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立方竞争法周报 Weekly Competition Law News

广东省住建厅和市监局发文规范房地产中介各类垄断行为

2023年8月30日，广东省住房和城乡建设厅（“广东省住建厅”）和广东省市场监督管理局（“广东省市监局”）联合发布《广东省市场监督管理局关于规范房地产经纪服务的实施意见》，要求房地产经纪机构不得收取任何未予标明的费用，不得利用虚假或者使人误解的标价内容和标价方式进行价格欺诈。具有市场支配地位的房地产经纪机构，不得滥用市场支配地位以不公平高价收取经纪服务费用。房地产互联网平台不得强制要求加入平台的房地产经纪机构实行统一的经纪服务收费标准，不得干预房地产经纪机构自主决定收费标准。房地产经纪机构、房地产互联网平台、相关行业组织涉嫌实施垄断行为的，市场监管部门依法开展反垄断调查。（[查看更多](#)）

Guangdong HURD and Guangdong AMR Issue Implementation Opinions to Regulate Various Monopolistic Behaviours in Real Estate Brokerage

On August 30, 2023, the Housing and Urban-Rural Development Department of Guangdong Province (“Guangdong HURD”) and the Guangdong Provincial Administration for Market Regulation (“AMR”) jointly issued the *Implementation Opinions on Regulating Real Estate Brokerage Services in Guangdong Province*. This document mandates that real estate brokerage agencies may not charge any undisclosed fees, nor engage in price fraud using false or misleading pricing information and pricing methods. Real estate brokerage agencies with dominant market positions are prohibited from unfairly charging unfairly high brokerage service fees. Real estate online platforms are not allowed to enforce uniform brokerage service fee standards on real estate brokerage agencies that join the platform and cannot interfere with the independent determination of fee standards by real estate brokerage agencies. If real estate brokerage agencies, real estate online platforms, or relevant industry organizations are suspected of engaging in monopolistic behaviours, market regulatory authorities will conduct anti-monopoly investigations following the law. ([More](#))

北京市市监局印发《关于支持平台企业持续健康发展的若干措施》

近日，北京市市场监督管理局（“北京市市监局”）印发《关于支持平台企业持续健康发展的若干措施》，助力营造宽松、有序、公平的发展环境，提升常态化监管水平，引领平台经济高质量发展。北京市市监局在文件中强调积极维护稳定健康的市场秩序。相关措施包括：优化市场竞争生态，强化公平竞争审查制度落实，鼓励发挥公平竞争审查第三方评估作用，加强滥用行政权力排除、限制竞争执法，破除地方保护和市场分割，营造平等发展的制度环境；强化经营者集中申报指导，建立健全经营者集中申报预警机制，及时提醒企业依法进行经营者集中申报，降低企业经营法律风险，制定经营者集中申报系列指南，便利和规范企业申报。（[查看更多](#)）

Beijing AMR Issues *Several Measures to Support Sustainable and Healthy Development of Platform Enterprises*

Recently, the Beijing AMR issued a notification entitled *Several Measures to Support the Sustainable Development of Platform Enterprises*. These measures aim to create a liberal, orderly, and fair development environment, enhance the level of routine supervision, and lead the high-quality development of the platform economy. The Beijing AMR emphasized the active maintenance of a stable and healthy market order in the notification. Some of the related measures include: optimizing the market competition ecosystem; strengthening the implementation of the fair competition review mechanism; making use of third-party assessments in fair competition reviews; strengthening the enforcement of anti-monopoly laws to prevent the abuse of administrative power to eliminate or restrict competition; eliminating local protectionism and market segmentation to create an environment of equal development; enhancing guidance for declarations of concentration of undertakings; establishing and improving an early warning mechanism for concentration of undertakings declarations to remind companies to make declarations in accordance with the law; reducing legal risks for businesses by providing a series of guidelines for prior notification of declarations of concentration of undertakings; and standardizing business declarations. ([More](#))

海南省市监局发布《海南省公用企业反垄断合规指引》

近日，海南省市场监督管理局（“海南省市监局”）关于发布《海南省公用企业反垄断合规指引》的公告。公告指出，为落实省委、省政府关于强化公平竞争政策实施的决策部署，引导海南省公用企业加强反垄断合规管理，防范反垄断法律风险，服务企业持续健康发展，维护消费者利益和社会公共利益，持续优化公平统一高效市场环境，海南省市监局结合实际，制定了《海南省公用企业反垄断合规指引》并附相关典型案例，现予以发布，供公用企业和其他各类企业进行反垄断合规管理时参考。（[查看更多](#)）

Hainan AMR Issues Hainan Province Public Utility Enterprise Antitrust Compliance Guidelines

Recently, the Hainan AMR issues a notification regarding the release of the *Hainan Province Public Utility Enterprise Antitrust Compliance Guidelines*. The notification states that in order to implement the decisions and arrangements of the Provincial Party Committee and Provincial Government to strengthen the implementation of fair competition policies, and to guide Hainan Province's public utility enterprises to enhance their antitrust compliance management, prevent antitrust legal risks, serve the sustainable development of enterprises, safeguard the interests of consumers and public interests, and continuously optimize a fair, unified, and efficient market environment, the Hainan AMR has developed the *Hainan Province Public Utility Enterprise Antitrust Compliance Guidelines* along with relevant typical cases, which are now being released for reference by public utility enterprises and other types of businesses when managing antitrust compliance. ([More](#))

