

**Hangzhou Internet Court
Province of Zhejiang
People's Republic of China**

Judgment

In the matter:

Plaintiff 1: Hangzhou Huatai Yimei Culture Media Co., Ltd.

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Defendant 1: Shenzhen Daotong Technology Development Co., Ltd.

Case No.: 055078 (2018) Zhe 0192 No. 81

June 27, 2018

This court concludes that the disputes in this case include: I. Is Huatai Yimei Company qualified as a plaintiff; II. Did Daotong Company infringe the right to dissemination over an information network; III. If the infringement is confirmed, are the damages claimed by Huatai Yimei Company in a reasonable amount.

I. Is Huatai Yimei Company qualified as a plaintiff

With regard to the Dispute No. 1, this court concludes that the article at issue includes interview, description, summary and review of social phenomena, and the included photos reflect selections and arrangements made by the author in perspective, composition and light, all of which are unique, comply with the provisions on work requirements by China's Copyright Law, and belong to literature and photography protected by the Copyright Law. This court does not support the allegation made by Daotong Company in the answer that the work at issue is a report of current events. Both the texts and photos at issue were published on the City Express. The two reporters under whose names the work was published both stated that the City Express owns the copyright of the work. The labor contract presented by the City Express and the statement by the authors can form a complete chain of evidence to show that the City Express owns the copyright of the work. This court does not support the allegation made by Daotong Company in the answer that the City Express does not own the copyright of the work at issue. The City Express granted an exclusive right to Huatai Yimei Company to execute the right to dissemination over an information network of the work at issue, and specifically stated that Huatai Yimei Company may file actions on its own behalf against alleged infringing actions. Therefore, Huatai Yimei Company is qualified as an entity to file this action.

II. Did Daotong Company infringe the right to dissemination over an information network

Huatai Yimei Company obtained evidence, through a third-party evidence preservation platform, Baoquan.com, with regard to the infringing webpages of Daotong Company, and proved the integrity of the electronic data and that the electronic data were not tampered with by storing the electronic data in blockchain. To determine whether the infringing action did take place, therefore, it is necessary to determine whether Huatai Yimei Company's approaches of securing evidence and storing evidence comply with electronic data-related provisions and determine how strong the evidence is. Referring to Article 8 of the Electronic Signature Law of the People's Republic of China, the following factors should be considered when examining the authenticity of digital messages as evidence: (1) reliability of methods for generating, storing or transmitting digital messages; (2) reliability of methods for maintaining the content integrity; (3) reliability of methods for identifying a sender; and (4) provisions on other relevant factors. As a result, this court will determine as follows the efficacy of the electronic evidence at issue from three aspects: examination of qualifications of the evidence preservation platform, examination of credibility of technical means for obtaining evidence on the infringing webpages, and examination of integrity of blockchain electronic evidence preservation.

(1) Regarding the examination of qualifications of the evidence preservation platform

According to investigations, the shareholder of Huatai Yimei Company is Zhejiang Huamei Holding Co., Ltd. Numchain [editor's note: the owner of the platform Baoquan.com]

has the following natural person shareholders: Yuan Wen, Hang Gao, Qiaofeng Li, and Chunquan Lu, and the following enterprise shareholders: Anji Numchain Investment Management Partnership, Hangzhou Numchain Investment Management Partnership, Xinyu Youchuang Investment Management Center, and Hangzhou Shuimu Zehua Venture Capital Partnership. The shareholders and business scope of Numchain are relatively independent of Huatai Yimei Company and the City Express, so Numchain is neutral and has passed the integrity identification and inspection by the National Quality Supervision and Testing Center of Cyber and Information Security Products. Baoquan.com operated by Numchain possesses the qualifications as a third-party electronic evidence preservation platform.

