

**“2012 BFSU-WANHUIDA CUP”**  
**Intellectual Property Moot Court**

Appellant (Plaintiff in the original trial): Beijing Xinda Electronic Technology Co., Ltd

Appellee (Defendant in the original trial): Guangzhou Jiabao Daily Necessities Co., Ltd

Appellee (Defendant in the original trial): Beijing Matt Trade Co., Ltd (not participate in the second instance procedure)

Jurisdiction: Beijing First Intermediate People’s Court

**Facts**

The followings are the facts without dispute for the two sides:

I

Beijing Xinda Electronic Technology Co., Ltd (hereinafter referred to as “Xinda Company”) was incorporated in 1991. As one of the earliest high and new-tech companies engaged in the research, development and sale of the digitalized Chinese typefaces, it has devoted large investment and efforts into the digitalization and systemization of Chinese typefaces.

In May 1997, Xinda Company organised Miao Huiqing and other designers to design the typeface named Xinda Huiqing. The chief designer, Miao Huiqing’s signature was contained in the designs in the plural. Xinda Company confirmed the design of all characters in the Huiqing Typeface in May 1998 and completed all the designing of the Huiqing Typeface (including both simplified and traditional Chinese) on December 26, 1998. The Huiqing Typeface was first published in Beijing on March 23, 1999.

On February 1, 1999, Miao Huiqing, the chief designer of the Huiqing Typeface, signed the Confirmation of the Copyright Ownership with Xinda Company which confirmed that the design of the Huiqing Typeface was under the charge of Xinda Company and was in consistent with its will. Miao Huiqing participated in the design under the commission of Xinda Company. Xinda Company enjoys all the rights exclusively including the copyright of the typeface.

The main characteristics of Huiqing Typeface are as follows:

Horizontal and vertical strokes of identical width; round stroke ends; heart-shaped dots; waving-willow-leaves-shaped short left-fallings; soaring long left-fallings and right-fallings; soft arc-shaped breaks and hooks; and round rather than square turnings.

The main procedures for the design of Huiqing Typeface: (1) The professional designers designed uniform manuscripts of the typeface; (2) Scan the manuscripts into computer to form the typeface library with high-precision dot matrix; (3) Digitized fitting. Transform the scanned dot matrix pictures into digitized outlines; (4) Improve the characters artificially and the quality of every character by character-making tools. (5) Quality testing. Smooth the outlines of the characters and structure the characters reasonably; (6) Integrate the characters into a character library, add the corresponding marks, numbers and foreign languages and turn them into different codes and styles; (7) Overall testing; (8) Commercialization.

On May 16, 1999, Xinda Company published *Software Collection of Xinda Typeface Library*, a CD-ROM with the Huiqing Typeface (including both simplified and traditional Chinese). The package of the CD contains “Software Collection of Xinda Typeface Library, Series Product of Xinda Typeface Library”, as well as the name of Xinda Company. The software contained many typefaces including Huiqing Typeface. The software can be installed on the computers with an operating system of Windows 95, 98 or NT.

The details of the Software License Agreement of “Software Collection of Xinda Typeface” Library are as follows:

## Software License Agreement of “Software Collection of Xinda Typeface Library”

This Software License Agreement is between the End User, and Beijing Xinda Electronic Technology Co., Ltd. By installing the software, you are consenting to be bound by all the terms in this agreement. The end user receiving the license shall follow the terms of the Agreement.

### *1. Authorization:*

#### *A. Fixed Use:*

*The end user may use this software on a computer that has registered to Xinda Company. One set of software may not be used simultaneously on two or more computers. Copying the software to other computers is forbidden. The software may not be used beyond the scope of authority.*

#### *B. Unfixed Use:*

*The end user shall not transfer the right to use of this software. However, the right to use may be transferred in connection with the transfer of ownership of the computer, provided that: the party receiving the software holds the License Agreement from Xinda Company, as well as the original software through out the using period and accept the terms of the agreement.*

### *2. Copyright:*

*The copyright of this software is owned by Beijing Xinda Electronic Technology Co., Ltd. exclusively. This software is protected by the relevant laws and regulations including The Regulations for the Protection of Computer Software, etc. The software enjoys the same protection under the copyright laws as the other intellectual works (such as books and records).*

When the CD-ROM of “Software Collection of Xinda Typeface Library” is run on Windows 98, the two Chinese characters, “黛” and “西” in Xinda Huiqing Typeface can be opened. The two Chinese characters are also contained in the original design provided by Xinda Company.

