

Investigation and Analysis on the Standard of Prosecution for the Crime of Violating Business Secrets from the Perspective of Optimizing Business Environment

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Abstract—It is a powerful measure to protect the legitimate rights and interests of business operators and optimize the business environment to prosecute and punish serious violations of business secrets. The present criminal law stipulates that the act of causing "heavy loss" to the obligee of business secrets is a requirement for the prosecution of a case of infringement of a commercial secret crime. However, how to identify the "heavy loss" in detail has no unified criterion. In view of this, the criminal sources of infringement of trade secrets should be revised and improved, the identification and calculation of the loss of trade secret owners in the prosecution standard should be refined, the calculation of illegal income should be simplified to establish a trade secret criminal prosecution protection mechanism conducive to punishing the infringement of business secrets, protecting the legitimate rights and interests of business operators, and optimizing the business environment.

Keywords—business environment; trade secret; heavy loss

I. INTRODUCTION

Business secrets are also known as "undisclosed information" outside China. According to Law of the PRC against Unfair Competition of 2018, they refer to technical information and business information that is not known to the public, and has commercial value and has been kept secret by the right holder. Business secret is an intangible asset of enterprises and an important chip for enterprises to win the competition in the modern market economy environment. At present, China is making great efforts to promote innovation and entrepreneurship, and optimize the business environment. Protecting trade secrets is an integral part of optimizing the business environment.

The infringement of commercial secrets is an economic crime that often occurs in recent years. The Rio tinto trial in which Hu Shitai and others were sentenced by Shanghai No.1 intermediate people's court for violating commercial secrets in March 2010 was a nationwide crime of violating trade secrets. According to Article 219 of the Criminal Law of the People's Republic of China in 1997, the crime of infringing on business secrets refers to the acts that cause

heavy losses to the obligee by obtaining an obligee's business secrets by stealing, luring, coercion or any other illegitimate means, or disclosing, using or allowing another to use the business secrets they have or obtained from the obligee. Therefore, whether to cause "heavy loss" becomes the key element of the prosecution in the case of infringement of commercial secrets.

In recent years, many scholars have conducted a series of studies on how to identify the "heavy loss" in the crime of infringing trade secrets. Qian Yuwen and Shen Jiadan (2018) believed that the comprehensive identification model of "heavy loss" should be reconstructed, and the losses of the obligee caused by illegal acts should be determined at different levels: in the case that the loss amount can be verified, the "loss of interest model" is applicable; in the case that the amount of loss is difficult to estimate or determine, the "business secret value model" is applicable to the behavior that causes all losses to the obligee, and the "illegal profit model" is applicable to acts that cause partial losses to the obligee. [1] Jin Guo (2018) holds that the evaluation scope of "heavy loss" shall be limited to the economic losses suffered by the obligee due to the loss of reasonable business opportunities. [2] Yan Hongshi (2017) holds that "heavy losses" shall be calculated strictly in accordance with the standard of direct economic losses; on the other hand, the principle of "beyond all reasonable doubt" and tolerant rule of criminal law should be implemented to avoid calculating "heavy losses" according to "criminal responsibility orientation". [3] Shen Yuzhong (2016) thinks that when choosing the identification method of "heavy loss" in the case of infringement of trade secrets, a more reasonable calculation basis should be selected according to the pattern of infringement of trade secrets, and the scope of loss should be defined scientifically. In the future, we should change the model of "criminal loss" by using "civil loss" and construct a multidimensional standard for the crime of infringement of trade secrets. [4]

Generally speaking, the current theoretical circle's research on the identification standard of "heavy loss" in the crime of violating trade secrets is mainly based on the

perspective of criminal law, and lacks empirical research and other disciplines. The opinions put forward have certain limitations, and cannot effectively respond to the practical needs of judicial case handling in the new era. Against the background of promoting the comprehensive rule of law and optimizing the business environment, it is of practical significance to analyze the reasonable identification of "heavy loss", which is the important part of the prosecution of the crime of violating business secrets, from the perspective of improving the business environment.

