



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.322

2022.11

立方要闻周报

Weekly News By Lifang & Partners

NO.62

立方竞争法周报 Weekly Competition Law News

中集集团因反垄断审查放弃并购，支付8500万美元和解费

CIMC Ceased Proposed Acquisition Due to Merger Review, Pays USD 85 Million Settlement Fee

最高院：加强反垄断司法

SPC: Strengthen Anti-Monopoly Justice

重庆发布反垄断审查申报指南

Chongqing Issues Anti-Monopoly Merger Filing Guideline

湖北省市监局纠正襄阳市行政审批局行政垄断行为

Hubei AMR Rectifies Administrative Monopoly Behavior of Xiangyang Government

国务院发布《促进个体工商户发展条例》

State Council Issues the Regulations on Promoting the Development of Self-employed Businesses

欧盟委员会发布关于宽大制度的指南

EU Commission Provides Guidance on its Leniency Policy and Practice

印度竞争委员会对谷歌罚款1.62亿美元

Competition Commission of India Fines Google USD 162 Million

欧盟附条件批准KPS收购铝业生产商Real Alloy Europe

EU Commission Approves KPS Acquisition of Real Alloy Europe, Subject to Conditions

英国竞争与市场管理局最终命令Meta出售Giphy

CMA Orders Meta to Sell Giphy

博通拟就与VMware并购交易向欧盟委员会提交反垄断审查申请



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.322

2022.11

Broadcom Banking on Early EU Approval of USD 61 Billion VMware Deal

网络安全与数据合规 Cybersecurity and Data Protection

国务院印发《全国一体化政务大数据体系建设指南》

The State Council Issues *the Guidelines for the Construction of the National Integrated Government Big Data System*

工信部发布《网络产品安全漏洞收集平台备案管理办法》

MIIT Releases *the Administrative Measures for the Record-filing of Security Vulnerability Collection Platforms for Network Products*

信安标委发布国家标准《信息安全技术 网络预约汽车服务数据安全要求》（GB/T 42017-2022）

NISSTC Releases a National Standard *Information Security Technology—Data Security Requirements for Online Ride-hailing Services*（GB/T 42017-2022）

《浙江省推进产业数据价值化改革试点方案》印发

The Pilot Proposals for Promoting the Value Reform of Industrial Data in Zhejiang Province Has Been Issued

山东省互联网信息办公室开通数据出境安全评估申报通道

Cyberspace Administration of Shandong Province Has Opened the Application Channel for Security Assessment of Outbound Data Transfers

香港发布有关虚拟资产发展的政策宣言

Policy Statement on Development of Virtual Assets Issued in Hong Kong

欧洲数据处理委员会批准首个欧洲数据保护认证系统

Europrivacy: the First Certification Mechanism to Ensure Compliance with GDPR

英国某建筑公司因侵犯员工隐私被ICO罚款440万英镑

One Construction Company Was Fined 4.4 Million Pounds by the ICO for Violating the Privacy of Employees



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.322

2022.11

美国联邦贸易委员会对Drizly的数据泄漏事故采取措施

FTC Takes Action Against Drizly for Its Data Leakage

知识产权 Intellectual Property

国家知识产权局拟增加商标依职权撤销规定

CNIPA Proposed to Add the Provisions on the Ex Officio Cancellation of Trademarks

VARTA与广东微电新能源就专利纠纷达成和解

VARTA and Guangdong Mic-power New Energy Reached a Settlement on Patent Dispute

法院判决：使用“小度机器人”标识构成商标侵权及虚假宣传

Shanghai IP Court Ruled That Using the "xiaodu robot" as Wake Words Constitutes Trademark Infringement and False Advertisement

真假“稳健医疗”案：同时适用法定赔偿与惩罚性赔偿

The Court Clarified That Statutory Damages and Punitive Damages could Accrue

乌菲兹美术馆起诉奢侈品牌高缇耶未经授权使用《维纳斯的诞生》

Uffizi Gallery Sues Jean Paul Gaultier for Use of Botticelli Image

苹果起诉健康检测公司Masimo

Apple Lawsuits Say Health Monitoring Company Masimo Copied Apple Watch

福特公司被判侵犯Versata软件公司商业机密

Jury Determined That Ford Infringes the Trade Secrets of Versata Software

立方竞争法周报 Weekly Competition Law News

中集集团因反垄断审查放弃并购，支付8500万美元和解费

2022年10月24日，据媒体报道，集装箱制造巨头中国国际海运集装箱（集团）股份有限公司（“中集集团”）因经营者集中反垄断审查的不确定性，与马士基集团签署和解协议，并向马士基集团支付8500万美元和解费。2021年9月27日，中集集团与马士基集团签署《股权购买协议》，中集集团拟购买马士基集团旗下马士基集装箱工业公司的全部股权，总价超过10亿美元。然而，由于经营者集中审查面临巨大的不确定性，可能导致约定的交易先决条件无法达成。因此，交易双方经评估后，决定终止本次交易。（[查看更多](#)）

CIMC Terminates Proposed Acquisition Due to Merger Review, Pays USD 85 Million Settlement Fee

On October 24, 2022, according to media reports, the container manufacturing giant China International Marine Containers (Group) Co., Ltd. (“CIMC”) signed a settlement agreement with A.P. Møller – Maersk A/S (“Maersk”) due to the uncertainty of anti-monopoly merger review, and will pay Maersk a settlement fee of USD 85 million. On September 27, 2021, CIMC signed the Equity Purchase Agreement with Maersk, in which CIMC proposed to purchase the entire equity of Maersk Container Industries, a subsidiary of Maersk, for a total price of over USD 1 billion. However, due to the huge uncertainty posed by the anti-monopoly merger review, which may result in the agreed prerequisites of the transaction not being reached, the parties decided to terminate the transaction after evaluation. ([More](#))