英国竞争上诉法庭支持CMA禁止Cérélia收购Jus-Rol的决定

2023年9月1日，英国竞争与市场管理局（CMA）发布公告，称英国竞争上诉法庭（CAT）驳回了Cérélia的全部四项上诉理由，支持CMA禁止Cérélia收购Jus-Rol的决定。2023年1月，CMA发

布了关于Cérélia收购Jus-Rol的第二阶段决定，认定Cérélia与Jus-Rol的拟议交易将大幅减少竞争，使英国零售商面临产品价格上涨和质量下降的风险，并最终将风险转嫁给消费者。Cérélia不同意CMA的决定并向CAT上诉。经过7个月的听证，CAT驳回了Cérélia的全部四项上诉理由，认定CMA的评估过程并不存在事实与法律上的错误，设定的补救措施合理适当，程序公平合理。（[查看更多](#)）

UK CAT Supports CMA's Decision to Prohibit Cérélia from Acquiring Jus-Rol

On September 1, 2023, the Competition and Markets Authority (CMA) in the United Kingdom issues an announcement stating that the Competition Appeal Tribunal (CAT) has rejected all four grounds of appeal from Cérélia and upheld CMA's decision to prohibit Cérélia's acquisition of Jus-Rol. In January 2023, the CMA issued a second-phase decision regarding Cérélia's acquisition of Jus-Rol, determining that the proposed transaction between Cérélia and Jus-Rol would significantly reduce competition, posing risks of product price increases and quality deterioration for UK retailers, ultimately passing these risks onto consumers. Cérélia disagreed with the CMA's decision and appealed to the CAT. After seven months of hearings, the CAT rejected all four grounds of Cérélia's appeal, concluding that the CMA's assessment process had not made any error of fact or law; the scope of the remedy was well reasoned and proportionate and the process followed by the CMA was rational and fair. ([More](#))

美地方法院驳回对亚马逊和五家大型出版商的反垄断起诉

2023年8月30日，据媒体报道，美国纽约南区地方法院（“地方法院”）驳回了两起针对亚马逊和五家大型出版商合谋操纵电子书、纸质书价格的反垄断诉讼。这两起集体诉讼由一家独立书店牵头，指控亚马逊与其他出版商达成一系列协议，确保亚马逊获得最低价格和最优惠条件。原告声称被告出版商生产了在美国销售的电子书和纸质书的80%，亚马逊则占据了电子书零售销量的90%和纸质书零售销量的50%。地方法院认为原告并未提供合谋的相关证据，未能解释被告出版商为什么要参与密谋，以巩固亚马逊在电子书零售市场中的主导地位。因此，地方法院在不影响实体权利的情况下驳回起诉（dismissed without prejudice），这也意味着原告可以就该案重新起诉。（[查看更多](#)）

US District Court Dismisses Antitrust Lawsuit against Amazon and Five Major Publishing Companies

On August 30, 2023, according to media reports, the United States Southern District Court of New York (“the Court”) dismisses two antitrust lawsuits against Amazon and five major publishers alleging collusion to manipulate the prices of e-books and paper books. These two class-action lawsuits were led by an independent bookstore and accused Amazon and other publishers of reaching a series of agreements to ensure Amazon received the lowest prices and most favourable terms. The plaintiffs claimed that the defendant publishers produced 80% of e-books and paper books sold in the United States, while Amazon held 90% of the e-book retail sales and 50% of paper book retail sales. The Court found that the plaintiffs did not provide relevant evidence of collusion and failed to explain why the defendant publishers would engage in a conspiracy to solidify Amazon's dominant position in the e-book retail market. Therefore, the Court dismissed the case without prejudice, meaning the plaintiffs can refile the lawsuit if they choose to do so without affecting their legal rights. ([More](#))

沥青行业Allied公司承认串通投标行为

2023年8月29日，美国司法部（DOJ）发布公告，称位于克拉克斯顿的Allied公司（F. Allied Construction Company Inc.）及其总裁安德鲁·福斯特（Andrew Foster）承认曾与两家沥青铺设公司及其员工串通操纵投标。Allied公司和福斯特分别于2013年6月至2019年6月和2017年7月至2021年5月期间参与了两次串通投标，协调彼此的投标价格，故意提交非竞争性的投标。Allied公司和福斯特各自对违违反谢尔曼法案第一条的两项指控认罪。目前，反垄断部芝加哥办事处、交通部检察官办公室（DOT-OIG）和美国邮政署检察官办公室（USPS-OIG）正在对沥青行业中的串通投标和其他反竞争行为进行反垄断调查，Allied公司是第一家认罪的公司，Foster是第二位认罪的个人。（[查看更多](#)）

Allied Asphalt Acknowledges Collusive Bidding Behaviour

On August 29, 2023, the U.S. Department of Justice (DOJ) issues an announcement stating that Allied Asphalt (Allied Construction Company Inc.), located in Clarkson, and its president, Andrew Foster, admit to conspiring with two asphalt paving companies and their employees to manipulate bids. Allied Asphalt and Foster participated in bid-rigging conspiracies during two separate periods: from June 2013 to June 2019 and from July 2017 to May 2021. During these times, they coordinated their bid prices and intentionally submitted non-competitive bids. Both Allied Asphalt and Foster pleaded guilty to two charges of violating the Sherman Act Section 1. Currently, the Antitrust Division's Chicago Office, the Department of Transportation Inspector General's Office (DOT-OIG), and the United States Postal Service Inspector General's Office (USPS-OIG) are conducting antitrust investigations into bid-rigging and other anti-competitive practices in the asphalt industry. Allied Asphalt is the first company to admit guilt, and Foster is the second individual to do so. ([More](#))