II. THE CURRENT LAW ON "HEAVY LOSS" OF THE CRIME OF VIOLATING TRADE SECRETS AND ITS DEFICIENCIES

Article 219 of the Criminal Law of the People's Republic of China does not specify the specific criteria for the identification of "heavy losses" in the crime of violating trade secrets. In order to meet the needs of judicial trial practice, the Supreme People's Procuratorate and the Ministry of Public Security promulgated the "Regulations on the Prosecution of Economic Crime Cases" on April 18, 2001, clarifying the qualitative criteria for heavy losses: those who caused direct economic losses to the obligee of commercial secrets of more than 500,000 yuan; or the acts that caused serious consequences to the obligee, such as bankruptcy. In 2004, Interpretation of Some Issues Concerning the Specific Application of the Law in Handling Criminal Cases of Infringement of Intellectual Property Rights issued by the Supreme People's Court and the Supreme People's Procuratorate once again clarified that any act that causes a loss of more than 500,000 yuan to the obligee of the trade secret is a "heavy loss". In May 2010, the Supreme People's Procuratorate and the Ministry of Public Security issued the "Provisions on the criteria for filing criminal cases under the jurisdiction of public security organs (II)" (hereinafter referred to as "Standard II"). Article 73 further refines the criteria for "heavy losses". The standard is: (1) causing losses of more than 500,000 yuan to the obligee of the business secret; (2) the amount of illegal income from infringing trade secrets is more than 500,000 yuan; (3) causing the business secret obligee to go bankrupt; (4) other circumstances that cause heavy losses to the obligee of business secrets.

Investigating a series of legal provisions on the "heavy loss" of the highest judicial organs in recent years, it can be seen that the threshold amount of "significant loss" has not changed, but the specific standard tends to be refined, which is more conducive to the needs of public security organs in handling cases. However, it must be clearly seen that even in the latest "Standard II", the definition of major losses still has many unclear aspects, such as: what aspects does "loss amount" cover, is it the value of trade secrets or the economic loss caused by the loss of business opportunities? Does the illegal income refer to what is actually obtained or what is potentially acquired? Does the income mean gross income or net income? Different conclusions will be drawn from different scales, which will greatly affect the prosecution, conviction and sentencing of cases. "According to statistics, in the analysis of 100 cases of infringement of trade secrets, about 95% of the prosecution and the defense

argued against the 'significant loss' determination, especially the calculation of the 'heavy loss', even because of the court decision. The calculation standard for 'significant loss' cannot be convinced, causing the defendant to appeal or the prosecution agency to protest." [5]

In order to have a deeper understanding of the current legal provisions of "heavy losses" and their influence in judicial practice, the author will interpret and analyze the relevant legal provisions with a typical case encountered in practice in recent years.

III. ANALYSIS ON CRIMINAL PROSECUTION CASES OF INFRINGEMENT OF COMMERCIAL SECRETS

A. Basic Facts

Company A is a manufacturing company engaged in the production of high-end mechanical equipment. It is well-known in the industry. It independently developed and designed unique intelligent food packaging equipment which includes two types: horizontal bar and parallel bar. Among them, the parallel bar model requires more materials. Company A has special technical drawings for the composite materials and production process of this equipment, and has taken corresponding confidential measures. Wu, who was originally a technician at the company, had access to the drawings and left after working for the company for a period of time. Later, he co-founded another equipment manufacturing company (hereinafter referred to as "company B"), which produced and sold the same type of intelligent food packaging equipment as company A, resulting in the loss of company A's original customer base. More than a year later, Company A noticed this situation and immediately reported the case to the judicial authorities. The judicial authorities filed a case for suspected infringement of trade secrets, took compulsory measures against Wu and related personnel, and entrusted C accounting firm to conduct an appraisal, with a view to identify the amount of the case, which provided strong evidence for the review and prosecution and trial stage of the later judicial organs.