最高院：加强反垄断司法

2022年10月20日，最高人民法院（“最高院”）在新闻发布会上宣布，2013年以来，最高院审结一审知识产权案件273.8万件，出台意见服务建设全国统一大市场，加强反垄断和反不正当竞争司法，维护公平竞争的市场秩序。依法审理电商平台“二选一”“大数据杀熟”等案件，加强对劳动者和消费者合法权益的保护，促进数字经济、平台经济规范健康发展。（[查看更多](#)）

SPC: Strengthen Anti-Monopoly Justice

On October 20, 2022, the Supreme People’s Court (“SPC”) announced at a press conference that since 2013, the SPC has concluded 2,738,000 first-instance intellectual property cases, issued opinions serving the construction of a unified national market, strengthened anti-monopoly and anti-unfair competition justice, and maintained a fair and competitive market order. The SPC has also tried cases of “either-or”, “data-enabled price discrimination against existed customer” of e-commerce platforms, strengthened the protection of the legitimate rights and interests of workers and consumers, and promoted the disciplined and healthy development of digital economy and platform economy. ([More](#))

重庆发布反垄断审查申报指南

2022年10月19日，重庆市市场监督管理局在其官网公布了重庆市经营者集中反垄断审查的申报指南，包含简要指南、商谈申请的基本要求和流程图三部分内容，明确了商谈申请的受理范围、申请时间、准备资料等要求内容。（[查看更多](#)）

Chongqing Issues Anti-Monopoly Merger Filing Guideline

On October 19, 2022, the Chongqing Municipal Administration for Market Regulation published on its official website the notification guideline for anti-monopoly merger review in Chongqing, which contains three parts: brief guide, basic requirements for negotiation application and flow charts, specifying the scope of acceptance of negotiation application, application time, preparation information and other required contents. ([More](#))

湖北省市监局纠正襄阳市行政审批局行政垄断行为

2022年10月17日，湖北省市场监督管理局（“湖北省市监局”）发布纠正襄阳市行政审批局滥用行政权力排除、限制竞争行为的公告。2022年5月，在对经营者招投标信用审核过程中，当事人只认可经营者在襄阳市的纳税证明、社保缴费证明等，排斥经营者在外地的经营业绩，变相限制外地经营者在本地公平参与招投标活动，损害了市场公平竞争秩序。接受调查后，当事人纠正了前期行为，消除相关后果，并进一步规范信用评价审核标准和程序，湖北省市监局因此依法结束调查。（[查看更多](#)）

Hubei AMR Rectifies Administrative Monopoly Behavior of Xiangyang Government

On October 17, 2022, the Hubei Provincial Administration for Market Regulation (“Hubei AMR”) issued a notice, correcting the abuse of administrative power by the Xiangyang Municipal Bureau of Administrative Examination and Approval which excluded and restricted competition. In May 2022, in the process of bidding credit review, the Bureau only recognized the operators’ local tax payment certificates and social security payment certificates, etc. in Xiangyang City, excluding operators’ business performance in other parts of the country, restricting non-Xiangyang operators’ fair participation in local bidding activities, and damaging the order of fair market competition. After being investigated, the Bureau corrected previous behavior, eliminated the relevant consequences and further standardized the credit evaluation review criteria and procedures. Therefore, Hubei AMR ended the investigation in accordance with law. ([More](#))

国务院发布《促进个体工商户发展条例》

近日，国务院发布《促进个体工商户发展条例》（“《条例》”），将于2022年11月1日起施行。《条例》规定，国家对个体工商户实行市场平等准入、公平待遇的原则。国家引导和支持个体工商户加快数字化发展、实现线上线下一体化经营。平台经营者应当在入驻条件、服务规则、收费标准等方面，为个体工商户线上经营提供支持，不得利用服务协议、平台规则、数据算法、技术等手段，对平台内个体工商户进行不合理限制、附加不合理条件或者收取不合理费用。（[查看更多](#)）

State Council Issues the Regulations on Promoting the Development of Self-employed Businesses

Recently, the State Council issued the *Regulations on Promoting the Development of Self-employed Businesses* (the “*Regulations*”), which will come into effect on November 1, 2022. The *Regulations*

provides that the State shall apply the principle of equal market access and fair treatment for self-employed businesses. The State guides and supports self-employed businesses to accelerate digital development and realize integrated online and offline operations. Platform operators should provide support for self-employed businesses in terms of entry conditions, service rules, service fees, etc., and shall not use service agreements, platform rules, data algorithms, technology and other means to unreasonably restrict, attach unreasonable conditions or charge unreasonable fees for self-employed businesses in the platform. ([More](#))

欧盟委员会发布关于宽大制度的指南

2022年10月25日，欧盟委员会以常见问题（FAQ）文件形式发布了关于宽大制度的指南。宽大制度使公司得以秘密地披露其参与的卡特尔行为，并于欧盟委员会在调查中合作。成功的宽大申请者可以获得潜在高额罚款的完全豁免，或取得大幅降低罚款结果。FAQ文件对宽大制度进行了详细解释；制定了新的实践制度，设置企业可联系的宽大事务官员；并表明委员会打算以不记名形式讨论潜在的宽大申请，从而避免披露具体行业、参与当事方或其他识别潜在卡特尔行为的细节的可能。 ([查看更多](#))

