

Guiding Case No.224

Xmei (Tianjin) Image Technology Co., Ltd. v. Henan Xlu Apiculture Co., Ltd.
(Case concerning a Dispute over the Infringement of an Information Network
Transmission Right of a Work)

(Adopted through discussion by the Judicial Committee of the Supreme People's
Court and issued on December 15, 2023)

Keywords: civil lawsuit/infringement of an information network transmission
right of a work/ownership/burden of proof

Key Points of the Judgment

In the case of a dispute over copyright ownership, the copyright ownership of a work cannot be determined only by the watermark or the declaration of the right, and the party concerned who claims copyright shall further provide evidence to prove it; otherwise, it shall bear adverse legal consequences.

Basic Facts

The person not involved in the case, G* Company, authorized Xmei (Tianjin) Image Technology Co., Ltd. ("Xmei Image Company") to display, sell and license others to use the "getty Images" brand images of G* Company in China, and to file a lawsuit against an infringement in its own name. Xmei Image Company found that Henan Xlu Apiculture Co., Ltd. ("Xlu Apiculture Company") used four of the above brand images without permission. Xmei Image Company then filed a lawsuit on the grounds of copyright infringement, claiming that Xlu Apiculture Company should be ordered to pay compensation for economic losses and reasonable right protection expenses. In support of its claim, Xmei Image Company submitted the confirmation of authorization issued by G* company, the declaration of the right of the website and other evidence, and the images involved had the watermark with the content of "getty Images". In its defense, Xlu Apiculture Company argued that the upper right corner of the watermark on the images involved was a trademark registration mark "", but not an author's

signature indicating the identity of the creator, and below the watermark, there was a photographer's signature and other brand names, indicating that the copyright of the images involved belonged to the author rather than Xmei Image Company or G* Company. Xlu Apiculture Company also inquired of G* Company about the ownership of the images involved by email, and received a reply that the images involved were submitted for publication by the photographer, and G* Company paid royalties to the photographer after selling such images in its own name, but the photographer retained the copyright of such images. Based on this, Xlu Apiculture Company believed that as the contributor retained the copyright, neither G* Company nor Xmei Image Company enjoyed the copyright of the images involved, and the claims of Xmei Image Company should be rejected.

Decision

On September 17, 2019, the Tianjin Third Intermediate People's Court made the civil judgment ([2019] Jin 03 Zhi Min Chu No.73), deciding that Xlu Apiculture Company shall compensate Xmei Image Company for its economic losses and reasonable expenses totaling CNY8,000; other claims of Xmei Image Company shall be rejected. Xlu Apiculture Company refused to accept the judgment of first instance and filed an appeal. On July 16, 2020, the Tianjin High People's Court made the civil judgment ([2020] Jin Min Zhong No.311), rejecting the appeal, and upholding the original judgment. Xlu Apiculture Company refused to accept the judgment of second instance and applied to the Supreme People's Court for a retrial. The Supreme People's Court ruled to try the case, and made the civil judgment ([2021] Zui Gao Fa Min Zai No.355) on December 20, 2021, revoking the judgments of first instance and second instance, and rejecting all the claims of Xmei Image Company.

Reasons for the Decision

The Supreme People's Court held that in addition to the watermark of "getty Images", the images involved were marked with the photographer's signature and other brand names, and "getty Images" was followed by the trademark registration mark "®"; therefore, the copyright of the images involved cannot be

identified as belonging to G* Company only by the watermark. In addition, Xmei Image Company also submitted the confirmation of authorization issued by G* Company and the declaration of the right of the website, but the confirmation of authorization can only prove the fact that G* Company authorized Xmei Image Company, but not serve as the evidence that G* Company enjoyed the copyright of the images involved. The declaration of the right was a unilateral statement, and in the absence of other evidence, the ownership of copyright cannot be determined only by the declaration of the right. Under this circumstance, Xmei Image Company shall further bear the burden of proof that G* Company enjoyed the copyright of the images involved, but it failed to provide evidence to prove it. On the contrary, according to the rebuttal evidence such as the reply of G* Company submitted by Xlu Apiculture Company, G* Company confirmed that the photographer who submitted the images involved for publication still retained the copyright of the images involved. Therefore, the claim of Xmei Image Company that G* Company owned the copyright of the images involved cannot be established, and its related claims made in the case shall not be supported.

Pertinent Legal Provisions

Article 12 of the Copyright Law of the People's Republic of China (Amended in 2020) (Article 11 of the Copyright Law of the People's Republic of China amended in 2010 shall apply to the case)

Article 7 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Dispute Cases Involving Copyright (Amended in 2020)

Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Amended in 2022) (Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China amended in 2020 shall apply to the case)