B. Judicial Accounting Appraisal Process and Conclusions

With reference to the foregoing provisions of the law, for the case of Wu's alleged infringement of trade secrets reported by company A, the judicial organ needs the accounting firm to identify whether the amount involved in the case of company B founded by Wu has reached the legal filing standards for prosecution. Combined with the actual situation of this case, the judicial authority requires the accounting firm to identify the amount of the following two aspects respectively: first, the amount of the loss caused by company B to the business secret obligee company A, and is it more than 500,000 yuan? Second, how much does company B make by violating trade secrets? Is it more than 500,000 yuan? The identification process of accounting firm is illustrated as follows:

1) The amount of losses caused by Company B to Company A due to infringement:

The existing criminal law and judicial interpretation have no clear provisions on how to calculate and determine the loss caused by the infringement of business secrets to the obligee. The accounting firm consulted a large number of materials in combination with the case, and communicated repeatedly with judicial organs and lawyers. Finally, based on the principle of prudence and reasonableness, it is determined that the loss of company A is the net profit of company A for each device of the same model during the infringement period multiplied by the number of devices of the above model sold by company B during the period. Among them, the sales volume is easy to identify. According to the records of the parties, sales contracts, bank statements and other information provided by the judicial organ, it is confirmed that company B sold 31 sets of equipment of the same model in the above period. What is more complicated is the net profit of each device of the same model during the infringement period of company A. According to the principle of financial accounting, in order to obtain the aforementioned net profit, it is necessary to confirm the sales revenue, cost of sales, tax payable and three period expenses of the equipment sold by Company A.

According to the audit, company A sold 37 sets of aforementioned intelligent food packaging equipment during the infringement period. The contract amount is RMB 5,175,000.00 with 27 parallel bar models (which is the model produced and sold by company B). There are 10 horizontal bar models, and the contract amount is 1,800,000.00 yuan. The total contract amount of the above 37 sets is RMB 6,975,000.00, and the total sales amount excluding tax shown in the book is RMB 6,268,317.17. It can be known that the average sales price excluding tax of each parallel bar model is 172,247.66 yuan. The above data are based on the sales contract and sales invoice provided by company A and are consistent with the audited financial report of company A. In addition, according to the relevant accounting materials of Company A, and based on the principle of matching allocation, it can be known that the tax payable for each equipment and the expenses for three periods total 24,791.38 yuan.

At this point, the priority is to determine the cost of sales of the above-mentioned equipment of Company A. This is a relatively complex problem, which requires an in-depth understanding of company A's cost accounting and carry-over method, as well as the cost components of the equipment at the technical level. The audit firm found that Company A produced and sold 37 sets of intelligent food packaging equipment during the period of infringement, including 27 sets of parallel bars and 10 sets of horizontal bars. The company B only produces and sells the parallel bars. To this end, it is necessary to distinguish the different manufacturing costs of the parallel bar model and the horizontal bar model, and thus the calculated net profit of the company's parallel bar model equipment is only true and credible. However, during the audit, it was found that the original cost accounting of this intelligent equipment by company A was relatively general, which was only carried

forward in batches. The manufacturing cost of parallel bar model and horizontal bar model was not clearly calculated separately. To this end, the project team of the firm, through the coordination of the judicial authorities, went deep into the production workshop and technical department of Company A, obtained the first-hand production drawings, technical parameters and related working hour records of the equipment, and compared them with the financial and production technical departments of Company A. Finally, it is estimated that the parallel bar model has a manufacturing cost of 14,552.17 yuan more than the horizontal bar model. According to the difference condition, the average manufacturing cost of each parallel bar model equipment of company A during the infringement period is 110,973.05 yuan and the net profit is 32,918.82 yuan.

During the period of suspected infringement, company B sold 13 sets of equipment of the same model. According to the foregoing, the net profit of each set is 32,918.82 yuan, and the loss caused by suspected infringement of trade secrets to company A is 427,944.66 yuan. According to the article 1 of the Provisions of the Ministry of Public Security of the Supreme People's Procuratorate on the Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II) on May 7, 2010, the infringement of Company B has not yet reached the standard for filing a criminal case.

