

China's First Criminal Case Involving 5G Technology Suggests Broader Scope of Trade Secret Enforcement

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Following China's amendment to the trade secret provisions in its Anti-Unfair Competition Law (AUCL) in April 2019, it has been closely watched whether China is ready to strengthen its protection of trade secrets through effective enforcement. While AUCL remains a civil code, prosecutors bringing criminal charges under China's criminal law are likely influenced by the AUCL's expansive trade secret provisions and take actions in a broader scope of areas. As demonstrated by China's first criminal case involving intellectual property infringement of 5G technology, there is likely an uptick in both civil and criminal trade secret enforcement in China.

China's First Criminal Case Involving 5G Trade Secret

Two former employees of ZTE, a Chinese telecom company, were indicted by local prosecutors in Shenzhen, Guangdong Province, alleging infringement of ZTE's trade secret involving 5G technology. While working for ZTE, the two engineers privately took on an outsourcing project and delivered a 5G active antenna prototype along with relevant technical documentation to a research institute, receiving a total amount of 2.35 million yuan (approximately \$331,345.00 USD) in return.

The case was in front of the People's Court of Nanshan District, Shenzhen, which found that technical documents used by the engineers on their side project were consistent with the documents belonging to ZTE, were ZTE's confidential technical information, and were valued at 4.3 million yuan. The two individuals were convicted of trade secret infringement, fined 150,000 yuan, and sentenced to three years in prison and four years probation. It was also reported that the two individuals compensated ZTE's loss in the amount of around 4.3 million yuan (approximately \$605,326.00 USD). Both pleaded guilty to the charges and neither appealed. This sentence was handed down in June 2019 but was only recently made public in May 2020, when the Guangdong Provincial Procuratorate highlighted this case in its publication of exemplary enforcement actions against intellectual property crimes in 2019.

An Overall Increase of Trade Secret Enforcement in China

As discussed in our previous post, the revisions to the AUCL introduced major improvements in Chinese law on trade secret protection, which as written, demonstrate a seismic shift to the trade secret landscape in China. Previously, the number of trade secret cases was already steadily increasing in the years immediately before the

AUCL amendment. As the China-U.S. trade deal unfolds and the Chinese government would like to take actions to ease points of contention, there may well be more enforcement, both civil and criminal, of trade secret infringement.

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