美第七巡回法院推翻麦当劳反垄断案裁决

2023年8月27日，据媒体报道，美国第七巡回上诉法院已推翻有关麦当劳公司（McDonald's Corporation）互不挖角协议（anti-poaching clauses）的反垄断裁决并发回伊利诺伊州北区联邦地区法院（“地区法院”）重审。此前，地区法院因麦当劳不具有市场力量判决驳回起诉。第七巡回上诉法院认为地区法院作出的裁决有误，互不挖角协议增加产量带来的消费者利益并不是垄断定价损害工人的合理理由，针对互不挖角协议应当进行更加仔细的经济分析。（[查看更多](#)）

U.S. Seventh Circuit Court Overturns McDonald's Antitrust Case Ruling

On August 27, 2023, according to media, the United States Seventh Circuit Court of Appeals overturns the antitrust decision related to the anti-poaching clauses of the McDonald's (McDonald's Corporation) and remands it for reconsideration by the Northern District of Illinois federal district court. Previously, the district court dismissed the lawsuit, ruling that McDonald's did not possess market power. The Seventh Circuit Court of Appeals found that the district court's decision was erroneous, stating that the consumer benefits resulting from increased production due to anti-poaching clauses were not a reasonable justification for monopolistic pricing that harms workers. Therefore, a more detailed economic analysis should be conducted regarding the anti-poaching clauses. ([More](#))

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

国家金融监管总局等五部门发布《关于规范货币经纪公司数据服务有关事项的通知》

2023年8月30日，国家金融监督管理总局、中国人民银行、中国证券监督管理委员会、国家互联网信息办公室、国家外汇管理局发布《关于规范货币经纪公司数据服务有关事项的通知》（以下简称“《通知》”）。在规范提供数据标准方面，《通知》指出，经交易机构授权同意后，货币经纪公司可向市场提供交易机构的报价数据和成交意向数据，数据标准应秉承“最小必须、保护客户隐私、促进信息共享”的原则，涉及能够识别交易双方主体的信息不得提供。
([查看更多](#))

China's National Financial Regulatory Administration and Other Four Departments Issue a Notice on Matters Related to the Regulation of Data Services of Currency Brokerage Companies

On 30 August 2023, China's National Financial Regulatory Administration, the People's Bank of China, China Securities Regulatory Commission, Cyberspace Administration of China, and State Administration of Foreign Exchange issued a *Notice on Matters Related to the Regulation of Data Services of Currency Brokerage Companies* (the "Notice"). In terms of regulating the standards governing provision of data, the Notice notes that, with the permission and consent of the trading institution, currency brokerage companies may provide the market with the trading institution's quote data and intended transaction trade data, and that the provision of data shall be based on the principles of "minimum necessity, protection of customer privacy and facilitation of information sharing" and shall not provide information that could identify the parties of transaction. ([more](#))

治安管理处罚法拟修改：违规出售或提供个人信息可被拘留

根据中国人大网2023年8月28日报道，《治安管理处罚法》修订草案提请十四届全国人大常委会第五次会议审议。修订草案将违法出售或者提供公民个人信息行为增列为侵犯人身、财产权利的行为并给予处罚。规定：违反国家有关规定，向他人出售或者提供个人信息的，处十日以上十五日以下拘留；情节较轻的，处五日以上十日以下拘留。窃取或者以其他方法非法获取个人信息的，依照前款的规定处罚。 ([查看更多](#))

Proposed Amendments to Law of the PRC on Public Security Administration and Penalties: Illegally Selling or Providing Personal Information Subject to Penalty of Detention

On 28 August 2023, according to National People's Congress website, the draft revision of the *Law of the PRC on Public Security Administration and Penalties* was submitted to the Standing Committee of the Fourteenth National People's Congress for consideration at the fifth meeting. The revised draft adds the illegal sale or provision of citizens' personal information into the category of violations of per-

sonal and property rights and imposes penalties. It is provided that: Whoever sells or provides personal information to others in violation of relevant applicable laws and regulations shall be detained for not less than 10 days but not more than 15 days; if the circumstances are relatively minor, they shall be detained for not less than five days but not more than 10 days. Those who steal or illegally obtain personal information by other means shall be punished in accordance with the provisions of the preceding paragraph. ([more](#))

国家标准《信息安全技术 重要数据处理安全要求》征求意见

2023年8月25日，全国信息安全标准化技术委员会秘书处发布国家标准《信息安全技术 重要数据处理安全要求》（征求意见稿）（以下简称“《征求意见稿》”），意见征求截至2023年10月24日。《征求意见稿》规定了数据处理者处理重要数据的安全要求，适用于数据处理者对重要数据开展处理活动，也可供监管部门、评估机构或其他有关组织对重要数据处理活动实施安全监管、评估等活动时参考。

《征求意见稿》明确，重要数据是指特定领域、特定群体、特定区域或达到一定精度和规模的数据，一旦被泄露或篡改、损毁，可能直接危害国家安全、经济运行、社会稳定、公共健康和安全。《征求意见稿》从设施安全、数据处理活动的安全、运行与管理安全等方面作出了详细规定。（[查看更多](#)）

Draft National Standard Information Security Technology - Important Data Processing Security Requirements Open for Public Comment

On 25 August 2023, the National Information Security Standardization Technical Committee issued national standard *Information Security Technology - Important Data Processing Security Requirements (Draft for Comments)* (the “Draft”), which is open for public comments until 24 October 2023. The Draft establishes the security requirements for the processing of important data by data processors, which apply to data processors carrying out processing activities on important data and may also be used as a reference by supervisory authorities, assessment agencies or other relevant organisations when carrying out security supervision, assessment and other related activities.

