use, profit and disposal of their trade secrets, which belongs to the law to the right holder. An intellectual property right of the holder of a trade secret. According to Article 219 of the Criminal Law of the People's Republic of China, the crime of infringement of trade secrets means theft, enticement, coercion or other improper means of obtaining the right holder's trade secrets, disclosing, using or allowing others to use the right holder's trade secrets obtained by the previous means trade secrets, disclose, use or allow others to use them in violation of an agreement or a right holder's requirement to keep trade secrets. The possession of trade secrets, causing significant losses to the right holders

of trade secrets. Infringement of other people's trade secrets, the infringer shall bear the following responsibilities: 1. stop the infringement, eliminate the impact, apologize; 2. to the right (3) bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (4) the administration shall be liable for damages if the right holder has caused damage to the property; (5) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (6) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (7) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (8) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (9) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (10) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (11) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights; (12) the administration shall bear the reasonable expenses incurred by the right holder for the protection of his or her rights The circumstances are punishable by a fine of not less than 10,000 yuan and not more than 200,000 yuan; 5. Criminal liability is incurred if the criminal law is violated.

32. Disputes over business secrets between Shandong Yuwang Ecological Food Co., Ltd., Harbin Binxian Yuwang vegetable protein Co., Ltd. and Guo Kun

Case source: 2019 Top 10 Texas Court Cases on Intellectual Property Trials

Hearing authority: Dezhou Intermediate People's Court, Shandong Province

Synopsis of the case:

As a technician at Shandong Yuwang, Guo Kun worked at Harbin Yuwang, an affiliate of Shandong Yuwang, before being promoted to The company's technical director. The Labor Contract signed between Shandong Yuwang Company and Guo Kun stipulated that Guo Kun had the obligation to keep trade secrets. After Guo Kun left the company, Shandong Yuwang Company and Harbin Yuwang Company requested the court to order Guo Kun to stop the infringement of trade secrets and to pay compensation to him for the infringement of trade secrets. (b) Economic losses and reasonable expenses.

The court held that Guo Kun submitted relevant textbooks and other evidence to contest that the 13 process procedures were public knowledge techniques, and that the evidence submitted by Shandong Yuwang and Harbin Yuwang could not prove that the 13 process procedures were trade secrets, and rejected the claims of Shandong Yuwang and Harbin Yuwang.

Commentary:

Trade secrets, is not known to the public, has a commercial value and the right to take corresponding measures to protect technical information and business. Information. Trade secrets should have secrecy, practicality and confidentiality. Operators should focus on protecting trade secrets developed in the course of business operations, but should also focus on distinguishing between trade secrets and publicly known information. Publicly known information includes: the general common knowledge or industry practice of the person who belongs to the technical or economic field, or the technology does not need to pay Information that is easily accessible at a certain cost; it involves only the dimensions, construction, and simple combination of materials of the product, after entering the marketplace Information that is directly accessible to the relevant public through observation of the product; has been published in a public publication or made public in the media, presentations, exhibitions, etc. Channel public disclosure of information.

33. Disputes over infringement of trade secrets between Shandong Maoshi ecological fertilizer Co., Ltd. and Liu Peng, Cai Xiaoling and Shandong duoyicheng Fertilizer Technology Co., Ltd

Case source: Linyi Municipal Court Intellectual Property Trial Top Ten Cases

Hearing authority: Linyi Intermediate People's Court, Shandong Province

Synopsis of the case:

The company was established on March 3, 2011, with Liu Peng and Cai Xiaoling as one of the shareholders. blended fertilizer, compound fertilizer, etc. Mausch asserts that it protects the production of controlled-release fertilizer raw materials, production process and production equipment as technical secrets, and protects the production raw materials, production process and production equipment as technical secrets. The supply channels and customer lists of the production equipment are protected as operating secrets, and Cai Xiaoling, Liu Peng, and Duoyicheng disclose, use their trade secrets, sued Cai Xiaoling, Liu Peng, Duo Yicheng company immediately stop infringing the plaintiff's trade secrets, jointly and severally compensate the plaintiff The economic loss was RMB 10,000,000 (including RMB 500,000 for the reasonable cost of rights protection).

Linyi Intermediate Court held that the business secrets claimed by Maoshi included operating secrets and technical secrets. The business secrets included customer lists and the supply channels of raw materials and production equipment, and the technical secrets included raw materials, production processes, production equipment, and production equipment. production equipment. Mausch testified that it kept its trade secrets confidential and whether the confidentiality measures it took were relevant to the technology's ability to bring Commercial value and other specific circumstances such as adaptation of doubt. Maoshi could not prove that the business information and technical information it claimed was a trade secret, and the basis for claiming infringement was not sufficient. Cai Xiaoling, Duoyicheng company jointly and severally compensate for economic losses and reasonable expenses, lack of facts and legal basis, the judgment rejects the plaintiff's claim. The court of first instance upheld the verdict. Both the plaintiff and the defendant appealed the verdict, and the court of second instance upheld the judgment of first instance.

Case analysis.

This case is a case of infringement of trade secrets. Trade secret disputes exist, such as difficult to prove, confidentiality and other characteristics of the people's court trial of trade secret infringement dispute first need to do the job It is for the plaintiff to fix the scope of trade secrets, and the People's Court will hear and decide according to the scope of trade secrets fixed by the plaintiff. The adoption of confidentiality measures is a necessary condition for the relevant information to be protected by law as a trade secret. Determine whether it constitutes a trade secret, belongs to the people's court judicial exercise of judicial power. Linyi intermediate court according to the constitutive elements of business secrets, accurately define the scope of protection of business secrets, strengthen the infringement of business secrets cases. trial, exploring the constraints of effective protection of trade secrets, substantive and procedural issues of the solution, effective protection of the rights and interests of commercial secrets of enterprises. Guide enterprises to establish and improve the management system of commercial secrets. This case, prompting enterprises to enhance the

protection of commercial secrets of consciousness, standardize and improve confidentiality measures, and actively create a good trade Investment Climate.

