CHINA

ANNEXES

STUDY ON TRADE SECRETS:
Activity Reference: 3_R1A0109 & 3_R1A0701

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EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

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I. Amendments To The Anti-Unfair Competition Law

Comparison of amendments to the Law of the People's Republic of China against Unfair Competition	
The 2017 revised edition	**The 2019 revised edition**
Article 9 An operator shall not commit any of the following acts of infringing on trade secrets: (1) obtaining the obligee's business secrets by theft, bribery, fraud, coercion or other unfair means; (2) disclosing, using or allowing others to use the business secrets of the obligee obtained by the means mentioned in the preceding paragraph; (3) disclosing, using or allowing others to use the business secrets they have in violation of the agreement or the obligee's requirements for keeping the business secrets. Where a third party obtains, discloses, USES or allows others to use the trade secret while fully knowing or should know the employees, former employees or other units or individuals of the right holder of the trade secret to carry out the illegal acts listed in the preceding paragraph, it shall be deemed as an infringement of the trade secret. The term "business secrets" as used in this Law refers to the technical and business information that is not known to the public, has commercial value and is subject to appropriate confidentiality measures taken by the right holder.	Article 9 An operator shall not commit any of the following acts of infringing on trade secrets: (1) obtaining the obligee's business secrets by theft, bribery, fraud, coercion, **electronic intrusion** or other improper means; (2) disclosing, using or allowing others to use the business secrets of the obligee obtained by the means mentioned in the preceding paragraph; (3) disclosing, using or allowing others to use the trade secrets in his possession in violation of the duty of confidentiality or the obligee's requirements for keeping trade secrets; **(4) abetting, enticing or helping another person to obtain, disclose, use or permit another person to use the business secrets of the right holder in violation of the confidentiality obligation or the requirements of the right holder on keeping business secrets.** **Any natural person, legal person or organisation without legal personality other than the business operator that commits any of the illegal acts listed in the preceding paragraph shall be deemed to have infringed upon business secrets.** Where a third party obtains, discloses, USES or permits others to use the trade secret while fully knowing or should know the employees, former

	employees, or other units or individuals of the right holder of the trade secret to carry out the illegal acts listed in the first paragraph of this Article, it shall be deemed as an infringement of the trade secret. The term "business secrets" as mentioned in this Law refers to the technical information, business information **and other business information** that are not known to the public, have commercial value and are subject to corresponding confidentiality measures taken by the right holder.
Article 17 A business operator that violates the provisions of this Law and causes damage to others shall bear civil liabilities according to law. A business operator whose lawful rights and interests have been harmed by acts of unfair competition may bring a suit in a people's court. The amount of compensation for an operator injured by acts of unfair competition shall be determined on the basis of the actual losses suffered by the operator as a result of the infringement; Where the actual loss is difficult to calculate, it shall be determined in accordance with the benefits derived by the infringer from the infringement. The amount of compensation shall also include the reasonable expenses paid by the operator to stop the infringing act. If the operator violates the provisions of Article 6 and article 9 of this Law, and it is difficult to determine the actual losses suffered by the obligee as a result of the infringement or the benefits obtained by the infringer as a result of the infringement, the people's court shall, in light of the circumstances of the infringing act, make a judgment to compensate the obligee not more than THREE million yuan.	Article 17 A business operator that violates the provisions of this Law and causes damage to others shall bear civil liabilities according to law. A business operator whose lawful rights and interests have been harmed by acts of unfair competition may bring a suit in a people's court. The amount of compensation for an operator injured by acts of unfair competition shall be determined on the basis of the actual losses suffered by the operator as a result of the infringement; Where the actual loss is difficult to calculate, it shall be determined in accordance with the benefits derived by the infringer from the infringement. **If an operator maliciously commits an act of infringing trade secrets and the circumstances are serious, the amount of compensation may be determined between one time and five times of the amount determined in accordance with the above methods.** The amount of compensation shall also include the reasonable expenses paid by the operator to stop the infringing act. If the operator violates the provisions of Article 6 and article 9 of this Law, and it is difficult to determine the actual losses suffered by the obligee as a result of the infringement or the benefits obtained by the infringer as a result of the infringement, the people's court shall, in light of the circumstances of the infringing act, make a judgment to compensate the obligee not more than 5 million yuan.

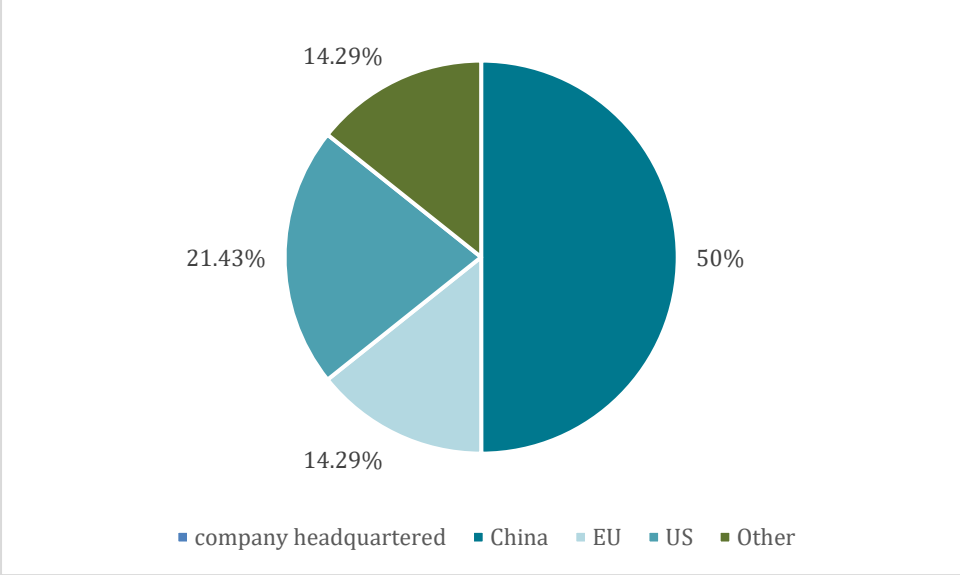
Article 21 If a business operator violates the provisions of Article 9 of this Law by infringing on commercial secrets, the supervision and inspection department shall order it to stop the illegal act and impose a fine of between 100,000 yuan and 500,000 yuan. If the circumstances are serious, a fine of not less than 500,000 yuan but not more than 3 million yuan shall be imposed.	Article 21 Where a business operator or any other natural person, legal person or organization without legal personality violates the provisions of Article 9 of this Law by infringing on business secrets, the supervision and inspection department shall order it to cease its illegal act, confiscate its illegal income and impose a fine of not less than 100,000 yuan but not more than one million yuan on it. If the circumstances are serious, a fine of not less than 500,000 yuan but not more than 5 million yuan shall be imposed.
	Article 32 **In the civil trial procedure of infringing trade secrets, the holder of right of trade secrets shall provide preliminary evidence to prove that he has taken measures to keep the trade secrets he claims, and reasonably show that the trade secrets have been infringed, the suspected infringer shall prove that the trade secrets claimed by the holder of right do not belong to the trade secrets stipulated in this Law.** **Where the holder of the trade secret provides preliminary evidence that reasonably indicates that the trade secret has been infringed, and provides one of the following evidence, the suspected infringer shall prove that there is no act of infringing the trade secret:** **(1) There is evidence that the suspected infringer has channels or opportunities to obtain trade secrets, and the information he USES is essentially the same as the trade secrets;** **(2) there is evidence that the trade secret has been disclosed or used by the suspected infringer or is at risk of being disclosed or used;** **(3) there is other evidence that the trade secrets are infringed upon by the suspected infringer.**

II. Company/Trade Secret Owner Questionnaire Results

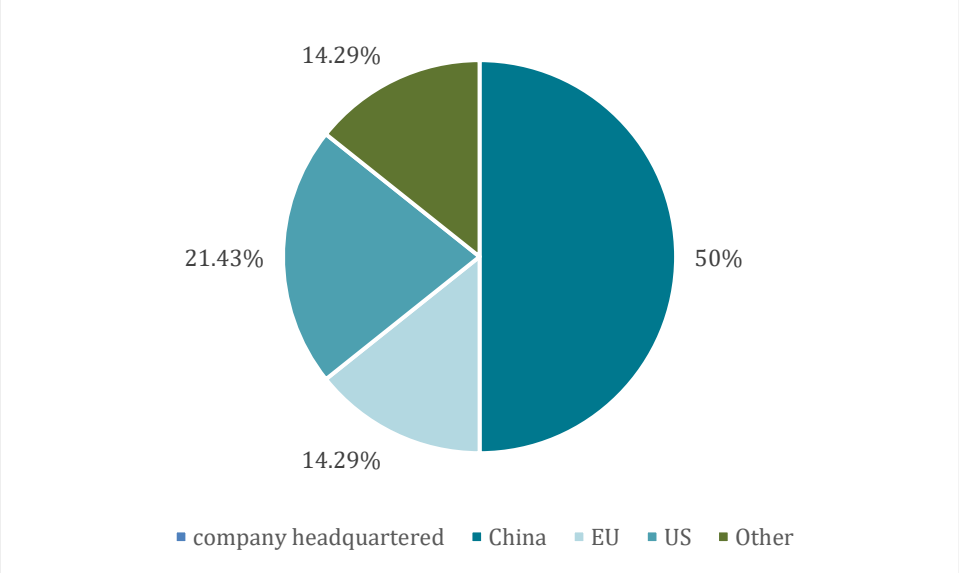
A total of 12 responses were received from

1. Introductory questions

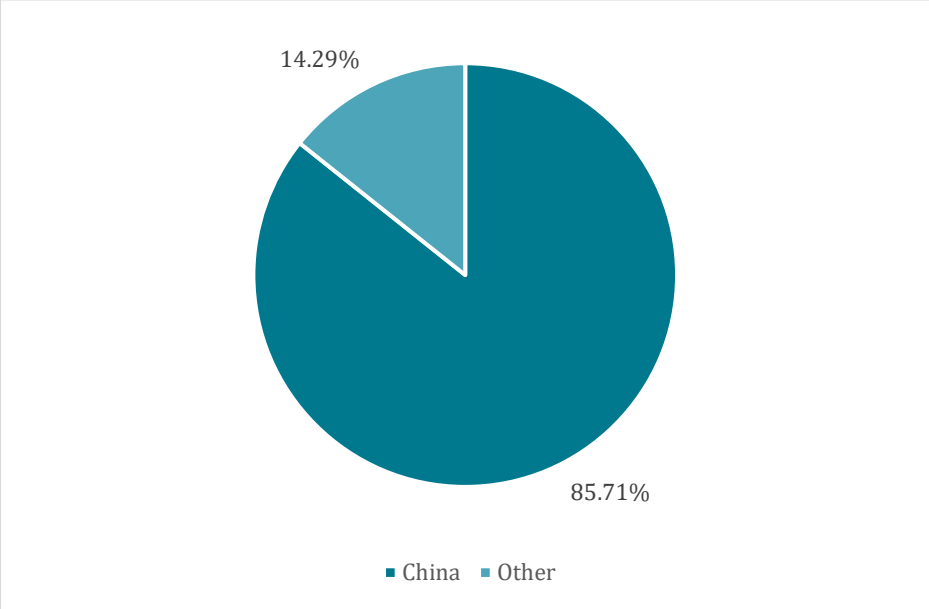
1.1. Business's size



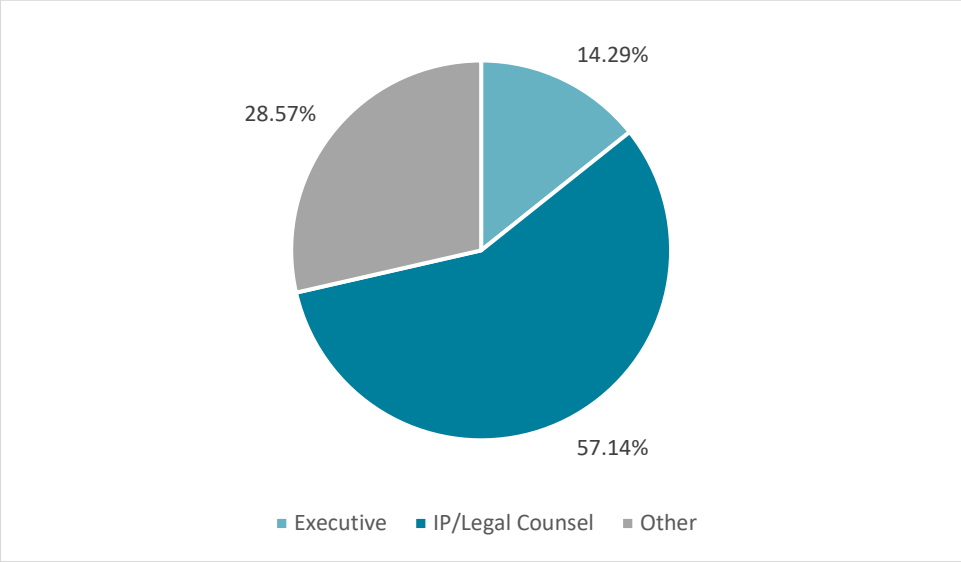
1.2. Where is your company headquartered?



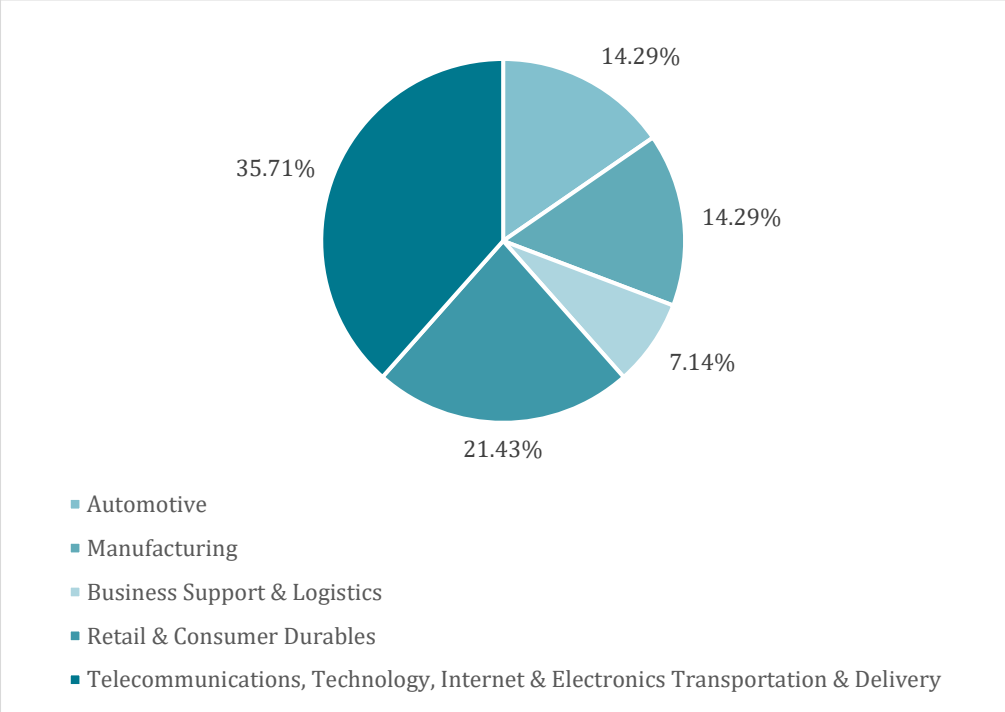
1.3. In which countries does your business trade?



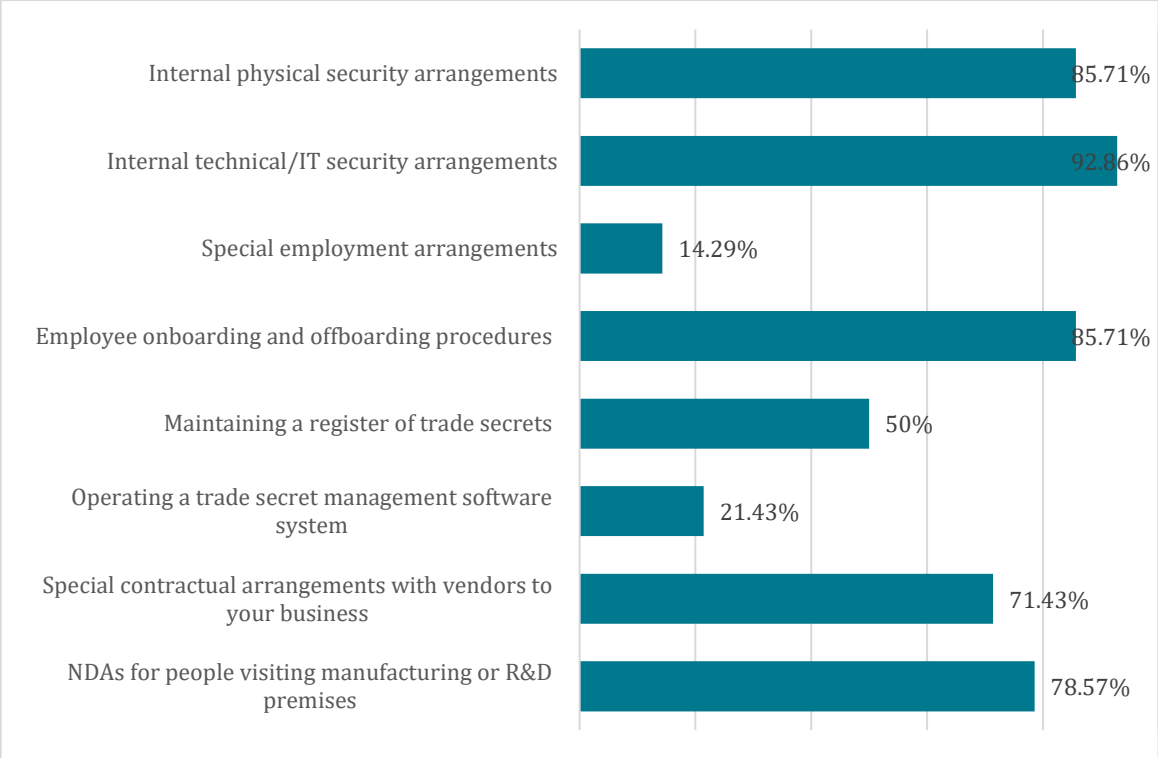
1.4. Your position



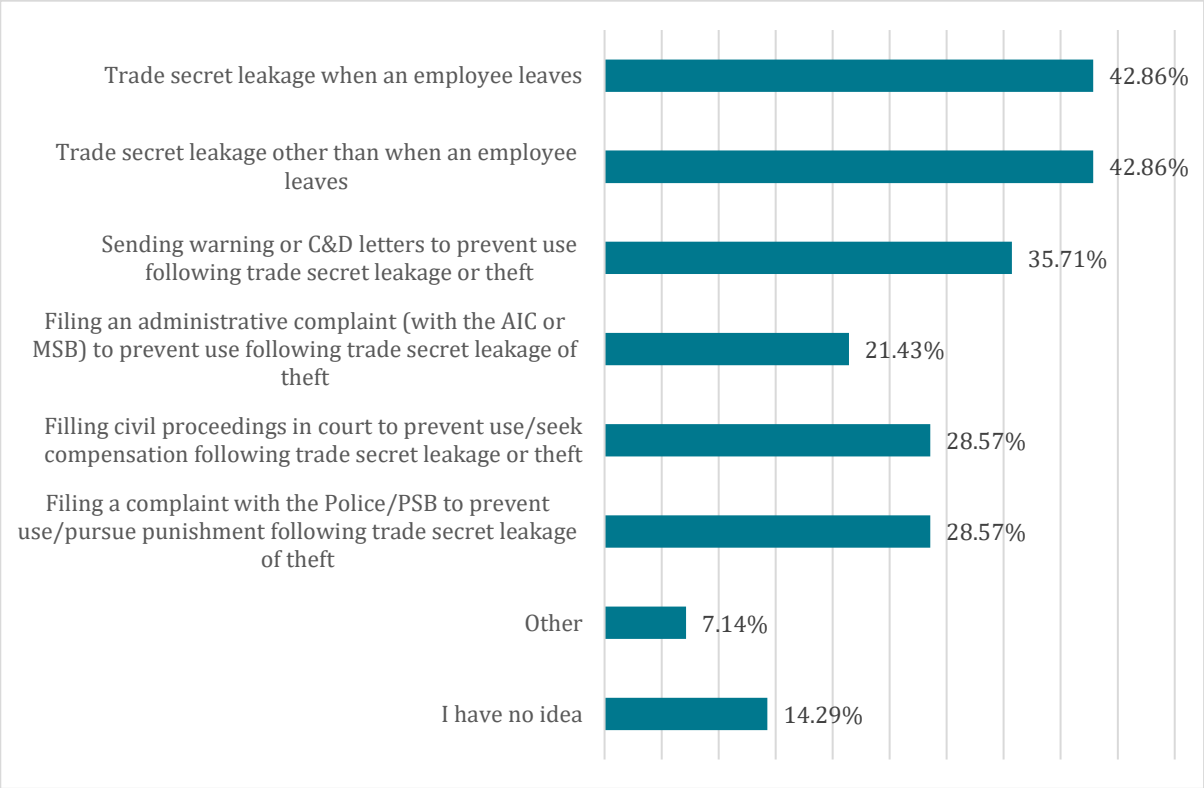
1.5. Your business's industry



1.6. What steps has your business taken to manage trade secrets in China?

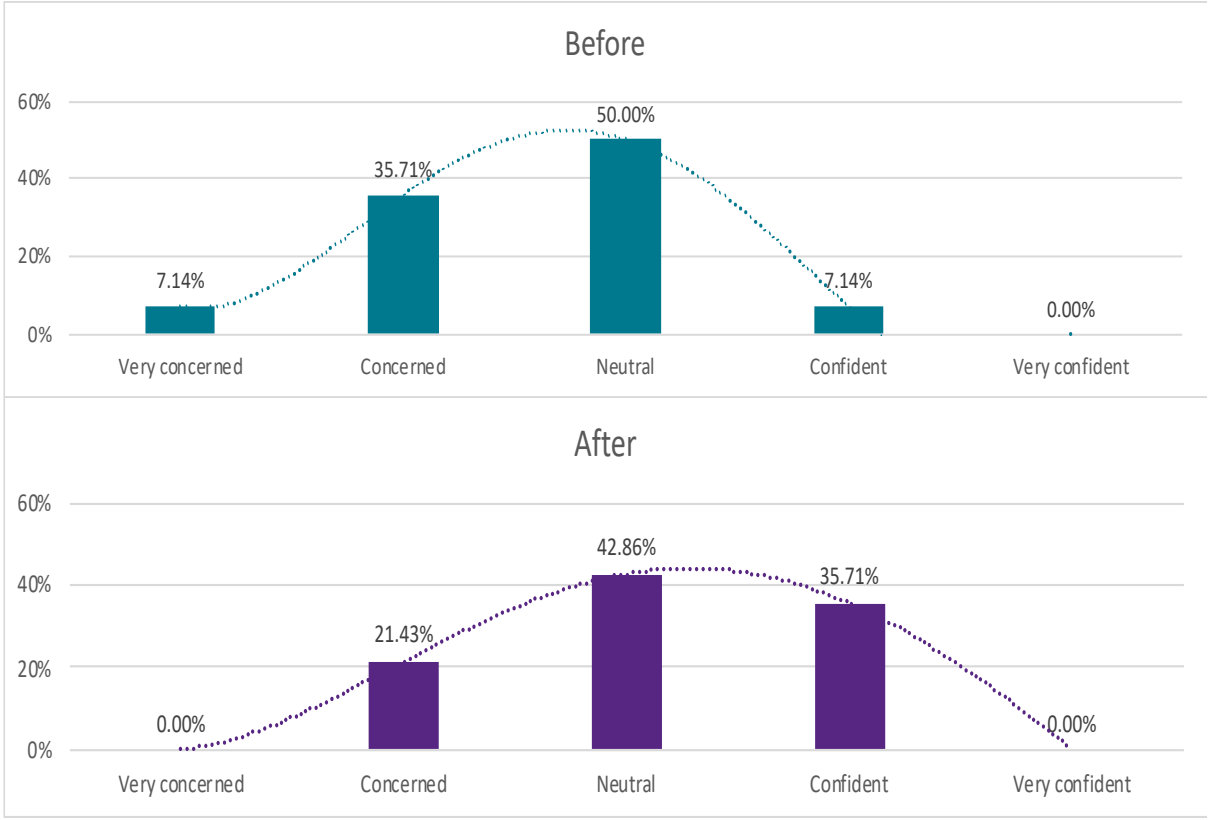


1.7. Which of these does your business have experience of in China?

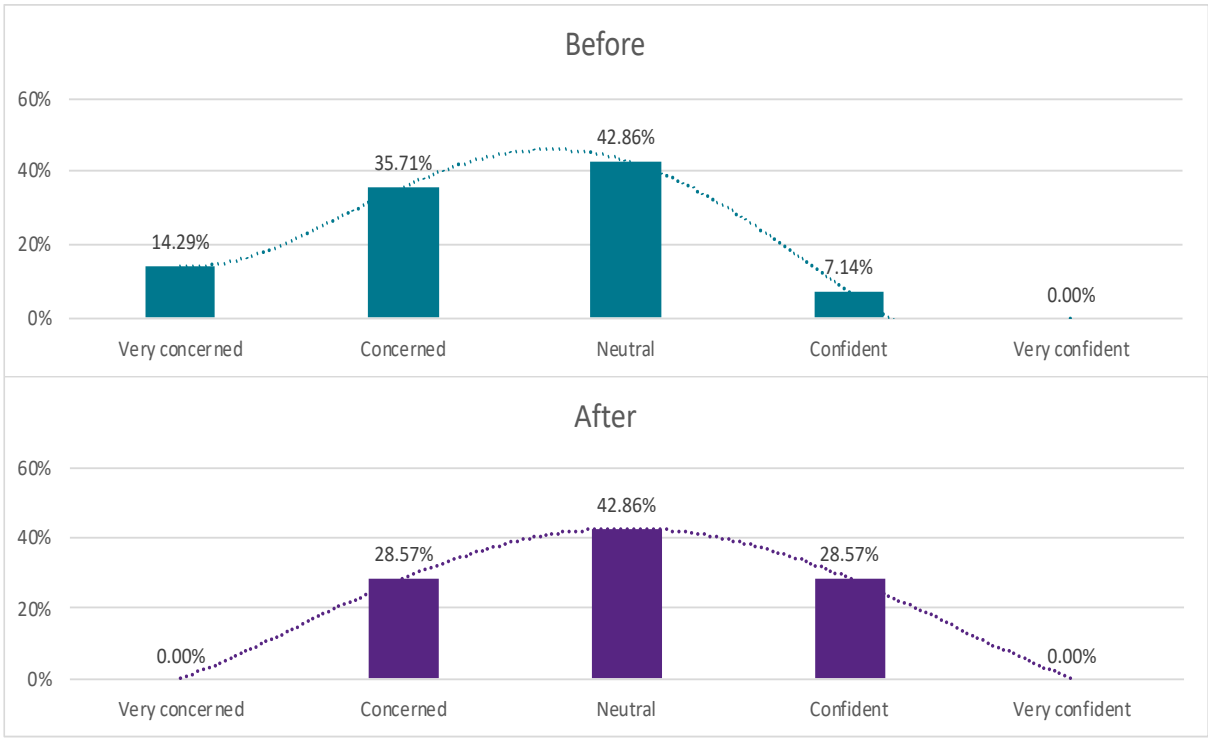


2. Detailed questions

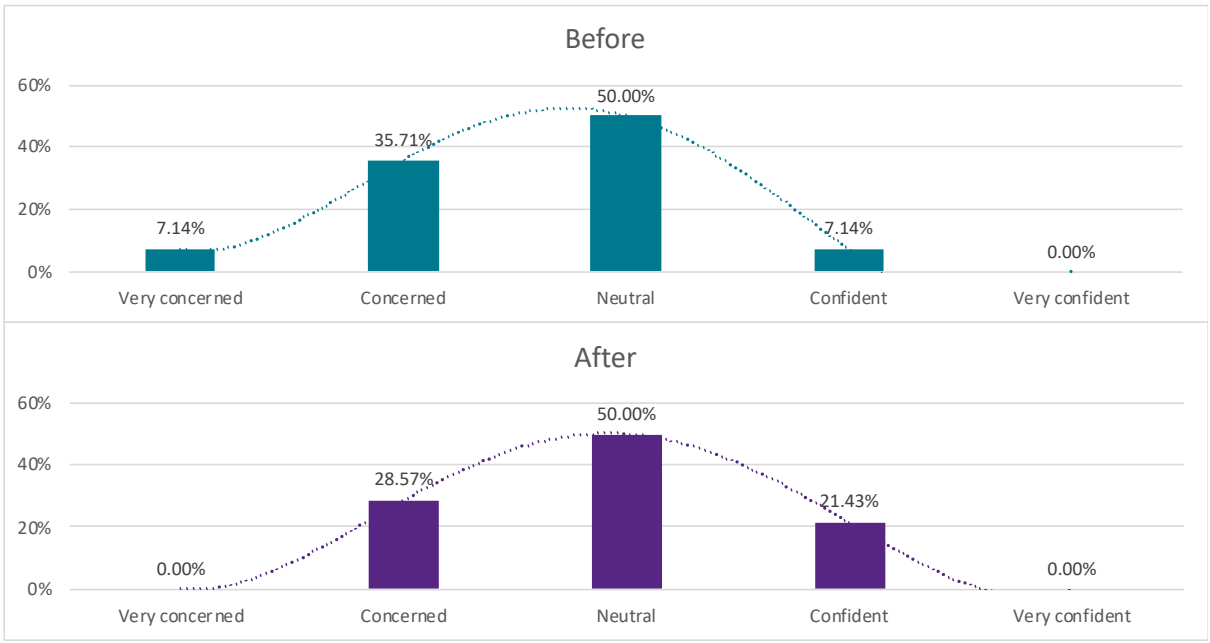
2.1. How concerned or confident were you about the scope of the **definition of trade secrets** before and after the amendment to the AUCL?



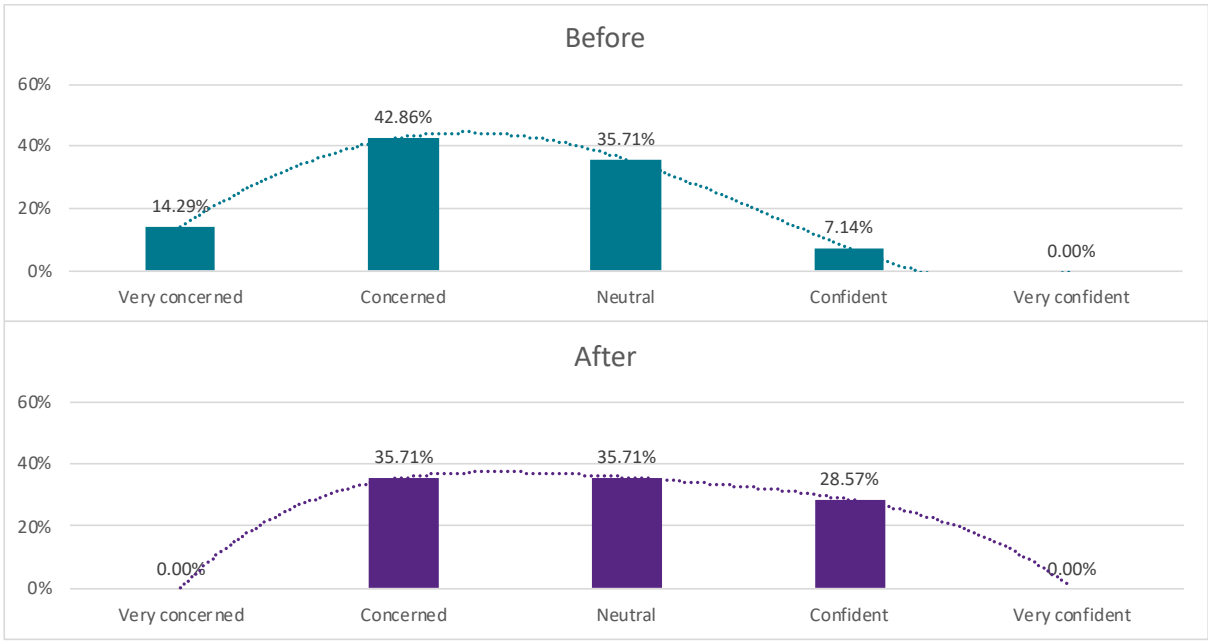
2.2. How concerned or confident were you **about acts defined as being trade secret misappropriation were broad enough** before and after the amendment to the AUCL?



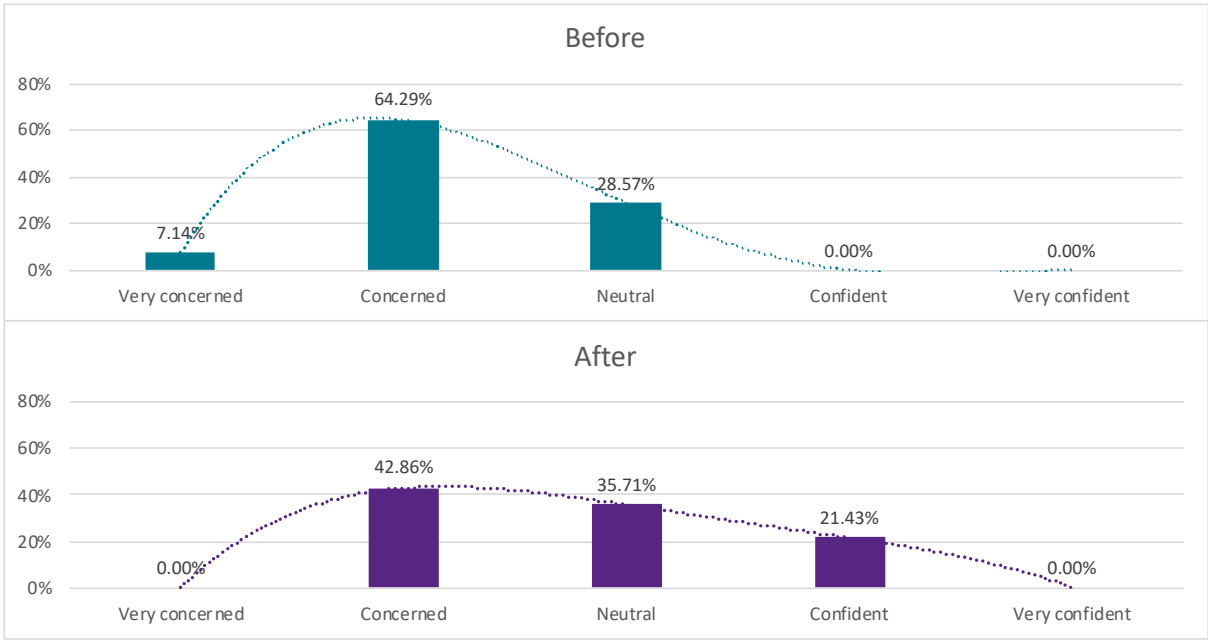
2.3. How concerned or confident were you about the **persons that could be liable for trade secret theft** before and after the amendment to the AUCL?



