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2022.03

立方要闻周报

Weekly News By Lifang & Partners

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

2021年全国查处垄断案件176件，罚没金额235.86亿元

176 Monopoly Cases investigated in 2021, confiscating and fining CNY 23.586 Billion

北京知产法院设立竞争垄断委员会及专业审判团队并发布十大典型案例

Beijing IP Court Establishes Competition and Monopoly Committee and Professional Trial Team, Releasing Ten Typical Cases

美国参议员提出《禁止反竞争合并法案》，禁止超50亿美元并购

U.S Senate Introduces Prohibiting Anticompetitive Mergers Act to Bar Mergers Worth USD 5 Billion

CMA批准索尼音乐收购音乐发行商AWAL

CMA Clears Sony's Acquisition of AWAL

欧盟委员会对部分汽车企业进行反垄断突击检查

EU Commission Carries out Unannounced Inspections in the Automotive Sector

亚马逊收购米高梅案获欧盟委员会批准

EU Commission Approves Acquisition of MGM by Amazon

欧盟委员会对谷歌和Meta达成的相关协议发起正式反垄断调查

EU Commission Opens an Antitrust Investigation into an Agreement Between Google and Meta

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

中共中央办公厅、国务院办公厅印发《关于加强科技伦理治理的意见》



No.290

2022.03

The General Office of the CPC Central Committee and the General Office of the State Council issued "Opinions on Strengthening Ethical Governance of Science and Technology

国家网信办派出工作督导组进驻豆瓣网

State Internet Information Office Sends Work Supervision Team to Douban.com

国家网信办将开展算法治理行动，督促整改大数据杀熟

The State Internet Information Office will carry out algorithm governance action to supervise and rectify the big data killing

工信部立即查处“3·15”晚会曝光的信息通信领域违规行为

Ministry of Industry and Information Technology to immediately investigate and deal with the "3-15" evening party exposure of information and communication field violations

银保监会将就涉企违规收费、个人信息保护等开展专项治理行动

The CBIRC will carry out special management actions on irregular charges related to enterprises and personal information protection

安徽省市监局公布2021年度侵犯消费者个人信息执法典型案例

Anhui Municipal Supervision Bureau Announces Typical Cases of Consumer Personal Information Infringement Enforcement in 2021

欧盟委员会就《欧洲网络复原力法案》征求意见

EU Commission Invites Citizens and Organizations to Share Their Views on the European Cyber Resilience Act

爱尔兰数据保护委员会对Meta罚款1700万欧元

Ireland DPC Fines Meta EUR 17 million For Data Security Violations

爱尔兰数据保护委员会发布关于在 GDPR 的一站式机制下处理跨境投诉的统计报告

Ireland DPC Publishes Statistical Report on the Handling of Cross-border Complaints Under GDPR's One-Stop-Shop Mechanism

美国怀俄明州通过遗传数据隐私法案

Wyoming Enacts the Genetic Data Privacy Act

NIST发布修订后的《制定识别和管理人工智能内部偏见的标准》



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2022.03

NIST releases report on identifying and managing bias in AI

NIST发布《人工智能风险管理框架》并向公众征求意见

NIST Seeks Comments on Draft AI Risk Management Framework, Offers Guidance on AI Bias

隐瞒数据泄漏事件，FTC对CafePress罚款50万美元

FTC Takes Action Against CafePress for Data Breach Cover-Up

知识产权 Intellectual Property

最高人民法院出台《反不正当竞争法》司法解释

Supreme People's Court issued judicial interpretation of Anti-Unfair Competition Law of the People's Republic of China

假冒“美心”月饼案宣判，假冒者被判处有期徒刑6年6个月，并处罚金1400万元

The counterfeit “Meixin” moon cake case was sentenced, and the counterfeiter was sentenced to 6 years and 6 months in prison and fined 14 million yuan

海淀法院就3CE商标侵权及不正当竞争诉讼案作出判决，判赔1040万元

Haidian District Court made a judgment on the 3CE trademark infringement and unfair competition lawsuit, awarding compensation of 10.4 million yuan

判决侵权！一审法院认定地理标志集体商标“香槟（Champagne）”构成驰名商标

Judgment of infringement! The court of first instance found that the collective trademark of geographical indication “Champagne” constituted a well-known trademark

最高法知产庭新案速递：如何依据产品贴附商标判断被诉侵权适格主体

New Case of the Intellectual Property Tribunal of the Supreme People's Court : How to determine the sued infringing eligible subject based on the trademark attached to the product

美国法院驳回德国大陆集团针对Avanci及其成员的SEP组件级许可的诉讼请求

U.S. court rejects Continental's claim against Avanci and its members for SEP component-level licenses

立方竞争法周报 Weekly Competition Law News

2021年全国查处垄断案件176件，罚没金额235.86亿元

2022年3月17日，全国市场监管系统反垄断工作会议召开。会议指出，2021年反垄断工作取得明显成效，重点领域和重大案件执法实现新突破，全国查处垄断案件176件，罚没金额235.86亿元；审结经营者集中案件727件，附条件批准4件、禁止1件。（[查看更多](#)）

176 Monopoly Cases investigated in 2021, confiscating and fining CNY 23.586 Billion

On March 17, 2022, the national market regulation system held the anti-monopoly work conference. The meeting pointed out that the anti-monopoly work in 2021 achieved obvious results, law enforcement in key areas and major cases achieved new breakthroughs: 176 monopoly cases were concluded, confiscating and fining CNY 23.586 billion; 727 cases relating to concentration of undertakings were concluded, with 4 conditional approval and 1 prohibition. ([More](#))

北京知产法院设立竞争垄断委员会及专业审判团队并发布十大典型案例

2022年3月16日，北京知识产权法院（“北京知产法院”）召开新闻发布会，通报竞争垄断委员会及专业审判团队的设立情况并发布竞争垄断十大典型案例。会上指出，2020年，北京知产法院受理竞争垄断类案件184件，2021年达306件，增幅近66%。在会上，北京知产法院宣布在院级专业法官会议制度中新设了“竞争垄断委员会”，并配备了竞争垄断专业审判团队，以提高竞争垄断案件专业化审判水平。（[查看更多](#)）

