

**People's Court of Zhengxiang district, Hengyang City, Hunan Province
Criminal Judgment**

(2020) Xiang 0408, Criminal Court of First Instance, No. 151

The defendant Tang Mingfang, male, born on February 18, 1979, Han ethnicity, secondary vocational school education, former employee of Hengyang Futaihong Precision Industry Co., Ltd., with household registration in Dongan County, Yongzhou City, Hunan Province. Hengyang City Public Security Bureau High-tech Development Zone Branch put him under criminal detention for suspected infringements upon trade secrets on September 11, 2019. He was arrested by Hengyang City Public Security Bureau High-tech Development Zone Branch under approval by the People's Procuratorate of Zhengxiang district, Hengyang City and is currently detained in Hengyang City Detention Center.

Lawyer Dai Huafeng, from Beijing Yingke (Changsha) Law Firm, represented the defendant.

The People's Procuratorate of Zhengxiang District, Hengyang City, charged the defendant Tang Mingfang with the crime of infringement of trade secrets in the indictment No. Criminal [2019] 325 of Hengyang Zhengxiang Public Prosecution. The Court formed a collegiate court in accordance with the law and heard the case in open court. Hengyang Zhengxiang District People's Procurator's office assigned prosecutor Cheng Yihui to support the prosecution, the defendant Tang Mingfang and his defender Dai Huafeng attended the proceedings. The trial has now been completed.

Hengyang City Zhengxiang District People's Procurator's office alleges that defendant Tang Mingfang joined Hengyang Futaihong Precision Industry Co., Ltd (hereinafter referred to as Hengyang Foxconn) on July 11, 2016, signed a non-disclosure agreement and an intellectual property rights confidentiality agreement, and then worked in the raw materials management section of Hengyang Foxconn's supply chain. The defendant Tang Mingfang was dissatisfied with many problems of the company, so he took advantage of the bugs in the management of the company's computer system, accessed the company's public disk through the office computer, illegally stole the company's confidential documents several times, and sent them to a WeChat friend (identity unknown) through QQ email. The documents stolen by defendant Tang Mingfang were published on August 8, 2019 on the China Labor Watch's website with the title "Amazon illegally employs workers and forces interns to work overtime". The article was later forwarded by other websites, causing serious impact on the reputation of Hengyang Foxconn. It was found that the business information of Hengyang Foxconn had all the elements of a trade secret; the business information claimed by the company was unknown to the public before August 8, 2019; the company lost RMB1,407,039 yuan in formal employment costs in August 2019 as a result of the salary adjustment due to disclosure of those confidential documents.

The prosecutor believes that the behavior of defendant Tang Mingfang constitutes the crime of infringement of trade secrets, and recommends that defendant Tang Mingfang shall be sentenced to two to three years in prison and a fine.

The defendant Tang Mingfang disagreed with the charge of infringement of trade secrets and the facts of the crime charged by the prosecuting authority, arguing that he only reported the fact of

illegal employment of workers by Hengyang Foxconn, his actions did not constitute a crime, and the loss caused by the adjusted labor cost of Hengyang Foxconn had nothing to do with him. Lawyer Dai Huafeng argued, first, the defendant Tang Mingfang disclosed unprotected information, which was related to Hengyang Foxconn company illegal employment, does not belong to trade secrets; second, constituting the crime of infringement of trade secrets must cause losses to the trade secret rights holders in the amount of more than 500,000 yuan, the existing evidence does not prove that Tang Mingfang's disclosure caused any losses to Hengyang Foxconn. Therefore, the defendant Tang Mingfang does not constitute the crime of infringement of trade secrets.

It was found that defendant Tang Mingfang joined Foxconn Technology Group in February 2006 and was transferred to Hengyang Futaihong Precision Industry Co., Ltd (hereinafter referred to as Hengyang Foxconn) as a Material Controller in July 2016, and signed a non-disclosure agreement and an intellectual property rights confidentiality agreement on July 11, 2016. The defendant Tang Mingfang was dissatisfied with many problems of the company during his work, so he took advantage of the bugs in the management of the company's computer system, accessed the company's public disk through his office computer and illegally stole confidential documents about employment costs, recruitment planning, business strategies, etc. several times, and sent the above documents and the relevant photos he took to a WeChat friend (identity unknown) through QQ email. The documents stolen by defendant Tang Mingfang were published on August 8, 2019 on the China Labor Watch's website with the title "Amazon illegally employs workers and forces interns to work overtime". The article was later forwarded by other websites, causing serious impact on the reputation of Hengyang Foxconn. The Judicial Expertise Center of Hunan University appraised that the documents stolen by Tang Mingfang of Hengyang Futaihong Precision Industry Co., Ltd. had all the elements to constitute trade secrets; the Judicial Expertise Center of Beijing Jingzhou Science and Technology Intellectual Property Rights Judicial Expertise Center appraised that the claimed operating information is not known to the public before August 8, 2019. The information provided by the High-tech Development Zone Branch of the Hengyang Public Security Bureau is the same as the operating information of Hengyang Futaihong Precision Industry Co., Ltd. which is unknown to the public. As appraised by Hunan Xingtai Accounting Firm Co., Ltd. the loss of official employment cost in August 2019 due to salary adjustment by Hengyang City Futaihong Precision Industry Co. caused by the infringement of trade secrets is RMB1,407,039 yuan.