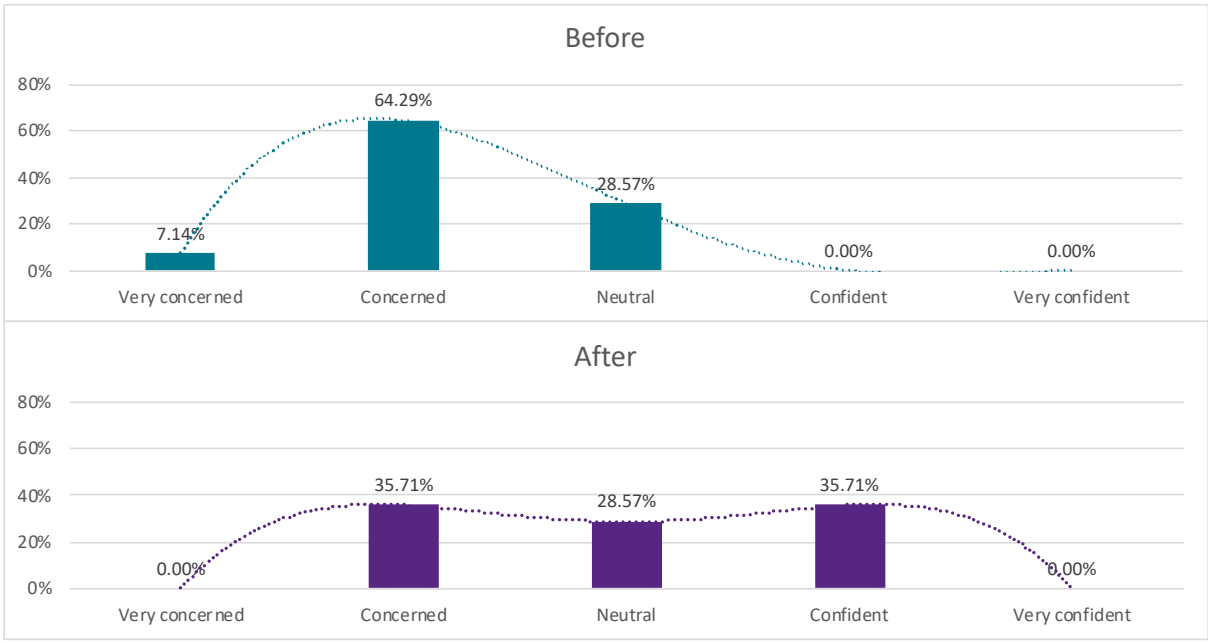
2.4. How concerned or confident were you about **evidential requirements and the burden of proof for demonstrating that information is a trade secret** before and after the amendment to the AUCL?



2.5. How concerned or confident were you about **evidential requirements and the burden of proof for demonstrating the trade secret has been misappropriated** before and after the amendment to the AUCL?



2.6. How concerned or confident were you that **there are adequate and effective remedies for misappropriation** before and after the amendment to the AUCL?



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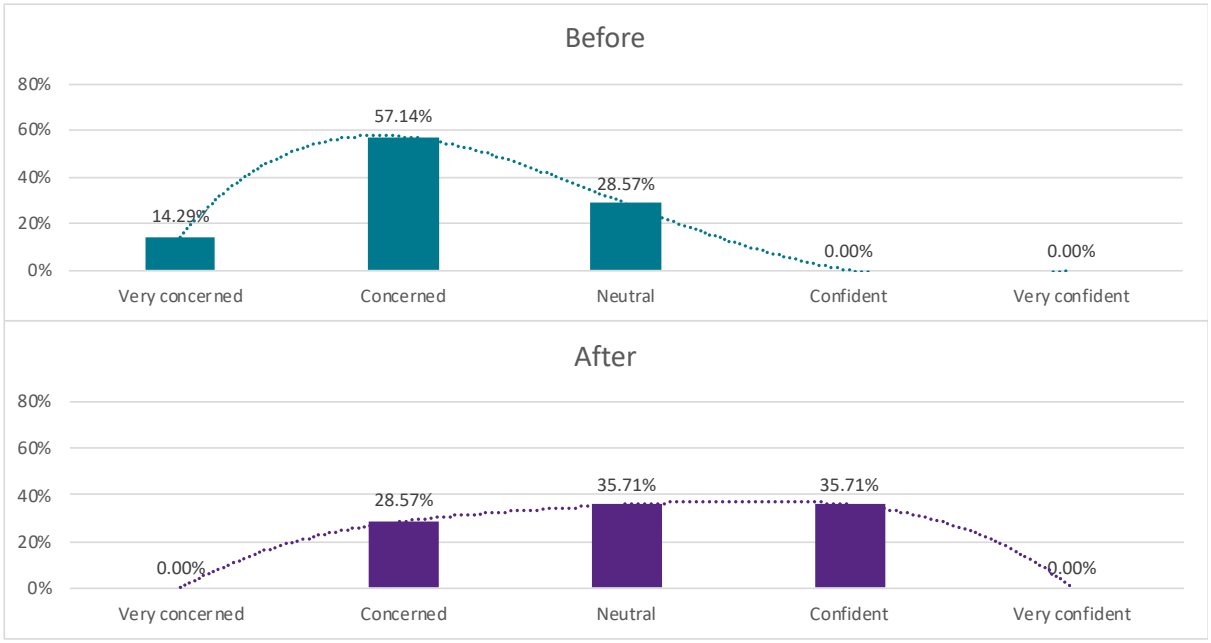

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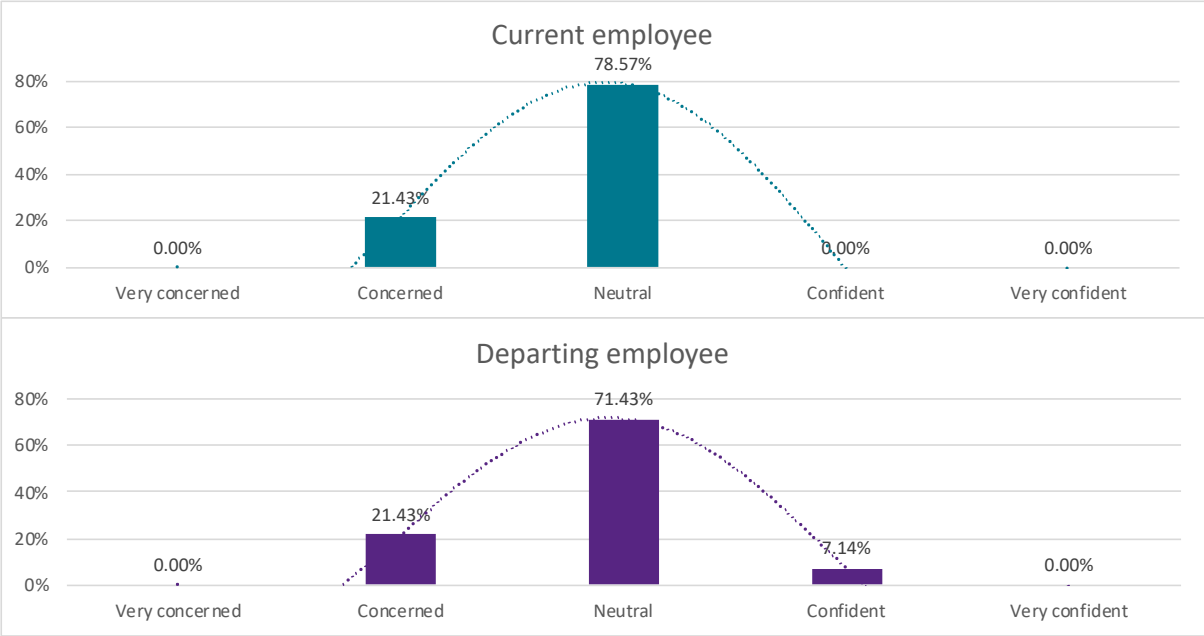

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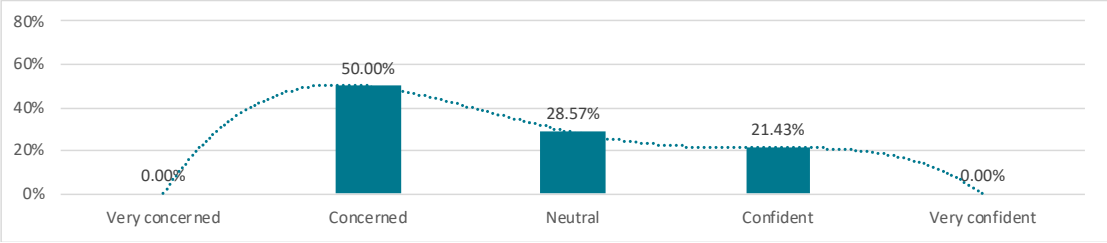
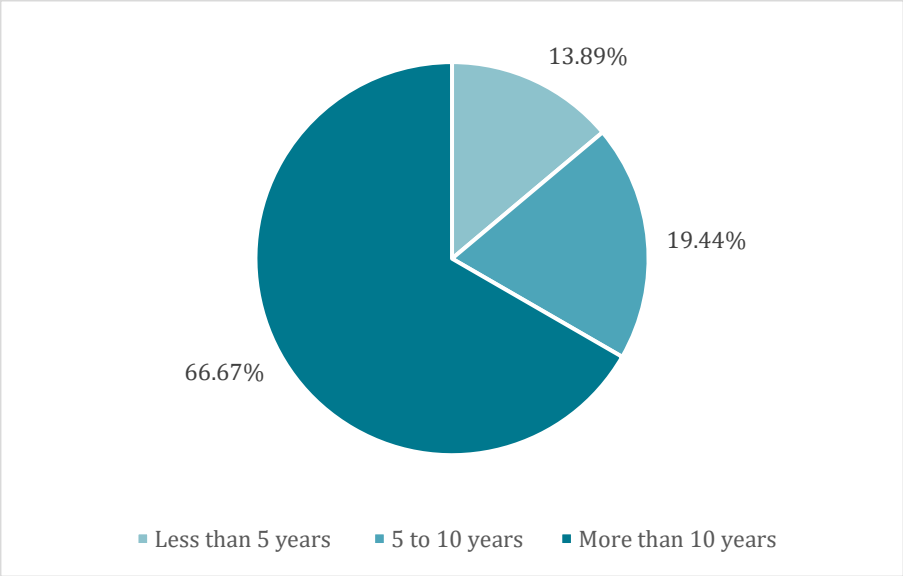


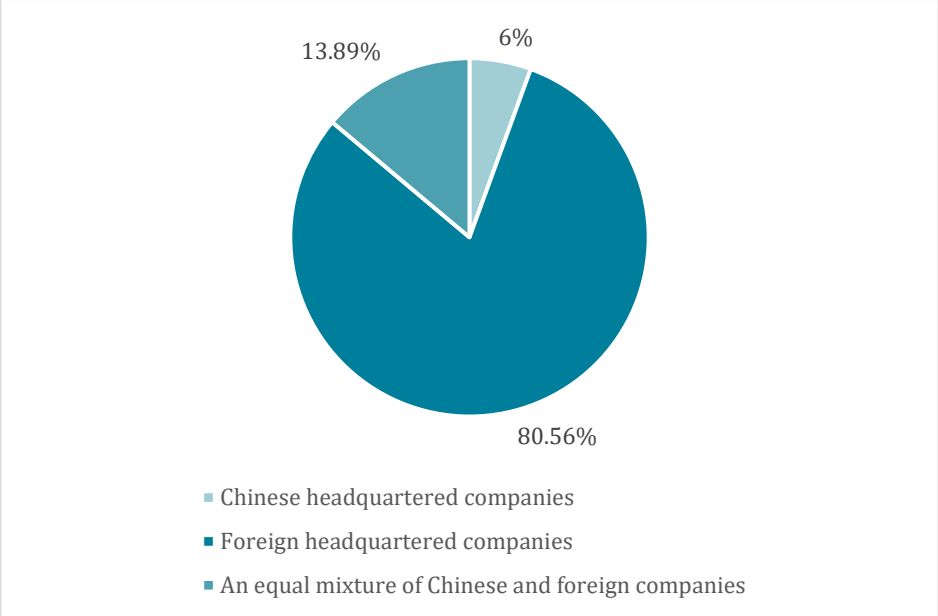
III. Practitioner Questionnaire Results

1. Introductory questions

1.1. How long have you been practicing IP law?



1.2. What kind of companies do you mostly act for?



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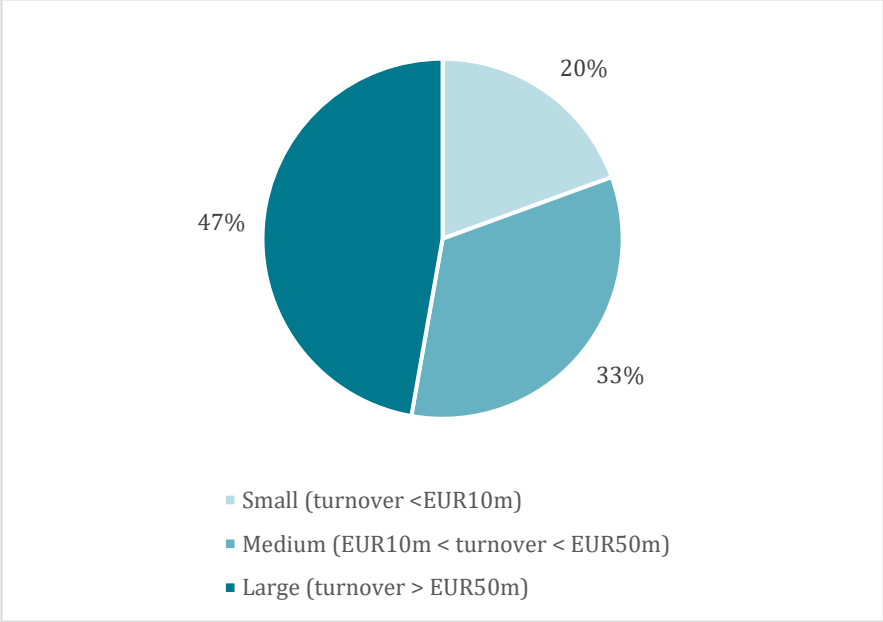
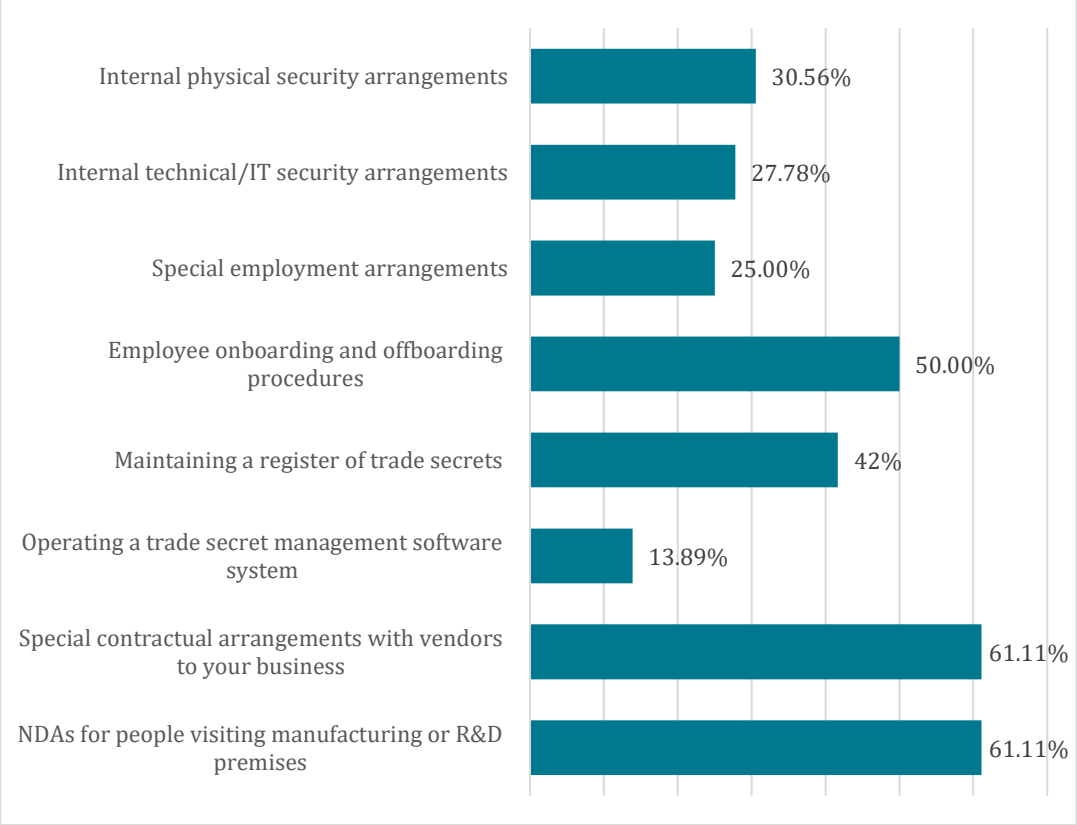
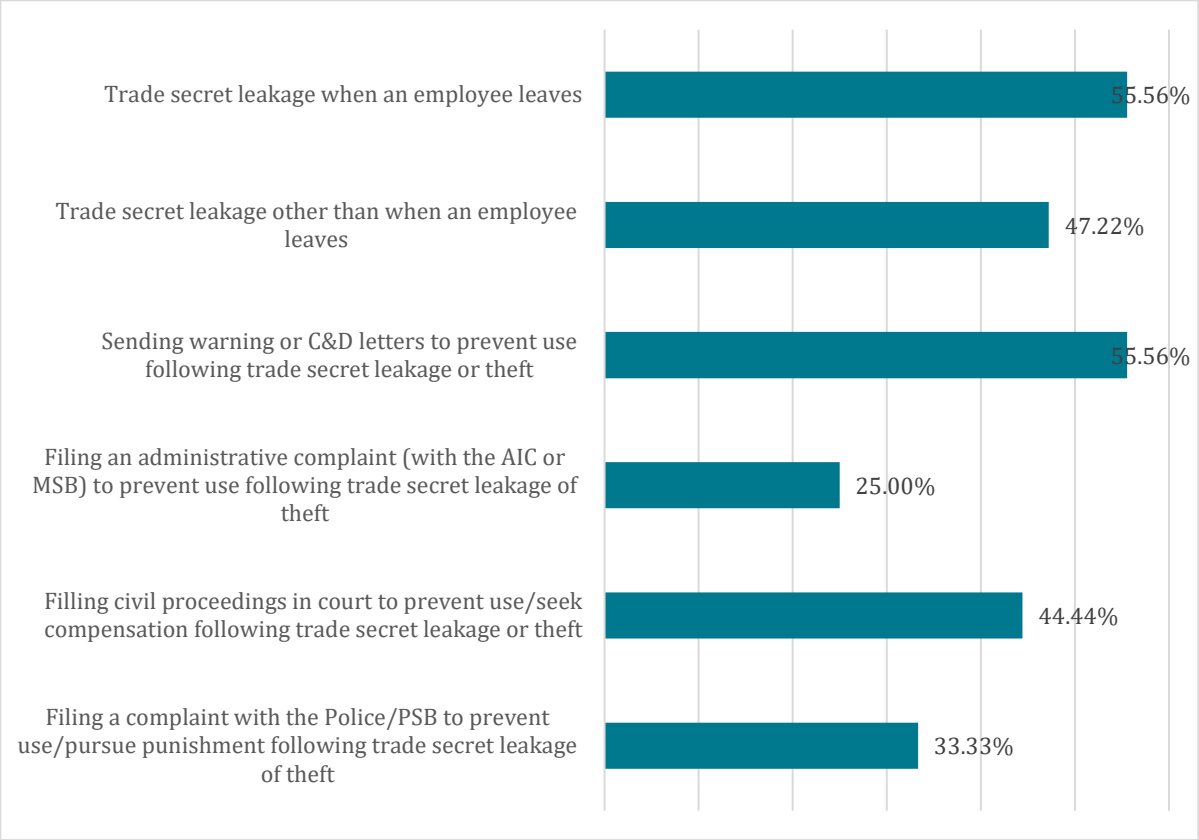


1.4. What experience do you have advising business clients on trade secret management?



1.5. What experience do you have advising business clients on trade secret enforcement?



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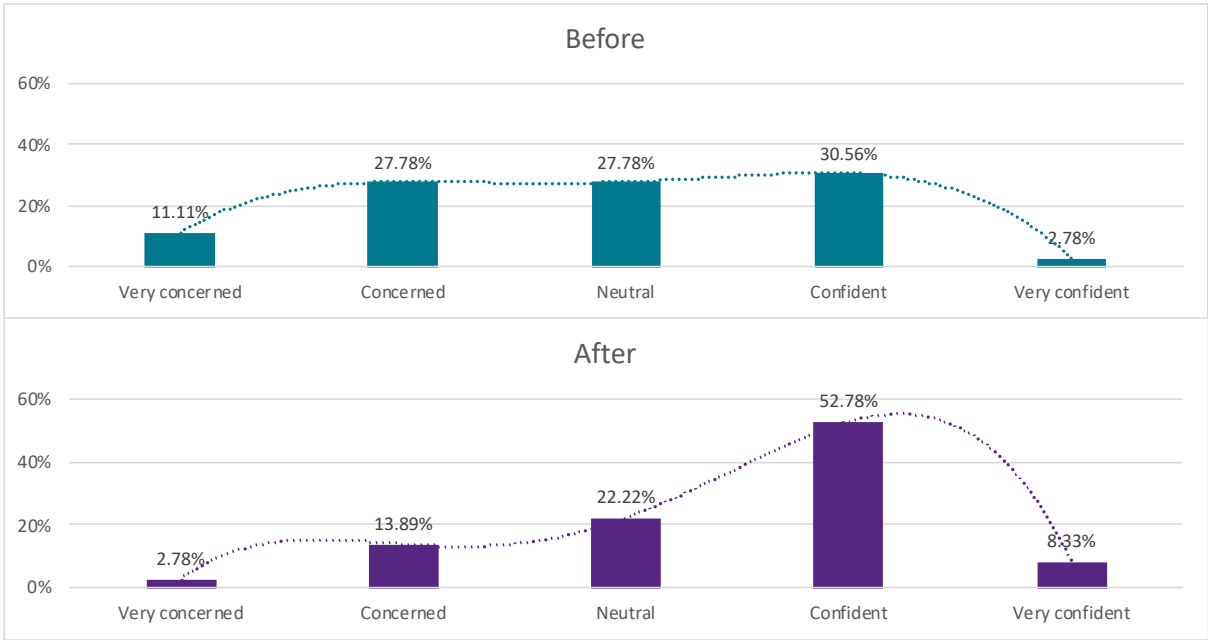

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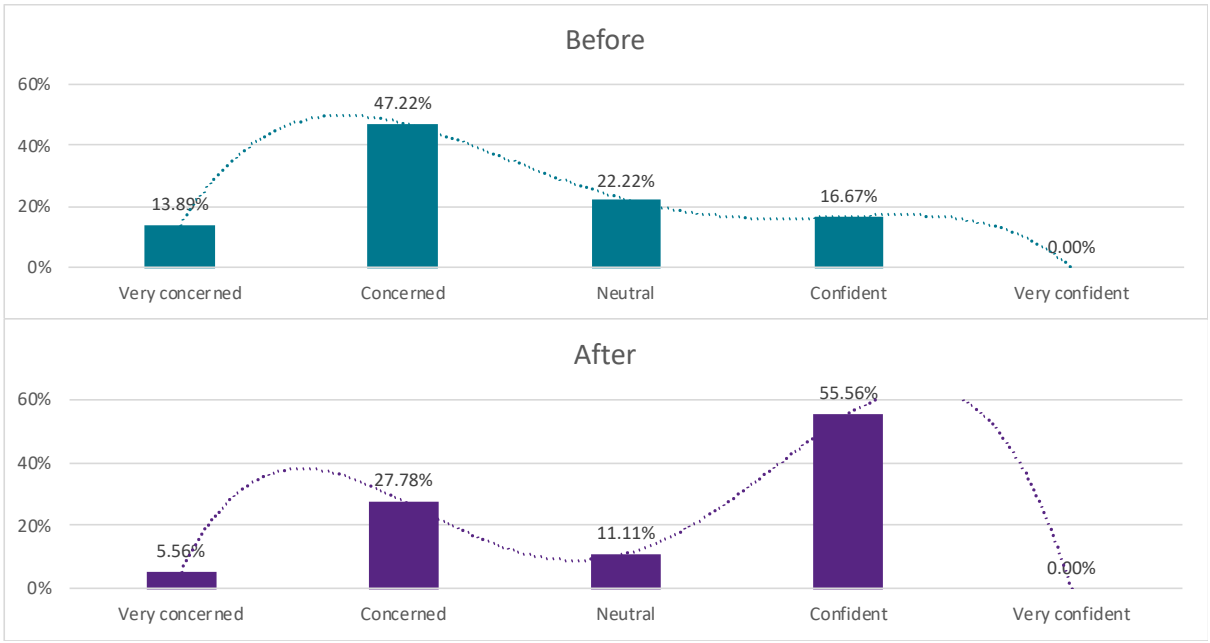

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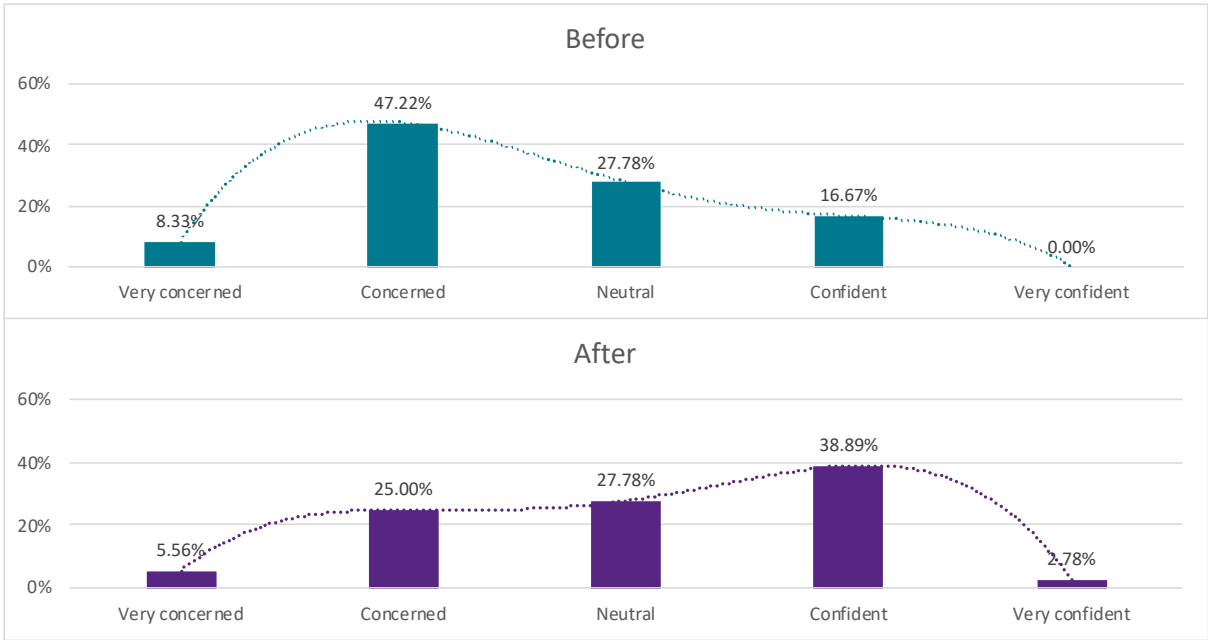

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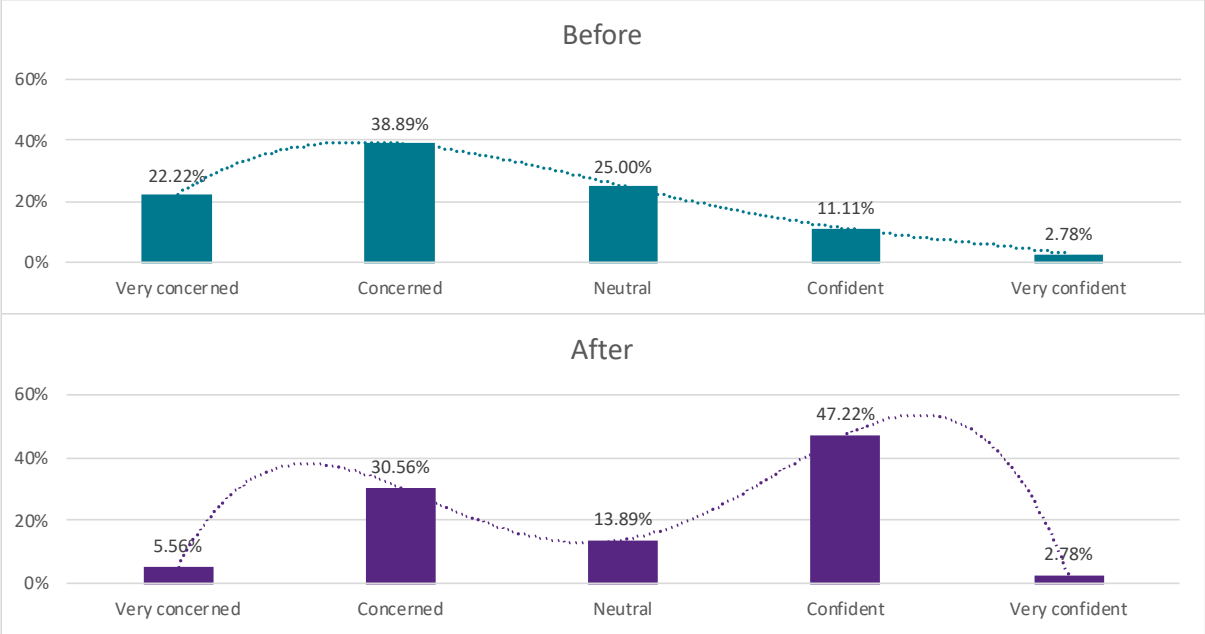

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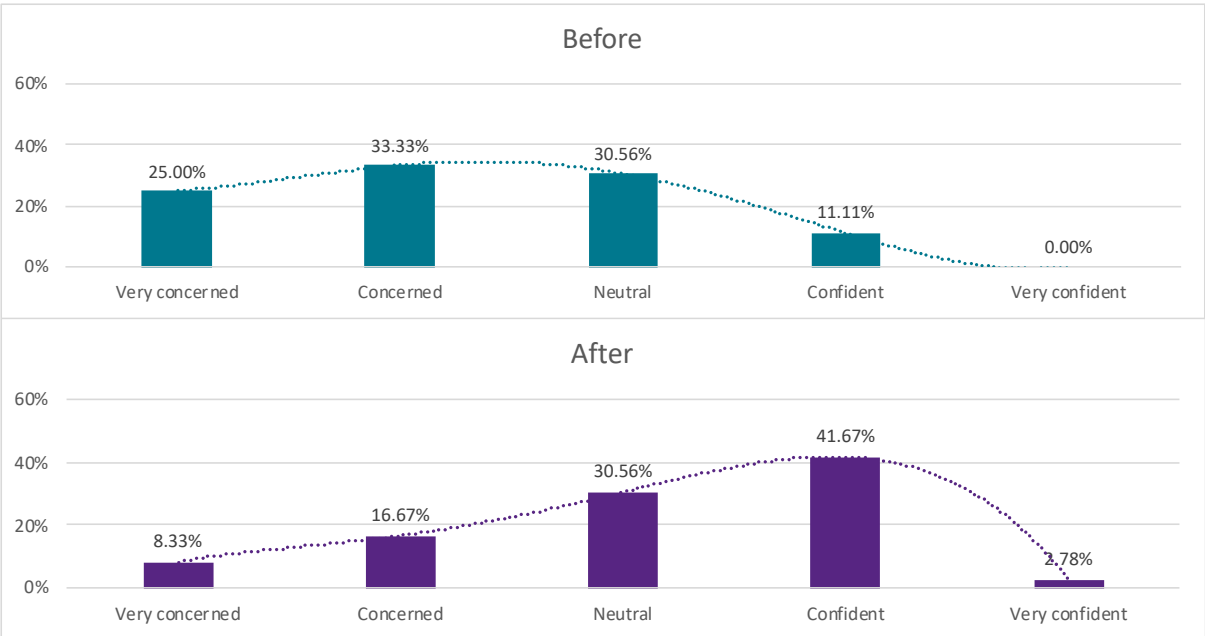

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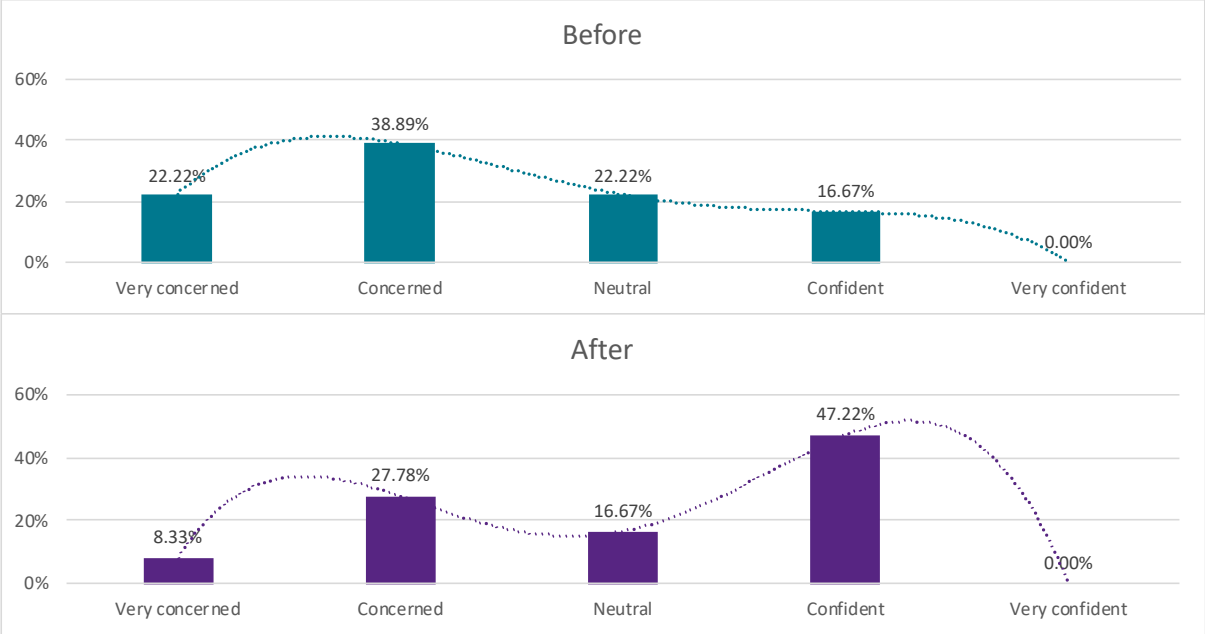

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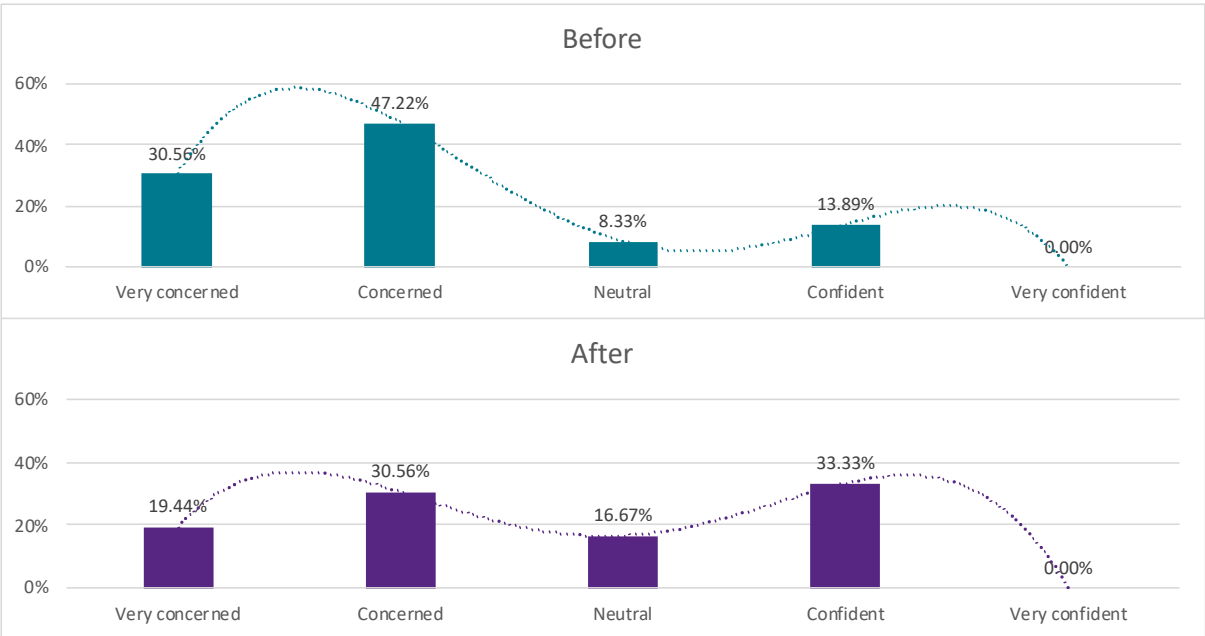

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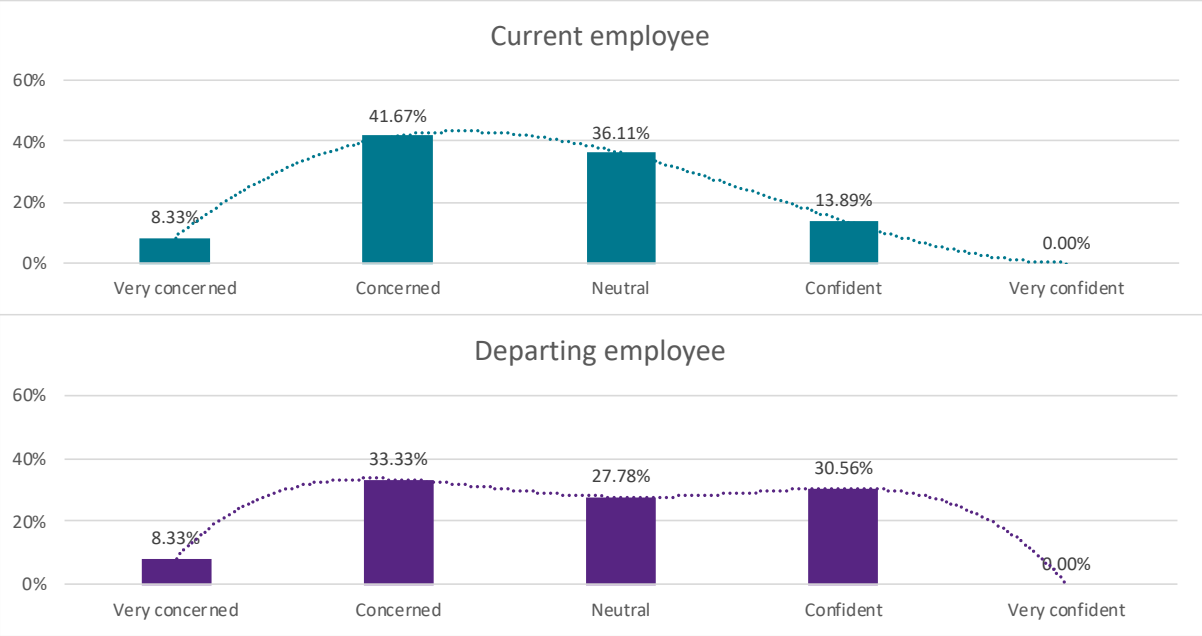

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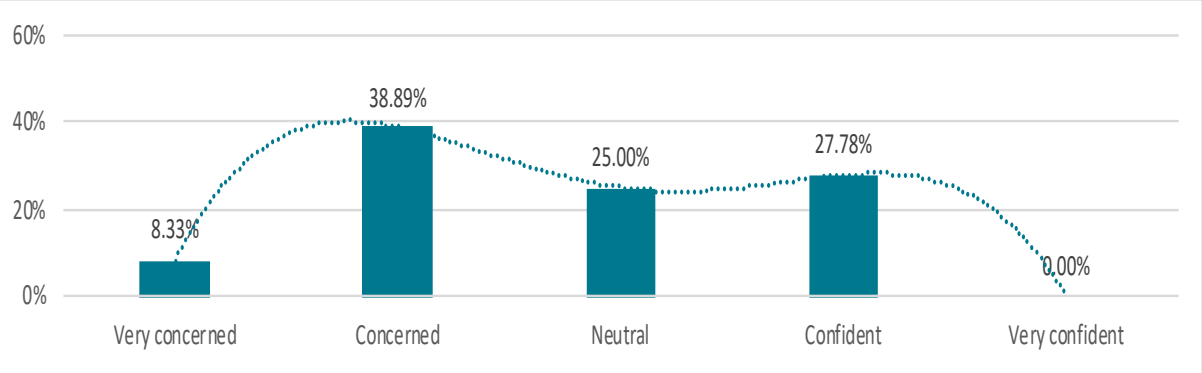

IV. Company interview

Interview with the China In-House Counsel of a multinational software business, with major operations in China.

