

Report of Guangdong Administration of Industry and Commerce on the Investigation and Enforcement of Trade Secret Infringement Cases

In recent years, under the correct leadership of the SAIC, the Guangdong Provincial Party Committee and the Provincial Government, all levels of administrations of industry and commerce in Guangdong province have conscientiously implemented the various relevant arrangements of higher authorities and deepened the investigation and enforcement of unfair competition cases. Now let us present a brief report on the investigation and enforcement of trade secret infringement:

1. Trade secret is an important intangible commercial property of enterprises. With the development of science and technology and the intensifying competition among enterprises, the problems related to trade secret are drawing more and more concerns and attentions. In recent years, Guangdong AIC has handled a small number of such cases. In 2008 it handled 7 cases, with a total fine of ¥ 140,000; in 2009, 3 cases, ¥ 10,000. According to some reports, due to the complication of such cases, there are many disputes arising from AIC's handling of such cases as administrative reviews, litigations and etc., and the handling efficiency is low, therefore, the infringed owners of trade secret are more willing to complain to public security bureau (PSB) or directly lodge litigation

before courts.

2. Trade secret is a special kind of intellectual property right (IPR). Unlike patent or trademark which is subject to grant or registration of state authorities, or copyright which conditions on the completion and signature of works, trade secret simply relies on its "secrecy" for the establishment of conditions. It is a valuable commercial property and has an important impact on companies' survival and development in the market competition. Once a company's trade secrets are infringed, its losses are usually beyond measure and much more than the compensation obtained through litigations.

For example: on October 26, 2007, the right owner NOBLE Energy Saving Technology (Zhuhai) Co., Ltd. (hereinafter referred to as "right owner" or "NOBLE Company") entrusted its lawyer to report to us that its lawfully-owned trade secret was infringed and request us to investigate and handle. On October 31, 2007, our enforcement officers carried out an on-site investigation at 2001 Anhui Building, Pearl Garden, Pearl Road 3094, Zhuhai where is the business place of Zhuhai NOAH Energy Saving Technology Co., Ltd. The investigation showed that Zhuhai NOAH Energy Saving Technology Co., Ltd. (hereinafter referred to as "the party" or "NOAH Company") was suspected of having infringed the

right owner's trade secret in the process of production and sales of energy saving products and damaging the right owner's legitimate interests. To find out the facts, we registered the case and started investigation on that very day.

Finding:

Zhuhai NOAH Energy Saving Technology Co., Ltd. was founded on July 19, 2007 and jointly invested by three natural persons, i.e., Zhang Qun, Zhu Hongbin and Zhang Tianliang, among whom Zhang Qun as a shareholder is its legal representative, but Zhang Qun is a nominal shareholder and the shares in its name is actually funded and controlled by Xiong Kewen (shown in bank deposits journal). After Zhuhong Bin, Xiong Kewen and Zhang Tianliang founded NOAH Company, Zhu Hongbin takes charge of the design and production of energy saving products while Xiong Kewen and Zhang Tianliang take charge of the sales and maintenance of energy saving products. Zhu Hongbin was originally NOBLE's employee, joined NOBLE company on December 30, 2003 and quitted in late 2005 (the last salary was paid on November 16, 2005). Wehn Zhu Hongbin During worked in NOBLE company, he successively served as manager of manufacturing department, electrical engineers of R & D department, etc. For the purpose of establishing a similar enterprise and producing similar products in the future, during the

term of service for NOBLE Company Zhu Hongbin took advantage of his position to steal by entrainment, copy (reproduction) and other illegal means four paper "enterprise standard" documents of the right holder, three of which were originals and one was a copy. And the names of energy-saving products are respectively "Motor Energy Saver," "Power Grid Filtering Energy Saver" "Power Grid System Saver ", "EffectPower Energy Saver".

The above-mentioned four "corporate standard" documents was discovered and seized in the party's premises, which contained technical requirements in "technical parameters" and test methods in "technical parameters testing", When stolen they were all in the validity period of registration. There were also material objects such as "man-machine interface circuit board", "main control circuit board" (test board) and a batch of semi-finished circuit boards. Other technical and business information were also copied in the form of computer storage media such as "circuit drawings," "product design", "control software program", "electrical schematic diagram", "circuit diagram of PCB", "bill of materials", "supplier list", "energy-saving plan", " client list" ,etc.

Using the above-said technical information and business information stolen from NOBLE company, Zhu Hongbin commissioned others to produce circuit boards for energy saving products according to NOBLE's "circuit drawings" and the stolen circuit board model, purchase materials

according to NOBLE's "bill of Materials", weld, assemble and finally produce various serials of energy saving products in the name of NOAH, e.g., BaseSaver, ECO, street lamp energy saver, NobiParam and so on.

NOBLE-designed "system diagram", "circuit drawings", "bill of materials", "suppliers" and other documents were stored in the computer controlled by Zhu Hongbin. And most names of these documents still contained of the word "NOBLE" in English or Chinese". NOAH's energy-saving products were OEMed (Original Equipment Manufactured) through NOBLE's technologies such as saver circuit board, bill of materials, electrical schematics, circuit drawings, product design, etc.