EU Commission Provides Guidance on its Leniency Policy and Practice

On October 25, 2022, the European Commission issued guidance in the form of a Frequently Asked Questions (FAQ) document on its leniency policy and practice. The Commission's leniency program gives companies the opportunity to disclose, on a confidential basis, their participation in a cartel and cooperate with the Commission during an investigation. A successful leniency applicant will either completely avoid a potentially high fine or receive a substantial reduction from it. The FAQ document provides a detailed explanation of the leniency program; sets out new practical arrangements with Leniency Officers that companies can contact; and signals the Commission's intention to discuss potential leniency applications on a "no-names" basis, without the need to disclose the sector, the parties involved or any other details identifying the potential cartel. ([More](#))

印度竞争委员会对谷歌罚款1.62亿美元

2022年10月20日，印度竞争委员会（Competition Commission of India, “CCI”）宣布对谷歌在安卓移动设备上的反竞争行为处以133.8亿印度卢比（约合1.62亿美元）的罚款，CCI还命令谷歌不得向智能手机制造商提供任何激励以促使其在设备上仅装载谷歌搜索服务。除此以外，谷歌在印度还面临着系列反垄断案件和更严格的科技领域监管，CCI同时还在调查谷歌在智能电视市场和应用内支付系统中的商业行为。 ([查看更多](#))

Competition Commission of India Fines Google USD 162 Million

On October 20, 2022, the Competition Commission of India (“CCI”) announced that it has fined Google 13.38 billion Indian rupees (\$162 million) for anti-competitive practices related to Android mobile devices. CCI also ordered Google not to offer any incentives to smartphone makers for exclusively carrying its search services. Besides, Google is facing a series of antitrust cases in India and stricter tech-sector regulations. CCI is also looking into Google's business conduct in the smart TVs market and its in-app payments system. ([More](#))

欧盟附条件批准KPS收购铝业生产商Real Alloy Europe

2022年10月19日，欧盟委员会发布公告，附条件批准KPS通过其子公司Speira收购Evergreen Holding Germany GmbH和Real Alloy Europe。KPS是一家美国私募股权公司，是德国平轧铝产品制造商Speira的最终控制人，Real Alloy Europe在欧洲经济区和英国从事再生铝生产供应，并向第三方提供铝渣和盐渣的回收服务。欧盟委员会调查显示，在交易完成后，交易各方将有动机和能力限制竞争对手获得铝回收产业链中的必要产品和服务，从而导致用于制造饮料罐的平轧铝产品价格上涨。为解决竞争担忧，KPS提出剥离Real Alloy Europe在英国的再生铝生产和铝渣回收设施，及Real Alloy Europe在法国的盐渣回收厂。（[查看更多](#)）

EU Commission Approves KPS Acquisition of Real Alloy Europe, Subject to Conditions

On October 19, 2022, the European Commission announced that it has approved the proposed acquisition of Evergreen Holding Germany GmbH and Real Alloy UK Holdco Ltd (“**Real Alloy Europe**”) by KPS Capital Partners, LP (“**KPS**”) through its subsidiary Speira BidCo I GmbH (“**Speira**”). KPS, a US private equity company, is the ultimate controller of Speira, a German manufacturer of advanced flat rolled aluminium products. Real Alloy Europe manufactures and supplies recycled aluminium in the EEA and UK. It also provides recycling services to third parties for (hazardous) by-products from the aluminium recycling process, such as dross and salt slag. According to investigation, following the transaction, the parties would have the incentive and ability to restrict the competitors’ access to necessary products and services in the aluminium recycling chain. In turn, this could lead to higher prices for aluminium flat rolled products used to manufacture beverage cans. To address the competition concerns, KPS offered to divest Real Alloy Europe’s recycled aluminium production and dross recycling facility in Swansea (UK) as well as Real Alloy Europe’s salt slag recycling plant in Sainte-Menehould (France). ([More](#))

英国竞争与市场管理局最终命令Meta出售Giphy

2022年10月18日，英国竞争与市场管理局（“**CMA**”）发布公告，认定Meta收购GIF图片搜索引擎Giphy的交易会使Meta得以限制其他社交媒体平台对GIF的访问，从而降低这些网站对用户的吸引力和竞争力；同时该交易还使Giphy不再是英国展示广告市场的潜在挑战者，阻碍了英国企业从市场创新中受益。2021年11月，CMA发布了对该交易的第二阶段决定，命令Meta出售Giphy，Meta随后向英国竞争上诉法庭（CAT）提起上诉。2022年7月，CAT维持了CMA的大部分决定。CMA最终认定，避免该交易对竞争产生严重影响的唯一解决办法就是将Giphy全部出售。（[查看更多](#)）

CMA Orders Meta to Sell Giphy

On October 18, 2022, the Competition and Markets Authority (“**CMA**”) announced that it has found that Meta’s takeover of Giphy could allow Meta to limit other social media platforms’ access to GIFs, making those sites less attractive to users and less competitive. It also found the deal has removed Giphy as a potential challenger in the UK display advertising market, preventing UK businesses from benefiting from innovation in this market. The CMA published its original Phase 2 decision on this case in November 2021, ordering Meta to sell Giphy. Meta subsequently appealed that decision to the Com-

petition Appeal Tribunal (“CAT”). In July 2022, the CAT upheld most of the CMA’s decision. The CMA has concluded the only way to avoid the significant impact the deal would have on competition is for Giphy to be sold off in its entirety to an approved buyer. ([More](#))