The interview was done on condition of confidentiality, given the sensitive nature of some of the questions asked.

Q1: How important are trade secret in your business? What type of trade secret are most important?

- As a software company, we use trade secret to protect our core technology - source code. Therefore, trade secret is very important to our business.
- Technical secret is more important. In order to protect our technical secrets, we have adopted many technical means, including signing confidentiality agreements, restricting access rights, saving download and access records, carrying out confidentiality training, etc. It is worth mentioning that we have successfully protected the company's trade secrets by criminal means recently, which has played a great deterrent role.
- For the business information, such as customer list, we also pay attention to the collation and editing of information, so as to avoid not being identified as trade secrets due to simple collection of information.

Q2: What are your major concerns about trade secret in your business?

- Source code leaks is the biggest concern. In addition, we are also concerned about the injunction and the strength of the crackdown.
- Since, the disclosure of the company's trade secrets will cause huge losses to the company, we rely heavily on the injunction protection, but the evidence threshold to obtain the injunction is high at present.
- For the strength of the crackdown, as the criminal case mentioned before, although the interests of the company have been successfully protected through criminal means, the criminals are finally given a suspended sentence. We think the crackdown is not strong enough.

Q3: Do you think the trade secret law is developing in the right direction?

- Yes, but there are still deficiencies. I think the provisions on the inversion of burden of proof are positive but still vague.

Q4: Do the law and practice effectively deal with the specific concerns about trade secret leakage in your business?

- The concerns are not fully solved. In the above-mentioned criminal case, apart from that criminals are only given a suspended sentence, the compensation paid by criminals is far lower than the cost of safeguarding rights.

Q5: Any impact you think has had the amendment of Anti-unfair Competition Law in 2019 (enhanced protection of trade secret)? what about the amendment did you most welcome?

- There are many positive amendments. I think the inversion of burden of proof and the limit of statutory damages has been raised to 5 million are most welcome.

Q6: What concerns still remain? And how could the law be improved further to protect business?

- China-US trade friction and other recent disputes between the two countries have led to a lack of confidence in rights protection.
- For the improvement of law, I think there should be more detailed provisions on the inversion of the burden of proof.

Q7: Any other thoughts, ideas for improvement, comments, concerns?

- This amendment of the Anti-unfair Competition Law adds the concept of electronic intrusion. For electronic intrusion, our company has always taken technical preventive measures, which requires access rights. But I think this amendment has increased the protection of small and medium-sized enterprises.

V. Details of the 19 cases analysed

1*	Shanghai Haoshen Chemical Reagent Co., Ltd., Shanghai Meishu Chemical Co., Ltd. and Shanghai Lijing Trading Co., Ltd., and Zhu Jiajia
2	Yiwu FOB Import and Export Co., Ltd. and Ying Qiaofang's second-instance civil judgment on trade secret infringement dispute
3*	First-instance civil judgment for disputes over infringement of business secrets between Beijing Hongwei Xianchuang Technology Co., Ltd. and Beijing Shicheng Weiye Technology Development Co., Ltd.
4	Shandong Xinkaiyue Electric Furnace Co., Ltd. and Feng Yaoshun's first-instance civil judgment
5	The civil judgment of the first instance in disputes over trade secret infringement between Guangdong Xiyue Intellectual Property Service Co., Ltd., Deng Xiaolan and Guangzhou Yangzhi Advertising Design
6	The civil judgment of the first instance in disputes over infringement of business secrets between Guangdong Kejielong Robot Co., Ltd., He Qian and Dongguan Sanruntian Intelligent Technology Co., Ltd.
7	First-instance civil judgment on disputes between Guangzhou Yili Information Technology Co., Ltd., Li Wenhui, and Guangzhou Wuli Technology Co., Ltd. on infringement of trade secret
8	First-instance civil judgment in disputes between Guangzhou Nankuang Enterprise Management Co., Ltd., Yao Yishan, and Meizhou Century Star Source Culture Media Co., Ltd. on the infringement of trade sec
9*	The first-instance civil judgment of Guangzhou Caorourou Travel Agency Co., Ltd., Guangzhou Milestone Travel Agency Co., Ltd., and Gu Zhifan on the infringement of trade secrets
10	The civil judgment of the first instance in the dispute between Hangzhou Jiwei Home Textile Co., Ltd. and Dai Chaoping and Ke Yuhang on the infringement of trade secrets
11*	The second-instance civil judgment of Hangzhou Hangcheng Patent Office Co., Ltd., Hou Lanyu and Jiaxing Yonghang Patent Agency
12*	Shenyang Meiying Education Information Consulting Co., Ltd. and Wang Lin's second-instance civil judgment for disputes over infringement of business secrets
13*	The civil judgment of the first instance in the dispute between Shenzhen Weifeng Commercial Co., Ltd. and Yang Ling on the infringement of trade secrets
14	First-instance civil judgment on disputes between Zhangzhou Xinhonglong Hardware Products Co., Ltd., Huang Yunbin and Longyan Limao Hardware Trading Co., Ltd. for infringement of business secrets
15	Guizhou Jiatai Real Estate Consulting Co., Ltd., Zhang Chengzhu, and Guizhou Yi'anju Real Estate Consulting Co., Ltd. Civil Judgment of the first instance in disputes over infringement of trade secrets
16	The first-instance civil judgment of Chongqing Manniu Industry and Commerce Consulting Co., Ltd. and Tan Qing Chongqing Yilian Jinhui Management Consulting Co., Ltd. in the dispute over infringement of
17	First-instance civil judgment of Shaanxi Zhenjiang Trading Co., Ltd., Wu Qiang and Wang Lihong on the infringement of trade secrets
18*	Civil Judgment for Retrial of Trade Secret Infringement Dispute between Mai Da Keer (Tianjin) Technology Co., Ltd. and Huayang Xinxing Technology (Tianjin) Group Co., Ltd.
19	The civil judgment of the first instance in the dispute of trade secret infringement between Xinli Media Group Co., Ltd. and Beijing Paihua Culture Media Co., Ltd.

VI. Machine translations of the seven highlighted cases

Case 1

Shanghai Haoshen Chemical Reagent Co., Ltd., Shanghai Meishu Chemical Co., Ltd. and Shanghai Lijing Trading Co., Ltd., and Zhu Jiajia's first-instance civil judgment

Trial court :People's Court of Yangpu District, Shanghai
Case number:(2019) Shanghai 0110 Minchu No. 1662
Referee date:2019.10.23
Cause of the case:Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes [Unfair Competition, Monopoly Disputes]>Infringement of Trade Secret Disputes [Infringement of Trade Secret Disputes]>Disputes over Infringement of Business Secrets [Disputes over Infringement of Business Secrets]

Plaintiff : Shanghai Haoshen Chemical Reagent Co., Ltd., domiciled in Baoshan District, Shanghai.

Legal representative: Ding Wanying, general manager of the company.

Plaintiff : Shanghai Meishu Chemical Co., Ltd., domiciled in Putuo District, Shanghai.

Legal representative: Ding Wanying, general manager of the company.

The two plaintiffs jointly appointed an agent ad litem: Wang Xiaobing, lawyer of Shanghai Longtian Law Firm.

The two plaintiffs jointly appointed an agent ad litem: Zhu Yue, a lawyer at Shanghai Longtian Law Firm.

Defendant : Zhu Jiajia, female, born on December 25, 1984, Han nationality, domiciled in Baoshan District, Shanghai.

Defendant : Shanghai Lijing Trading Co., Ltd., domiciled in Baoshan District, Shanghai.

Legal representative: Li Zhihao, executive director of the company.

The two defendants jointly appointed an agent ad litem: Xu Taotao, lawyer of Shanghai Jianghuai Law Firm.

The plaintiff Shanghai Haoshen Chemical Reagent Co., Ltd. (hereinafter referred to as Haoshen Company), the plaintiff Shanghai Meishu Chemical Co., Ltd. (hereinafter referred to as Meishu Company) and the defendant Zhu Jiajia, and the defendant Shanghai Lijing Trading Co., Ltd. (hereinafter referred to as Lijing) The case of the company) infringement of business secrets was accepted by this court on January 21, 2019, and ordinary procedures were applied in accordance with the law, and the trial was held in public. The plaintiff Haoshen Company and the plaintiff Meishu Company's co-appointed agents Wang Xiaobing and Zhu Yue, the defendant Zhu Jiajia, and the defendant Li Jing's co-appointed agents Xu Taotao appeared in court to participate in the litigation. The case has now been concluded.

The plaintiff Haoshen Company and the plaintiff Meishu Company jointly filed a lawsuit to this court: 1. Order the two defendants to immediately stop infringing on the trade secrets of the two plaintiffs; 2. Order the two defendants to compensate the two plaintiffs for economic losses of 1,000,000 yuan; 3. Sentence The two defendants were ordered to jointly compensate the two plaintiffs for the reasonable expenses of 66,600 yuan for stopping the infringement. During the trial, the two plaintiffs changed the second claim as: order the two defendants to jointly compensate the two plaintiffs for economic losses of 990,500 yuan; change the third claim as: order the two defendants to compensate the two plaintiffs for the reasonable cost of stopping the infringement. The cost is 75,500 yuan (including attorney's fee 60,000 yuan, notarization fee 13,000 yuan, and insurance company guarantee fee 2,500 yuan paid for property preservation).

Facts and reasons: The plaintiff Haoshen Company was established in January 1998, mainly engaged in the production and sales of chemical reagent products and raw materials. Wu Buling, the shareholder of the plaintiff Haoshen Company, established the plaintiff Meishu Company in December 2009, and cooperated with Haoshen Company in the production and sales of chemical reagent products and raw materials. The two plaintiffs are highly affiliated companies with overlapping shareholders and the same legal representative. The two plaintiffs have established and developed long-term and stable trading relationships with a large number of customers in the field of chemical reagent products and raw materials. In this process, we have mastered a large amount of customer list information, including the customer’s name, address, contact information, transaction habits, intentions, product requirements, etc., constituting a special customer list information that is different from related public information, and has significant commercial value to the two plaintiffs Therefore, the two plaintiffs also actively adopted corresponding reasonable security measures.

The defendant Zhu Jiajia held sales positions at the two plaintiffs from August 2013 to October 2017. During Zhu Jiajia's work with the two plaintiffs, he had long-term contact with a large number of customers of the two plaintiffs and mastered a large amount of customer list information. The defendant Lijing Company was established on September 13, 2017. Zhu Shengxing, the legal representative, is Zhu Jiajia's adoptive father. The two have a close relationship. Zhu Jiajia is the actual controller of Lijing Company. The main business scope overlaps with the two plaintiffs.

The two plaintiffs discovered that since September 2017, at the beginning of the establishment of Lijing Company, Zhu Jiajia had not resigned from the two plaintiffs. Zhu Jiajia had already used the information on the list of the two plaintiffs that he had contacted and grasped to take the initiative to snatch the two plaintiffs’ customers. A large number of customers of the two plaintiffs had business dealings with Lijing Company. Lijing Company sold a large number of the same products as the two plaintiffs to a large number of customers of the two plaintiffs, seeking illegitimate benefits and causing huge losses to the two plaintiffs.

The two plaintiffs believed that the large amount of customer information held by the plaintiffs constituted business secrets and should be protected by the Anti-Unfair Competition Law . During Zhu Jiajia's work at the two plaintiffs, the "Labor Contract", "Confidentiality Agreement", "Commitment", "Company Confidentiality System", etc. signed with the plaintiff all had clear provisions on the confidentiality of the above-mentioned customer list. Zhu Jiajia was aware of the situation In order to deliberately violate the

regulations, disclose to Lijing Company and jointly use the information on the customer list of the two plaintiffs in its possession to seek illegitimate interests, cause huge losses to the two plaintiffs, and violate the trade secrets of the two plaintiffs. responsibility. The two plaintiffs sued the court after repeatedly warning the two defendants and failed.

The two defendants jointly argued that: 1. The customer information claimed by the two plaintiffs does not constitute a trade secret. The information claimed by the plaintiff has no carrier and no summary of the customer information, so no actual content exists. The transaction between the plaintiff and the customer is initiated randomly Yes, these customers also have transactions with other companies, so it is not that they have established a stable transaction relationship with the plaintiff, and the confidentiality agreement between the plaintiff and the defendant Zhu Jiajia is not clear enough. 2. The two defendants did not infringe the plaintiff's trade secrets. The defendant operated normally. The defendant's customers chose to conduct business transactions with the defendant Zhu Jiajia based on their trust in Zhu Jiajia. The defendant did not take the initiative to snatch the plaintiff's customers. Did not infringe any rights of the plaintiff. 3. The plaintiff and the defendant Zhu Jiajia had no agreement on prohibition of business competition, and the defendant Zhu Jiajia could engage in business in the same industry after leaving the plaintiff. 4. The amount of compensation requested by the two plaintiffs was too high and there was no basis, so they did not agree to all the claims of the two plaintiffs.

The investigation found that:

1. The basic situation of the two plaintiffs

   The plaintiff Haoshen Company was funded by Wu Buling and Wu Jingxian and was established in January 1998. The legal representative is Ding Wanying. It mainly deals in chemical products and raw materials (hazardous chemicals are permitted under the scope of business license), metal materials and products, etc.

   The plaintiff, Meishu Company, was funded by Ding Wanying and Wu Jingxian and was established in December 2009. The legal representative Ding Wanying is mainly engaged in the sales of chemical raw materials and products (except for hazardous chemicals, controlled chemicals, fireworks and firecrackers, civil explosives, precursors Toxic chemicals), glass products, etc.

   During the trial, both the plaintiff and the defendant confirmed that the two plaintiffs were "two brands, one team," that is, the same group of management personnel controlled and operated the actual operations of the two companies. For the plaintiff Haoshen Company has a hazardous chemical business license, and therefore involved in this type of hazardous chemical business, it will be carried out in the name of Haoshen Company. Some other businesses are based on the different tax payment methods of the two plaintiffs, and some are determined according to the customer's designation. The two defendants have no objection to the fact that the external business is conducted in the name of Haoshen Company or Meishu Company.

2. Defendant Zhu Jiajia's position in the plaintiff's office

   From September 2013 to October 2017, the defendant Zhu Jiajia worked for the plaintiff Haoshen Company as product sales and resigned in October 2017.

In the labor contract signed by the defendant Zhu Jiajia and the plaintiff Haoshen Company, it is clearly stipulated that the confidential matters involving trade secrets and intellectual property rights are clearly stipulated. If Zhu Jiajia leaks the trade secrets, Haoshen Company has the right to terminate the labor contract, and Zhu Jiajia shall also be liable for economic losses. , Haoshen Company pays Zhu Jiajia confidentiality fee of 200 yuan per month. In the "Company Confidentiality System" attached to the labour contract, the scope of confidentiality is clearly stipulated, including the company's sales business information, source information, supplier confidence surveys, etc. Zhu Jiajia signed on the "Company Confidentiality System" to confirm that the system has been reviewed read. In September 2013, Zhu Jiajia issued a "Letter of Commitment" to Haoshen Company and Meishu Company. The main content is: Work in the sales department during the company's work, involving the company's top business secrets in business, sales, storage, software, and network, on-site or resignation After that, we will never disclose the company's commercial secrets, do not damage or infringe the company's interests, and will not publish illegal information related to network restrictions. In September 2013, the two plaintiffs (Party A) and Zhu Jiajia (Party B) signed a "Confidentiality Agreement", stipulating that: 1. Party A shall pay Zhu Jiajia a monthly confidentiality fee of 200 yuan; Party A and Party B have confirmed that Party B shall assume confidentiality obligations The scope of Party A's business secrets is not limited to 1. Technical information; 2. Business information: the company's Xiao Cong imports, sells, deposits, and financial software database information; 2. ... 2. No third party who does not assume confidentiality obligations Disclosure of Party A's business secrets; 3. It shall not be permitted (the act of disposing of Party A's business secrets such as lending, gifting, renting, transfer, etc., is "permitted") or assisting any third party who does not assume the obligation of confidentiality to use Party A's business secrets ；……3. Confidentiality period: Both parties confirm that Party B's confidentiality obligations start when Party A takes appropriate confidentiality measures for the trade secrets mentioned in Article 1 of this agreement and notify Party B, and ends when the trade secrets are disclosed, whether Party B is in employment , Does not affect the assumption of confidentiality obligations, etc.

In addition, in the details of his monthly payroll from 2015 to 2017 signed and confirmed by Zhu Jiajia, the payable items include a confidentiality allowance of 200 yuan, as well as the amount of "Hao Shen gross profit" and the amount of "Meishu gross profit". Commission. During the trial, the defendant Zhu Jiajia recognized that the 200 yuan confidential allowance was jointly paid by the two plaintiffs.

3. List of clients claimed by the two plaintiffs

During 2010, the plaintiff Haoshen Company and the outsider Shanghai Haobixin Industry and Trade Co., Ltd., Shanghai Leiyun Shangfengbang Pharmaceutical Co., Ltd., Shanghai Jushi Chemical Co., Ltd., Shanghai Wansen Water Treatment Co., Ltd., and Shanghai Rongxun Chemical Co., Ltd. , Shanghai Atotech Aluminum Co., Ltd., Shanghai Chuangding Machinery Technology Co., Ltd., Shanghai Dongmei Chemical Co., Ltd., Shanghai Parker Precision Co., Ltd., Shanghai Pinxin Metallurgical Equipment Co., Ltd., Shanghai Qilin Auxiliary Co., Ltd., Shanghai Rui Xin Technology Instrument Co., Ltd., Shanghai Shanli Petrochemical Equipment Co., Ltd., Shanghai Guangsheng Technology Co., Ltd., Shanghai Lebao Daily Chemical Co., Ltd., Shanghai Minglie New Materials Co., Ltd., Shanghai Feiji Trading Co., Ltd., Shanghai Cyber

Chemical Co., Ltd., Shanghai Jiahao Adhesive Products Co., Ltd., a total of 19 companies have established business relationships. On the eve of the appointment of the defendant Zhu Jiajia, the plaintiffs Haoshen Company and Meishu Company and the outsiders Jiangsu Zhongneng Chemical Co., Ltd., Shanghai Nuocheng Pharmaceutical Co., Ltd., Qingdao Jinhuiyuan Electronics Co., Ltd., Shanghai Jiangying Environmental Protection Equipment Co., Ltd., and Qingdao Five companies of Shengrunxian Electronics Co., Ltd. have business contacts.

In 2015, 2016, and 2017, in addition to maintaining business operations with the above 24 companies, the two plaintiffs also worked with the outsiders Jiangsu Shitong Coloring New Material Co., Ltd. (formerly Funing Shitong Chemical Co., Ltd.) and Shanghai Baidu Nuo Food Co., Ltd., Shanghai Guojie Plastic Packaging Products Co., Ltd., Shanghai Hanyu New Material Co., Ltd., Shanghai Haoju Chemical Technology Co., Ltd., Shanghai Huahong Metal Products Co., Ltd., Shanghai Jinban Pharmaceutical Co., Ltd., Shanghai Jinyuan Weituo Environmental Protection Equipment Engineering Co., Ltd., Shanghai Maiqi Biological Technology Co., Ltd., Shanghai Wanchun Electric Co., Ltd., Semiconductor Manufacturing International (Shanghai) Co., Ltd., Shanghai Puge Automation Equipment Co., Ltd., Shanghai Liwusheng Nano Technology Co., Ltd., Shanghai Yaoyao Perfume Co., Ltd., Sichuan Shangte Technology Co., Ltd., Huangshan Pingyi Environmental Technology Co., Ltd., Liying Electronic Technology (Shanghai) Co., Ltd., Jiangxi Tianjia Technology Co., Ltd., a total of 18 companies continue to conduct trading business. During this period, the salespersons of the 42 companies mentioned above and the two plaintiffs were all shown as defendant Zhu Jiajia.

In 2003, the two plaintiffs began to use the business management software-"Xiao Cong Business Management Software", which stores the goods, suppliers, customers, salespersons, warehouse inventory of the two plaintiffs, product purchase, sale, storage, and financial And other details. The management and business personnel of the two plaintiffs can only log in to the software on the computers in the business premises of the two plaintiffs, and by entering their respective user names and passwords, they can see the business information within their respective jurisdictions according to their different jurisdictions. From the software, you can query the details of the business done by the defendant Zhu Jiajia (code 4) during his employment, including the sales date, delivery note number, material name and specification, sales quantity, unit price, sales amount and customers of each business Name, these business details include multiple transaction records with the above 42 companies over the years. The customer name, address, contact person and contact information are displayed in the individual editing of the customer column of the software.

During the trial, the defendant Zhu Jiajia had no objection to the facts of this section, confirming that according to the authority granted by the plaintiff, he could see all sales management, inventory management, basic information and other information on the software and what he was responsible for and what the two plaintiffs did The product name, quantity, amount, unit price, customer name, and contact information of each business of the company, including the relevant transactions between the two plaintiffs and existing customers before their employment; and that these customers are assigned to them by the plaintiff Yes, but it is also needed for maintenance.

4. The basic situation of the defendant Lijing Company and the position of the defendant Zhu Jiajia in Lijing Company

   The defendant Lijing Company was established in September 2017. The original legal representative was Zhu Shengxing. It mainly deals in chemical products and raw materials (except hazardous chemicals, controlled chemicals, fireworks and firecrackers, civil explosives, precursor chemicals), metal materials and Wholesale and retail of products and glass products.
   The defendant Zhu Jiajia and Zhu Shengxing, the original legal representative of the defendant Lijing Company, were in an adoptive father-daughter relationship. After Zhu Jiajia resigned from Haoshen Company, he joined Lijing Company as product sales and responsible for external liaison. In December 2017, after Zhu Shengxing became seriously ill, Lijing Company was actually operated by Zhu Jiajia.

5. Suspected infringement of the two defendants

   Since December 2017, the defendant Lijing Company has conducted chemical product business transactions with 41 companies on the customer list claimed by the two plaintiffs except Jiangxi Tianjia Technology Co., Ltd. These transactions included more products originally purchased by these customers from the two plaintiffs, and the prices of some of the products were also lower than the prices of the products provided by the two plaintiffs to these customers.

   In May 2018, the two plaintiff clients, Shanghai Lei Yunshang Fengbang Pharmaceutical Co., Ltd., issued a "Description of Business Transactions with Li Jing", stating that the company's chemical reagents and laboratory consumables were purchased from Shanghai Haoshen Chemical Reagent Co., Ltd. in 2017 At that time, Haoshen's salesman was Zhu Jiajia; around October 2017, Zhu Jiajia said that she was proud to have resigned from the company and joined another company-Shanghai Lijing Trading Co., Ltd. The office is located at Shunfeng Road, Jiading District**, and will be mailed later A business license and related qualification documents of Lijing Trading. In June 2018, the two plaintiff clients, Shanghai Shanli Petrochemical Equipment Co., Ltd. issued a certificate, which reads: In mid-September 2017, Zhu Jiajia called me to say that he was about to leave Haoshen Company and opened a new company, Shanghai Lijing Trading Co., Ltd., she is not a legal person, but the actual controlling shareholder, the registered place is Zhenchen Road, Baoshan District, and the business place is on Shunfeng Road, Nanxiang**. I hope that our company will purchase from her company in the future and guarantee the price is lower than Haoshen Company , The supply is still the same as the previous Haoshen company. The two plaintiff clients, Jiangxi Tianjia Technology Co., Ltd., also issued a certificate stating that on December 20, 2017, I received a text message from Zhu Jiajia from Lijing Company, saying that her name was Zhu Jiajia. She used to work in Shanghai Haoshen Company, and now she came out to drive by herself. The company hopes that I can buy from her, the price can be discounted, and other conditions are the same as Haoshen Company; attached with Zhu Jiajia's information "I am Zhu Jiajia from Shanghai Lijing Trading Company. I used to work in Haoshen (Meishu). You have always The potassium ferrocyanide purchased from Haoshen, can you please come to me to purchase it? The product comes from a manufacturer, and the product is 22 yuan per bottle. Please reply to me after receiving it and wait for WeChat record.

6. Other facts:

1. On December 18, 2017, the two plaintiffs issued "Notice Letters" to their clients to inform them that Zhu Jiajia had resigned from the plaintiff, and all his words and deeds did not represent the two plaintiffs, and Zhu Jiajia and Li Jing Company used the two plaintiffs' commercial secrets The two plaintiffs will provide cash rewards based on the invoice transaction amount for customers who provide Zhu Jiajia with the transaction information and evidence of Lijing Company and its transactions through legal means, and the two plaintiffs will receive a one-off cash reward based on the transaction amount of the invoice or the reagent products and glass instrument products purchased by the customer at the market price. Decrease 50% as a reward, and purchase reagent products and glass instrument products as VIP members at 25% off the market price.

   On December 28, 2017, the person in charge of the plaintiff Haoshen Company and the defendant Zhu Jiajia negotiated for the use of customer information of the two plaintiffs to conduct business transactions for Lijing Company.
2. During the trial, the two defendants submitted the main content issued by the 24 companies in the above-mentioned list of customers claimed by the plaintiff, including Shanghai Huahong Metal Products Co., Ltd., as "the company voluntarily has transactions with Zhu Jiajia and Shanghai Lijing Trading Co., Ltd. Contacts." or "The company voluntarily entered into transactions with Zhu Jiajia and Shanghai Lijing Trading Co., Ltd. based on its trust in Zhu Jiajia." The formatted "Statement Statement" was intended to prove the list of customers claimed by the two defendants and the two plaintiffs. Business transactions between Chinese companies are initiated by customers and are based on market economic behaviors that are trusted by both parties. The two plaintiffs had no objection to the authenticity of the "Statement Statement", but believed that some of the "Statement Statement" had no official seal, and the probative power of the evidence was not recognized.

3. The two plaintiffs paid RMB 60,000 for attorney fees and RMB 13,000 for notarization for this case, and RMB 2,500 for insurance premiums to the insurance company for property preservation in this case.

   The above facts include the industrial and commercial registration materials, full-time labor contract, company confidentiality system, letter of commitment, confidentiality agreement, payroll, resignation, invoice, delivery note, express delivery note, and (2018) Shanghai Xu Zhengjing provided by the two plaintiffs. No. 6671, 6672 notarization, household registration information, WeChat chat records, proof materials, (2019) Shanghai Xu Zhengjing Zi No. 3067, 3068 notarization, (2018) Shanghai 0110 Minchu No. 16388 evidence exchange transcript, litigation legal services Agreement, attorney's fee invoice, notarization fee invoice, explanations of the situation provided by the two defendants, purchase and sale contract and order information, notification letter, order, invoice and combing table for the same customer Lijing Company selling the same product, as well as the parties' evidence exchange transcript and court hearing Confirmed by evidence such as statement transcript.

   This court believes that the focus of the dispute in this case is: 1. Whether the customer information claimed by the two plaintiffs constitutes the common

trade secrets of the two plaintiffs; 2. Whether the two defendants infringed the trade secrets of the two plaintiffs; 3. If the two defendants constituted an infringement of trade secrets, it is the civil liability that should be assumed.

Regarding the first focus of the dispute, this court believes that, in accordance with the provisions of the " People's Republic of China Anti-Unfair Competition Law ", trade secrets refer to technical information and technical information that is not known to the public, has commercial value, and has been subject to appropriate confidentiality measures by the right holder. Business information. The customer list business information claimed by the two plaintiffs meets the above conditions and constitutes the common trade secrets of the two plaintiffs. The reasons are as follows:

First of all, the customer list in trade secrets generally refers to the customer's name, address, contact information, and transaction habits, intentions, content, and other special customer information that is different from related publicly known information, including a customer list that gathers many customers, and Specific customers who maintain long-term stable trading relationships. Generally speaking, customer information that only contains the customer's name, place, address and contact information can often be easily obtained from public channels. It is the customer's transaction habits, transaction needs, price affordability, and even the contact information of specific contacts. Special customer information that is publicly known can constitute a protected business secret. In this case, according to the evidence in the case, the two plaintiffs have conducted business transactions with some of their claimed customers since 2010. As of 2017, the two plaintiffs had multiple, even a large number of business dealings with the 42 clients they claimed, and established stable trading relationships. In addition, the two plaintiffs entered and sorted out the product name, quantity, amount, unit price, customer name, contact person and contact information of each business with these customers through their "Xiao Cong Business Management Software". It is possible to obtain special information such as product demand and product price acceptance by these specific customers, and transaction habits. Because this special information needs to be formed through accumulation in the business process, it is not generally known by the relevant personnel; and the name, business scope, place, place, address or information of the company can often only be obtained from the Internet or other public channels. General information such as contact information. These specific customer information of the two plaintiffs constituted their "not known to the public" business information. The defendant's customer information about the plaintiff's claims can be obtained through online inquiries about the company's basic information, and does not constitute "unknown to the public". This court does not accept the information of "knowledge", and the relevant information has no carrier argument, without facts and legal basis.

Secondly, the plaintiff Haoshen Company clearly agreed on confidential matters involving trade secrets and intellectual property in the labor contract signed with the defendant Zhu Jiajia. Defendant Zhu Jiajia also promised to the two plaintiffs that the company's distribution, sales, storage, software, and network top commercial secrets during the work period will not be disclosed after the job or after leaving. The two plaintiffs signed a "Confidentiality Agreement" with the

defendant Zhu Jiajia. The scope of business secrets for which Zhu Jiajia should be kept confidential includes Xiao Cong's import, sales, storage, financial software database information, and the relevant confidentiality period until the trade secret is disclosed, regardless of Zhu Jiajia Whether or not they are employed, it does not affect the assumption of confidentiality obligations and so on. The two plaintiffs also paid the defendant Zhu Jiajia the consideration of the obligation of confidentiality, which shows that the two plaintiffs not only have the will to keep confidential, but also adopted a variety of reasonable confidentiality measures to protect the two plaintiffs' customer lists and other business information. The two defendants argued that the confidentiality agreement between the plaintiff and the defendant Zhu Jiajia was unclear and lacked factual basis, and this court rejected it.

Since the two plaintiffs jointly adopted confidential measures for the above-mentioned business information, the two plaintiffs claimed that they shared the above-mentioned business information, and this court supported it.

Third, based on the fact that these specific customer information was formed by the accumulation of the two plaintiffs during their business operations, the two plaintiffs also paid a certain amount of labour and time for this. And these specific customer information can also save the plaintiff's transaction costs, increase the plaintiff's trading opportunities, and bring actual or potential economic benefits to the two plaintiffs, so it has certain commercial value.