The *Draft* makes it clear that important data refers to data in specific fields, specific groups, specific regions, or of a certain precision and scale, which, once leaked or tampered with or destroyed, may directly jeopardise national security, economic operation, social stability, public health and safety. The *Draft* contains detailed provisions on the security of facilities, security of data-processing activities, and security of operation and management. ([more](#))

国家标准《信息安全技术 大型互联网企业内设个人信息保护监督机构要求》征求意见

2023年8月25日，全国信息安全标准化技术委员会秘书处发布国家标准《信息安全技术 大型互联网企业内设个人信息保护监督机构要求》（征求意见稿）（以下简称“《征求意见稿》”），意见征求截至2023年10月24日。《征求意见稿》规定了大型互联网企业建立和运行

个人信息保护监督机构的要求，包括个人信息保护监督机构的设置、职责、工作规则，以及个人信息保护监督机构的成员等要求。《征求意见稿》适用于大型互联网企业建立和运行个人信息保护监督机构，也可为监管、检查、评估等活动提供参考。

《征求意见稿》明确，大型互联网企业指提供重要互联网平台服务、用户数量巨大、业务类型复杂的互联网企业，同时具备较大用户规模、较广业务种类、较多业务范围、较高经济体量和较强影响力的大型互联网平台。个人信息保护监督机构指大型互联网企业建立的主要由外部成员组成，对自身个人信息保护合法合规情况、履行个人信息保护社会责任情况等进行独立监督，并对提升个人信息保护水平提出建议和意见的机构。（[查看更多](#)）

Draft National Standard Information Security Technology - Requirements for Personal Information Protection Supervisory Bodies within Large Internet Enterprises Open for Public Comment

On 25 August 2023, the National Information Security Standardization Technical Committee issued national standard *Information Security Technology - Requirements for Personal Information Protection Supervisory Bodies within Large Internet Enterprises (the Draft for Comments)* (the “Draft”), which is open for public comments until 24 October 2023. The *Draft* provides requirements for the establishment and operation of a personal information protection supervisory body by a large Internet company, including requirements for the establishment and duties and operating rules of the personal information protection supervisory body and the members of the data protection supervisory body. The *Draft* applies to the establishment and operation of personal information protection supervisory bodies by large Internet enterprises, and may also serve as a reference for activities such as supervision, inspection and evaluation.

The *Draft* clarifies that large internet enterprises refer to those Internet enterprises that provide important Internet platform services, have a huge number of users, and have complex types of business, as well as large Internet platforms that have a comparatively larger scale of users, wider types of business, more business scopes, higher economic volumes and stronger influence. The Personal Information Protection Supervisory Agency refers to an organisation established by a large Internet company, composed mainly of external members, to independently monitor its own personal information protection lawfulness and compliance, fulfilment of its social responsibility for personal information protection, etc., and to make recommendations and suggestions for improving the level of personal information protection. ([more](#))

深圳市人民检察院发布《深圳市移动互联网应用程序分发业务合规指引》

2023年8月29日，深圳市人民检察院发布《深圳市移动互联网应用程序分发业务合规指引》（以下简称“《指引》”）。《指引》旨在明确移动互联网应用程序分发平台的合规义务和责任，引导业内企业树立合规意识、培育合规文化，搭建全面有效的合规体系，全力封堵监管漏洞，助推行业规范发展。《指引》共7章58条，包括应用程序分发业务常见合规风险及法律后果、分发平台合规管理体系、分发平台资质与备案合规要求和分发业务合规要求等。

《指引》明确，该指引所称的应用程序分发业务，是指基于互联网平台为移动互联网应用程序提供发布、下载、动态加载等服务。从事应用程序分发业务的分发平台，包括但不限于应用商店、快应用中心、互联网小程序平台、浏览器插件平台等类型。《指引》强调，移动互联网应用程序分发平台应当充分履行数据及信息安全保障义务。（[查看更多](#)）

Shenzhen People's Procuratorate Issues *Compliance Guidelines for Mobile Internet Application Distribution Business in Shenzhen*

On 29 August 2023, Shenzhen People's Procuratorate Issued *Compliance Guidelines for Mobile Internet Application Distribution Business in Shenzhen (the "Guidelines")*. The *Guidelines* aims to clarify the compliance obligations and responsibilities of mobile Internet application distribution platforms, guide enterprises in the industry to establish compliance awareness, cultivate a compliance culture, build a comprehensive and effective compliance system, and make every effort to close regulatory loopholes and promote the standard development of the industry. The *Guidelines* consists of 7 chapters and 58 articles, including common compliance risks and legal consequences of application distribution business, compliance management system of distribution platforms, qualification and record-filing compliance requirements of distribution platforms and compliance requirements of distribution business.