博通拟就与VMware并购交易向欧盟委员会提交反垄断审查申请

2022年10月17日，据媒体报道，美国芯片制造商博通公司（Broadcom）拟就其以610亿美元收购云计算公司VMware的交易向欧盟委员会提交反垄断申请，该交易于2022年5月宣布，是迄今为止本年度的全球第二大交易，标志着博通试图将其业务范围扩展至企业软件领域。知情人士称，博通将通过指出存在来自亚马逊、微软和谷歌的竞争，说明在云市场中已有许多重要竞争者，从而证明该交易不会引发真正的竞争问题，进而争取欧盟委员会在审查的第一阶段便作出批准。（[查看更多](#)）

Broadcom Banking on Early EU Approval of USD 61 Billion VMware Deal

On October 17, 2022, according to news report, U.S. chipmaker Broadcom will file a merger review application to the European Commission over its proposed \$61 billion buy of cloud computing company VMware. Announced in May, the deal is the second biggest globally so far this year and marks Broadcom’s attempt to diversify its business into enterprise software. People familiar with the matter said, Broadcom will seek a first-stage early European Union antitrust approval by pointing to competition from Amazon, Microsoft and Google, indicating that there are many very big players in the cloud market now and this (deal) would not raise real competition risks. ([More](#))

网络安全与数据合规 Cybersecurity and Data Protection

国务院印发《全国一体化政务大数据体系建设指南》

2022年10月28日，国务院办公厅发布关于印发《全国一体化政务大数据体系建设指南》（以下简称《指南》）的通知。该指南充分整合现有政务数据资源和平台系统，重点从统筹管理、数据目录、数据资源、共享交换、数据服务、算力设施、标准规范、安全保障等8个方面，组织推进全国一体化政务大数据体系建设。《指南》提出，2023年底前，全国一体化政务大数据体系初步形成，基本具备数据目录管理、数据归集、数据治理、大数据分析、安全防护等能力，数据共享和开放能力显著增强，政务数据管理服务水平明显提升。（[查看更多](#)）

The State Council Issues the Guidelines for the Construction of the National Integrated Government Big Data System

On 28 October 2022, the General Office of the State Council issued the *Guidelines for the Construction of the National Integrated Government Big Data System* (the "Guidelines"). The Guidelines have fully integrated the existing government data resources and platform systems, focusing on eight aspects, including overall management, data directory, data resources, sharing and exchange, data services, computing facilities, standards and specifications, and security assurance, to organize and promote the construction of the national integrated government big data system. By the end of 2023, the

national integrated government big data system will be preliminary established. Such a system will basically possess the capabilities of data directory management, data collection, data governance, big data analysis, security protection, etc. The ability of data sharing and opening will be significantly enhanced, and the service level of government data management will be significantly improved. ([More](#))

工信部发布《网络产品安全漏洞收集平台备案管理办法》

2022年10月28日，为规范网络产品安全漏洞收集平台备案管理，工业和信息化部（以下简称工信部）发布《网络产品安全漏洞收集平台备案管理办法》（以下简称《办法》）。《办法》规定，漏洞收集平台备案通过工信部网络安全威胁和漏洞信息共享平台开展，采用网上备案方式进行。拟设立漏洞收集平台的组织或个人，应当通过工信部网络安全威胁和漏洞信息共享平台如实填报网络产品安全漏洞收集平台备案登记信息，主要包括：漏洞收集平台的名称、首页网址和互联网信息服务（ICP）许可或备案号，用于发布漏洞信息的相关网址、社交软件公众号等互联网发布渠道；主办单位或主办个人的名称或姓名、证件号码，以及漏洞收集平台主要负责人和联系人的姓名、联系方式等信息。 ([查看更多](#))

MIIT Releases *the Administrative Measures for the Record-filing of Security Vulnerability Collection Platforms for Network Products*

On 28 October 2022, in order to regulate the administration of record-filing of security vulnerability collection platforms for network products, the Ministry of Industry and Information Technology (the "MIIT") issued *the Administrative Measures for the Record-filing of Security Vulnerability Collection Platforms for Network Products* (the "Measures"). According to the Measures, the filing of a security vulnerability collection platform is carried out through the Internet security threat and vulnerability information sharing platform of the MIIT, and online filing is adopted. Any organization or individual intending to set up a vulnerability collection platform shall, through the network security threat and vulnerability information sharing platform of the MIIT, truthfully fill in the registration and filing information about the security vulnerability collection platform for network products, mainly including: name, homepage and ICP license or registration number of the vulnerability collection platform, the relevant URL, public account of social software and other Internet distribution channels for releasing vulnerability information; the name and ID number of the sponsor or sponsor individual, and the name and contact information of the person in charge and contact person of the vulnerability collection platform. ([More](#))

信安标委发布国家标准《信息安全技术 网络预约汽车服务数据安全要求》（GB/T 42017-2022）

2022年10月25日，中国电子技术标准化研究院联合20家单位共同研制了国家标准GB/T 42017-2022《信息安全技术 网络预约汽车服务数据安全要求》。标准实施对象为网络预约汽车服务。该服务是指以互联网技术为依托构建服务平台，整合供需信息，为用户提供网络预约汽车出行服务的经营活动。标准主要规范网络预约出租汽车（简称“网约车”）服务，不包括私人小客车合乘（俗称“顺风车”）、网约货运和网约巴士。该标准规定了网络预约汽车服务收集、存储、使用、加工、提供、公开、出境等数据处理活动的安全要求，给出了行程录音录像等典型场景数据安全保护要求。 ([查看更多](#))

NISSTC Releases a National Standard *Information Security Technology—Data Security Requirements for Online Ride-hailing Services* (GB/T 42017-2022)

