

INTELLECTUAL PROPERTY • Jul. 12, 2007

## In Copter Suit, China Lands on New Legal Ground Utah Company Must Pay Hong Kong Firm For Knocking Off Design of Kids' Toy

By D. Heimpel  
Daily Journal Staff Writer



Bucking a trend, a Chinese company has won a settlement from an American firm in an infringement case, and the legal action is expected to trigger further suits in U.S. courts by businesses that usually are the target of knockoff claims, experts say.

In the case filed in San Francisco, Hong Kong's Silverlit Toys Manufactory received \$100,000 in its successful claim against Utah's Absolute Toy Marketing over the design of a model helicopter. *Silverlit Toys v. Absolute Toy Marketing Inc.*, C06-7966 (N.D. Cal., filed Dec. 29, 2006).

"There will be more cases like this," said Silverlit's attorney, Vincent Chieffo, with the Los Angeles office of Miami-based Greenberg Traurig. "China is a big country with a lot of smart people who are developing IP that they have to protect."

A California intellectual property specialist agreed.

Xiang Wang, a partner at Menlo Park's Orrick, Herrington & Sutcliffe who leads the firm's China-focused intellectual property practice, said that so far only a handful of cases involved Chinese companies suing American firms over infringement issues.

For many years, American companies have accused Chinese manufacturers of chronically infringing on their intellectual property.

But Wang said he expects the *Silverlit* case, which he said is the first he knows of that has settled or reached judgment, to spur a wave of legal actions by Chinese companies trying to protect their products.

In the settlement, Absolute agreed to pay Silverlit and admitted it was a willful infringer of the company's children's toy, the Picoo Z remote-control model helicopter.

According to its complaint, Silverlit began shipping the toy in 2006. Among the American distributors that marketed the device was Absolute Toy Marketing, which sold the 10,750 units of the Picoo Z through its online store, [www.hobbytron.com](http://www.hobbytron.com).

Silverlit claimed that, after it sold 600,000 units for \$30 apiece and ran out of supplies in November, Absolute started selling a toy helicopter of its own, called the PicoZ and designed to look like Silverlit's model.

"If you went on the Hobbytron Web site, you'd see a picture of my client's helicopter," Chieffo said.

When customers ordered it, they would receive a knockoff bought from another Chinese manufacturer, he said.

Absolute went as far as disseminating a press release, the complaint claims, that was meant to deceive potential customers. Absolute reassured its consumers that the toy, sold out everywhere else, could be found on the Hobbytron Web site.

"We're especially glad to bring this news to all the panicked parents who don't want to disappoint their kids this holiday season," the release read.

The claim, filed by Silverlit in the Northern District of California in San Francisco, on Dec. 29, 2006, came down hard on the behavior of Absolute: "Defendants knowingly and willfully embarked on a course of outrageous commercial intellectual piracy."

The presiding judge, Claudia Wilken, was blunt in her assessment of the weakness of the defendant's case and ordered the two parties to sit down for a settlement conference on Feb. 9. On April 14, the companies reached a settlement pending discovery at a neutral evaluator conference, and on June 20 the case concluded with the settlement in favor of Silverlit. As a result, authorities seized and destroyed between 3,000 and 4,000 units of Absolute's helicopters.

"At this point in time, I don't have a comment," Absolute's counsel, Michael Neustel, of Fargo, N.D.'s Neustel law offices, said.

Kevin Choi, Silverlit's CEO, said that he knew the prosecution of the case would be costly but there was no alternative.

"The reputation of Chinese industry and business ethics is in some small way at stake here in the long run," Choi said. "Maybe our success in the courts will discourage infringers and encourage Chinese companies to take steps to ensure the protection of their IP rights."

Experts in the field said China is on steady road to walling up its intellectual-property protection.

Wang said that, although Silverlit is the first such case to conclude, a suit filed earlier last year was one of the first that he knows of in which a Chinese company filed an intellectual-property action against an American firm.

In the Feb. 16, 2006, complaint, Chinese flash-memory producer Netac Technology Co. claimed New Jersey-based PNY Technologies stole its methodology for making computer memory devices. The case, which is pending, was filed in the Eastern District of Texas. Shenzhen-based Netac is seeking an undisclosed sum. Netac Technology Co. v. PNY Technologies (E.D. Texas, filed Feb. 16, 2006).

Wang said that, in China, domestic companies are beginning to turn to their courts for protection. He said the businesses filed more intellectual-property suits in their courts in 2005 and 2006 than U.S. companies did in that country during the same period.

Lynda J. Zadra-Symes, a partner with Irvine-based Knobbe Martens Olson & Bear, said Chinese businesses are notorious for knocking off goods made in other countries.

"We have many clients whose products are copied by unauthorized Chinese companies, which try to sell them in this country," said Zadra-Symes, who has filed numerous trademarks with the customs office to keep counterfeit Chinese goods from entering the U.S. through the Los Angeles, Long Beach and other ports.

Chieffo said an increased litigiousness among Chinese businesses domestically is the harbinger internationally.

"This should be encouraging to Chinese companies as well as non-Chinese investors in China," Chieffo said of the settlement in the *Silverlit* case. "They are starting to protect their valuable intellectual property."

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