



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.337

2023.2

立方要闻周报

Weekly News By Lifang & Partners

NO.76

立方竞争法周报 **Weekly Competition Law News**

青海一石油公司垄断纠纷案开庭

A Qinghai Petroleum Company Monopoly Dispute Case Comes to Trial

山西市场监管2022反垄断：完成4件垄断线索调查

Shanxi AMR 2022 Anti-Monopoly Regulation: Concludes 4 Administrative Monopoly Clues Investigation

欧盟委员会将评估Adobe以200亿美元收购Figma的交易

European Commission to Assess Proposed Acquisition of Figma by Adobe

韩国网约车平台因自我优待被罚2030万美元

Korean E-hailing Platform Fined USD 20.3 Million for Self-Preference Conduct

欧盟委员会就Viasat收购Inmarsat案展开深入调查

European Commission Opens In-Depth Investigation into the Proposed Acquisition of Inmarsat by Viasat

美反垄断机构联合发布2021财年HSR并购前申报报告

FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report

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

工信部公布2022年版行政执法事项清单

MIIT Released the *List of Administrative Law Enforcement Items (2022 Edition)*

公安部公布“断号”行动十大典型案例，依法严厉打击网络账号黑色产业链



No.337

2023.2

The Ministry of Public Security Announced Ten Typical Cases of "Disconnecting Accounts" Action, and Severely Cracked Down on the Black Industrial Chain of Network Accounts

浙江省印发《关于支持信息服务业稳进提质的实施意见》

Zhejiang Province Publicly Distributed *the Implementation Opinions on Supporting the Steady Improvement of Information Service Industry*

广东省发布《2022广东省数字政府网络安全指数评估报告》

Guangdong Province Issued *the 2022 Guangdong Digital Government Network Security Index Assessment Report*

四川省政府新闻办举行《四川省数据条例》解读新闻发布会

Sichuan Information Office Held a Press Conference on Interpretation of *Sichuan Data Regulations*

《深圳市数据产权登记管理暂行办法》公开征求意见

The Interim Measures of Shenzhen Municipality for *the Administration of Data Property Right Registration Issued to Solicit Public Comments*

上海市召开数据出境安全评估政策系列宣讲会（张江站）

Shanghai Held a Series of Seminars on Policies on Security Assessment for Cross-border Data Transfer (Zhangjiang Station)

贵阳大数据交易所上线全国首个数据产品交易价格计算器

Guiyang Big Data Exchange Launched the First Transaction Price Calculator for Data Products in China

内蒙古通信管理局通报19款APP侵害用户权益行为

Inner Mongolia Communications Administration Released Bulletin on APPs Infringing upon Rights and Interests of Users

德国联邦宪法法院禁用通过数据自动化分析预测犯罪的软件

German Constitutional Court Strikes Down Predictive Algorithms for Policing

知识产权 Intellectual Property

最高院和最高检就侵犯知识产权刑事案件适用法律若干问题的解释公开征求意见



Interpretation of Supreme People's Court and Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling of Criminal Cases of Intellectual Property Infringement open to the public for comments

北京知识产权法院选任115名技术调查官

Beijing IP Court Elects and Appoints 115 Technical Investigation Officers

“哈啰单车”诉“全能车”网络不正当竞争获赔6140余万元

"Hello Bicycle" V. "All-round Bicycle" Online Unfair Competition, Awarded Damages of More than RMB 61.4 Million

“美盛”商标、字号及商品包装装潢遭恶意攀附，法院判赔6817.5万元

Trademark, Brand name, Decoration of "Mosaic" are Maliciously Attached

广东高院：仅凭持有外观设计专利证书不足以享有稳定的排他性权利

Guangdong High People's Court Ruled Holding a Design Patent Certificate Alone is not Enough to Enjoy Stable Exclusive Rights

最高法：租借种子经营许可证从事侵权行为被判惩罚性赔偿

SPC Ruled on Punitive Damage for Infringement Committed by Leasing or Leasing Seed Operation License

四川高院：擅用TIGI弹力素商品特有包装、装潢构成不正当竞争

Sichuan High People's Court Ruled Unauthorized Use of the Unique Decoration of TIGI Elastin Products Constitutes Unfair Competition

欧宝和供应商CATL在与MU Ionic的电子电池纠纷中大获全胜

Opel and Supplier CATL Succeed in E-battery Dispute with MU Ionic

伦敦上诉法院判决联想侵犯InterDigital标准必要专利

InterDigital Wins Third Decision in 2023 from UK Court in Lenovo Dispute

立方竞争法周报 Weekly Competition Law News

青海一石油公司垄断纠纷案开庭

2023年2月14日，根据中国庭审公开网公布的信息，青海省西宁市中级人民法院于2023年2月16日早上九点对青海省民和川中石油天然气有限责任公司垄断纠纷案进行公开开庭审理。本案原告为海东华泽燃气器具商贸有限公司民和分公司，案号为（2022）青01知民初142号。（[查看更多](#)）

A Qinghai Petroleum Company Monopoly Dispute Case Comes to Trial

On February 14, 2023, according to the information published by the China Court Trial Online network, the Xining Intermediate People's Court of Qinghai Province held a public trial at 9 a.m. on February 16, 2023 for the monopoly dispute of the Qinghai Minhe Chuazhong Petroleum and Natural Gas Co., Ltd. The plaintiff in the case is Haidong Huaze Gas Appliances Trading Co., Ltd. and the case number is (2022) Qing 01 Zhi Min Chu No. 142. ([More](#))

山西市场监管2022反垄断：完成4件垄断线索调查

2023年2月13日，据媒体报道，山西省市场监督管理局在2022年不断强化网络平台、医药、公用事业等领域反垄断执法力度，立案查处朔州市7家机动车检测公司达成并实施垄断协议案，完成市场监管总局转交的4件垄断线索调查任务，持续推进2起垄断案件和7件垄断线索的后续核查工作，为全省营造公平竞争的市场环境发挥了积极作用。（[查看更多](#)）

Shanxi AMR 2022 Anti-Monopoly Regulation: Concludes 4 Administrative Monopoly Clues Investigation

