

Henderson
15/4/10

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
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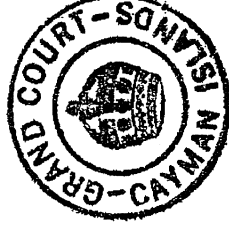
CAUSE NO. FSD 12 OF 2010

8 IN THE MATTER OF SECTION 46 OF THE COMPANIES LAW
9 (2007 REVISION)
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11 AND IN THE MATTER OF THE GRAND COURT RULES 1995, ORDER
12 102(2)(1)(b)
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15 BETWEEN:

16 ZHANZOU INC.
17



18 Plaintiff
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21 AND:

- 22 (1) EYOU INC.
- 23 (2) SEQUOIA CAPITAL CHINA I, L.P.
- 24 (3) SEQUOIA CAPITAL CHINA PARTNERS FUND I, L.P.
- 25 (4) SEQUOIA CAPITAL CHINA PRINCIPALS FUND I, L.P.
- 26 (5) MORNINGSIDE TECHNOLOGY INVESTMENTS
27 LIMITED
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30 Defendants
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34 **Appearances:** Ms. Tina Asgarian of Ogier for the Plaintiff

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36 Ms. Sandie Corbett & Mr. Vahid Chittleborough of Walkers for the
37 1st Defendant

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39 Mr. John Epp of Conyers Dill & Pearman
40 for the 2nd Defendant to 5th Defendants
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43 **Before:** Hon. Justice Henderson
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45 **Heard:** April 15, 2010
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RULING

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18 1. The Plaintiff Applicant seeks a declaration that the First Defendant is in
19 breach of an injunction granted by Quin J. of this Court on October 20, 2008.

20 That injunction reads, in its material part, that:

21 Until further Order, the ... Defendant must not:-

22 "Use its shareholding in Beijing Yiyou Liandong Ltd (or
23 any other entity in which it holds shares) to cause any
24 changes to the structure of that Company (including, but not
25 limited to, its corporate office holders and management) or
26 the core business in which it engages, and must not seek to, or
27 assist in, dealing with Beijing Yiyou Liandong Ltd.'s assets, in
28 the manner provided for in sub paragraph 1(a) above;

29
30 save in the ordinary course of business...."

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32 2. Paragraph 1(a) was a proscription on selling, transferring, assigning,
33 encumbering, disposing of or otherwise dealing with any asset.

34

35 3. The underlying action is a dispute between shareholders concerning the
36 majority ownership in the First Defendant, Eyou. It is the subject of

1 arbitration proceedings in Hong Kong. Eyou owns one hundred per cent of
2 the shares in Beijing Yiyou, a company incorporated in the People's Republic
3 of China.

4
5 4. Beijing Yiyou, as a wholly owned subsidiary of a foreign corporation, is
6 required by PRC law to have a legal representative. That person's identity is
7 registered in a public register in China. He or she is the only person who can
8 bind the company legally without some other affirmative act by the company's
9 management. It is conceded that the legal representative is an office holder
10 within the terms of paragraph 1(c) of the injunction which I have quoted
11 above.

12
13 5. On July 11, 2008, well before the injunction was issued or requested, Beijing
14 Yiyou's shareholder passed a resolution terminating the authority of the
15 existing legal representative and appointing a new one, Ms. Wang Qiong,
16 instead. That appointment was the first step in a process which would have to
17 be followed to its conclusion for the new legal representative's role to be fully
18 effectual. It was necessary to register the new legal representative in place of
19 the old in the publicly accessible government registry. For that purpose, a
20 number of documents needed to be executed and submitted.

21
22 6. The injunction was brought to the notice of Eyou on October 21, 2008, and
23 served upon it informally on October 24, 2008. At that time, the appointment

1 of Wang Qiong as the new legal representative was not yet registered in the
2 required manner. Ms. Xie Na is, and was, the holder of a power of attorney
3 from Eyou which permitted her to execute documents connected with the
4 registration process on behalf of the subsidiary Beijing Yiyou. That power

5 reads:

6 We, the directors of Eyou Inc. ("Company"), hereby authorise
7 Ms. Xie Na, ID No. 1101011197609288404X, a director of the
8 company, with full power and authority to execute and deliver
9 any and all such documents she may deem necessary or appropriate
10 in order to amend the registrations and filings of Beijing Yiyou
11 Liandong Information Technology Company Ltd, a wholly foreign
12 owned enterprise one hundred per cent owned by the company,
13 with Beijing Municipal Bureau of Commerce ...
14

15 7. On November 1, 2008, at a time when Eyou knew of the injunction, Ms. Xie

16 Na executed a letter of authorisation which was needed to complete the

17 registration process. That letter appoints Tang Jingcao as the company's agent
18 for the purpose of registering "procedures" on its behalf at the Beijing