The *Guidelines* clarifies that the application distribution business refers to the provision of services such as publishing, downloading and dynamic loading for mobile Internet applications based on Internet platforms. Distribution platforms engaged in the application distribution business include, but are not limited to, application stores, quick application centers, Internet applet platforms, browser plug-in platforms and other types. The *Guidelines* stresses that mobile Internet application distribution platforms should fully fulfil their data and information security obligations. ([more](#))

北京网信办发布《北京市扫码消费服务违规收集使用消费者个人信息案例解析及合规指引》

2023年8月30日，为切实有效指导经营者充分认识消费者个人信息保护的重要性，清楚了解收集使用消费者个人信息的范围边界，进一步强化经营者的合规意识，北京市互联网信息办公室联合国家互联网应急中心北京分中心制定并发布《北京市扫码消费服务违规收集使用消费者个人信息案例解析及合规指引》（以下简称“《指引》”）。

《指引》按照消费者真实扫码消费体验过程中可能遇到问题的先后顺序，整理出六类违规问题，包括：强制或诱导消费者关注公众号、未通过弹窗等显著方式告知消费者隐私政策、频繁提示注册登录，干扰消费者使用、强制消费者提供与功能无关的个人信息、违规向第三方提供消费者个人信息、未向消费者提供删除个人信息的功能选项。（[查看更多](#)）

Beijing Cyberspace Administration Office Issues *Analysis of Cases of Illegal Collection and Use of Consumers' Personal Information by Beijing's Sweeping Consumption Services and Guidelines on Compliance*

On 30 August 2023, in order to effectively guide business operators to fully understand the im

importance of the protection of consumers' personal information, to clearly understand the scope of the collection and use of consumers' personal information, and to further strengthen the operators' awareness of compliance, the Beijing Cyberspace Administration Office, in conjunction with the Beijing Sub-center of CNCERT, has formulated and released the "Analysis of Cases of Illegal Collection and Use of Consumers' Personal Information by Beijing's Sweeping Consumption Services and Guidelines on Compliance" (the "*Guidelines*").

The *Guidelines* list six types of non-compliance in the order of the problems that consumers may encounter during their real-life code-sweeping experience, including: forcing or inducing consumers to follow public accounts, failing to inform consumers of the privacy policy through pop-ups and other conspicuous means, frequently requiring registration and login and interfering with consumers' use, forcing consumers to provide personal information unrelated to the function and unlawfully disclosing consumers' personal information to third parties, and failing to provide consumers with the option to delete personal information. ([more](#))

《贵州省数据要素登记管理办法（试行）》公开征求意见

2023年8月31日，贵州省大数据发展管理局发布了《贵州省数据要素登记管理办法（试行）》（征求意见稿）（以下简称“《征求意见稿》”），意见征求截至2023年9月14日。《征求意见稿》包括总则、登记机构、登记主体、登记内容、登记程序、登记类型、安全管理、附则共八章四十四条。

《征求意见稿》中明确，数据资源、算法模型、算力资源以及综合形成的产品和服务等数据要素在本省行政区域内的初始登记、交易登记、信托登记、变更登记、注销登记、撤销登记和续证登记，适用本办法。《征求意见稿》要求登记机构应当建立重大安全风险监测、风险警示、风险处置等风险控制制度以及突发事件应急处置预案，按要求保管登记相关资料。应当建立保护数据传输、存储和使用安全的基础设施，加强防攻击、防泄漏、防窃取的监测、预警、控制和应急处置能力建设。 ([查看更多](#))

Guizhou Provincial Data Element Registration Administration Measures (for Trial Implementation) Open for Public Comment

On 31 August 2023, the Guizhou Provincial Big Data Development Authority issued *Guizhou Provincial Data Element Registration Administration Measures (for Trial Implementation) (Draft)* (the "*Draft*"), which is open for comments until 14 September 2023. The *Draft* consists of 8 chapters and 44 articles, including the General Provisions, the Registration Authority, the Subject of Registration, the Content of Registration, the Registration Procedures, the Types of Registration, the Security Management, and the Bylaws.

The *Draft* specifies that it shall apply to the initial registration, transaction registration, trust registration, change registration, cancellation registration, revocation registration and renewal registration of data elements, such as data resources, algorithmic models, arithmetic resources, and comprehensively formed products and services, within the administrative area of the province. The *Draft* requires that the registration authority should establish a risk control system for monitoring of major security risks, risk warning, risk disposal and other risk control systems, as well as an emergency response plan for

emergencies, and keep registration-related information as required. It should establish an infrastructure to protect the security of data transmission, storage and use, and strengthen the building of monitoring, early warning, control and emergency disposal capacity for anti-attack, anti-leakage and anti-stealing. ([more](#))