(2) Regarding the examination of credibility of technical means for obtaining evidence on the infringing webpages

Turn on a command window on a computer, type in a command, “ping www.baoquan.com,” and the returned IP is 112.74.234.54. According to investigations, the physical location of the IP is the Aliyun BGP Data Center. Therefore, it can be seen that Baoquan.com is deployed inside Aliyun. As a general cloud platform, Aliyun can ensure that servers are not infected or invaded by viruses or Trojans in normal situations; moreover, Baoquan.com has obtained a certificate of the Website Security Class I Certification and record evidence of Information System Security Class Protection III awarded by the Third Research Institute and the National Quality Supervision and Testing Center of Cyber and Information Security Products of the Ministry of Public Security. Therefore, it should be determined that this website has a secure environment for storing electronic data, unless proved wrong by evidence to the contrary. Upon receiving an infringing webpage URL, the Baoquan.com server would automatically request a target address under the Internet environment, and the target address automatically returns a state code and webpage information to confirm a valid accessible address of the requested URL, thereby ensuring that the capture of the infringing link is performed in the Internet environment.

Baoquan.com captures images from a target webpage by automatically invoking Puppeteer, an open source program of Google, and at the same time, acquires the source code of the target webpage by invoking curl. According to investigations, Puppeteer is a Node library formally produced by Google that controls headless Chrome through the DevTools protocol, which can collect data by using API provided thereby as a crawler to access webpages. The Curl command acquires information like webpage content and version by simulating an HTTP request through a file transfer tool working in the command line according to the URL rule. This evidence securing system is equally open to all people, and anyone can use the system. Moreover, the operation process thereof is automatically completed by a machine according to a program preset by the evidence obtaining system. The likelihood that relevant links are tampered with by humans throughout the evidence obtaining and evidence securing process is relatively low. Therefore, the source of the electronic data has relatively high credibility; meanwhile, Chain Forensic Science identified and confirmed the technicality of using the Puppeteer and Curl programs for webpage screenshots and source code retrieval in Baoquan.com. In the absence of evidence to the contrary, therefore, this court confirms that the approach by Baoquan.com to parse a domain name for a target webpage to generate and store digital messages by using public open source capture programs from Google is reliable. In this case, the webpage screenshots captured through Puppeteer show that the alleged infringing article published by the “First Female Fashion Network” in 2017 is substantially consistent with the article at issue. The source code address of the target webpage acquired through Curl is “www.ladyfirst.com”

[editor's note: "www.ladyfirst.com.cn"]. According to investigations, the name of the website "www.ladyfirst.com" [editor's note: "www.ladyfirst.com.cn"] is "First Female Fashion Network" and the entity on record is Daotong Company.

(3) Regarding the examination of integrity of blockchain electronic evidence preservation

Baoquan.com packaged and compressed the webpage screenshots, source code and access information, calculated the SHA256 value and then uploaded the same to the FACTOM blockchain and the Bitcoin blockchain to ensure that the electronic data is not changed. To examine the reliability of this approach to maintain content integrity, it is necessary to first analyze and judge the blockchain technology.

As a decentralized database, blockchain is a string of data blocks generated by using a cryptography method in an associated manner. Each data block contains information of an online transaction for verifying the validity (authenticity) of the information and generating the next block. Specifically, a blockchain network is a network formed by using servers of a plurality of institutions or companies as nodes. A node on the network will package data generated within a time period to form a first block, and then synchronize the block to the entire blockchain network. Other nodes on the network verify the received block and, when the verification passes, add the block to a local server. Subsequently, a node would package newly generated data and information of existing blocks on the local server together to form a second block. After other nodes receive the block and the verification of the block passes, the second block is added to a local server. The first block and the second block are associated. Subsequent data inside the network are all packaged into blocks in the same manner as described above, and the blocks are connected end to end to form a chain. The chain is a blockchain. If data in a block needs to be changed, the content of all blocks after the block needs to be changed, and data backup by all the institutions and companies on the blockchain network needs to be changed as well. Therefore, the feature of a blockchain is that it is difficult to be tampered with or deleted. When it is confirmed that the electronic data at issue has been saved to a blockchain, the approach to maintain content integrity is reliable. In this case, to confirm that the electronic data has indeed been uploaded to the blockchain, this court performed examination in two aspects: whether the electronic data has truly been uploaded and whether the uploaded electronic data is the electronic data at issue.