Regarding the second focal point of the dispute, this court believes that in accordance with the provisions of Article 9, Paragraph 1, Paragraph 3 and Paragraph 2 of the " People's Republic of China Anti-Unfair Competition Law " , business operators shall not commit the following violations of trade secrets: Violation Confidentiality obligations or violation of the right holder's requirements for keeping business secrets, disclosing, using or allowing others to use the trade secrets they have; the third party knows or should know about the trade secret holder's employees, former employees, or other units or individuals to implement this article If the illegal acts listed in the first paragraph still obtain, disclose, use or allow others to use the trade secret, it shall be deemed as an infringement of the trade secret. Based on the evidence in the case, it can be determined that the defendant Zhu Jiajia actually came into contact with the customer list business information claimed by the two plaintiffs, but violated the confidentiality agreement with the two plaintiffs, disclosed and used the above customer information to Lijing Company, and actually contacted the customer list claimed by the two plaintiffs 41 companies other than Jiangxi Tianjia Technology Co., Ltd. have conducted business transactions, and their behaviour improperly used the competitive advantage brought by the customer information obtained by the two plaintiffs through their business accumulation, and constituted a violation of the trade secrets enjoyed by the two plaintiffs. Infringement; Lijing Company knew or should have known Zhu Jiajia's above-mentioned illegal activities, but still used the business information to engage in direct competition with the two plaintiffs in order to profit, which also constituted an infringement of the trade secrets enjoyed by the two plaintiffs. The reasons are as follows:

First of all, the two plaintiffs and the defendant Lijing Company are both enterprises dealing in chemical products and raw materials, and they have a competitive relationship with each other.

Secondly, regarding the trade secrets of the two plaintiffs, the defendant Zhu Jiajia and the two plaintiffs have the relevant confidentiality period until the trade secrets are disclosed. Regardless of whether Zhu Jiajia is in office, it does not affect the confidentiality agreement assumed by the confidentiality obligation. Zhu Jiajia worked as a salesperson for the 42 customers involved in the case claimed by the two plaintiffs during the work of the plaintiff. According to her authority, he was able to access the business information of the 42 customer lists claimed by the two plaintiffs, and knew the transaction needs and trading habits of these specific customers. , Price acceptance range and related contact information. According to the evidence in the case, in the nearly one year or so after Zhu Jiajia left and joined Lijing Company as a salesperson, Lijing Company had business transactions with 41 customers out of the 42 customer list claimed by the plaintiff, and Most of the products in the transaction were the same as the products traded by the two plaintiffs and these customers, and the prices of some of the products were lower than the prices provided by the two plaintiffs to these customers. In combination with the defendant Zhu Jiajia's resignation from the plaintiff before and after his departure from the plaintiff, he issued targeted invitations to some of the customers involved in the case regarding the purchase of goods from Lijing Company, and the statement that the price would be lower than the plaintiff. As the actual controller of Lijing Company, Zhu Jiajia and Lijing Company Without providing convincing facts and reasons, it can be concluded that the defendant Zhu Jiajia violated the confidentiality agreement with the two plaintiffs by disclosing and using the obtained customer information to Lijing Company. As a competitor of the two plaintiffs in the same industry, Lijing Company still used the above-mentioned customer information and had actual transactions with 41 companies except Jiangxi Tianjia Technology Co., Ltd. when it knew and should have known Zhu Jiajia’s illegal activities. The two plaintiffs’ competitive advantages were improperly used to cause damage to the two plaintiffs, so the actions of the two defendants constituted an infringement of the two plaintiffs’ trade secrets.

As for the descriptions of some of the customers provided by the two defendants, it was asserted that the customers voluntarily entered into transactions with Zhu Jiajia and Shanghai Lijing Trading Co., Ltd. based on their trust in Zhu Jiajia. In this regard, this court believes that the “ Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Unfair Competition Civil Cases ” clearly stated that “the client conducts market transactions with the employee’s unit based on personal trust in the employee, and the employee’s resignation can prove If a customer voluntarily chooses to conduct market transactions with himself or his new unit, it shall be determined that no unfair competition methods have been used, unless the employee and the original unit have agreed otherwise." In this case, first the defendant Zhu Jiajia and the two plaintiffs had an agreement that whether Zhu Jiajia was in office would not affect her obligation of confidentiality, and that Zhu Jiajia would not assist any third party who did not undertake the obligation of confidentiality to use the two plaintiffs’ trade secrets; secondly, the defendant had no evidence to prove The clients involved

in the case established a trading relationship with the two plaintiffs because of Zhu Jiajia's personal investment and dedication. In fact, these customers were also assigned by the two plaintiffs to Zhu Jiajia for management after Zhu Jiajia joined the plaintiffs. Zhu Jiajia was provided by the two plaintiffs. Only material and other conditions have obtained the opportunity to contact and trade with customers; once again judging from the evidence content of the "Statement" provided by the two defendants, it is also impossible to prove that the transactions between Lijing Company and these customers were initiated by customers. Therefore, the relevant defences of the two defendants claiming personal trust were rejected by this court.

Regarding the third focus of controversy, this court believes that the two defendants infringed on the common commercial secrets of the two plaintiffs and should bear corresponding legal liabilities in accordance with the law. The two plaintiffs now claim that the two defendants should stop the infringement and jointly compensate the legal liabilities for economic losses. This court can support it.

Regarding the amount of compensation, since it is difficult to determine the actual economic losses suffered by the two plaintiffs due to the infringement in this case, and it is also difficult to determine the amount of economic benefits that the two defendants received due to the infringement, this court will operate a secret office based on the two plaintiffs to establish a list of clients involved. The efforts made, the transaction price of similar products in the past, the nature of the infringement by the two defendants, the circumstances, the subjective fault, the duration of the infringement, and the reasonable fees paid by the two plaintiffs to stop the infringement, etc., determine what the two defendants should bear. The amount of compensation.

In summary, in accordance with the " People's Republic of China Anti-Unfair Competition Law " Article 9, paragraph 1, paragraph 3 , paragraph 2, paragraph 3 , Article 17 , "The Supreme People's Court on the application of law in the trial of civil cases of unfair competition interpretation of several issues " article 9, paragraph , Article X , Article XI , Article XIII , Article XIV , Article XVI , Article XVII provisions, the verdict is as follows:

1. Defendant Zhu Jiajia and Defendant Shanghai Lijing Trading Co., Ltd. shall immediately cease infringing upon the plaintiff Shanghai Haoshen Chemical Reagent Co., Ltd. and the plaintiff Shanghai Meishu Chemical Co., Ltd.'s list of customers involved in the case (see attachment for details) ;

2. The defendant Zhu Jiajia and the defendant Shanghai Lijing Trading Co., Ltd. shall jointly compensate the plaintiff Shanghai Haoshen Chemical Reagent Co., Ltd. and the plaintiff Shanghai Meishu Chemical Co., Ltd. for economic losses of RMB 600,000 within ten days from the effective date of this judgment;

3. The defendant Zhu Jiajia and the defendant Shanghai Lijing Trading Co., Ltd. shall jointly and severally compensate the plaintiff Shanghai Haoshen Chemical Reagent Co., Ltd. and the plaintiff Shanghai Meishu Chemical Co., Ltd. for the reasonable expenses paid to stop the infringement within 10 days from the effective date of this judgment 73,000 yuan.

If the obligations of paying money fails during this specified in the judgment, should be in accordance with the " Civil Procedure Law of People's Republic of China " fifty-three Article applies, no pay double interest on the debt during the delay in performance.
The case acceptance fee of 14,394 yuan and property preservation fee of 5,000 yuan totaled 19,394 yuan. The plaintiff Shanghai Haoshen Chemical Reagent Co., Ltd. and the plaintiff Shanghai Meishu Chemical Co., Ltd. should bear 3,394 yuan, and the defendant Zhu Jiajia and the defendant Shanghai Lijing Trading Co., Ltd. should bear 16,000 yuan. yuan.
If you disagree with this judgment, you can submit an appeal petition to this court within 15 days from the date of service of the judgment, and submit copies according to the number of parties or representatives of the other party, and appeal to the Shanghai Intellectual Property Court.

Attachment: List of clients involved:

1. Shanghai Haobixin Industry and Trade Co., Ltd.
2. Shanghai Leiyunshang Fengbang Pharmaceutical Co., Ltd.
3. Shanghai Jushi Chemical Co., Ltd.
4. Shanghai Wansen Water Treatment Co., Ltd.
5. Shanghai Rongxun Chemical Co., Ltd.
6. Shanghai Antolite Aluminum Co., Ltd.
7. Shanghai Chuangding Machinery Technology Co., Ltd.
8. Shanghai Dongmei Chemical Co., Ltd.
9. Shanghai Parker Precision Co., Ltd.
10. Shanghai Pinxin Metallurgical Equipment Co., Ltd.
11. Shanghai Qilin Additives Co., Ltd.
12. Shanghai Ruixin Technology Instrument Co., Ltd.
13. Shanghai Shanli Petrochemical Equipment Co., Ltd.
14. Shanghai Guangsheng Technology Co., Ltd.
15. Shanghai Lebao Daily Chemical Co., Ltd.
16. Shanghai Minglie New Material Co., Ltd.
17. Shanghai Feiji Trading Company
18. Shanghai Cyber Chemical Co., Ltd.
19. Shanghai Jiahao Adhesive Products Co., Ltd.
20. Jiangsu Zhongneng Chemical Co., Ltd.
21. Shanghai Nuocheng Pharmaceutical Co., Ltd.
22. Qingdao Jinhuiyuan Electronics Co., Ltd.
23. Shanghai Jiangying Environmental Protection Equipment Co., Ltd.
24. Qingdao Shengrunxian Electronics Co., Ltd.
25. Jiangsu Shitong Coloring New Material Co., Ltd. (formerly Funing Shitong Chemical Co., Ltd.),
26. Shanghai Benro Food Co., Ltd.
27. Shanghai Guojie Plastic Packaging Products Co., Ltd.
28. Shanghai Hanyu New Material Co., Ltd.
29. Shanghai Haoju Chemical Technology Co., Ltd.
30. Shanghai Huahong Metal Products Co., Ltd.
31. Shanghai Jinban Pharmaceutical Co., Ltd.
32. Shanghai Jinyuan Weituo Environmental Protection Equipment Engineering Co., Ltd.
33. Shanghai Maiqi Biological Technology Co., Ltd.
34. Shanghai Wanchun Electric Co., Ltd.
35. Semiconductor Manufacturing International (Shanghai) Co., Ltd.
36. Shanghai Puge Automation Equipment Co., Ltd.

37. Shanghai Liwusheng Nano Technology Co., Ltd.
38. Shanghai Yaoyao Spices Co., Ltd.
39. Sichuan Shangte Technology Co., Ltd.
40. Huangshan Pingyi Environmental Protection Technology Co., Ltd.
41. Liying Electronic Technology (Shanghai) Co., Ltd.
42. Jiangxi Tianjia Technology Co., Ltd.

Presiding Judge: Jin Ying
Judge: Wang Tingyu
People's Juror: Wu Kuili
October 23, 2019
Clerk: Gao Shenbo

Case 3

First-instance civil judgment for disputes over infringement of business secrets between Beijing Hongwei Xianchuang Technology Co., Ltd. and Beijing Shicheng Weiye Technology Development Co., Ltd.

Trial court :People's Court of Shijingshan District, Beijing
Case number:(2018) Beijing 0107 Minchu 1518
Referee date:2019.06.27
Cause of the case:Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes [Unfair Competition, Monopoly Disputes]>Infringement of Trade Secret Disputes [Infringement of Trade Secret Disputes]>Disputes over Infringement of Business Secrets [Disputes over Infringement of Business Secrets]

Plaintiff : Beijing Hongwei Xianchuang Technology Co., Ltd., domiciled at D1803, No. 18 Jianshe Road, Kaixuan Street, Liangxiang, Fangshan District, Beijing.

Legal representative: Hui Dengfeng, chairman of the board.

Entrusted litigation agent: Chang Zhiguo, lawyer of Beijing Tianchi Juntai Law Firm.

Agent ad litem: Gu Ran, female, employee of Beijing Hongwei Xianchuang Technology Co., Ltd.

Defendant : Sun Juan, female, born on June 18, 1990, Han nationality, unemployed, living in Changping District, Beijing.

Defendant : Li Luya, female, born on August 26, 1983, Han nationality, unemployed, living in Changping District, Beijing.

Defendants Sun Juan and Li Luya co-appointed litigation attorney: Liao Hui, lawyer of Beijing Zhaojun Law Firm.

Defendant : Beijing Shicheng Weiye Technology Development Co., Ltd., domiciled at 510, 5th Floor, Building 1, No. 91 Shashun Road, Xiaotangshan Town, Changping District, Beijing.

Legal representative: Li Shuhong, general manager.

Attorney attorney: Shao Juan, lawyer of Beijing Changxing Law Firm.

The plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd. (hereinafter referred to as Hongwei Xianchuang Company) and the defendants Sun Juan, Li Luya, and Beijing Shicheng Weiye Technology Development Co., Ltd. (hereinafter referred to as Shicheng Weiye Company) in the case of infringement of business secrets, this court in 2018 After the case was filed on January 22, ordinary procedures were applied in accordance with the law, and the trial was held in private. The accredited litigation agents Chang Zhiguo and Gu Ran of the plaintiff Hongwei Xianchuang, the defendants Sun Juan, Li Luya and their co-appointed litigation agents Liao Hui, and the appointed litigation agent Shao Juan of the defendant Shicheng Weiye attended the court. The case has now been concluded.

The plaintiff Hongwei Xianchuang Company filed a lawsuit with this court: 1. Order the three defendants to immediately stop disclosing, using, and allowing others to use the plaintiff's trade secrets; 2. Order the three defendants to eliminate the impact and publicly apologize to the plaintiff; 3. The three defendants were ordered to compensate the plaintiff for economic losses of 3 million yuan, including reasonable expenses, namely, legal fees of 30,000 yuan, and the remaining part was economic losses; 4. The litigation costs in this case were jointly borne by the three defendants. Facts and reasons: On July 10, 2007, the plaintiff (formerly known as Beijing Hongwei Jinling Technology Development Co., Ltd.) was registered and established. It is a supplier of domestic examination rooms and venue safety technology prevention products, services and comprehensive solutions. To build a designated brand for standardized examination rooms for educational examinations. Mainly engaged in high-tech cheating prevention and control systems, invisible headphones and cheating signal detectors, and candidate identification systems. The plaintiff invested millions of yuan each year to develop a series of products in the field of safety technology prevention in the examination room and venue, and won honours and titles such as national high-tech enterprises. The plaintiff spent a huge amount of money to promote the brand and expand customers. After ten years of painstaking efforts, he developed and accumulated a large amount of customer information, and entered the customer name, contact number, demand, sales situation, pricing plan and other information into the customer management system developed by the plaintiff. Classify and determine different marketing strategies. The plaintiff has taken complete confidentiality measures, including signing a "confidentiality agreement" with all personnel who have access to core secrets, and leaving for audit. The defendant Li Luya entered the post on February 19, 2012, and successively held important core positions such as project manager and product manager. Defendant Sun Juan entered the post on March 18, 2013 and successively held important positions such as business assistant of the business marketing department. During their employment, the two defendants were the main target of the plaintiff's training, but before leaving their jobs, the two actively collected and sorted out customer information, logged into the customer management system many times to export customer information, accessed the company's file server data, and privately shared important company data, information, and documents. Copy, copy and carry it out. On December 9, 2016, the two defendants registered the defendant Shicheng Weiye Company in the name of Sun Juan's parents. Its business scope was similar to that of the plaintiff, and the products sold were exactly the same, and there were a large number of transactions after the two defendants resigned. Defendants Sun Juan and Li Luya used the customer information stolen from the plaintiff to send text messages, post promotional materials and colour pages to the plaintiff's core users and agents, and sell similar products at low prices in accordance with the plaintiff's pricing plan, which led to the plaintiff's customers and agents Running orders resulted in a sharp decline in performance and damage to goodwill. In summary, we urge the court to strictly enforce the law and protect the plaintiff's legitimate interests.

The defendants Sun Juan and Li Luya jointly argued that: 1. When the second defendant resigned, the plaintiff presided over the resignation or resignation audit. After it was proved that the second defendant had no problems, the plaintiff agreed to resign. 2. During the period of the second defendant, especially Sun Juan, it was impossible to have access to the plaintiff's complete customer information. According to the plaintiff, the customer management system is an important information system, and extremely strict security measures must be taken. Sun Juan is just an ordinary employee of the company, working in cooperation with other core positions in the company, and his resignation is only because the plaintiff arranged for him Leaving Beijing to work, and Sun Juan did not want to

leave Beijing, so she left. Li Luya temporarily resigned due to physical discomfort. The two defendants did not participate in the operation of the defendant Shicheng Weiye after leaving their posts. 3. The so-called losses cited by the plaintiff to the court may be caused by a variety of possible factors. It may be due to the plaintiff's mismanagement leading to a decline in performance, or it may be a decline in normal business caused by changes in the purchasing unit's situation, and there is no inevitable causal connection with the two defendants. In summary, the plaintiff's prosecution against Sun Juan and Li Luya has no factual or legal basis, and we implore the court to dismiss the prosecution against the two defendants.

The defendant Shicheng Weiye argued that the defendant's customer information acquisition channels were legal and compliant and did not use the plaintiff's customer information, nor did the plaintiff have evidence to prove that the defendant used its customer information. Since the defendant's business operations, the company's transaction records and among the customers that have been transacted have a very low coincidence rate with the plaintiff's customers. Therefore, the plaintiff's economic losses are not related to the defendant's, and the court should dismiss the plaintiff's claims.

The parties submitted evidence in accordance with the lawsuit request, and this court organized the parties to exchange evidence and cross-examine. For the business license, product and test report, qualification and honour certificate, patent certificate and copyright certificate, customer management system software, employee confidentiality agreement signed by Sun Juan and Li Luya, the labour contract of Sun Juan and Li Luya submitted by the plaintiff Hongwei Xianchuang Company, The letter of commitment signed by Sun Juan, Li Luya's resignation letter, customer export record web page printout, mobile device use record printout, defendant Shicheng Weiye's basic business license information web page printout, employee entry registration form, copy of Li Luya's temporary residence permit, Printouts of products and promotional materials, printouts of some of the defendant's customers, Li Luya's memorandum of understanding on auditing unauthorized conduct of Li Luya's departure, Li Luya's memorandum of understanding on auditing of unauthorized conduct of leaving work, Sun Juan's memorandum of understanding on auditing of unauthorized conduct of departures, Sun Juan's memorandum of understanding on auditing of unauthorised conduct of departures Material and information application filing, declaration, Sun Juan and Li Luya's core position employee resignation confirmation letter, customer QQ chat record printouts and other evidences. Defendants Sun Juan and Li Luya's evidence on the authenticity of the customer management system software and customer export records in the above evidence Objections to the authenticity of the printouts of web pages and mobile device usage records, and no objection to the authenticity and legality of other evidence, but objections to the relevance; the defendant Shicheng Weiye Company prints the products and promotional materials in the above evidence The authenticity of the document is not recognized, and there is no objection to the authenticity and legality of other evidence, but the relevance and purpose of the proof are objected.

For the plaintiff Hongwei Xianchuang Company's invoice information summary sheet and copy of the list details, xxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx, Beijing Hongwei company IT electronic information and office automation management system, CRM company platform basic configuration and maintenance guidance document, SERVERO server shared file operation log record, Sun Juan resignation transfer form, Final customer data, printouts of contact data, printouts of contract review toolkit of the large market

department, plaintiff's tax return, ××××××××××××××××××××××××× ××××××××××××××××××××, agent purchase contract and telephone recording, lawyer's agency contract and invoice, plaintiff's and agent's QQ chat record printout, etc., defendant Sun Juan and Li Luya recognized the authenticity of Shicheng Weiye's invoice information summary and list details, original contracts and invoices, Sun Juan's resignation form, plaintiff's tax declaration, lawyer's agency contract and invoices, but Objections to the relevance, the authenticity of other evidence is not recognized; the defendant Shicheng Weiye Company recognizes the authenticity of the original contract and invoice in the above evidence, but does not recognize the purpose of the proof, and the authenticity of other evidence Both sexes raised objections.

During the evidence exchange process hosted by the court, the technicians of the plaintiff Hongwei Xianchuang Company demonstrated in court the customer management system software, customer export records, and mobile device usage records.

The defendants Sun Juan and Li Luya did not submit evidence.

For the brief description of the product on sale and the printout of the promotional page submitted by the defendant Shicheng Weiye Company, ×××××××××××××××××××××××××××××× ×××××××××××××× and other evidence, the plaintiff Hongwei Xianchuang has no objection to the authenticity of the above-mentioned evidence, but raises objection to the relevance or the purpose of the proof; the defendants Sun Juan and Li Luya have both No objection. For the defendant Shicheng Weiye Company's customer information collection channel printouts, printouts of products on sale and product introductions, ×××××××××××××××××××××××××××× ××××××××××××××××, QQ chat log print, Guangzhou Haoxin Electronic Technology Co., Ltd. website screenshot print, Shenzhen Jingtan Security Equipment Co., Ltd. website screenshot print, purchase Evidence such as copies of invoices, copies of sales invoices, CDs of customer information sources, web search prints, web prints of fields where metal detector shields are widely used, educational system directories, etc. The plaintiff Hongwei Xianchuang does not accept the above evidence Acknowledged that the defendants Sun Juan and Li Luya have no objection to the above evidence.

In the litigation, according to the application of the plaintiff Hongwei Xianchuang Company, this court obtained the invoices issued by the defendant Shicheng Weiye Company from April 2017 to December 2018 from the Beijing Changping District Taxation Bureau of the State Administration of Taxation (hereinafter referred to as the Changping Taxation Bureau). Information; According to the application of the defendant Sun Juan, the Beijing Xinnuo Judicial Appraisal Office issued the Beijing Xinnuo Judicial Appraisal Opinion from the Beijing Municipal Public Security Bureau's Changping District Public Security Bureau. Both parties have no objection to the authenticity of the evidence obtained by this court. The plaintiff Hongwei Xianchuang Company raised objections to the relevance of the judicial appraisal opinions, and the defendants Sun Juan, Li Luya, and Shicheng Weiye Company objected to the relevance of the invoice information.

Regarding the above-mentioned evidence submitted by both parties and the evidence obtained by the court, the certification opinions of this court are as follows: the two parties have no objection to the authenticity of the evidence, and this court will confirm the authenticity of the relevant evidence after review; for the plaintiff Hongwei Xianchuang Company The customer management system software and relevant screenshot prints, final customer data, and contact data prints were demonstrated in court by the plaintiff and

verified by the court, and there are other evidences such as sales contracts and invoices that have been confirmed to be authentic. Its authenticity will be confirmed, and the purpose of the proof will be confirmed in the part deemed by this court; for customer export records web page printouts, mobile device use records printouts, product and promotional materials printouts, photos of the Shandong examination office venue, and multiple recording evidence , Plaintiff and supplier ××××QQ chat records, IT electronic information and office automation management system, CRM company platform basic configuration and maintenance guidance documents, SERVERO server shared file operation log records, large marketing department contract review toolkit prints, A printed copy of the QQ chat history between the plaintiff and the agent. The above evidence was prepared unilaterally by the plaintiff. If the three defendants raise objections and there is no other evidence to support them, this court will not confirm the above evidence and reject some of the evidence. The reason will be detailed in the part deemed by this court; for the explanation of the XX Education Examination Centre on Beijing Shicheng Weiye Technology Development Co., Ltd. related business transactions, the authenticity of the explanation will be confirmed by this court after checking the original.

For the defendant Shicheng Weiye Company's customer information collection channel printouts, printouts of products on sale and product introductions, ××××××××××××××××××××××××××× ××××××××××××××××, Guangzhou Haoxin Electronic Technology Co., Ltd. website screenshot print, Shenzhen Jingtan Security Equipment Co., Ltd. website screenshot print, web search print, metal detection Evidences such as web page printouts and educational system directories in the fields where the shielding device is widely used. The authenticity of the above-mentioned evidence has been verified and approved by this court. The purpose of the proof will be confirmed in the part deemed by this court; for copies of purchase invoices and sales Copies of invoices, CD-ROMs of customer information sources, and printouts of QQ chat records are all photocopies or printouts. In the event that the plaintiff Hongwei Xianchuang raises an objection, this court cannot verify the authenticity of the above-mentioned evidence. The evidence is not confirmed.

This court determined the facts as follows: The plaintiff Hongwei Xianchuang Company (formerly known as Beijing Hongwei Jinling Technology Development Co., Ltd.) was established on July 10, 2007, and its main business is examination room, venue security technology prevention, cheating prevention and control R&D and sales of anti-cheating systems and equipment such as systems, invisible headphones and cheating signal detectors. The defendants Sun Juan and Li Luya were employees of the plaintiff Hongwei Xianchuang Company. Among them, Sun Juan joined in March 2013 and served as assistant to vice president, assistant manager and other positions, and resigned in March 2017; Li Luya joined in February 2012 and served as project manager and other positions, December 18, 2016 Leave on the day.

On December 9, 2016, the defendant Shicheng Weiye Company was established, and its business scope included the sale of anti-cheating equipment in the examination room, technical consultation, and technical services. The shareholders of the company at the time of establishment were ××× and ×××, among which ××× is the legal representative of the company, and the two are the parents of the defendant Sun Juan. Upon questioning, the defendant Shicheng Weiye Company admitted that the products it sold were the same as some products operated by the plaintiff Hongwei Xianchuang Company, and the defendant Sun Juan admitted that his parents had not engaged in relevant business before the establishment of the company.

The business secret claimed by the plaintiff Hongwei Xianchuang in this case is the customer list (including upstream suppliers and downstream purchasers). The specific content is: WeChat, telephone number, QQ number, email address, position, quotation plan (Including the purchase price of the product obtained by the plaintiff from the supplier and the plaintiff's external sales price), as well as information on the customer's purchasing intentions and trading habits. The above-mentioned information, the plaintiff, Hongwei Xianchuang Company, is stored by entering the customer management system, and has a user name, security password and usage authority. The defendant Shicheng Weiye asserted that the above information was not a trade secret and provided evidence that it obtained customer information from the websites of relevant companies and units.

According to the employee confidentiality agreement, labor contract, letter of commitment, memorandum of understanding on unauthorised conduct of leaving the post audit provided by the plaintiff Hongwei Xianchuang Company with the defendants Sun Juan and Li Luya, application for leaving the post, filing of the leave audit, application for company materials and information Evidences such as filings, declarations, and confirmation letters of resignation of employees in core positions can confirm that the defendants Sun Juan and Li Luya should be aware of the scope of information included in the company's business secrets. For example, the "Employee Confidentiality Agreement" signed by the defendants Sun Juan and Li Luya at the time of entry stated that Party B (i.e. the employee) shall not transfer Party A (i.e. the plaintiff) Technology, product formulas, training materials, customer files, company operation methods, company secrets and other related information leaked or provided to competitors. The scope of business information that may become Party A's trade secrets, including customer lists, pricing policies, purchase channels, production and sales strategies, and the composition of the project team. Party B promises that it shall not hold any position in other enterprises or institutions that produce and operate similar products or provide similar services with Party A without the prior written consent of Party A during the term of office and within 3 years after leaving. Relevant confidentiality clauses are stated in the labour contract signed by both parties. The company's core employees' resignation responsibility requirements and commitment letters signed by the defendants Sun Juan and Li Luya when they resigned also contained promises of confidentiality, confidentiality and non-competition. It has been verified that both defendants Sun Juan and Li Luya had the right to enter the customer management system during their employment.

According to the invoice information issued by the defendant Shicheng Weiye from April 2017 to December 2018, obtained by this court from the Changping Taxation Bureau, there are a number of customers who had transactions with Shicheng Weiye and the list of customers claimed by the plaintiff Hongwei Xianchuang. The customers in are the same, including: ×× ××. Moreover, according to the sales contract and invoice submitted by the plaintiff Hongwei Xianchuang Company, the time of the plaintiff's transactions with the above-mentioned customers was before the establishment of the defendant Shicheng Weiye Company.

Regarding the Jingxin [2018] Sijianzi No. 839 judicial authentication opinion issued by the Beijing Xinnuo Judicial Appraisal Institute obtained by this court, because the client list on which the authentication opinion is based is the case after the litigation, both parties respectively reported to the appraisal agency The list of clients submitted, therefore, the conclusion of the appraisal cannot objectively prove the situation at the time of the dispute in this case, so the conclusion of the appraisal opinion is not accepted by this court.

According to another investigation, the plaintiff Hongwei Xianchuang Company paid 30,000 yuan in legal fees for this case.

This court believes that based on the facts that have been ascertained, the defendants Sun Juan and Li Luya are former employees of the plaintiff Hongwei Xianchuang Company, Hongwei Xianchuang Company and the defendant Shicheng Weiye Company are in a competitive relationship, and Sun Juan's parents are shareholders of Shicheng Weiye Company. Juan's mother ××× is the legal representative of Shicheng Weiye Company.

The focus of the dispute in this case is: 1. Whether the information involved in the customer list claimed by the plaintiff meets the statutory requirements for business secrets; 2. Whether the defendant has committed the act of infringing on his business secrets claimed by the plaintiff; 3. If the infringement is established , The legal responsibilities of the defendants.

Regarding the first controversy. According to the Anti-Unfair Competition Law of the People's Republic of China (hereinafter referred to as the Anti-Unfair Competition Law), trade secrets refer to business secrets such as technical information and business information that are not known to the public, have commercial value, and have been subject to appropriate confidentiality measures taken by the right holder. information. Among them, "not known to the public" means that the relevant information is not generally known and easily available to the relevant persons in the field to which it belongs; "commercially valuable" means that the relevant information has practical or potential commercial value and can bring to the right holders Competitive advantage; "corresponding confidentiality measures" refer to the reasonable protection measures taken by the right holder to prevent information leakage in accordance with the specific circumstances such as its commercial value.

In this case, the plaintiff, Hongwei Xianchuang, claimed that the list of customers that should be protected as business secrets is a customer list that gathers many customers. The specific information includes: the position of the specific person in charge or contact person of the customer unit and the contact information of WeChat, telephone, QQ number, email, etc. , The information including the scale of the examination room, purchasing intention, transaction habits and previous transaction records obtained every time you contact the customer, the above information is obviously not the information that can be easily obtained in the public domain. Judging from the evidence provided by the defendant Shicheng Weiye, it wants to prove that customer information can be collected on comprehensive information websites, but it can only find the names, titles, fixed-line telephones, and email addresses of certain personnel in a certain unit and department. The information does not include the specific contact person and contact information of the customer responsible for the relevant business, and it is not possible to obtain important information such as purchasing intentions and trading habits. The acquisition of the above-mentioned information requires operators to make long-term efforts and reflect their business wisdom and strategies. The law also wants to protect such intangible property, rather than protecting general information. At the same time, this court also found that the plaintiff, Hongwei Xianchuang Company, has adopted the following measures for the list of clients involved in the case, including signing labour contracts and confidentiality agreements with new employees that include confidentiality clauses, signing confidentiality commitment letters with departing employees, and bringing company materials and materials for the resignation audit. Documents such as application filing, declarations,

resignation confirmation letters for employees in core positions and other documents emphasizing their continued performance of confidentiality obligations and non-competition obligations, as well as confidentiality measures such as setting passwords and permissions for the customer information management system, are sufficient to prove that they attach importance to the list of customers involved Moreover, stricter secrecy and preventive measures have been taken.

In summary, this court determined that the list of clients involved in the case for which the plaintiff Hongwei Xianchuang claimed rights meets the statutory requirements for trade secrets, and belongs to the business secrets of trade secrets protected by the Anti-Unfair Competition Law. Regarding the defence opinions of the three defendants that the list of clients involved in the case did not constitute a trade secret, the three defendants did not submit evidence sufficient to overturn the relevant claims of the plaintiff Hongwei Xianchuang Company, and it was inconsistent with the facts ascertained in this case, so the above defences of the three defendants were not accepted .

Regarding the second focus of controversy. According to the Anti-Unfair Competition Law, operators must not commit the following acts that infringe on trade secrets: (1) Obtain the right holder's trade secrets by theft, bribery, fraud, coercion, electronic intrusion or other improper means; (2) Disclosure and use Or allow others to use the trade secrets of the right holder obtained by the methods in the preceding paragraph; (3) Violate the confidentiality obligation or violate the right holder's requirements for keeping trade secrets, disclose, use or allow others to use the trade secrets they have; (4) Instigate , Inducing or helping others to violate the obligation of confidentiality or the right holder's requirements for keeping business secrets, obtain, disclose, use or allow others to use the right holder's business secrets. Any natural person, legal person, or unincorporated organization other than the operator who commits the illegal acts listed in the preceding paragraph shall be regarded as an infringement of trade secrets. A third party who knows or should know the employee, former employee, or other unit or individual of the trade secret right holder who commits the above-mentioned illegal acts and still obtains, discloses, uses or allows others to use the trade secret shall be regarded as an infringement of the trade secret. In reality, since the infringement of trade secrets must be carried out in a concealed manner, it is difficult for the right holder to prove the specific method and time of the infringer obtaining and disclosing his trade secrets from the perspective of evidence. In this case, the plaintiff Hongwei Xianchuang Company also tried to prove from the background records of the customer information management system involved and other monitoring software to prove that the defendants Sun Juan and Li Luya used their positions to facilitate the copy of the list of customers involved and disclosed it to the defendant Shicheng Weiye Company. The above-mentioned evidence was produced unilaterally by the plaintiff. In the case where the three defendants all raised objections, this court could not confirm the authenticity of the relevant evidence content, and even if the above-mentioned evidence is true, it cannot prove that the two people copied the customer list during their employment. The normal performance of duties still has another purpose, so this court will not accept the above evidence.

Based on the facts that have been ascertained, this court believes that, first of all, the defendants Sun Juan and Li Luya, as former employees of the plaintiff, have the right to enter the plaintiff Hongwei Xianchuang's customer management system to obtain the customer list, and they are clearly aware of the plaintiff's confidentiality of the customer list Requirements and how important the information is to the plaintiff's business. Secondly, the defendant Shicheng Weiye Company was established just before Sun Juan left. The

company's legal representative and shareholders were Sun Juan's parents. Sun Juan also admitted that his parents had not engaged in the examination room anti-cheating business before, and the company and the plaintiff Hongwei Xianchuang has a competitive relationship in the same industry. Third, the Anti-Unfair Competition Law stipulates that the trade secret right holder provides preliminary evidence that reasonably shows that the trade secret has been infringed, and there is evidence that the suspected infringer has channels or opportunities to obtain the trade secret, and the information used is substantially the same as the trade secret. , The suspected infringer should prove that he did not infringe on commercial secrets. Judging from the transaction situation of Shicheng Weiye Company, it has conducted transactions with at least 8 customers in the plaintiff's client list within a short period of time after its establishment, and some of them still have multiple transactions, but Sun Juan and Shicheng Weiye Company were unable to do so. Reasonable explanation and proof. The above facts are sufficient to prove that Sun Juan violated the confidentiality obligation and Hongwei Xianchuang's requirements for keeping business secrets, and disclosed to Shicheng Weiye Company the list of customers he had, and Shicheng Weiye knew that Sun Juan was aware of Hongwei Xianchuang's business secrets. The former employees still used the customer list disclosed to him by Sun Juan, and the above actions have constituted an infringement of Hongwei Xianchuang's business secrets.

In summary, this court found that the defendant Sun Juan and Shicheng Weiye Company jointly infringed on the plaintiff Hongwei Xianchuang's business secrets. However, based on the existing evidence and the facts ascertained, it is impossible to prove that the defendant Li Luya has infringed upon the plaintiff's business secrets.

On the third focus of controversy. According to the Anti-Unfair Competition Law, operators who violate the provisions of this Law and cause damage to others shall bear civil liability in accordance with the law. If the business operator violates the provisions of Articles 6 and 9 of this law, and the actual losses suffered by the right holder due to the infringement, and the benefits obtained by the infringer due to the infringement are difficult to determine, the people's court shall make a judgment on the right holder based on the circumstances of the infringement. Compensation below one million yuan.