上海市网信办整治租借手机充电器场景侵害个人信息权益乱象

据2023年8月30日上海市网信办消息，根据网民举报线索和前期技术巡查发现，C站充电、电饱饱等手机充电设备租借服务企业在扫码环节（还未进入租借环节）就强制索要消费者手机号码、微信昵称、头像等个人信息以及存在用户注销账号困难等问题。网信部门对相关企业开展约谈指导、普法教育，要求企业按照《个人信息保护法》相关规定，全面落实个人信息处理的“最小必要”原则，个人信息处理规则必须公开、透明，采取有效措施确保个人信息处理活动合法合规。上海市网信办已指导属地市场占有率较高的一家企业率先完成自查整改。此外，上海市网信办已对属地一家违法违规情节严重、提供充电设备租借服务的企业予以行政处罚。针对一批市场使用率高、覆盖面广的非上海属地企业，上海市网信办已将相关违法违规线索上报国家网信办。

([查看更多](#))

Shanghai Cyberspace Administration Rectifies the Infringement of Personal Information Interests in the Scene of Renting Mobile Phone Chargers

According to information from Shanghai Cyberspace Administration on 31 August 2023, based on netizen reports and preliminary technical inspections, it was found that mobile phone charging equipment rental service enterprises, such as C-station Charging, Dianbaobao, etc., in the code-sweeping process (before the initiation of the actual renting process), such rental service enterprises mandatorily to ask for personal information such as consumers' mobile phone numbers, WeChat nicknames, avatars and other personal information, as well as the existence of difficulties in cancelling accounts and other problems. The Cyberspace authorities have conducted interviews to provide guidance and legal education for relevant enterprises, requiring them to comprehensively implement the principle of “minimum necessity” in processing personal information in accordance with the relevant provisions of the *Personal Information Protection Law*, and to make the rules for handling personal information open and transparent, and to take effective measures to ensure that their personal information processing activities are lawful. Shanghai Cyberspace Administration has instructed an enterprise with a high market share in its territory to take the lead in completing self-inspection and rectification. In addition, Shanghai Cyberspace Administration has imposed administrative penalties on a local enterprise providing charging equipment rental services for serious violations of the law. For a number of non-Shanghai based enterprises with a high market share and wide coverage, Shanghai Cyberspace Administration has reported the relevant illegal clues to the Cyberspace Administration of China. ([more](#))

英国信息专员办公室发布电子邮件安全指南

近日，英国信息专员办公室（Information Commissioner's Office，简称ICO）发布了关于确保包含敏感个人信息的电子邮件安全性的指南，旨在维护电子邮件所涉及的个人信息的安全

性。依据该指南，能够直接或间接识别个人身份的电子邮件地址属于个人数据，即使邮件内容不涉及任何敏感内容，显示该电子邮件的收件者信息也可能导致收件者的敏感信息或机密信息泄露。企业在批量发送电子邮件时，应当采取适当的组织和技术措施，确保个人信息安全。

([查看更多](#))

ICO Issues Guidance on Sending Emails Containing Personal Data

Recently, the Information Commissioner's Office (ICO) published guidance on sending emails containing sensitive personal information, intended to protect the security of personal information involved in e-mail. According to the guidelines, email addresses that could be used to directly or indirectly identify an individual belong to personal data. Even if an email does not contain sensitive personal data, revealing the recipients of an email could disclose sensitive information about them. Organizations should implement technical and organizational measures to mitigate the risks involved when sending personal information via bulk e-mails. ([more](#))

知识产权 Intellectual Property

国知局发布国家标准《专利评估指引》

9月1日，据国家知识产权局消息，国家标准《专利评估指引》（国家标准编号GB/T42748-2023，以下简称《指引》），已于近日获得国家市场监督管理总局（国家标准化管理委员会）批准发布，将于2023年9月1日起实施。

《指引》在前期开展试点和广泛征求意见的基础上，构建了一套可扩展、可操作的专利价值分析评估指标体系，包括法律价值、技术价值、经济价值一级指标3项，二级指标14项，三级指标27项及若干项扩展指标，科学指导许可转让、金融、财税、侵权救济、分级管理等不同场景下的指标选取和权重调整，供企业、高校、科研组织、金融机构、评估机构等主体根据实际需求和具体场景选用，在此基础上通过谈判协商或综合市场信息分析，促成专利的市场定价和价值实现。

来源：国家知识产权局

China National Intellectual Property Administration Issues the National Standard *Guidelines for Patent Evaluation*

On 1 September, according to CNIPA, the national standard *Patent Evaluation Guidelines* (National Standard No. GB/T42748-2023, the *Guidelines*) has recently been approved by the Standardization Administration Committee of China (SAC) and will come into effect on 1 September, 2023.

The *Guidelines* constructed a scalable and operational patent value analysis and evaluation index system, based on the pilot project conducted and extensive consultation in the early stage. The system in-

cluding 3 first-level indicators , 14 second-level indicators, 27 third-level indicators and a number of extension indicators of legal value, technical value and economic value, which shall scientifically guide the selection and weighting of indicators in different scenarios, such as licence transfer, finance, taxation, infringement remedies, hierarchical management, etc. The selection and adjustment are available to enterprises, universities, scientific research organisations, financial institutions, assessment agencies and other subjects according to their specific needs and scenarios, on the basis of which market price and value of patents can be facilitated through negotiation or comprehensive market information analysis.