1. Examination of whether the electronic data has truly been uploaded

To determine whether the electronic data at issue has truly been uploaded, a search can be conducted in the FACTOM blockchain according to the transaction hash value provided by Huatai Yimei Company to check the hash content and generation time of the transaction. According to the block height submitted by Huatai Yimei Company, it can be found through query that the hash content of the transaction has been stored into the block height, and the time of uploading the content can also be found. Moreover, the uploading time is reasonable relative to the time displayed in the invocation log of using Puppeteer and Curl to automatically acquire webpage screenshots and source code, and the block height generation time is consistent with the time logic between the invocation log generation time and the FACTOM rules.

The transaction hash value of the Bitcoin blockchain is anchored according to the block height, and it is found through query in the Bitcoin blockchain that the content contained in the block node is consistent with the hash value of the content stored in FACTOM. Therefore, this court confirms that Baoquan.com has uploaded the electronic data to the FACTOM blockchain and the Bitcoin blockchain.

2. Examination of whether the uploaded electronic data is the electronic data at issue

The hash value is calculated for the file that packages and compresses the webpage screenshots, source code and invocation information downloaded in Baoquan.com. According to the comparison, the value is consistent with the hash value of the electronic data for blockchain preservation as submitted by Huatai Yimei Company. Therefore, it can be confirmed that the electronic data at issue has been uploaded to the FACTOM blockchain and the Bitcoin blockchain, and that the integrity of the electronic data at issue has been preserved with no change since the upload to the blockchains.

In summary, this court concludes that electronic data saved and secured using technical means like blockchain should be analyzed and determined case by case with an attitude of being open and neutral. The technologies like blockchain should not be dismissed or the standard of determination thereof should not be raised because they are novel and complex technical means at present, nor should the standard of determination thereof be lowered because it is difficult to tamper with or delete the technology. The effectiveness of evidence thereof should be determined, in a comprehensive manner, according to relevant legal provisions on electronic data, wherein the emphasis should be on examination of the source of electronic data and content integrity thereof, security of the technical means, reliability of the methods, legitimacy of formation, and degree of association with other evidence for mutual corroboration, thereby determining the effectiveness of evidence. In this case, Numchain is a civil entity independent of the parties, and Baoquan.com operated thereby is a third-party evidence preservation platform that complies with legal provisions. Baoquan.com uses open source programs from Google that have relatively high credibility to secure electronic data, such as the infringing work, and the webpage screenshots, source code information, and invocation log formed by the technical means through capturing the target webpages can corroborate with each other, and can clearly reflect the source of the data and the generation and transfer routes. It should be determined that the electronic data generated in such a manner is reliable. Meanwhile, Baoquan.com uses the blockchain technology that satisfies relevant standards to preserve and secure the above electronic data, which ensures the integrity of the electronic data. Therefore, the above electronic data can be used as a basis for determination of infringement in this case. Namely, this court finds that the work at issue is published on the “First Female Fashion Network” operated by Daotong Company.

It is stipulated in Article 10, Paragraph (12) of the Copyright Law of the People's Republic of China that “the right to dissemination over an information network is a right to provide works to the public in a wired or wireless manner, such that the public can obtain the works at a time and location selected by each individual thereof;” (1) in the case of duplicating, issuing, performing, showing, broadcasting, compiling, and disseminating, without consent of a copyright owner, the owner's work via an information network, unless otherwise stipulated by this law...” As a statutory copyright, the right to dissemination over an information network is a proprietary right of an owner and is an absolute right in nature. If

any action of dissemination over an information network subject to the control of the propriety right is carried out without consent of the right owner and in the absence of statutory or stipulated exception, such an action constitutes infringement. The establishment of the infringing action is not dependent on factors such as a fault made by an actor or profits obtained by an actor. In this case, it has been proved that Daotong Company provides the work at issue on a website operated thereby to the public, and online users can acquire the work by means of downloading, browsing, and like via an information network at a time and location selected by each individual thereof. The action of Daotong Company is a dissemination of the work at issue over an information network.