On February 13, 2023, according to news report, in 2022, the Shanxi Provincial Administration for Market Regulation ("Shanxi AMR") continued to strengthen anti-monopoly law enforcement in the fields of online platforms, healthcare and pharmaceuticals and public utilities, investigated and concluded the monopoly agreement case of seven Shuozhou motor vehicle inspection companies, completed the investigation missions delegated by the State Administration for Market Regulation of 4 monopoly clues, continued to follow up on verifications and investigations of 2 monopoly cases and 7 monopoly clues, and played a positive role in creating a provincial-wide fair market environment. ([More](#))

欧盟委员会将评估Adobe以200亿美元收购Figma的交易

2023年2月15日，欧盟委员会宣布将评估Adobe以200亿美元收购Figma的交易。Figma提供基于网络的产品设计协作工具，Adobe是提供交互式产品设计工具的全球软件公司。拟议交易由于未达到《欧盟合并条例》规定的营业额门槛，并未向欧盟委员会进行申报，最初只在德国和奥地利进行了申报，奥地利随后根据《欧盟合并条例》向委员会提交转介请求。欧盟委员会认为该交易符合转介标准，可能会严重影响至少在整个欧洲经济区范围内交互式产品设计和白板软件

市场中的竞争，因此最好审查拟议交易潜在的跨境影响。欧盟委员会将正式要求Adobe申报该交易，且Adobe在获得批准前不得实施该交易。 ([查看更多](#))

European Commission to Assess Proposed Acquisition of Figma by Adobe

On February 15, 2023, the European Commission issued a statement, announcing that it would assess the proposed USD 20 billion acquisition of Figma by Adobe. Figma offers a web-based collaborative tool for product design, Figma Design, and Adobe is a global software company offering an interactive product design tool, Adobe XD. The proposed transaction does not reach the turnover thresholds set by the *EU Merger Regulation* (EUMR) and therefore was not notified to the Commission. The transaction was notified for regulatory clearance in Austria and Germany, and was submitted to the European Commission for a referral by the Austria watchdog pursuant to EUMR. The European Commission considers that the transaction meets the criteria for referral under EUMR. In particular, the transaction threatens to significantly affect competition in the market for interactive product design and whiteboarding software, which is likely at least EEA-wide. The European Commission also concluded that it is best placed to examine the potential cross-border effects of the transaction. The European Commission will now ask Adobe to notify the transaction. Adobe cannot implement the transaction before notifying and obtaining clearance from the Commission. ([More](#))

韩国网约车平台因自我优待被罚2030万美元

2023年2月14日，据媒体报道，韩国公平交易委员会（Korea Fair Trade Commission, KFTC）对韩国网约车平台Kakao Mobility罚款257亿韩元（约合2030万美元），命令停止歧视性呼叫派单行为并定期提交改进报告。KFTC表示，Kakao Mobility滥用算法优待其子公司及关联公司旗下的自营出租车。根据该算法，即使自营出租车距离呼叫乘客更远，仍会较其他出租车优先收到派单。此外，KFTC表示Kakao Mobility还有可能利用其市场支配地位寻求增加从叫车和派车服务中收取的佣金。 ([查看更多](#))

Korean E-hailing Platform Fined USD 20.3 Million for Self-Preference Conduct

On February 14, 2023, according to news report, the Korea Fair Trade Commission (KFTC) fined Kakao Mobility, a Korean E-hailing platform, 24.7 billion won (approximately USD 20.3 million) and issued an order to cease discriminative call allocation and submit progress reports. KFTC stated that Kakao Mobility has been manipulating algorithms to favor taxis owned by a subsidiary and a related company. Under the algorithm, the favored taxis that were further away from the caller were prioritized over other taxis in the cab allocation. KFTC said that Kakao Mobility may also seek to increase the commission from requesting and accepting taxi calls by capitalizing on its dominance in the market. ([More](#))

欧盟委员会就Viasat收购Inmarsat案展开深入调查

2023年2月13日，欧盟委员会发布公告，宣布对Viasat收购Inmarsat的拟议交易展开深入调查。Inmarsat和Viasat都是垂直整合的卫星网络运营商和卫星服务供应商，Viasat拥有四颗地球静止轨道卫星，Inmarsat拥有15颗。初步调查显示两家公司在欧洲经济区和全球为商业航空提供机载宽带服务（broadband in-flight connectivity）的市场中为紧密竞争对手，由于市场进入门槛高，目

前并无多少可替代的供应者，且考虑到卫星市场正面临转型，非静止卫星运营商已转向或计划转向机载服务市场。欧盟委员会担心通过收购Inmarsat，Viasat将减少在欧洲经济区和/或全球为商业航空公司提供机载宽带服务市场中的竞争。（[查看更多](#)）

European Commission Opens In-Depth Investigation into the Proposed Acquisition of Inmarsat by Viasat

On February 13, 2023, the European Commission issued an announcement, stating that it has opened an in-depth investigation into the proposed acquisition of Inmarsat by Viasat. Viasat and Inmarsat are both a vertically integrated satellite network operator and satellite services provider. Viasat owns and operates four GEO satellites while Inmarsat owns 15. The preliminary investigation shows that the parties are close competitors in the EEA or global markets for the supply of broadband in-flight connectivity (IFC) services to commercial airlines, and there are currently few alternative suppliers due to high entry barriers. Plus considering that the satellite market is undergoing a transition with operators of non-geostationary satellites having entered or planning to enter the IFC market, the European Commission is concerned that that the transaction may allow Viasat to reduce competition in the market for the supply of broadband IFC services to commercial airlines. ([More](#))

美反垄断机构联合发布2021财年HSR并购前申报报告

2023年2月10日，美国联邦贸易委员会（FTC）和司法部（DOJ）反垄断部门联合发布了《2021财年哈特-斯科特-罗迪尼年度报告》（“《2021财年HSR并购前申报报告》”）。根据报告，反垄断机构在2021财年收到了破纪录的3520件交易申报，并对其中65起申报发出了深入审查要求。其中有32起交易被两家反垄断机构均提出挑战，主要涉及消费者商品服务、制药、农业、医疗、高科技和能源领域，反垄断机构对其中的18起交易提起了进一步诉讼。（[查看更多](#)）

FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report

On February 10, 2023, the U.S. Federal Trade Commission (FTC), together with the Justice Department (DOJ)'s Antitrust Division, released the agencies' 44th *Annual Hart-Scott-Rodino Report*. The report notes that a record-breaking 3,520 transactions were reported to both antitrust agencies during fiscal year 2021, and that the agencies issued 65 second requests in fiscal year 2021. The report goes on to highlight the 32 merger challenges undertaken by both agencies in important sectors including consumer goods and services, pharmaceuticals, agriculture, healthcare, high tech and industrial goods, and energy. The Commission brought 18 of the 32 merger enforcement actions. ([More](#))

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

工信部公布2022年版行政执法事项清单

2023年2月8日，工业和信息化部（下称“工信部”）对外公布了《工业和信息化部行政执法事项清单（2022年版）》，共涉及296项行政执法事项，其中含15项新增数据安全相关执法事项（第247-261条），具体包括：对工业和信息化领域数据处理者落实数据安全保护责任义务及管理措施落实的监督检查；对工业和信息化领域数据处理者开展数据处理活动未依照法律、法规的规定，建立健全全流程数据安全管理制度行政的行政处罚；对工业和信息化领域数据处理者开展数据处理活动未依照法律、法规的规定，采取相应的技术措施和其他必要措施，保障数据安全的行政处罚等。（[查看更多](#)）

MIIT Released the *List of Administrative Law Enforcement Items (2022 Edition)*

On 8 February 2023, the Ministry of Industry and Information Technology (the "MIIT") recently published the *List of MIIT Administrative Enforcement Items (2022 Edition)*, which covers 296 administrative enforcement matters, including 15 new data security-related enforcement matters (Articles 247-261). Specifically, the data-security related enforcement matters include: supervising and inspecting the implementation of data security protection responsibilities and the adoption of management measures by data processors in the industrial and information technology fields; imposing administrative penalties on data processors in the fields of industry and information technology that fail to establish and improve a whole-process data security management system in accordance with laws and regulations when conducting data processing activities; and imposing administrative penalties on data processors in the fields of industry and information technology that fail to adopt the corresponding technical measures and other necessary measures to ensure the security of data in accordance with the provisions of laws and regulations in carrying out data processing activities. ([More](#))

公安部公布“断号”行动十大典型案例，依法严厉打击网络账号黑色产业链

2023年2月15日，公安部公布2022年“断号”行动十大典型案例。鉴于网络账号黑色产业链严重危害互联网管理秩序，损害人民群众合法权益，公安机关强化案件侦办，依法严厉打击网络账号黑色产业链。十大典型案例包括：非法购买微博账号和手机号码，贩卖给他人以此牟利；购买大量虚假实名手机号和某旅行住宿平台网络账号，并利用上述账号登录相关平台采集客房价格信息；大量购买学生及留守老人的身份证号、手机号等公民个人信息，批量注册支付宝、淘宝商铺等网络黑账号，贩卖牟利等案件。（[查看更多](#)）

The Ministry of Public Security Announced Ten Typical Cases of "Disconnecting Accounts" Action, and Severely Cracked Down on the Black Industrial Chain of Network Accounts

On 15 February 2023, the Ministry of Public Security announced ten typical cases of "disconnecting accounts" action. In view of the fact that the black industrial chain of network accounts seriously endan-

gers the order of Internet management and harms the legitimate rights and interests of the people, the public security authorities have strengthened case investigation and cracked down on the black industrial chain of network accounts in accordance with the law. The ten typical cases include, among others: illegally buying microblog accounts and mobile phone numbers and selling them to others for a profit; purchasing a number of false real-name mobile phone numbers and network accounts on a travel and accommodations platform, and using such accounts to log in to relevant platforms to collect guest room pricing information; purchasing ID numbers, mobile phone numbers and other personal information of students and elderly people who were left-behind in the countryside, registering in batches online black accounts such as Alipay and Taobao shops and reselling such accounts for a profit, etc. ([More](#))

浙江省印发《关于支持信息服务业稳进提质的实施意见》

2023年2月14日，浙江省数字经济发展领导小组办公室发布《关于支持信息服务业稳进提质的实施意见》（以下简称“《意见》”）。《意见》强调提升网络和数据安全保障能力，明确要求浙江省委网信办，浙江省通信管理局等6个省级有关单位加强数据安全技术研究与应用，探索有利于数据安全保护、有效利用、合规流通的产权制度和市场体系，完善数据要素市场体制机制。（[查看更多](#)）

Zhejiang Province Publicly Distributed the Implementation Opinions on Supporting the Steady Improvement of Information Service Industry

On 14 February 2023, Zhejiang Leading Group Office of Digital Economy Development issued *the Implementation Opinions on Supporting the Steady Improvement of Information Service Industry (the "Opinions")*. The Opinions stress the improvement of the ability to safeguard network and data security, and require in clear terms six relevant provincial authorities, including the Zhejiang Cyberspace Administration and the Zhejiang Communication Administration, to strengthen the research and application of data security technologies, and explore property right systems and market systems that are conducive to the protection of data security, effective use of data and circulation of data in a legally compliant manner, and improve systems and mechanisms for the data element market. ([More](#))

广东省发布《2022广东省数字政府网络安全指数评估报告》

2023年2月13日，据广东省政务服务数据管理局消息，广东省发布《2022广东省数字政府网络安全指数评估报告》（以下简称《报告》）。《报告》指出，广东加快数字政府网络安全防护体系建设，全省数字政府网络安全工作迈上新台阶、实现新跃升。2022年广东省数字政府网络安全指数评估覆盖全省21个地市，采集约6.8万项数据。《报告》显示，全省数字政府网络安全指数从2020年53.81分提升至2022年64.19分，同比增长19.3%；网络安全指数达到受控级以上水平的地市由6个增加到12个，同比增长100%。（[查看更多](#)）

Guangdong Province Issued the 2022 Guangdong Digital Government Network Security Index Assessment Report

