

CASE TRANSLATION: CHINA

Case citation:

Hangzhou Huatai Yimei Culture Media Co., Ltd. v. Shenzhen Daotong Technology Development Co., Ltd. (2018) Zhe 0192 Civil Case, First Court No. 81

Name and level of the court:

Hangzhou Internet Court of the People's Republic of China

Date of decision:

27 June 2018

China; intellectual property infringement; authenticity of electronic evidence; screenshot of webpage; SHA256 hash value; blockchain related evidence; Bitcoin block chain; integrity of evidence; law of electronic signatures

Hangzhou Internet Court of the People's Republic of China

Paper of Civil Ruling

(2018) Zhe 0192 Civil Case, First Court No.81

Plaintiff: Hangzhou Huatai Yimei Culture Media Co., Ltd., located in Room 307, 3rd Floor, Building 2, No. 68, No.1 Street, Hangzhou Economic and Technological Development Zone, Zhejiang Province

Legal representative: ZHANG Jianqiu, Chairman of the Board

Law Agents: SUN Yuxiong, TONG Liling, lawyers of Zhejiang Fa Xiao Law Firm

Defendant: Shenzhen Daotong Technology Development Co., Ltd., located in Mingheyuan 904, No. 1 West Fourth Lane of Hekan Village Stadium and Bantian Street, Longgang District, Shenzhen City, Guangdong Province

Legal representative: XIANG Changxin, General Manager

This court accepted the case of Hangzhou Huatai Yimei Culture Media Co., Ltd (hereinafter, 'Huatai Yimei') versus Shenzhen Daotong Technology Development Co., Ltd. (hereinafter, 'Daotong') for

infringement of the right of dissemination on information networks on 10 January 2018, and applied a summary procedure in accordance with the law and heard the case in a public court session on 15 March 2018. SUN Yuxiong, the lawyer entrusted by Huatai Yimei, and XIANG Changxin, the legal representative of Daotong, attended the proceedings. The review of this case has now been concluded.

Huatai Yimei Co. filed legal proceedings with this court, requesting Daotong to:

1. Immediately delete the article *A mother took her 4-year-old son into the female dressing room of a swimming pool and was scolded by the manager and cried*, published on Ladyfirst.com.
2. Award damages in the sum of RMB 6200 for the loss for copyright infringement.
3. Award the sum of RMB 2500 for the attorneys' fee.
4. Bear all the litigation costs of this case.

Facts and Reasons

ZHENG Yi and LIN Bibo, journalists of *City Express* (a newspaper, translators note: the name of the newspaper in the Chinese language is Dushikuaibao) worked together and published an article titled *A mother, who took her 4-year-old son into the female dressing room of a swimming pool, was scolded by the manager and cried* (hereinafter, 'involved article') of around 3100 words and one illustration on the A08 page of newspaper of *City Express* on 24 July 2017. On 24 July 2017, the Ladyfirst.com operated by Daotong (website: <http://www.ladyfirst.com.cn>) published the article *A mother, who took her 4-year-old son into the female dressing room of a swimming pool, was scolded by the manager and cried* (hereinafter, 'alleged article'). The content and illustration of the alleged article were the same as the involved article.

The copyright of the involved article belongs to *City Express*. On 24 July 2017, the *City Express* gave Huatai Yimei the exclusive right of dissemination on information networks in the involved article. Daotong reprinted the work without authorization, the right of dissemination on information networks being owned by Huatai Yimei, in which case caused infringement to the legitimate rights and interests of Huatai Yimei. On 17 October 2017, the lawyers for Huatai Yimei sent a letter to Daotong, requesting it to cease the infringement and pay damages. Daotong ignored it. Accordingly, Huatai Yimei made the above claims. During the trial, Huatai Yimei withdrew its first claim.

The defendant, Daotong argued that:

1. XIANG Changxin, the legal representative of Daotong, established the Ladyfirst.com and filed it under the name of Daotong to provide an exchange platform for women and fashion information. This website did not earn any profit.
2. Since the involved article is useful for references to children, the Ladyfirst.com reprinted and collected the alleged article from SINA on 24 July 2017 and indicated the source, *City Express*, when redistributing the article. On 19 October 2017, the Ladyfirst.com immediately deleted the alleged article upon receiving the letter from the lawyer.
3. The Ladyfirst.com website had a limited click rate and influence, and redistributed in good faith, without any commercial purpose, only for disseminating information, and caused no economic losses to Huatai Yimei. Therefore, the defendant did not agree with the amount of compensation claimed.
4. The authors who signed their names on the involved article provided by Huatai Yimei were ZHENG Yi and LIN Bibo. However, the labour relationship certificate and the author's statement provided by Huatai Yimei did not contain any relevant information or the signature of ZHENG Yi, and Huatai Yimei did not provide the labour agreements between ZHENG Yi, LIN Bibo and *City Express*. Furthermore, the relevant information of the journalist ZHENG Yi is not available on the website of the State Administration of Press and Publication of the People's Republic of China. Therefore, the defendant did not agree that the copyright of the involved article belonged to *City Express*.
5. Since 90 per cent of the content of the involved article was quoted from the poster of Jiaxing BBS and interviewees at Hangzhou Swimming Pool, the