In this case, this court has determined that the defendant Sun Juan and Shicheng Weiye Company have jointly infringed the plaintiff Hongwei Xianchuang's business secrets. Therefore, the plaintiff requested the two defendants to stop the infringement, eliminate the impact, and compensate for the loss. Supported; the plaintiff did not support the defendant Li Luya's claim due to insufficient evidence.

Regarding the way to eliminate the impact, the plaintiff Hongwei Xianchuang Company's supplementary opinion submitted after the court clearly stated that the three defendants published an apology in the well-known national news media Legal Daily to eliminate the impact. This court believes that the defendants Sun Juan and Shicheng Weiye Company have committed infringements of the plaintiff Hongwei Xianchuang's trade secrets and damaged the legitimate rights and interests of the plaintiff Hongwei Xianchuang. According to the specific circumstances of the case, the plaintiff's apology was published to eliminate the impact. The litigation request is well-founded in law and should be supported.

Regarding the amount of compensation for economic losses, the supplementary opinion submitted by the plaintiff Hongwei Xianchuang after the court clearly requires that the defendant's subjective malice, circumstances, plaintiff's losses, investigation costs and other factors should be based on the defendant's benefits, in accordance with the tenth

anti-unfair competition law. According to the third paragraph of Article 7, the compensation shall be five times the benefit of the defendant. Anti-Unfair Competition Article 17 stipulates that: if the lawful rights and interests of business operators are harmed by acts of unfair competition, they can file a lawsuit in the people's court. The amount of compensation for an operator who has suffered damage due to an act of unfair competition shall be determined according to the actual loss suffered by the infringement; if the actual loss is difficult to calculate, it shall be determined according to the benefit obtained by the infringer due to the infringement. If an operator maliciously commits an act of infringing on trade secrets and the circumstances are serious, the amount of compensation may be determined at more than one time and less than five times the amount determined in accordance with the above methods. The amount of compensation should also include reasonable expenses paid by the operator to stop the infringement. Based on the facts and relevant evidences ascertained in this case, the plaintiff Hongwei Xianchuang did not submit evidence sufficient to prove its actual losses, but the evidence in the case can find out the income of the defendant Shicheng Weiye between April 2017 and December 2018 As well as the corresponding customers, it is possible to make discretionary compensation in accordance with the infringer's benefits obtained from the infringement in accordance with the provisions of the above-mentioned law on the order of compensation methods. According to the evidence collected by our court, the invoice information issued by the defendant Shicheng Weiye from April 2017 to December 2018 showed that the transaction amount with the eight identified customers totalled more than 410,000 yuan. Since there is no evidence that the unfair competition involved in the case has ceased, this court has calculated the sales and profits since the establishment of Shicheng Weiye Company on the basis of the transaction amount, combined with the defendants Sun Juan and Shi Chengweiye Company shall determine the amount of compensation based on the fact that unfair competition is more subjective and malicious. Regarding reasonable expenditures, the court gave full support in view of the fact that the plaintiff Hongwei Xianchuang provided corresponding attorney fees.

In summary, in accordance with Article 15 of the " Law of the People's Republic of China on Tort Liability ", Articles 9 , 17, and 32 of the " Law of the People's Republic of China Against Unfair Competition " , the Supreme People's Court on Trial explain unfair competition application of laws in civil cases , " Article IX , Article X , Article XI , Article 13, paragraph 1 ," Civil Procedure law of People's Republic of China " Article 74, paragraph 1 of the Regulations, the verdict is as follows:

1. The defendant Sun Juan and Beijing Shicheng Weiye Technology Development Co., Ltd. immediately stopped infringing on the plaintiff's Beijing Hongwei Xianchuang Technology Co., Ltd. customer list involved in the case;
2. The defendant Sun Juan and Beijing Shicheng Weiye Technology Development Co., Ltd. shall jointly compensate the plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd. for economic losses of 360,000 yuan and reasonable expenditures of 30,000 yuan within ten days from the effective date of this judgment, a total of 390,000 yuan. yuan;
3. The defendant Sun Juan and Beijing Shicheng Weiye Technology Development Co., Ltd. published an apology statement in the Legal Daily within 30 days from the effective date of this judgment to eliminate the impact of the plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd. (the content of the statement must be approved by this court After review, the plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd. can publish the main content of this judgment in a nationally

distributed newspaper, and the expenses shall be borne by the defendant Sun Juan and Beijing Shicheng Weiye Technology Development Co., Ltd.);

4. Dismissed other claims of the plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd.

If the obligations of paying money fails during this specified in the judgment, the defendant Sun Juan, Beijing Science and Technology Development Co., Ltd. Albert Cheng Shi should be in accordance with the " Civil Procedure Law of People's Republic of China " fifty-three Article applies, doubling to pay the delayed period Interest on debt.

The case acceptance fee was 30,800 yuan, and the plaintiff Beijing Hongwei Xianchuang Technology Co., Ltd. was responsible for 23,650 yuan (paid), and the defendant Sun Juan and Beijing Shicheng Weiye Technology Development Co., Ltd. were responsible for 7,150 yuan (7,150 yuan from the effective date of this judgment). Pay within days).

If you disagree with this judgment, you can submit an appeal letter to this court within 15 days from the date of service of the judgment, and submit copies according to the number of parties or representatives of the other party, and appeal to the Beijing Intellectual Property Court.

Presiding Judge: Yi Zhenchun
People's Juror: Zhao Yanru
People's Assessor: Guo Shuyi
June 27, 2019
Clerk: Wang Jiao

Case 9

The first-instance civil judgment of Guangzhou Caorourou Travel Agency Co., Ltd., Guangzhou Milestone Travel Agency Co., Ltd., and Gu Zhifan on the infringement of trade secrets

Trial court :People's Court of Tianhe District, Guangzhou City, Guangdong Province
Case number:(2019) Guangdong 0106 Republic of China 1778
Referee date:2019.05.30
Cause of the case :Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes【Unfair Competition, Monopoly Disputes】>Trade Secret Infringement Disputes【Trade Secret Infringement Disputes】

Plaintiff : Guangzhou Caorourou Travel Service Co., Ltd., domiciled at **C2002, Tangdong Yu South Road, Tianhe District, Guangzhou City, with unified social credit code 9144010658762732XX.

Legal representative: Nan Qianming, general manager.

Attorney attorney: Zhao Bing, lawyer of Guangdong Tiansheng Law Firm.

Defendant : Guangzhou Milestone Travel Service Co., Ltd., domiciled at the social credit code 91440101MA5CJT181U, Guanyu Road, Tangdong, Tianhe District, Guangzhou City.

Legal representative: Yu Zhifan, executive director and general manager.

Defendant : Yu Zhifan, male, born on November 17, 1991, Han nationality, living in Shuangqing District, Shaoyang City, Hunan Province.

Defendant : Liu Yingying, female, born on August 17, 1993, Han nationality, living in Zengcheng District, Guangzhou City, Guangdong Province.

Defendant : Xie Xiaofei, female, born on February 5, 1993, Han nationality, living in Yangchun City, Guangdong Province.

The four defendants jointly appointed litigation attorney: Yuan Yongjun, lawyer of Guangdong Southern Freedom Law Firm.

The four defendants jointly appointed litigation attorney: Cen Chengbiao, a trainee lawyer of Guangdong Southern Freedom Law Firm.

The plaintiff Guangzhou Caorourou Travel Service Co., Ltd. (hereinafter referred to as Caorourou Company) and the defendant Guangzhou Milestone Travel Service Co., Ltd. (hereinafter referred to as Milestone Company), Gu Zhifan, Liu Yingying, and Xie Xiaofei in the case of a trade secret infringement dispute, this court accepted the case according to law A collegial panel was formed and the hearings were held in private. The plaintiff Cao Rourou Company appointed Zhao Bing, the litigation agent, and the defendants Milestone Company, Gu Zhifan, Liu Yingying, and Xie Xiaofei jointly appointed the litigation agents Yuan Yongjun and Cen Chengbiao to participate in the lawsuit. The case has now been concluded.

The plaintiff, Cao Rourou, alleged that the defendants Gu Zhifan, Liu Yingying, and Xie Xiaofei were employees of the plaintiff. They resigned from July to September 2018 and jointly registered and established the Defendant Milestone Company, which operated similar businesses to the plaintiff. The plaintiff found that the WeChat chats of the defendants Po Zhifan, Liu Yingying, and Xie Xiaofei showed that the three defendants uploaded the WeChat accounts of some of the plaintiff's customers to their personal mobile phones and conducted business activities with the customers. The plaintiff's customer information is the plaintiff's trade secrets. Article 6 of the labour contract signed by the plaintiff and the defendants Gui Zhifan, Liu Yingying, and Xie Xiaofei stipulates that "the work-related information, intelligence, and data (including but not limited to customer data, WeChat , QQ, travel notes, routes, pictures, company operating models, etc.) are fully owned by Party A, and must be fully handed over to Party A when Party A needs it or after resignation. At the same time, Party B must strictly abide by trade secrets, and shall not report to Party A during or after resignation. Disclosure or private use by a third party". The travel routes, publicity slogans, and business models displayed on the WeChat official account of the defendant Milestone were similar to those of the plaintiff's existing products, and obviously used the operating model known to the defendant, including the defendant, Zhizhifan, when they served with the plaintiff. Each defendant's actions infringed the plaintiff's trade secrets. In order to protect the plaintiff's legitimate rights and interests, the court filed a lawsuit requesting that the four defendants immediately stop infringing on the plaintiff's trade secrets, and delete the names of the plaintiff's customers and travel agency's local contact personnel that were downloaded and saved by the defendant. Phone, WeChat and other information.

Defendants Milestone Company, Gu Zhifan, Liu Yingying, and Xie Xiaofei jointly argued that: 1. The names, telephone numbers, WeChat and other information of the customers and travel agencies mentioned by the plaintiff in this case are not business secrets, and the customers mentioned by the plaintiff are one-time The contingent transaction partner is not part of the customer list. The contact person and mobile phone of Xining Lanyang Travel Service Co., Ltd. are information that can be obtained from public channels, which is obviously not a trade secret. 2. The four defendants did not commit acts of infringing on the plaintiff's so-called trade secrets. While the defendants Zhifan, Liu Yingying, and Xie Xiaofei were working at the plaintiff's office, the plaintiff asked the three defendants to use their personal WeChat to communicate with customers and local contacts. In the case of WeChat privately loaded onto personal mobile phones, the three defendants also completed the handover with the plaintiff when they resigned. The current three defendants only interacted with the customers mentioned by the plaintiff in the circle of friends, and there was no actual transaction and no infringement.

The investigation found that: Caorourou Company is a limited liability company, established on December 20, 2011, with a registered capital of 1 million yuan, and its business scope is business services.

Milestone Company is a limited liability company established on November 20, 2018 with a registered capital of 500,000 yuan. Its shareholders are Zhifan, Liu Yingying, and Xie Xiaofei, and its business scope is business service industry.

Gu Zhifan joined Caorou Company on March 10, 2015 as the company's deputy head of operations, and resigned on October 25, 2018; Liu Yingying joined Caorou Company on November 19, 2014 as the company's sales. Resigned on September 7, 2018; Xie Xiaofei

joined Caorourou Company on November 13, 2014 as the company's salesperson, and resigned on August 30, 2018.

Gu Zhifan, Liu Yingying, and Xie Xiaofei (Party B) signed a labour contract with Caorourou Company (Party A) during their employment, stipulating that "During the working period, Party B shall not engage in investment, part-time and other activities related to the business operated by Party A. The work-related information, intelligence, and materials (including but not limited to customer data, WeChat, QQ, travel notes, routes, pictures, company operation models, etc.) are owned by Party A, and must be complete when Party A needs it or after resignation Hand it over to Party A. At the same time, Party B must strictly abide by trade secrets, and shall not disclose to third parties or use it privately during or after resignation.

Cao Rourou Company claims that the content of its trade secrets is the customer list, contact information, and contact information of the staff of the local travel agency, telephone number, WeChat, etc., and submits the following evidence for its claim: 1. "Team Domestic Travel Contract" "Domestic Travel Four copies of the "Insurance Plan", Party A (tourist) and the insured Chen Gang, Hu Xiujun, etc., Party B (travel agency) and the insured Cao Rourou Company, the contract stipulates the travel route, departure time, number of tourists, travel arrangements and both parties Rights and obligations, the contact numbers of tourist representatives Chen Gang and Hu Xiujun are available at the contract signing office, and the travel agency’s signing representatives are all Yu Zhifan. The above contract is stamped with the special seal of the Caorourou Company. 2. "Ganqing and Qinghai Tourist Destination Access Project Travel Agency Inter-industry Reception Business Cooperation Agreement", stating that Caorourou Company and Xining Lanyang Tourism Service Co., Ltd. have signed the above agreement on tour charter car use, stipulating that Xining Lanyang Tourism Service Co., Ltd. shall be liable The company is responsible for providing the ground pick-up service for tourist routes in the business area of Caorourou Company. The contract page and the signing office are stamped with the official seals of the two companies, and the contract signing office also shows the contact number of the contact person of Xining Lanyang Tourism Service Co., Ltd. Jia Guixin. The four defendants believed that Evidence 1 did not have the original, and that the original and the copy of Evidence 2 were inconsistent with the signatures. Therefore, the authenticity of Evidence 1 and 2 was not recognized.

Caorourou Company also submitted personal WeChat information and screenshots of WeChat Moments, showing that there are multiple WeChat Moments like and comment records, intending to prove that Zhifan, Liu Yingying, Xie Xiaofei and Xining Lanyang Travel Service Co., Ltd. contact person, Chen Gang , Hu Xiujun conducts tourism marketing on WeChat page. The four defendants confirmed the identity of the persons involved in the aforementioned WeChat Moments and the facts of the likes and comments.

In response to their defence, the four defendants submitted printed copies of the Qinghai Lanyang Travel Service Co., Ltd. website, the Qinghai Lanyang Travel Service Co., Ltd. official website, and the Qinghai Lanyang Travel Service Co., Ltd. Weibo page to prove that the business of Xining Lanyang Travel Service Co., Ltd. was not a commercial secret. Caorourou Company confirmed the authenticity of the above-mentioned evidence and withdrew its claim that the contact information of the local contact person of Xining Lanyang Tourism Service Co., Ltd. belongs to its business secret.

During the trial, Cao Rourou Company stated that it had signed labour contracts with Zhifan Gu, Yingying Liu, and Xiaofei Xie, stipulating that the three defendants could only use

the mobile phones issued by the company when they were in the company to develop business. Although the three defendants handed over their work mobile phones when they resigned. Back, but the contents of the mobile phone have been transferred to the milestone company; Cao Rourou also claims that its official website shows tourism models, tourism products, tourism forms and promotional slogans. The content of the milestone company's WeChat official account is consistent with the above content , But Cao Rourou Company did not submit evidence to prove this claim.

The above facts are evidence of the labour contract submitted by Caorourou Company, the domestic travel contract for the team, the domestic travel insurance plan, the printout of WeChat screenshots, the printout of the webpage submitted by the four defendants, and the statements of both parties.

This court believes that this case is a trade secret infringement dispute. Caorourou Company claimed that the four defendants had unfair competition behaviours that infringed their trade secrets. Therefore, there are the following two controversies in this case: First, whether the information claimed by Caorourou Company constitutes Trade secrets, the second is whether the four defendants violated the trade secrets of Cao Rourou Company.

According to the fourth paragraph of Article 9 of the " People's Republic of China's Anti-Unfair Competition Law ", the term "trade secrets " in this law refers to technical information, business secrets that are not known to the public, have commercial value, and are subject to appropriate confidentiality measures taken by the right holder. Information and other commercial information. In this case, the trade secrets claimed by Caorourou Company include the customer list, contact information, and contact information of the local travel agency personnel's name, telephone number, and WeChat. This court's analysis is as follows: 1. The customer list in the trade secrets is generally Refers to the customer's name, address, contact information, and transaction habits, intentions, content and other special customer information that is different from related publicly known information, including a customer roster that gathers many customers, and specific customers who maintain long-term stable trading relationships. In this case, the list of customers that Caorourou claimed to be a trade secret only proved that it contained simple content such as the names and contact information of two customers. The above information does not belong to special customer information that is different from relevant publicly known information and cannot reflect Caorourou. The company's long-term trading relationship with customers and fixed trading habits. 2. Cao Rourou Company only provided the contact number of the contact person of Xining Lanyang Tourism Service Co., Ltd. to prove that the name, telephone number, WeChat and other contact information of the personnel of the local travel agency claimed to be a trade secret, and the court withdrew it The claim that the company's personnel information is a trade secret, so in this case, it did not submit evidence involving the contact information of the personnel of the local travel agency, and should bear the legal consequences of not being able to provide evidence. 3. Although the Cao Rourou Company agreed on confidentiality clauses and adopted certain confidentiality measures when signing the labour contract with Gui Zhifan, Liu Yingying, and Xie Xiaofei, as mentioned above, it failed to provide evidence to prove that the information it claimed was not for the public Commercial information that is known and has commercial value. 4. Cao Rourou Company maintains that the relevant content of Milestone's WeChat official account is consistent with the travel model, travel products, travel form and promotional slogan displayed on its official website, but it has not submitted evidence to prove it, and this court will not accept its claim Adopted. Based on this, this court believes that the customer list, contact information, and contact information of the local travel agency personnel's name,

telephone number, WeChat and other contact information claimed by Caorourou Company do not constitute trade secrets, and the four defendants did not infringe Caorourou Company's trade secrets. . The claim of Caorourou Company has no factual and legal basis, and this court does not support it.

In summary, in accordance with the " People's Republic of China Against Unfair Competition Law " Article IX fourth paragraph , " Supreme People's Court on the trial of civil cases of unfair competition Application of Laws " 9 (2) , tenth Article , Article 13, paragraph 1 , " Civil Procedure law of People's Republic of China " Article 74, paragraph 1 , Article 134 paragraph of the provision, the verdict is as follows:

The claim of the plaintiff Guangzhou Caorourou Travel Service Co., Ltd. was rejected.

The case acceptance fee of 100 yuan was borne by the plaintiff Guangzhou Caorourou Travel Service Co., Ltd.

If you disagree with this judgment, you can submit an appeal petition to this court within 15 days from the date of service of this judgment, and submit copies according to the number of the opposing parties, and appeal to the Guangzhou Intellectual Property Court.

Presiding Judge: Su Guosheng
Judge: Liu Qiaojing
People's Juror: Zhang Zhuyun
May 30, 2019
Clerk: Liao Mingping

Case 11

The second-instance civil judgment of Hangzhou Hangcheng Patent Office Co., Ltd., Hou Lanyu and Jiaxing Yonghang Patent Agency

Trial court :Intermediate People's Court of Hangzhou City, Zhejiang Province
Case number:(2019) Zhejiang 01 Minzhong 4315
Referee date:2019.12.13
Cause of the case :Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes【Unfair Competition, Monopoly Disputes】>Trade Secret Infringement Disputes【Trade Secret Infringement Disputes】

Appellant (plaintiff in the original trial): Hangzhou Hangcheng Patent Office Co., Ltd., domiciled at Room 505, No. 2 (Wanxin Building), Guanyihou, Shangcheng District, Hangzhou City, Zhejiang Province.

Legal representative: Wei Weimin, director.

Authorized litigation agent: Li Xueting, lawyer of Zhejiang Taihang Law Firm.

Entrusted litigation agent: Ye Mao, lawyer of Zhejiang Taihang Law Firm.

Appellee (defendant in the original trial): Hou Lanyu, female, Han nationality, born on November 7, 1981, living in Xiacheng District, Hangzhou City, Zhejiang Province.

Attorney attorney: Zhang Jin, male, Han nationality, born on October 19, 1982, lives in Jianggan District, Hangzhou City, Zhejiang Province, and is the husband of Hou Lanyu.

Appellee (defendant in the original trial): Jiaxing Yonghang Patent Agency (general partnership), domiciled at Room 1903, Ziwei Building, Haizhou Street, Haining City, Zhejiang Province.

Executive partner: Cai Ding.

The appellant Hangzhou Hangcheng Patent Office Co., Ltd. (hereinafter referred to as Hangcheng Patent Office) was a case of a trade secret infringement dispute with the appellee Hou Lanyu and Jiaxing Yonghang Patent Agency (hereinafter referred to as Yonghang Patent Office) and refused to accept Hangzhou Railway The Transportation Court (2018) Zhejiang 8601 Minchu No. 670 civil judgment appealed to this court. After the court filed the case on May 13, 2019, it formed a collegiate panel in accordance with the law and conducted an investigation on the case on September 19, 2019. Li Xueting, the entrusted litigation agent of the appellant Hangcheng Patent Office, the appellee Hou Lanyu and his entrusted litigant Zhang Jin, and Cai Ding, the executive partner of the appellee Yonghang Patent Office, attended the court to participate in the investigation. The case has now been concluded.

Hangcheng Patent Office's appeal request: 1. Revocation of the original judgment, and the revised sentence supporting items 2, 3, 4, 5, and 6 of the appellant's first instance litigation; 2. The two appellees shall bear the litigation costs of the first instance and the second instance. Facts and reasons: 1. The facts are wrong. The court of first instance held that the evidence provided by the appellant can only reflect the appellant’s customer name,

address, and contact information, but does not contain any in-depth information such as the client's specific transaction habits, transaction conditions, and transaction needs, and is not sufficient to constitute a trade secret. But in fact, the evidence 2 provided by the appellant in the first instance clearly shows that in addition to the client name, address, and contact information, the appellant's client list also includes patent name, patent type, patent legal status, and patent fee reduction information. , The counterparty company account number, certificate status, agent, receiver, business designated contact, designated contact mobile phone number, patent applicant, applicant ID number/institution code, inventor, inventor ID number, whether to announce , Issuance date, change item, priority application number, priority date, prior applicant, remarks, document details, fee details, fee name category, official fee amount, service fee, actual amount collected, reminder number, fee Order number, verification status, charging time, invoice number, official voucher number/payment date, etc., including a full range of customer information. The above information, except for some information such as customer name, business registration address, business registration contact information, patent name, etc., most of the information is not available through public channels, and the above information can fully reflect the customer's preference for types of patents and other transaction habits over the years . What kind of transaction conditions such as transaction prices are applicable, what kind of professional patent engineers and other transaction requirements information are required, and even the actual business connection of the customer, the person in charge's mobile phone number, ID number, patent documents, patent layout, legal status, and payment are all cleared Chu. According to evidence 5 and 9 of the appellant's first instance, the appellee took at least 10 clients from the appellant, resulting in 180 transactions. In this case, the appellant's first instance evidence 2 highlights the 4 clients listed in the appellant's The cooperation lasted for many years, even more than ten years. For example, Zhejiang University started on April 8, 2005, Zhejiang Sci-tech University started on October 12, 2007, Zhejiang Marine Fisheries Research Institute started on December 25, 2008, and Tongxiang Jialifeng Industrial Co., Ltd. started on May 2012. Start on the 16th. After appellee Hou Lanyu resigned on April 29, 2016, he established a cooperation with Zhejiang University on August 18, 2016 at the latest, and established a cooperation with Zhejiang Sci-Tech University on August 23, 2016, and on August 9, 2016. Established a cooperation with Zhejiang Marine Fisheries Research Institute, and established a cooperation with Tongxiang Jialifeng Industrial Co., Ltd. on August 17, 2016. The appellant's client list is the summary, accumulation and precipitation of the appellant's years of service to clients. It is the core information of the appellant's market competition. Even if the core element of confidentiality is aside, it is only necessary to collect, verify and summarize these information. The time cost and labour cost are not affordable by ordinary units. Therefore, we believe that the first-instance court's finding that the customer list is not sufficient to constitute a trade secret is an error in finding facts. 2. The applicable law is wrong. The court of first instance held that Hou Lanyu violated the promise he made at the time of resignation, but this is not within the scope of the review of this case. The appellant may claim his rights separately, that is, the court of first instance found that Hou Lanyu violated the promise he made at the time of resignation, but It is believed that other legal relations should be applied, but the court of first instance ignored a fact and a law. A fact is that Hou Lanyu's resignation commitment is a measure taken by the appellant's unit to protect trade secrets during the resignation process in the whole process of management and control. It cannot ignore the entry and on-the-job and other links and treat the final resignation commitment letter separately. Due to the particularity of the patent industry, customers ultimately need the personal docking service of patent engineers. Over time, the patent industry took orders privately and started to take away customers' black agents. As a leader in the patent industry in Zhejiang Province, the appellant felt the pain earlier than his peers,

and established the full-process trade secret protection measures for employment, in-service, and resignation earlier. Therefore, when the appellant's employees are recruited, they are clearly informed and agreed upon in the "Labour Contract" and "Agreement on Intellectual Property Protection and Trade Secret Protection" as well as the corresponding protection clauses. In the on-the-job link of employees, a special management system will assign specific account passwords to control trade secrets. The protection of trade secrets will be reiterated during the employee's resignation process. Usually, employees will indicate that they will not infringe on trade secrets and will not take away customer resources. Therefore, the letter of undertaking made by Hou Lanyu at the time of resignation is a link in the overall management and control of the appellant's business secret protection measures. It is that when he resigns, he reiterated the protection of the appellant's trade secrets, indicating that there will be no infringement of trade secrets. The statement is not an independent agreement without a reason. A legal provision is the labour contract law. The law stipulates that unless the labourer violates the competition restriction or the service period agreement, the labourer's liability for breach of contract will be deemed invalid. Therefore, the undertaking involved in this case is not only used as a link in the protection of trade secrets, but also applicable to the protection of trade secrets. Except for the Anti-Unfair Competition Law of the People's Republic of China , there is no application of contract law, labour law and other laws and regulations in the letter of commitment. The court of first instance held that the appellant can make other claims based on other legal relationships, which is impossible to rely on. 3. Other circumstances. (1) The litigation request was changed in court according to the judge's request and the judgment was not changed. At the time of the lawsuit in this case, the content of the appellant's petition 2 was "to order the two defendants to stop unfair competition, and not to disclose or allow others to use the plaintiff's business secrets in their possession." During the trial, the change was confirmed upon the request of the court to order the two defendants to stop the unfair competition, but the judgment in this case did not make the change for unknown reasons. (2) The content of the appellee's current clients and the appellant's client list is substantially the same, but the appellee cannot explain the legitimacy of the information it obtained. The appellant has provided evidence to prove that the appellee's current client is a client in the original appellant's client list, and the content of the client information of both parties is substantially the same, so as to prove that the appellee's existence constitutes the disclosure and use of trade secrets or allows others to use trade secrets Probability standards. According to the rules of proof, the appellee believes that the customer list is public information, and if he obtains customer information through legitimate channels, he shall bear the corresponding burden of proof. Moreover, according to Article 13 paragraph 2 of the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Unfair Competition Civil Cases " , the client conducts market transactions with the employee's unit based on the trust of the employee. After resignation, it can be proved that the client voluntarily chooses to conduct market transactions with himself or with his new unit, it shall be determined that no improper means have been used, unless otherwise agreed between the employee and the original unit. Therefore, according to the letter of undertaking made by Hou Lanyu when she resigned, even if the customer chooses voluntarily, it is an act of unfair competition. (3) Some facts of this case test the legal principle of honesty and core socialist values. The simple fact of this case is that the appellant notified the client list and other information as the appellant's business secrets through various methods such as the Labour Contract and the Agreement on Intellectual Property Protection and Trade Secrets Protection when Hou Lanyu entered employment. Hou Lanyu has worked in the appellant's unit for 8 years. During his tenure, he has been using the appellant's management system with the account and password assigned by the appellant, from assistant to mature patent engineer. At the

time of resignation, the appellee made another promise. The appellant did not deny Hou Lanyu's current work ability and customer service ability, but in fact, the two parties have always been aware of what trade secrets and customer lists are not important, and how to protect them. Bright. The appellant believes that any legal judgment must not be separated from simple facts, and this case should not deviate from basic social value judgments. In summary, the judgment of the first-instance court has some facts and the application of law in that there are errors in the facts and the application of the law, and the court of second-instance is requested to revise the judgment in accordance with the law.

Hou Lanyu replied that the first and first-instance courts clearly identified the fact that the list of clients claimed by the appellant did not constitute a trade secret. According to my country's Anti-Unfair Competition Law and relevant judicial interpretations, the appellant claimed that his client list constitutes a trade secret, and at least he must prove the peculiarity of his client information and that he has a long-term and stable transaction relationship with the client. Its labour, money, and effort for customer information. In this case, the appellant shall bear the burden of proof to prove the content and scope of the trade secrets it possesses, the protective measures adopted, and the specific acts of unfair competition carried out by the appellee. However, the appellant failed to provide sufficient and effective evidence in this case to prove that the list of clients he claimed constituted a trade secret. The court of first instance found this correct. 2. The court of first instance applied the law correctly. At the same time, it is emphasized that the letter of undertaking has nothing to do with the judgment of infringement of trade secrets. It can neither prove the composition of trade secrets nor prove whether there is any violation of trade secrets. 3. Other circumstances. The appellee has explained the situation in the client patent list listed by the appellant in the cross-examination of evidence in the first instance, and the appellant listed is not a client who has a long-term stable trading relationship with the appellant. In summary, the first-instance court found the facts clear and the procedures were legal, and requested to reject the appellant's appeal request and uphold the original judgment.

Yonghang Patent Office argued that Hangcheng Patent Office should not list him as a defendant in the original trial. Yonghang Patent Office did not know the agreement between the appellant and Hou Lanyu and requested the court of second instance to uphold the original judgment.

Hangcheng Patent Office filed a lawsuit with the original court: 1. Confirm that Hou Lanyu and Yonghang Patent Office constitute unfair competition; 2. Order Hou Lanyu and Yonghang Patent Office to stop unfair competition, and shall not disclose, use or allow others to use it The business secrets of Hangcheng Patent Office in his possession; 3. Order Hou Lanyu and Yonghang Patent Office to compensate Hangcheng Patent Office for the loss of operating profit of RMB 300,000; 4. Order Hou Lanyu and Yonghang Patent Office to compensate Hangcheng Patent Office The reasonable cost of the rights protection expenditure was RMB 5,000; 5. Hou Lanyu and Yonghang Patent were ordered to bear the litigation costs of this case; 6. Hou Lanyu and Yonghang Patent were jointly and severally liable within the scope of the above 5 litigation claims.

The original trial court confirmed the fact: Hangcheng Patent Office was established on December 11, 2001, with a registered capital of RMB 5 million. Business scope: Services: Patent application, re-examination, invalid patent affairs, patent disputes, patent consultation, and patent Consultant, patent search, patent technology transfer intermediary, provide intellectual property consulting, business (technical) secret protection consulting services, patent customs filing services, agent computer software registration

procedures, foreign patent agency, intellectual property management system evaluation services, intellectual property rights Review service, trademark agency, etc.

Hangcheng Patent Office and Hou Lanyu signed labour contracts four times on December 17, 2008, September 3, 2009, September 16, 2011, and October 28, 2015, respectively, and agreed that Hou Lanyu would act as the patent attorney assistant. , The contract period is from September 23, 2008 to September 14, 2019. On December 17, 2008, the two parties signed an "Intellectual Property Protection and Trade Secrets Agreement", stipulating that the main content of confidentiality is: confidential information obtained by employees, including but not limited to: company's financial data; customer information, customers Channels and work plans and measures; customer's patented technology, information, software, hardware, etc. and company-related information. The obligation of confidentiality is: Hou Lanyu agrees to keep the company's trade secrets and customer's technical secrets for a long time, and will not use or disclose the company's trade secrets and customer technical secrets to any third party without the permission of Hangcheng's patent; during the period of employment or within two years of leaving the company Do not participate in activities organized by other companies that compete with the company. As Hou Lanyu promised and signed this confidentiality agreement, Hangcheng Patent Office paid Hou Lanyu a pledge of 200 yuan per month.

On April 21, 2016, Hou Lanyu applied for resignation on the grounds that he needed to take care of his body, and formally resigned from the Hangcheng Patent Office on the 29th of that month. On May 24, 2016, Hou Lanyu signed a letter of undertaking: After leaving the Hangcheng Patent Office, he will not take away any of Hangcheng's customers, and will not have any profit-making business relationships with customers during the work period of Hangcheng. If He violated the above undertakings and voluntarily accepted a penalty of 100,000 yuan. The above commitments are voluntary commitments, true and effective, without any coercive factors.

Yonghang Patent Office was established on June 12, 2016. The shareholders are Hou Lanyu, Jiang Chengpeng and Cai Ding, and the executive partner is Cai Ding. The company's business scope: patent agency services; patent consulting services; copyright agency services; trademark agency services; copyright agency services; corporate management consulting services; technology project declaration consulting services; legal consulting services. Hou Lanyu participated in the establishment of Yonghang Patent Office and took away the clients of Hangcheng Patent Office. The original clients of Yonghang Patent Office and Hangcheng Patent Office have profited from multiple transactions.

Upon investigation, the Hangcheng Patent Office paid a total of 5,000 yuan in attorney fees for this case.

The court of first instance held that, based on the facts ascertained by the court and the opinions of both parties, the focus of the dispute in this case was whether the trade secrets claimed by Hangcheng Patent existed and whether the actions of Hou Lanyu and Yonghang Patent Office infringed upon Hangcheng Patent Office. Proposed trade secrets. The lawsuit filed by Hangcheng Patent is a trade secret infringement lawsuit. Therefore, Hangcheng Patent Office has the burden of proving the content and scope of the trade secrets it possesses, the confidentiality measures adopted, and the specific unfair competition behaviours implemented by Hou Lanyu and Yonghang Patent. The trade secrets claimed by Hangcheng Patent are the client list. Article 9 of the " People's Republic of China Anti-Unfair Competition Law " stipulates: "The commercial

secrets mentioned in this article refer to technical information and business information that are not known to the public, have commercial value, and have been protected by the right holder." Supreme People's Court on several issues hear civil cases application of unfair competition law interpretation " of Article XIII provides that:" trade secret list of customers, generally refers to the customer's name, address, contact information and transaction habits, intentions, content The composition of special customer information that is different from related publicly known information, including customer lists of many customers, and specific customers who maintain long-term and stable trading relationships." The court of first instance held that "specific customer information" in trade secrets generally refers to specific The non-public contact information, transaction habits, transaction conditions, demand situation, transaction content and other specific information are obtained by the operator through long-term, stable, and specific contributions. The protection is for the operator to realize the relationship with the specific customer. The long-term accumulation and contribution of trust and stable relationship belong to the unique and exclusive customer information of the operator. In this case, the evidence submitted by Hangcheng Patent can only reflect the customer's name, address, and contact information, but it does not contain the customer's specific transaction habits, transaction conditions, and transaction requirements. According to the evidence submitted by the Hangcheng Patent, the court was unable to determine the specific content of the trade secrets it claimed, and was unable to determine whether the list of clients claimed by the Hangcheng patent belonged to distinguished related publicly known specific customer information and whether it had corresponding commercial value. Therefore, Hangcheng Patent Office failed to provide sufficient and effective evidence to prove that its claimed client list constituted a trade secret, and it should bear the legal consequences of not being able to provide evidence. Therefore, the court of the original trial rejected the claims of Hangcheng Patent Office according to law.

Although the evidence submitted by the Hangcheng Patent in this case is not sufficient to prove that the Hou Lanyu and Yonghang patents constitute an infringement of the trade secrets claimed by the Hangcheng Patent, Hou Lanyu promised in writing that he would not bring along after leaving the Hangcheng Patent Office. Any client who visits Hangcheng Patent Office will no longer have business dealings for profit with clients during the work period of Hangcheng. If he violates his promise, he will voluntarily accept a penalty of 100,000 yuan in liquidated damages. Hou Lanyu proposed that the letter of undertaking was signed under coercion, but the evidence submitted by Hou Lanyu was not sufficient to prove the fact that he signed the letter of undertaking under coercion, so this proposition of Hou Lanyu was not accepted. Hou Lanyu took advantage of his work as an assistant to the patent attorney of the Hangcheng Patent Office to take away the customers of the Hangcheng Patent Office and had business dealings with the customers of the original Hangcheng Patent Office for profit. The above behaviour of Hou Lanyu violated the promise he made at the time of resignation, but this was not within the scope of the examination of this case, and Hangcheng Patent Office could claim his rights separately. To sum up, the original court in accordance with Article 10 of the " People's Republic of China Anti-Unfair Competition Law " , "The Supreme People's Court Interpretation on Several Issues Concerning the Application of Law in the Trial of Unfair Competition Civil Cases " Article 13 and the " Civil Procedure Law of the People's Republic of China " According to Article 64 , the judgment is as follows: the litigation request of Hangcheng Patent Office is rejected. The case acceptance fee was 5875 yuan, which was borne by Hangcheng Patent.

