

The first instance verdict on Crayon Shin-chan

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The Shanghai Municipal No. 1 Intermediate People's Court gave its first instance verdict on the copyright lawsuit of Crayon Shin-chan on March 23, 2012. Shanghai Enjia Economy and Trade Development Co Ltd was ordered to stop infringement and pay RMB 300,000 (\$47,000) to Futabasha Co Ltd in compensation.

'Crayon Shin-chan' is a cartoon character in a series created by a Japanese cartoonist, the late Yoshito Usui. With copyright solely authorised by Yoshito Usui in 1992, Futabasha Co Ltd of Japan, believed that three Chinese companies, including Shanghai Enjia, used images of Crayon Shin-chan in many goods, promotional activities and trademarks without authorisation, and conducted franchising activities in the market in respect of Crayon Shin-chan products via various media so that these companies had infringed its copyright and seriously affected its authorised business and commercial promotion of cartoon images of Crayon Shin-chan. Therefore, Futabasha brought a lawsuit against the three Chinese companies to the court and asked for RMB 1.06 million (\$167,615) in compensation for its loss.

At the hearing, Shanghai Enjia argued that it legally used the trademarks that had been approved for registration, and so it had properly exercised its trademark right. The other two defendants, Guangzhou Chengyi Optical Co Ltd and Jiangsu Xiangshui Shifu Economic Development Co Ltd, argued that they had legally obtained the trademark registrations of the word and the design concerning Crayon Shin-chan, so their use didn't constitute an infringement of the copyright.

The Shanghai Municipal No. 1 Intermediate People's Court held that the images and calligraphic works of Crayon Shin-chan have originality and belong to works of fine arts under the Copyright Law of China. The facts that the defendant, Shanghai Enjia, used and reproduced the images and characters of Crayon Shin-chan on its products and sold the products and also promoted them for sale via the Internet constituted the acts of reproducing, distributing, and communicating through an information network under the Copyright Law of China. The defendant, Shanghai Enjia, implemented the exclusive right of the prior copyright owner without authorisation in the process of exercising the right of licensed trademarks, so it did constitute an infringement of the copyright and the company should bear relative liability for the infringement.

The other two defendants' activities—registering and holding the trademarks—are not exclusive rights the copyright owner should enjoy, so they did not constitute copyright infringement under the law. Therefore, the court ordered Shanghai Enjia to stop infringement and pay compensation to Futabasha.

Trade secrets can apply for a closed hearing

The National People's Congress passed the Amendment to the Criminal Procedure Law of the People's Republic of China on March 14, 2012. The new law will come into force on January 1, 2013.

The present Criminal Procedure Law of China was enacted in 1979 and first amended in 1996; this is the second important amendment. The number of articles in the amended Criminal Procedure Law increases from 225 to 290 and the contents relating to the amendment involve evidence systems, compulsory measures, defence systems, investigative measures, trial procedures, enforcement procedures, etc, and a special procedure is added.

According to Article 152 of the present law, cases of first instance in a people's court shall be heard in public, but cases involving state secrets or personal privacy shall not be heard in public. The amended law changes Article 152 to a new Article 183 and adds a provision that where the party applies for a closed hearing in a case involving trade secrets, a closed hearing may be conducted.

This amendment further enhances the feasibility of criminal law protection and strengthens the IP rights-related criminal trial's functions of punishing and deterring criminals.

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