involved article was not the original work by ZHENG Yi and LIN Bibo, and should be deemed as a report of current news and not protected by copyright law.

6. Daotong redistributed the involved article with the purpose of respecting the public's right to be aware of social information and in consideration of the significance for references to children's growth and education, and without any commercial purpose or purpose of gaining profits. Therefore, the nature of the article is in the public interest, in which case, the relevant provisions of fair use in *Regulations on the Protection of Rights to Information Network Communication* shall apply.

7. The subjective motive of Huatai Yimei for protecting its right is not pure.

The parties submitted evidence in accordance with the law for their claims, and this court required the two parties to exchange and cross-examine the evidence. Where the parties had no disagreement on the evidence, this court confirmed it and attached the evidence in the case file. However, regarding the magnitude of proof of facts, this court integrated this evidence with other facts to make a comprehensive determination. Regarding the evidence that the two parties disagreed on, this court's determination is as follows:

1. Regarding the certificate of labour relations, authorization and the supplementary statement by ZHENG Yi submitted by Huatai Yimei, Daotong refused to agree and argued that part of the evidence was submitted after the court debate and should not be used as evidence. After review, this court found that the above evidence was true, legal and [mutually verifiable/consistent], and was related/relevant to the case. Therefore, this court confirmed its validity. Although some of the evidence was submitted after the court hearing, since it could prove the copyright owner of the involved article, such evidence can still be deemed as the supplementary evidence that Huatai Yimei refuted in response to the objection raised by Daotong. Besides, this court required both parties to cross-examine the above supplementary evidence and provided Daotong with the opportunity to refute the evidence, which guaranteed the procedural rights of cross-examination and refutation of Daotong. Therefore, this court confirmed the validity of the above evidence.
2. Huatai Yimei did not recognize/accept/agree with the authenticity, legitimacy and relevance of the

following documents submitted by Daotong: the income certificate of Alimama, the screenshot of the original article reprinted from SINA, the statistical certificate of the company flow, or the weight statistics certificate by Baidu. After examination, this court found that the authenticity of the screenshot of original article reprinted from SINA can be confirmed, and it is also related/relevant to this case. Therefore, this court confirmed the validity of this evidence. Since other evidence was irrelevant to this case, this court did not confirm the validity.

Based on the above valid evidence and the statements made by the parties in the trial, this court determined the following facts:

The 3010-words article named *A mother, who took her 4-year-old son into the female dressing room of a swimming pool, was scolded by the manager and cried* was published on 24 July 2017 on the 8th page 'Hot Spot Seeks Truth' of *City Express*, and signed 'Reporter: ZHENG Yi, LIN Bibo'. Attached were two pictures, one with the signature of 'Journalist: ZHENG Yi shot', the other with the reference to other newspapers.

On 18 October 2014, ZHENG Yi signed a Labour Contract with *City Express*, which states that Party A is *City Express*, Party B is ZHENG Yi, and they agreed that Party B should work in the editing department based on the needs of Party A. Party B is willing to accept the work arranged by Party A and has the responsibility to perform full-time work. The contract period was from 18 October 2004 to 17 October 2017.

On 30 September 2016, LIN Bibo signed a Labour Contract with *City Express*, which states that Party A is *City Express*, Party B is LIN Bibo, and they agreed that Party B should work in the editing department based on the needs of Party A, and Party B is willing to accept the work arranged by Party A and has the responsibility to perform full-time work. This contract has no fixed term, and the validity period of the contract starts from 30 September 2016.

On 13 July 2017, *City Express* issued a certificate of labour relations, stating that 16 people, including LIN Bibo, were employees of the newspaper. Their labour relations began from 16 June 2015 to 16 June 2018. The certificate of labour relations has the official seal of *City Express*, and contained the employee's name and ID number.