Beijing IP Court Establishes Competition and Monopoly Committee and Professional Trial Team, Releasing Ten Typical Cases

On March 16, 2022, Beijing Intellectual Property Court (“Beijing IP Court”) held a press conference, issuing the establishment of the Competition and Monopoly Committee and the professional trial team and releasing ten typical cases of competition and monopoly. It was also pointed out at the conference that in 2020, the Beijing IP Court received 184 competition and monopoly cases, and in 2021 it received 306 cases, with an increase of nearly 66%. The establishment of Competition and Monopoly Committee and a professional trial team on competition and monopoly cases will also improve the trial level of competition and monopoly cases. ([More](#))

美国参议员提出《禁止反竞争合并法案》，禁止超50亿美元并购

2022年3月17日，据媒体报道，美国参议员Elizabeth Warren和众议员Mondaire Jones提出《禁止反竞争合并法案》（The Prohibiting Anticompetitive Mergers Act，“《法案》”）。《法案》将禁止交易额超过50亿美元（约合人民币320亿元）以及卖家市场份额超过25%或雇主市场份额超过33%的合并。根据该《法案》，司法部和联邦贸易委员会在审查合并案时需考虑对劳动者的影响，有权直接拆分合并或否决交易，而无需等待法院的命令。（[查看更多](#)）

U.S Senate Introduces Prohibiting Anticompetitive Mergers Act to Bar Mergers Worth USD 5 Billion

On March 17, 2022, Senate Elizabeth Warren and Representative Mondaire Jones introduced *The Prohibiting Anticompetitive Mergers Act* (“Act”). The Act bars mergers worth USD 5 Billion (around CNY 32billion) or more. It would also bar deals resulting in market shares above 33% for sellers or 25% for employers. Under the Act, the Justice Department and Federal Trade Commission would be required to consider how a merger would affect workers and would be empowered to break up mergers and reject deals without having to wait for court orders. ([More](#))

CMA批准索尼音乐收购音乐发行商AWAL

2022年3月16日，英国竞争与市场管理局（“CMA”）批准索尼音乐收购音乐发行商AWAL。经过两轮深入调查，CMA认为，尽管索尼音乐与AWAL公司在提供艺人厂牌服务和签约成功艺人方面存在重叠，但仍有许多供应商可继续与两家公司在提供艺人厂牌服务市场进行有效竞争，签约成功艺人市场上还有其他供应商可弥补因收购AWAL导致的有限竞争损失。因此，CMA认为该交易不会大幅减少英国市场的竞争。（[查看更多](#)）

CMA Clears Sony’s Acquisition of AWAL

On March 16, 2022, The UK Competition and Markets Authority (“CMA”) cleared Sony’s acquisition of AWAL. After two rounds of in-depth inquiries, CMA considered that despite the overlap between Sony Music and AWAL in A&L service and artist service, there are many other providers that can continue to compete effectively with both companies in the A&L service market and there are many other firms providing similar services which can be expected to make up for the limited loss of competition from AWAL. Thus, CMA concluded that the deal does not substantially reduce competition in the UK. ([More](#))

欧盟委员会对部分汽车企业进行反垄断突击检查

2022年3月15日，欧盟委员会对活跃于多个成员国的汽车公司和行业协会进行了突击检查，并向多个汽车公司发出信息问询函。委员会担心部分公司可能违反了欧盟禁止企业从事卡特尔和限制性商业行为的反垄断规定（《欧洲联盟运作条约》第101条）。这次检查和信息问询函主要涉及与报废汽车和货车的收集、处理和回收有关的可能共谋行为。（[查看更多](#)）

EU Commission Carries out Unannounced Inspections in the Automotive Sector

On March 15, 2022, the EU Commission conducted unannounced inspections at the premises of companies and associations active in the automotive sector located in the several Member States. In parallel, the Commission sent out formal requests for information to several companies active in the automotive sector. The Commission has concerns that several companies and associations may have violated EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union). The inspections and requests for information concern possible collusion in relation to the collection, treatment, and recovery of end-of-life cars and vans which are considered waste. ([More](#))

亚马逊收购米高梅案获欧盟委员会批准

2022年3月15日，欧盟委员会宣布无条件批准亚马逊收购米高梅的交易。欧委会认为，两家公司活跃在视听内容产业链的不同环节，不存在明显的横向重叠。在纵向关系上，欧委会认为米高梅作为上游视听内容生产商的业务规模有限；即使亚马逊在下游视频流媒体平台市场上占有相当大的市场份额，但其也面临激烈的竞争。欧委会认为，将米高梅的电影添加到亚马逊的Prime Video服务中不会对亚马逊作为市场服务提供商的地位产生重大影响。（[查看更多](#)）

EU Commission Approves Acquisition of MGM by Amazon

On March 15, 2022, the EU Commission approved unconditionally the proposed acquisition of MGM Holdings Inc. (“MGM”) by Amazon.com Inc (“Amazon”). EU Commission found that the parties are primarily active in different parts of the audio-visual content value chain, and the horizontal overlaps are relatively small. From the perspective of vertical links, the Commission found that MGM's upstream activities as a producer and licensor of audio-visual content are limited; even if Amazon has a sizeable market presence among video streaming platforms, the Commission found that Amazon faces strong competition from other players. Therefore, the Commission concluded that the addition of MGM's content into Amazon's Prime Video offer would not have a significant impact on Amazon's position as the provider of marketplace services. ([More](#))

欧盟委员会对谷歌和Meta达成的相关协议发起正式反垄断调查

2022年3月11日，欧盟委员会称其已经启动正式的反垄断调查，以评估谷歌与Meta就在线展示广告达成的协议是否违反了欧盟的竞争规则。此次调查的主要对象是双方于2018年9月达成的一项名为“Jedi Blue”的协议，根据该项协议，Meta的Audience Network参与了谷歌的公开招标项目。欧盟认为，该项协议可能排除与谷歌相竞争的其他广告技术服务，从而限制或扭曲在线展示广告市场的竞争，损害广告发布商的利益，并最终损害消费者。（[查看更多](#)）