Source: CNIPA

北京互联网法院发布审判工作白皮书

8月31日，北京互联网法院召开新闻发布会，向社会发布《北京互联网法院审判工作情况白皮书》（以下简称《白皮书》），同时聚焦数字版权、数字消费、平台治理、数据算法、网络权益保护等领域，发布了五类十大典型案例。

《白皮书》涵盖基本情况、规则引领、改革创新、能动司法、开放发展五个部分，全面呈现了该院发挥功能型法院职能作用，在总结推广新型审理模式、探索构建新型诉讼规则、健全完善专业化审判机制、总结提炼法律规则、推动网络空间治理法治化、强化国际话语权和规则制定权等方面的生动实践。

来源：京法网事

Beijing Internet Court Issues White Paper on Trial Work

On 31 August, Beijing Internet court held a press conference to release the *White Paper on Trial Work of the Beijing Internet Court* (the *White Paper*), focusing on the protection of digital copyright, digital consumption, platform governance, data algorithms, and network rights and interests and so on, and released ten typical cases in five categories.

The *White Paper* covers five parts: basic situation, rules guideline, innovation and reform, active judiciary, and opening development, and fully presents the court's role as a functional court. The white paper is about a vivid practice in summarizing and promoting new trial models, exploring and constructing new litigation rules, improving professional trial mechanisms, summarizing and refining legal rules, promoting the rule of law in cyberspace governance, and strengthening international discursive power and law-making.

Source: Jingfawangshi

美院教授被控抄袭30年索赔6000万

近日，北京知识产权法院就西尔万诉叶永青侵害著作权纠纷案做出一审判决，叶永青需立即停止涉案侵权行为，赔礼道歉，消除影响，赔偿金人民币500万元。

法院认为，判断美术作品侵权的实质性相似时，通常应以普通观察者的角度，考虑美术作品的视觉形象特征，进行整体认定和综合判断。在进行比对的权利画作与侵权画作均数量较多的情况下，可将全部涉案画作进行整体考量，同时结合作者的创作经历、创作方法、创作风格等因素予以综合判断是否构成侵权。

对于使用他人有独创性的表达进行创作美术作品的行为，构成对在先作品的复制或是改编，取决于二者之间存在的视觉差异大小以及在后表达是否形成新作品。只有从普通观察者的角度来看，在后表达与在先表达存在足够大的视觉差异的情况下，在后表达才能获得著作权保护，否则有可能构成复制行为。

来源：北京知识产权法院

China Academy of Art Professor was Sued for Plagiarism of 30 Years, and Damages of RMB 5 Million was Awarded

Recently, Beijing IP court issued a first-instance judgment of copyright infringement between Christian Silvain v. Ye Yongqing. Ye, the defendant, shall immediately stop the infringement involved, apologize to Silvain and eliminate the impact, and pay damages of RMB 5 Million.

The Court held that when judging the substantive similarity of infringement of artworks, the overall judgment shall be made from the perspective of ordinary observers, taking the visual image characteristics of artworks into account. When the number of copyrighted paintings and infringing paintings to be compared is large, all these involved in the case can be considered as a whole, and combined with the author's creation experience, creative method and style and other factors, to make a comprehensive judgment.

In determining the act of using other's original expression to create a artwork constitutes an infringement, it is depend on the visual difference between the two works, and whether the after expression is a new work. Only when there is an apparent visual difference between the later expression and the former expression from the perspective of ordinary observers, can the later expression obtain copyright protection, otherwise it may constitute an act of copying.

Source: Beijing IP court

BURBERRY诉恒源祥商标侵权，索赔150万元

近日，天眼查App显示，博柏利有限公司（BURBERRY LIMITED）、恒源祥（集团）有限公司等侵害商标权纠纷一案一审裁定书公开。

文书显示，原告博柏利公司诉称，原告是“BURBERRY”“博柏利”等商标权利人，其发现，恒源祥公司的侵权产品在天猫、京东等多家恒源祥专卖店中进行销售，原告诉请法院判令四家被告立即停止侵权并销毁库存侵权商品，并共同赔偿原告损失150万元。被告之一的无锡恒基服饰有限公司在提交答辩状期间提出管辖权异议，法院审理后裁定驳回。

来源：中国经济周刊

BURBERRY Sued Hengyuanxiang for Trademark Infringement: Claims for RMB 1.5 Million

Recently, a first-instance ruling on trademark infringement between BURBERRY LIMITED (the Plaintiff) v. Hengyuanxiang (Group) Co., Ltd. and others (the Defendants, a Chinese clothing conglomerate) has been issued.

The Plaintiff found that infringing products of Hengyuanxiang are sold in many Hengyuanxiang outlets such as Tmall and JD.com. Plaintiff requested the court to order the four defendants to immediately stop the infringement and destroy the infringing goods in stock, and claims for RMB 1.5 million. One of the defendants raised the objection to the jurisdiction during the reply period, but the court ruled to dismiss after hearing.