34. Administrative penalties for infringement of trade secrets by an art training institution investigated and dealt with by the Market Supervision Bureau of Fuyang District, Hangzhou, Zhejiang Province

Case source: website of the State Administration of Market Regulation (published on 19.11.28)

Hearing authority: Fuyang District Market Supervision Administration, Hangzhou, Zhejiang Province

Synopsis of the case:

In the case investigation, it was found that some arts training institutions or teachers who had influence over students used their influence to refer students to arts training institutions or teachers who were specifically geared towards (b) Training institutions that offer cultural courses for artistic students, which in turn pay a large "channel student commission" to the entity or individual who introduces the student to them. The "channel student commissions" are calculated as a percentage of the student's training fees. These "channel student commissions" indirectly contributed to the high training fees, and the students became the "channel student" between the art training institutions and the teachers. meat and potatoes", and then resellers can also earn a high "commission". Investigation and prosecution of A training institutions using B training institutions to take away the information of students leaving employees for marketing activities, and to leave employees Li X headed The marketing team of the company arranged separate office space for the specific enrollment business activities.A training institution was sentenced to $300,000 for violating trade secrets.

35. Imitate the original company hand game products for profit, the game company employees violate trade secrets were fined.

Case source: Jiaxing Municipal Market Supervision Administration (20.4.26) / Zhejiang "Bright Sword 2019" to protect intellectual property rights Integrated Enforcement Operations Releases Top 10 Typical Cases

Hearing authority: Jiaxing Market Supervision Administration, Zhejiang Province

Synopsis of the case:

In August 2018, Company A's Vice President Zhang approached Vice President Ding and asked Ding to copy a new handheld game for him in reference to Company A's product. Thereafter, Ding authorized the company's technicians to create a new handheld game using Company A's game source code. in August 2018. Zhang found Chen, a departing employee of Company A, and let Chen set up Company B using someone else's ID card.

After the establishment of the company, Zhang invited the employees of Company A, Song and Zhang to become a co-partner of Company B, and to Company B as a platform Launching a new handheld game. Without the consent of Company A, Song and Zhang directed two major agents in the Zhejiang region belonging to Company A to Company B without their consent and profited from it. It was ascertained that Zhang, Ding, Song and Zhang constituted an illegal act of unfair competition that violated trade secrets, and the market supervision department The above four people were fined 200,000, 150,000, 130,000 and 120,000.

By the Jiaxing market supervision bureau by the open branch of the investigation and handling of Zhang X and other people violate trade secrets series of cases, not only for the enterprise to recover huge losses. At the same time to create a high-quality competitive environment for intellectual property rights, promote investment has played a positive role in attracting investment, was awarded the national top ten cases. In recent years, Jiaxing Market Supervision Bureau Jingkai Branch attaches great importance to the protection of intellectual property rights, through publicity and guidance, brand building, and the development of intellectual property rights. Continuously promote intellectual property rights by constructing guidance stations (points) for the protection of trade secrets and by rigorously investigating and prosecuting trademark and trade secret violations. Conservation efforts.

36. Infringement of trade secrets by Hong X and Fantuo Corporation

Case source: State Administration of Market Supervision, "Anti-Unfair Competition Law Enforcement and "Hundred Days Action" Typical Case Evaluation Activity" Top Ten Cases

Hearing authority: Xiamen Haicang Market Supervision Authority

Synopsis of the case:

Recently, Xiamen City Haicang District Market Supervision Bureau investigated and dealt with a case of theft of customer lists. The person involved in the case, Mr. Hong, between 2012 and 2018, served as a stone foreign trade salesman for Weisheng. in September 2017. Still in office, Hong established Fantuo as a sole proprietorship of a natural person.In December 2017, Hong set up Fantuo with the knowledge that his As a legal representative of the Fantuo company, still in the office premises of the Weisheng company records Weisheng company 7 stone foreign trade Customer contacts, emails and other information in order to engage in stone foreign trade business again. Four of them were U.S. customers.In January 2018, Hong left Weisheng.From January 2018 to April 2018, Sailtop Inc. With four of the above seven foreign trade customers (U.S. customers) conducted foreign trade transactions in stone, the business volume of 469,600 yuan. Weisheng company noticed the abnormal business fluctuations, and reported the situation to the market supervision department. In this regard, Fantuo company pleaded that its behavior should belong to the "Xiamen Special Economic Zone Anti-unfair competition Regulations" Article 20. The first paragraph (a) of the so-called favoritism, that is, their own business or for others to operate the unit of the same kind of business. For the infringer's cunning Haicang District Market Supervision Bureau of the case officers flexible interpretation of the law, gradual probation of the infringer to make its cooperation with the investigation. Finally, the infringer Fantuo took the initiative to save customers for the rights holder Weisheng company, apologized in the newspaper and agreed to compensate for losses. After investigation, the market supervision department determined that Fantuo obtained and used Waisheng's customer list by theft means, disrupting market competition. order, violating the provisions of Article 9.1 (1) and (2) of the Anti-Unfair Competition Law, and constituting an infringement of commercial secrets. behavior. According to the provisions of Article 21 of the Anti-Unfair Competition Law, and also in view of the many mitigating circumstances of Fantuo, it was decided that the Mitigated penalty, $69,000 fine.

Commentary:

Xiamen Haicang District Market Supervision Bureau of Yangda that: this case in the investigation and handling process, the case officers through the electronic forensics software "now survey wizard" The company conducted an "important document search" on Wysong's computer and discovered that Mr. Hong had sent a message through Wysong to a U.S. client company. Email, translated into Chinese: "I'm leaving Wesson, the new company will give you a better price and quality, I trust you! will be satisfied with the new company." This is sufficient to prove that Hong had a subjective motive to violate the trade secrets of Weisheng.

Objective behavior, Hong theft and the use of Wei Sheng company's customer list, in the theft, Hong knew that he is already the legal representative of the company, this information is also used by the company in the stone foreign trade business, so Fantuo company is the appropriate party in this case,

its behavior violated the legitimate rights and interests of trade secrets owner Wei Sheng company, disturbing the order of market competition, constitutes an infringement of trade secrets.

37. Disputes over infringement of trade secrets by Qingdao sentrei import and Export Co., Ltd. against Xu Hongxing, Qingdao hongshitong import and Export Co., Ltd., Li Longmei and Zhao Xiaoqing

Case source: 2019 National Bar Association Know-How Committee Annual Top Ten Cases of the Year Conference

Hearing authority: Shandong Provincial High People's Court

Synopsis of the case:

Ltd. (hereinafter referred to as Centuri) is a company specializing in the production of interior and exterior art and decoration materials and the production of decorative materials, such as paper, plastic, wood, paper, and paperboard. trading company in the export business, Defendant Xu Hongxing and Defendant Li Longmei were together at Centuri from February 2014 to July 2015. Company work, and is husband and wife relationship. Xu Hongxing left less than a month after the time, on August 7, 2015, sole proprietorship to establish the defendant Qingdao Hong Shitong Import and Export Co. (hereinafter referred to as Hong Shi Tong Company), with Li Longmei as the legal representative. The six customers of Hong Shi Tong were all enterprises that Xu Hongxing and Li Longmei were responsible for contacting when they worked for Centurion, and five of the customers were in the The two defendants did not have an actual trading relationship with Centuri while they were in office.