2) The amount of illegal income obtained by Company B due to infringement of trade secrets:

The current criminal law and judicial interpretation also have no specific provisions on how to calculate and determine the amount of illegal income of the infringer in the case of infringement of trade secrets. In this case, the accounting firm plans to use the gross profit of company B's sales of the same type of equipment during the suspected infringement period to determine its illegal income.

In order to obtain the above gross profit, it is necessary to determine the sales revenue of company B and the sales cost carried forward by the corresponding proportion. Among them, the sales income of Company B is relatively easy to determine. According to the party's transcripts, sales contracts, bank flow reconciliation documents and other information provided by the judicial authorities, it can be confirmed that Company B sold 13 sets of the same type of parallel bar equipment in the above period, and the sales price of each set is 180,000.00 yuan (VAT rate is 13%). Based on this, it can be calculated that the selling price of each set is 159,292.04 yuan excluding tax. The total sales revenue of the above 13 sets is 2,070,796.52 yuan. In addition, according to the bank statement of company B provided by the judicial authority, company B has recovered the above-mentioned sales amount of RMB 1,171,317.00 through the public bank account.

However, how to determine the cost of selling the equipment mentioned above is a more difficult problem. Because, as a privately founded company by the person involved in the case, the company's financial accounting is more confusing. Judging from the materials available for examination and verification provided by the seizure of the judicial authority, the accounting books and accounting

vouchers of company b are not complete. In terms of the collection and carry-forward of production costs and sales costs, accurate matching accounting cannot be carried out according to the accounting standards for enterprises and relevant accounting systems, and the sales costs of the equipment mentioned above cannot be truly and completely reflected. With reference to Article 35 of the Law of the People's Republic of China on Administration of Tax Collection and Article 47 of Detailed Rules for the Implementation of the Law of the People's Republic of China on Administration of Tax Collection, the taxpayer who "has set up account books, but the accounts are in disorder or the cost information, income vouchers and expense vouchers are incomplete and difficult to check the accounts, and tax authorities shall have the right to determine the amount of tax payable:". When checking and approving, the tax authority may check and approve with reference to the business scale and income level of the same or similar industry in the locality, or with reference to the method of operating income or cost plus reasonable expenses and profits. Through inquiry, the accounting firm found that Company A is the only one company in China that produces this intelligent food packaging equipment, which can be said to be unique in the same industry. Except for Company B that involved in the suspected infringement in the production, there is no other company in China that produces such equipment. Moreover, the cost accounting of Company A from the establishment to the infringement period is generally relatively stable and solid, and each of the previous fiscal years has been audited and confirmed by other accounting firms. Based on the above factors and the principle of comparability and rationality, it is finally determined to calculate the gross profit of sales of Company B by comparing the average manufacturing cost of the equipment produced by Company A during the infringement period.

According to the foregoing, the average manufacturing cost of each parallel bar model equipment of company A during the infringement period is 110,973.05 yuan. Based on the cost data, Company B sold a total of 13 identical parallel bar models during the above period, each of which included a tax price of RMB 159,292.04, and each gross profit amounted to RMB 48,318.99. Therefore, the gross profit of 13 sets of equipment of the same type sold by company b during the suspected infringement period was 628,146.87 yuan. According to the Article 2 of the Provisions of the Ministry of Public Security of the Supreme People's Procuratorate on the Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II), if according to the above calculation caliber, the behavior of Company B has reached the crime of infringement of trade secrets on file prosecution standards.

C. Enlightenment

Through the analysis of the two audit appraisal ideas in this case, it can be found that different calculation calibers in the same case will get different appraisal results, leading to different conclusions on whether the personnel involved in the case have reached the standards of criminal prosecution.

