

Trade secrets protection in China

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- **1. Law of Trade secrets protection in China**
- **1.1 Anti-Unfair Competition Law of the People's Republic of China**
 - (Adopted on september 2, 1993 and Congress on december 1, 1993)
 - **Article 10** Managers shall not use the following methods to infringe upon business secrecy:
 - 1. to steal, coerce, or use any other unfair method to obtain the other's business secrets;

- 2. to disclose, use or permit others to use the business secrets mentioned in Section 1 of this Article;
- 3. to violate the contract or the requirement to publish, use or permit others to use the business secrets, which were maintained as secrets by the legal owner of the business secrecy.
- The third party who knows or should know the illegal activities as first mentioned, and who gains, uses or publishes the business secrecy shall be looked as activities of infringing upon the others' business secrecy.
- "Business secrecy", in this Article, means the utilized technical information and business information which is unknown by the public, which may create business interests or profit for its legal owners, and also is maintained secrecy by its legal owners.

- **1.2 Contract Law of the People's Republic of China**
- (Adopted on March 15, 1999 and Congress on October 1, 1999)
- (Article 43, Article 342, Article 343, Article 347, Article 348, Article 350, Article 352, Article 353,)
- **1.3 Criminal Law of the People's Republic of China**
- (Adopted on July 1, 1979, as amended on March 14, 1997, Congress on October 1, 1997)
- (Article 219, Article 220,)

- **1.4 Labor Contract Law of the People's Republic of China**
- (Adopted On June 29, 2007 and January 1, 2008, as amended on December 28, 2012, and Congress on July 1, 2013)
- (Article 23, Article 24,)
- **1.5 Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition**
- (Congress on February 1, 2007)
- (Article 9-18)

- 1.6 On public security organs to build a case for prosecution in criminal cases within the jurisdiction of the standard provisions of (ii)
- (Congress on May 7, 2010)
- (Article 69-76, 79)
- 1.7 The Supreme People's Court, the Supreme People's Procuratorate on the specific application of laws dealing with infringement of intellectual property rights in criminal cases explanation of the problem
- (Congress on December 22, 2004)
- (Article 7, Article 15)

- 1.8 The Supreme People's Procuratorate, the Supreme Court on specific application of law in handling criminal cases of infringing intellectual property rights problems of interpretation (ii)

- (Congress on April 5, 2007)

- (Article 4, Article6)

- 1.9 Supreme People's Court on several issues of controversy over a technology contract law applicable to the interpretation

- (Congress on January 1, 2005)

- (Article1, Article12, Article13, Article20, Article21,)

- 1.10 The Supreme People's Court on the overall strengthening of intellectual property rights trials provide views of the judicial guarantees for building an innovative country

- (Congress on January 17, 2007)

- (Article8)

- 1.11 The Supreme People's Court opinions on several issues regarding the implementation of national intellectual property strategy

- (Congress on March 30, 2009)

- (Article12)

- 1.12 Several problems about intellectual property trials serving the overall situation under the current economic situation opinion
 - (Congress on April 21, 2009)
 - (Article13)
- 1.13 Supreme People's Court on intellectual property rights trial into full play the function of promoting the development of socialist culture and prosperity and promote the coordinated development of economic autonomy of views on several issues
 - (Congress on December 16, 2011)
 - (Article25, Article26)

- **2. Legal liability of infringement of commercial secrets in China**
- **2.1 Civil liability for infringement of commercial secrets**
- **Anti-Unfair Competition Law**
 - Article 20 Manager shall bear the responsibility for compensating to the damage made by damager to the damaged party under the violation of the provision of this Law. Amount of the compensation shall be equivalent to the profit made by the damager during its damaging, if it is difficult to measure the amount of damage; And it also shall compensate the reasonable cost to the damaged party who has paid the cost to investigate the activities of unfair competition made by damager.
 - The damaged party may bring law suit to the People's Court when its legal interests and rights are damaged.

- Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition
- (Congress on February 1, 2007)
- (Article 16, Article 17,)

- **2.2 The chief responsibility for the infringement of commercial secrets**
- **Anti-Unfair Competition Law**
- Article 25 Supervisor shall order to stop the illegal activities, may fine amount from more than 10,000 to less than 200,000 RMB yuan, if manager violates the Article 10 to infringe upon the business secrecy.
- Regulations on the prohibition of acts of infringing trade secrets (Congress on November 23, 1995, as amended on December 3, 1998)

- **2.3 Criminal liability of infringement of commercial secrets**
- **Criminal Law of the People's Republic of China**
- **Article 219.** Whoever engages in one of the following activities which encroaches upon commercial secrets and brings significant losses to persons having the rights to the commercial secrets is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine; or is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment and a fine, if he causes particularly serious consequences:

- (1) acquire a rightful owner's commercial secrets via theft, lure by promise of gain, threat, or other improper means;
- (2) disclose, use, or allow others to use a rightful owner's commercial secrets which are acquired through the aforementioned means;
- (3) disclose, use, or allow others to use, in violation of the agreement with the rightful owner or the rightful owner's request of keeping the commercial secrets, the commercial secrets he is holding.