The court held that the list of customers for whom the parties claimed protection under the Interpretation of the Unfair Competition Law fell into two main categories. One category is the list of customers with in-depth information, as distinguished from relevant public information, and the other is the list of specific customers who maintain long-term stable trading relationships. customers. Whether the two types of customer information constitute trade secrets does not have different requirements on whether there is a transactional relationship with the customer. Distinguish from relevant publicly known information and meet the elements of Article 10(3) of the Anti-Unfair Competition Law, even if the right holder has not yet Using that information to enter into a transactional relationship with a customer, that particular customer information may still constitute a trade secret to be protected; whereas the second type of It was necessary to have a transaction with the customer and also to maintain a long-term and stable trading relationship.

Accordingly, the Court found that Xu Hongxing, Li Longmei, and Hong Shitong had violated Centrix's trade secret conduct by robbing the Company's customers, and awarded each defendant jointly and severally 1 million yuan in compensation for Centrix's economic losses.

Typical significance:

(i) For the first time, the court has clarified in a decision document that there is a difference between a customer list and a specific customer in terms of what constitutes a trade secret.

The typical significance of this case is that, the court for the first time in the court documents clear the aforementioned customer information constitutes a trade secret elements are different, namely, depth of information of the customer list, as long as it is different from the relevant public information, and in line with the Anti-Unfair Competition Law, Article 10, paragraph 3 of the elements, even if the right holder has not used the information and the customer has a trading

relationship, this particular customer information can still constitute a trade secret to protect; and maintain a long-term stable trading relationship with a particular customer constitutes a trade secret not only with the customer has a transaction, and also to maintain a long-term stable trading relationship.

(2) clear no transaction of the customer list can also constitute trade secrets.

Before this case, the court in shandong province for the customer list constitutes a trade secret of the general judicial opinion, the right holder should maintain with the customer in question. Only a long-term and stable trading relationship can constitute business information protected by the Unfair Competition Law. And long-term stable trading relationship, mainly from the transaction duration, transaction amount, transaction quantity and other factors.

In this case, shandong high court changed before the customer list constitutes a trade secret standard, the first clear no actual transaction of the customer list, as long as it conforms to the three elements of trade secrets, constitute a depth of information, also can be identified as the right holder's trade secrets.

(3) The judgment reflects the referee concept is conducive to shaping a fair and orderly market competition environment, create a good business environment, regulate entrepreneurship and innovation, but also more in line with the public expectations of justice.

Distinguish between the customer list in the customer list and specific customers, and then clearly constitute the elements of trade secrets, not just emphasize the long-term stable trading relationship, more in line with commercial operations and trading practice, more in line with the public expectations of justice, more conducive to the protection of trade secrets, more conducive to shaping a fair and orderly market competition environment, create a good business environment, regulate entrepreneurship and innovation.

38. Violation of trade secrets by the defendants Huang Liqiang, Qian Zhenpeng and four others

Case source: Typical Cases of Guangdong Procuratorial Organs Dealing with Crimes Against Intellectual Property Rights According to Law

Hearing authority: People's Court of Tianhe District, Guangzhou, Guangdong Province

Synopsis of the case:
(hereinafter referred to as Kylin Hosun) is a subsidiary of Kylin Hosun Network Technology Co. (hereinafter referred to as Kylin Hop Shing Network Technology Co., Ltd.), a wholly-owned subsidiary of Beijing Kylin Hop Shing Network Technology Co. (hereinafter referred to as APUS), which is a wholly-owned subsidiary of Beijing KyLin Hopson Network Technology Co. (hereinafter collectively referred to as APUS) designs and develops mobile Android system cleaning software. and has APUS Launcher, TurboCleaner, Power+Launcher. and other products into the market.
Defendants Liqiang Huang, Zhenpeng Qian, Xian Li, and Zhisong Pei were formerly employed by Kirin Hopson Technology Company and Kirin Hopson Network Company. Elijah Huang was an employee of APUS Launcher, TurboCleaner, Power+. Product manager for Launcher and other products, responsible for product design, with access to product documentation, design documentation access; Qian Zhenpeng Worked as a development engineer for TurboCleaner, Power+Launcher, and other products, responsible for related... Source code development for products, with access to product documentation, design documentation and source code; Jisong Pei was a member of the Power+ Development engineer for Launcher and other products, responsible for source code development of related products, with access to product documentation, design documentation. and source code permissions; Xian Li was the head of commercialization operations, responsible for the company's commercialization operations, mastering the company's commercialization ideas. strategies, business analysis results, etc. Defendants Huang Liqiang, Qian Zhenpeng, Li Xian, and Pei Zhisong conspired to use the product source code and business operation data mastered in the company's work Trade secrets, developing mobile Android system cleaning software products similar to the company for profit, and saving the relevant information away before leaving the company. In the second half of 2016, Huang Liqiang, Qian Zhenpeng, Li Xian and Pei Zhisong prepare to set up a new company, using the work in the company to master the Trade secrets, development and design of mobile phone Android system cleaning software.October 26, 2016, Shanghai thick ride information technology Ltd. (hereinafter referred to as HTSC) was established, and its office was located at the 38th floor of Block 1, TaiKoo Hui, Tianhe District, Guangzhou. The Defendant, Huang Liqiang, was one of the actual controllers of Hou Cheng Company, and was responsible for the design of the product and the operation of the Company; Li Xian was one of the commercializers of Hou Cheng Company. The principals; Zhenpeng Qian and Zhisong Pei are programmers and perform programming. Hou Cheng's for-profit business is mobile phone Android system cleaning software, including Color Booster, Color Cleaner-Clean Memory and other products, the basic functions of the above software are the same. The Color Booster software source code has at least 67 functions, which are identical to those of Beijing Kylin Hopson. Power+Launcher, Turbo Cleaner, Limited, Power+Launcher, Power+Launcher, Turbo Cleaner, Limited. Similarity. The technical information of the source code

of the above 67 functions is technical information that is not known to the public. It has been found that since August 9, 2016, by uploading to the Internet Application Marketplace for users to download and use, and by working with various well-known The platform cooperates with the advertising costs of profit, thick multiplying the company account profit a total of $ 98,975.3, to capture the day of the RMB pair of The US dollar exchange rate is calculated at the midpoint of 6.871, which is approximately RMB 6,800,059.29.

