

**Actively establish the system of Commercial Secrets Protection
Vigorously protect the Intellectual Property Rights of Enterprises**

Administration of Industry & Commerce Bureau of Zhejiang Province

In recent years, all industry & commerce bureaus of Zhejiang province (the “AIC”) have in-depth practiced the scientific outlook on development, put forward the demand of “focus on competition law enforcement”, and treat the commercial secret protection as the major work. Since 2006, the AIC has totally investigated 52 cases of commercial secret infringement, the value of which count up to RMB17, 687,100, fined and confiscated RMB2, 839,600, as well as recovered the loss of enterprises about RMB20, 000,000. In particular, considering the status quo that enterprises are lack of knowledge of commercial secret protection in the business course and are weak awareness thereto, the AIC enhances the administrative guidance and make a great contribution to the protection of enterprises’ key IPRs and the restructure and update of industry. The main measures include:

1. Constantly enhance our understanding and enhance the “support” on confidential protection

On one hand, the registered trade mark is regarded as the external IPRs of enterprises, to which both the government and enterprises attach great importance to protect; on the other hand, the commercial secrets are

regarded as the internal IPRs and embody the key competitiveness of enterprises, however, the protection effect of commercial secrets seems not satisfactory. Based on the result from 2008 survey against some enterprise of Taizhou city, commercial secret infringement is universal; enterprises are puzzled and lack of knowledge and protection on commercial secrets; while the administrative system of curbing infringement also exists defects. In order to change this situation, we convene specific conference every year since 2008, research and arrange works against commercial secrets protection, and issued the *Notice on Launching the Specific Action to Protect IPRs and Lawful Benefits of Enterprises in Our Province*, under which we ordered all branches to in-depth understand and comprehensively implement the “four consistency” requirements of SAIC, and to emphasize the commercial secrets protection as one of important jobs which actively serves the overall of economic development. Meanwhile, each region stipulated its own measures for the purpose of this job; particularly, some regions, such as Taizhou and Haiyan, make commercial secrets protection up to government level and organize a working agency led by the AIC. After a period of hard working, effectively protecting commercial secrets of enterprises from infringement became a consensus and goal of the AIC from top to bottom.

2. Emphasize the prevention and enhance the “Immunity” of enterprises

Through the investigation and research on enterprises, and considering the nature of commercial secrets, we believe that the priority of protection is prevention. Only when the checkpoint of protection is on the front can the infringement be effectively curbed, while the post-protection could have the legal basis. This regard, we focus on three aspects: First, to enhance the education and propaganda of the protection of commercial secrets. Each region compiled some promotional materials, such as Guideline of Commercial Secrets Protection, made the laws and regulations clear to the chief executive of enterprise, and actually corrected the wrong awareness of “no secret, uselessness of secrets and hardly investigate the responsibility of disclosure”. Meanwhile, we enhanced the education of the personnel who are available to commercial secrets, and promoted their consciousness and initiative to protect secrets and benefits of enterprises. Second, to lead enterprises to establish contractual management. Per the invitation of enterprises, we evaluated their confidential protection work, comprehensively analyzed the status quo of protection, regardless of system, hardware measures and software safety, pointed out potential risks and blind spots, give our opinion and proposal, as well as lead enterprises to establish sound confidential protection system. Some regions, such as Taizhou and Wenzhou, have made various templates of commercial secrets protection according to the features of each industry, including but not limited to the concept, scope, aspects involving secrets, classification of protection measures, and

confidential liability of employees, for enterprises reference. Some regions also convened training meetings of commercial secrets laws in high-tech zone and science zone, and trained relevant personnel of enterprises with confidential knowledge combining actual cases. Third, to actively establish contact system of “protect enterprises”. We assigned specific persons to key enterprises. Such persons will lead enterprises, according to the actual situation of enterprise, to establish a team, under which the chief executive is the leader and other relevant personnel is members thereof, specifically for commercial secrets protection; at the same time, the team will assign a full-time or part-time person to take charge of general and daily works, so as to establish a normal confidential protection system. We also assisted enterprises to identify the content of commercial secrets and establish well-targeted protection system. In addition, we facilitated the protection channels, while enterprises could report or consult to contact-person of the AIC within 24 hours.

3. Improve the investigation means and enhance the “deterrence” of investigation

In recent years, the provincial AIC often convenes specific conferences to research and arrange investigation against commercial secrets infringement. These investigation focus on the illegal behaviors against technological information and operating information, such as

technological program, manufacturing method, formula, process, sample, mold, operating manual and business correspondence involving commercial secrets. Hangzhou AIC investigated a case under which certain technical company infringed commercial secrets of *GE Healthcare*, and this case was awarded as one of the best cases of IPRs protection in 2007-2008 by *Quality Brands Protection Committee* (QBPC). Deqing AIC investigated a case regarding infringement of certain sensor company's commercial secrets, for which *China Weighing Instrument Association* specially expressed its appreciation. Taizhou Shujiang AIC investigated a chain case regarding reselling pharmaceutical process and more than 100 million. Ningbo Yuyao AIC investigated a case under which an employee violated his company's confidential provisions and used client materials without authorization, and the enterprise gave the AIC a pennant in this respect. Zhoushan AIC investigated a case regarding stealing certain listing company's textile machinery drawings, and punished two persons involved and fined RMB26, 000. Wenzhou Longwan AIC investigated a case regarding using email to infringe certain valve company's client materials and business information, and this case received high praise from local government. Jiaxing Tongxiang AIC investigated a case regarding using Trojan virus to stealing the holder's costume design, and transferred this case to police for further investigation. Aimed at the new trend of current cases regarding commercial secrets infringement, which

combined network technology, when investigating such cases, each region paid attention to timely adopt the measures, such as seal-up and detention, for preservation of evidence. Aimed at the new types of network infringing behaviors, we preserve evidence through many methods including notarization, inspection record and recovery of damaged program, and serve for the verification and identification of infringement. Considering the nature of commercial secret infringement, each region actively get help from polices, and obtain key evidence, such as correspondence, contents of communication and conversation, SMS, e-mail and transaction records of bank account, so as to serve for the investigation. Meanwhile, we take proper confidential measures against investigators, so as to prevent disclosure of commercial secrets once again during the investigation, which could eliminate the worries of enterprises.

4. Improve long-term regulatory mechanism and enhance the “implementation” of protection

To establish linkage mechanism among different departments and institutionalize comprehensive long-term mechanism. We require that each branches of AIC shall, together with police, procuratorate and court, establish well-targeted linkage mechanism which aims at the infringement of commercial secrets against major enterprises. Each region shall incorporate commercial secrets protection into its regulatory

scope of basic units, select law-executors who are familiar with relevant laws and instruct enterprise to adopt proper measures for secrets protection throughout the whole course, and timely deal with the guidance and complaints regarding these jobs. To take advantage of trade association who is familiar with the commercial secrets protection, to enhance the communication and cooperation among enterprise, to enhance the industry self-regulation, so as to establish the protection mechanism of self-discipline, self-management and self-improvement.

5. Conclusion

From the perspective of enforcement practice, China's legal protection for commercial secrets is incomplete, fragmented, too fundamental and hard to be enforced. To protect the commercial secrets needs not only the conscious action of enterprises, establishment and improvement of protection system, and correctly selection of legal methods to maintain rights, but also active promotion and whole-hearted service of relevant governmental departments, and overall improvement of morality and conscience each person in the society. Only if enterprises, government and society work together can the comprehensive system of protection be established, so as to establish a solid defense of commercial secrets protection.