On 3 September 2017, LIN Bibo issued an 'Author Statement', which stated that ZHENG Yi and LIN Bibo

are journalists employed by *City Express*. The involved article published in the 8th page of *City Express* on 24 July 2017 was written during their working hours. The copyright of the work belongs to *City Express*.

On 16 April 2018, ZHENG Yi issued an 'Author Statement', which stated that ZHENG Yi is a journalist employed by *City Express*. The involved article in the 8th page of *City Express* published on 24 July 2017 was written during the hours he worked. The copyright of the work belongs to *City Express*.

The Authorization Letter of the Right of Communication on Information Networks issued by *City Express* states that *City Express* has the copyright of the involved article and authorizes Huatai Yimei to exclusively implement the right of communication on information networks of the involved article. Huatai Yimei has the right to bring a legal action independently on behalf of itself or to take other measures to protect its rights. The authorization period started from 24 July 2017 and was effective until 23 July 2018.

Huatai Yimei alleged that Daotong published the involved article in the Ladyfirst.com. Huatai Yimei then sent the URL of the infringing webpage to the BAOQUAN.COM website through an API interface and requested (BAOQUAN.COM website) to preserve the infringing webpage.

After receiving the request, Zhejiang Shuqin Technology Co., Ltd. (hereinafter, 'Shuqin') as the main operator of the BAOQUAN.COM, within the environment of Aliyun, used the back-end code to take a screenshot of the target webpage through Google's Open Source Program 'Puppeteer' plug-in unit, which generated an operation log and recorded the time and processing of the content. The back-end code then obtained the source code of the target page and related call information by calling 'curl' (an open source programs with URL syntax working in command line mode) plug-in unit, generated operation log, and recorded the call time and processing of the content. After that, BAOQUAN.COM wrapped the screenshot and source code to calculate a corresponding SHA256 hash value, and uploaded them to FACTOM block chain and a Bitcoin block chain simultaneously. The Zhejiang Qianmai Judicial Identification Institute (hereinafter, 'Qianmai Identification Institute') explained and confirmed the technical detail of the above process.

This court obtained access into BAOQUAN.COM, after

Huatai Yimei provided the court with the account number and password. The court then entered Security Number '83F1D7697C714166B94D166753C67116' in the search bar, then clicked 'Download and Preserve' to obtain the file package, which contained four sub-files. The file '3_url2 image_8699824944546815467.jpg' is a screenshot of the webpage. The top of the file shows 'Ladyfirst.com.cn'. The main text shows: 'current location: Home Page > emotional life > social documentary'. The title of the article is 'A mother took her 4-year-old son into the female dressing room of a swimming pool and was scolded by the manager and cried'; 2007-07-24; Source: *City Express*; Editor: Elephant'. After a review, it was established that the content of the text is basically the same as the involved article. The bottom of the screenshot shows 'Ladyfirst.com, all rights reserved, Yue ICP Filing No. 13048290-2'.

The document '2_shortcut_log_7379229916797635231.txt' is a webpage screenshot operation log, showing the name of the screenshot host: node 1; host ownership company: Zhejiang Shuqin Technology Co., Ltd., the screenshot starting time: 2017-08-25, 16:28:47, the screenshot completing time: 2017-08-25 16:28:55.

The file '4_shortcut_code_5815092442702329065.txt' is the webpage source code operation log. It shows that the source code of the webpage is: href=http://www.ladyfirst.com.cn/templates/ladyfirst_com_cn/images/style2.css rel='stylesheet' type='script/css'><javascript src='http://www.ladyfirst.com.cn/templates/ladyfirst_com_cn/images/nav.js' type='text/javascript'></script><script type='text/javascript'

The Qianmai Identification Institute issued a Judicial Identification Opinion on 20 June 2018, stating that it was entrusted by Zhejiang Shuqin Technology Co., Ltd. to identify whether the document entitled '83F1D7697C714166B94D166753C67116-c1303aba38f3d134bf93026ae65e305266b4273d1303d20a631a919bd9530c.zip' (hereinafter, 'the infringement document package') had been modified after preservation. In accordance with GA/T976-2012 'General Method of Forensic Scientific Appraisal of Electronic Data' and SF/Z JD0400001-2014 'General Implementation Specification for Forensic Appraisal of Electronic Data', the Identification Institute used computers and 360 browsers to carry out the following steps:

1. Search the FACTOM block chain. Firstly, visit the node address of FACTOM block chain of the Qianmai Identification Institute in the Aliyun server 'http://47.104.25.30:8090', and input the transaction hash value of electronic data related to the case provided by Huatai Yimei 'c1303aba38f3d134bf93026ae65e305266b4273d1303d20a631a919bd9530c' (hereinafter, 'transaction hash value') for inquiry. The CHAIN ID is '589eff8eaadf4bc61837b38bd3dcd4b747ac9faf83b8069c1da05fcc8ee4b0c6', and the storage content of the block is '5f188779155cb6fc2d3822f8356282a464af15d5e9f6af68572533c17a9bea', which is consistent with the SHA256 value of the inspection document. According to the Factom block packing rule, the block packing time is 10 minutes, and the height of the block is 103140, according to the generation time of the transaction hash value. The KEYMR value is '5c8a0aceda219e436f5899125b359e4db38268d201caf6f195c0c9a8ae4749' and the display time is '2017-08-25:24:00'. According to the CHAIN ID of '589eff8eaadf4bc61837b38bd3dcd4b747ac9faf83b8069c1da05fcc8ee4b0c6', the transaction hash value is found in this block.

The FACTOM block chain website 'http://explorer.factom.com/' was visited, and the transaction hash value was inputted for the purposes of a query. The query results showed that the transaction hash value CHAIN is '589eff8eaadf4bc61837b38bd3dcd4b747ac9faf83b8069c1da05fcc8ee4b0c6'. The content of the block is '5f188779155cb6fc2d3822f830256282a464af15d5e9f6af68572533c17a9bea', which is consistent with the SHA256 value of the inspection document. According to the FACTOM block packing rule, the block packing time is 10 minutes to pack a block. According to the generation time of the transaction hash value, the height of the block is 103140. The KEYMR value is '5c8a0aceda219e436f5899125b359e4db38268d201caf6f195c0c9a8ae4749', and the display time is 'Friday, 25 August 2017, 16:24'. The CHAIN ID is '589eff8eaadf4bc61837b38bd3dcd4b747ac9faf83b8069c1da05fcc8ee4b0c6', which is searched in block 103140. The transaction hash value is in this block.

2. Search the Bitcoin block chain. According to the hash value of Bitcoin transaction inquired in FACTOM block chain, '924d86f047432c192de6587323bf4cfd221e58007acd1b96b2e1ecaf47e7a30', searching that on www.blockchain.com and www.btc.com respectively.

The inquiry results both show that the value is the transaction hash value of block with the height of 482210, and the block time is '2017-08-27 13:31:20' (Greenwich Standard Time). Output Scripts stored the contents of

'46610000192e45c8a0aceda219e436f5899125b359e4db38268d201caf6f195c0c9a8ae4749', in which '4661' is the four-digit character, which is the hexadecimal representation of ASCII code of Factom abbreviated as 'Fa'. '0000000192e4' is the 12-digit character, which is the hexadecimal representation of the Factom block with the height of '103140'.

'5c8a0aceda219e436f5899125b359e4db38268d201caf6f1959a8ae4749' is the KEYMR value of the block with the height of 103140 in the FACTOM block chain.

According to the Qianmai Identification Institute, by querying the data in the Bitcoin block chain, the KEYMR value of the block with the height of 103140 in the FACTOM block chain is recorded in the block with the height of 482210, which is

'5c8a0aceda219e436f5899125b359e4db38268d201caf6f195c9a8ae4749'. The

'5f188779155cb6fc2d3822f830256282a464af15d5e9f6af68572533c17a9bea' recorded in the FACTOM block chain with the height of 103140 is the SHA256 value of the inspection document. Based on the hash value application, Bitcoin block chain mechanism and FACTOM block chain mechanism, it can be concluded that the inspection document has not been modified after preservation.

According to the identification procedure of the Qianmai Identification Institute, this court verified the block chain preservation of the electronic data in the following steps:

Login to the website <http://explorer.factom.com/> and searched the transaction hash value provided by Huatai Yimei for a query. The results showed that:

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'HASH : c1303aba38f3d134bf93026ae65e305266
b421273d1303d20a631a919bd9530c, CHAIN :
589eff8eaadf4bc61837b38bd3dcd4b747ac9faf83
b8069c1da05fcc8ee4b0c6, EXTERNAL
IDS : 83F1D7697C714166B94D166753C67116 ;
CREATED (GMT+0800) : Friday, 25 August 2017,
16:29 ; CONTENT : 5f188779155cb6fc2d3822f83
0256282a464af15d5e9f6af68572533c17a9bea'.
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By searching the block height 103140 provided by Huatai Yimei, the generation time of the block height is established as Friday, 25 August 2017, 16:24. There are 43 ENTRY BLOCK in the height, including CHAIN:

'589

eff8eaadf4bc61837b38bd3dcd4b747ac9faf83b8069c1da05fcc8ee4b0c6' at Friday, 25 August 2017, 16:24.