Proceedings:

On February 9, 2017, the defendants Huang Liqiang, Qian Zhenpeng, Pei Zhisong, and Li Xian were arrested and brought to justice. On January 16, 2018 and March 21, 2019, respectively, the Guangzhou Tianhe District Prosecutor's Office charged each defendant with constituting a violation of the The crime of trade secrets was prosecuted and changed in the Tianhe District People's Court in Guangzhou (partial factual change). On 16 May of the same year, the Tianhe District People's Court handed down a verdict, finding that each of the defendants constituted the crime of infringement of trade secrets and sentencing them to two years and four months' imprisonment. fifteen days to two years, three months and fifteen days of imprisonment and a fine ranging from two hundred and forty thousand dollars to one hundred and fifty thousand dollars, and for each defendant Ltd. and its company, Shanghai Hou Cheng Information Technology Co., Ltd. to confiscate the illegal income of RMB 680059.29 and turn it over to the treasury.

Commentary:

This case is a classic case of a departing employee stealing trade secrets from a "former owner". The victim of the case is a private enterprise selected by the Ministry of Science and Technology list of "unicorn" company with a market capitalization of 1 billion yuan, the development of the Android phone cleanup. Software and other products such as market occupancy rate is high, in the domestic and even international have strong competitiveness. The case occurred when the enterprise was preparing to go public, and the infringing Android phone cleaning software is an important trade secret of the enterprise, the case of The effect of the handling has a vital impact on the survival and development of the enterprise. The successful handling of the case not only enabled the victimized enterprise to retain its core technology and competitiveness, but also to solve the problem of intellectual property protection for Internet enterprises. The face of the infringement appraisal, loss calculation and other difficult problems provide a reference experience, the Legal Daily, Sohu and other media reported on the case. In the past few years, the prosecution has achieved good legal and social results in the handling of cases.

In the case, the procuratorial authorities adjusted their thinking in a timely manner, guiding the investigation and evidence collection, and solving problems such as infringement appraisal and loss calculation. The core controversy of the case is whether and how the defendant violated the victim unit's trade secrets. Prosecutors use the core code comparison instead of the traditional full code comparison to solve the problem of identification workload, time consuming and high cost; from the The case is an example of a case that has been successfully handled for the crime of infringement of trade secrets of the Internet and technology enterprises, providing a model for evidence, identification and accusation. The successful handling of this case has provided a model for the collection, appraisal and accusation of crimes of infringement of commercial secrets of Internet and technology enterprises. Better help enterprises to protect their rights, guide judicial cases, and

protect the private economy.

39. Crimes of Huang Peiyu and Wang Peng violating trade secrets in Shenzhen

Case source: typical cases of Guangdong procuratorial organ dealing with crimes against intellectual property rights according to law

Hearing authority: Shenzhen Nanshan District People's court

Synopsis of the case:
From 2002 to January 2017, the defendant Huang Peiyu worked in ZTE as RF Engineer, wireless architect, RRU chip product manager, etc.; from April 2008 to October 2016, the defendant Wang Peng worked in Xi'an Research Institute of ZTE, served as R & D Engineer of RRU department, project leader of active antenna a8808, etc. In mid-2014, the defendant Huang Peiyu accepted the technical outsourcing project of 5g active antenna prototype of a research institute. Huang Peiyu, the defendant, attached the project to Shenzhen Senbo Industrial Technology Co., Ltd. and signed four outsourcing contracts for project technology research and development with the above research institute, with a total contract amount of 2.35 million yuan. Huang Peiyu, the defendant, gave the project to Wang Peng, the defendant, to be responsible for the technical landing. Huang Peiyu, as the general director of the project, is responsible for contract negotiation and signing, finance, participation in demand demonstration, etc.; Wang Peng, as the technical director of the project, is responsible for RF design and overall collection of technical documents, hardware, software, etc. submitted by other personnel. After the completion of the research and development, a 5g active antenna prototype and relevant technical documents were delivered to the Institute in phases according to the contract. From 2015 to 2017, it collected the project funds of RMB 2.35 million in five times.
After identification, the defendant Wang Peng passed the email bruewangp@163.com The technical documents delivered are identical with the documents of ZTE's "index decomposition of active antenna receiving link LTE FDD". The defendant Wang Peng passed the email bruewangp@163.com "Logic. 7z" technical documents sent to the resigned Lei Hong and "3228" of ZTE FGPA design scheme a has the same document.
It is identified that the 3228 FGPA design scheme a and LTE FDD documents are technical information unknown to the public. ZTE has adopted confidentiality measures for the above-mentioned technical information of the company by formulating multiple confidentiality systems, such as the company's business information security management regulations, business secret protection management specifications, etc., signing confidentiality agreement and information security commitment letter with its employees, centralized encryption and storage of documents, etc. ZTE's above technical information has been applied in the design and development of r8862, r8862a and other RRU products. The products have been commercially used and sold at home and abroad, which can bring economic benefits to ZTE and is practical. After evaluation, the evaluation value of the above-mentioned document trade secret is 4.3 million yuan.

Proceedings:
On June 28, 2019, Nanshan District Procuratorate of Shenzhen city initiated a public prosecution to Nanshan District People's Court of Shenzhen City for the defendant Huang Peiyu and Wang Peng suspected of infringing trade secrets. On December 5 of the same year, the people's Court of

Nanshan District of Shenzhen city made a judgment, and the defendants Huang Peiyu and Wang Peng were sentenced to three years' imprisonment, four years' probation and a fine of 150000 yuan. Both defendants pleaded guilty and did not appeal.

Commentary:

This case is the first criminal case involving 5g technology infringement of intellectual property in China. At the stage of examination and arrest and examination and prosecution, the procuratorial organ actively plays a leading role in accurately guiding investigation. More than ten supplementary investigation outlines are listed in terms of the source, circulation way, preservation way and the profit situation of the criminal suspect of the trade secret involved in the case. The public security organ is guided to carry out the evidence collection work accurately, several key testimonies are obtained, the use characteristics and leakage way of the trade secret involved are clarified, which lays a solid foundation for the accurate accusation of the crime.