On 13 February 2023, according to Guangdong Provincial Administration of Government Service Data, Guangdong Province issued *the 2022 Guangdong Digital Government Network Security Index As-*

assessment Report (the "Report"). The report points out that Guangdong has accelerated the construction of the digital government network security protection system, and the digital government network security work in the province has reached a new level and achieved a new leap. In 2022, the evaluation

of the network security index of Guangdong digital government covered 21 prefectures and cities in Guangdong and collected about 68,000 items of data. The Report shows that the network security index for digital governments in the whole province increased from 53.81 points in 2020 to 64.19 points in 2022, representing a year-on-year increase of 19.3%; the number of prefecture-level cities with their network security index at the controlled level or above increased from 6 to 12, representing a year-on-year increase of 100%.[\(More\)](#)

四川省政府新闻办举行《四川省数据条例》解读新闻发布会

2023年2月16日，四川省政府新闻办在成都举行《四川省数据条例》（以下简称《条例》）解读新闻发布会，介绍《条例》制定背景、主要内容及特点，并就有关情况回答记者提问。该《条例》设八章七十条，包括理顺数据管理体制机制、建立以公共数据为主的数据资源体系、促进数据要素有序流通、推动数据资源高效开发利用、加强数据安全管理和个人信息保护、协同推进区域合作等6个方面，构建四川省范围内数据“一盘棋”的统筹管理基础。[\(查看更多\)](#)

Sichuan Information Office Held a Press Conference on Interpretation of Sichuan Data Regulations

On 16 February 2023, Sichuan Information Office held a press conference on interpretation of *Sichuan Data Regulation (the "Regulations")* in Chengdu, introducing the background, main contents and characteristics of the Regulations, and answering questions from reporters about relevant situations. The Regulations consist of eight chapters and 70 articles, covering six aspects, including straightening out the data management system and mechanism, establishing a data resource system mainly based on public data, promoting the orderly circulation of data elements, the efficient development and use of data resources, strengthening data security management and personal information protection, coordinately promoting regional cooperations and building a foundation for overall management of data in Sichuan Province.[\(More\)](#)

《深圳市数据产权登记管理暂行办法》公开征求意见

2023年2月20日，深圳市发展和改革委员会（下称“深圳市发改委”）发布通告，就《深圳市数据产权登记管理暂行办法》（征求意见稿）（以下简称“《办法》”）公开征求社会公众意见。征求意见截至2023年3月17日。《办法》明确数据产权登记的客体为“数据资源”与“数据产品”。《办法》规定，经数据产权登记后，登记主体享有如下权利/凭证：依照法律法规和合同约定享有相应的数据资源所有权、数据加工使用权和数据产品经营权；经登记机构审核后，获取数据资源或数据产品登记证书、数据资源许可凭证，作为数据交易、融资抵押、数据资产入表、会计核算、争议仲裁的重要依据。[\(查看更多\)](#)

The Interim Measures of Shenzhen Municipality for the Administration of Data Property Right Registration Issued to Solicit Public Comments

On 20 February 2023, the Development and Reform Commission of Shenzhen Municipal issued a circular to solicit public comments on *the Interim Measures of Shenzhen Municipality for the Administration of Data Property Right Registration (draft for comments) (the "Measures")*. The deadline for receiving comments is 17 March 2023. The Measures clarify that the objects subject to data property rights registration are "data resources" and "data products". According to the Measures, a registration entity that has completed the data property right registration shall be entitled to the following rights/certificates, including the ownership of data resources, the right to use and process data and the right to deal with data products, in accordance with laws, regulations and contracts. After a review by the registration authority, a registration entity shall obtain the registration certificates of the data resources or data products as well as the data resource licenses, which serve as important bases for data transactions, mortgage financing, entry of data assets into financial statements, accounting, and arbitration of disputes.[\(More\)](#)

上海市召开数据出境安全评估政策系列宣讲会（张江站）

2023年2月17日，为更好指导和服务上海属地数据处理者申报数据出境安全评估、合法依规开展数据出境活动，营造良好营商环境，上海召开数据出境安全评估政策系列宣讲会（张江站）。会上，上海市网信办通报了目前数据出境安全评估申报受理情况，介绍了相关法律法规及申报材料注意事项。上海市信息安全测评认证中心专家重点围绕数据出境风险自评估实施及报告撰写进行了辅导。交流答疑时，针对企业代表提出的申报情形判定、数据类型识别、申报材料提交等方面问题进行了回应及解答。[（查看更多）](#)

Shanghai Held a Series of Seminars on Policies on Security Assessment for Cross-border Data Transfer (Zhangjiang Station)

On 17 February 2023, a series of seminars on policies on security assessment for cross-border data transfer (Zhangjiang Station) were held in Shanghai for the purpose of providing better guidance and services for data processors in Shanghai in their applications for security assessment for cross-border transfer of data pursuant to laws and regulations, and creating a good business environment. At the meeting, the Shanghai Cyberspace Administration briefed on the status of acceptance of applications for security assessment for cross-border data transfer so far, and introduced the relevant laws and regulations as well as points for attention in the preparation of application materials. Experts from the Shanghai Information Security Testing Evaluation and Certification Center provided tutorial services on the implementation of the self-assessment of the risks involved in cross-border transfer of data and the preparations of the self-assessment report. During the exchange of questions and answers, responses and answers were provided in response to questions raised by the representatives of the enterprises with respect to the determination of the circumstance for filing an application, identification of data types, submission of application materials, etc.[\(More\)](#)

贵阳大数据交易所上线全国首个数据产品交易价格计算器

2023年2月17日，根据贵阳大数据交易所官网显示，在国家发改委价格监测中心的指导下，贵阳大数据交易所上线全国首个数据产品交易价格计算器。交易价格计算器的应用在现阶段为企业

提供了基于成本角度的交易定价参考，定期的数据产品估值工作可以有效地协助管理层分析数据资产价值、企业价值与数据产品开发投入的相关性，从而发掘高价值密度的数据资产。贵阳大数据交易所发布的数据产品交易价格计算器有利于营造包容、审慎、容错的数据流通交易环境。 ([查看更多](#))

Guiyang Big Data Exchange Launched the First Transaction Price Calculator for Data Products in China