During the second instance, Hangcheng Patent Office submitted the following evidence to this court:

1. Demonstration of system operation path. Proof: Hou Lanyu has the right and must be able to view all the facts about the private information of the client involved.

2. Customer information content. Proof: The customer information involved in the case that Hou Lanyu can obtain includes all the in-depth information such as all personalized service requirements, payment ability level, personal contact information, ID number, and the fact that it meets the formal and substantive requirements of trade secrets and should be protected by law.

3. 3. Hou Lanyu operating system records. Proof: The fact that Hou Lanyu actually operated the customer management system involved in the case.

   After cross-examination, Hou Lanyu and Yonghang Patent Office disputed its authenticity and relevance. This court believes that the above-mentioned evidence can be mutually corroborated with the evidence provided by Hangcheng Patent Office in the first instance, so this court confirms the validity of its evidence.

In addition to the facts found in the second review of this court that are consistent with the facts found by the original court, they also found out:

During the period when Hou Lanyu worked as a patent attorney assistant at the Hangcheng Patent Office, he wrote many patent application documents for Tongxiang Jialifeng Industrial Co., Ltd., Zhejiang University, Zhejiang Sci-tech University, Zhejiang Institute of Marine Fisheries, etc. The received customer information includes the customer's contact address, telephone number, inventor's ID number, service fee, and entrusted agent work order, etc. The entrusted agent work order records the inventor's certificate number, name, address, fixed telephone number, mobile phone number, and designated Contact name, email address, zip code, fax, application agency fee, actual review agency fee, special needs, etc.

After Hou Lanyu resigned from the Hangcheng Patent Office, he changed the agency for more than 100 patents applied by Tongxiang Jialifeng Industrial Co., Ltd., Zhejiang University, Zhejiang Sci-Tech University, and Zhejiang Institute of Marine Fisheries from Hangcheng Patent Office to Yong Aviation Patent Office.

According to the agency contract provided by Hangcheng Patent, the agency fee for a single patent application is 2500 yuan, and the actual examination agency fee is 1500 yuan, totalling 4000 yuan.

Based on the appeal request and reasons of the appellant Hangcheng Patent Office and the defence opinions of the appellees Hou Lanyu and Yonghang Patent Office, the focus of the second instance of this case is: 1. Whether the list of clients claimed by Hangcheng Patent constitutes a trade secret; 2. Whether Hou Lanyu and Yonghang Patent Office have infringed on the trade secrets claimed by Hangcheng Patent; 3. If the infringement is established, what kind of infringement liability should be assumed.

This court considers that, first of all, Article 9 Paragraph 4 of the "Law of the People's Republic of China Against Unfair Competition " stipulates: "Commercial secrets referred to in this law refer to those that are not known to the public, have commercial value, and are subject to appropriate actions by the right holder. Technical information, business information and other commercial information for confidential measures." Article 13 of

the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition " stipulates: "The list of clients in trade secrets generally refers to clients' Name, address, contact information, and transaction habits, intentions, content, etc. constitute special customer information that is different from related publicly known information, including customer lists that gather many customers, and specific customers who maintain long-term stable trading relationships. Customers are based on individual employees If the employee relies on market transactions with the employee's unit, and after the employee resigns, it can prove that the customer voluntarily chooses to conduct market transactions with himself or his new unit, it shall be determined that no improper means have been used, unless the employee and the original unit have agreed otherwise "According to the facts ascertained by this court and the court of first instance, Hou Lanyu once served as an assistant patent attorney at the Hangcheng Patent Office. During his tenure, the customer information that he can access includes the address, telephone number, and identity of the inventor. Certificate number, service fee, commissioned agent worksheet, etc. The commissioned agent worksheet records the inventor's certificate number, name, address, fixed telephone, mobile phone number, designated contact name, e-mail address, zip code, fax, application agency fee, Actual examination agency fees, special needs, etc. This court believes that, first, the above-mentioned information is the accumulation of intellectual labour and operating costs in the long-term business process of Hangcheng Patent, which is difficult to obtain through public channels, and is not generally known and easily obtained by relevant personnel in the field of patent agency. Has constituted special customer information that is different from related publicly known information. Second, from the above information, customers' trading habits, special needs, precise and detailed contact information, etc. can be learned. Therefore, the above information can bring competitive advantages to Hangcheng Patent and has commercial value. Third, according to the evidence provided by Hangcheng Patent, it can be known that Hangcheng Patent Office has adopted a series of confidential measures to prevent the leakage of the above-mentioned client list, including signing the "Intellectual Property Protection and Trade Secret Agreement" with Hou Lanyu, and leaving the company in Hou Lanyu When it is time to sign the letter of commitment, etc. In summary, this court believes that the list of clients involved in the case, including Tongxiang Jialifeng Industrial Co., Ltd., Zhejiang University, Zhejiang Sci-Tech University, and Zhejiang Institute of Marine Fisheries, claimed by Hangcheng Patent, is "not known to the public" , The statutory conditions of "has commercial value" and "the right holder adopts corresponding confidentiality measures" constitute commercial secrets.

Secondly, the " Supreme People's Court on the trial of civil cases of unfair competition Application of Laws interpretation of " Article XIV provides: "The parties alleged infringement of its trade secrets, should have their business secrets meet the statutory requirements, the other party The burden of proof is the fact that the information and its trade secret are identical or substantially identical and the other party has adopted improper means. Among them, the evidence that the trade secret meets the statutory requirements includes the carrier, specific content, commercial value, and actions taken against the trade secret. According to the facts ascertained by this court and the original trial court, after Hou Lanyu resigned from Hangcheng Patent Office, he transferred Tongxiang Jialifeng Industrial Co., Ltd., Zhejiang University, Zhejiang Sci-Tech University, and Zhejiang Ocean Fisheries Research Institute The agency for more than one hundred patent applications has been changed from Hangcheng Patent Office to Yonghang Patent Office. After comparison, it can be seen that the above-mentioned customer information is substantially the same as the information on the customer list claimed by Hangcheng Patent. The " People's Republic of China Anti-Unfair Competition Law " Article 9, Paragraph

1, Item 3 : Operators must not commit the following acts that infringe on trade secrets: “(3) Violation of confidentiality obligations or violation of the rights holder’s requirements for keeping trade secrets, Disclosure, use, or allow others to use the trade secrets he holds." In this case, Hou Lanyu violated the requirements of the obligation to keep business secrets between him and Hangcheng Patent Office and used the client list he had during his tenure at Hangcheng Patent Office. , Infringed on the trade secrets of Hangcheng Patent Office. " People's Republic of China Anti-Unfair Competition Law " 9, paragraph 3 states: "The third person knows or should know the trade secret rights holders employees, former employees or other units, the implementation of individual offenses listed in the first paragraph of this Article, Anyone who still obtains, discloses, uses, or allows others to use the trade secret shall be regarded as an infringement of the trade secret.” In this case, Hangcheng Patent Office did not provide evidence to prove that Yonghang Patent Office knew or should have known that Hou Lanyu had violated his trade secret. Illegal conduct, therefore, this court does not support the allegations of infringement by Hangcheng Patent Office against Yonghang Patent Office.

Third, Article 17 of the " People's Republic of China Anti-Unfair Competition Law " stipulates: "If an operator violates the provisions of this law and causes damage to others, he shall bear civil liability in accordance with the law. The legitimate rights and interests of the operator are damaged by acts of unfair competition. If it is difficult to calculate the actual loss, the amount of compensation for the business operator who has suffered damage due to unfair competition shall be determined based on the actual loss suffered by the infringement; if the actual loss is difficult to calculate, it shall be based on the benefit obtained by the infringer due to the infringement. Confirmation. If the operator maliciously commits an infringement of trade secrets and the circumstances are serious, the amount of compensation can be determined at one to five times the amount determined according to the above method. The amount of compensation should also include the reasonable expenses paid by the operator to stop the infringement. If the business operator violates the provisions of Articles 6 and 9 of this law, and the actual losses suffered by the right holder due to the infringement, and the benefits obtained by the infringer due to the infringement are difficult to determine, the people’s court shall make a judgment on the right holder based on the circumstances of the infringement. Compensation below one million yuan." In this case, Hou Lanyu shall bear the civil liability for stopping the infringement and compensating for the loss of Hangcheng's patent.

Regarding the amount of compensation that Hou Lanyu should bear for the economic losses of Hangcheng Patent Office, this court believes that since Hangcheng Patent Office did not submit evidence to prove the specific losses suffered by the infringement or the specific benefits obtained by Hou Lanyu due to the infringement, Hou Lanyu also No evidence was provided to prove the specific amount of profits obtained from the infringement. In view of the difficulty of determining the interests of the infringer and the loss of the infringed, this court will comprehensively consider the commercial value of the trade secret involved, Hou Lanyu’s subjective fault, the nature of the infringement, duration, scale, scope and other infringement circumstances, and Hangcheng Factors such as reasonable fees paid by the patent firm to stop the infringement in this case shall determine the amount of compensation as appropriate. At the same time, this court noticed the following facts: 1. After Hou Lanyu resigned from Hangcheng Patent Office, he applied for more than 100 patents from Tongxiang Jialifeng Industrial Co., Ltd., Zhejiang University, Zhejiang Sci-Tech University, Zhejiang Institute of Marine Fisheries, etc. The agency changed from Hangcheng Patent Office to Yonghang Patent Office; 2. The agency contract provided by Hangcheng Patent showed that the agency fee for a single patent application was 2500

yuan, and the actual examination agency fee was 1500 yuan, totaling 4000 yuan; 3 .Hangcheng Patent Office paid 5,000 yuan in legal fees for this case.

In summary, this court believes that since Hangcheng Patent Office submitted new evidence in the second instance, its grounds for appeal are partially established, and this court supports its reasonable part. The facts found in the original judgment were basically clear, but the application of the law was wrong, and this court corrected it in accordance with law. In accordance with Article 9, Paragraph 1, Paragraph 3, Paragraph 4 , and Article 17 of the " Anti-Unfair Competition Law of the People's Republic of China " , "The Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition " 10th Article 3 , Article 14 , "The Civil Procedure Law of the People's Republic of China " Article 170, paragraph 1, paragraph 2 , the judgment is as follows:

1. Revocation of Civil Judgment of Hangzhou Railway Transportation Court (2018) Zhejiang 8601 Minchu No. 670 ;

2. Hou Lanyu immediately stopped the unfair competition behavior that infringed on the business secrets of Hangzhou Hangcheng Patent Office Co., Ltd., and must not use the list of clients involved in the case;

3. Hou Lanyu shall compensate Hangzhou Hangcheng Patent Office Co., Ltd. for economic losses and reasonable expenses for stopping infringement in a total of RMB 120,000 within ten days from the effective date of this judgment;

4. Dismissed other claims of Hangzhou Hangcheng Patent Office Co., Ltd.

   If the obligations of paying money unspecified period in accordance with this judgment, should be in accordance with the " Civil Procedure Law of People's Republic of China " fifty-three Article applies, no pay double interest on the debt during the delay in performance.

The first-instance case acceptance fee was RMB 5,875, which was borne by the appellant Hangzhou Hangcheng Patent Office Co., Ltd., which was 1,782 yuan, and the appellee Hou Lanyu was borne by 4093 yuan; the second instance case acceptance fee was 5,875 yuan, which was borne by the appellant Hangzhou Hangcheng Patent Office Co., Ltd. 1782 yuan, the appellee Hou Lanyu bears 4093 yuan.

Hangzhou Hangcheng Patent Office Co., Ltd. shall come to this court to refund the fees within 15 days from the date of service of this judgment; Hou Lanyu shall pay to this court the litigation fees that should be borne within 10 days from the date of service of this judgment.

This decision is final.

Presiding Judge: Wang Ling
Judge: Xu Yan
Judge: Xu Jun
December 13, 2019
Clerk: Zhang Tianma

Case 12

Shenyang Meiying Education Information Consulting Co., Ltd. and Wang Lin's second-instance civil judgment for disputes over infringement of business secrets

Trial court :Intermediate People's Court of Shenyang City, Liaoning Province
Case number:(2019) Liao 01 Min Final 15384
Referee date:2019.12.18
Cause of the case:Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes [Unfair Competition, Monopoly Disputes]>Infringement of Trade Secret Disputes [Infringement of Trade Secret Disputes]>Disputes over Infringement of Business Secrets [Disputes over Infringement of Business Secrets]

Appellant (plaintiff in the original trial): Shenyang Meiying Education Information Consulting Co., Ltd., domiciled at Tie**, Shenyang City.

Legal representative: Zhang Ying, general manager of the company.

Appellee (defendant in the original trial): Wang Lin.

Entrusted litigation agent: Sun Hao, lawyer of Liaoning Huilu Law Firm.

Appellee (defendant in the original trial): Shenyang Tongle Education Consulting Co., Ltd. Jingxing Street Branch, domiciled at Tie**, Shenyang City.

Person in charge: Wei Xiaoxu, manager of the company.

Entrusted litigation agent: Sun Hao, lawyer of Liaoning Huilu Law Firm.

Appellee (defendant in the original trial): Shenyang Tongle Education Consulting Co., Ltd., domiciled at Gate 8, Tie** Nanjiu Middle Road**, Shenyang City.

Legal representative: Wei Xiaoxu, executive director of the company.

Entrusted litigation agent: Sun Hao, lawyer of Liaoning Huilu Law Firm.

The appellant, Shenyang Meiying Education Information Consulting Co., Ltd. (hereinafter referred to as Meiying Company), and the appellee Wang Lin, Shenyang Tongle Education Consulting Co., Ltd. Jingxing Street Branch (hereinafter referred to as Tongle Jingxing Street Branch), Shenyang Tongle Education Consulting Co., Ltd. (hereinafter referred to as Tongle Company) in the case of a dispute over infringement of business secrets, objected to the civil judgment of the People's Court of Shenyang High-tech Industrial Development Zone (2019) Liao 0192 Minchu No. 338 and appealed to this court. After the court filed the case on October 31, 2019, a collegial panel was formed in accordance with the law, and the trial was held. The appellant Meiying Company's legal representative Zhang

Ying, the appellee Wang Lin, the appellee Wang Lin, Tongle Jingxing Street Branch, and Tongle Company jointly entrusted the litigation agent Sun Hao to participate in the lawsuit. The case has now been concluded.

Meiying Company's appeal request: 1. To revoke the Civil Judgment (2019) Liao 0192 Minchu No. 338 of the People's Court of Shenyang High-tech Industrial Development Zone , and support all the claims made by the appellant in the original trial; 2. The litigation costs of this case shall be borne by the appellee . Facts and reasons: The facts found by the original trial court were unclear and the application of the law was wrong. Based on the wrong determination of the facts of the case, the original court held that the appellant's failure to take effective confidentiality measures should be corrected. The original trial found (page 8 of the judgment): "The appellant placed the entire admission agreement containing the information of each student at the front desk, so that other personnel including the defendant Wang Lin can come in contact with it at will" is not true. In fact, the appellant put the above-mentioned information in the cabinet and locked it, and at the same time, someone was in charge of the key to the cabinet. If someone needs to borrow, they need permission before they can borrow. In other words, it is impossible for anyone including the defendant Wang Lin to have access to these materials at will. In addition, the original court found that the appellant's signing of a confidentiality agreement alone was not sufficient to prevent others from easily obtaining the information involved in the case through legitimate means. This determination is wrong, and the original court does not know on what basis it concluded that others can easily obtain the information involved in the case through legitimate means. Defendant Wang Lin is a teacher working on the appellant, and her identity is specific. With this identity, she determines that she can easily obtain the information involved in the case in a legitimate way. Therefore, the appellant signed a "Confidentiality Agreement" to restrict her. If this "confidentiality agreement" is not used to restrain his behaviour, the appellant will not be able to restrain the defendant Wang Lin and other teachers who work with the appellant. It should be pointed out that at the time of the original trial, the defendant Wang Lin had admitted that he did indeed take the 19 trainees to the other two appellees. This fact was sufficient to determine that each defendant should be held liable. The court of first instance determined that the appellant did not subjectively intend to keep confidential. If the appellant did not have the willingness to keep confidential, the appellant would not sign a "confidentiality agreement" with teachers working at the appellant's office, including the appellant Wang Lin. In summary, the original court found that the facts of the case were wrong, applied the court's error, and requested the second-instance court to support the appellant's appeal.

Wang Lin argued that 1. The court of first instance found that the facts were clear, and the applicable law was correct, and the client list claimed by the appellant was not a business secret. During the first instance, the appellant had already admitted that he had placed the entire enrolment agreement of each student at the front desk, instead of putting it in the cabinet and locked it in his appeal petition. During the original trial, the appellant did not provide evidence to prove the appeal petition. This fact asserted shows that there are obvious contradictions between the facts stated before and after the appellant, and the facts claimed in the appeal petition are purposeful false statements made by the appellant and cannot be accepted. At the same time, during the first instance, the appellant did not provide evidence to prove whether its effective confidentiality measures can prevent others from accessing business information. Therefore, the customer list claimed by the appellant

lacks statutory requirements, does not have confidentiality, and is not a business secret. . 2. The "Confidentiality Agreement" signed by the appellant and the appellee can bind Wang Lin herself, but cannot bind other people, and is not enough to prevent others from obtaining the information involved in the case through legitimate means. The appellant operates in the education industry, in which students are highly mobile. Students can choose any educational institution to receive related services according to their personal needs and their teaching experience and evaluation. There are dozens of companies operating similar or similar education and training projects in Star Mall where the appellant's company is located. Basically, all companies have adopted online and offline methods for teaching and publicity, and they often leave unspecified information during the publicity period. Customer information for follow-up promotion, and there is no lack of mutual recommendation and introduction among students during the period. Therefore, various businesses operating similar or similar educational programs can easily obtain relevant information of students, and their methods of obtaining information are all legitimate, so this category It is inevitable that there is information overlap between the education industry. The appellant believes that the information on the trainees it possesses cannot be known to others, and the exclusive view that once the information of others overlaps with the information is a tort is obviously unrealistic, does not conform to industry rules and the principle of fair competition, and lacks factual and legal basis. 3. The appellant stated in the appeal petition that at the time of the original trial, the appellee Wang Lin had admitted that he did indeed take the 19-minim students to the other two appellees. It should be made clear here that in the original trial, Wang Lin only admitted that the appellant and the appellee Tongle Company had student overlap, involving 19 people, but never admitted that it was her individual who brought the students to Tongle Company. Yes, the facts claimed by the appellant are completely fictitious and arbitrarily fabricated. The appellee believes that it can be seen by consulting the original court transcript. 4. Even if the appellant's so-called student roster is a business secret, he still has the responsibility to prove that the appellee Wang Lin used improper means to obtain the business information involved in the case and violated the confidentiality agreement and disclosed information to others after learning the information. The inability to provide evidence for this will bear the adverse consequences of the inability to provide evidence. In summary, the information involved in the case claimed by the appellant does not belong to business secrets, and the appellee Wang Lin did not infringe on his business secrets. The first-instance court rejected all the appellant's claims with factual and legal basis. The second-instance court is requested to uphold the original judgment. The legitimate interests of the appellee.

Tong Le Jingxing Street Branch argued that it agreed with the appellant Wang Lin's defense. First, the court of first instance found that the facts were clear and the applicable laws were correct. The appellant did not take effective confidentiality measures when managing the student list, and the client list he claimed was not a business secret and lacked statutory constitutional requirements. Secondly, the "Confidentiality Agreement" signed by the appellant and the appellee Wang Lin is only effective between the two parties, but the agreement does not exclude the right of others to obtain the information involved in the case through legitimate means. Our company obtains the information of the students through formal channels. Not a tort. Here, during the original trial, the appellant did not provide evidence to prove that the appellee Wang Lin had taken improper conduct to obtain the business information involved, violated the confidentiality agreement and disclosed information to others after learning the information, nor did it prove that our company

knew or should Obtained and used the business information involved in the case without knowing it. Therefore, the appellant claimed that our company's infringement did not meet the statutory constitutional requirements, and that our company's normal business activities did not constitute infringement of business information. In summary, the information involved in the case does not belong to business secrets, and our company did not infringe on the appellant's business secrets, and requested the court of second instance to reject his appeal request in accordance with the law.

Tong Le Company argued that it agreed with the defendants of Wang Lin and Tong Le Jingxing Street Branch. The information involved in the case does not belong to business secrets, and our company did not infringe on the appellant's business secrets, and requested the court of second instance to reject his appeal request in accordance with the law. Meiying Company filed a lawsuit with the court of first instance: 1. Judging that Defendant 1 and Defendant 2 should stop the infringement, and compensate the plaintiff for a loss of 47,141 yuan (tentatively, subject to the final actual loss); 2. The defendant shall bear the litigation costs. In the trial, the plaintiff changed the first claim to 107,880 yuan, and at the same time claimed that the defendant Tongle Company should be responsible for the actions of its branch.

The court of first instance found the facts: the plaintiff Meiying Company and the defendant Wang Lin signed a labour contract on December 29, 2016, and the defendant Wang Lin was employed by the plaintiff Meiying Company as a teacher. The contract period was from December 30, 2016 to December 2018. On the 31st. The two parties signed a confidentiality contract in December 2016, stipulating that the defendant Wang Lin shall have the obligation to keep confidential all the business secrets of the plaintiff Meiying Company, including the student roster, during his tenure and after his departure. After that, the two parties signed a second labour contract. The contract period was from December 31, 2018 to December 31, 2020, but it was not actually performed. In January 2019, Wang Lin went to work at the Jingxing Street Branch of the defendant Tong Le. Some students of the plaintiff Meiying Company successively requested refunds and attended classes at the defendant Tongle Jingxing Street Branch. The plaintiff Meiying Company believed that Wang Lin leaked the plaintiff's student information to the defendant Tongle Jingxing Street Branch. As a result of the loss of its students, the defendant Tongle Company should bear the responsibility for the infringement of its branch, so it brought the case to the court. The client list claimed by the plaintiff Meiying Company includes a list of 19 trainees who are teaching objects, specifically including the names of parents and trainees, parents' contact numbers, learning courses, trainees' age and other basic information about the trainees. It was also found that the plaintiff, Meiying Company, was incorporated on November 12, 2014. The legal representative is Zhang Ying, the registered capital is 5 million, and the business scope is education information consultation and cultural and artistic exchange activity planning. The defendant Tongle Jingxing Street Branch was registered and established on May 22, 2014. The person in charge is Wei Xiaoxu. Its business scope includes educational information consulting, children's intelligence development, educational software technology development, and computer system integration. The defendant Tongle Company was incorporated on May 27, 2013. The legal representative is Wei Xiaoxu, the registered capital is 1 million, and the business scope is the same as that of the defendant Tongle Jingxing Street Branch.

The court of first instance held that the case was a business secret dispute involving infringement of customer information. The main focus issues examined in this case are whether the customer list claimed by the plaintiff Meiying Company constitutes business secrets, and whether the defendant Wang Lin and Tong Le Jingxing Street Branch have infringed the plaintiff Meiying Company's business secrets. According to the provisions of the " People's Republic of China Anti-Unfair Competition Law ", business secrets in trade secrets refer to business information that is not known to the public, has commercial value, and is subject to appropriate confidentiality measures taken by the right holder. According to this, business information must have the three requirements of confidentiality, commercial value and confidentiality at the same time to constitute business secrets. The plaintiff, Meiying Company, claimed that the list of customers containing the list of students, age, contact information of parents, and courses studied constitute business secrets. According to Article 14 of the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition " (hereinafter referred to as the " Interpretation of the Trial of Unfair Competition Cases ") , the plaintiff Meiying Company shall comply with the statutory requirements for its business secrets The conditions, the fact that the information of the opposing party and its business secrets are the same or substantially the same, and the fact that the opposing party has adopted improper means shall bear the burden of proof. Among them, the evidence that business secrets meet statutory conditions includes the carrier, specific content, commercial value, and specific confidentiality measures adopted for the business secret. The plaintiff Meiying Company submitted to the court the carrier of business secrets, that is, the admission agreement and clarified the specific content of the business secrets. However, the court held that the client list claimed by the plaintiff Meiying Company did not have the three requirements of business secrets at the same time. The reasons are as follows: , Article 9 Paragraph 1 of the " Interpretation for the Trial of Unfair Competition Cases " stipulates that the relevant information is not generally known and easily available to relevant personnel in the field to which it belongs, and should be deemed as stipulated in Article 10 Paragraph 3 of the Anti-Unfair Competition Law Not known to the public". The client list claimed by the plaintiff Meiying Company consists of the names, ages, contact information, and course content of the 19 trainees. The list can reflect transaction intentions and content, and is different from related public information. It is composed of multiple personalized information, which is not generally known to people in the field, and should be regarded as not known to the public and confidential. Secondly, Article 10 of the " Interpretation for the Trial of Unfair Competition Cases " stipulates that if the relevant information has actual or potential commercial value and can bring a competitive advantage to the right holder, it shall be deemed as Article 10, paragraph 3 of the Anti-Unfair Competition Law The stipulation "can bring economic benefits to the right holder and is practical". The plaintiff, Meiying Company, obtained the list of customers by organizing activities and other means, and invested a certain amount of manpower and material resources. The roster of many customers can reflect the training needs of the trainees and form a certain competitive advantage. The list of clients involved in the case can bring economic benefits to the plaintiff Meiying Company and has commercial value. Third, business secrets are rights generated through their own confidentiality, and the right holder should take reasonable protection measures that are compatible with their commercial value, which is sufficient to prevent information leakage. " The trial unfair competition cases explained ," Article XI provides that reasonable human rights protection measures taken by leaking information to its commercial value and other specific conditions adapted to

prevent, should be recognized as the third paragraph of Article X of the Unfair Competition Law "Secret measures". The people's court shall determine whether the right holder has adopted confidentiality measures based on factors such as the characteristics of the information carrier involved, the obligee's willingness to keep confidentiality, the identifiable degree of confidentiality measures, and the difficulty for others to obtain through legitimate means. In this case, the customer list claimed by the plaintiff Meiying Company was recorded in the enrolment agreement of each student, and the entire list was placed at the front desk. The front desk is an area with frequent personnel flow. There are many customers and employees, and it is generally difficult to control and manage. It placed the admission agreement at the front desk so that other personnel, including the defendant Wang Lin, could be contacted at will. Subjectively, he did not have the will to keep it secret. In addition, confidentiality measures should be precautionary measures taken against those who may have access to or know business information. The defendant Wang Lin in this case was a teacher and did not participate in the signing of the admission agreement, nor was he responsible for keeping the admission agreement. The plaintiff Meiying Company only signed a confidentiality agreement with it, which was not enough to prevent others from easily obtaining the information involved in the case through legitimate means. Therefore, the plaintiff Meiying Company did not take effective confidentiality measures, and the list of its clients did not meet the confidentiality requirements of business secrets. In summary, the plaintiff, Meiying Company, failed to provide evidence to prove that the customer list it claimed complied with all statutory requirements for business secrets, so the customer list it claimed contained 19 trainees' information does not constitute business secrets. In addition, the plaintiff Meiying Company did not provide evidence to prove that the defendant Wang Lin used improper means to obtain the operating information involved in the case and violated the confidentiality agreement after learning the information, and disclosed operating information to others, nor did it provide evidence to prove that the defendant Tongle Jingxing Street Branch knew or Obtain and use the business information involved in the case when it should be known. Therefore, the court did not support the claim of the plaintiff Meiying Company. In summary, in accordance with Article 9 Paragraph 4 of the " People 's Republic of China Anti-Unfair Competition Law " , "The Supreme People's Court Interpretation on Several Issues Concerning the Application of Law in the Trial of Unfair Competition Civil Cases " Article 9, Paragraph 1 , Article 10 . Articles 11 and 14 , Article 90 of the " Interpretation of the Supreme People's Court on the Application of the " Civil Procedure Law of the People's Republic of China "" ruled that the litigation request of the plaintiff Shenyang Meiying Education Information Consulting Co., Ltd. should be rejected.

In the second instance, the parties submitted new evidence. This court organized the parties to conduct evidence exchange and cross-examination. The appellant submitted: 1. Three explanations issued by the front desk staff and the witness testimony of two of the front desk staff; 2. The administrative work process of the campus and the publicized pictures of the office; 3. The locked pictures of the front desk and sales office cabinets. The above evidence is intended to prove that the appellant stated on the eighth page of the original judgment put the admission agreement containing the information of each student at the front desk so that other personnel including Wang Lin can freely access the situation. It is not a fact. The fact is that the cabinet is locked, and a dedicated person Master the key, sign is required for borrowing, and the student information has confidentiality measures. The appellee issued a cross-examination opinion on the above evidence: 1.

Regarding the witness testimony of the witness Li, because the witness was employed by the appellant in April 2019, he could not prove whether the cabinet where the relevant materials were stored before was locked. The testimony of the second witness, Mr. Han, regarding the appellant's claim that the cabinet was not locked, was what the appellant claimed, and his statement was evidence. The testimony of the two witnesses was not sufficient to prove that the appellee Wang Lin had contacted the appellant's so-called business information, nor could it prove that Wang Lin used improper means to obtain and divulge business information; 2. Both the authenticity of evidence 2 and evidence 3 and the problem of proof The objection was that the two pieces of evidence were produced unilaterally by the appellant, and the photos could not confirm whether the cabinet was locked, whether it was stored in the appellant's company, and whether the cabinet kept the appellant's alleged business information. Among them, the lockable photos of the cabinet and the employees' workflow can be made and posted inside the company at will, and the formation time of the evidence cannot be determined.

Based on the statement of the parties and the evidence confirmed by examination, this court confirms the facts ascertained by the court of first instance.

This court believes that the focus of the appeal in this case is whether the business information involved in the case has confidentiality requirements, that is, whether the party claiming to constitute business secrets has taken reasonable protective measures to prevent information leakage and suit its commercial value and other specific circumstances, and the respondent Wang Lin Have you grasped the business information involved in the case and leaked it to the appellee Tong Le Jingxing Street Branch? During the trial of the first instance, the entire list of the appellant Meiying's self-identified clients was placed on the front desk, and the appellee Wang Lin had the opportunity to contact. During the trial of the second instance, the appellant Meiying Company explained that the client list stated in the trial of the first instance is only the list of customers who signed in. The file information is different from the signed list. The sign-in list can be contacted by the appellee Wang Lin because the appellee Wang Lin has to check every day. Parents in class will check and confirm. In the second instance, the appellant stated that the files of the students had been put in a cabinet and locked, and that someone was assigned to keep the keys. The access to the student files requires the approval of the principal or the person in charge to register at the front desk for access. At the same time, the appellant stated that he had not approved the appellee Wang Lin to consult the student files, and the appellee Wang Lin said that he had not consulted the student files. The appellant Meiying Company believed that the appellee Wang Lin had access to parent information through the establishment of a parent group during class. In the absence of sufficient evidence to overturn the aforementioned self-confessed facts, the appellant Meiying Company made different statements on the facts of the same case in the first instance and the second instance, which violated the principle of estoppel in civil litigation, and the factual claim cannot be obtained. stand by. The appellant Meiying Company did not provide sufficient evidence to prove that the appellee Wang Lin obtained the information of the trainees through improper means. The appellant believed that Wang Lin violated the confidentiality agreement after obtaining information such as the parents of the trainees through the class group, and taking 19 trainees involved in the case to Tongle Jingxing Street Branch of the appellee to study constituted infringement. The establishment of tort liability requires the tort, fault, damage consequence, and causal relationship between the tort and the damage. The appellant Meiying Company did not have evidence to

prove that the appellee Wang Lin committed the tort. According to the " Supreme People's Court's Interpretation on the Application of the Civil Procedure Law of the People's Republic of China " Article 90, paragraph 2 , before making a judgment, If the parties fail to provide evidence or the evidence is insufficient to prove their factual claims, the party who bears the burden of proof shall bear the adverse consequences. Therefore, the court did not support this factual claim of the appellant.

In summary, the appeal request of Shenyang Meiying Education Information Consulting Co., Ltd. could not be established and should be rejected; the court of first instance found that the facts were clear and the applicable law was correct and should be maintained. In accordance with the " Civil Procedure Law of People's Republic of China " items seventy first paragraph of Article (a) , ruling as follows:

The appeal was rejected and the original verdict was upheld.

The second-instance case acceptance fee of 2,458 yuan was borne by Shenyang Meiying Education Information Consulting Co., Ltd.

This decision is final.

Presiding Judge: Ge Jun
Judge: Liu Bo
Judge: Tai Yuequn
December 18, 2019
Assistant to the judge: Chen Kai
Clerk: Sun Aibo

Case 13

The civil judgment of the first instance in the dispute between Shenzhen Weifeng Commercial Co., Ltd. and Yang Ling on the infringement of trade secrets

Trial court :People's Court of Luohu District, Shenzhen City, Guangdong Province
Case number:(2019) Guangdong 0303 Republic of China 22428
Referee date:2019.09.19
Cause of the case:Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes【Unfair Competition, Monopoly Disputes】>Trade Secret Infringement Disputes【Trade Secret Infringement Disputes】

Plaintiff : Shenzhen Weifeng Business Co., Ltd., domiciled in Room **, East Block, Guoshang Building, Jiabin Road, Luohu District, Shenzhen, with unified social credit code ×××657.

Legal representative: Zhong Peixiang, general manager of the company.

Entrusted litigation agent: Luo Hongyu, lawyer of Guangdong Junyan Law Firm, license number 14403201311017070.

Defendant : Yang Ling, female, Han nationality, born on October 20, 1995, with ID card address in Shaoyang County, Hunan Province,

In the case of the plaintiff Shenzhen Weifeng Business Co., Ltd. v. Yang Ling infringement of trade secrets, the court filed the case on July 9, 2019, and opened the court in accordance with the law in accordance with ordinary procedures. The plaintiff's entrusted litigation agent Luo Hongyu and the defendant Yang Ling attended the court. The case has now been concluded.

The plaintiff Shenzhen Weifeng Commercial Co., Ltd. filed a litigation request with this court: 1. The defendant was judged to pay 3180 yuan to the plaintiff (the interest was calculated at the principal of 3180 yuan from February 24, 2017, according to the People's Bank of China loan interest rate for the same period until the actual repayment. On the day of arrears, it is temporarily calculated as 27 yuan until the day of the suit); 2. The defendant paid the plaintiff 50,000 yuan (a total of 53207 yuan); 3. The defendant shall bear all the litigation costs of this case. The plaintiff changed the litigation request as follows: 1. The defendant paid 6,360 yuan to the plaintiff (the interest is based on the principal of 6,360 yuan, and will be calculated at the same period of the People's Bank of China loan interest rate from February 24, 2017 until the actual repayment date. It is 54 yuan as of the date of the suit); 2. Request the defendant to stop infringing on the plaintiff's trade secrets; 3. The defendant shall bear all litigation costs in this case. Facts and reasons: On October 10, 2015, the defendant joined the plaintiff's company as a business consultant, and on the same day the two parties signed the "Company Confidentiality Agreement". The confidential content includes customer information (including but not limited to the customer's company name, contact number, QQ , Contact person, etc.). If Party B, the defendant, breaches the contract, it needs to pay a penalty of 100,000 yuan in accordance with the agreement. On August 30,

2017, the defendant applied to the plaintiff for resignation on the grounds of “has other plans to go home for development”, and formally terminated the labour contract with the plaintiff on September 5, 2017. On February 11, 2019, the defendant voluntarily contacted the plaintiff’s client for the annual review service, and did not actively disclose his resignation from the plaintiff’s company, causing the client to misunderstand that the defendant was still an employee of the plaintiff’s company and paid 6,360 yuan for the company’s annual review service . The above-mentioned customer information, including company name, company's annual review, contact person, and contact information are all trade secrets belonging to the plaintiff company that the defendant had during his work in the plaintiff company. The plaintiff adopted measures such as OA system and encryption software to keep the client information confidential The defendant contacted the plaintiff’s clients many times without the consent of the plaintiff, and seriously violated the "Company Confidentiality Agreement" signed by the two parties. In order to protect the plaintiff’s legitimate rights and interests, the defendant filed a lawsuit, and the judgment is as requested.