The procuratorial organ does not "handle cases on the basis of cases", but actively acts to give full play to the procuratorial function and protect the legal rights of private enterprises equally according to law. During the handling of this case, the procuratorial organ learned that Huang Peiyu, the defendant, had worked in ZTE for more than ten years and was an expert in the field of communication technology of the company. He resigned in 2016 and founded Shenzhen Hino wheat field company to independently research and develop the UAV image transmission technology. He was a major shareholder and legal representative of the company. The company has many invention patents and belongs to the national level High tech enterprises. This case has caused difficulties in the company's operation. For this reason, the procuratorial organ specially investigated and discussed the situation with ZTE. ZTE reported that Huang Peiyu had made great contribution to the company during his working period. After leaving and starting his own business, he did not use ZTE's technology. As long as Huang Peiyu confessed his guilt and made compensation for the loss, the company was willing to understand him. After the explanation, the two defendants finally compensated ZTE for the loss and got an understanding. The procuratorial organ timely suggested that the investigation organ should change the compulsory measures against the two defendants, so that the company could continue to operate, effectively avoiding "the case was handled, and the enterprise collapsed". In the end, the procuratorial organ considers that the two defendants belong to the first-time accomplice without serious consequences, and pleads guilty to the crime, accepts the punishment, compensates the victim's loss and obtains the understanding, puts forward the sentencing suggestion of applying the probation, which is adopted by the court, and the two defendants plead guilty to the crime and serve the law. The case handling has achieved the unification of legal effect and social effect.

40. Violation of trade secrets by Dongguan Yu Fuxian

Case source: Typical Cases of Guangdong Procuratorial Organs Dealing with Crimes Against Intellectual Property Rights According to Law

Hearing authority: Third People's Court of Dongguan City, Guangdong Province

Synopsis of the case:
The Defendant, Yu Fuxian, in 2004, entered Dongguan City, Qingxi Town, Chonghe Village, Mingmen (China) Children's Products Co. As a senior associate in the design center, he was responsible for the management of the first section of the design center and product design proofing, new product structure conception, new product design Proposal and improvement work, grasping the relevant trade secrets of Mingmen Company, and signed the "trade secret protection and non-competition restriction" with the company. Agreement" and other confidentiality agreements.Around May 2017, Yu Fu Xian and the company's outsider Su Pei Chong discussed jointly developing baby electric products, such as rocking chairs and cribs, for sale for profit. Yu Fuxian used the convenience of his position to steal infant electric rocking chairs, cribs parts and other children's products from the design center of Mingmen Company and to sell them for profit. parts and accessories, including parts of research and development products that are not marketed for sale by Mindman, and the aforementioned products via WeChat, email, etc. The company's design information and parts and accessories for children's products not yet listed on the market are also referenced. , drawing designs privately, using the stolen parts for proofing, producing samples, and preparing to work with Supechon on production, and Sales. After Yu Fu Xian was arrested by the public security authorities.
The 3D drawings of Mingmen's NU103 (upgraded rocking chair), BB1709 (multi-layer bedside bed) and other products were identified. The design drawings are identical or highly identical to the 3D drawings, design drawings and objects of the corresponding products seized from Yu Fuxian and others. The above technical information on a wide range of Mingmen products (overall product drawings) is both "Not Applicable" and "Not Easy". The technical information (overall product design drawings) for many of the products listed above are both "Not for Everyone" and "Not for Easy". Access" belongs to "technical information not known to the public". After the audit, the research and development cost of Mingmen's technology project BB1709 was more than 20,000 yuan, and the research and development cost of Mingmen's technology project NU103 was more than 20,000 yuan, and the research and development cost of Mingmen's technology project NU103

was more than 20,000 yuan, and the research and development cost of Mingmen's technology project NU103 was more than 20,000 yuan, and the research and development cost of Mingmen's technology project NU103 was more than 20,000 yuan, and the research and development cost of Mingmen's technology project NU103 was more than 20,000 yuan. The total cost was more than $830,000.

Proceedings:

On November 1, 2018, Dongguan City, the third downtown prosecutor's office to the defendant Yu Fuxian suspected of violating trade secrets to the third Municipal People's Court filed a public prosecution.On May 17, 2019, Dongguan City, the Third Municipal People's Court made a judgment that Yu Fu The defendant was sentenced to six months and 20 days' imprisonment and a fine of RMB 80,000 for the crime of infringement of trade secrets. The defendant, Yu Fuxian, did not appeal.

Commentary:

This is a case in which the judiciary successfully investigated the case and protected the rights and interests of the right holder by "catching it early and catching it small" before the actual damage occurred. paradigm. At the same time, the case also provides a reference for the crime of infringement of trade secrets in the identification of losses and other difficulties. The procuratorial authorities effectively protect the intellectual property rights of private enterprises in accordance with the law and create a good environment for the rule of law and business environment for the development of private enterprises. Ensuring the healthy development of private business enterprises.

In this case, the procuratorial authorities promoted the successful verdict in the attempted trade secret infringement case by explaining the law, reasoning and strengthening the evidence system. Because Yu Fuxian had not yet produced on a large scale after acquiring the relevant trade secrets, the losses caused to the right holders were not reflected in a significant way. Therefore, the amount of criminality there is some controversy. The procuratorial authorities after in-depth study of relevant laws and regulations and national typical cases, proposed YuFuXian use of the right holder trade secrets Sufficient to find significant economic harm to the right holder, the cost of research and development of the relevant trade secret should be directly identified as economic harm to the right holder The opinion that his conduct was an attempted crime, that the crime in question was necessary for criminal prosecution, or else for spending more than $800,000 on research and development products is not fair to Mindman. In order to strengthen the case, the prosecution focused on communicating and collaborating with the private sector, leading Mingmen to provide additional information that would be necessary as a result of this case. The expenses and other evidence to improve the evidence system, sufficiently strong to point to the facts of the crime. The relevant opinions were adopted by the court and have certain reference significance.

In addition, the procuratorial authorities have taken the initiative to issue relevant procuratorial recommendations on the loopholes in the protection of intellectual property rights of enterprises, to promote the healthy development of private enterprises. development. In the process of handling the case, the procuratorial authorities after the visit to the Mingmen Company field communication, found that the Mingmen Company in the protection of intellectual property rights also There are deficiencies, such as loopholes in security management of classified work departments and areas, and insufficient supervision and protection of classified carriers. After the study, it is recommended

to Mingmen Company to issue the No. 3 prosecutorial recommendation of 2019 to Dongguan Third Urban District Prosecutor's Office for the protection of the The above-mentioned loopholes in intellectual property rights measures to rectify, such as reasonable determination of the scope of confidentiality, actively apply for patent protection; strengthen the company's internal confidential The protection of hardware carriers and electronic network carriers; the establishment of effective market monitoring, express infringement legal risks. The relevant suggestions were adopted and appreciated by Mingmen Company and achieved good results.