The KEYMR value of the block height is 5c8a0aceda219e436f5899125b359e4db38268d201caf6f195c0c9a8ae4749, and the transaction hash value anchored to the Bitcoin block chain is 924d86f047432c192de6587323bf4cfd221e580070d1b96b2e1af477a30.

Access was then obtained to www.blockchain.com and www.btc.com, where the aforesaid transaction hash value was entered for a query. The block height is 482210 and the block time is 'utc: 2017-08-27 13:31:20'. The Output Scripts are both '46610000192e45c8a0

aceda219e436f5899125b359e4db38268d201caf6f1950c9a8ae4749'. The storage contents are consistent with KEYMR values in blocks with the height of 103140 in the FACTOM block chain. The results of the above search are consistent with the identification result from the Qianmai Identification Institute.

By searching 'Hash Value Calculating Tool' in Baidu, and calculating the hash value of the compressed package formed by webpage screenshots etc. by ATOOL online tools, this court obtained the SHA256 value of '5f188779155cb6fc2d3822f830256282a464af15d5e9f6af685733c17a9bea'. The HASH value of the packaged file is consistent with the content stored in the FACTOM block chain.

On 17 October 2017, the lawyer of Zhejiang Fa Xiao Law Firm entrusted by Huatai Yimei sent a letter to Daotong, requesting that it shall cease the infringement and pay damages. The letter was sent on 17 October 2017 to Mingheyuan 904, No. 1 West Fourth Lane of Hekan Village Stadium and Bantian Street, Longgang District, Shenzhen City, Guangdong Province. The recipient was XIANG Changxin, who signed for the receipt of the letter on 9 October 2017.

Huatai Yimei and Zhejiang Fa Xiao Law Firm entered into a Legal Service Agreement and agreed that the fee for the legal work is RMB 2500.

In addition, this court found that *City Express* is a legal entity in the form of a public institution. Its purpose and scope of business are to provide news and related information services for urban people, to edit and publish *City Express*, etc. Huatai Yimei was established on 1 June 2015, with registered capital of RMB 10 million. Its business scope is: production,

reproduction, distribution of special topics, variety arts, TV plays, etc., and services: sports activities planning, public relations planning, etc. Daotong was established on 5 June 2013, with a registered capital of RMB 500,000. Its business scope is: e-commerce trading centre, e-commerce operation, domestic trade and so on. Zhejiang Shuqin Technology Co., Ltd. (hereinafter, 'Shuqin') is the filing subject of BAOQUAN.COM. The company was established on 20 May 2016, with a registered capital of RMB 12.5 million. Its business scope is: services: network information technology, technology development of computer software and hardware, technical services, technical consultation, undertaking exhibitions, undertaking computer network engineering (involving certificate management), etc.

Ruling

This court held that the significant issues of the dispute in this case are: 1) Whether Huatai Yimei has the standing to be the plaintiff; 2) Whether Daotong has constituted infringement to the right of communication on information networks; 3) If the infringement has been constituted, whether the amount of compensation claimed by Huatai Yimei is reasonable.

I. Whether Huatai Yimei has the standing to be the plaintiff

Regarding the first important issue of the dispute, this court held that the involved article consists of interviewing, describing, summarizing and commenting on social phenomena, and the attached pictures reflected the author's choice and arrangement in the angle, composition and light, all of which are original and in line with the provision in the Chinese copyright law concerning the conditions of protected work, and such work shall belong to the writing and photographic work protected by the Copyright Law. This court did not support Daotong's defence claim that the work involved in the case was report of current events. Since *City Express* authorized Huatai Yimei the exclusive right of communication on information networks of involved works, and expressly clarified that Huatai Yimei could independently file a legal action against the alleged infringement, Huatai Yimei has the standing to be the plaintiff in this case.

II. Whether Daotong has committed infringement to the right of communication on information networks
Huatai Yimei obtained the evidence of the infringing

webpage of Datong through the third-party depository platform-BAOQUAN.COM, and proved the integrity of the electronic data, and established that it has not been tampered by means of storing electronic data in the block chain. Therefore, in order to determine whether the infringement has occurred, it is necessary to determine whether the method of securitization and deposit of evidence by Huatai Yimei complies with the relevant provisions relating to electronic data and the magnitude of the evidence. In accordance with article 8 of the *Law of the People's Republic of China on Electronic Signatures*, the following factors shall be taken into consideration when examining the truthfulness of any electronic data as evidence:

- (1) The reliability of the methods used when creating, storing or transmitting the electronic data;
- (2) The reliability of the methods used to maintain the integrity of the contents;
- (3) The reliability of the methods used to identify the addressor and;
- (4) Other relevant factors.