On September 9, 2009, on the application of Xinda Company, the National Copyright Administration issued the *Copyright Registration Certificate* of Xinda Huiqing Typeface (simplified and traditional Chinese). The details of the Certificate are as follows:

*The documents submitted by the applicant, Beijing Xinda Electronic Technology Co., Ltd, comply with the requirements. The applicant, as a legal entity, enjoys the copyright of the art work “Xinda Huiqing Typeface (including simplified and traditional Chinese)”, which was completed on December 26, 1998 and published in Beijing on Mar 23, 1999. After the examination and verification by Copyright Protection Centre of China, the copyright of this work was registered.*

On May 10, 2000, the National Copyright Administration issued the *Computer Software Copyright Registration Certificate* of “Software Collection of Xinda Typeface Library”, the details are as follows:

*The copyright owner of the software is Beijing Xinda Electronic Technology Co., Ltd. Upon the application of the applicant, and according to the regulations of The Regulations for the Protection of Computer Software, after reviewing the application, the copyright owner of the software enjoys the copyright from May 16, 1999.*

## II

Guangzhou Jiabao Daily Necessities Co., Ltd (hereinafter referred to as “Jiabao Company”) was incorporated in 1995 in Guangzhou. The Company is mainly engaged in shampoo, hair care, personal cleansing, skincare and health products. On April 1, 2003, Jiabao Company applied to Trademark Office of the State Administration for Industry and Commerce of PRC for the registration of the trademark of the Chinese characters “黛西” (Application No. 3472394). The trademark is approved to be used in the following commodities (in Class 3): cosmetics, toilet water, sunscreen cream, talcum powder, toothpaste, soap, shampoo, cleansing milk, etc. The registered trademark would be valid from May 10, 2005 to May 9, 2015 (the Huiqing Typeface is shown on the left, while the trademark on the right).

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黛西®

### III

The US Wonderful Creative Design Co., Ltd (hereinafter referred to as “Wonderful Company”) is specially engaged in the design of package, sign, trademark and advertisement of products. The registered trademark “黛西” and the package used by Jiabao Company were designed by Wonderful Company under the commission of Jiabao Company. Jiabao Company paid the design and production fees to Wonderful Company. Wonderful Company preserves the sample of the trademark “黛西”, the order forms and the bills, as well as the invoices, the packages and CD-ROM of the “Software Collection of Xinda Typeface Library”, etc.

### IV

Beijing Matt Trade Co., Ltd (hereinafter referred to as “Matt Company”) was incorporated in Beijing in 1995. Under the *Commercial Purchase Agreement* signed with Jiabao Company, Matt Company purchased the personal care products of “黛西” Series for retail from Jiabao Company. From Feb, 2009, under the *Commercial Purchase Agreement*, Matt Company purchased and sold 25 types of goods of “黛西” Series of Jiabao Company and preserved all the order forms, invoices and receipts.

## Procedures

### I

In April, 2009, Xinda Company found that Jiabao Company used the two Chinese characters, “黛” and “西” in Xinda Huiqing typeface on the packages, signs, trademarks and advertisements of many types of its products without permission. Therefore, Xinda Company commissioned Beijing Chengxin Notary Office to notarize that the two

characters “黛西” on the packages of the 25 types of products, including shampoo, soap and toothpaste which were purchased by Matt Company from Jiabao Company outstandingly used the typefaces from Xinda Huiqing Typeface Library.

On Jun 8, 2009, Xinda Company brought a lawsuit before Beijing Haidian District People’s Court and claimed that it enjoys the copyright of the Xinda Huiqing Typeface, which possesses originality compared with other well-known art typefaces. Jiabao Company, who used the two characters “黛西” in Xinda Huiqing Typeface on 25 types of its products, infringed Xinda Company’s copyright (including the right of authorship, producing, publication and exhibition) of Huiqing Typeface Library and of the single characters in the typeface library. Moreover, Matt Company shall be responsible for tort because of its sales of the infringing products.