The defendant Yang Ling argued: 1. I did not know that I had signed this confidentiality agreement. I knew that I had signed a labour contract. 2. When I first joined the company, I applied for an accounting assistant, not a sales applicant. I think the company asked me to sign this non-disclosure agreement, which was deceptive. 3. After I joined the company, I did not change to an accounting position. 4. I have not violated trade secrets, and I do not know which of the company’s customers are. I filed for resignation in July 2017, and formally resigned in September. I have gone through all the procedures and returned all the materials to the company.

The parties submitted evidence in accordance with the lawsuit request. This court organized the parties to cross-examine the evidence and ascertain the following facts:

> On October 10, 2016, the defendant and the plaintiff signed the "Shenzhen Weifeng Business Co., Ltd. Shenzhen Labour Contract". The contract stipulated that the defendant joined the plaintiff company, the job content was business consultant, the work location was Shenzhen, and the contract period was from October 2016 10th to October 9th, 2017.
>
> On the same day, the two parties signed the "Company Confidentiality Agreement", which stipulated that the confidential content includes the technical information and business information of the third party (such as the plaintiff’s other customers or suppliers) that the plaintiff has mastered and is responsible for confidentiality, including but not Limited to customer information, etc., customer information especially includes but not limited to the customer’s Hong Kong company name or domestic company name, contact number, QQ number, contact person, contract and scanned copies of related documents and other paper or computer document information; confidentiality period Unless the plaintiff clearly states in writing that a certain confidential content involved in this agreement is not required to be kept secret, the defendant shall keep the plaintiff’s trade secrets indefinitely from the date of establishing a labour relationship with the plaintiff (including the probation period).

The plaintiff company issued the "Notice on Standardizing Contract Management", which stated the plaintiff company's contract management specifications and repeatedly mentioned the use of the OA system. There was the defendant's signature in the "Consultation Department Signature Confirmation" of the notice.

The plaintiff's company OA system shows that the plaintiff's customers are classified in the customer information column. The end customers are divided into uncompleted customers and closed customers, and uncompleted customers are divided into A-level strong intention customers and B-level development customers , C-level undeveloped customers, D-level unintentional customers, transaction customers are divided into general customers, silver customers, and gold customers. On the contract collection details page of the system, the information topics are "Hong Kong company annual review-Hong Kong Huitong Investment Management Co., Ltd. collection", "Hong Kong company annual review-Hong Kong Zhengui Investment Management Co., Ltd. collection" The basic information page contains information such as the customer's name, contact person, and total amount of money, among which the handlers are "Yang Ling".

On August 30, 2017, the defendant issued the "Resignation Application" to the plaintiff.

On September 5, 2017, the plaintiff and the defendant signed the "Confirmation of Termination of Labour Relations", confirming that: the defendant served as a business consultant at the plaintiff's office, and the labour contract was terminated by mutual agreement on September 5, 2017, and both parties decided to terminate the labour relationship.

The plaintiff claimed that the defendant still kept in touch with the plaintiff's customers in the name of the plaintiff's company after resignation, handled business for the plaintiff's customers, and provided the defendant's and the plaintiff's customer contacts and the defendant's WeChat chat records as evidence. The defendant confirmed the authenticity of the contents of the WeChat chat records provided by the plaintiff and the contacts of the plaintiff's clients (i.e. Hong Kong Tonghui Investment Management Co., Ltd., Hong Kong Zhengui Investment Management Co., Ltd.). From February 11 to February 20, 2019, the defendant's chat records with the contact person of Hong Kong Tonghui Investment Management Co., Ltd. showed that the defendant stated "Your annual review is No. 3-31, you can start processing", " Documents needed for the annual review: 1. Take photos of the materials for the annual review last year...", "Your materials have not been photographed and sent to me, and there will be fines for overdue, please deal with them in time", "The annual review fee is 3180 yuan..." The defendant received 3,180 yuan from WeChat, the contact person of Hong Kong Tonghui Investment Management Co., Ltd. on February 20. On February 24, 2019, chat records between the defendant and Hong Kong Zhengui Investment Management Co., Ltd. showed that the defendant stated that "the information is complete, the fee is 3180 yuan..." and "Important notice: due to the new regulations implemented by the Hong Kong government ..... The annual review is 2880 yuan, and the total fee is 3180 yuan....." and other content and provided his Alipay account to the other party. On the same day, he charged 3180 yuan by way of Alipay transfer.

On June 3, 2019, Hong Kong Tonghui Investment Management Co., Ltd. issued a "Certificate" stating that the company entrusted the defendant to handle the annual review on February 20, 2019, and paid the defendant an annual review fee of 3180 yuan. The defendant did not do this business, so he contacted the defendant to request a refund of the annual review fee, and the defendant accepted the company's request and returned the annual review fee.

The plaintiff made it clear in court that the trade secrets he requested for protection in this case were client data, including the company name, registration date, address, contact person, contact number, and annual review information of Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd. .

The defendant claimed that the client's information requested by the plaintiff was public information, and submitted a screenshot of the information obtained through online inquiry as evidence. After verification in court, Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd. can be obtained through online inquiry. Basic information such as the company name, company number, and date of establishment of the two companies. The plaintiff also confirmed in court.

This court believes that this case is a dispute over infringement of trade secrets. The focus of the dispute in this case is: 1. Does the "client list" requested by the plaintiff constitute the plaintiff's trade secrets? 2. Did the defendant violate the plaintiff's trade secrets?

Regarding the focal point of the dispute, according to Article 9 of the " People's Republic of China Anti-Unfair Competition Law " : "Trade secrets refer to technical information, business information, etc. that are not known to the public, have commercial value, and have been subject to appropriate confidentiality measures by the right holder. "Business information", it can be seen from the above provisions that the composition of a trade secret should meet the following conditions: 1. It is confidential, that is, it is not known to the public and is not a known technology; 2. It has commercial value and can be used for the right holder. Real or potential (foreseeable) economic benefits or competitive advantages; 3. The right holder has adopted certain confidentiality measures, which is reflected in management. The right holder generally adopts certain confidentiality measures for these trade secrets, and the secrecy measures taken can keep the technical information or business information confidential under normal circumstances. Article 13 of the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Unfair Competition Civil Cases " stipulates that the list of customers in trade secrets generally refers to the customer's name, address, contact information, and transaction habits, intentions, and content Special customer information that is different from related publicly-known information, including customer rosters that aggregate many customers, and specific customers who maintain long-term stable trading relationships.

In this case, the evidence submitted by the plaintiff to prove that the customer information requested for protection is a trade secret was the contract payment details in the company's OA system. This court believes that the plaintiff claimed that the trade

secrets in this case were client data of Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd., but the evidence submitted by it was not sufficient to prove that Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd. Gui Investment Management Co., Ltd. is a specific customer who maintains a long-term and stable trading relationship with the plaintiff, which is different from ordinary customers. According to the relevant information of the plaintiff's OA system, it cannot prove its efforts and costs for developing these customers. The customer information The customer information lacks clear transaction information and other transaction information. It is just a simple classification and summary, which cannot prove that the plaintiff has carried out in-depth management of the customer data that it claims to protect. In summary, the evidence submitted by the plaintiff cannot yet prove that the customer information requested by the plaintiff is valuable and can further bring the plaintiff a competitive advantage. The evidence submitted by the plaintiff is not sufficient to prove that the customer information requested for protection is a trade secret.

Regarding the second focus of the dispute, the evidence used by the plaintiff to prove that the defendant actually violated trade secrets was the WeChat chat records between the defendant and relevant personnel of Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd., but the evidence can only prove The defendant's business dealings with relevant personnel of Hong Kong Tonghui Investment Management Co., Ltd. and Hong Kong Zhengui Investment Management Co., Ltd. were not sufficient to prove that the defendant's behaviour was improper, and the plaintiff failed to provide evidence to prove that the customer information it claimed constituted a trade secret. Therefore, it cannot be determined that the defendant committed an act infringing the plaintiff's trade secrets.

In summary, according to " People's Republic of China Anti-Unfair Competition Law " Article IX , " Supreme People's Court on the trial of civil cases of unfair competition Application of Laws explained ," Article XIII , " Civil Procedure Law of People's Republic of China " section The provisions of paragraph 1 of Article 64 and Article 142 ,The verdict is as follows:

All claims of the plaintiff Shenzhen Weifeng Commercial Co., Ltd. were rejected.

The case acceptance fee of RMB 25 shall be borne by the plaintiff. The plaintiff has paid a case acceptance fee of RMB 1,130 and the remaining costs of RMB 1,105 shall be returned to the plaintiff.

If you disagree with this judgment, you can submit an appeal letter to this court within 15 days from the date of service of this judgment, and submit copies according to the number of the opposing parties, and appeal to the Shenzhen Intermediate People's Court of Guangdong Province.

Presiding Judge: Chen Wandan
People's Assessor: Zhu Guoping
People's Juror: Yao Xuefen
September 19, 2019
Clerk: Wu Chunyan

Case 18

Civil Judgment for Retrial of Trade Secret Infringement Dispute between Mai Da Keer (Tianjin) Technology Co., Ltd. and Huayang Xinxing Technology (Tianjin) Group Co., Ltd.

Trial court :Supreme People's Court
Case number:(2019) Supreme Law Min Zai No.268
Referee date:2019.12.16
Cause of the case:Civil>Intellectual Property and Competition Disputes★>Unfair Competition Disputes【Unfair Competition, Monopoly Disputes】>Trade Secret Infringement Disputes【Trade Secret Infringement Disputes】

Applicant for the retrial (defendant in the first instance, appellant in the second instance): Medakeer (Tianjin) Technology Co., Ltd. Place of residence: Chenxing Road****, Zhongbei High-tech Zone, Xiqing District, Tianjin.

Legal representative: Wang Chenggang, general manager of the company.

Entrusted litigation agent: Li Danhua, lawyer of Beijing Deheng Law Firm.

Respondent (plaintiff in the first instance, appellant in the second instance): Huayang Xinxing Technology (Tianjin) Group Co., Ltd. Domicile: Science and Technology Park, Hongri South Road, Nankai District, Tianjin).

Legal representative: Wang Xuming, chairman of the company.

Authorized litigation agent: Zhang Ming, lawyer of Tianjin Xingtong Law Firm.

Agent ad litem: Wang Tong, male, employee of the company.

Defendant in the first instance: Wang Chenggang.

Defendant in the first instance: Zhang Hongxing.

Defendant in the first instance: Liu Fang.

The applicant of the retrial, Mai Da Keer (Tianjin) Technology Co., Ltd. (hereinafter referred to as Mai Da Keer Company) and the respondent Huayang Xinxing Technology (Tianjin) Group Co., Ltd. (hereinafter referred to as Huayang Company), the first instance defendants Wang Chenggang, Zhang Hongxing In the case of Liu Fang's infringement of trade secrets, he refused to accept the civil judgment of Tianjin Higher People's Court (2018) Jinminzhong No. 143 and applied to this court for a retrial. This court made a civil ruling (2018) Supreme Law Minshen No. 5704 on June 28, 2019 to bring the case to trial. After the arraignment, this court formed a collegial panel in accordance with the law and opened a court session to hear the case. Wang Chenggang, the legal representative of the retrial applicant, Mai Da Keer, Li Danhua, the entrusted litigation agent, Zhang Ming and Wang

Tong, the entrusted litigation attorneys of the respondent Huayang, and Wang Chenggang, the defendant in the first instance, attended the court. The case has now been concluded.

Mai Da Keer Company applied for a retrial, claiming that the facts and applicable laws were wrong in the second-instance judgment and requested a retrial to amend the judgment. Specific facts and reasons: (1) The original court found that the business information involved in the case belonged to the customer list in the sense of the Anti-Unfair Competition Law and lacked factual basis. The customer list in the sense of the Anti-Unfair Competition Law generally refers to the customer's name, address, contact information, and transaction habits, intentions, content, and other special customer information that is different from related publicly known information. The names, addresses, telephone numbers, contacts, etc. of the 43 customers identified in the original audit that the secret points can be obtained through the Internet and the materials issued by the trade fair. The other product names, product specifications, and unit price information are all publicly issued by Huayang Company. Can get. (2) The court of first instance determined that the list of 43 customers was a customer list in the sense of the Anti-Unfair Competition Law, which was then classified as business secrets and lacked a legal basis. The court of first instance failed to ascertain whether Huayang Company used the information of 43 customers to conduct actual market transactions, and whether it obtained economic benefits through the information of these customers. More importantly, it did not ascertain whether the company used the information of 43 customers to conduct transactions. In order to obtain market transactions, they gain a competitive advantage by obtaining the customer information. The in-depth information contained in the customer list should be business information that can reflect the labour obtained by the operators and reflect the special habits of the customers. In other words, it can reflect the customer stickiness and the strong industry characteristics formed by the operators and customers in the long-term transaction process. A collection of various types of information about individual trading habits. The names of 43 customers as public information can be easily obtained without any labour. The customer's telephone number, address, address and other auxiliary information can be easily obtained in the process of querying the customer list. It does not reflect the long-term market operation of the operator. Reflect the customer's individual trading habits. (3) The court of first instance assumed that the information of 43 customers was formed during the personal service of the three defendants in the first instance, and it presumed that the above-mentioned individuals had contact with the information, and furthermore, because it became a competitor with Huayang Company, the above-mentioned individuals were presumed to have committed infringement, which lacked factual basis. The above-mentioned individuals have long service periods as former employees of Huayang. They are very familiar with the production, manufacturing and sales of industrial cleaning agents, and have a better understanding of other customers except for 43 customers. In other words, the above-mentioned individuals not only know the customer names, telephone numbers, locations, and addresses of 43 customers, which can be queried through public channels, but can also list more public information such as customer names. This information is not known through contact with Huayang's so-called confidential information during the tenure but is slowly accumulated through long-term business activities. It has become an indelible memory of the above-mentioned individuals in the brain, and even in the industrial cleaning agent market. Obtain the labour experience and survival skills for survival. (4) Huayang Company sued Tianjin No. 1 Intermediate People's Court (hereinafter referred to as the Court of First Instance) for an order to order Maidake Company and the defendants in the

first instance to stop using its customer list and jointly compensate for economic losses. The court of first instance ruled that Maidake the company and the defendants in the first instance shall not disclose, use, or allow others to use the trade secret, which exceeds the claims of Huayang. (5) This case is a trade secret dispute. During the trial of the first instance, the judge did not solicit opinions from both parties on whether the trial should not be conducted in public. In addition, the court of first instance obtained the invoice record of Medakol from the tax bureau according to Huayang's application, which contained Medakol's trade secrets. The court of first instance did not seek the opinion of Medakol when organizing the cross-examination of both parties. Whether the cross-examination will not be disclosed. The above practices of the court of first instance violated the provisions of the Civil Procedure Law and harmed the legitimate rights and interests of the parties.

Huayang Company submitted an opinion stating that the facts found in the first and second instance judgments were clear and the evidence was sufficient, and requested that the original judgment be maintained. The main reasons: (1) The information of the 43 customers in this case was collected and integrated by Huayang Company, which spent a lot of manpower, material resources, financial resources, and time cost. Huayang Company took confidential measures for them in accordance with the law and did not belong to the field. Relevant personnel are generally aware of and easy to obtain, possess confidentiality, confidentiality, value and practicality, and meet the constituent requirements of commercial secrets. (2) The defendants in the first instance, Wang Chenggang, Zhang Hongxing and Liu Fang, had all worked in important positions of Huayang Company, and actually contacted and used Huayang Company’s customer information involved in the case. The three persons and Huayang Company had signed a "Confidentiality Agreement", and their actions with Medakol Company constituted an infringement of Huayang Company's trade secrets. (3) The evidence materials submitted by Medakere for retrial application include Huayang's product catalogues, price lists and other commercial secret materials with commercial value. In the case where there is no direct evidence to prove the legal way to obtain such evidence, It disproves the fact that Wang Chenggang and the three defendants in the first instance took away a large amount of information from Huayang Company when they resigned. (4) The first and second instance courts did not violate the procedural rules in the trial of the case in accordance with the law when none of the parties had applied for a non-public trial.

Huayang Company sued the court of first instance: 1. Mai Da Keer Company, Wang Chenggang, Liu Fang, Zhang Hongxing immediately stopped using Huayang Company’s customer list for external sales; 2. Mai Da Keer Company, Wang Chenggang, Liu Fang, Zhang Hongxing Joint and several compensations for Huayang Company’s economic losses totaled 315,7062.9 yuan; 3. The litigation costs were borne by Mai Da Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing.

The court of first instance found the facts as follows: Huayang Company is an enterprise engaged in the research and development, production and sales of industrial cleaning and maintenance products. The product range mainly includes industrial chemicals such as cleaning agents, lubricants, and sealants.

Maida Keer was established on October 30, 2015 by Wang Chenggang. The registered legal representative at the beginning of establishment was Zhang Shujuan, who was Liu Fang’s mother, and the registered shareholder Lin Haina was Wang Chenggang’s

relative. It was changed in April 2016. The representative is Wang Chenggang, mainly engaged in the production and sales of cleaning agents.

Wang Chenggang joined Huayang Company in 1996 and served as director, deputy general manager of sales, general manager and vice president of Huayang Company. From 2012 to 2016, he served as the legal representative of Huayang Company. He founded Medakel at the end of October 2015. The current legal representative and general manager.

Zhang Hongxing joined Huayang Company in 2001. He used to be the manager of the technical department and the manager of the technical service department of Huayang Company. In January 2016, he joined the company as the manager of the technical department.

Fang Liu joined Huayang Company in 2010. He used to be the manager of Huayang Company's sales and service department. At the end of October 2015, he joined Maida Keer Company and was responsible for personnel and administration.

Huayang Company has signed confidentiality agreements with Zhang Hongxing and Liu Fang. The scope of confidentiality includes business secrets related to customer business, products, and services.

Huayang adopts ERP system to manage customer information. In Huayang's ERP system, the stored customer information includes customer name, product name, product specifications, sales order quantity, unit price, contact person, telephone number, place, address, etc. Yang company has performed part of the customer information in the ERP system Notarized and submitted the corresponding invoice.

In this lawsuit, Huayang selected a customer list containing 43 customer information as the infringed trade secret. The specific list is: xxx kitchen and bathroom appliances factory (omitted). The secret points claimed by Huayang in this lawsuit are: the customer name, product name, product specifications, sales order quantity, unit price, contact person, telephone number, and address that it has acquired in the transaction with the aforementioned 43 customers.

The above-mentioned 43 customers and Huayang Company had more than 5 transactions in 2014 and 2015. Huayang Company calculated that its sales with the above-mentioned customers in 2014 and 2015 were 261,1162.14 yuan. After the establishment of Mai Da Keer, the company had transactions with the above-mentioned customers and the sales were 129,8163.3 yuan.

The "Customer Satisfaction Survey for Cooperation Instructions" submitted by Mida Keer company stamped by some customers, the content is: "My company understands that Mida Keer company is a company that produces and sells cleaning agents. My company provides by contacting its company After the samples were tested and the quality was confirmed to be good, the cooperation was reached so far. I hope that Meida Keer can continue to improve product quality and service while maintaining stable product quality, and reduce product prices to ensure the long-term cooperation between the two parties."

All "Cooperation" Explain that the content format of the Customer Satisfaction Survey is the same, most of which do not indicate the time, most of which indicate the time is 2017.

Huayang Company spent 150,000 yuan in lawyer fees and 16,800 yuan in notarization fees.

The court of first instance held that trade secrets refer to technical information and business information that are not known to the public, can bring economic benefits to the right holder, are practical, and are protected by the right holder. The customer list in trade secrets generally refers to the customer's name, address, contact information, and transaction habits, intentions, content and other special customer information that is different from the relevant publicly known information, including the customer list of many customers, and the maintenance of long-term Specific customers with stable trading relationships. If the parties allege that others have infringed on their business secrets, they shall bear the burden of proof for the fact that the business secrets they possess meet the legal requirements, that the information of the other party is the same or substantially the same as the business secrets, and that the other party has taken improper means. Among them, the evidence that a trade secret meets statutory conditions includes the carrier, specific content, commercial value, and specific secrecy measures adopted for the trade secret. The focus of the dispute in this case is: (1) Whether the customer list composed of 43 customer information claimed by Huayang Company constitutes a trade secret; (2) Whether Maidakeer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing infringed Huayang Company Business secrets; (3) How does Medakel, Wang Chenggang, Liu Fang, and Zhang Hongxing assume responsibilities and how they assume responsibilities.

(1) Regarding the issue of whether the customer list composed of 43 customer information claimed by Huayang Company constitutes a trade secret.

First of all, the information of 43 customers who have stable trading relationships with Huayang, including the xxx kitchen and bathroom appliance factory claimed by Huayang Company, includes customer name, product name, product specifications, sales order quantity, unit price, contact person, telephone number, and address. This information includes not only customer names, addresses, and contact information, but also in-depth information such as transaction products, transaction prices, and transaction quantities. Although some customers' names, phone numbers, locations, addresses, and other information can be queried through public channels, it is known that the combination of in-depth information such as the customer's name, phone number, location, address, and transaction content is not common to related personnel in the field. Known and easily available.

Secondly, Huayang has adopted reasonable protection measures in line with the commercial value of the above information. Specifically, it includes signing a confidentiality agreement with employees and using an ERP system that requires a login username and password to access the above information.

Third, the above-mentioned information has actual or potential commercial value and can bring competitive advantages to right holders. Huayang Company

will inevitably spend a lot of manpower, material resources and financial resources to accumulate the above-mentioned numerous and rich customer information. Possessing this information, especially the information of customers with stable trading relationships, can unblock product sales, maintain stable product sales, and form a competitive advantage in the same industry. Companies that have obtained this information can go beyond the initial period of market development, quickly open up sales of similar products, and obtain corresponding market benefits.

In summary, the customer information advocated by Huayang Company is confidential, confidential, valuable and practical, and conforms to the requirements of commercial secrets. The court of first instance found that the customer name, product name, product specifications, sales order quantity, unit price, contact person, telephone number, and address of the 43 customer transactions between Huayang Company and xxx Kitchen & Bathroom Appliance Factory constitute trade secrets.

(2) Regarding whether Maida Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing infringed the trade secrets of Huayang Company.

First of all, Wang Chenggang, Zhang Hongxing, and Liu Fang have access to trade secrets. Wang Chenggang used to serve as director, sales deputy general manager, general manager, and vice president of Huayang Company, and served as the legal representative of Huayang Company. Zhang Hongxing was the manager of the technical department and technical service department of Huayang Company, and Liu Fang was the manager of the sales service department of Huayang Company. Person’s job title and job content have convenient conditions for contacting customer list information. The invoice submitted by Huayang Company can prove that the latest formation time of the customer information involved in the case was before Wang Chenggang, Zhang Hongxing, and Liu Fang left their jobs.

Secondly, Wang Chenggang, Zhang Hongxing and Liu Fang have statutory or agreed confidential obligations. As a senior manager of Huayang Company, Wang Chenggang has the statutory obligation to keep business secrets and be loyal to the company; Zhang Hongxing and Liu Fang have signed a confidentiality agreement with Huayang Company. According to the agreement, they should keep the business secrets in contact with Huayang Company.

Third, Wang Chenggang founded Medacre Company and served as the legal representative. Zhang Hongxing and Liu Fang joined the Medacre Company shortly after leaving Huayang Company and held important positions. Medakol produces and sells the same products as Huayang, and there is a competitive relationship between the two. With Wang Chenggang, Zhang Hongxing, and Liu Fang all working in Mai Da Keer and holding management positions, the sales customers of Mai Da Keer within a short period of time after the establishment of the company overlapped with Huayang's sales customers. The 43 customers

advocated by Huayang Company have all become the sales target of Medakol Company.

Fourth, Medakal has not proven the process of self-development of the aforementioned 43 customers in a short period of time. Under the circumstances that Wang Chenggang, Zhang Hongxing, and Liu Fang have convenient access to trade secrets and a large number of customers of Medakel and Huayang, they are obliged to provide evidence to prove the process of developing their own customers. The contents of the "Customer Satisfaction Survey for Cooperation Explained" submitted by Maida Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing are exactly the same, and were produced unilaterally by Ma Da Keer Company. The evidence cannot prove that the customer is based on Wang Chenggang, Zhang Hongxing, and Liu Hongxing. Fang relied on the trust and proactively entered into transactions with Medacall.

In summary, the court of first instance found that Wang Chenggang, Zhang Hongxing, and Liu Fang violated the statutory or agreed obligation to keep business secrets and allowed Medakere to use the trade secrets they hold. The above-mentioned trade secrets are all violations of trade secrets.

(3) Regarding the responsibilities of Mai Da Keer Company, Wang Chenggang, Liu Fang and Zhang Hongxing.

First of all, Wang Chenggang, Zhang Hongxing, and Liu Fang violated the statutory or agreed obligation to keep trade secrets and allowed Mai Da Keer to use the trade secrets in its possession. Mai Da Keer used the above-mentioned trade secrets with knowledge, they are all violations of trade secrets. Maida Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing shall immediately stop the above-mentioned infringements, and shall not disclose, use or allow others to use the trade secret without authorization while the trade secret is not known to the public.

Secondly, the use of the trade secrets involved in the case to obtain commercial benefits by Maida Keer Company caused economic losses to Huayang Company and should be compensated according to law. In view of the inability to determine the actual losses of Huayang Company due to the infringement involved in the case or the actual profits of Medakol, the court of first instance comprehensively considered the commercial value of Huayang Company's customer information, the extent of Medakol's subjective fault, and the scope of infringement. , The time of infringement and Huayang Company's rights protection costs and other factors, the amount of compensation is determined at a discretion of 600,000 yuan (including reasonable costs for rights protection).

Thirdly, the trade secrets used by Mai Da Keer come from Wang Chenggang, Zhang Hongxing, and Liu Fang. Wang Chenggang, Zhang Hongxing and Liu Fang have a common intention for Mai Da Keer Company to use Huayang Company's trade secrets for profit. Bear joint and several liability for damages.

> In summary, the judgment of the first instance: 1. Mai Da Keer, Wang Chenggang, Zhang Hongxing, and Liu Fang immediately stopped infringing on the trade secrets of the Huayang Company involved in the customer list, that is, during the period when the trade secrets involved are not known to the public, they shall not disclose, use or allow others Use the trade secret; 2. Mai Da Keer Company shall compensate Huayang Company 600,000 yuan within ten days from the effective date of this judgment; 3. Wang Chenggang, Zhang Hongxing, and Liu Fang shall be jointly and severally liable for the content of the second judgment; 4. , Dismissed Huayang Company's other claims. The case acceptance fee was 32057 yuan, and the property preservation fee was 5,000 yuan. Huayang Company was responsible for 14,000 yuan, and Maida Keer Company, Wang Chenggang, Zhang Hongxing, and Liu Fang shared 23057 yuan.

Huayang Company refused to accept the judgment of the first instance and appealed to the Tianjin Higher People's Court (hereinafter referred to as the Court of Second Instance). Appeal request: 1. The second and third items of the first-instance judgment were revoked; 2. The judgment was changed to Mai Da Keer Company, Wang Chenggang, Zhang Hongxing, and Liu Fang to jointly compensate Huayang Company 1 million yuan. Facts and reasons: The amount of compensation in the first instance judgment was too low and should be adjusted. In the first-instance judgment, it has been determined that Medakal used the information of the 43 customers involved and had transactions with the 43 customers after its establishment, and the sales amount was 129,8163.3 yuan. On the basis of finding out the sales amount obtained by Medacer’s infringement of trade secrets, according to the evidence obtained by the court of first instance, the gross profit margin of Medacer in 2016 was 68.77%, plus Huayang’s reasonable expenses. Mai Da Keer Company shall compensate Huayang Company for the loss of 1 million yuan.

Medakere argued that, first, Medakere did not infringe on Huayang’s trade secrets and should not be compensated. Second, according to the law, the amount of compensation should be calculated with reference to the actual profits of the company. Medakere has to spend a lot of costs in the process of operating the company and selling products, and Huayang has not submitted evidence to prove this type of product industry. Profit margin. Therefore, the calculation method of compensation claimed by Huayang Company has no legal basis. Thirdly, the products sold by Medakere to the 43 customers involved in the case contain products similar to those of Huayang, but they also include a large number of new products developed by Medakere. These products should not be included in the compensation amount. , The amount of compensation determined in the judgment of first instance was too high.

Wang Chenggang, Liu Fang, and Zhang Hongxing argued that they agreed with the defense opinions of Medacall.

Mai Da Keer also refused to accept the judgment of the first instance and filed an appeal. Appeal requests: 1. Revocation of the judgment of the first instance, and the judgment to dismiss all claims of Huayang Company; 2. The costs of litigation shall be borne by Huayang Company. Facts and reasons: First, the information involved in the case is not an intellectual achievement, nor a customer list in the sense of a trade secret. The information involved in the case recorded in the notarization is a detailed list of sales orders in Ningbo,

Xiamen, and Xi'an. It is only a simple data entry of the transaction counterparties and products and other daily operations and sales in chronological order or customer order. There are duplicates and incorrect records. The error message simply does not enable contact with relevant customers. The information involved in the case is not a summary, classification, or summary of customer information, and cannot reflect special corporate information such as transaction habits and transaction intentions that are different from publicly known information. Second, the information of the 43 customers involved has been known to the public and is not a business secret. The customer contact information in the customer information claimed by Huayang Company has been disclosed in whole or in part by the media. You can obtain the customer information involved in the lawsuit through Baidu search, and even the publicly disclosed content is more comprehensive and accurate than the record. Third, the first-instance judgment found that Wang Chenggang, Liu Fang, and Zhang Hongxing had contacted Huayang before leaving their posts in the wrong customer list. 1. Wang Chenggang, Zhang Hongxing and Liu Fang resigned from Huayang Company on October 25, 2015, December 26, 2015, and November 5, 2015 respectively. The notarization submitted by Huayang Company was generated on December 23, 2016. The date was one year after the three persons left their jobs, and the content recorded was the state when the evidence was formed, so the three persons could not access the customer information involved in the case. 2. The court of first instance held that the invoice submitted by Huayang Company could prove the latest formation time of the client's information involved in the case and was unfounded. Invoices are only business vouchers that record the situation when the transaction occurred, and can only prove that Huayang Company and the counterparty of the invoice have had transactions. It is not a carrier of business secrets, nor is it a business secret itself. 3. The contents of the trade secrets claimed by Huayang Company are recorded in Huayang Company's management system. For one year after Wang Chenggang, Zhang Hongxing, and Liu Fang leave their posts, the system is controlled by Huayang Company, and the content can be controlled by Huayang Company. Add, modify. Even if the invoice can prove that Huayang has had transactions with the counterparty of the invoice, it cannot prove that Wang Chenggang, Zhang Hongxing, and Liu Fang were able to access the customer information involved in the case through the management system during their tenure, as well as the customer information and the content recorded in the notarized certificate. the same. 4. Wang Chenggang, Zhang Hongxing, and Liu Fang have no conditions for access to trade secrets. Zhang Hongxing is a technician who is engaged in technology development and after-sales service work in Huayang Company, and has no authority to access customer information involved in the case. During their tenure at Huayang Company, Wang Chenggang and Liu Fang were engaged in administrative management and financial work, and they were not involved in sales and procurement. Although they have the authority to understand the general data of Huayang Company's customers, they do not specifically contact customer information. Fourth, the first-instance judgment found that Medakal had not proved the customer's development process and had insufficient basis. Zhang Hongxing is a technician who has been engaged in related research for decades in the field of chemical preparations. Wang Chenggang has nearly 30 years of work experience in the chemical industry. 69 customers have issued a certificate of cooperation for Medacre. The establishment is proactively contacted by Medacre. Partnership. In 2016, MDAC successfully developed nearly 200 new customers and established stable trading relationships. The first instance judgment ignored the above facts. Fifth, the amount of compensation in the first instance judgment is too high. Maida Keer Company did not infringe on Huayang Company's trade

secrets and should not be liable for compensation. Even if it constitutes an infringement, the amount of compensation determined by the court of first instance is too high. At the beginning of the establishment of the enterprise, a large amount of costs was incurred during the operation, including raw materials, wages, manufacturing costs, management fees, etc. When the operating amount is 1.29 million yuan, the compensation amount reaches 50% of the operating amount, which is too high.

Wang Chenggang, Liu Fang, and Zhang Hongxing argued that they agreed to the appeal request and factual reasons of Medacall.

Huayang Company argues that first, the list of customers involved in the case includes detailed records of the specific types, specifications, quantities, transaction prices, and order times of the products Huayang Company sells to customers, which is high-value commercial information. The information that Mai Da Keer Company claims has been made public is only yellow page information. The court of first instance determined that the client list constituted a trade secret was correct. Second, the information in the ERP system of Huayang Company cannot be arbitrarily modified, and Mai Da Keer Company advocates that Huayang Company can add or modify the contents of the system arbitrarily without providing evidence.

During the second instance, Medakal submitted 12 pieces of new evidence in six groups to the court of second instance. The court of second instance organized the parties to exchange evidence and cross-examination.

The first set of evidence is: Evidence 1, a contract numbered xxx between Medakal and Tianjin x** Co., Ltd.; evidence 2, a PPT print of the Tiansi financial system operation demonstration used by Medakal One serving. The above evidence proves that the sales records recorded by Huayang Company are derived from its self-controlled management system, and its contents can be arbitrarily added or modified by Huayang Company. Huayang Company cannot prove that the information involved in the case recorded in the notarial certificate is in Wang Chenggang, Zhang Hongxing, and Liu Fang Formed before leaving.

Huayang Company’s opinion on the first group of evidence cross-examination is: firstly, the evidence is not new evidence; secondly, it does not recognize the authenticity of the evidence. The PPT presentation file is unilaterally produced by Medakal and is a system of Medakal. Self-manipulation, without notarization; again, relevance is not recognized. The ERP system is a software customized according to customer needs. Different companies use different functions and operating methods. It cannot be proved that Huayang Company can arbitrarily conduct ERP system content. Add and modify.

The second group of evidence is: Evidence 3, 4, 5, Huayang company product brochures and leaflets; Evidence 6, Industrial maintenance product manual; Evidence 7, Process cleaning, rust prevention, and water treatment product brochures; Evidence 8, Industry application examples. The above evidence proves that the product name, specification, purpose and other information recorded in the Huayang Company's notarization have been publicly disclosed in the market and are not confidential.

Huayang Company's cross-examination opinion on the second set of evidence is that it recognizes the authenticity of the above-mentioned evidence, but does not recognize the legality and relevance. First of all, the product information of Huayang Company is provided by sales staff to specific corporate customers with high transaction opportunities for their reference when placing orders, that is, only Huayang Company employees and potential customers can get it, and Mai Da Keer does not belong to the above-mentioned personnel. It shows that the above-mentioned source of evidence is illegal and was taken from Huayang Company when Wang Chenggang, Liu Fang, and Zhang Hongxing left their posts. Secondly, the dispute in this case is the collection of customer information that can bring commercial value to the company, such as the specific needs, ordering and usage habits of specific customers. It is confidential, confidential, valuable and practical. The content of the above evidence is the product Promotional materials, including product names, uses, functions, etc., are not confidential.