Based on this, this court determined the validity of the electronic evidence from the following three aspects: reviewing the qualifications of the depository platform, reviewing the credibility of the technical means of obtaining evidence from the infringing webpage, and reviewing the integrity of the electronic evidence preserved in the block chain.¹

i. Review of the qualifications of the depository platform

After inquiry, it is established that the shareholder of Huatai Yimei is Zhejiang Huamei Holdings Co., Ltd.

The natural persons who are shareholders of Shuqin Company include WENG Yuan, GAO Hang, LI Qiaofeng and LU Chunquan. The company shareholders of Shuqin Company include the Anji Shuqin Investment Management Partnership, Hangzhou Shuqin

¹ Editorial note: for more detail on authentication, including the tests, see Stephen Mason and Daniel Seng, editors, *Electronic Evidence* (4th edn, Institute of Advanced Legal Studies for the SAS Humanities Digital Library, School of Advanced Study, University of London, 2017), 7.128 and appendix 2, open source at <https://humanities-digital-library.org/index.php/hdl/catalog/category/law>, and the Draft Convention on Electronic Evidence, 13 *Digital Evidence and Electronic Signature Law Review* (2016) S1 – S11, at <https://journals.sas.ac.uk/deeslr/article/view/2321>.

Investment Management Partnership, Xinyu Youchuang Investment Management Centre, and Hangzhou Shuimu Zehua Venture Capital Partnership. The shareholders and business scope of Shuqin Company are relatively independent from Huatai Yimei and *City Express*, therefore Shuqin Company is neutral in this case. Besides, Shuqin Company has passed through the integrity identification test carried out by the National Quality Supervision and Testing Centre for Information Network Products. Therefore, the BAOQUAN.COM operated by Shuqin Company is qualified to be the third-party depository platform for electronic evidence.

ii. Credibility review of the technical means used to obtain evidence from the infringing webpage

Launching the computer's Command Window and entering the command line "ping www.baoquan.com" returns the IP address 112.74.234.54. Upon inquiry, the physical location of this IP address is established in Alibaba Cloud's BGP data centre. Therefore, it can be inferred that the BAOQUAN.COM is deployed in Alibaba Cloud. As a general cloud platform, Alibaba Cloud can ensure that its server is not infected by viruses and Trojans under normal circumstances. Besides, BAOQUAN.COM has obtained First-Level Certification for Website Security, and Third-Level Filing Proof for Information System Security Protection granted by the Third Research Institute of Ministry of Public Security and the National Quality Supervision and Testing Centre for Information Network Products. Therefore, without evidence to the contrary, the website should be considered to have a secured environment for electronic data storage. Upon receipt of the infringing webpage's URL, BAOQUAN.COM's server will automatically request the target address in the Internet environment. The target address will automatically return the status code and webpage information to confirm that the requested URL is a valid accessible address, thereby ensuring the infringing link's capture is carried out in the Internet environment.

The BAOQUAN.COM server can scrape images from the target webpage by automatically calling the Google open source program Puppeteer, and at the same time obtaining the target webpage source code by using Curl. According to the inquiry, Puppeteer is a Node library developed by Google officially to control the headless Chrome through the DevTools protocol. Data can be retrieved from the webpages by using the provided API as a crawler. The Curl command is a file

transfer tool that works under the command line using URL rules. By simulating HTTP requests, it retrieves information such as page content and versions. This type of evidence securitization system is open to everyone and can be used by anyone. Its operation is automatically completed by the machine following procedures laid out in the forensic system. The possibility of relevant linkages being tampered is relatively low, thus the credibility of such electronic data source is relatively high. Besides, the Qianmai Identification Institute has examined and confirmed the technical details of BAOQUAN.COM's use of Puppeteer and Curl program for screen-shots and source code retrieval. Therefore, in the absence of contrary evidence, this court determines that BAOQUAN.COM's use of Google Open Source Capturing Program to perform domain name resolution to generate and store data messages on the target webpage is reliable. In this case, the screenshot of the webpage captured by Puppeteer shows that the alleged infringing article published by 'Ladyfirst.com.cn' in 2017 is fundamentally the same as the involved article, and the source code of the target webpage obtained through Curl is 'www.ladyfirst.com'. Upon inquiry, the website name of 'www.ladyfirst.com' is 'Ladyfirst.com.cn', and its filing subject is Datong.

iii. Review of the integrity of the electronic evidence preserved in Blockchain

BAOQUAN.COM compresses the screenshots, source codes and call information, calculates the SHA256 value and uploads it to the FACTOM Blockchain and the Bitcoin Blockchain to ensure that the electronic data has not been modified. To review the reliability of such method, the Blockchain technology shall first be analyzed and reviewed.