Xiong Kewen was the actual controller of the shares under NOAH's shareholder Zhang Qun's name and worked as chief sales officer (CSO) of a major region of Noah's marketing center when the case was initiated. Xiong Kewen joined NOBLE on August 25, 2003, worked as NOBLE's Beijing office manager from March 2004 to January 2007 and served as a CSO of a major region of NOBLE's Marketing Centre from January 2007 up to then in charge of the sales of energy-saving products in Beijing, Tianjin, Liaoning, Jilin, Heilongjiang, Hebei, Shanxi, Inner Mongolia, Xinjiang and other provinces, cities and municipalities directly under the central government. During his employment in NOBLE, Xiong Kewen without the consent of NOBLE used the convenience that he

normally discussed energy-saving technology solutions with distributors and provided installation and after-sales services for end-users to exploit without authorization the distributors which had a long-term stable trading relationship with NOBLE (Tianjin ZHAOBO Industry & Trade Co., Ltd., Beijing Electric Ray Technology Co., and etc.), rendered the chance of providing goods to NOAH which should have been enjoyed by NOBLE. Xiong Kewen misappropriated NOBLE's business information for the sales of NOAH's OEMed energy-saving products. By the time of the initiation of the crime, Zhuhai NOAH Energy Saving Technology Co., Ltd. had produced and sold three batches (totally 26 units) of energy-saving products using the technical information and business information of the right owner, and the payments of goods actually received had amounted to RMB 300,104 yuan.

In accordance with Article 13, paragraph 3 of the Anti-Unfair Competition Law of the People's Republic of China, we confirm that the technical information and business information of the right owner on the NOBLE series of energy-saving products and franchised dealers who maintain a long-term stable trading relationship stored in the forms of computer storage media, paper media and physical media are practical trade secrets which are not known to public and can bring economical interests to the right owner who have taken measures to keep them secret

and therefore should be protected by Chinese laws.

The six circuit boards of energy saver like NobiPower seized at production site of the party and similar products of the right owner NOBLE have same technical parameters except marks on some products. The identification results of the circuit boards of six energy-savers presented by the right owner indicate that the following circuit boards are completely identical: the appearance of the circuit boards, the main components / parameters and other auxiliary components / parameters in the same locations are 100% identical; the circuit board principles of circuit board of BaseSaver are 100% identical; the model marks of NobiPower man-machine interface circuit board and the model marks of main circuit board of ECO are 100% identical. When the party commissioned others to produce bare boards, the "NOBLE" mark on the bare boards is completely the same as that of the right owner. The party has no objection to the comparative identification results" and could not provide any evidence to prove that the energy-saving technology it used was not obtained from the right owner.

The above facts are proved by such evidences as the on-site investigation record and inquiry record confirmed and signed by the party, "enterprise standard" documents, circuit boards, "circuit drawings,"

"product design", "electrical schematic diagram", "circuit board wiring diagram", "saving resolution", "clients list ", the operational materials of the franchised dealers, as well as the testimony of witnesses, the “comparative identification report”, photos and etc.

The shareholders of the Party Zhu Hongbin and Xiong Kewen breach the confidentiality requirements set forth in the "code of conduct" of the right owner, take advantage of their positions, steal the above-mentioned trade secrets of the right owner, and in NOAH's name exploit the above trade secrets for production and marketing of OEMed energy-saving products, seriously damage the legitimate interests of the right owner. The acts of Zhu Hongbin and Xiong Kewen are acts of the party. The party is in violation of Art.2, Para.1 and Art.10, Para. 1 of the Anti-Unfair Competition Law of the People's Republic of China and constitutes the act infringing other's trade secret in Art.2, Para.1 items (1), (2) and (3) of the Anti-Unfair Competition Law of the People's Republic of China. Pursuant to Art.25 of the Anti-Unfair Competition Law of PRC and Art.7 Para.2 of the Several Rules on the Prohibition of Acts Infringing Trade Secret, the party is ordered to immediately stop the illegal act and subject to the following sanctions:

(1) The party is ordered to return to the right owner NOBLE Energy

Saving Technology (Zhuhai) Co., Ltd. the material objects which contain trade secrets and are stolen from the right owner such as the "enterprise standard" documents, "man-machine interface circuit boards" and "the main control circuit boards" of energy-saving products, and etc.;

The party is fined 120,000 yuan for its illegal acts infringing the trade secrets of the right owner, which will go to the Treasury.

3. Some Thinking Arising from the Investigation and Enforcement.

While the investigation and enforcement of trade secret infringement cases are deeply carried out in the whole society of , some law breakers will take more concealed and complicated measures to infringe trade secrets in order to avoid investigation and escape from legal liability and new situations and new problems emerge constantly, so it is urgent for enforcement officers to master certain basic skills in collecting electronic evidences and adapt themselves to the development of the circumstances.

When handling such types of cases in the future, we hope we can enhance the communication and cooperation with PSB (Economic Investigation, Internet Police), courts and other law enforcement authorities, set up a linkage mechanism for law enforcement so as to more effectively improve the efficiency of law enforcement, safeguard the interests of the

right owner and deter the offenders.

Next, we will continue to follow the arrangements of the higher authorities, solidly push forward the governance work on trade secret infringement, and make more contribution to the economic and scientific development in our province.

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