EU Commission Opens an Antitrust Investigation into an Agreement Between Google and Meta

On March 11, 2022, the EU Commission said they had opened a formal antitrust investigation to assess whether an agreement between Google and Meta for online display advertising services may have breached EU competition rules. The investigation mainly concerns a September 2018 agreement, which Google code-named “Jedi Blue”, between Google and Meta for the participation of Meta's Audience Network in Google's Open Bidding program. The Commission is concerned that the agreement may exclude ad tech services competing with Google, and therefore restrict or distort competition in markets for online display advertising, to the detriment of publishers, and ultimately consumers. ([More](#))

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

中共中央办公厅、国务院办公厅印发《关于加强科技伦理治理的意见》

近日，中共中央办公厅、国务院办公厅印发了《关于加强科技伦理治理的意见》（“《意见》”）。《意见》提出了科技伦理的治理要求，明确了科技伦理原则。并从健全科技伦理治理体制、加强科技伦理治理制度保障、强化科技伦理审查和监管、深入开展科技伦理教育和宣传四个方面提出相应的要求。（[查看更多](#)）

The General Office of the CPC Central Committee and the General Office of the State Council Issued the Opinions on Deepening the Ethical Governance of Science and Technology

Recently, the General Office of the Communist Party of China Central Committee and the General Office of the State Council issued the *Opinions on Deepening the Ethical Governance of Science and Technology* (“**The Opinions**”). The Opinions puts forward the governance requirements of science and technology ethics and clarifies the principles of science and technology ethics. It also puts forward corresponding requirements in four aspects: improving the system of science and technology ethics governance, strengthening the institutional guarantee of science and technology ethics governance, enhancing the review and supervision of science and technology ethics, and carrying out in-depth education and publicity of science and technology ethics. ([More](#))

国家网信办派出工作督导组进驻豆瓣网

2022年3月15日，针对当前豆瓣网存在的严重网络乱象，国家互联网信息办公室（“国家网信办”）指导北京市互联网信息办公室派出工作督导组，进驻豆瓣网督促整改。豆瓣此前已多次因内容违规、超范围收集用户信息等问题受到处罚。（[查看更多](#)）

CAC Sends Work Supervision Team to Douban.com

On March 15 2022, in response to the current serious disorder on Douban.com, the Cyber space Administration of China (“CAC”) directed the Cyberspace Administration of Beijing to dispatch a working steering group entering into Douban.com for supervision and rectification of the situation. Douban.com has been punished several times previously due to issues concerning illegal content, collecting of users’ information beyond the permitted range, etc. ([More](#))

国家网信办将开展算法治理行动，督促整改大数据杀熟

2022年3月17日，国务院新闻办公室举行2022年“清朗”系列专项行动新闻发布会。国家网信办网络管理技术局局长于永河在回答记者提问时表示，将严厉打击算法违法违规行，督促整改算法不合理应用带来的“信息茧房”“算法歧视”“大数据杀熟”等影响网民生产生活的问

题。于永河表示，国家网信办将于近期启动2022年“清朗·算法综合治理”专项行动，时间将持续到今年年底。专项行动将联合有关部门共同开展，目标是聚焦网民关切，解决算法难题，维护网民合法权益。重点是落地落实落好《互联网信息服务算法推荐管理规定》，推动算法综合治理工作的常态化和规范化。（[查看更多](#)）

CAC Carries Out Algorithm Governance Action to Supervise the Rectification of Big Data Discriminatory Pricing

On March 17 2022, the Information Office of the State Council held a press conference concerning the topic of the 2022 *Qinglang* special actions. Yu Yonghe, the director of Cyberspace Administration of China (“CAC”) Network Management Technology Bureau, said in response to questions from reporters that CAC will crack down on algorithm violations laws and regulations, and urge the entities in violation of laws and regulations to rectify issues brought by the unreasonable application of algorithms such as, the *Information Cocoons*, *algorithm discrimination*, *Discriminatory Pricing*, etc. Yu Yonghe said that the CAC will recently launch the 2022 *Qinglang algorithm comprehensive governance* special action, which will last until the end of this year. The action will be carried out jointly with relevant departments. The goal is to respond the netizens’ concern, to solve algorithm problems and to safeguard the legitimate rights and interests of netizens. The focus is to profoundly implementate *Internet Information Service Algorithm Recommendation Management Regulations*”, to promote the normalization and standardization of the algorithm comprehensive governance work. ([More](#))

工信部立即查处“3·15”晚会曝光的信息通信领域违规行为

2022年3月16日，工业和信息化部（“工信部”）表示，针对3月15日央视播出“3·15”晚会报道的以免费Wi-Fi为名诱骗用户下载恶意APP、应用软件平台强迫捆绑下载、骚扰电话、儿童手表安全防护等问题，立即组织认真核查，依据《个人信息保护法》《网络安全法》《电信条例》《规范互联网信息服务市场秩序若干规定》《电信和互联网用户个人信息保护规定》等有关法律法规要求，进行严厉查处。工信部坚决将积极采取有效措施，持续强化电信和互联网用户个人信息保护。（[查看更多](#)）

MIIT Immediately Investigate and Solve the Problems in Information and Communication Exposed on “3.15”

On March 16 2022, the Ministry of Industry and Information Technology (“MIIT”) said that, in response to the "3-15" evening broadcast by CCTV on March 15, it will resolve the reported issues including luring users to download malicious apps in the name of free Wi-Fi, forced bundled downloads by application software platforms, harassing phone calls, and children's watch safety protection. Task groups shall immediately be organized to carefully inspect, severely investigate and strictly punish relevant parties in accordance with the *Personal Information Protection Law*, the *Cyber Security Law*, the *Telecommunications Regulations*, the *Several Provisions on Regulating the Order of the Internet Information Service Market*, the *Provisions on Protecting the Personal Information of Telecommunications and Internet Users* and other relevant laws and regulations. The Ministry of Industry and Information Technology will firmly adopt effective measures to continuously strengthen the protection of the personal information of telecommunications and Internet users. ([More](#))