On 25 October 2022, China Electronics Standardization Institute jointly with 20 entities developed a national standard GB/T 42017 -2022, *Information Security Technology—Data Security Requirements for Online Ride-hailing Services*. The target for implementation of the standard is online car reservation services. The said services refer to the business of providing users with online car reservation travel services through a service platform that is established relying on Internet technologies and integrates supply and demand information. This standard mainly applies to the service of taxis subject to online-booking, excluding the ridesharing of privately-owned passenger cars (commonly known as "hitchhiking"), online-booking freight and online-booking bus services. The standard sets forth the security requirements for data collection, storage, use, processing, provision, public disclosure and overseas transfer and other activities concerning online car booking, and data security requirements for typical scenes, such as the audio and video recording of the journey. ([More](#))

《浙江省推进产业数据价值化改革试点方案》印发

2022年10月28日，浙江省数字经济发展领导小组办公室印发《浙江省推进产业数据价值化改革试点方案》（以下简称“《方案》”）。该《方案》旨在加快中国（温州）数安港市场化建设运营，推进数据安全技术研发与流程创新、数据产品交易、数智产业孵化、全流程合规法律服务等功能建设。《方案》推行企业首席数据官制度。制定企业首席数据官制度建设指南，在省属国企、大型企业先行开展首席数据官制度试点，鼓励企业设立专门数据管理部门等。 ([查看更多](#))

The Pilot Proposals for Promoting the Value Reform of Industrial Data in Zhejiang Province Has Been Issued

On 28 October 2022, the Office of Zhejiang Provincial Leading Group for Development of Digital Economy issued *the Pilot Proposals for Promoting the Value Reform of Industrial Data in Zhejiang Province (the "Proposals")*. The proposals are aimed at accelerating the market-oriented construction and operation of China (Wenzhou) Shu'an Port, and accelerating the research and development of data security technology and process innovation, data product trading, digital intelligence industry incubation, whole-process compliance and legal services and other functions. According to the Proposals, efforts will be made to promote the chief data officer system of enterprises. Guidelines are to be formulated on the development of the chief data officer system of enterprises, pilot programs of the chief data officer system are to be launched first in provincial state-owned enterprises and large enterprises, and enterprises are encouraged to set up special data management departments. ([More](#))

山东省互联网信息办公室开通数据出境安全评估申报通道

2022年10月26日，为指导和帮助数据处理者规范、有序申报数据出境安全评估，山东省网信办开通数据出境安全评估申报通道。有关申报适用范围、申报方式、申报流程、申报材料等具体要求应当根据国家互联网信息办公室发布的《数据出境安全评估申报指南（第一版）》规定，按照申报指南申报数据出境安全评估。咨询电话：18853135773，0531-51773249、81913920。

报送地址：山东省济南市市中区经十路20637号文博写字楼217室（山东省互联网信息办公室）。（[查看更多](#)）

Cyberspace Administration of Shandong Province Has Opened the Application Channel for Security Assessment of Outbound Data Transfers

On 26 October 2022, in order to guide and help data processors to apply for security assessment of outbound data transfers in a standardized and orderly manner, the Cyberspace Administration of Shandong Province has opened the application channel for security assessment of outbound data transfers. The specific requirements on the application scope, application method, application process, application materials, etc. of the application shall be in accordance with *the Guide to Applications for Security Assessment of Outbound Data Transfers (First Edition)* issued by the Cyberspace Administration of China, and application for security assessment of outbound data transfers shall be made in accordance with the application guidelines. Tel.: 18853135773, 0531-51773249, 81913920. Address: Room 217, Wenbo Office Building, No. 20637, Jingshi Road, Shizhong District, Jinan, Shandong. (Cyberspace Administration of Shandong Province) ([More](#))

香港发布有关虚拟资产发展的政策宣言

2022年10月31日，香港财经事务及库务局正式发布《有关香港虚拟资产发展的政策宣言》。就香港发展蓬勃的虚拟资产行业和生态圈，阐明政府的政策立场和方针。政策宣言涵盖以下方面：1.愿景与方针；2.监管；3.试验计划；4.展望。香港未来将研究推出NFT、绿色债券代币化及数码港元试验计划。该宣言显示出，香港作为国际金融中心，其对从事虚拟资产业务的创新人员持开放态度。（[查看更多](#)）

Policy Statement on Development of Virtual Assets Issued in Hong Kong

On 31 October 2022, the Financial Services and the Treasury Bureau (“FSTB”) in Hong Kong issued the Policy Statement on Development of Virtual Assets, which sets out the government’s policy stance and approach towards developing a vibrant sector and ecosystem for virtual assets in Hong Kong. The policy statement covers the following: 1. vision and approach; 2. regulation; 3. pilot projects; and 4. way forward. Hong Kong will explore pilot schemes for NFT, green bond tokenisation and e-HKD plan. The statement indicates that Hong Kong, as an international financial center, is open to innovators engaged in virtual asset business. ([More](#))

欧洲数据处理委员会批准首个欧洲数据保护认证系统

2022年10月17日，欧洲数据保护委员会（EDPB）批准了第一个欧洲数据保护印章 Europrivacy。它标志着在确保尊重欧盟隐私保护规则方面实现了巨大飞跃。公司和服务平台可以使用该认证机制为业务赋值，增加服务的信赖度，包括评估其数据处理活动的合规性；选择数据者；评估跨境数据传输的充分性；向用户和客户保证他们的个人数据得到了充分的保护。Europrivacy国际数据保护专家委员会和欧洲认证与隐私中心相应地管理和更新认证机制。这两个机构将确保该机制与监管和技术的进步保持同步。（[查看更多](#)）