19 Administration for Industry and Commerce. It limited the authority of that

20 agent by asserting expressly that the agent was not allowed to change any

21 content in a declaration document and not permitted to make corrections

22 which might appear to him to have been necessary to the documentation. The

23 letter of authorisation was signed by the proposed new legal representative,

24 Wang Qiong, and by Xie Na.

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26 8. In accordance with the authorisation, Tang Jingcao completed the registration
27 of the new legal representative on December 16, 2008. It is the execution of

1 the letter of authority by Xie Na on November 1, 2008, which is said to
2 constitute a breach of this injunction.
3
4 9. The first question is whether the completion of the registration process was a
5 step taken by Yiyou in the ordinary course of business. If so, it would not be
6 caught by the terms of the injunction. This point was not pressed in argument.
7 The answer, I am confident, is no. The appointment of a legal representative
8 is an important but relatively infrequent event which assists a corporate entity
9 in acquiring business, but it is not a routine or typical commercial transaction.
10 It is not something a business would do in the ordinary course of its trade or
11 commerce.
12
13 10. The respondent argues that the act of substance was the resolution of July 11,
14 2008. Completion of the registration process was largely a formality needed
15 only to ensure that the decision already taken was given its full effect. There
16 is substantial truth in this assertion, but it is not an effective answer to the
17 summons. Mr. Justice Quin's injunction prohibits Yiyou from doing anything
18 at all to cause a change in the structure of Beijing Yiyou. Even the seemingly
19 routine act of authorising an agent to proceed with the registration of the legal
20 representative is an act which this injunction forbids.
21
22 11. It is unclear whether in signing the letter Xie Na was acting on behalf of the
23 parent or the subsidiary. The power of attorney is granted by Eyou (the

1 parent), but it authorises her to act with respect to filings by the subsidiary
2 and, presumably, on the subsidiary's behalf.
3
4 12. The legal requirement is spelled out in the Provisions on Registration,
5 Administration of Legal Representatives of Legal Persons, amended in 1999
6 and promulgated by the State Council of the People's Republic of China.
7 Article 6 of those provisions requires that when applying for a change in the
8 registration of the legal representative, "the legal person" -- that is to say, the
9 company or legal entity, shall submit the following documents to its
10 registration authority. There follows a list of three classes of documents:
11 first, documentation with respect to the removal of the old legal
12 representative; second, documentation with respect to the appointment of the
13 newly designated legal representative; and third, an application form for
14 alteration of the registration "signed by the original or the newly designated
15 legal representatives". There does not appear to be a legal requirement for a
16 signature on behalf of either the parent or the subsidiary beyond the need for
17 one of the two legal representatives to sign.

18
19 13. Thus, it would seem that Wang Qiong's signature, which also appears on the
20 letter of authorisation of November 1, 2008, may have been the only signature
21 which was necessary. The act now complained of, the signing by Xie Na,
22 may have been superfluous. That, in my view, is a circumstance which can be
23 material only to penalty. The terms of the injunction properly construed

1 prohibit any active step intended to assist in bringing about a change in the
2 structure of Beijing Yiyou. Xie Na's signature was affixed with just such an
3 intention.
4
5 14. Finally, the respondent points out that Beijing Yiyou would have been liable
6 to a fine if it did not act promptly to register the change of legal
7 representative. In fact, the company missed the prescribed filing deadline and
8 could have been, but was not, fined in December 2008. The fact that Beijing
9 Yiyou had a positive obligation to complete the registration process should
10 have caused Eyou to appear before Quin J. and seek a relaxation of the
11 injunction. Eyou should not have allowed Xie Na to sign the letter, whether
12 she was obligated to do that or not.
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14 15. In the result, I find that Eyou has breached clause 1(c) of the injunction by
15 permitting its attorney, Xie Na, to sign the letter of authorisation of November
16 1, 2008. I grant a declaration to that effect.
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18 16. I also grant to the plaintiff an order that the First Defendant disclose, within a
19 certain time, in writing to the plaintiff, each and every change it has sought to
20 make or has made to the structure of Beijing Yiyou Liandong Ltd or any other
21 entity in which the First Defendant holds shares, or to the core business in
22 which Beijing Yiyou Liandong Ltd engages, together with particulars of any
23 action in the nature of dealing with Beijing Yiyou Liandong Ltd's assets.

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2 17. I will hear from counsel as to the appropriate time period, as I entertain

3 concerns that the requested three-day deadline is too short.

4 Dated this 15th day of April, 2010

5

6 *Henderson, J.*

7 Henderson, J.

8 Judge of the Grand Court