Therefore, if we continue to maintain the current ambiguous definition of "heavy loss" in the current legal documents, it is likely to lead to "different judgments in the same case", which will be detrimental to the fairness and justice of judicial trials, and thus hinder the realization of the long-term goal of the rule of law.

IV. PERFECT IDEAS ON THE PROSECUTION OF THE CRIME OF VIOLATING TRADE SECRETS FROM THE PERSPECTIVE OF OPTIMIZING BUSINESS ENVIRONMENT

The business environment is generally considered to be the sum of the surrounding circumstances and conditions that accompany the entire process of a business activity, from its inception to its conclusion. A sound business environment is a necessary condition for business investment and economic vitality. The rule of law can equally protect the legitimate rights and interests of various market entities in accordance with the law, regulate the boundaries between the government and the market, and adjust the interests of various market entities, [6] thus "the rule of law is the best business environment." To optimize the business environment by means of the rule of law is a measure taken by the relevant government departments in China in the new era. Trade secret protection mechanism is an integral part of the business environment. Criminal sanctions against serious violations of trade secrets are an inevitable choice to optimize the business environment. Based on the perspective of optimizing business environment, the author proposes the following ideas to improve the criminal law identification of "heavy losses" in the crime of violating business secrets:

A. The Relevant Provisions Are Sorted Out and the Criminal Legal Sources of Infringement of Trade Secrets Are Revised and Improved

Under the conditions of modern market economy, trade secrets are the intangible property of enterprises with great commercial competitiveness and are the lifeline of enterprises. Since the beginning of the 21st century, illegal and unfair competition practices that infringe on trade secrets have appeared frequently in China. The national judicial organs have also handled hundreds of influential cases of infringement of trade secrets such as the aforementioned Rio tinto trial committed by Hu Shitai. However, as mentioned above, China's current criminal regulations on the infringement of commercial secrets are not perfect. Most of the legal provisions were issued early and relatively scattered, with poor coordination. In the current background of optimizing the business environment, in order to better play the role of judicial trials in protecting trade secrets, the following aspects should be sorted out to improve the criminal legal sources of infringement of trade secrets:

First, the top legislature, the National People's Congress (NPC), initiated the amendment procedure of the Criminal Law to reasonably improve the provisions of Article 219 of the law on the crime of violating commercial secrets. Article 219 of the Act was enacted in 1997, in which the provisions on the manifestation of criminal acts violating trade secrets can no longer fully cover the actual situation. To this end, due to the provisions of Article 9 of the Law of the PRC

against Unfair Competition, which came into effect on January 1, 2018, on the infringement of trade secrets, "Where a third party obtains, discloses, uses or permits others to use the business secret even though it knows or should know the employee, former employees of business secret right holders or other units or individuals is carrying out the illegal acts listed in the preceding paragraph, it shall be regarded as an infringement of the business secret" was included in the provisions of Criminal Law, so as to ensure the coordination and consistency of the legislation on infringement of commercial secrets by the highest legislature and maintain the unity and authority of the legal system.

The second is to summarize the relevant legal interpretation documents on criminal cases of infringement of trade secrets since 2001. The Supreme People's Court and the Supreme People's Procuratorate issued a special Interpretation on Several Issues Concerning the Specific Application of Laws in Handling Criminal Cases of Infringement of Trade Secrets, providing precise and clear provisions on the application of laws in criminal cases of infringement of commercial secrets, including the calculation and determination of "heavy losses". This judicial interpretation issued by the two highest judicial organs should summarize the judicial practice in recent years the trial experience and the reasonable suggestions of the theoretical circle on the basis of sorting out the relevant provisions in the past. Based on the current background of comprehensively governing the country in accordance with the law and optimizing the business environment, it's a must to make scientific, applicable and forward-looking provisions in terms of external form and internal clause design, so as to provide a more reasonable and accurate legal source for handling cases of crimes of violating business secrets.