On 17 February 2023, according to the website of the Guiyang Big Data Exchange, under the guidance of the Price Monitoring Center under the National Development and Reform Commission, the Guiyang Big Data Exchange has launched the first data product trading price calculator in China. At the present stage, the application of the transaction price calculator provides enterprises with a cost-based transaction pricing for reference, and regular valuation of data products can effectively assist the management in analyzing the correlation between the value of data assets, on one hand, and the enterprise value and the investment in data products development, on the other hand, so as to discover data assets with high value density. The trading price calculator for data products released by Guiyang Big Data Exchange is believed to be conducive to creating an inclusive, prudent and fault-tolerant data circulation and trading environment. ([More](#))

内蒙古通信管理局通报19款APP侵害用户权益行为

2023年2月14日，内蒙古通信管理局通报了19款APP侵害用户权益行为。内蒙古自治区通信管理局组织第三方检测机构对部分属地活跃移动APP进行侵害用户权益安全检测，截止通报发布日，尚有19款APP未完成整改。未完成整改的APP涉及问题包括：APP强制、频繁、过度索取权限；违规收集个人信息；强制用户使用定向推送功能等。内蒙古通信管理局要求上述APP应在2023年2月24日前完成整改落实工作，逾期整改不到位的，将依法依规开展相关处置工作。 ([查看更多](#))

Inner Mongolia Communications Administration Released Bulletin on APPs Infringing upon Rights and Interests of Users

On 14 February 2023, the Inner Mongolia Communications Administration released a bulletin on 19 APPs infringing upon users' rights and interests. The Inner Mongolia Communications Administration organized third-party testing agencies to conduct security testing on the active mobile APPs infringing upon users' rights and interests in certain areas under its jurisdiction. As of the date of issuance of the notice, rectification had not been completed with respect to 19 APPs. The problems involved in such APP include: forced, frequent and excessive requests for authorization by APPs; illegal collection of personal information; and forced use of the targeted push function. The Inner Mongolia Communications Administration had required the above-mentioned APPs to complete the rectification by 24 February, 2023, and if the rectification were not completed within the time limit, penalties would be imposed according to laws and regulations. ([More](#))

德国联邦宪法法院禁用通过数据自动化分析预测犯罪的软件

据ACM新闻网站2023年2月17日消息，德国联邦宪法法院在一项具有里程碑意义的裁决中宣布黑森州和汉堡市警方使用监控软件违宪。此案由德国公民权利协会代表11名原告提起，指控名为“Hessendata”的软件程序利用数据在任何犯罪发生之前创建嫌疑人档案来促进预测性治安。原告认为该软件可用于预测性警务，将会提高出错风险和执法歧视。黑森州自2017年起即使用该监控软件，而汉堡市尚未开始使用。（[查看更多](#)）

German Constitutional Court Strikes Down Predictive Algorithms for Policing

According to ACM on 17 February 2023, the German Federal Constitutional Court declared the use of surveillance software by police in Hesse and Hamburg unconstitutional in a landmark ruling. The case was brought by the German Society for Civil Rights on behalf of 11 plaintiffs and rested on the argument that the software programme - named "Hessendata"-facilitates predictive policing by using data to create profiles of suspects before any crime has been committed. The plaintiffs argued that the software could be used for predictive policing, raising the risk of mistakes and discrimination by law enforcement. The surveillance software has been used in Hesse since 2017, while Hamburg has not yet started to use it. ([More](#))

知识产权 Intellectual Property

最高院和最高检就侵犯知识产权刑事案件适用法律若干问题解释公开征求意见

为加大知识产权刑事司法保护力度，依法惩治侵犯知识产权犯罪，维护社会主义市场经济秩序，根据《中华人民共和国刑法》《中华人民共和国刑事诉讼法》有关规定，最高人民法院、最高人民检察院起草了《关于办理侵犯知识产权刑事案件适用法律若干问题的解释（征求意见稿）》（以下简称《意见稿》），并于近日向社会公开征求意见。此次征求意见稿进一步细化、调整了知识产权犯罪的定罪量刑标准，对《刑法修正案十一》中新增内容明确了定义、具体认定标准等事项，对部分构成要件进行了重新解释。

来源：最高人民法院

Interpretation of Supreme People's Court and Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling of Criminal Cases of Intellectual Property Infringement open to the public for comments

In order to strengthen the criminal judicial protection of intellectual property rights and punish the crimes of infringing intellectual property rights in accordance with the law, the SPC and the SPP drafted the Interpretation of Several Issues Concerning the Application of Law in Handling of Criminal Cases of Intellectual Property Infringement (Draft for Comments) ("the Draft"), in accordance with the relevant provisions of the Criminal Law of the People's Republic of China and the Criminal

Procedure Law of the People's Republic of China, and recently released it for public comment. The draft for comment further refined and adjusted the conviction and sentencing standards of intellectual property crimes, clarified the definition and specific identification standards of the new contents in the Amendment XI to the Criminal Law, and reinterpreted some of the constituent elements.

Source: SPC

北京知识产权法院选任115名技术调查官

2月15日，北京知识产权法院举办技术调查官聘任仪式。115名来自机械、化学、医药、材料、通信、电学等各个技术领域，具有丰富实践经验的兼职技术调查官“入职”北京知识产权法院。据了解，北京知识产权法院成立以来，已受理与专利、植物新品种、集成电路布图设计、技术秘密、计算机软件等相关的技术类案件2.3万件，审结2万件。该院曾先后选任三批技术调查官183人，参与了3281件案件的技术事实查明工作，辅助法官有效审理了一批所涉领域迭代较快、技术方案晦涩难懂、案件事实精深复杂的案件。技术调查官能够帮助法官厘清技术问题、查明技术事实，将技术讲清楚讲准确，有效提升审判效率和质量，获得当事人认可。

来源：北京知识产权法院

Beijing IP Court Elects and Appoints 115 Technical Investigation Officers

On February 15, the Beijing Intellectual Property Court (“Beijing IP Court”) held the appointment ceremony of the technical investigation officers. 115 part-time technical investigation officers with rich practical experience from various technical fields, such as machinery, chemistry, medicine, materials, communications, electricity, were recruited to the Beijing IP Court. Since its establishment, Beijing IP Court has accepted 23,000 cases of technology related to patents, new varieties of plants, layout-designs of integrated circuits, integrated circuit layout design, technical secrets and computer software, and concluded 20,000 cases. The court ever appointed three batches of 183 technical investigation officers who participated in the ascertainment of technical facts in 3,281 cases, and assisted judges to effectively hear a batch of cases involving fields that iterated rapidly and involved obscure technical schemes and complicated facts. Technical investigation officers are able to help judges clarify technical issues and ascertain technical facts, explain technologies clearly and accurately, effectively improve the efficiency and quality of trials, and obtain the recognition of the parties concerned.