The court also found that the defendant Tang Mingfang was arrested by the police of the High-tech Development Zone Branch of Hengyang Public Security Bureau on September 11, 2019.

The above-mentioned facts are confirmed by the following evidence that was adduced and confronted in the court, and the court confirms them.

1. The registration form of the Public Security Bureau for receiving the report, the decision letter of filing the case, the detention certificate, the arrest certificate, the prosecution opinion, and the defendant's household registration information and criminal verdict. It proves that the case was reported to the police, the criminal case was filed, the defendant Tang Mingfang was taken compulsory measures, and the identity information.

2. List of seized items and documents. Proof that the Public Security Bureau seized an OPPO A5 cell phone owned by the defendant Tang Mingfang.

3. Personal current account transaction details, proving that the defendant Tang Mingfang's bank account transaction flow.

4. Computer information photos, photos in defendant's cell phone, proving that the defendant Tang Mingfang's computer information and photos taken by his cell phone.

5. The non-disclosure agreement and the intellectual property rights confidentiality agreement, serving as proof of the fact that Defendant Tang Mingfang signed confidentiality agreements when he joined Hengyang Foxconn on July 11, 2016.

6. The content of the article published on China Labor Watch's website. It proves that the defendant Tang Mingfang sent confidential information and photos to others, which then were edited and published to this website.

7. Four copies of Judicial Expertise opinions. It is verified that the Judicial Expertise Center of Hunan University appraised that the documents stolen by Tang Mingfang of Hengyang Futaihong Precision Industry Co., Ltd. had all the elements to constitute trade secrets; the Judicial Expertise Center of Beijing Jingzhou Science and Technology Intellectual Property Rights Judicial Expertise Center appraised that the claimed operating information is not known to the public before August 8, 2019. The information provided by the High-tech Development Zone Branch of the Hengyang Public Security Bureau is the same as the operating information of Hengyang Futaihong Precision Industry Co., Ltd. which is not known to the public. As appraised by Hunan Xingtai Accounting Firm Co., Ltd. the loss of official employment cost in August 2019 due to salary adjustment by Hengyang City Futaihong Precision Industry Co. caused by the infringement of trade secrets is RMB1,407,039 yuan.

8. The testimony of witness Chen. It proves that the witness learned that negative reports about Hengyang Foxconn were circulated on the Internet on August 7, 2019. By checking the factory video surveillance monitoring system, it was found that the photographer of the photos on the website was Tang Mingfang. Tang Mingfang was suspected of leaking confidential company information, which damaged the company's reputation and made a negative impact on the company.

9. The testimony of witnesses Xie and Lei. It proved that Tang Mingfang's behavior had a serious impact on the reputation of Hengyang Foxconn. A large number of employees left, the company's factory director Liu and human resources manager Xiao were fired, and the labor cost loss caused by salary adjustments was as high as RMB1,407,039 yuan.

10. The confession and defense of the defendant Tang Mingfang. It proved that because he was dissatisfied with Hengyang Foxconn's many problems, he tried to publish the company's questions on the "Jinri Toutiao (Today's Headline)" website and was rejected. Later, He frequently chatted with a friend on WeChat about the problems and expressed opinions of Hengyang Foxconn. On July 1, 2019, he took advantage of a loophole in the company's

computer management system to access the company's public disk through his own office computer, found the company's statistics of resignations, secretly took photos and saved them on his mobile phone, and sent the photos through his QQ email that night. After that, the other party continued to request him to take photos of more confidential documents. Tang took pictures of other confidential documents of the company and sent these photos to the other party 9 times in the same way. Afterwards, the other party released the above-mentioned confidential documents on the China Labor Watch website on August 8, 2019, which caused heavy losses to the company. The stolen confidential documents specifically refer to: 1. The company's manpower recruitment policies and rules; 2. The list of schools that deliver student interns to Hengyang Foxconn which the company cooperates with; 3. The company's manpower employment problems and solutions; 4. The data of temporary (dispatch) workers hired by the company exceeding the legal limit; 5. The cost comparison between the company's use of student interns and formal workers; 6. The company's production and operation goals; 7. The company's replacement plan for short-term workers; 8. The company's manpower recruitment status, number of recruits, and the data of overtime; 9. The company's manpower status in July this year, resignation and salary data, and management of various labor issues; 10. Company meeting minutes.