41. Linhai Investigation and Punishment of Wang X's Infringement of Business Secrets

Case source: Zhejiang "Bright sword 2019" comprehensive law enforcement action to protect intellectual property rights issued ten typical cases

Hearing authority: Linhai Market Supervision Administration, Taizhou City, Zhejiang Province

Synopsis of the case:

September 29, 2019, Linhai City, Zhejiang Province, Market Supervision and Administration of Zhejiang Province, Linhai City, market supervision and management of Wang X violated the trade secrets of a technology limited company of Zhejiang Province to make an administrative penalty, in a timely manner to prevent the leakage of corporate business secrets.

It has been ascertained that: during Wang's tenure in a technology company in Zhejiang, he had signed a confidentiality agreement with the company. But after leaving the company, without the consent of the right, the right to copy the technical information and customer information and other business secrets. In the rightholder explicitly requested the person in the separation of the company before the technical information and customer information of the unauthorized copy of the company to delete or return to the company. The party ostensibly represents to the rightholder that it has deleted the information, but in fact keeps the trade secret information copied from the rightholder. inside portable hard drives and USB sticks. The party, after leaving the right holder's employment, went to work for a competitor of the right holder, putting the right holder's trade secrets at risk, which had an impact on the The rightholder's market competition posed a direct threat.

Wang, despite having signed a confidentiality agreement with the rightholder company, still obtained and kept the rightholder's business secrets such as technical information and business information by unfair means, which violated the provisions of Article 10(1)(1) of the Anti-Unfair Competition Law of the People's Republic of China (1993), and belonged to the illegal act of obtaining the rightholder's business secrets by other unfair means, and the Linhai Market Supervision Administration punished the parties for their illegal acts according to Article 25 of the Anti-Unfair Competition Law of the People's Republic of China.

42. Guangdong Xiyue Intellectual Property Co., Ltd. v. Deng Xiaolan and Foshan Lijia Intellectual Property Service Co., Ltd. for infringement of trade secrets

Case Source: 2019 Foshan Court Typical Intellectual Property Civil Cases

Hearing authority: Foshan City Intermediate People's Court, Guangdong Province

Case No.: (2019) Yue 06 Minfang 2768

Gist of the verdict:

To determine whether a customer list constitutes a trade secret, in addition to the secrecy, commercial value and confidentiality of the elements of a trade secret. The customer list should also include the customer name, contact person, contact details, transaction price, type of demand and demand habits, potential transaction In-depth information on customers, such as their intentions and their ability to afford the price of the product, is also included in the list. The information contained in the customer list claimed by Guangdong Xiyue Intellectual Property Company Limited is only simple information such as the customer's name and contact information. Lack of depth of what constitutes a trade secret; the evidence submitted by Guangdong Xiyue Intellectual Property Co. The existence of transactions between the limited company and the five customers does not prove that a long and stable trading relationship has been formed between the two parties, and failed to prove that it had taken reasonable and effective measures to keep confidential the list of customers claiming its rights, so Guangdong Xiyue Intellectual Property Co. The list of customers requesting protection does not constitute a trade secret.

43. Jinan Huazhong Company v. Jiao X, a dispute over infringement of trade secrets

Case source: Jinan Law Association Top Ten Intellectual Property Cases 20.5.6

Hearing authority: Jinan Intermediate People's Court of Shandong Province

Case No.: (2019) Lu 01 Min end 2546

Synopsis of the case:

Defendant Jiao came to work for Plaintiff since May 2012, and was responsible for maintaining customers during his work, and Defendant started in May 2013 from the The plaintiff parted without saying goodbye, take away important data such as mobile hard disk, the defendant left to join Shandong Jixin Automobile Sales Co. The company was a competitor with Plaintiff's peers, and after Defendant entered the company and contacted its customers who obtained information from Plaintiff's company, and contacted multiple The customer formed orders, mainly for Ichiban Philippines, based on a contract of confidentiality agreement between the parties, petitioned the court Judgment of the defendant to stop infringement and compensation for economic losses and reasonable expenses a total of 300,000, the court of first instance ruled that the defendant Jiao compensate the plaintiff Jinan Huachong machinery and equipment Co., Ltd. economic losses 200,000 yuan, the two sides appealed to the court of second instance, the court of second instance that Jiao X in this job The actual agency is the operator's duties, and the operator should be regarded as a unified whole. Jiao X thinks that he is not the operator, does not conform to the appeal of the main body of the identity of the act of infringement of trade secrets, this court does not support. After Jiao left Huazhong, Ichiban broke off cooperation with Huazhong, and Ichiban and Huazhong were in a relationship. The facts that JCL was doing business with Ichiban and that Jiao could not provide JCL with a legitimate source of information about Ichiban and the Circumstances, this court believes that the fact that Jiao infringed the trade secrets involved in Huazhong is highly probable and sufficient. The court of second instance finally upheld the original judgment.

Gist of the verdict:

In recent years, with China's economic development and technological progress, trade secrets as intellectual property protection system, in the enterprise's Business and market competition plays an important role, but the fierce and brutal competition, frequent turnover of personnel, and to the enterprise's Trade secrets pose a variety of risks. According to statistics, the search of the past five years, the public adjudication documents, to settle the case of infringement of trade secrets in the national court each year an average of less than 100 cases, and less than 30% of the plaintiffs have won their cases, how to accurately understand and apply the law to provide a strong business secret Judicial protection, is the current intellectual property trial work in the more important issues.

Trade secrets in intellectual property cases in the intellectual property trial has its unique judgment ideas and judicial judgment rules, the court in the trial of such cases. There are also different views on what constitutes a trade secret; the allocation of the burden of proof; and the determination of the cause of defense. april 23, 2019 The Law of the People's Republic of China Against Unfair Competition in force expands the scope of subjects infringing on trade secrets, types of acts, and the scope of the infringement of trade secrets by perfecting evidence. The allocation rules were

amended to reduce the burden of proof on the right holder and to increase the amount of compensation and administrative penalty for trade secret infringement. At the legislative level, the protection of trade secret right holders has been strengthened. However, at the same time, under the new law, the court's discretionary space is also greater, how to correctly understand and apply the new law, still need in specific cases. Further research and analysis.

44. Xu X, Li X, Zhang X violated the trade secrets of Ruhefei Xue Chemical Technology Co.

Case source: the contents of the WeChat published by the Hefei City Prosecutor's Office 20.4.26

Trial Court: High and New District People's Court, Hefei City, Anhui Province

Synopsis of the case:

Hefei Ruixue Chemical Technology Co., Ltd (hereinafter referred to as Ruixue) is a company engaged in the development of ink. Since 2006, the company's R & D team dedicated to a friction ink (also known as thermal erasable ink) research and development, which lasted 6 years. In 2012, the product was successfully developed and mass produced on the market.