银保监会将就涉企违规收费、个人信息保护等开展专项治理行动

2022年3月15日，银保监会消费者权益保护局局长郭武平在“银行业保险业深入推进金融消费者保护”专场新闻发布会上表示，银保监会将开展为期四至五个月的涉企违规收费专项治理行动，严查收费政策落实不到位、以贷收费、强制收费等行为。除整治涉企违规收费外，郭武平透露，2022年，银保监会还将开展银行业保险业个人信息保护专项整治，推动银行业保险业切实落实《中华人民共和国个人信息保护法》，提升对个人信息使用的规范性，保护消费者信息安全权。（[查看更多](#)）

The CBIRC Will Carry Out Special Management Actions on Irregular Charges Related to Enterprises and Personal Information Protection

On March 15 2022, Guo Wuping, director of the Bureau of Consumer Rights Protection of the China Banking and Insurance Regulatory Commission ("CBIRC"), said at a special press conference on *Further Promotion of Financial Consumer Protection in the Banking and Insurance Industry* that the CBIRC will carry out special governance actions on irregular charges related to enterprises for a period of four to five months, strictly investigating the lack of implementation of charging policies, and unlawful behaviors such as charging for loans and mandatory Charges. In addition to irregular charges, Guo Wuping revealed that, in 2022, the CBIRC is also going to carry out special rectification of personal information protection in the banking and insurance industry, to promote the effective implementation of the *Personal Information Protection Law* in the banking and insurance industry, enhance the standardization of the use of personal information, and protect the information security right of customers. ([More](#))

安徽省市场监管局公布2021年度侵犯消费者个人信息执法典型案例

2022年3月14日，安徽省市场监督管理局（“安徽省市监局”）公布2021年度侵犯消费者个人信息执法典型案例。分别是：（1）安徽佳创房地产开发有限公司未经消费者同意收集消费者个人信息案；（2）良德装饰经营部侵害消费者个人信息案；（3）吾悦美容美发会所未经消费者同意收集消费者个人信息案；（4）科勒建材经营部未经消费者同意收集、使用消费者个人信息案；（5）交换空间装饰工程有限公司未经消费者同意收集、使用消费者个人信息案；（6）中培励学课外教育培训中心有限公司侵害消费者个人信息案；（7）东箭装饰设计工程有限公司宿州分公司侵害消费者个人信息案；（8）金艺建筑装饰工程有限公司侵害消费者个人信息案；（9）叶某某涉嫌侵犯消费者个人信息案。（[查看更多](#)）

Anhui Administration for Market Regulation Announces Typical Cases of Consumer Personal Information Infringement Enforcement in 2021

March 14 2022, Anhui Provincial Bureau of Market Supervision 2021 infringement of personal information of consumers law enforcement typical cases, respectively: (1) a real estate company collected consumers' personal information without their consent; (2) a decoration company infringed on consumers' personal information; (3) a beauty salon collected consumers' personal information without their consent; (4) a decoration company collected and used consumers' personal information without their consent; (5) a decoration engineering company collected and used consumers' personal information

without consumers' consent; (6) an education company infringed on consumers' personal information; (7) a design company infringed on consumers' personal information; (8) a decoration engineering company infringed on consumers' personal information; (9) Mr. Ye infringed on consumers' personal information. ([More](#))

欧盟委员会就《欧洲网络复原法案》征求意见

2022年3月16日，欧盟委员会开始就《欧洲网络复原法案》（“《法案》”）向公众征求意见。欧盟委员会指出，该法旨在为欧盟各地数字产品和服务建立共同的网络安全规则。《法案》将补充现有的欧盟立法框架，其中包括关于网络和信息系统安全的指令（NIS指令）和《网络安全法》，以及委员会在2020年12月提出的欧盟高度共同网络安全措施的未来指令（NIS 2）。([查看更多](#))

EU Commission Invites Citizens and Organizations to Share Their Views on the European Cyber Resilience Act

On March 16 2022, the EU Commission launched a public consultation to gather the views and experiences of all relevant parties on the forthcoming European Cyber Resilience Act (“the Act”). The Commission noted that the Act seeks to establish common cybersecurity rules for digital products and associated services that are placed on the market across the EU. The Act will complement the existing EU legislative framework, which includes the Directive on the security of Network and Information Systems (NIS Directive) and the Cybersecurity Act, as well as the future Directive on measures for high common level of cybersecurity across the Union (NIS 2) that the Commission proposed in December 2020. ([More](#))

爱尔兰数据保护委员会对Meta罚款1700万欧元

2022年3月15日，爱尔兰数据保护委员会（“DPC”）宣布，对Meta Platforms Ireland Limited违反《通用数据保护条例》（“GDPR”）的行为处以1700万欧元的罚款，此前DPC已对12起数据泄露事件进行了调查。DPC指出，其调查了Meta公司在处理与这12份数据泄露有关的个人数据时遵守GDPR的程度。DPC发现，Meta公司没有采取适当的技术和组织措施，使其能够随时证明它采用了安全措施保护欧盟用户的数据，这违反了GDPR第5（2）条和第24（1）条。([查看更多](#))

Ireland DPC Fines Meta EUR 17 million For Data Security Violations

On March 15 2022, the Ireland Data Protection Commission (“DPC”) announced that it had imposed a fine of €17 million on Meta Platforms Ireland Limited for violations of General Data Protection Regulation (“GDPR”), following an inquiry into a series of 12 data breach notifications. The DPC highlighted that its inquiry examined the extent to which Meta complied with the requirements of the GDPR to the processing of personal data relevant to the 12 breach notifications. The DPC found that Meta did not have in place appropriate technical and organizational measures which would enable it to readily demonstrate the security measures that it implemented in practice to protect EU users' data, in the context of the 12 personal data breaches. The breach, according to DPC, infringed Articles 5(2) and 24(1) of the GDPR. ([More](#))

