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## Weekly News By Lifang & Partners NO.6

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ICO UK Provides Advisory Answers to Frequently Asked Questions About Data Transmission

## Intellectual Property

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### **The China National Intellectual Property Administration issued the Measures for the Collaborative Governance of Illegal Acts in the Patent and Trademark Agency Industry**

A few days ago, China National Intellectual Property Administration issued the "Measures for the Collaborative Governance of Illegal Acts in the Patent and Trademark Agency Industry", which blacklisted patent and trademark agencies and agents in four situations, and announced them to the public within a certain period of time. Accept social supervision and implement coordinated restraint measures.

It is understood that the formulation and issuance of the "Measures" aims to further implement the requirements of strict party governance, strengthen the construction of party style and clean government, prevent the risk of corruption, crack down on violations of laws and regulations in the patent and trademark agency industry, and create a clean and honest agency industry development Environment.

Source: [China Intellectual Property News](#)

### **State Administration for Market Regulation issued the "Regulations on the Prohibition of Unfair Competition on the Internet" Draft for Solicitation of Comments**

On the 17th, State Administration for Market Regulation issued the "Provisions on Prohibition of Unfair Competition on the Internet" draft for soliciting opinions from the public.

This means that online unfair competition behaviors such as "choosing one of the two", data "acquainting", and false transactions will face stricter and more detailed supervision.

According to the draft, operators shall not make false or misleading commercial propaganda on the sales status, transaction information, operating data, user evaluation of the operators themselves or their products, and deceive or mislead consumers or the relevant public.

Do not use technical means to influence the business choices of other operators by restricting transaction objects, restricting sales area or time, restricting participation in promotions, etc., implement "choosing one of the two" behaviors, and hinder or destroy the legal provision of dependent parties. The normal operation of the network products or services of the Internet disrupts the order of fair transactions in the market.

Source: [Economic Information Daily](#)

### **China National Intellectual Property Administration: 109 trademark registration applications including "Yang Qian", "Chen Meng", and "Quan Hongchan" , the names of the three Chinese new Tokyo Olympic Games champions, were rejected according to law**

The CNIPA issued a notice on August 19, dismissing 109 trademark registration applications including "Yang Qian", "Chen Meng", and "Quan Hongchan" in accordance with the law. The details of the announcement are as follows:

At the 32nd Olympic Games, the Chinese sports delegation kept in mind the entrustment of the party and the people, bravely challenged, surpassed itself, and burst out Chinese power. They have won 38 gold medals, 32 silver medals, and 18 bronze medals. They have won honors for the motherland and the people, and united and worked hard for the whole party and the people of all ethnic groups on the new journey of building a modern socialist country in an all-round way. Infused with spiritual power.

However, individual enterprises and natural persons have maliciously registered the names of Olympic

athletes such as "Yang Qian", "Chen Meng" and "Quan Hongchan" and related hot words with specific meanings such as "Xing Ge" and "Tian Shen" and submitted trademark registration applications. , To grab or improperly use the reputation of others in the market, infringe on the rights of others' names and their legal rights, and have had a bad social impact.

In this regard, the State Intellectual Property Office condemned it, and in accordance with the provisions of Article 10, paragraph 1, item (8) of the Trademark Law, imposed the trademark No. 58130606 "Yang Qian", the trademark No. 58108579 "Chen Meng", and No. 58265645. 109 trademark registration applications (including one label and multiple categories) including the trademark "Quan Hongchan" were quickly rejected.

Source: CNIPA

### **Tencent sues Douyin for infringement of "CRIME CRACKDOWN", claiming RMB 100 million**

Recently, Tencent Video has discovered that a large number of infringing videos of TV Series "CRIME CRACKDOWN" continue to exist on Douyin without authorization.

In response, Tencent Video's operator Shanghai Penguin Film and Television Culture Communication Co., Ltd. sued Beijing Weibo Vision Technology Co., Ltd., the operator of Douyin, to the Beijing Intellectual Property Court and request an order for Douyin to delete, filter, and block the infringing "CRIME CRACKDOWN" videos on the platform, stop spreading the infringing videos through Douyin for illegitimate benefits, and demand Douyin to compensate for economic losses and rights protection expenses of RMB 100 million yuan.