Between February 2013 and April 2015, Xu X, Li X in the process of serving as a salesman of the snow company, using the position of the , falsely claiming that the company's receipts account changes, misappropriating the company's funds of $16,199. on April 4, 2018, the high-tech district prosecutor's office To Xu X, Li X suspected of encroachment crime to the high-tech district court public prosecution. In July of the same year, the High-Tech District Court of first instance to two people for the crime of encroachment. After the verdict, Mr. Xu and Mr. Li appealed against the verdict. On August 23rd of the same year, the case was ruled by the Hefei Intermediate People's Court and sent back for retrial. During the retrial, high and new district procuratorate, after examination, found that Xu X, Li X is also suspected of violating trade secrets. After additional investigation, in June 2019 to the High-tech District Court additional prosecution of Xu, Li, Zhang suspected of violating Rexroth's Trade secrets.

Gao New District Prosecutor's Office accused: Xu X, Li X in the huge benefits of friction ink temptation, decided to conceal the snow company to produce their own mo Friction ink is sold to customers with a commitment to give shares in the form of a detailed process formula for friction ink from the company that has access to the Zhang mou hands to get process formula single. Subsequently, Xu X, Li X purchase of large production equipment, has in Yiwu, Hefei, Lu'an and other places to produce friction ink, until the The case occurred in July 2017. During that time, the three men's violation of trade secrets caused more than $6.5 million in damage to Rachel's.

Commentary:

Crimes against trade secrets in practice less, this case is the first time a member of the high-tech district prosecutor's task force for similar cases, many The issue has no previous case law to refer to. In the course of the project, the prosecutor consulted a number of professional bodies and procuratorial authorities that had handled similar cases in the past, and according to the characteristics of the case. Forming an Opinion.

How to understand and apply the highly specialized nature of trade secret infringement cases, in this case involving many issues in the field of chemistry, to a practical case. It was a huge test for the undertaking prosecutor. The prosecutor had to study and research, and repeatedly seek evidence from professionals for analysis.

The evidence in this case is complicated, the parties have different views, in order to fully safeguard the rights of the defense proceedings, undertake the prosecutor a total of 8 questioning suspects. The prosecutor also met with family members of the defendants and suspects more than 10 times, and listened carefully to their arguments and opinions. During the handling of the case, the

prosecutor in charge of the case also met with the defenders and family members of the suspects more than 10 times, and accepted four written defence opinions from lawyers, while the other prosecutors met with the family members of the suspects more than 10 times. More than 20 pieces of evidence materials.

In March 2020, high and new district court according to the case to make the first trial decision: Xu X for infringement of the crime of encroachment, infringement of trade secrets. , the two crimes were combined and he was sentenced to five years in prison and fined 2.4 million yuan. Li was sentenced to five years' imprisonment and a fine of 2.4 million yuan for the crimes of occupying office and violating trade secrets, the two crimes being combined. Zhang was sentenced to four years in prison and fined 1.8 million yuan for the crime of violating trade secrets.

45. Violation of trade secrets by Lei X and Li X, employees of Shenzhen Le Yue Biotechnology Co.

Case source: Guangdong Market Supervision Administration announces typical cases of anti-unfair competition enforcement.

Trial Authority: Shenzhen Market Supervision Administration

Synopsis of the case:

It is established that Mr. Lei, the legal representative of Shenzhen Le Yue Biotechnology Co. job opportunity, logged into the Complainant's company system with his own account, screenshotted the Complainant's company's customer and vendor information 38,541 entries, downloaded 1559 drawings of the Complainant's product design; used 60 drawings of the Complainant's brain stereoscopic Positioner design drawings, 20 drawings of adapters for mice and rat pups to be sold to an animal clinic and a biotech company. Limited, with sales totaling $27,300. The party's employee, Mr. Lee, used a USB flash drive to download customer information from the complainant's company, and after joining the party's company, used that customer information to send mass 5 emails, 23 of the Complainant's original customers actively contacted the client to purchase $88,139 in products.

The party's legal representative, Ray, an employee, Lee, violated the confidentiality agreement with the complainant, using the complaint that he mastered while on the job The company will take unfair competition to damage the technical data of human products (drawings), supplier information, customer information and other business secrets. the legitimate rights and interests of the Complainant and violated Article 9(1)(3) of the PRC Law Against Unfair Competition. constitutes an infringement of trade secrets. In the course of the investigation of the case, the parties actively cooperate with the case officers to investigate and collect evidence, admit fault attitude is good, in the case immediately stop The parties reached an agreement on compensation for the infringing activities and obtained the understanding of the complainant. The law enforcement agency ordered the parties to stop the illegal activities and imposed a fine of 100,000 yuan.

Words to operators: According to Article 9 of the Law of the People's Republic of China Against Unfair Competition, a commercial secret is a secret that is not open to the public. Know, has commercial value and the right to take appropriate measures to protect technical information, business information and other commercial information. Trade secrets is an important part of intellectual property rights, the enterprise itself to take confidentiality measures is the administrative protection of commercial secrets and judicial protection. Premise. The operator should strengthen the awareness of trade secret protection, take the necessary protection measures, establish and improve the relevant protection system, may come into contact with the Trade secret personnel, to sign a confidentiality agreement, non-compete agreement, etc. in a timely manner, in the event of trade secret infringement can be timely and effective Rights Protection. Operators can refer to the recently released "Guangdong Market Supervision Administration on the Protection of Business Secrets" for relevant measures to strengthen the protection of business secrets. Guidelines for the Protection of Trade Secrets.

46. Guangzhou Liancheng Optoelectronic Technology Co., Ltd. v. Guangzhou oulette Electronic Technology Co., Ltd. and defendant Xiafei's infringement of trade secrets

Case source: Guangzhou Yuexiu District, Guangzhou, 2015-2019 Top Ten Typical Cases of Disputes Involving Unfair Competition

Trial Authority: Yuexiu District People's Court, Guangzhou, Guangdong Province

Synopsis of the case:

Plaintiff is a company engaged in the trading of photoelectric lighting and auto parts supplies. The defendant Xia Fei on February 16, 2012 joined the company's foreign trade department. The two sides have signed the labor contract and the confidentiality agreement, states that the defendant Xia Fei during the work should keep business secrets, including but not Restricted to technical information, business information and customer lists, and shall not disclose, publish, teach, transfer or otherwise make known to a third party that it belongs to the plaintiff. The technical secrets or trade secrets, the plaintiff caused losses, shall compensate the economic losses of the plaintiff, etc.". The defendant Xia Fei during the work in its personal name registered the defendant Guangzhou OUPLIGHT Electronic Technology Co. (the Company), which was engaged in the same auto parts and lighting business as Plaintiff, and served as its legal representative. The defendant Xia Fei, during the performance of his duties, provided the defendant Ouplight with the plaintiff's customer list and stole the plaintiff's business opportunities and orders. On July 29, 2014, the plaintiff violated the labor contract against the defendant Xia Fei to Guangzhou Yuexiu District Labor Personnel Dispute Arbitration The arbitration committee applied for arbitration, the arbitration committee awarded the defendant Xia Fei to the plaintiff to pay 10,000 yuan of breach of contract. The plaintiff sued the defendant OUPLIGHT and the defendant XIA Fei for infringement of trade secrets.