爱尔兰数据保护委员会发布关于在 GDPR 的一站式机制下处理跨境投诉的统计报告

2022年3月15日，爱尔兰DPC发布了一份关于DPC在GDPR一站式服务机制下处理跨境投诉的统计报告。DPC指出，自2018年5月以来，DPC接收并处理了大量的跨境投诉，例如面向欧盟/欧洲经济区的主要监管机构（“LSA”）的投诉，以及对总部位于爱尔兰的技术和互联网平台公司的投诉。根据该报告，DPC收到了1150份有效的跨境投诉；其中969份（占比84%）是对LSA的投诉，181份（占比16%）是对相关监督机构的投诉。由于LSA涉及10个数据控制者，86%的投诉由DPC处理。（[查看更多](#)）

Ireland DPC Publishes Statistical Report on the Handling of Cross-border Complaints Under GDPR's One-Stop-Shop Mechanism

On March 15, 2022, the Ireland DPC published a statistical report on the DPC's handling of cross-border complaints under the GDPR One-Stop-Shop mechanism. The DPC noted that since May 2018, the DPC has received and concluded a significant number of cross-border complaints, such as the EU/EEA leading supervisory authority (“LSA”) for a large number of technology and internet platform companies with EU headquarters in Ireland. According to the report, 1,150 valid cross-border complaints have been received by the DPC; 969 (84%) as LSA and 181 (16%) as a concerned supervisory authority, and 86% of all cross-border complaints handled by the DPC as the LSA relate to just ten data controllers. ([More](#))

美国怀俄明州通过遗传数据隐私法案

2022年3月8日，怀俄明州遗传数据隐私法HB0086正式生效。HB 0086要求任何收集个人基因数据的企业提供关于公司收集、使用或披露基因数据的政策和程序的清晰和完整的信息，并提供高完整的隐私政策概述；在公司收集基因数据之前需获得个人的明确同意，并在将消费者的基因数据转移或披露给公司的供应商和服务提供商之外的任何人时获得单独的明确同意。（[查看更多](#)）

Wyoming Enacts the Genetic Data Privacy Act

On 8 March 2022, House Bill (“HB”) 0086 for the Wyoming Genetic Data Privacy Act was signed into law. HB 0086 requires any business that collects genetic data from individuals to provide clear and complete information regarding the company's policies and procedures for the collection, use, or disclosure of genetic data with a high-level privacy policy overview; and obtain express consent from an individual before collecting the genetic data and separate express consent for transferring or disclosing the consumer's genetic data to any person other than the company's vendors and service providers. ([More](#))

NIST发布《制定识别和管理人工智能偏见的标准》

2022年3月16日，美国国家标准与技术研究院（“NIST”）在征求意见后发布了SP 1270《制定识别和管理人工智能偏见的标准》。NIST详细说明，SP 1270支持了可信赖和负责任的人工智能（“AI”）的发展，是NIST正在开发的AI风险管理框架的指南。此外，NIST解释说，SP 1270的意图是分析人工智能偏见这一挑战性领域的争议问题，并为制定详细的社会技术指南以识别和管理人工智能偏见的路线图提供第一步。（[查看更多](#)）

NIST releases report on identifying and managing bias in AI

On March 16 2022, the National Institute of Standards and Technology (“NIST”) released Special Publication (“SP”) 1270 'Towards a Standard for Identifying and Managing Bias in Artificial Intelligence, following its request for comments. NIST detailed that SP 1270 is part of a larger effort to support the development of trustworthy and responsible artificial intelligence (“AI”), and it offers guidance connected to the AI Risk Management Framework that NIST is developing. Furthermore, NIST explained that the intent of SP 1270 is to analyze the controversial issues in the challenging area of AI bias and to provide a first step on the roadmap for developing detailed socio-technical guidance for identifying and managing AI bias. ([More](#))

NIST发布《人工智能风险管理框架》并向公众征求意见

2022年3月17日，为促进值得信赖和负责任的人工智能（AI）的使用，NIST（美国国家标准与技术研究院）发布《人工智能风险管理框架》并向公众征求意见。该草案涉及人工智能系统的设计、开发、使用和评估方面的风险。该自愿性框架旨在提高对人工智能系统相关的企业和社会风险的理解，并帮助管理这些风险。它旨在提供一个灵活的、结构化的和可衡量的过程，以解决整个人工智能生命周期中的人工智能风险，并为开发和使用值得信赖和负责任的人工智能提供指导。（[查看更多](#)）

NIST Seeks Comments on Draft AI Risk Management Framework, Offers Guidance on AI Bias

On March 17, 2022, NIST (“National Institute of Standards and Technology”) released for public comment an initial draft of the AI Risk Management Framework (AI RMF) to promote the development and use of artificial intelligence (AI) technologies and systems that are trustworthy and responsible, the draft addresses risks in the design, development, use, and evaluation of AI systems. The voluntary framework is intended to improve understanding and help manage enterprise and societal risks related to AI systems. It aims to provide a flexible, structured, and measurable process to address AI risks throughout the AI lifecycle and offers guidance for the development and use of trustworthy and responsible AI. ([More](#))

隐瞒数据泄漏事件，FTC对CafePress罚款50万美元

2022年3月15日，美国联邦贸易委员会（“FTC”）宣布，在线商品平台CafePress将向数据泄露的受害者赔偿50万美元，并对违反1914年联邦贸易委员会法案（“FTC法案”）的行为进行赔

偿。FTC称，CafePress没有采取合理的安全措施来保护存储在其网络上的买家和卖家的敏感信息，并以未加密文本存储社保号码和密保答案，并且保留数据的时间超过必要限度。此外，FTC还说，该公司也没有即时对众所周知的威胁采取保护措施，也没有对安全事件作出充分的反应，从而导致CafePress的网络多次被破坏。因此，FTC认为，这些公司的行为违反了FTC法案，CafePress没有采取足够的技术和组织措施来保护它所处理的个人数据，也没有及时通知当局和数据主体发生数据安全事件。（[查看更多](#)）

