

## 2018 BFSU-WANHUIDA IP MOOT COURT CASE

In Beijing Intellectual Property Court

P Network Company

*As Petitioner*

V.

S Network Company

*As Respondent*

### Facts

I

1. The FIFA Constitution stipulates that Chinese Football Association (hereinafter referred to as “CFA”) is the original owner of all the rights of all the races and competitions under its jurisdiction, including all kinds of property rights, audio-visual and broadcast recording, reproduction and broadcasting copyrights, and multimedia copyrights.
2. The Charter of Chinese Football Association stipulates that CFA is the governing body of Chinese football movement and the original owner of all rights arising from the various football events. These rights include various property rights, audio-visual and broadcast recording, reproduction and broadcasting copyrights,

multimedia copyrights, market development and promotion rights, and intangible assets such as badges and copyrights, and rights to use in cooperation with third parties or entirely through third parties, to exercise its rights entirely through cooperation with third parties.

## II

3. In March 2006, CFA issued a power of attorney, authorizing China Super League Limited liability Company (hereinafter referred to as “Super League Company”) as agent to develop and operate TV, radio, Internet and various multimedia copyrights of China Football Association Super League (hereinafter referred to as “the Super League”). The authorization was exclusive and valid for 10 years.
4. In March 2012, Super League Company signed an agreement with S Network Company (hereinafter referred to as “S Company”), stipulating that S Company enjoys the exclusive rights to broadcast the Super League’s videos in its portal website S Network. The rights include but not limited to the rights of live broadcasting, recording, on demand, and extension, lasting for the period from March 1, 2012 to March 1, 2014. In order to avoid ambiguity, the agreement also specifically listed the portal websites that have competitive relationships with the S Network, including P Network Company (hereinafter referred to as “P company”)’s portal website P Network. According to the agreement, these portal websites that have the competitive relationship with the S Network shall not be in any form, including but not limited to the direct misappropriation of TV signals to conduct live or video broadcast of the Super League’s tournaments, the production of on-demand signals, the openly false propaganda of enjoying rights to live or on-demand broadcast Super League’s tournaments by way of jump links. In December 2012, Super League Company again issued a power of attorney to S Company, specifying that S company enjoys rights of exclusive rebroadcasting, communication, playing all the Super League’s tournaments and videos during the contract period in the portal websites area. The power of attorney also specifies

that S company has the right to take all legal means, including litigation, to prevent third parties from illegally using the above-mentioned videos and obtain compensation.

5. In addition, through multiple authorizations, L Network Company (hereinafter referred to as “L Company”) and L Network under its operation also received the 2013-2014 Season’s Communication rights of the Super League. However, the tournaments shall only be broadcasted in its own network, L Network, and on PC client-sites.

### III

6. In August 2013, P company's portal website P Network, in its Super League Channel homepage, labelled and provided videos of the Super League in the prominent position. P Network didn’t obtain any authorization documents to communicate Super League’s tournaments through the Internet.

### IV

7. The live programs of the Super League’s tournaments provided by either S Network or P Network through the internet, were produced and broadcasted by C TV Sports Channel, that is, the programs in the present case were produced and broadcasted by C TV station. Relevant programs of websites were all rebroadcasted from C TV. There was no copyright agreement between C TV station and Super League Company concerning the programs in the present case. There was no copyright agreement between C TV Station and S company, P company, L company concerning the programs in the present case.

## **Trial for the First Instance**

### V

8. In March 2015, S company sued P Company to the court, claiming that in August 2013, S company found P Website labelled and provided videos of the Super League in the prominent position of its Super League Channel's homepage. P Network illegally rebroadcasted the Super League's live video without legal authorization, violating S company's copyrights of relevant sports events program. P company also constituted unfair competition by grabbing the economic benefits of S company, diverting the user's attention and website traffic. S company thereby requested the Court to decree P company to stop violating S company's exclusive rights to communicate the Super League's tournaments; to stop destructing the competition order and business model in sports events rebroadcasting rights licensing area; to immediately stop the misleading false propaganda in sources of video broadcasting service; to compensate for economic losses; to eliminate the adverse effects of infringement and unfair competition behaviour by issuing a statement by P company in the homepage of P Network and China Television Newspaper.
9. P Company argued that, S Company's cause of action was not clear, and its pleadings were not in accordance with law. Football Tournaments were not the object of copyright law protection. The rights in sports events did not necessarily equal to rights in sports events program. S Company had not been authorized by the author, and its authorization had a major flaw. Thus S Company was not the appropriate subject of the case. S Company sued an incorrect defendant. And it's without legal basis to claim for compensation.
10. In the trial, the Court informed the operator of L Network, L Company as a third party to participate in the lawsuit.