Source: Beijing News

### **Alibaba launches NFT market for copyright transactions**

Alibaba launched a new NFT market "Blockchain Digital Copyright Asset Trading", allowing copyright holders to sell IP-related tokenized copyright asset certificates. The market can be accessed through the Alibaba auction platform to provide copyright holders of literature, games, animation, music, art, etc., with digital works based on the "new copyright blockchain" for verification and on-chain transactions. It is reported that the "New Copyright Blockchain" is a distributed ledger technology platform operated by the Copyright Committee of the Sichuan Blockchain Association. Currently, the market is online, and several NFTs under custody will start auction next month. Bidders must pay a deposit of 500 yuan to participate in the auction, and each auction has a starting price of 100 yuan. The works currently on display include "Star Wars" fan art. Buyers can view their collections through Bit Universe, a cryptocurrency combination application integrated into WeChat.

Source: Tencent

### **Huawei sued NPE PanOptis for monopoly infringement, claiming RMB 99 million**

Recently, the first-instance civil ruling on monopoly disputes between Huawei Technologies Co., Ltd., Huawei Terminal Co., Ltd. and PanOptis Patent Management Co., Ltd. (PanOptis Patent Management) was published. The plaintiff is Huawei Technologies Co., Ltd., and the defendant is PanOptis Patent Management Co., Ltd., etc.

The court held that the plaintiff in this case required the defendant to bear joint and several liabilities of RMB 99 million, which did not exceed the level of jurisdiction of this court. Therefore, this court has jurisdiction over this case in accordance with the law.

In addition, litigation with the plaintiff and the defendant in a foreign country does not constitute a re-

peated litigation.

The result of the judgment in this case was to dismiss the objections raised by the defendant PanOptis Patent Management Co., Ltd. and other companies on the jurisdiction of the case.

Source: [Tencent](#)

### **Converse wins the design patent infringement case against Madden**

Steve Madden is a company that mainly produces and retails clothing, shoes, belts, handbags and accessories, while Converse is primarily a footwear company. Converse sued Madden for infringing on his design patent, but Madden requested the court to dismiss some of Converse's infringement claims. The court compared the evidence images submitted by both parties and found that the two designs were not different enough to dismiss Converse's claim. On the contrary, ordinary consumers may be confused or deceived, believing that the accused product is a patented design. Recently, the Federal District Court of Massachusetts rejected Madden's request.

Source: [Intellectual Property Protection in China](#)

### **Apple settled the copyright infringement litigation against Corellium**

Apple settled with Corellium, a cybersecurity startup, out of court at the time when the two-year legal dispute between the two parties is about to begin.

In August 2019, Apple accused Corellium of creating a "virtualized" version of the iPhone, infringing its copyright and violating the Digital Millennium Copyright Act (DMCA). In 2018, Forbes revealed that Corellium plans to allow researchers to boot the iPhone on their laptops to explore security weaknesses or usage flaws in the iOS system. This move caused a sensation in the security community.

Recently, a brief court document showed that the two parties had reached a settlement. The court document read: "The two parties held negotiations. The case has been settled. Both parties and their lawyers signed a confidentiality clause." As early as December last year, Apple had abandoned some cases of copyright infringement, but has been trying to prove that Corellium violated the DMCA.

Source: [Intellectual Property Protection in China](#)

## **Overseas News**

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### **Tianjin Issues the *Anti-Monopoly Compliance Guidelines for Business Operators Underlining the Monopoly Risk of Small Operators***

On August 10, 2021, the Tianjin Administration for Market Regulation issued the *Anti-Monopoly Compliance Guidelines for Business Operators* ("**Guidelines**") to provide guidance for operators to carry out daily anti-monopoly compliance. The *Guidelines* briefly list and explain the three typical monopoly behaviors of operators in law enforcement to help operators identify and deal with risks. In addition, the *Guidelines* specifically point out that a smaller operator may also be identified as a dominant player because of strong control in a particular related market. Therefore, no matter the size of operators, it is necessary to pay attention to the monopoly compliance. ([More](#))

### **Shaanxi and Jiangsu Issue the *Anti-Monopoly Compliance Guidelines for Business Operators (Draft for Comments)***

Recently, the Administration for Market Regulation of Shaanxi Province and Jiangsu Province issued the *Anti-Monopoly Compliance Guidelines for Business Operators (Draft for Comments)* respectively.