- Whoever acquires, uses, or discloses other people's commercial secrets, when he knows or should know that these commercial secrets are acquired through the aforementioned means, is regarded as an encroachment upon commercial secrets.
- The commercial secrets referred to in this article are technical information and operation information that are unknown to the public, can bring economic profits to their rightful owners, are functional, and are kept as secrets by their rightful owners.
- The rightful owners referred to in this Article are owners of the commercial secrets and users who have the permission of the owners.

- **The Supreme People's Court, the Supreme People's Procuratorate on the specific application of laws dealing with infringement of intellectual property rights in criminal cases explanation of the problem**

- **Article 7** Implementation of Article No. 219 of the criminal law provisions of the acts, causing loss to the trade secret rights of more than \$500,000, belonging to the 'causing heavy losses to the trade secret rights', on charges of stealing commercial secrets should be sentenced to three years imprisonment or criminal detention and shall also, or shall only, be fined.

- The right to trade secrets of man-made loss amount in two million five hundred thousand yuan or more, belonging to the 219th provisions of the criminal law, the special serious consequences, should be the crime of Infringing Commercial Secrets sentenced to three years in prison and fined. "

- Article 15:** "the unit of the implementation of the criminal code 213rd to 219th provisions of the act, in accordance with the provisions of this interpretation of the corresponding individual crime conviction and sentencing standards of three times the conviction and sentencing."

- **Article 16:** "knowingly infringe intellectual property crime, and to provide loans, funds, accounts, invoices, certificates, licenses, or provide the production, place of business or transportation, storage, agent import and export facilities, help, shall be punished as an accomplice in the infringement of intellectual property rights crimes."

- **The Supreme People's Procuratorate, the Supreme Court on specific application of law in handling criminal cases of infringing intellectual property rights problems of interpretation (ii):**
- 1, it is clear that the standard of conviction and sentencing of unit crime and individual crime
- 2, the provisions in accordance with the law of applying the principal at the same time, will increase the application of the intensity of the fine penalty, for the first time clearly stipulates the specific standard of penalty of crime of intellectual property

- **Article 4** For infringement of intellectual property rights, the people's court shall take into account the illegal income, illegal business amount, the loss caused by the right people, social harmfulness and other circumstances, the amount of the fine.
- 3, the implementation of the law on intellectual property rights in criminal cases of public prosecution and private prosecution, and effectively protect the victim's right of criminal prosecution.

- Article 5 Victims have the evidence of infringement of intellectual property rights criminal cases, directly to the people's court, the people's court shall accept the case; serious damage to social order and national interests of intellectual property infringement criminal cases, the people's Procuratorate prosecuted according to law.

- 4, The application of the probation case for infringement of intellectual property rights
- **Article 5** Violations of intellectual property rights, in accordance with the provisions of the criminal law of the probation conditions, according to the law applicable to probation:
 - (1) again, after the infringement of intellectual property rights by the criminal punishment or administrative punishment, the infringement of intellectual property rights constitutes a crime;
 - (2) has no repentance;
 - (3) refused to surrender the illegal income;
 - (4) other circumstances which should not be applied to probation.

•< **The Supreme People's Procuratorate, Ministry of public security on criminal cases under the jurisdiction of the public security organ for filing prosecution standards provisions (II) >**

•**Article 73** [violated commercial secrets case (Article 219 of the criminal law)]:

•"Violating commercial secrets, allegedly one of the following circumstances, shall be filed for investigation and prosecution:

•(1) of the amount of damage to the commercial secrets of the amount of five hundred thousand yuan or more;

•(2) the amount of the illegal income of a commercial secret is more than five hundred thousand yuan;

- (3) the insolvency of a commercial secret right;
- (4) other to trade secret rights made heavy losses. "
- Replaced the April 18, 2001 promulgation and implementation of the < The Supreme People's Procuratorate, the Ministry of public security provisions on the standards of prosecution of economic crime cases>.

- **< The opinions on the application of the law of the application of the criminal cases of infringement of intellectual property rights>**, make a further amendment to the relevant issues of the criminal liability of the infringement of intellectual property rights:
 - (1) the jurisdiction of criminal cases of infringement of intellectual property rights has been clarified.
 - (2) the relevant evidence in the criminal cases of infringement of intellectual property rights
 - (3) further provisions on the punishment of violations of intellectual property rights

- Cumulative calculation of the violation of intellectual property rights
- **Article 15:**"Knowingly infringe intellectual property crime, and for its provides production, manufacturing infringing products is the main raw material, auxiliary materials, semi-finished products, packaging materials, machinery and equipment, labeling, production technology, formulations, such as help, or to provide access to the Internet, server hosting, network storage space, communication transmission channel, on behalf of the charges, such as the cost of clearing services, infringement of intellectual property crime shall be punished as an accomplice."

- **Article 16:** "The perpetrator of the crime of infringement of intellectual property rights, at the same time constitute the production and sale of fake and shoddy goods, in accordance with the infringement of intellectual property rights and production, sales and shoddy goods crime in the heavier punishment."

- Thank you

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