

### Facts of the case

Crocodile Garments (ZhongShan) Ltd. is the beneficiary owner in Mainland China of the trademark of Crocodile. Two of their employees (defendant A and B) and C-company produced and sold clothing with the trademark of Crocodile, infringing the rights of the trademark owner. Sinotimes filed a claim at Shanghai No.2 Intermediate People's Court on behalf of Crocodile Garments HK Ltd. (trademark owner) and Crocodile Garments (ZhongShan) Ltd. (holder of the trademark in Mainland China) requiring the defendants to stop the infringement acts, to destroy the clothing containing any trademark of Crocodile, to apologize publicly and to pay damages for compensation.

### Court Procedures

Defendant B did not reply to the charges, even though he had admitted earlier to Shanghai Municipal Bureau of Quality and Technical Supervision that he had stocked a batch of shipping marks with the trademark of Crocodile and supplied it to C-company, and that they cooperated in producing a batch of clothing.

Defendant A denied that he had the intention of joint infringement, arguing that he did not participate in the entire process and did not know of the cooperation between defendant B and C-company. He only leased houses to defendant B.

C-company argued that when defendant B came to the company for business, he presented sufficient official documentation such as Crocodile Garments Ltd.'s business cards, relevant copies of the company's licenses and a letter of authorization with Crocodile Garments Ltd.'s company chop, which allowed C-company to produce the clothing with the trademark of Crocodile. C-company considered this an apparent agency and pled having acted without fault and not being legally liable.

On behalf of the plaintiff, Sinotimes brought forward that by his alleged actions of supplying trademarks without authorization, defendant B had evidently infringed the owner's exclusive rights to a registered trademark. Although defendant A denied his intend of joint torts, a large number of tortuous shipping marks and clothing as well as a partnership agreement was found in his house. These facts allowed the conclusion

that defendant A had participated in the tort and that he had the intend of joint torts.

Sinotimes argued that defendant A and B should therefore assume joint responsibility. C-company did not fulfill the obligation of examining defendant B's legal authority. In addition, the letter of authorization was forged. Crocodile Garments Ltd. had not granted any authorization of this kind. Therefore, C-company should assume tort responsibility for producing and selling the clothing.

The court, at last, followed Sinotimes' line of argumentation. In the verdict all defendants were convicted to stop torts and pay different amounts of damages to Crocodile Garments Ltd.

### Case study

According to Sinotimes' understanding there are three highlights in the trial and judgment:

1) The court convicted each defendant according to his individual fault, instead of convicting all defendants collectively. The court held that defendant A and B have obvious fault in torts, and thus should assume full responsibility. C-company should assume less responsibility because on the

one hand it did not comply with censoring requirements but on the other hand there was no persuasive evidence for the intend of joint infringement.

2) The court raised the level of protection of the interests of the trademark owners and the trademark holder. Apart from convicting the defendants to pay economic compensation, the court imposed civil penalties by confiscating the products of infringement and by imposing a financial penalty.

3) In order to avoid further loss Shanghai Municipal Bureau of Quality and Technical Supervision, in reply to Sinotimes' request on behalf of the plaintiff for preliminary measures, timely detained and sealed the products, the trade marks and the logo. Thus, the products have been prevented from flowing into the market. These measures have avoided greater and unaccountable losses to the plaintiff.