The court of first instance ordered the two defendants to stop the infringement, and jointly compensated the plaintiff for the economic loss of 51,650 yuan. The court of second instance upheld the original judgment.

Typical significance:

Infringement of trade secrets cases are more difficult to try and there are different legal bases for trying this type of case because of the existence of different Judgment thinking, prone to differing standards of adjudication. This case in the trial process, there are also differences, that is, the defendant Xia Fei based on the labor contract relationship has assumed the responsibility for breach of contract, the plaintiff and then claims Whether its tort liability violates the principle of ne bis in idem.

For the above differences, the practical and theoretical world there are different views. Cause is China's contract law, article 122 stipulates that, due to a party's breach of contract, infringement of the other party's personal and property rights and interests. The injured party has the right to choose whether to be held liable for breach of contract or to be liable in tort under other laws, so the traditional logic of civil adjudication It is to require the right holder to choose the remedy in the two major legal relationships of breach of contract and infringement. In addition, there are different legal provisions applicable to the infringement of trade secrets, such as (1) the Anti-Unfair Competition Law for trade secret The characterization and legal liability. (2) Article 23 of the Labor Contract

Law with respect to confidentiality agreements and non-competition clauses and legal liability. (3) Article 147 of the Company Law on the duty of fidelity and diligence and legal liability of directors, supervisors and senior management. Due to the existence of different legal provisions, it is destined to diverge in the logic of the decision and the perspective of exposition. Therefore, in the trial of this type of case, it is necessary to correctly clarify the relationship between non-competition and infringement of trade secrets, and non-competition agreement is the protection of The important means of trade secrets, to trade secrets grading management, to avoid employees to grasp the enterprise's core secrets play a protective role; and Trade secrets are independent, even in the absence of a non-compete agreement, during and after an employee's employment with a competing enterprise. Or enterprises that run their own competing businesses are also obliged not to disclose and not to use the trade secrets of others.

Annual Report of the Supreme People's Court on Intellectual Property Rights Cases (2009) Civil Ruling No. 9 states that, for disputes arising from a non-competition agreement between a worker and an employer, if the parties' agreement is based on If the parties claim their rights on the grounds of breach of contract, it is a labor dispute and should be resolved through the labor dispute procedure in accordance with the law; if the parties claim their rights on the grounds of infringement of contract, then it is a labor dispute and should be resolved through the labor dispute procedure. Where rights are asserted on the grounds of trade secrets, the dispute is one of unfair competition, and the people's courts may accept it directly in accordance with the law. In addition, the Supreme People's Court's Decision on Giving Full Play to the Judicial Function of Intellectual Property Rights to Promote the Development of Socialist Culture and Great Prosperity, and to Promote the Development of the Culture of the People's Republic of China. Opinions on Some Issues of Independent and Coordinated Economic Development (Fafa [2011] No. 18), which clearly stipulates that the plaintiff is infringing on trade secrets. For the tort, without the existence of non-competition agreement restrictions. Accordingly, the plaintiff in this case, the plaintiff, and filed a tort of breach of contract, and did not violate the principle of non-dispute.

47. Disputes over infringement of trade secrets between Jinfeng Technology (Shenzhen) Co., Ltd. and Chen Guoling, Chen Zhiping, Shenzhen org Ruifeng Technology Co., Ltd. and Abby Mold Engineering Co., Ltd

Hearing authority: Shenzhen Intermediate People's Court, Guangdong Province

Case No.: (2017) Yue 03 Min re 138 (2019.6.20)

Gist of the verdict:

The court of second instance found that the business information of the five customers involved in the case did not constitute Jinfeng's trade secrets, which was not in line with the legal facts of the case, but also Failure to take into account the special nature of e-mail as a carrier of trade secrets, the application of the law is wrong and should be changed according to the law. Jinfeng maintained relatively long-term and stable trading relationships with the five customers involved in the case, and the emails involved the personal cell phones of the customer's engineers. The cost price floor, the delivery time rule, and the unique needs of the customer are, we believe, sufficient to cover the protection of trade secrets. The court of second instance held in its judgment that email as the carrier, does not constitute a trade secret. In the era of dataization, the carriers of trade secrets are also diversified. The customer's business information in the case was developed by Jinfeng Company through participating in overseas exhibitions and negotiating on site, which was developed in the long term. Acquired at the cost of intellectual labor and operating costs associated with the transaction, difficult to obtain through public channels, and not available to other competitors. It is generally known and easily accessible and confidential. This customer information includes the name, contact number, email address, customer quotes, customer trading habits, and product requirements of the customer's company manager. etc., which is impossible to obtain using a computer search as OREF claims, the added commercial value and the trust it carries The relationship also gives Jinfeng a competitive advantage and brings economic benefits to Jinfeng. The Confidentiality Agreement, computer confidentiality, and the prohibition on taking company computers out of the company in a private manner are deemed to have taken appropriate confidentiality measures. Including the five customer lists involved in the case constituted Jinfeng's trade secrets.

The court held that the use of the customer list trade secrets should mean that the infringer used the information from the customer list to conduct a The transaction, as a matter of practice, should have been between the infringer and the customer on the list. It is certain that the infringer will use basic information such as the customer's name, address and contact details when trading with the listed customer, but in asserting the The list of customers protected as trade secrets shall not be limited to basic information such as the customer's name, address, contact information, etc., if required to It is often impractical for rights holders to prove whether the infringer used in-depth information beyond the basic information, and in fact if the infringer Access to in-depth information about the right holder's customer list, which it would normally use in its transactions. Thus, in light of the facts of this case, OREF has transacted with the customer list, and common sense dictates that it has used the Trade secrets of customer lists, including in-depth information. The Respondent's aforementioned defenses are not admissible in this Court's retrial.