Europrivacy: the First Certification Mechanism to Ensure Compliance with GDPR

On 17 October 2022, the European Data Protection Board approved the very first European Data Protection Seal - Europrivacy. It marks a leap forward in ensuring the respect of the European Union's groundbreaking privacy protection rules. Companies and services can use the certification scheme to increase the value of their businesses and trust in their services. They can use Europrivacy to: assess the compliance of their data processing activities; select data processors; assess the adequacy of cross-border data transfers; assure citizens and clients of the adequate processing of their personal data. The Europrivacy International Board of Experts in data protection and the European Centre for Certification and Privacy manage and update the certification scheme, accordingly. The two bodies will ensure that it is in step with regulatory and technological advancements. ([More](#))

英国某建筑公司因侵犯员工隐私被ICO罚款440万英镑

2022年10月24日，英国信息专员办公室（ICO）对一家建筑公司Interserve开出440万英镑的罚单，并对那些忽视软件更新和员工培训等关键措施而可能受到网络攻击风险的公司发出警告。ICO发现，Interserve未能采取适当的安全措施来防止网络攻击，使黑客通过钓鱼邮件获取多达11.3万名员工的个人信息，违反了数据保护法。被泄露的个人信息包括，联系方式、国家保险号码和银行账户信息，以及特殊类型数据，包括民族血统、宗教、残疾情况、性取向和健康信息等。（[查看更多](#)）

One Construction Company Was Fined 4.4 Million Pounds by the ICO for Violating the Privacy of Employees

On 24 October 2022, the Information Commissioner's Office (the ICO) issued a fine of £4,400,000 to Interserve Group Ltd, and warned that companies are leaving themselves open to cyber attack by ignoring crucial measures like updating software and training staff. The ICO found that the company failed to put appropriate security measures in place to prevent a cyber attack, which enabled hackers to access the personal data of up to 113,000 employees through a phishing email. The compromised data included personal information such as contact details, national insurance numbers, and bank account details, as well as special category data including ethnic origin, religion, details of any disabilities, sexual orientation, and health information. ([More](#))

美国联邦贸易委员会对Drizly的数据泄漏事故采取措施

2022年10月24日，美国联邦贸易委员会（FTC）对在线酒类交易平台Drizly及其CEO采取了相应措施，FTC指控称Drizly存在以下几项问题：没能实施基本的安全措施；在不安全的平台上存储关键的数据库信息；忽略对网络安全威胁的监控；将客户暴露给黑客和身份盗窃者等，导致泄露了约250万消费者的个人信息。早在Drizly数据泄漏事故发生的两年前，Drizly就被警告存在安全问题，但Drizly却没有采取措施保护消费者数据免受黑客的攻击。现FTC命令Drizly销毁不必要的数据库，并且限制其未来对数据的收集和存储，其CEO也因在其任职期间公司的违法行为，将受到特殊数据安全要求的约束。（[查看更多](#)）

FTC Takes Action Against Drizly for Its Data Leakage

On 24 October 2022, the Federal Trade Commission (the FTC) is taking action against the online alcohol marketplace Drizly and its CEO. The FTC alleges that Drizly: failed to implement basic security measures; stored critical database information on an unsecured platform; neglected to monitor network for security threats; exposed customers to hackers and identity thieves. Allegedly the personal information of about 2.5 million customers was exposed. Drizly was alerted to security problems two years prior to the breach yet failed to take steps to protect consumers' data from hackers. The FTC's proposed order requires the company to destroy unnecessary data, restricts the data that the company can collect and retain, and binds its CEO to specific data security requirements for his role in presiding over unlawful business practices. ([More](#))

知识产权 Intellectual Property

国知局拟增加商标依职权撤销规定

近日，国家知识产权局发布对十三届全国人大五次会议第2505号建议答复的函。其中提到，继续强化商标使用义务和权利边界，着力解决“重注册、轻使用”问题。一是完善商标使用概念，突出使用的基础地位。二是在保留原有撤三制度的基础上，研究引入商标使用承诺和存续期间主动提交使用情况说明制度的可行性。三是拟增加商标依职权撤销规定，对于商标注册人未履行使用承诺、未依法提交使用情况说明、以及不正当行使商标专用权等情形，可以依职权撤销其注册商标。加强制度设计、优化程序、强化义务和明晰权利边界、适应技术飞速发展新形势等意见建议，将在新一轮《商标法》及其实施条例修改准备工作中予以重点关注和充分研究。

来源：国知局

CNIPA Proposed to Add the Provisions on the Ex Officio Cancellation of Trademarks

Recently, the CNIPA releasing the reply to proposal No.2505 issued by the 5th session of the 13th National People's Congress. It provides for continuing to intensify the obligations and boundaries of the right to use trademarks, and address the issue of "attaching too much importance to trademark registration while neglecting trademark use". First, the concept of trademark use shall be improved, and the fundamental status of trademark use shall be highlighted. Second, on the basis of retaining the original cancellation system, study the feasibility of introducing the system of undertaking to use trademark and voluntary submission of explanation of trademark use during the trademark validity period. Third, it is proposed to add provisions on the Ex Officio cancellation of trademarks. In the event that the trademark registrant fails to fulfill its use commitment, fails to submit a description of the use according to law, and improperly exercises the exclusive right to use the trademark, it may cancel its registered trademark on its authority. Suggestions such as strengthening system design, optimizing procedures, strengthening obligations and clarifying rights boundaries, and adapting to the new situation of rapid technological development will be given special attention, and full study in the preparation of the new round of revision of the Trademark Law and its implementation regulations.