B. Specifying the Determination and Calculation Caliber of Loss of the Business Secret Oblige in the Prosecution Standard

Article 73 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security promulgated in May 2010 on the standards for the prosecution of criminal cases under the jurisdiction of public security organs (II) stipulates: "(1) Any acts that cause losses of more than 500,000 yuan to the obligee of the trade secret." As for the initial amount of this loss, the author believes that it can still be retained in the new judicial interpretation documents, but the specific scope of loss should be clarified. Through sorting out the relevant filing and prosecution legal documents in previous years, it can be found that the category of identification of loss tends to expand, which has evolved from the original "direct loss" to the current "loss". In view of this, in the new judicial interpretation document, it is proposed to determine the loss in the following order:

The net loss of business transactions due to infringement of trade secrets Such business transaction opportunity mainly includes the following aspects: first, the obligee uses the business secret to produce goods or services, but the business secret is infringed, the market share of the above goods or services, and the customer group is squeezed and damaged,

and the loss of the transaction net income due to the loss of the above business opportunity. The loss of company A in afore-mentioned case belongs to this kind of circumstance. Second, the obligee intends to transfer the business secret directly or license others to use it reasonably, but due to the illegal infringement of the infringed, he loses the opportunity to transfer or license others to use it reasonably, thus incurring the loss of transfer fee or usage fee. For the above losses, based on the principle of fairness and reasonableness, it is advisable to use the net income calculation method, that is, to refer to the recent similar trading market, to calculate the amount of the loss by deducting the corresponding cost and tax, and deducting the corresponding cost and income. This is a more straightforward and easy-to-accept calculation method.

Loss of inherent value or loss of part of trade secrets caused by infringement In the new judicial interpretation, it should be stipulated that if the loss suffered by a trade secret cannot be determined according to the first method mentioned above when it is infringed, it can be determined as the loss of inherent value or loss of part of trade secrets caused by infringement. For the calculation of the inherent value loss of such trade secrets, reference can be made to the research and development cost of trade secrets, combined with the useful life and the amortized value, and the income valuation method is used to comprehensively analyze and estimate the market expected profit of trade secrets. Specifically, the special economic verification institutions such as accounting firms and asset appraisal institutions may be entrusted to review and issue independent and objective and fair valuation reports for identification.

The above two are the starting point of the case for the case of infringement of trade secrets in judicial interpretation. From the perspective of the integrity of the interpretation of the explanatory document, the specific situation of "causing particularly serious consequences" in Article 219 of the Criminal Law should also be defined. From the perspective of the amount of loss, the author believes that the relevant provisions of the past can be used to identify the loss amount of more than 2.5 million yuan as "causing particularly serious consequences" and can be sentenced to three to seven years in prison.

C. Simplifying the Calculation of Illegal Gains

According to Article 73 of Standard 2 in May 2010, if the amount of loss caused to the obligee of business secrets cannot be determined in the first order, it shall be determined and prosecuted in the second order "if the amount of illegal income due to infringement of business secrets is more than 500,000 yuan". At first glance, the article seems clear and reasonable, and there is also a certain rationality of accountability. However, from the practice of judicial case handling in recent years, there are many disputes. The most important one is what is "illegal gains", by the total amount of the transaction or gross profit, or net profit? This involves the proficiency of the standard wide or medium mode. In addition, does illegal income refer to what was actually obtained at the time of the offence or what was available at the time of the offence but not yet received? These were not

clear in the previous regulations. But in fact, as described in the previous case, the amount of money obtained by different diameters is quite different, which will greatly affect the determination of the case. The author believes that in the context of the knowledge economy in the 21st century, based on the perspective of improving the business environment and strengthening the protection of trade secret property rights, in the introduction of judicial interpretation on crimes of violating commercial secrets, it's necessary to summarize the previous experience and lessons, and make the following more simple and feasible provisions: "The amount of illegal income due to infringement of trade secrets is more than 500,000 yuan" will be revised to "The amount of illegal transaction due to infringement of trade secrets is more than 3 million yuan". The reason for this adjustment is as follows:

Replacing "illegal income" with "illegal transaction amount" is easy to put on record for prosecution of judicial determination. The illegal income has the aforementioned ambiguity, and the amount of illegal transaction is relatively clear, that is, The amount of foreign sales or service transactions obtained by the unlawful infringer after using the illegally obtained trade secrets for production and business operation, including the amount of income derived by the unlawful infringer from transferring the trade secret to foreign countries or licensing the use of the trade secret to others. In either case, in practice, only the transaction amount needs to be verified without considering the complicated costs of illegal crimes, which will save judicial resources and facilitate the judicial protection of trade secrets. In addition, in the judicial interpretation clause, the amount of the illegal transaction here should indicate the amount of the transaction received and receivable. For the transaction amount that may be received but not received, the aforesaid standard should still be referred to for prosecution, but it can be considered as a factor of sentencing.

The standard of criminal prosecution is reasonable in "the amount of illegal transaction is more than 3 million yuan" According to the previous regulations, and the amount of illegal income of more than 500,000 yuan should be criminally prosecuted. If the illegal income is changed to illegal transaction amount with the amount is still set at 500,000 yuan, it is likely to expand the scope of punishment, which is not in line with the basic principle of modesty and suppression of modern criminal law. The aforementioned 500,000 yuan is a standard set by the past ten years. Considering the level of price increase in the process of economic development and the profit rate of most industries, it is reasonable and consistent to put on criminal record and pursue the case according to 3 million yuan after conversion. Of course, some people may feel that in some cases, the threshold amount for filing a case has been raised, creating an opportunity for criminals to escape punishment. In the author's opinion, under the condition of market economy, for economic illegal acts, the market competition order can be standardized by means of other legal responsibilities, and penalty is only one of the means of legal sanctions. If the amount is not large or the harm is not serious, the illegal act may be restrained by civil or administrative means. China's new the Law of the PRC against Unfair Competition of 2018

has made a more comprehensive regulation of unfair competition including infringement of trade secrets. Article 21 of the law stipulates that: Where an operator violates the provisions of article 9 of this law and infringes on commercial secrets, the supervision and inspection department shall order him to stop his illegal act and impose a fine of not less than 100,000 yuan but not more than 500,000 yuan. If the circumstances are serious, a fine of not less than 500,000 yuan but not more than 3 million yuan shall be imposed. Article 26 stipulates that where an operator, in violation of the provisions of this law, engages in unfair competition and is subject to administrative penalty, the supervisory and inspection department shall record the credit record and publicize the matter in accordance with the provisions of relevant laws and administrative regulations. In addition, Article 17 also makes reasonable provisions on how to assume civil liability. The author thinks that, with the help of the above provisions, relatively strong administrative punishment and civil accountability can be carried out for the general illegal acts that violate business secrets and have not reached the standard of criminal prosecution. Only for serious violations of trade secrets, it is necessary to launch a criminal accountability mechanism. This idea also conforms to the principle of modesty of criminal law. Therefore, considering various factors, it is realistic and reasonable to set the standard of filing a criminal case to be above 3 million yuan.

V. CONCLUSION

Business secrets are valuable resources for business operators under the background of modern knowledge economy and information economy. It is necessary to protect operators' legitimate business secrets and maintain the proper market order to optimize the business environment. From the external level, the rule of law is the long-term optimal means to protect trade secrets. It is necessary to protect the rights and interests of business operators, promote innovation and entrepreneurship, and optimize the business environment to carry out criminal prosecution of illegal acts that seriously infringe business secrets. In the new period, due to the deficiencies in the identification of "heavy loss" of infringement of trade secrets in previous issued legal documents, it's a must to uphold the principle of modesty, restraint and prudence in the criminal law, economize judicial resources, and promote the rule of law and justice, focus on the overall requirements of optimizing the business environment, keep pace with the times, keep up with the reality, and create a relatively scientific and reasonable legal basis for the determination of "heavy losses" of the crime of infringement of trade secrets from the aspects of the identification model of losses, the selection order, and the starting amount of liability recovery.

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