Court believes that the defendant Tang Mingfang violated the requirements of the confidentiality agreement regarding the protection of trade secrets during his work in Hengyang Foxconn, and used loopholes in the computer management system of Hengyang Foxconn to steal the company's trade secrets and disclose them to others for posting on foreign websites, causing a serious negative impact to Hengyang Foxconn with a loss of RMB1,407,039 yuan in labor costs of the company, and his behavior has constituted a crime of infringement upon trade secrets. The People's Procuratorate of Zhengxiang District of Hengyang City charged the defendant Tang Mingfang with the crime of infringement upon trade secrets. The facts are clear, the determination is accurate, and the evidence is reliable and sufficient. The allegation is established and this court supports it. The defendant Tang Mingfang and his defender argued that the defendant Tang Mingfang was only reporting the illegal employment practices of Hengyang Foxconn Company, and the labor cost loss had nothing to do with the defendant Tang Mingfang. The defendant Tang Mingfang's actions did not constitute the crime of infringement upon trade secrets. However, their argument does not match the facts, and this court does not support it. The sentencing proposal of the People's Procuratorate complies with the law, and this court supports it. In order to combat criminal crimes and maintain the order of the socialist market economy, in accordance with the facts, nature, circumstances, and degree of harm to society of the crime committed by the defendant Tang Mingfang, in accordance with the Article 219, Paragraph 1, Item 3, Article 45, Article 47, Article 52, Article 53 Paragraph 1, and Article 64 of the Criminal Law of the People's Republic of China, and Article 7, Paragraph 1 of Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Some Issues of Law Application in Handling the Criminal Cases Concerning Infringement of Intellectual Property Rights, this court has made the judgment as follows:

1. Defendant Tang Mingfang committed the crime of infringement upon trade secrets and is sentenced to two years' imprisonment and a fine of 10,000 yuan (The sentence shall be calculated from the date of execution of the sentence; if the defendant has been detained before the execution of the sentence, one day in custody will be calculated equal to one day in prison.

Thus his imprisonment shall be from September 11, 2019 to September 10, 2021. The fine shall be paid within ten days after the judgment becomes effective);

2. An OPPO A5 mobile phone seized by the Public Security Bureau from the defendant Tang Mingfang shall be confiscated.

If the defendant disagrees with this judgment, he can appeal through this court or directly to the Hengyang Intermediate People's Court within ten days from the second day of receiving the judgment. If he appeals in writing, he should submit one original and five copies of the appeal.

Chief Judge: Tang Wenjing

People's Juror: Jiang Haiyan

People's Juror: Liu Ruijin

July 1, 2020

Assistant Judge: Gao Simin

Clerk (concurrently) :Gao Simin

The relevant legal provisions applicable to this case are attached:

CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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

(3) disclose, use, or allow others to use, in violation of the agreement with the rightful owner or the rightful owner's request of keeping the commercial secrets, the commercial secrets he is holding.

Article 45. Except as otherwise provided in Articles 50 and 69 of this Law, the term of fixed-term imprisonment is not less than six months and not more than fifteen years.

Article 47. The term of fixed-term imprisonment is counted as commencing on the date the judgment begins to be executed; where custody has been employed before the judgment begins to be executed, the term is to be shortened by one day for each day spent in custody.

Article 52. In imposing a fine, the amount of the fine shall be determined according to the circumstances of the crime.

Article 53. A fine is to be paid in a lump sum or in installments within the period specified in the judgment.

Upon the expiration of the period, one who has not paid is to be compelled to pay. Where the person sentenced is unable to pay the fine in full, the people's court may collect whenever he is found in possession of executable property.

Article 64. All articles of property illegally obtained by the criminal element shall be recovered or he shall be ordered to make restitution or pay compensation for them. The legitimate property of the victims shall be promptly returned. Contraband and articles of the criminal's own property used for committing the crime shall be confiscated. Articles of confiscated property and fines shall be handed over to the national treasury and shall not be diverted or otherwise disposed of.

Interpretation of the Supreme People's Court and the Supreme People's Procuratorate Concerning Some Issues on the Specific Application of Law for Handling Criminal Cases of Infringement upon Intellectual Property Rights

Article 7: Where any person who has committed one of the acts as prescribed in Article 219 of the Criminal Code and caused a total loss of over 500,000 yuan to the right-holder of trade secrets shall be deemed as “having brought significant losses to the right-holder of trade secrets”; and the offender shall be sentenced to imprisonment for a definite term of no more than three years or criminal detention, with concurrently a fine, or exclusively to a fine upon conviction of Crime of Trade Secrets Infringement.