Source: Beijing IP Court

“哈啰单车”诉“全能车”网络不正当竞争获赔6140余万元

近日，上海市徐汇区人民法院就上海哈啰普惠科技有限公司等（原告）（下称“哈啰普惠公司”）与深圳市大展鸿途科技有限公司等（被告）网络不正当竞争纠纷案作出一审判决，认定“全能车”APP的运营构成不正当竞争，责令二被告赔偿原告6140余万元。

法院认为，一旦“全能车”APP运营长期存在必将使得市场在配置资源方面的基础性功能无法得

到正常发挥，多项核心机制完全紊乱；而哈啰单车等品牌共享单车企业也终将因入不敷出，无法持续性地向消费者提供共享单车服务，而最终被迫退出这一市场。更为严重的是，鉴于种种市场乱象，新晋投资资本断然不会冒险入局如此高危、无序的竞争领域，最终整个共享单车行业有可能走向消亡，消费者亦会因缺乏市场供给而“无车可用”，其长远福祉必将严重受损。本案中，“全能车”APP运营代表了在新技术加持下“效率优先”的单一导向，其对于共享单车市场秩序的冲击与颠覆显而易见，而所产生的有限效率提升，却是以牺牲哈啰普惠公司等全体共享单车企业的合法产业利益、整体消费者的长远福祉，损害竞争公平为高昂代价的。据此，现在，乃至可以预见的将来，反不正当竞争法所倡导的全部规范价值均不会与此类利益失衡的无序竞争行为相契合。综上，认定“全能车”APP的运营，侵害了哈啰普惠公司等竞争权益，构成反不正当竞争法第十二条第二款第四项规定“其他妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行”的不正当竞争行为。

来源：上海市徐汇区人民法院

"Hello Bicycle" V. "All-round Bicycle" Online Unfair Competition, Awarded Damages of More than RMB 61.4 Million

Recently, the Shanghai Xuhui District People's Court has rendered its first-instance judgment in the "Hello Bike" and "All-round Bicycle" network unfair competition dispute. According to the judgment, the court determined that the operation of the " All-round Bicycle " APP constitutes unfair competition and ordered the two defendants to pay the damages of more than RMB 61.4 million for the plaintiff.

The court held that once the " All-round Bicycle " APP was operated for a long time, it would make the basic function of the market in resource allocation unable to be played properly. And the brand sharing bike enterprises such as Hello Bicycle will eventually be forced to withdraw from this market because they can't make ends meet and can't continue to provide consumers with bike sharing services. What's more, in view of the current state of the market, new investment capital is unlikely to venture into this high-risk competition. Eventually, the whole bike-sharing industry may go toward the extinction, consumer rights will be harmed. The limited efficiency improvement generated by the operation of the " All-round Bicycle " APP is at the high cost of sacrificing the legitimate industrial interests and the interests of the overall consumers of all bike-sharing enterprises such as Hello Bike, and damaging the fairness of competition. In summary, it is determined that the operation of the " All-round Bicycle " App infringes the competition rights and interests of Hello and others, and constitutes unfair competition of " commit any other acts which hinder or disrupt cyber products or services provided legitimately by other business operators. " as specified in Item 4, Paragraph 2 of Article 12 of the Anti-unfair Competition Law.

Source: Shanghai Xuhui District People's Court

“美盛”商标、字号及商品包装装潢遭恶意攀附，法院判赔6817.5万元

山东省高级人民法院就美盛农资（北京）有限公司（下称“美盛北京公司”）与青岛美盛云天化工进出口有限公司（原审被告）等侵害商标权及不正当竞争纠纷案作出二审判决，驳回上

诉，维持原判。一审法院认定被告侵害美盛北京公司注册商标专用权，并构成不正当竞争。责令被告赔偿经济损失6817.5万元。

法院认为，美盛北京公司系第4228482号、第4226255号商标的专用权人，被诉侵权产品复合肥料与上述美盛北京公司的注册商标核定使用的商品属相同商品，其产品上的标识与第4226255号注册商标在构成要素、设计风格等方面接近，易使相关公众对商品来源产生混淆误认，且存在被告曾多次申请注册被诉侵权产品使用标识，但被商标局驳回的事实，而“美盛”商标在肥料商品上又具有较高知名度，因此被告在其产品上使用侵权标识的行为侵害了美盛公司注册商标的商标专用权。其次，经过美盛北京公司及其关联公司长期经营，“美盛”牌掺混肥料产品在相关行业形成了极高的知名度，为相关公众所熟知，“美盛”字号因有较高的使用频率而具有较强的识别力。故，美盛北京公司的“美盛”字号依法应受到保护，被告擅自使用美盛北京公司有一定影响的企业名称，造成相关公众的混淆误认，其行为构成不正当竞争。最后，被告的商品包装、装潢与美盛北京公司的商品包装、装潢在整体视觉效果上构成近似，易造成相关公众的混淆和误认，其行为构成不正当竞争。

来源：山东省高级人民法院

Trademark, Brand name, Decoration of "Mosaic" are Maliciously Attached

The Shandong High People's Court has rendered its judgment of second instance on a trademark right and unfair competition dispute case, rejected the appeal. The Court of First Instance ruled that the defendant had infringed upon Mosaic Beijing Co's exclusive rights to use its registered trademark, which constituted unfair competition. The defendant was ordered to pay the damages of RMB 68.175 million.

