**Spin Master Ltd., Plaintiff v. Guangzhou Lingdong Creative Culture Technology Co., Ltd. et al., Defendants.**

No. (2017) Su 05 Min Chu No. 1177.

**Court’s Opinion on Dispute of Focus**

Spin Master is the assignee and owner of CN patent No. 200780006093.7 (the “Bakugan patent”), which is valid and protected by the law, with ownership of the right to exclude others from manufacturing, selling and offering for sale the invention of the Bakugan patent.

1. **Patent infringement**

Spin Master argued that all 20 types of Eonster Hunter series toys (the “Eonster Hunters” or “accused products”) infringe claims 1 and 6 of the Bakugan patent. The defendants countered that the Eonster Hunters neither infringe the Bakugan patent literally nor equivalently. The court rejected the defendants’ arguments in four aspects on comparison of claims to the accused products as following:

1. For disputed feature “rollable first shape that can roll and move on a running surface” recited in claim 1, paragraph 80 in the specification provides examples like spherical shape, rugby ball shape or a circular that can be employed as the rollable first shape. The accused products are formed as “egg shape” when in first shape, apparently can also roll and move on a running surface, therefore incorporating the dispute feature.

2. Next, the disputed limitation “at least one interior component is configured as being contained inside of a containing space formed by multiple exterior components, thus cannot be seen from outside” is to limit the inter-structural between the interior components and the exterior components as depicted in the specification and figures, in another word, aforesaid interior component (s) is/are in a concealed position. Even some of the accused products the exterior components are transparent, there’s at least one interior component that is in the concealed position, thus the defendants’ argument that the interior components of the accused products are visible when in first shape failed.

3. In regards of the argument that the accused products didn’t include a magnetic body outside the transformable toy. The court concluded that the “magnetic body” is a magnetically responsive body including magnet or metal according to the embodiment in the specification.

4. Finally, in response to the argument that the character shape of the accused products revealed when in second shape are not “human character” as limited in claim 1. The court clarified that one skilled in the art can reasonably understand that the “character shape” in claim 1 can indicate fictitious character shape.

In summary, the Eonster Hunters fell into the protection of Bakugan patent claims 1 and 6.

1. **Liability of each defendants and compensation amount**

The judgment ruled that the evidence in this case are sufficient to demonstrate Guangzhou Lingdong Creative Culture Technology Co., Ltd. (LINGDONG) as the manufacturer, has manufactured, sold, offered to sale the accused products; Zhongshan Yongtai Plastic Products Co., Ltd. (YONGTAI) and Zhongshan Zhanyi Plastic Products Co., Ltd. (ZHANYI) as the production factories, have manufactured the accused products. Therefore, they shall bear joint and several liability for the cause of actions against each of them.

The court fully supported Spin Master’s compensation claim based on the profit the defendants gained from infringement. Spin Master conducted wide purchase from offline and online shops, provided sales data of e-commerce platforms, and margin of toy industry, etc. The court held that Spin Master has provided preliminary evidences to prove the infringement profit. The court required the defendants to provide books and materials recording the profit on the accused products which should be possessed by the defendants, however, the defendants expressly refused to provide. Under the circumstances of the defendants’ refusal without proper reason, the court held the defendants to bear the burden of evidence obstruction. Based on the abovethe court made the following analysis and evaluation on the compensation amount:

**1. online sales volume of accused products**

The sales records of 22 Tmall.com sellers contributed CNY 19,747,459.08 in 2017 and CNY 5,763,577.02 from Jan. 2018 to Jul. 2018 of the accused products sales volume;

The sales records of 16 JD.com sellers contributed CNY 3,852,154.25 from Mar. 2017 to Dec. 2017 and CNY 1,497,689.25 from Jan. 2018 to Sep. 2018 of the accused products sales volume;

The sum-up of four YHD.com sellers’ customers comments number multiplies corresponding price per unit accused product contributed CNY 1,153,500 in 2017 of the accused products sales volume;

In conclusion, the online sales volume of the accused products amounted to CNY 24,753,113.33 in 2017 and CNY 7,261,266.27 in 2018, CNY 32014379.6 in total, not to mention those sold infringing products without sales records obtained in this case and the defendants’ continuous infringement acts.

**2. offline sales volume of accused products**

The court adopted the online: offline proportion of toys retail market according to ‘White Paper on China Toy Industry’ issued by China Toy & Juvenile Products Association. In detail, the percentage for online sales is 23.5% in 2017 and 28.7% in 2018. With the online sales volume provided above, the total (online and offline) sales volume came to CNY 105,332,397.15 in 2017 and CNY 25,300,579.34 in 2018, CNY 130,632,976.49 in total, which can be verified with other evidences including LINGDONG’s invoice records from Guangzhou tax bureau and LINGDONG’s own publicity.

**3. Operation profit margin**

The court adopted the average margin (12.28%) of six listed toy companies who share the same position in the industry with LINGDONG.

By using these criteria, the defendants’ gains from the infringement during the year 2017 and 2018 equal to the sales volume of infringing products (CNY 130,632,976.49) \* average operation profit margin (12.28%), which is CNY 16,041,729.51.

In light of the above, considering the defendants’ bad faith reflecting by the infringement scale and duration, as well as the full support of the attorney’s fee and other legal expenses Spin Master requested, the court granted CNY 15 million in total.