FTC Takes Action Against CafePress for Data Breach Cover-Up

On 15 March 2022, The Federal Trade Commission (“FTC”) announced that CafePress, an online merchandise platform agreed to enter into a settlement for \$500,000 in redress to victims of the data breaches and for violations of the Federal Trade Commission Act of 1914 (“the FTC Act”). FTC alleged that CafePress failed to implement reasonable security measures to protect the sensitive information of buyers and sellers stored on its network, stored social security numbers and password reset answers in clear, readable text, and retained the data longer than was necessary. Moreover, the FTC added that the company also failed to apply readily available protections against well-known threats and adequately respond to security incidents, and, as a result, CafePress' network was breached multiple times. As such, the FTC found that the actions of the companies violated the FTC Act by failing to implement sufficient technical and organizational measures to protect the personal data it was processing, and by failing to timely notify the authorities and the data subjects of a data security incident. ([More](#))

知识产权 Intellectual Property

最高人民法院出台《反不正当竞争法》司法解释

2022年3月17日，《最高人民法院关于适用〈中华人民共和国反不正当竞争法〉若干问题的解释》（以下简称《解释》）发布，自2022年3月20日起施行。

《解释》共29条，对反不正当竞争法第二条的适用条件进行了细化，并重点强调了“商业道德”；对反不正当竞争法第六条“仿冒混淆”的规定进行了细化。另外，考虑到互联网行业技术和商业模式更新发展快的特点，《解释》严格把握立法精神和竞争政策，及时总结司法实践经验，对法律适用条件作出适当细化，为司法裁判提供必要规则指引，同时为市场的自我调节和技术创新留出空间。

来源：最高人民法院

Supreme People's Court issued judicial interpretation of Anti-Unfair Competition Law of the People's Republic of China

On March 17, 2022, the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China" (hereinafter referred to as the "Interpretation") was issued, and came into force on March 20, 2022.

The Interpretation totally has 29 articles, detailing the application conditions of Article 2 of the Anti-Unfair Competition Law, emphasizing "business ethics", and detailing the provisions of "imitation and

confusion" in Article 6 of the Anti-unfair Competition Law. In addition, taking into account the characteristic of rapid update and development of technology and business models in the Internet industry, the Interpretation strictly grasps the spirit of legislation and competition policies, summarizes judicial practice experience in a timely manner, and appropriately details the application conditions of the law, so as to provide necessary rules and guidelines for judicial judgement. At the same time, it leaves room for market self-regulation and technological innovation.

Source: Supreme People's Court

假冒“美心”月饼案宣判，假冒者被判处有期徒刑6年6个月，并处罚金1400万元

在“3·15国际消费者权益日”当天，上海市高级人民法院在线审理一起假冒“美心”等注册商标的刑事案件，并当庭宣判，裁定驳回上诉，维持原判。此前，一审判决庄某耿犯假冒注册商标罪，判处有期徒刑六年六个月，并处罚金1400万元。

二审上海高院认为，庄某耿未经“美心”等注册商标权利人许可，组织、指使同案犯在同一商品上使用与涉案注册商标相同的商标，起到决策、指挥作用。情节特别严重，构成假冒注册商标罪，并系主犯。在量刑方面，本案中庄某耿及其犯罪团伙销售规模大、涉案金额高，更重要的是，涉案侵权商品为月饼，是具有较高消费需求的食品，庄某耿等人的行为危及广大消费者的健康权益，具有严重社会危害性，依法应予严惩。另外，庄某耿系主犯，又系累犯，且其前罪所涉罪名与本案相同，均为假冒注册商标罪，并同样涉及本案“美心”品牌月饼。庄某耿至今仍不认罪、悔罪，足见主观恶性之深，依法应从重处罚。故作出上述终审判决。

来源：上海市高级人民法院

The counterfeit “Meixin” moon cake case was sentenced, and the counterfeiter was sentenced to 6 years and 6 months in prison and fined 14 million yuan

On the “3.15 International Consumer Rights Day”, Shanghai High People's Court tried online a criminal case of counterfeiting registered trademarks of “Meixin”, and pronounced the judgement in court, ruling to reject the appeal and uphold the original judgement. Previously, Zhuang Mougeng was sentenced to 6 years and 6 months in prison and fined 14 million yuan in the first instance for the crime of counterfeiting a registered trademark.

In the second instance, Shanghai High Court held that Zhuang Mougeng, without the permission of the owners of registered trademarks of "Meixin", organized and instructed the accomplice to use the same trademark as the registered trademark involved in the same product, and played a decision-making and commanding role. The circumstances were particularly serious, which constituted the crime of counterfeiting a registered trademark and he was the principal criminal. In terms of sentencing, in the present case, Zhuang Mougeng and his criminal gang have large sales scale and the money amount involved is high. More importantly, the infringing goods involved are moon cakes, which are foods with high consumer demand. The behavior of Zhuang Mougeng and others endangers the health rights and interests of a majority of consumers, bring serious social harm, and should be severely punished in accordance with the law. In addition, Zhuang Mougeng is the principal criminal and a recidivist, and the charge involved in his previous crime is the same as that in this case, both of which are crimes of counterfeiting registered trademarks, and also involved the “Meixin” brand moon cakes in the present

case. Zhuang Mougeng still does not pleaded guilty or repented, which shows the depth of his subjective viciousness and should be severely punished in accordance with the law. Therefore, the above-mentioned final judgment is made.