The court held that the alleged infringing product is identical to the product on which the plaintiff's registered trademark has been approved to be used, and the logo on the alleged infringing product is similar to that of the plaintiff's registered trademark in terms of constituent elements, design style and other aspects, which would easily lead to confusion and misidentification of the product source by the relevant public. In addition, the defendant had applied for registration of the logo of the alleged infringing products for many times but these applications were rejected by the Trademark Office. The "Mosaic" trademark is well-known in fertilizer products. Therefore, the defendant's use of the infringing logo on its products infringes Mosaic Co's exclusive right to use its registered trademark. Secondly, after the long-term operation of Mosaic Beijing and its affiliated companies, its products have become highly well-known in relevant industries and are well known by the relevant public. The "Mosaic" brand name has strong recognition because of its high frequency of use. Therefore, the "Mosaic" brand name of Mosaic Beijing shall be protected according to law. The defendant used the enterprise name of Mosaic Beijing without authorization, causing confusion and misunderstanding among the relevant public, and its act constituted unfair competition. Finally, the defendant's decoration of products are similar to those of Mosaic Beijing in terms of overall visual effect, which is easy to cause confusion and misunderstanding among the relevant public, and its act constitutes unfair competition.

Source: Shandong High People's Court

广东高院：仅凭持有外观设计专利证书不足以享有稳定的排他性权利

广东高级人民法院就荟上承（惠州）木盖新材料有限公司与熊兴恶意提起知识产权诉讼损害责任纠纷案作出二审判决，驳回上诉，维持原判。一审法院认定熊兴违反诚实信用原则提起3698号案件专利侵权之诉的行为，构成恶意提起知识产权诉讼。

法院认为，并非所有的智力成果均给予法律上的独占性保护，智力成果享有排他性的权利，应当具备一定的法定条件。外观设计专利权形成的条件之一是外观设计具备新颖性，一旦被证明不具有新颖性，则该外观设计属于公有领域的范围，任何人都可以正当使用该外观设计。外观设计专利授权经由形式审查，其新颖性有可能在授权之后重新受到评价，先前所授专利权有可能最终被认定为自始无效。因此，仅凭持有外观设计专利证书，不足以自以为享有稳定的排他性权利。外观设计专利持有人在明知该外观设计已经在先公开的情况下，特别是在明知前述专利法律制度的情况下，仍然发起对他人正当使用该外观设计行为的侵权诉讼，其行为本质上是对外观设计专利权的权利滥用。

来源：广东高级人民法院

Guangdong High People's Court Ruled Holding a Design Patent Certificate Alone is not Enough to Enjoy Stable Exclusive Rights

The Guangdong High People's Court made a second-instance judgment in respect of a damage liability dispute over malicious filing of intellectual property litigation, upholding the original judgment. The court of first instance held that the defendant's filing of the patent infringement lawsuit in Case No. 3698 in violation of the principle of good faith constituted the malicious filing of intellectual property litigation.

The court holds that not all intellectual achievements are given exclusive legal protection. For the intellectual achievements to enjoy exclusive rights, certain statutory conditions shall be met. One of the formative conditions of a design patent right is that the design is novel. Once it is proved that it is not novel, the design shall belong to the scope of public domain, and anyone may legitimately use the design. The authorization of a design patent may go through formal examination, its novelty may be subject to re-evaluation after authorization, and the patent right previously granted may finally be determined as invalid ab initio. Therefore, merely holding the certificate of a patent for design is insufficient to consider that one is entitled to stable and exclusive rights. Where the holder of a design patent clearly knows that the design has been previously published, especially where the holder of the patent for design initiates an infringement proceeding against the fair use of the design by others, such act is essentially an abuse of the patent right for design.

Source: Guangdong High People's Court

最高法：租借种子经营许可证从事侵权行为被判惩罚性赔偿

最高人民法院就四川雅玉科技股份有限公司（下称“雅玉公司”）与云南金禾种业有限公司

（下称“金禾公司”）、云南瑞禾种业有限公司（下称“瑞禾公司”）侵害植物新品种权纠纷案作出二审判决，责令原审二被告销毁相关繁殖材料，并赔偿雅玉公司经济损失二十余万元。

最高院认为，植物新品种权所有人对其授权品种享有排他的独占权；除另有规定外，任何单位或者个人未经植物新品种权所有人许可，不得为商业目的将授权品种的繁殖材料重复使用于生产另一品种的繁殖材料。本案中，金禾公司明知“YA8201”为雅玉公司享有品种权的植物新品种，仍然未经品种权人许可为商业目的重复使用“YA8201”的繁殖材料生产“金禾玉618”“金禾880”品种的繁殖材料，构成对涉案授权品种“YA8201”的侵害，应当承担侵权责任。侵犯植物新品种权，情节严重的，可以适用惩罚性赔偿。伪造、变造、买卖、租借种子生产经营许可证的，可以认定为侵权行为情节严重。租借种子生产经营许可证使得不具备与种子生产经营相适应的生产条件的企业进入种子市场，为种子法所明确禁止。本案中，金禾公司属于故意侵权，且其租借种子生产经营许可证的行为构成侵权行为情节严重的情形，故依法可以适用惩罚性赔偿。瑞禾公司作为帮助侵权人，对上述赔偿负连带责任。

来源：最高人民法院

SPC Ruled on Punitive Damage for Infringement Committed by Leasing or Leasing Seed Operation License

The Supreme People's Court (SPC) made the second-instance judgment on the dispute over the rights of new plant varieties, ordering the two defendants in the original trial to destroy the relevant propagating materials and pay the damages of over RMB200,000.

The court ruled that the owners of new plant varieties have exclusive rights to their authorized varieties; unless otherwise provided, any entity or individual, without the permission of the owners of new plant varieties, is not allowed to repeatedly use the propagation materials of the authorized varieties for the production of the propagation materials of another varieties for commercial purposes. The defendant repeatedly propagated materials for commercial purposes despite knowing that "YA8201" was a new plant variety to which the plaintiff had the variety right, which infringed the case-related authorized variety and shall take the liability for infringement. Punitive damages may be applied if the circumstances are serious for infringement upon the title of new plant variety. The act of forging, altering, trading in, leasing or renting the seed production and trading license may be determined as serious. The Seed Law prohibits enterprises without suitable production conditions for seed production and operation to enter the seed market through leasing or renting the seed production and operation license. The defendant committed intentional infringement, and its act of leasing the seed production and operation license constitutes serious infringement, therefore, punitive damage may be applied according to the law. The other defendant, as the assisting infringer, shall bear the joint and several liability for the aforesaid damages.