As a kind of decentralized database, Blockchain is a series of data blocks generated by cryptography. Each data block contains information of a network transaction, which is used to verify the validity (anti-counterfeiting) of its information and to generate the next block. Specifically, a Blockchain network is a network composed of a plurality of organization or company servers as nodes. One node on the network will pack the data generated in a given time period to generate the first block, and then synchronize it with the entire Blockchain network. Other nodes on the network will authenticate the block that is received, and add it to the local server after verification. After that, another node will put together the newly

generated data and the information of the existing block in the local server to form a second block. After receiving the block and passing the verification, other nodes will add the second block to their local servers. Subsequent data is packed in the same manner, with the head of each block connected to the end of the previous block to form a chain. Such a chain is called Blockchain. To modify data in a block, one will have to modify the contents of all blocks after that block, and modify the data backed up by all organizations and companies in the Blockchain network. Therefore, the information on Blockchains are hard to be altered and removed. After confirming that the electronic data has been uploaded to a Blockchain, it is a reliable method to maintain content integrity. In this case, in order to confirm that the electronic data has been uploaded to the Blockchain, this court will review from the following two aspects: whether the electronic data had actually been uploaded, and whether the electronic data uploaded is the electronic data involved in this dispute.

A. Review whether the electronic data had actually been uploaded

To determine whether the electronic data had actually been uploaded, this court searched the FACTOM Blockchain using the transaction hash value provided by Huatai Yimei to view its contents and the generated time. According to the block height submitted by Huatai Yimei, content of the abovementioned transaction hash value and its upload time can be found. The upload time and the time when the webpage's screenshots and its source code are captured using Puppeteer and Curl as indicated on the call log are reasonable. The generated time of the block height is consistent, in terms of time logic, with the call log's generated time and the FACTOM packaging rule.

According to the transaction hash value anchored to the Bitcoin block chain by the block height, it is found that in the Bitcoin block chain, the content contained in the block node is consistent with the content hash value stored in the FACTOM. Therefore this court confirms that the BAOQUAN.COM has uploaded the electronic data to the FACTOM block chain and Bitcoin block chain.

B. Review whether it is the electronic data involved in this dispute

Through packing the screenshots, source code and calling information downloaded from BAOQUAN.COM

and compressing them, the hash value can be calculated. After comparison, such value is consistent with the electronic data hash value of the block chain preservation submitted by Huatai Yimei. Therefore, it can be confirmed that the involved electronic data has been uploaded to the FACTOM block chain and the Bitcoin block chain, and has been kept intact and has not been modified since the last link.

In summary, this court held that the determination on electronic data that is deposited and fixed by technical means such as block chain shall be subject to an open and neutral manner and be analyzed case by case. Neither excluding or enhancing the standard since the block chain and other technologies themselves are new and complex technical means, nor reducing the standard due to such technology has the characteristic of making it difficult to tamper and delete the information inside, the effectiveness of the evidence shall be determined in accordance with relevant laws and regulations of electronic data. Among them, the source of electronic data, the content integrity, the security of technical means, the reliability of the methods, the legality of formation, and the degree of relevance to other evidences shall be reviewed as important issues to determine the effectiveness of the evidence. In this case, the Shuqin Company is a civil legal entity independent to the parties, and BAOQUAN.COM is operated by the Shuqin Company, which is a third-party depository platform that complies with the law, fixing electronic data such as infringing works by using the highly credible Google open source program, and the screenshots, source code information and call logs captured and formed by this technical means can mutually confirm each other, and can clearly reflect the source, generation and transmission path of the data. Therefore, the electronic data generated thereby shall be deemed as being reliable. At the same time, BAOQUAN.COM uses the block chain technology that complies with relevant standards to carry out the deposit and fixation of the above electronic data, thus the integrity of the electronic data is ensured. Therefore, the above electronic data can be used as evidence for the infringement of this case. This court finds that the involved work was published on the 'Ladyfirst.com.cn' operated by Daotong.