Source: China Economic Weekly

“南方黑芝麻”反向混淆案：侵权获利非判赔的主要考量因素

近日，浙江省高级人民法院就浙江黑五类食品有限公司、丰城黑五类食品有限公司诉南方黑芝麻集团股份有限公司侵害商标权纠纷案作出二审判决。二审判决被告停止侵权行为，销毁库存商品，并赔偿原告损失共计20万元。

法院认为，商标法意义上的混淆既包括正向混淆，也包括反向混淆：反向混淆是指由于在后被诉标识的使用，使得相关公众可能会误认为在先商标权人的商品或服务来源于在后被诉标识的使用者，或两者之间存在某种特定的联系。南方黑芝麻公司超出其自有商标核定使用范围使用被诉侵权标识，构成反向混淆。因此，在确定损害赔偿数额时应主要考虑权利人因难以正常创牌并建立自身商誉而受到的损失，或者为消除创牌阻碍而额外付出的宣传、经营开支，侵权人因制造、销售被诉产品而获得的利益并非确定赔偿数额的主要考量因素。

来源：浙江省高级人民法院

Reverse Confusion Case of "Southern Black Sesame": Profit from Infringement is Not the Primary Factor in Awarding Damages

Recently, Zhejiang High Court issued a second-instance judgement of trademark infringement between Zhejiang Heiwulei Food Co. and Fengcheng Heiwulei Food Co. (the Plaintiff) against Southern Black Sesame Group Co. (the Defendant). The court ordered the Defendant to stop the infringement, destroy the goods in stock, and pay damages of RMB 200,000.

The court held that confusion in law includes both forward confusion and reverse confusion. Reverse confusion occurs when the public mistakes the goods or services of the later accused mark for those of the former trade mark owner, or believes that there is a specific association between the two. The Defendant used the accused infringing logo beyond the approved scope of its own trademark, which constituted reverse confusion. Therefore, in this case, in determining the amount of damages, the focus shall primarily centre on the rights holder's losses, including the challenges in obtaining a regular license and establishing their reputation. Other factors to consider include removing barriers to licensing, and additional publicity and business expenses. The profits from infringement shall not be the main consideration in awarding compensation.

Source: Zhejiang High Court

美法院维持惠而浦针对深圳二公司初步禁令

近日，家电巨头惠而浦获得美国第五巡回上诉法院的胜诉判决，禁止两家中国公司销售其著名的KitchenAid立式搅拌机的仿制品。法院确认，惠而浦的“标志性”搅拌机的设计有权获得商标保护，德克萨斯州法院（原审法院）禁止深圳三利达电器科技公司和深圳Avoga科技公司销售外观相似的搅拌机的决定是合理的。

上诉法院在审理过程中认定，“几十年来，KitchenAid立式搅拌器具有标志性的子弹形头部、倾斜的颈部和时尚的设计。”虽然在上诉过程中深圳二公司提出惠而浦的外观设计因具有功能性而不能获得商标保护的论点，但该论点最终被驳回了。陪审团表示，“没有任何记录表明混合器的外观造型是设备工作的原因”。最终上诉法院确认了原审法院的判决，维持了对于深圳两公司的禁令要求。

来源：REUTERS

The U.S. Court of Appeals Upholds Whirlpool's Win that Blocked Sales of Two Shenzhen Companies

Recently, Whirlpool (WHR.N) convinced the 5th U.S. Circuit Court of Appeals on Friday to uphold a trademark win that blocked two Chinese companies from selling alleged knockoffs of its famous KitchenAid stand mixer. The court affirmed that the design of Whirlpool's "iconic" mixer was entitled to trademark protection and that a Texas court's decision to bar sales of Shenzhen Sanlida and Shenzhen Avoga's similar-looking mixers was justified.

"For decades, the KitchenAid stand mixer, with its signature bullet-shaped head, sloped neck, and sleek design, has been a staple on wedding registries and the crown jewel in a home cook's kitchen," the court said. The 5th Circuit upheld the decision, rejecting the Chinese companies' argument that Whirlpool's design could not receive trademark protection because it is functional. "Here, nothing in the record demonstrates that the exterior styling of the mixer is the reason the device works," a unanimous three-judge panel said.

Source: REUTERS

New Balance起诉Golden Goose侵犯其运动鞋商业外观

8月24日，据海外媒体COMPLEX报道，美国运动品牌New Balance提起诉讼，New Balance声称Golden Goose的“Dad-Star”运动鞋与新百伦公司的990系列鞋款在商业外观上异常相似。

据了解，Golden Goose是由设计师Alessandro Gallo和Francesca Rinaldo 于2000年创立的意大利品牌，主要产品有著名的Superstar系列、Ball系列和Mid star系列。

据New Balance在8月18日提交的诉状，Golden Goose这款运动鞋，在灰色配色和名称上与990系列相似，且Golden Goose将其命名为“Dad-Star”的行为，会导致消费者混淆或误认。New Balance请求法院判决Golden Goose停止宣传和销售涉案运动鞋，并判决返还因销售涉案侵权商品所获利润。

来源: [COMPLEX](#)

New Balance Sues Golden Goose Over "Copycat" Dad Shoes

On 24 August, according to [COMPLEX](#), New Balance filed a lawsuit against Golden Goose last week, alleging that the Golden Goose's Dad Shoes infringed on the trade dress of its iconic 990 sneakers.

Golden Goose is an Italian brand founded by Alessandro Gallo and Francesca Rinaldo in 2000. Its main products include the famous Superstar series, Ball series and Mid star series.

The complaint, which was filed on Aug. 18 in Massachusetts' district court, alleges that Golden Goose's Dad-Star shoe points to the resemblance of the grey shades used on the 990 sneakers, and that Golden Goose may have intentionally named its sneaker the "Dad-Star," which causes confusion among consumers. New Balance is asking the court to halt Golden Goose from advertising and selling the Dad-Star sneaker or releasing products in the future that infringe on its 990 trade dress. New Balance also wants the court to award it with the profits Golden Goose made from selling the Dad-Star shoe.

Source: [COMPLEX](#)

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