Both of these guidelines stipulate anti-monopoly risk identification and compliance management and give special tips to operators of special market fields, including public enterprises with natural monopoly attributes, building materials enterprises such as cement and concrete, as well as platform operators. ([More](#))

### **Fengcheng Concrete Association and 8 Member Enterprises Fined Around CNY 286 Million for Implementing Monopoly Agreements**

On August 19, 2021, the Administration for Market Regulation of Jiangxi Province (“**Jiangxi AMR**”) issued the punishment decision against Fengcheng Ready-mixed Concrete Association and its member enterprises. After investigation, it was found that the concrete association organized 8 member enterprises to implement several monopoly agreements, including price-fixing, restricting production, dividing the market of raw material procurement and sale and boycott. On July 23, 2021, Jiangxi AMR fined CNY 500,000 on the association, advised Fengcheng Civil Affairs Bureau to revoke its registration of social organizations, ordered the member enterprises to stop their illegal behaviors, confiscated their illegal income and fined 3% or 8% of their sales amount in 2018, the accumulative amount of which is around CNY 286 million. ([More](#))

### **FTC Files an amended complaint against Facebook**

On August 19, 2021, the Federal Trade Commission (“**FTC**”) filed an amended complaint against Facebook in the agency’s ongoing federal antitrust case, alleging that Facebook resorted to an illegal buy-or-bury scheme to maintain its dominance. Facebook lured app developers to the platform, surveilled them for signs of success, and then buried them when they became competitive threats. The amended complaint bolsters the FTC’s monopoly power allegations by providing detailed statistics showing that Facebook had dominant market shares in the U.S. personal social networking market. The suit also provides new direct evidence that Facebook has the power to control prices or exclude competition; significantly reduce the quality of its offering to users without losing a significant number of users or a meaningful amount of user engagement; and exclude competition by driving actual or potential competitors out of business. Moreover, FTC also again asked the court to order Facebook to sell Instagram and WhatsApp. ([More](#))

### **Mexican Antitrust Regulator Fines Drug Distributors for Price-fixing**

On August 17, 2021, the Plenary of the Federal Economic Competition Commission in Mexico (“**Cofece**”) fined five pharmaceutical companies for restricting the supply of medicines and fixing, manipulating and increasing the price of drugs in the Mexican market, for which they will have to pay around MXN 903 million. After investigation, Cofece sanctioned 5 companies as well as 21 legal representatives for the carrying out absolute monopolistic practices in the drug distribution market, whose damage to Mexican consumers is estimated to be MXN 2,359 million. In addition, the Association of Distributors of Pharmaceutical Products of the Mexican Republic was also fined for assisting in the execution of said conduct. ([More](#))

### **Google Files to Dismiss Ohio Antitrust Lawsuit**

On August 13, 2021, Google files to dismiss a monopoly lawsuit brought in June by the Ohio attorney general. The complaint alleged that the Silicon Valley giant has used its dominance to prioritize its own products in a way that “intentionally disadvantages competitors” and asserted that Google could be seen as a common carrier or a public utility. Google’s lawyers argue in the motion that the search giant does not meet the state’s requirements to be considered a common carrier. Under Ohio law, common carriers charge a fee to deliver a standardized service, and public utilities are regulated by a set of state regulations. However, the whole point of Google Search is to provide results tailored to a specific que-

ry, and it is not shipping a commodity product, but constantly working to provide useful information in response to people's unique queries. It is found to be the first case seeking confirmation of Google as a public utility. ([More](#))

## Cybersecurity and Data Protection

### The Supreme Prosecutor Issues a Notice to Clarify the Focus of Personal Information Protection Public Interest Litigation Cases

On August 21, 2021, the Supreme People's Procuratorate issued the *Notice on Implementing the Personal Information Protection Law and Promoting Public Interest Litigation on Personal Information Protection* (“*Notice*”). The *Notice* clarifies that according to the relevant provisions of the *Personal Information Protection Law*, all levels of procuratorial authorities shall focus on key points and strictly control the following aspects when performing their prosecutorial duties for public interest litigations: sensitive personal information such as biometrics, religious beliefs, special identities, medical health, financial accounts, and trajectories should be strictly protected; personal information of special groups such as children, women, persons with disabilities, the elderly, and military personnel requires special protection; education, medical care, employment, pension, consumption and other key areas of personal information handled, as well as the handling of large-scale personal information of more than 1 million users should be prioritized; the protection of personal information of specific targets formed due to time, space and other connections should be enhanced accurately. ([More](#))

### Personal Information Protection Law voted to be implemented from November 1, 2021

On August 20, 2021, the *Personal Information Protection Law* reviewed and passed by the Standing Committee of the National People's Congress, which will come into force as of November 1, 2021. The *Personal Information Protection Law* consists of seventy-four articles under eight chapters, aiming at protecting the rights and interests of personal information, regulating the processing of personal information, and promoting the reasonable use of personal information, which is a milestone for the personal information protection. Its main contents include: make clear rules on personal information processing, targeted regulation on automated decision-making, image collection, sensitive personal information processing, etc.; make clear obligations to be undertaken by personal information processors: including classification and management of personal information, security technical protection, designated personnel, compliance audit, risk assessment, timely remediation for information leakage, etc.; strictly regulate cross-border transfer of personal information, etc. ([More](#))