Source: CNIPA

VARTA与广东微电新能源就专利纠纷达成和解

10月26日，VARTA宣布，VARTA AG与中国电池生产商广东微电新能源有限公司达成一项和解。该项和解协议结束了一项涉及VARTA CoinPower锂离子扣式电池部分专利以及微电新能源相关扣式电池专利的长期诉讼。VARTA在德国独家生产CoinPower系列电池，是全球多数顶级TWS耳机品牌的主要供应商。此前，VARTA已开始在全球TWS的重要市场就专利受到侵犯采取了法律行动。此次和解的协议包括，双方撤销针对彼此在全球范围内的所有专利诉讼。同时，双方承诺在全球范围内通过调解程序解决与这些技术有关的未来所有专利纠纷。此次和解协议的具体条款内容保密。

来源：[VARTA Microbattery](#)

VARTA and Guangdong Mic-power New Energy Reached a Settlement on Patent Dispute

On October 26, VARTA announced that VARTA AG had reached a settlement with the Chinese battery manufacturer Guangdong Mic-power New Energy Co., Ltd.(Guangdong Mic-power New Energy). The agreement ended a long-running litigation involving some of VARTA's CoinPower lithium-ion button battery patents and other button battery patents related to micro- electric new energy. VARTA produces the CoinPower range of batteries exclusively in Germany and is the main supplier of most of the world's leading TWS headphone brands. Previously, VARTA has taken legal action against TWS for patent infringement in important markets around the world. Included in the terms of the settlement, the parties drop all patent lawsuits worldwide against each other. Furthermore, the parties commit to resolve all future patent disputes relating to those technologies via mediation proceedings worldwide. The terms of this settlement agreement are confidential.

Source: [VARTA Microbattery](#)

法院判决：使用“小度机器人”标识构成商标侵权及虚假宣传

近日，上海知识产权法院就百度在线网络技术（北京）有限公司（百度公司）与上海沃玺智能科技有限公司（沃玺公司）、郑州雅兰化妆品有限公司（雅兰公司）侵害商标权及虚假宣传纠纷一案作出二审判决，判决驳回沃玺公司上诉，维持原判。此前一审法院判决沃玺公司构成商标侵权及虚假宣传，因商标侵权行为赔偿百度公司经济损失350万元，雅兰公司对其中2000元承担连带赔偿责任；沃玺公司、雅兰公司分别赔偿百度公司因虚假宣传行为所造成的经济损失10万元、1万元。

上海知识产权法院认为，沃玺公司默认在加工被控侵权产品时把“小度小度”作为唤醒词，构成商标侵权，一审法院认定并无不当。沃玺公司在推广其“AnysayX3 机器人”产品时，过度使用百度公司的商业资源，超出了合理范围，已经达到了造成相关公众误解的程度，会误导消费者，构成虚假宣传。

来源：[上海知识产权法院](#)

Shanghai IP Court Ruled That Using the Logo of "xiaodu robot" as Wake Words

Constitutes Trademark Infringement and False Advertisement

Recently, the Shanghai Intellectual Property Court has made its judgment of second instance on the trademark right and false advertising dispute of Baidu Inc. The judgment rejected the appeal and upheld the original judgment, affirming that the defendants' act constitutes false advertising and infringement of Baidu Inc's exclusive right to use its registered trademark.

The court held that the defendant by default used "xiaodu xiaodu" as wake words when processing the alleged infringing product and thus constituted trademark infringement. In promoting its "AnysayX3 robot" product, the defendant excessively used the commercial resources of Baidu beyond a reasonable scope, which had led to confusion of the relevant public. Therefore, it constituted false advertisement.

Source: Shanghai IP Court

真假“稳健医疗”案：同时适用法定赔偿与惩罚性赔偿

近日，江苏省高级人民法院就稳健医疗用品股份有限公司（稳健股份公司）与苏州稳健医疗用品有限公司（苏州稳健公司）、苏州航伟包装有限公司（航伟公司）、滑海舟侵害商标权及不正当竞争纠纷案作出二审判决，判决驳回上诉，维持原判，此前一审法院认定苏州稳健公司、航伟公司、滑海舟侵犯稳健股份公司注册商标专用权，责令赔偿稳健股份公司经济损失100万余元。

法院认为，首先，苏州稳健公司、航伟公司、滑海舟在“航伟包装”淘宝店铺中对销售的口罩产品品牌介绍、宝贝详情、产品宣传图片、“爱淘猫”微信公众号发布的文章和视频、航伟公司官网中分别突出使用“winner”“稳健”“稳健医疗”标识字样。已经可以起到识别商品来源的作用，属于商标性使用，且所使用标识与稳健股份公司注册商标相同或近似，构成商标侵权。在稳健股份公司的企业字号在医疗物资行业内具有了较高的知名度的情况下，苏州稳健公司未经允许擅自使用“稳健”字号，构成不正当竞争。

关于本案损害赔偿金额，法院采用综合计算模式确定，由以下三部分组成：其一，对于能够明确被控侵权产品销量的部分，适用侵权获利的计算方法；其二，本案符合适用惩罚性赔偿的条件，以苏州稳健公司等获利金额作为惩罚性赔偿的计算基数；其三，对于无法查明被控侵权产品具体销量的部分，适用法定赔偿方式进行酌定。以上三部分数额相加，一审法院据此确定苏州稳健公司等赔偿经济损失及合理支出102.1655万元，二审法院对上述赔偿金的计算方法和结果予以认可。

来源：江苏省高院

The Court Clarified That Both Statutory Damages and Punitive Damages could Accrue

Recently, the High People's Court of Jiangsu Province made a second instance judgment on the case of trademark infringement and unfair competition dispute. It rejected the appeal and upheld the original judgment, determining that the defendant infringed the plaintiff's exclusive right to use registered trademarks, and ordered the defendant to pay the damages of more than RMB1 million.