Based on the above reasons, Xinda Company demanded that the defendants, Jiabao Company and Matt Company, shall:

1. Stop using and selling the products whose packages, signs, trademarks and advertisements contain the characters “黛西” in Huiqing typeface and destroy all the infringing products;
2. Compensate the loss and bear the reasonable expenses of litigation;
3. Make a public apology and eliminate the negative effects.

Jiabao Company rebutted:

1. Chinese character belongs to the public domain. It is not the subject matter under the protection of Copyright Law and shall not be owned exclusively by any individual or legal person. Although the character library can be regarded as an art work with unified style, the single character in the library is not an art work protected by the Copyright Law. The plaintiff doesn’t enjoy the copyright of the single character in the library.
2. The plaintiff registered the character library and received the *Computer Software Copyright Registration Certificate* and the *Copyright Registration*

*Certificate* of the character library. However, whether the plaintiff enjoys the copyright of every single character in the character library cannot be judged by these certificates, but by the relevant regulations in the Copyright Law. In addition, a single character in the character library does not possess the originality required by the Copyright Law.

3. The registered trademark “黛西” used by Jiabao Company was designed by Wonderful Company under the commission. The use of the design of Wonderful Company does not infringe the rights of Xinda Company.
4. No matter whether Jiabao Company infringes the copyright of the plaintiff, it has nothing to do with the personal right. Therefore Jiabao Company has no responsibility to apologize.

Matt Company rebutted:

The products containing the characters “黛西”, sold by Matt Company, were purchased legally. Matt Company executed the reasonable duty of care and doesn't constitute infringement.

After the hearing of the case, Beijing Haidian District People's Court held that the Xinda Huiqing Typeface Library has unified style. Its distinctiveness differs it from other typeface libraries. It can meet the requirement of originality in the Copyright Law. The copy and use of the characters in the typeface library as a whole can constitute infringement. However, since the structure and the stroke patterns of Chinese characters are fixed, as to a single character in the library, the style of every single character in the library has its limitation. It cannot enjoy the copyright as the calligraphies created by calligraphers, which have their own styles and originalities. Therefore the plaintiff's claim that every single character in the library is an art work which enjoys copyright is lack of evidence.

Moreover, in this case, Jiabao Company did not use the character software of Xinda Company directly. The software was used by Wonderful Company for making profit. Jiabao Company, as the user of the design, paid fees to Wonderful Company and

obtained the design. It is hard for them to know whether the design constitute infringement. Besides, Jiabao Company makes no illegal profit. Therefore, there is no legal basis for Jiabao Company to bear the tort responsibility. In addition, the products in this case sold by Matt Supermarket (operated by Matt Company), were purchased from legitimate sources. Matt Company executed the reasonable duty of care and thus, did not make infringement.

Therefore, according to Article 3 of *The Copyright Law of the People's Republic of China* and Article 4 (8) of *The Regulations for the Implementation of the Copyright Law of the People's Republic of China*, Beijing Haidian District People's Court dismissed all the claims of Xinda Company.

## II

Xinda Company refused to accept the judgment of Beijing Haidian District People's Court and appealed to Beijing First Intermediate People's Court within the legal time limit. Xinda Company appealed that: the appellee, Jiabao Company used the characters “黛西” from the Xinda Huiqing Typeface Library on the packages of its products without any permission, thus infringed the appellant's rights to reproduce and publish; the appellee, Matt Company sold the products in this case and thus infringed the appellant's right of publication. The reasons are as follows:

Firstly, according to the regulations about art works in the Copyright Law, the originality of the two characters “黛、西” in Huiqing Typeface Library shall be judged by the standards of common art works. The Copyright Law makes no differential regulations concerning with the originality of the works. The characters “黛西” meet the requirements of the regulations about originality in the Copyright Law. Therefore, they shall be treated as art works and protected by the Copyright Law. Secondly, when selling the Huiqing Typeface Library Software, Xinda Company, the appellant, only sold the software product. It never authorized or transferred the right of every single character in the library. Jiabao Company, the appellee, when using the characters “黛西” on the packages of its products without any permission, infringed the appellant's



right to reproduce and publish. Therefore, the first instance court made mistakes in determining the facts and applying the laws. The appellant pleaded the court to withdraw the original judgment and uphold all the claims of the appellant.

Jiabao Company, the appellee, insisted on its opinions in the plea and claimed that the facts determined by the first instance court are clear and the application of laws is correct. The appellee pleaded the court to uphold the original judgment.