Source: Shanghai High People's Court

海淀法院就3CE商标侵权及不正当竞争诉讼案作出判决，判赔1040万元

近日，北京市海淀区人民法院就莱雅公司及韩国NANDA公司起诉吴某等五被告侵害“3CE”系列商标权及不正当竞争案作出判决，认定被告方使用“3CE”标识构成商标侵权，并认定被告方存在商品包装装潢、商品名称、企业字号等仿冒行为及虚假宣传行为，判决赔偿经济损失及合理支出1040万元。

法院认为，被告方注册的3ce.cc域名的主要部分与原告方主张的商业标识构成相同或近似，在主观上有借用涉案域名攀附3CE品牌的主观恶意，构成不正当竞争。进一步，原告大量证据显示有消费者将被告方的品牌误认为是原告的品牌，因此被告方使用“3ce”“3CE”在客观上也已经达到了使消费者混淆或误认的后果，构成商标侵权。

来源：北京市海淀区人民法院

Haidian District Court made a judgment on the 3CE trademark infringement and unfair competition lawsuit, awarding compensation of 10.4 million yuan

Recently, Beijing Haidian District People's Court made a judgment on the case that LAIYA company and NANDA company sued five defendants including Wu and others for infringing the “3CE” series of trademark rights and unfair competition, affirmed that the defendants’ use of the “3CE” logo constituted trademark infringement and the defendants had counterfeiting and false propaganda actions related to commodity packaging and decoration, commodity names, and enterprise names, etc., and was ordered to compensate economic losses and reasonable expenses of 10.4 million yuan.

The court held that the main part of the 3ce.cc domain name registered by the defendant was the same or similar to the commercial logo claimed by the plaintiffs, and there exists subjective malicious intention to use the domain name involved to attach to the 3CE brand, which constituted unfair competition. Further, the plaintiffs have a lot of evidence showing that some consumers mistake the defendants’ brand as the plaintiffs’ brand. Therefore, the defendants’ use of “3ce” and “3CE” has objectively achieved the consequences of making consumers confused or misunderstood, constituting the trademark infringement.

Source: Beijing Haidian District People's Court

判决侵权！一审法院认定地理标志集体商标“香槟（Champagne）”构成驰名商标

近日，北京知识产权法院审结了一起侵害“香槟（Champagne）”商标权的民事一审案件，判决被告广州雪蕾公司停止生产被诉侵权商品并赔偿原告香槟酒委员会经济损失及合理开支共计21万元，判令被告北京雅丽莎迪公司停止销售被诉侵权产品并向香槟酒委员会支付合理开支1万元。

香槟酒委员会成立于1941年，是一家依照法国法律创立的半官方机构。该委员会主张其作为宣传、推广并保护香槟酒的相关权益主体，在第33类葡萄酒商品上所享有的第11127266号“Champagne”及第11127267号“香槟”地理标志集体商标，经过长期宣传使用已经在中国相关公众中广为知晓、达到驰名程度。该委员会认为广州雪蕾公司生产、北京雅丽莎迪公司销售的香水商品上标注有“Champagne Life”“香槟人生”标识，构成对香槟酒委员会驰名商标的摹仿，会导致香槟酒委员会驰名商标的显著性减弱，淡化香槟酒委员会的驰名商标与葡萄酒商品的对应联系，构成商标侵权。

经审理，北京知识产权法院认定广州雪蕾公司在被诉侵权商品上使用被诉侵权标识的行为已经属于误导公众，致使香槟酒委员会的利益可能受到损害的情形，构成商标侵权。北京雅丽莎迪公司能够证明其销售的被诉侵权商品是自己合法取得并说明提供者广州雪蕾公司，故其不承担赔偿责任，但不能免除停止侵害行为和支付维权合理开支的责任。

来源：[知产北京](#)

Judgment of infringement! The court of first instance found that the collective trademark of geographical indication “Champagne” constituted a well-known trademark

Recently, Beijing Intellectual Property Court concluded a civil first-instance case involving infringement of the trademark “Champagne” right, and judged that the defendant Guangzhou Xuelei Company should stop the production of the accused infringing goods and compensate the plaintiff Comite Champagne for economic losses and reasonable expenses totaling 210,000 yuan. The defendant Beijing Yalishadi company was ordered to stop selling the accused infringing products and pay the Champagne Committee a reasonable cost of 10,000 yuan.

Comite Champagne is a semi-official institution created under French law, founded in 1941. The committee maintained that as the main body of publicity, promotion and protection of champagne related rights and interests, the No. 11127266 “Champagne” and No. 11127267 “Champagne” geographical indication collective trademarks it enjoyed on the 33rd category of wine products had been widely known among the relevant public in China after being publicized and used for a long time and reached the degree of well-known. The committee believed that the perfume goods produced by Guangzhou Xuelei Company and sold by Beijing Yalishadi Company are marked with the logos of “Champagne Life” and “香槟人生”， which constituted imitation of the well-known trademarks of the Comite Champagne and will cause the distinctiveness of the well-known trademarks of the Comite Champagne to weaken, dilute the corresponding connection between the well-known trademarks of the Comite Champagne and the wine goods, and constitutes trademark infringement.

After trial, Beijing Intellectual Property Court determined that the use of the accused infringing logo by Guangzhou Xuelei Company on the accused infringing goods had misled the public, which may cause the interests of the Comite Champagne to be damaged and constituted trademark infringement. Beijing Yalishadi Company could prove that the accused infringing goods it sold were legally obtained by itself and explained that the supplier was Guangzhou Xuelei Company, so it did not bear the responsibility for compensation, but it could not be exempted from the responsibility to stop the infringement action and pay reasonable expenses for rights protection.