The third group of evidence is: Evidence 9, product brochures of other companies in the same industry, proving that the products recorded in Huayang's order are conventional industrial cleaning products, and that the sales of industrial cleaning agents by Mai Da Keer on the market are the normal operating behavior of the company. No infringement of the trade secrets of Huayang Company.

Huayang Company's cross-examination opinion on the third group of evidence is that the evidence is not new evidence and does not recognize the authenticity and relevance of the evidence. The content of the evidence is only an introduction to other companies' products and is not confidential. It has nothing to do with business secrets.

The fourth group of evidence is: Evidence 10, Huayang company notice, price notice, national unified price list, product preferential price list, product order form, which proves that the price of the products sold by Huayang company has been publicly disclosed and is not confidential .

The opinion of Huayang Company on the fourth group of evidence is as follows: First, the price notice is a document that Huayang Company and customers adjust the product price one-on-one, and the price list is an external quotation provided by Huayang Company for sales staff to refer to. The bottom line is that the actual transaction price is higher than this price, which is confidential. The source of the evidence 10 of Mai Da Keer is illegal and should be excluded. Secondly, Wang Chenggang, Liu Fang, and Zhang Hongxing all have access to relevant secret documents at Huayang Company. The confidentiality agreement signed by Huayang Company with Liu Fang and Zhang Hongxing stipulates that employees have confidentiality obligations for the company's confidential materials and should return them upon resignation. This evidence shows that Wang Chenggang, Liu Fang, and Zhang Hongxing illegally obtained, disclosed, and used Huayang's trade secrets.

The fifth group of evidence is: Evidence 11, a product price list of companies in the same industry, proving that the prices of industrial conventional products are publicly available information on the market.

Huayang Company's opinion on the fifth group of evidence cross-examination is that it does not recognize the authenticity, legality and relevance of the evidence. First of all, the

evidence is the product information of other companies, and it cannot be confirmed whether it is true. Secondly, the content of the evidence is the product information of other companies unrelated to the case and has nothing to do with the trade secrets involved.

The sixth group of evidence is: Evidence 12. Two authorized litigation attorneys of Mai Da Keer, and lawyers Liu Jixiang and Zhang Dongyang of Tianjin Sifang Junhui Law Firm reported to Shaanxi xxx Co., Ltd. buyer Ma and production manager Pu. The investigation transcripts proved that some customers took the initiative to trade with Medakol, and Medakol did not take the initiative to request to sell products to them.

Huayang Company's opinion on the sixth group of evidence cross-examination is as follows: First, the evidence was collected by the lawyers of Maida Keer Company, and the witness did not appear in court and did not recognize the authenticity. Secondly, the opinion of the surveyed person is not an official opinion, and his judgment has no reference value.

The proof and cross-examination of the above parties were certified by the court of second instance as follows:

Regarding the first set of evidence, the court of second instance held that the contents of the ERP system used by Mai Da Keer Company can be added or modified through a demonstration, but it cannot prove that Huayang Company's ERP system can be added arbitrarily. Or modify. During the first instance, Huayang Company submitted the value-added tax invoices for transactions with 43 customers including xxx kitchen and bathroom appliance factory in 2014 and 2015, and the notarization of the notarization of customer information in the ERP system. The above invoices and notarizations can be mutually It was confirmed that the list of 43 customers including xxx kitchen and bathroom appliance factory had been formed before Wang Chenggang, Liu Fang, and Zhang Hongxing left their positions. Therefore, this group of evidence is not accepted.

Regarding the second set of evidence, the court of second instance held that the second set of evidence submitted by Medakere was all Huayang's product brochures, and the content was only an introduction to Huayang's product names, functions, features, and specifications. The information does not have in-depth information such as transaction prices, transaction habits, and business strategies of the 43 customer information, so this set of evidence cannot prove that the information of the 43 customers involved in the case of Huayang Company is not confidential.

Regarding the third set of evidence, the court of second instance held that the evidence was a product brochure of other companies and had nothing to do with whether the information of Huayang Company's 43 customers constitutes a trade secret and whether Medakol Company infringed on Huayang Company's trade secrets, and was not related. Sex. Therefore, this group of evidence is not accepted.

Regarding the fourth set of evidence, the court of second instance held that the content of the evidence was a confidential document formed during the negotiation between Huayang Company and other companies regarding product quotations and price adjustments. Since this set of evidence was obtained from Huayang Company and could not

be obtained from public channels, it could not prove that the information of the 43 customers involved in the case was not confidential.

Regarding the fifth group of evidence, the court of second instance held that this piece of evidence was publicly quoted information on products of other companies in the same industry, and was not relevant to the case, and the evidence was not accepted.

Regarding the sixth group of evidence, the court of second instance held that the evidence was the transcript of the investigation conducted by the two authorized litigation agents of Mai Da Keer on the purchaser Ma and the production manager of Shaanxi xxx Co., Ltd. Since this piece of evidence was investigated and produced by Medakal, the two persons under investigation did not appear in court to testify, and the court of second instance denied the authenticity and relevance of this piece of evidence, so this set of evidence was not accepted.

The facts ascertained by the court of first instance are correct and the court of second instance shall confirm.

The court of second instance held that the focus of the dispute in this case is: first, whether the 43 customer information claimed by Huayang Company constitutes the customer list in the trade secret; second, whether Mai Da Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing have infringed The behavior of Huayang Company's trade secrets; third, whether the list of Huayang's customers had been formed before Wang Chenggang, Liu Fang, and Zhang Hongxing left their posts; fourth, whether the amount of compensation determined by the court of first instance was appropriate.

(1) Whether the information of 43 customers claimed by Huayang Company constitutes the customer list in the trade secret.

1.About the confidentiality of the customer list

First of all, from the content of the customer list, the 43 customer information advocated by Huayang Company not only includes general information such as customer name, address, contact person, and telephone number, but also includes contact information, order date, product name, specifications, and sales volume. , Transaction unit price, etc. are different from the in-depth information of public channel information; secondly, in terms of the number of customers in the customer list, Huayang Company advocates 43 customers including xxx kitchen and bathroom appliance factory, which meets the characteristics of many customers; third, from customers In terms of transactions with customers in the list, the above 43 customers had more than 5 transactions with Huayang during the period from 2014 to 2015, forming a long-term and stable transaction relationship. In summary, in accordance with Article 13 Paragraph 1 of the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition " : "The list of customers in trade secrets generally refers to the customer's name, address, contact information, and The difference between

transaction habits, intentions, content, etc., and special customer information related to publicly known information, including customer lists that aggregate many customers, and specific customers who maintain long-term and stable trading relationships." Therefore, Huayang Company advocates 43 customer information It complies with the above-mentioned laws and has the characteristics of confidentiality

2. Regarding the confidentiality of the customer list
Huayang Company has adopted reasonable confidentiality measures for 43 customer information, including Huayang Company and its employees signed a confidentiality agreement, 43 customer information is stored in Huayang Company ERP system, company employees need to use a user name and password to log in to ERP system. As a senior manager of Huayang Company, Wang Chenggang has the statutory obligation to keep the company's business secrets; Zhang Hongxing and Liu Fang signed a confidentiality agreement with Huayang Company, and it should be determined that Huayang Company has adopted confidential measures.

3. On the value of the customer list
The information of 43 customers has actual or potential commercial value, which can bring Huayang Company a competitive advantage, so the above-mentioned customer list is practical and valuable.

In summary, in accordance with Article 10 of the " Anti-Unfair Competition Law of the People's Republic of China " (implemented in 1993, hereinafter referred to as the Anti-Unfair Competition Law): "Trade secrets are those that are not known to the public and can bring economic Interests, practical technical information and business information that have been kept confidential by the right holder." The information of Huayang's 43 customers complies with the confidentiality, confidentiality, practicality, and value of business secrets. The court of first instance determined the information of 43 customers of Huayang Company belongs to the customer list in the trade secret, and it is not inappropriate. Therefore, the second-instance court did not support the claims of Mai Da Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing that the information involved in the case was not an intellectual achievement or a customer list in the sense of a trade secret.

(2) Whether Maida Keer Company, Wang Chenggang, Liu Fang, and Zhang Hongxing have committed acts of infringing on trade secrets.

First of all, Wang Chenggang, Liu Fang, and Zhang Hongxing have the conditions for access to trade secrets. Wang Chenggang joined Huayang Company in 1996 and served as the company's director, sales deputy general manager, general manager, and vice president. He also served as the legal representative of Huayang Company from 2012 to 2016; Zhang Hongxing joined Huayang Company in 2001 and served as Manager of the company's technical department and manager of the technical service department; Liu Fang joined Huayang in 2010 and served as the company's sales service manager. According

to the positions and work content of Wang Chenggang, Liu Fang, and Zhang Hongxing in Huayang Company, they all have the opportunity and convenient conditions to contact the customer list.

Secondly, the company was established on October 30, 2015. Wang Chenggang founded the company and is currently the company's legal representative and general manager; Zhang Hongxing joined the company in January 2016 as the manager of the technical department; Fang Liu joined Medakal at the end of 2015 and is responsible for personnel and administration. Maida Keer Company is mainly engaged in the production and sales of industrial cleaning agents; Huayang Company is mainly engaged in the research and development, production and sales of industrial cleaning and maintenance products. Therefore, both companies produce and sell industrial cleaning products. The scope of production and business is the same. Competitive relations in the same industry.

Thirdly, within a short period of time after its establishment in October 2015, Medakol had conducted transactions with the aforementioned 43 customers of Huayang, and Medakol had not submitted sufficient evidence for self-development of the aforementioned 43 customers. The customer's evidence, that is, Medakol has no evidence to prove that the customer list it uses has a legitimate source.

In summary, Wang Chenggang, Liu Fang, and Zhang Hongxing violated the statutory and agreed obligation of keeping business secrets with Huayang Company, disclosing the business secret management information they possess, and allowing Maida Keer to use the above-mentioned customer list; The company knowingly used the above-mentioned customer list without the permission of Huayang Company. According to the method of "same (substantially similar) + contact-legal source" determined by trade secret infringement, the court of first instance found that Medakol, Wang Chenggang, Liu Fang, and Zhang Hongxing jointly committed the infringement of Huayang Company's trade secrets, and it was not improper.

(3) Whether the customer list of Huayang Company has been formed before Wang Chenggang, Liu Fang and Zhang Hongxing left their posts.

The invoice submitted by Huayang Company during the first instance proved that it had conducted more than 5 transactions with 43 customers including xxx kitchen and bathroom appliance factory in 2014 and 2015; at the same time, Huayang Company also submitted its A notarized certificate for notarizing customer information in the ERP system, which contains information on transactions with 43 customers. In the trial of the second instance, Wang Chenggang, Liu Fang, and Zhang Hongxing all recognized that they had resigned from Huayang Company before the end of 2015. Therefore, the invoice and notarization can prove that the list of 43 customers was before Wang Chenggang, Liu Fang, and Zhang Hongxing resigned from Huayang Company. That has been formed. Therefore, the notarization of the Huayang Company by

Meida Keer Company was formed in November 2016, and the customer information in the ERP system can be modified, and it cannot prove that the customer list of Wang Chenggang, Liu Fang, and Zhang Hongxing existed before the resignation. It is not supported.

(4) Whether the amount of compensation judged by the court of first instance is appropriate.

Regarding the amount of compensation, when the actual losses of Huayang Company due to the infringement or the profit from infringement of Mai Da Keer Company cannot be determined, the court of first instance comprehensively considered the commercial value of Huayang Company's customer information and rights protection expenses. Due to Daker's degree of fault, time of infringement, circumstances and other factors, it was determined at its discretion that Maida Keer Company compensated Huayang Company 600,000 yuan; because Wang Chenggang, Liu Fang, Zhang Hongxing and Mai Da Keer Company jointly violated Huayang Company Therefore, the court of first instance ruled that Wang Chenggang, Liu Fang, and Zhang Hongxing should bear joint and several liability for compensation, which was not inappropriate. Therefore, Huayang Company's claim that Maida Kerr should compensate for its losses of 1 million yuan is not supported; the claim of Maida Kerr that the amount of compensation in the first instance judgment is too high is not supported.

To sum up, the court of second instance decided to reject the appeal and uphold the original judgment.

During the review process of this court, Mai Da Keer Company submitted 14 pieces of evidence (No. 15, missing No. 4) to this court. Evidence 1 and 2 were respectively the evidence of the transaction information disclosure of the 43 clients involved in the case, and (2018) Beijing The Notary Certificate No. 53402 of Changan Neijing Certificate is intended to prove that the contact person, address, and telephone number in the customer information of Huayang Company through the process of browsing and printing web pages from the Internet and the results are public information on the Internet and are not confidential. The cross-examination opinions issued by Huayang Company are as follows: Regarding the evidence 1 and 2 submitted by Maida Keer Company, Huayang Company's opinion is that the authenticity, relevance and proof purpose of the evidence are not recognized. Regarding the evidence submitted by Mai Da Keer other than Evidence 1 and 2, Huayang believes that: First of all, except for the submitted evidence 6 witness testimony, other evidence is only reorganized and compiled on the basis of the evidence submitted in the first and second instances , New evidence that does not meet the provisions of the Civil Procedure Law. Secondly, in response to other evidence other than evidence 1 and 2 submitted by Mai Da Keer, it is obvious that there is evidence of a surprise attack. Thirdly, the above-mentioned evidence lacks authenticity and relevance, and cannot prove the purpose of Maida Keer. in particular:

Evidence 3 is the "notarized customer information comparison table", which proves that it uses the basic customer information of Huayang Company. Evidence 5 is the "Summary Analysis Table of 43 Customer Transaction Time and Frequency", which intends

to prove that 43 customers are not Huayang Company's stable trading customers. Evidence 12 "Comparison of transaction details of xxx companies", intends to prove that the products, cycles, quantities, and prices of the transactions between Mai Da Keer and Huayang are different from customers, and the price of the only similar product is very different and higher than the price of Huayang. It is intended to prove that it does not possess or use the customer information of Huayang Company. The cross-examination opinion of Huayang Company is that the three pieces of evidence belong to the subjective opinion analysis of Medakel Company and are not evidence in the sense of the Civil Procedure Law. It is not true that the number of transactions between multiple customers and Huayang Company listed in the “43 Customer Transaction Time and Frequency Summary Analysis Table” in Maida Keer Company Evidence 5 is not true. According to the notarization submitted by Huayang Company in the original trial Both the book and the sales invoice can fully prove that the number of transactions between Huayang Company and the 43 customers involved in the case in the two years in 2014 and 2015 was as low as 5 times and as high as 81 times, which is an extremely stable customer relationship. Therefore, the authenticity, objectivity, relevance and purpose of proof of evidence 3, 5, and 12 are not recognized.

Evidence 6 is the "witness testimony", which is intended to prove that the customer took the initiative to contact Medakal to reach cooperation. Huayang Company’s cross-examination opinion is that, first of all, the witness Cheng had a close and interest relationship with Maida Keer Company and the first-instance defendants Wang Chenggang and Liu Fang, so there is a legal interest relationship, which is beneficial to Maida Keer Company. The statement lacks truthfulness. Secondly, the statement made by the witness Cheng completely deviates from the basic common sense in the sales bargaining process in commercial activities and the normal mentality that a seller should have in bargaining. Thirdly, the witness Cheng Mou's statement also made it clear that industrial cleaning agent products must be combined with the specific actual conditions of different customers, and necessary on-site tests are required to formulate products that effectively meet customer needs and sell them to customers. However, this statement obviously contradicts the fact that Maidakeer Company maintains that most of the industrial cleaning products are generally used by the general public and do not need to be adjusted for the specific needs of customers. The witness's testimony lacked truthfulness for the favourable statement of Medakol Company, and his statement violated industry customs, let alone represented the industry practice of similar or similar industrial cleaning agent production enterprises in the dispute in this case.

Evidence 7 is "commercial rebate certificate". It is intended to prove that it has reached cooperation with 43 customers through its own methods and efforts. Huayang Company's cross-examination opinion is that the evidence has not been submitted for verification and its authenticity is not recognized. In addition, the nature and content of the payment in the corresponding bill and the main body of the payee are not directly related to the facts of the case. At the same time, the set of evidence submitted by Medakere is all the consumption expenditure of Medakere, and it cannot prove the fact that it has established a cooperative relationship with the 43 customers involved in the case through its own means and efforts, so the evidence 7 The authenticity, relevance, and purpose of proof are not recognized.

Evidence 9 is "Huayang Instruction Manual", evidence 10 is "Huayang Ensay Product Introduction Manual", and evidence 11 is "Huayang Ensay Sales Instruction Manual". It is proposed to prove that there is no uniform standard for the products in this industry, and they all adopt their own corporate standards, and the products are not comparable. All employees in this industry have received industry knowledge training from the company at their job. Huayang Company's cross-examination opinion is that the evidence 9 and 10 are product manuals, which are not directly related to the determination of trade secrets in this case, and the manuals and other materials cannot prove the fact that Maidakeer believes that the products are not standard and comparable. , And the purpose of the proof has nothing to do with the facts in this case. And the evidence 10 and 11 Mai Da Keer Company did not submit the original, and its authenticity is not recognized. At the same time, although the "Huayang Ensay Company" in Evidence 10 and 11 is similar to the name of Huayang Company, it has no connection with the two completely independent companies of Huayang Company. In addition, according to the content of the sales instruction manual of Evidence 11, it is "Huayang Ensai Company"'s reference material for sales personnel training, which facilitates and regulates the understanding and application of the basic skills of its sales personnel for external sales. There is no customer name, Contact information, product specifications, unit price and other practical information, so the proof purpose of the evidence and the facts in dispute in this case are not related, so the relevance and proof purpose of evidence 9 are not recognized, and the authenticity of evidence 10 and 11 , Relevance, and purpose of proof are not recognized.

Evidence 13 is the "Business Negotiation Letter of Shaanxi xxx Company", which intends to prove that it can learn the prices of competing businesses from customers. The cross-examination opinion of Huayang Company is that, first of all, the evidence does not have the original and its authenticity is not recognized. Secondly, judging from the content of the product quotations of different suppliers listed in the letter, the quotations of different product models, specifications, and quantities are not comparable, and more importantly, they are not related to the products or customers in this case. Therefore, the quotations for the products listed in the letter are at best only the bargaining exchanges between Medacall and customers on specific products, and are not related to this case. Therefore, the authenticity, relevance, and purpose of the evidence are not recognized.

Evidence 14 is a "screenshot of the summary of xxx financial statements", which intends to prove that the customer's purchase expenditures in Medakere are very small, are not sensitive to prices, and prices are not a deep secret. The cross-examination opinion of Huayang Company is that, on the one hand, from the perspective of the evidence collection and deposit form, the screenshot of the webpage does not conform to the effective method of fixing and storing the evidence, so its authenticity is not recognized. On the other hand, judging from the content contained in the evidence and the purpose of proof by Medakal, the financial statement information has nothing to do with this case, and it cannot reflect the publicity of the price information of the products in dispute in this case, that is, it cannot be confirmed. The purpose of the certification of Medacall. Therefore, the authenticity, relevance, and purpose of the evidence are not recognized.

Evidence 15 is "Explanation of the cleaning agent used by Xi'an xxx Co., Ltd.". It is intended to prove that customers use multiple and different quality cleaning products at the

same time and cooperate with different suppliers in the same industry, so there is no secret in this industry. The cross-examination opinion of Huayang Company is that, first of all, the evidence does not have the original and its authenticity is not recognized. Secondly, the explanation can only prove the fact that the client company purchases cleaning agent products, but the explanation cannot prove that the product suppliers have no secrets in the development and sales of their respective products. Therefore, the authenticity of the evidence and the purpose of the proof are not recognized.

Huayang Company submitted 11 pieces of evidence to this court. Evidence 1 is a document of the China Industrial Cleaning Association: Zhongqing Xiefa (2019) No. 033 "Response on the Characteristics of the Marketing Business of Industrial Cleaning Agents", which intends to certify that Medakere Company The claimed industrial cleaning agent product has high universality and versatility, customer development does not need to pay, and the product price is open and can be easily obtained. There is no factual and practical basis at all. Maida Keer issued a cross-examination opinion that it had no objection to the authenticity and legality of evidence 1, its relevance, and the purpose of proof. Mai Da Keer believes that Evidence 1 is not a document of universal applicability and cannot cover all sales in the industry. Maida Keer does not deny that a small number of customers need this tailor-made service, but such customers account for a very low proportion in the industry, and most customers need conventional products.

Evidence 2 is the "Statement Statement" of Changsha xxx Co., Ltd., and Evidence 3 is the "Statement Statement" of xxx Bioengineering Co., Ltd. It is proposed to prove that stable customers are manufacturers who need to accumulate many years of hard work and are based on a large amount of practical information in use by customers. of. Maida Keer issued a cross-examination opinion that the client is open, and in a fully competitive market environment, other peers have the right to establish trading relationships with customers through publicly known information, legal sources, and customer voluntarily. No objection to the authenticity, legitimacy, and relevance of evidence 2 and 3, and objection to the purpose of the proof.

Evidence 4 is (2019) Jinxi Qingzheng Jingzi No. 209-214 "Notarization", and evidence 5 is (2019) Jinxi Qingzheng Jingzi No. 215-217 "Notarization", which is intended to prove that Zhang Hongxing and Liu Fang are in office During this period, we have an in-depth understanding of the specific requirements of the customer's working conditions and the detailed plan of product deployment. Maida Keer issued a cross-examination opinion that it has no objection to the authenticity, legality and relevance of the evidence 4, and objection to the purpose of the proof. The authenticity of evidence 5 cannot be ascertained, the legality and relevance are not objectionable, and the purpose of the proof is objectionable.

Evidence 6 is (2019) Jinxi Qingzheng Jingzi No. 218 "Notarization", which is intended to prove that Wang Chenggang, Liu Fang, and Zhang Hongxing participated in the formulation and implementation of the "Sales Secretarial Work Manual" during their tenure, and they knew the importance and secrets of customer information Sex. The cross-examination opinion issued by Maida Keer Company is that there is no objection to the authenticity and legality, objection to the relevance of the evidence, and objection to the purpose of the proof.

Evidence 7 is Liu Fang's resignation "Meeting Sign", which intends to prove that Liu Fang's public email address was xxx.com during his work in Huayang Company. Liu Fang masters important secret company information such as "ERP software", "group customers", "price list" and "sales contract". Mai Da Keer Company issued a cross-examination opinion that the evidence can only prove that Liu Fang had contact with the materials listed in the countersignature during his work in Huayang Company. The existence of the "consignment form" just proved that Liu Fang had completely completed the materials when he left. The submission did not take away any materials, and it is impossible for Liu Fang to use the information in these materials while working at Medakol. Therefore, there is no objection to the authenticity, legitimacy, and relevance of evidence 7, and objection to the purpose of the proof

Evidence 8 is (2019) Jinxi Qingzheng Jingzi No. 219-221 "Notarization", and evidence 9 is the sales invoice. Evidences 8 and 9 were used to prove that the information of the 43 customers involved was first recorded in the EPR management system of Huayang Company in 2012, that is, it was formed before the establishment of Mai Da Keer and the departure of Wang Chenggang, Zhang Hongxing and Liu Fang. Maida Keer issued a cross-examination opinion that Evidence 8 and 9 cannot prove the specific time and content of the record in the ERP management system. It has doubts about the authenticity of Evidence 8 and 9, and has no objection to the legality and relevance of the proof. objection.

Evidence 10 is the Civil Judgment of Tianjin Nankai District People’s Court (2016) Jin 0104 Minchu No. 7919, which intends to prove that Wang, a former employee of Huayang Company, was dismissed by Huayang Company for violating confidentiality regulations and other reasons. The business manager of Medakal Company, therefore, may have a high degree of doubt about the legality of the source of information about the client-related information obtained by Medakal Company. Medakal issued a cross-examination opinion that during the re-examination, Medakal was able to prove that the quotation and the sales orders of manufacturers including Medakal and Huayang to a certain customer were publicly available. Information, thus submitting the above-mentioned information obtained from public channels to the court. With regard to the above-mentioned quotation and sales order evidence submitted by Medakal, Medakal has submitted a legal source statement to the court. In addition, Wang Peng's personal situation is not related to this case. Therefore, there is no objection to the authenticity and legitimacy of the evidence 10, the relevance and the purpose of the proof.

Evidence 11 is witness testimony. Customers who intend to prove stable need to have information on customer habits and other information. This information is the result of years of practice and summary of the company. The information obtained by others is sufficient to open up sales and seize the market in the short term. The quotations, training materials, etc. of other companies in the industry submitted by Maida Keer Company are non-public information and are obtained through illegal channels. The cross-examination opinion issued by Maida Keer Company is that the testimony of the witnesses can only represent the personal views and knowledge, at most, the company, and cannot reflect the general state of the industry.

As for the proof and cross-examination of the above-mentioned parties and the evidence submitted by the parties in the original trial, this court will analyse them together with the focus of the case.

In addition, the court found that the products related to this case were mainly chemical products related to the maintenance and cleaning of factory equipment. Huayang Company once reported to the Nankai Branch of Tianjin Public Security Bureau that Mai Da Keer Company violated its trade secrets and provided to this court the transcript of the bureau's inquiries on Wang Chenggang, Liu Fang, and Zhang Hongxing. Huayang Company stated in court that after receiving the criminal report, the bureau did not make a decision to file a criminal case against Wang Chenggang and others. Huayang Company and Wang Chenggang, Liu Fang, Zhang Hongxing did not sign a non-competition contract or have similar agreements.

According to the facts ascertained by the original trial court and the reasons for the parties' application for retrial and the defense opinions, the focus of the dispute in this case is the customer name, product name, product specification, sales order quantity, unit price, and contact person in the transaction between Huayang Company and the aforementioned 43 customers. , Telephone number, place, and address constitute the commercial secrets as stipulated in Article 10 of the Anti-Unfair Competition Law, and whether Maida Keer has used the commercial secrets.

This court believes that in hearing trade secret cases, the people's courts should not only strengthen the protection of trade secrets in accordance with the law, effectively stop the infringement of trade secrets, create a safe and reliable legal environment for enterprise innovation and investment, but also properly handle and protect business. The relationship between secrets and laborers' free choice of jobs, restrictions on competition, and the rational flow of talents, safeguard the legitimate rights and interests of workers in legitimate employment and entrepreneurship, and promote the rational flow of labour and independent job selection in accordance with the law. The knowledge, experience and skills acquired and accumulated by employees at work, except for the business secrets of the unit, constitute an integral part of their personality and are the basis of their survivability and labour ability. Employees have the freedom to use them independently after leaving their jobs.

Article 13 of the " Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition " stipulates that "the list of customers in trade secrets generally refers to the customer's name, address, contact information, and transaction habits, intentions, and The content, etc., constitute special customer information that is different from related publicly known information, including customer lists that gather many customers, and specific customers who maintain long-term and stable trading relationships. The customer conducts market transactions with the employee's unit based on the individual's trust in the employee, and the employee resigns Later, if it can be proved that the customer voluntarily chooses to conduct market transactions with himself or his new unit, it shall be determined that no improper measures have been taken, unless the employee and the original unit have agreed otherwise." Accordingly, the list of customers protected by trade secrets shall be excluded. In addition to being constituted by the customer's name, address, contact

information, and transaction habits, intentions, content and other information, it should also belong to special customer information that is different from relevant publicly known information, and does not mean the protection of all customer lists.

In this case, there are three pieces of core evidence related to the focal issue. One is the list of Huayang's 43 infringed customers submitted by Huayang in the first instance (2012-2015); the other is provided by Mai Da Keer (2018) Jing Chang'an Neijing Zhengzi No. 53402 notarization, its content mainly refers to the process and results of the process and results of Mai Da Keer's browsing and printing web pages through the Internet under the witness of a notary office to prove the contact person and address in Huayang's customer information , The telephone is public information on the Internet; one is the customer information comparison table submitted by Mai Da Keer, that is, the list of Huayang's 43 infringed customers (2012-2015) and Mai Da Keer's 43 customer information comparison table.

Regarding the first evidence, the first and second instance courts organized both parties to cross-examine, and this court will not repeat the certification opinions. Regarding the second piece of evidence, Huayang Company did not recognize the authenticity, relevance and purpose of the evidence. This court believes that the evidence is a search for relevant network information under the witness of a notary. It reflects the objective conditions of network information, recognizes its authenticity and relevance, and authenticates its purpose of proof in combination with other evidence. Regarding the customer information comparison table (Evidence 3) submitted by Mai Da Keer Company, Huayang Company's cross-examination opinion is that the evidence belongs to Mai Da Keer Company's subjective opinion analysis and is not evidence in the sense of the Civil Procedure Law. This court believes that although the evidence was produced by Medacer, the customer information for comparison is the customer information requested by Huayang in the original litigation and Medacor's customer information. Both pieces of customer information are It is managed by ERP management software. If you need to analyse the similarities and differences, you must compare them. Merely on the grounds that the comparison was made by Medacer's own forms, it denied that the evidence was not based on sufficient validity, so Huayang's objection was not supported. According to the form, this court found that the contact information of 43 customers of Huayang Company and the contact information of corresponding customers of Medakol Company. There are 40 different contact numbers, accounting for about 93%, of which contact person and contact number There are 37 companies that are all different, accounting for about 86%. Regarding the specific information for comparison, this court will not list specific information due to the specific contact information of relevant market entities.

This court believes that, based on the evidence submitted by Huayang, Huayang has adopted confidential measures for its client list and conducted related transactions. However, whether it is a trade secret protected by the Anti-Unfair Competition Law, the judgment requirements should be based on the law. Judge with judicial interpretation. In this case, according to the notarization provided by Medakal, the information of the aforementioned 43 customers can be obtained through online search. According to the list of 43 infringed customers provided by Huayang Company (2012-2015), the main contents of the customer list are: order date, order number, product name, product specification, unit (bucket or unit), sales order quantity, unit price, tax-free Base currency, contact person,

phone number, address. According to the customer list, the form is the transaction record and contact person between Huayang Company and a customer during a specific time period. This court believes that firstly, in the current network environment, relevant demand-side information is easy to obtain, and relevant industry practitioners can easily know according to their labour skills; secondly, regarding order date, order number, product name, product specification, sales order quantity, unit price , Untaxed functional currency and other information are listed generally, and do not reflect a customer's transaction habits, intentions and other content that is different from general transaction records. Without in-depth information covering the specific transaction habits and intentions of relevant customers, it is difficult to determine that the demand-side information is a trade secret protected by the Anti-Unfair Competition Law.

Huayang Company claims that its 43 customer list transaction information can reflect the special product needs and transaction habits of different customers. According to the evidence provided by Huayang, the list of 43 infringed customers of Huayang (2012-2015), the product names and specifications of the products sold are SK-221 (25L), Okos-1 (25L), 9600 plastic spray cans (600ml), SK-237 (25L), Sukejie-Ⅰ (25L), Di Techun-Ⅲ (20L), SK-632 (20L), Spark (25L), etc.; among 43 customers, there are xxx Manufacturing and production enterprises such as kitchen and bathroom appliance factories, as well as companies operating stationery and gifts such as Ningbo xxx Co., Ltd., for stationery and gift enterprises, it is difficult to explain that the purchased products reflect the special needs of customers. In addition, according to the aforementioned evidence, taking SK-221 (25L) and Sukejie-I (25L) as examples, SK-221 (25L) products are purchased by xxx kitchen and bathroom appliance factories. There are Ningbo xxx companies to buy Sukejie-I (25L). Take the Sukejie-I product as an example, 30 of the 43 customers listed by Huayang Company purchased it, accounting for 69.76%. It is difficult to prove that the products it sells reflect the special product needs of customers, and it is even more difficult to prove It reflects the special trading habits of customers.

In addition, according to the comparison table provided by Mai Da Keer, about 86% of the 43 customers' list of important information-related contacts and phone numbers are different from those requested by Huayang, and those with different contact numbers. Approximately 93%, and 26 customers submitted proofs that they voluntarily chose Medakol for market transactions. Consider that both parties in this case are enterprises that develop, produce and sell industrial cleaning and maintenance products. The product range mainly includes cleaning agents, lubricants, sealants and other industrial chemicals. Due to the characteristics of the industry engaged in cleaning product sales and services, customers choose which suppliers to trade with, not only considering the performance and price of related products, but also Considering the quality of the cleaning service, it is difficult to conclude that Medakel has used the relevant information of the Huayang Company's 43 customer lists for market transactions when the proportion of contacts and telephone numbers are quite different.

In view of the foregoing analysis, combined with the fact that Huayang Company has not signed a non-competition agreement with Wang Chenggang, Zhang Hongxing, and Liu Fang, Mai Da Keer does not assume the relevant non-competition obligations. Therefore, under the circumstances that Wang Chenggang, Zhang Hongxing, and Liu Fang neither have the obligation to restrict competition, the list of relevant customers does not constitute a

trade secret, and the proportion of relevant contacts and contact telephone numbers is quite different, it is difficult for this court to determine the Medakol Company The actions of Wang Chenggang and others constituted an infringement of Huayang's trade secrets. Under the condition that Wang Chenggang, Zhang Hongxing and Liu Fang do not infringe on the trade secrets of Huayang Company, they have no obligation to restrict competition, and use the knowledge, experience and skills they have learned from the original employer, whether it is to learn relevant market information from market channels or based on Practicing experience knows or judges the needs of a certain market entity for related products and services, and can develop market on this basis and compete with other market traders in the same industry, including the original unit. Although market competition with the original unit does not necessarily meet the noble standards of personal morality, as a market transaction participant, it is not prohibited by law to engage in business in the same industry without violating the prohibition of the law and without contractual obligations. If there is no obligation of non-competition and no trade secrets, just because a certain company has had multiple transactions or stable transactions with another market entity, the ex-employees are prohibited from competing in the market, which is essentially restricting the market. The opportunity for market entities to choose other transaction entities not only confines the trading activities of both parties to the transaction, restricts market competition, but also is not conducive to safeguarding the legitimate rights and interests of workers in their legitimate employment and entrepreneurship, and runs counter to the Anti-Unfair Competition Law to safeguard the healthy development of the socialist market economy , Encourage and protect fair competition, stop unfair competition, and protect the legitimate rights and interests of operators and consumers.

In summary, the reasons for the relevant retrial application of Maidake are established. The courts of the first and second instance found that Maidake used the list of Huayang's 43 customers and violated Huayang's trade secrets. The facts and applicable laws were all wrong. The hospital corrected it. In accordance with the " People's Republic of China Against Unfair Competition Law " (1993 implementation) Article 10, paragraph 3, " Supreme People's Court on the trial of civil cases of unfair competition Application of Laws explained ," Article XIII , " People's Republic of China According to the provisions of Article 207, paragraph 1 , and Article 170, paragraph 1 , paragraph 2 of the Civil Procedure Law , the judgment is as follows:

1. Revocation of Tianjin No. 1 Intermediate People's Court (2017) Jin 01 Min Chu No. 50

   Judgment

2. To revoke the Tianjin Higher People's Court (2018) Jinminzhong No. 143 Civil Judgment;

3. Dismissed the litigation request of Huayang Xinxing Technology (Tianjin) Group Co., Ltd.

The first-instance case acceptance fee was 32057 yuan, the property preservation fee was 5,000 yuan, and the second-instance case acceptance fee was 39,357 yuan, all of which were borne by Huayang Xinxing Technology (Tianjin) Group Co., Ltd.

This decision is final.

Presiding Judge: Wang Yanfang
Judge: Mao Lihua
Judge: Du Weike
December 16, 2019
Assistant Judge: Tang Xian
Clerk: Zhang Limeng