## VI

11. After the hearing, the court of first instance adjudicated that, in accordance with the FIFA Constitution, China Football Association Charter and the authorization procedures, it can be determined that, in the contract period, S Company enjoyed

the rights of exclusive rebroadcasting, communication, playing Super League's tournaments and all the videos in the portal websites area. It also enjoyed the rights to take all legal measures to prevent third parties from illegally using above videos and to obtain compensation. Despite the fact that C TV logo appeared on the broadcast pages, it cannot be denied that S Company obtained the rights to rebroadcast the tournaments in the present case.

12. At the same time, the court, based on an agreement signed by Super League Company and the party not involved in the present case, Dong'ao Sports Management Company, found that Super League Company usually maintained the separate authorization formats, that is, to authorize portal websites broadcasting rights and TV broadcasting rights and TV products rights respectively. Therefore, the defense proposed by P Company that S Company was not authorized, and there was a significant flaw in the authorization was not supported by the court.
13. It can be seen from the broadcasting websites and the entrance status of the web pages involved in the case that the program was broadcasted under the subnet of the L Network. According to the general technical explanation, the domain name owner has the control power to the content played by its sub domain name. So, L Company had the control power to the rebroadcasting of relevant sport events.
14. Based on a number of factors below, the Court finally determined that the information source of the tournaments in the present case was determined and transmitted out by L Network: (1) P Company was once cooperated with L Company. L Network pushed relevant videos to P Network. The website in the present case was labeled "video broadcasting cooperation- P Network interactive broadcasting room". (2) There were two entries: "L Sport" and "P Sport" on the relevant broadcasting page, so that it cannot be concluded that the page returns to the only main page (address); (3) The relevant website address had been discontinued and the domain name cannot be parsed to get the server source of the tournaments screen. (4) L Network cannot prove the inconsistency of its content with the P Network.

15. At the same time, the court opined that according to the chain of rights, the above-mentioned Dong'ao Sports Management Company only had rights in local radio and television broadcasting, non-portal online video copyrights and so on, but P network was not within the above range. L Company's rights were limited to its own website, and shall not cooperate with third parties or authorize third parties to use authorized programs through links, co-establishment of cooperation platforms and other means. P Company was not providing links as pure network service but jointly providing tournaments rebroadcast to network users through collaboration with L Company using links as technical means. So the rebroadcasting behaviour of P network infringed upon the broadcasting right of S network.
16. The court held that under the Tort Liability Law, the adversely affected party has the right to request some or all of the persons who held joint liabilities to take the responsibility. Therefore, S Company has the right to require P Company to bear the tort liability and request it to stop the infringement.
17. Regarding the issue on whether the broadcast of the tournaments is original and constitutes a work protected by the Copyright Law, the court considered that the formation of the transmission screen is a result of multiple lens selection and orchestration. Different location settings, screen selection, arrangement and cutting can lead to different final screens. Through the selection of the recording lens, orchestration, the formation of a viewing screen is a kind of creative work. Different screen effects reflect its originality. The screen formed by recording the sports tournaments should be identified as works. Therefore, the co-broadcast behaviors of L Network and P Network infringed on S Company's copyrights in screen works of sports tournaments in the present case.
18. Regarding the issue on whether the broadcast of the tournaments constitutes unfair competition, the court opined that the same fact cannot be adjudicated and regulated by two different laws. The act of rebroadcasting had been adjudicated by the PRC Copyright Law, and there was no need to adjudicate it again according to

the Anti-Unfair Competition Law. Therefore, the lawsuit for unfair competition was not supported.

19. To conclude, the court of first instance ruled that P Company shall cease to broadcast the Super League's tournaments from March 1, 2012 to March 1, 2014, make a statement on the P Network homepage for seven consecutive days to eliminate its adverse effects, and compensate the economic losses suffered by S Company.

### **Appellate Trial**

#### **Petition**

20. P Company refused to accept the judgment of the trial of the first instance, appealed to the Beijing Intellectual Property Court, petitioning the court to revoke the judgment of the trial of the first instance and amend the judgment to non-infringement.