Daotong Company alleged that its action of dissemination of the work at issue over an information network is of a nature for public welfare and belongs to reasonable uses. However, its action does not comply with any one of reasonable uses prescribed in Article 22 of the Copyright Law or meet the requirements for reasonable use prescribed in Article 21 of the Rules for Implementation of the Copyright Law. Therefore, this court rejects this allegation in the answer by Daotong Company.

III. Are the damages claimed by Huatai Yimei Company in a reasonable amount

It is stipulated in Article 48 of the Copyright Law of the People's Republic of China that “a party that has conducted any of the following infringing actions shall be liable for civil liabilities such as stopping the infringement, effect elimination, apologies, and damages...: (1) in the case of duplicating, issuing, performing, showing, broadcasting, compiling, and disseminating, without consent of a copyright owner, the owner’s work via an information network, unless otherwise stipulated by this law...”. In this case, Daotong Company shall be liable for stopping the infringement, deleting the alleged infringing article, and damages for the infringing actions that have taken place. Daotong Company alleged that it had deleted the article at issue, and Huatai Yimei Company withdrew this claim in the case hearing process, which is approved by the court and will not be further judged.

With regard to the amount of damages, Huatai Yimei Company does not present any evidence to prove losses suffered thereby as a result of the infringement or profits obtained by Daotong Company as a result of the infringement, and requests that statutory damages be applied and the amount be determined by this court appropriately by comprehensively considering relevant factors, such as market influence and reputation of the text work and photo work at issue, degree of the infringement by Daotong Company, and the like. Meanwhile, this court has noticed the following facts: 1. The text work at issue has a word count of about 3010 words and took up 1 page of the City Express when published; 2. One of the photos at issue is a guide sign, which did not require a professional photographer to shoot; 3. The alleged infringing article uses the article at issue in its entirety; 4. The text work at issue contains a lot of conversations with interviewees; 5. The source of the work was indicated clearly by Daotong Company when forwarding the work; 6. Daotong Company was established on June 5, 2013 with a registered capital in the amount of 500,000 Yuan; 7. Huatai Yimei Company obtained and verified the evidence for this case and retained attorneys for the litigation with the attorneys’ fees agreed at 2500 Yuan.

In summary, pursuant to Article 10, Article 11, Article 48, and Article 49 of the Copyright Law of the People's Republic of China, Article 8 of the Electronic Signature Law of the People's Republic of China, Article 64 of the Civil Procedure Law of the People's Republic of China, and Article 108 of the Interpretation of the Supreme People's Court of Several Issues concerning the Application of the Civil Procedure Law of the People's Republic of China, the following judgment is made:

I. The defendant Shenzhen Daotong Technology Development Co., Ltd. shall compensate the plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. for economic losses (including reasonable expenses for stopping infringement) in an amount of 4000 Yuan within 10 days after the effective date of this judgment;

II. Other claims by the plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. are dismissed.

If the payment obligation is not fulfilled within the period specified herein, a debt interest shall be paid in a doubled amount for the delayed period pursuant to Article 253 of the Civil Procedure Law of the People's Republic of China.

The defendant Shenzhen Daotong Technology Development Co., Ltd. shall be liable for 18 Yuan of the case processing fee in the amount of 25 Yuan (already reduced by half), while the plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. shall be liable for 7 Yuan.

The plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. shall file an application for refund with this court within 15 days after the effective date of the judgment; the defendant Shenzhen Daotong Technology Development Co., Ltd. shall pay this court the litigation fee for which it is liable within 7 days after the effective date of the judgment.

Any party having an objection to the judgment may file an appeal with the Intermediate People's Court of Hangzhou City, Zhejiang Province by submitting the appeal petition to this court within 15 days after the day of service of the judgment and providing copies thereof consistent with the number of opposing parties.

Judge Li Sha

It has been verified that this copy is identical with the original June 27, 2018