In accordance with clause 12, article 10 of *Copyright Law of the People's Republic of China*, the right of communication on information networks, i.e., the right to make a work available to the public by wire or

wireless means, enabling members of the public to obtain access to the work from a place at a time chosen by them; (1) Reproducing, distributing, performing, projecting, broadcasting, making a collection of, or communicating to the public via an information network, a work, without permission from the copyright owner of the work, unless this Law provides otherwise ... The right of communication on information networks is a statutory copyright, an exclusive right owned by the right holder and an absolute right in nature. Where there is no permission from the right holder and no statutory or agreed exception circumstance, any performance of communication behaviour on information networks controlled by the exclusive right may constitute the infringement. The above infringement is not constituted on the basis that the infringer had any fault or the infringer has the purpose of gaining profit. In this case, it has been confirmed that Daotong provided the public with the involved work on the website it operates, and users can obtain access to the work from a place at a time chosen by them via downloading and browsing, etc. through the network. Therefore, Daotong's behaviour shall be deemed as a communication on information networks of the involved work.

Daotong claimed that its communication behaviour on information networks of the involved works has the nature of public interest and should be deemed as fair use. However, its behaviour does not comply with any of the provisions for fair use as stipulated in article 22 of the Copyright Law, and it cannot satisfy the requirement to constitute a fair use as stipulated in article 21 of the Copyright Law. Therefore, this court did not adopt Daotong's claim.

III. Whether the amount of compensation claimed by Huatai Yimei is reasonable

In accordance with article 48 of the *Copyright Law of the People's Republic of China*, anyone who commits any of the following infringements shall cease the infringement, take remedial actions, make an apology, pay damages, or/and undertake any other civil liability depending on the circumstances ...: (1) Reproducing, distributing, performing, projecting, broadcasting, making a collection of, or communicating to the public via an information network, a work, without permission from the copyright owner of the work, unless this Law provides otherwise ... In this case, Daotong shall undertake to cease the infringement, delete the infringing article, and assume the

compensation liability for the infringement which has already occurred. Since Daotong claimed that it had deleted the involved article, and Huatai Yimei withdrew such petition during the trial of the case, this court granted the withdrawal and no longer judges it.

Regarding the amount of compensation, since Huatai Yimei had no evidence to prove its loss due to infringement or the benefits obtained by Datong due to infringement, and requested the application of statutory compensation, this court comprehensively considered the relevant factors including the market influence and the popularity of the involved writing and photograph work and the infringement of Daotong to determine the compensation amount appropriately. At the same time, this court noticed the following facts:

- (1) The number of words in the involved writing was about 3010 words, which was published in one page of *City Express*;
- (2) The involved photographic work in the case was a guide card, and no professional was required to take such photographs;
- (3) The alleged infringing article and the article involved used the full text of the article involved;
- (4) The involved writing contained a large portion of interview content;
- (5) Daotong indicated the source of the work when forwarding;
- (6) Daotong was established on 5 June 2013, and the registered capital was RMB 500,000;
- (7) Huatai Yimei conducted the evidence collection and identification for this case, entrusted a lawyer to participate in the lawsuit, and agreed with the lawyer for a fee of RMB 2,500.

In summary, in accordance with articles 10, 11, 48, and 49 of the *Copyright Law of the People's Republic of China*, article 8 of the *Law of the People's Republic of China on Electronic Signatures*, articles 64 of the *Civil Procedure Law of the People's Republic of China*; article 168 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, the judgment is as follow:

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) of RMB 4,000 within 10 days from the effective date of this judgment;

II. Dismiss other claims from the plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd.

If the defendant fails to perform its obligations to pay within the time limit specified in this judgment, it shall pay twice the amount of interest on the debt for the period during which the performance is deferred in accordance with the provisions of article 253 of the *Civil Procedure Law of the People's Republic of China*.

The case acceptance fee was RMB 25 (halved), among which the defendant Shenzhen Daotong Technology Development Co., Ltd. shall pay RMB 18, and the plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. shall pay RMB 7.

The plaintiff Hangzhou Huatai Yimei Culture Media Co., Ltd. shall apply for a refund to this court within 15 days from the effective date of this judgment; the defendant Shenzhen Daotong Technology Development Co., Ltd. shall pay to the court the litigation costs within seven days from the effective date of this judgment.

If either party is dissatisfied with this judgment, such party may appeal to this court within 15 days from the date of delivery of the judgment, and copies of the appeal petition shall be provided according to the number of persons in the other party. The appeal court is the Hangzhou Intermediate People's Court of Zhejiang Province.

Judge: SHA Li

Clerk: YU Yiyi

27 June 2018

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