### Five Authorities Including CAC jointly Issue *Automobile Data Provisions (for Trial Implementation)*

On August 20, 2021, the Cyberspace Administration of China (“CAC”), the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the Ministry of Transportation and Communications jointly issued “*The Automobile Data Provisions (for Trial Implementation)*”. The *Automobile Data Provisions* consists of 19 articles under the following three chapters: (1) clarification of the scope of automobile data; (2) four principles of automobile data processing; (3) automobile data collection, cross-border transfer, commercial usage, and other issues. The *Automobile Data Provisions* clarifies the general requirements for automobile data processors to carry out data processing activities, which mainly include: (1) the processing of automobile data should be legal, proper, specific, and clear, and be directly related to the design, production,

sales, use, operation and maintenance of automobiles; (2) carrying out the processing of automobile data by using the Internet and other information networks should implement provisions such as cybersecurity grade protection, and should strengthen automobile data protection, and perform data security obligations in accordance with the law; (3) the processor should establish complaint and report channels, and handle user complaints and reports in a timely manner.[\(More\)](#)

### **MIIT Circulates 43 APPs for Illegal Calling of Address Book, Location Information and Other Information, etc.**

On August 18, 2021, the Ministry of Industry and Information Technology (“MIIT”) issued a “*Look Back*” Notice on the Issues of APPs Illegally Calling Address Book, Location Information and Opening Pop-up Windows Harassing Users, with 43 APPs reported for problems, including Ctrip Travel, Sohu Video, iQIYI, etc. MIIT has organized a “look-back” for the three issues reflected by users, such as illegally calling of the address book, location information and harassment of users by opening pop-up windows, requiring the APPs being notified to complete the rectification before August 25. If failing to make rectification within the time limit or fail to make rectification as required, they will be disposed of by the MIIT in accordance with the law.[\(More\)](#)

### **MOFCOM Publicly Solicits Comments on the Industry Standard for the *Management and Service Specifications for Livestream E-commerce Platform (Exposure Draft)***

On August 18, 2021, in response to the regulation for the livestream e-commerce sector, the Ministry of Commerce (“MOFCOM”) publicly solicited comments on the industry standard for the *Management and Service Specifications for Livestream E-commerce Platform (Exposure Draft)*. It not only stipulates the settlement and withdrawal of the merchants and live streaming subjects, and the examination and verification of product and service information, but also emphasizes the security and authenticity of data information. [\(More\)](#)

### **SAMR Issues the *Regulations on Prohibition of Unfair Competition on the Internet (Exposure Draft)***

On August 17, 2021, the State Administration of Market Regulation (“SAMR”) issued the *Regulations on Prohibition of Unfair Competition on the Internet (Exposure Draft)* (“*Exposure Draft*”) for public comment. The *Exposure Draft* points out that operators shall not use data, algorithms, and other technical means to implement traffic hijacking, interference, malicious incompatibility and other acts to impede or disrupt the normal operation of network products or services legitimately provided by other operators, by influencing users’ choice or otherwise. Operators shall not directly organize, or through a third party, in a short period of time, conduct high-frequency transactions with competitors or give them favorable reviews, etc., thereby triggering the platform’s anti-brushing punishment mechanism to reduce the transaction opportunities of such competitors.[\(More\)](#)

### **Zhejiang Communications Administration Carries out Special Rectification Actions on the Internet Industry Market Order**

On August 17, 2021, the Zhejiang Communications Administration issued a notice to carry out special rectification actions on the market order of the Internet industry, focusing on problems such as disrupting the order of competition, infringing on users’ rights and interests, threatening data security, violating regulations on qualification and resource management, specifically including providing users’ personal information to third parties without obtaining users’ consent; in the collection, transmission and storage of user data, failing to establish a data security management system and take necessary security tech-



nical measures as required by laws and regulations; when providing user data to third parties, failing to take necessary technical and management measures such as security assessment and log audit as required by laws and regulations. ([More](#))

## **ICO UK Provides Advisory Answers to Frequently Asked Questions About Data Transmission**

On August 11, 2021, the UK Information Commissioner's Office (“ICO”) organized a consultation session on data transfers. The Advisory Committee asked whether it was necessary to approve an addendum to allow the transfer of personal data from the UK to be subject to standard EU contractual terms. In addition, the advisory meeting requested that (1) the ICO terminate (for now, temporarily) its approval of the 2001, 2004, and 2010 SCCs; (2) draft an entirely new protocol for cross-border data transfers specific to the UK; (3) publish a data transfer risk assessment; and (4) make changes to the UK's existing data transfer guidelines. ([More](#))

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