As for the amount of damage in this case, the court adopted a comprehensive method of calculation. The method comprises the following three parts: first, apply the method of calculation of infringement profits to the part for which the sales volume of the accused infringing product can be identified; second, the case complies with the conditions for applying punitive damages, and the amount of profits made by the defendant shall be used as the calculation basis for punitive damages; third, apply the method of statutory damages to the part for which the sales volume of the accused infringing product cannot be identified. Based on the sum of the above three parts, the court determined that the defendant shall pay the damage of RMB1 million.

Source: [The High People's Court of Jiangsu Province](#)

乌菲兹美术馆起诉奢侈品牌高缇耶未经授权使用《维纳斯的诞生》

近日，佛罗伦萨的乌菲兹美术馆起诉时装设计师让·保罗·高缇耶（Jean Paul Gaultier）（以下简称高缇耶）在未经授权的情况下，在新系列服装中复制了一幅桑德罗·波提切利的名画《维纳斯的诞生》。《维纳斯的诞生》是该博物馆的永久收藏，由博物馆进行版权管理，高缇耶今年早些时候推出了“Le Musée”系列，该博物馆认为法国奢侈品牌“未经授权”，以商业使用为目的使用波提切利的绘画，违反了意大利《文化遗产法典》（Codice dei Beni Culturali）规定的法律标准。其法律部门已正式要求该品牌就商业交易进行谈判，或停止销售该作品系列中的未来物品。

目前，以这幅画为特色的系列中的物品已被高缇耶的网站删除，但仍可通过选定的在线服装零售商购买。

来源: [ARTNEWS](#)

Uffizi Gallery Sues Jean Paul Gaultier for Use of Botticelli Image

The Uffizi Gallery in Florence is suing the fashion designer Jean Paul Gaultier for reproducing an image of a Botticelli painting in a new capsule collection without authorization. The image at the center of the dispute is Botticelli's famed opus Birth of Venus which is in the Florentine museum's permanent collection and who's copyright the museum oversees. Gaultier launched its "Le Musée" collection earlier this year. The museum is suing the French luxury brand for its "unauthorized" commercial use of the Botticelli image, which it claims violates a legal standard designated under Italy's Cultural Heritage Code. According to the museum, its legal department sent an official request for the label to negotiate a commercial deal or to halt sales of future items from the collection featuring the work. Items from the collection featuring the painting have been removed the designer's website, but are still available via select online clothing retailers.

Source: [ARTNEWS](#)

苹果起诉健康检测公司Masimo

近日，苹果在美国特拉华州联邦法院提起一项诉讼，指控健康检测公司Masimo推出的W1系列智能手表侵犯了其多项专利。该诉讼指控Masimo侵犯了包括智能手表和健康监测技术在内的六项专利，以及包括苹果手表和充电器设计元素在内的四项专利。苹果指责Masimo试图利用诉讼将苹果的手表从市场上撤出，以此为目的，为Masimo自己的手表让路。

Masimo 声称苹果的诉讼是“报复性的”，“似乎试图避开双方在过去三年里一直在进行诉讼的法院”。苹果公司的一位发言人表示，起诉 Masimo 是希望该案件能够“保护我们代表客户推进的创新”。

来源：路透社

Apple Lawsuits Say Health Monitoring Company Masimo Copied Apple Watch

Apple Inc sued medical technology company Masimo Corp in Delaware federal court, accusing its new W1 line of smartwatches of infringing several Apple Watch patents. The lawsuit accuses Masimo of infringing six patents covering smartwatch and health-monitoring technology, as well as four patents covering design elements of Apple Watches and chargers. Apple accused Masimo of trying to use the litigation to remove Apple's watches from the market to "make way for Masimo's own watch."

Masimo said in a statement that Apple's lawsuits are "retaliatory" and "appear to be an attempt to avoid the court in which the parties have been litigating their dispute for the past three years." "By launching a device that copies Apple Watch and infringes our intellectual property, Masimo attempted to take advantage of our teams' many innovations," Apple said in a statement.

Source: REUTERS

福特公司被判侵犯Versata软件公司商业机密

10月29日消息，美国密歇根州的一个联邦陪审团裁定福特汽车公司违反合同和滥用商业机密的罪名成立，在经过三周的审判证词后，周三裁定福特公司需向总部位于得克萨斯州的Versata软件公司赔偿1.0465亿美元(约7.59亿元人民币)。

本案争论的焦点是2004年两家公司之间的一份合同，其中涉及Versata公司开发的用于管理汽车部件在组装过程中如何配置的软件。陪审团认定，福特公司滥用了机密信息，对Versata的软件进行逆向工程，用于自己的商业用途，并在没有许可证的情况下使用该软件。

来源：CBTNEWS

Jury Determined That Ford Infringes the Trade Secrets of Versata Software

A federal jury in Michigan found Ford Motor Co. guilty of violating a contract and misuse of trade secrets, awarding Texas-based Versata Software USD104.65 million after three weeks of trial testimony.

At issue is a 2004 contract between the two companies involving software Versata developed to manage how vehicle components are configured during assembly. The jury determined that Ford misused confidential information, reverse-engineered Versata's software for its own commercial use and used it without a license.

Source: CBTNEWS

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.





Subscribe to our WeChat community


扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 韩国

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Korea

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261