Source: SPC

四川高院：擅用TIGI弹力素商品特有包装、装潢构成不正当竞争

近日，四川省高级人民法院就联合利华服务（合肥）（原审原告）有限公司与多家化妆品公司

(原审被告)不正当竞争纠纷案作出二审判决,驳回上诉,维持原判。一审法院责令多个被告停止制造、销售侵权产品,并赔偿原告经济损失300万元。

法院认为,采用涉案包装装潢的产品品牌有7家,但销售量均不大,知名度不高,结合涉案弹力素产品的销量、宣传等因素,在被告没有其他证据的情况下,少量其他品牌使用该包装装潢,并不必然导致涉案弹力素包装装潢成为弹力素产品的通用包装装潢。涉案TIGI弹力素产品包装装潢属于《反不正当竞争法》第六条第(一)项规定的具有一定影响的商品包装装潢。在被诉侵权产品包装装潢与涉案产品包装装潢基本完全相同的情况下,结合被诉侵权产品瓶身上使用的黑色字体,瓶身所附的黄色长方形标签等产品外包装细节设计布局也同涉案弹力素一致,仅凭附加被告商标和瓶身不同的英文文字,不足以阻却混淆误认的发生,被诉侵权行为构成不正当竞争。

来源:四川省高级人民法院

Sichuan High People's Court Ruled Unauthorized Use of the Unique Decoration of TIGI Elastin Products Constitutes Unfair Competition

Recently, the Sichuan High People's Court has made its judgment of second instance in the unfair competition dispute between Unilever Service (Hefei) Co.,Ltd. and several cosmetics companies, rejecting the appeal. The court of first instance ordered the defendants to stop producing and selling the infringing products and pay the damages of RMB 3 million.

The court held that there were seven product brands using the decoration, but the sales volume was not large and the popularity was not high. In combination with the sales volume, publicity and other factors of the Elastin product in the case, in the absence of other evidence by the defendant, a small number of other brands using the decoration did not necessarily lead to the Elastin decoration in the case becoming the general decoration of the Elastin product. The decoration of TIGI Elastin products involved in the case belongs to the decoration of products with influence as stipulated in Item 1 of Article 6 of the Anti-unfair Competition Law. Under the condition that the decoration of the accused infringing product is basically the same as the decoration of the product involved, combined with the black font used on the bottle body of the accused infringing product, the design layout of the outer decoration details of the product such as the yellow rectangular label attached to the bottle body is also consistent with the elastic element involved in the case. Only by attaching the defendant's trademark and the different English words on the bottle body, it is not enough to prevent the occurrence of confusion, and the accused infringement acts constitute unfair competition.

Source: Sichuan High People's Court

欧宝和供应商CATL在与MU Ionic的电子电池纠纷中大获全胜

杜塞尔多夫地区法院裁定,汽车制造商欧宝(Opel)和中国锂离子电池制造商CATL胜诉,法官裁定这两家公司没有侵犯涵盖汽车电子电池的MU Ionic专利。该诉讼被视为未来与其他汽车制造商之间潜在纠纷的一个测试案例。法官认为,MU Ionic的电池技术的专利EP 19 39 971(下称“EP 971”)保护锂离子二次电池和其中使用的非水电解质溶液,CATL电池中的技术

使用了该专利不涵盖的其他物质。专家们认为，考虑到该技术的商业潜力，MU Ionic可能会对这一裁决提出上诉。与此同时，CATL和欧宝已分别向联邦专利法院提交了针对EP 971的无效诉讼。

来源: [juve-patent](#)

Opel and Supplier CATL Succeed in E-battery Dispute with MU Ionic

Dusseldorf Regional Court has found in favour of carmaker Opel and Chinese lithium-ion battery manufacturer CATL, with the judges ruling that the two companies do not infringe an MU Ionic patent covering e-batteries for cars. The lawsuit is being viewed as a test case for potential future disputes with other car makers, which use CATL batteries in their electric cars. EP 971 protects a lithium secondary cell and nonaqueous electrolytic solution for use therein. However, the judges concluded that the technology in CATL's batteries uses additional substances which the patent does not cover. MU Ionic may appeal the decision, which experts consider likely given the technology's commercial potential. In parallel, CATL and Opel have each filed a nullity action against EP 971 at the Federal Patent Court.

Source: [juve-patent](#)

伦敦上诉法院判决联想侵犯InterDigital标准必要专利

近日，英国法院再次在InterDigital与联想的专利诉讼中做出了有利于InterDigital的裁决。伦敦上诉法院推翻了高等法院关于无效性的裁决，认定InterDigital的专利是有效的，并维持了高等法院关于该专利是必要且受到侵犯的裁决。这是InterDigital自2023年初以来在这场争端中的第三次法庭胜利。1月，上诉法院维持了下级法院的裁决，即InterDigital蜂窝专利是有效、必要的和受到侵犯的，在第三次技术审判中，高等法院裁定联想侵犯了另一项InterDigital蜂窝专利，该专利也被认为是有效和必要的。

来源: [globenewswire](#)

InterDigital Wins Third Decision in 2023 from UK Court in Lenovo Dispute

A UK court has once again ruled in its favor in the company's patent litigation with Lenovo. The Court of Appeal in London overturned the High Court's ruling on invalidity, finding that InterDigital's patent is valid and upheld the High Court's ruling that the patent is essential and infringed. This is the third court victory for InterDigital in this dispute since the beginning of 2023. In January, the Court of Appeal upheld a lower court verdict that an InterDigital cellular patent is valid, essential and infringed and, in the third technical trial, the High Court ruled that Lenovo is infringing another InterDigital cellular patent, which was also deemed to be valid and essential.

Source: [globenewswire](#)

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 | 首尔

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Seoul

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261