Source: [Intellectual Property Beijing](#)

最高法知产庭新案速递：如何依据产品贴附商标判断被诉侵权适格主体

近日，最高人民法院对上诉人普利茅斯公司与被上诉人联想（北京）有限公司（以下简称联想北京公司）侵害计算机软件著作权纠纷一案作出终审裁定：撤销一审裁定，指令北京知识产权法院继续审理。

最高人民法院认为，对于起诉条件的审查，被告是否“适格”，仅需要审查原告是否提供了被告与所争议的法律关系具有关联性的初步证据，而不应以经过实体审理程序才能判断的、被告最终是否系争议的法律关系中的义务主体或责任主体作为判断依据。最高人民法院明确，被诉侵权产品上贴附有商品商标的，可以初步认定该商品商标的注册商标专用权人系被诉侵权产品的制造者，在有关侵权诉讼中，可以成为与案件纠纷具有实际关联的被告。

本案中，普利茅斯公司提交的被诉侵权手机包装及手机上均有“Lenovo”商标，联想北京公司认可其系“Lenovo”商标的注册商标专用权人。普利茅斯公司在本案起诉时，一方面提供了联想北京公司的名称、住所，确定了联想北京公司的主体身份；另一方面，提交了被诉侵权产品上载有联想北京公司注册商标的初步证据。由于被诉侵权产品上贴附有联想北京公司商标，应当认定联想北京公司系本案适格被告。

来源：最高人民法院知识产权法庭

New Case of the Intellectual Property Court of the Supreme People's Court: How to determine the infringing eligible subject to be sued based on the trademark attached to the product

Recently, Supreme People's Court made a final ruling on the case of the computer software copyright infringement dispute between the appellant Plymouth Company and the appellee Lenovo (Beijing) Co., Ltd. (hereinafter referred to as Lenovo Beijing Company), revoking the first-instance ruling and ordering the Beijing Intellectual Property Court to continue the trial.

The Supreme People's Court held that, for the review of the conditions of prosecution, whether the defendant is "qualified" only needs to examine whether the plaintiff has provided preliminary evidence that the defendant is related to the legal relationship in dispute, and should not be judged by whether the defendant is ultimately the subject of obligation or subject of responsibility in the disputed legal relationship which can be judged only through the substantive trial procedure. The Supreme People's Court has clarified that if the accused infringing product is affixed with a commodity trademark, it can be preliminarily determined that the owner of the exclusive right to the registered trademark of the commodity trademark is the manufacturer of the accused infringing product, and can become the defendant who has actual connection with the case in dispute in the relevant infringement lawsuit.

In the present case, the accused infringing mobile phone package and mobile phone submitted by Plymouth Company had the "Lenovo" trademark, and Lenovo Beijing company admitted that it was the exclusive owner of the registered trademark right of the "Lenovo" trademark. In the present case, on the one hand, Plymouth provided the name and domicile of Lenovo Beijing Company to determine the subject identity of Lenovo Beijing Company. On the other hand, it submitted preliminary evidence proving that the accused infringing product contained the registered trademark of Lenovo Beijing

Company. Since the accused infringing product is affixed with the trademark of Lenovo Beijing Company, it should be determined that Lenovo Beijing Company is a qualified defendant in this case.

Source: Intellectual Property Court of the Supreme People's Court

美国法院驳回德国大陆集团针对Avanci及其成员的SEP组件级许可的诉讼请求

2022年2月28日，美国第五巡回上诉法院在德国大陆集团诉汽车专利池Avanci及其成员诺基亚、Optis和夏普一案中作出裁决，驳回了大陆集团的上诉，认定大陆集团不是适格原告，并没有受到实质损害，并驳回其要求Avanci向其以“组件级”许可方式提供SEP许可的诉求。至此，以汽车零部件供应商为代表的汽车产业发起的对标准必要专利“设备级许可”的挑战，以专利权人阵营的胜出而暂告一段落。

法院从大陆集团作为零部件供应商实际承担的补偿责任和Avanci拒绝许可给大陆集团造成的实质伤害两个维度进行分析，认为现有证据不能证明大陆集团有任何实质损害，包括：（1）在其下游整车制造商接受许可后，作为零部件供应商的大陆集团未能证明其实际承担了补偿责任；（2）虽然Avanci以及诺基亚等拒绝许可给大陆集团，但大陆集团并没有被权利人起诉或者被威胁起诉SEP侵权，在下游整车制造商获得Avanci许可后，大陆集团实际上获得了“自由实施”的权利，而且大陆集团甚至不是FRAND承诺“适格的”第三方受益人，仅是附带受益人。基于上述分析，上诉法院驳回大陆集团的上诉。

不过，该判决并不意味着上诉法院直接否定“组件级许可”的收费模式，驳回大陆集团起诉的原因是在于大陆集团未能充分举证。值得注意的是，法院在判决的最后认为标准组织（SSOs）可能是解决FRAND问题的更直接关联方，通过其知识产权政策有可能在前端解决这些难题。

来源：AUTONEWS

U.S. court rejects German Continental Group's claim against Avanci and its members for a SEP component-level license

On February 28, 2022, the U.S. Court of Appeals for the Fifth Circuit ruled in the case that German Continental Group sued Auto Patent Pool Avanci and its members Nokia, Optis and Sharp, rejected Continental Group's appeal, found that Continental Group was not a qualified plaintiff and does not suffer substantial damage, and dismissed its claim for requesting Avanci to provide it with a SEP license on a "component-level" basis. So far, the challenge of the "device-level license" of standard essential patents initiated by the auto industry represented by auto component suppliers has come to a temporary end with the victory of the patentee.

The court analyzed from the two dimensions of Continental Group's actual liability for compensation as a component supplier and the substantial damage caused to Continental Group due to Avanci's refusal to license, and held that the existing evidence could not prove that Continental Group suffers any substantial damage, including: (1) after the downstream whole auto manufactures accepted the license, Continental Group, as a component supplier, failed to prove that it actually assumed the compensation responsibility; (2) although Avanci and Nokia refused to license to Continental Group, Continental

Group was not sued or threatened to be sued for SEP infringement by the obligee, Continental Group actually gained "freedom to operate" right after downstream whole auto manufactures gained license from Avanci, and Continental Group was not even a "qualified" third-party beneficiary of FRAND commitment, only an incidental beneficiary. Based on the above analysis, the Court of Appeal dismissed Continental Group's appeal.

However, the judgment does not mean that the Court of Appeal directly denies the "component-level license" charging mode. The reason for rejecting Continental Group's lawsuit is that it failed to provide sufficient evidence. It is worth noting that at the end of the judgment, the court held that the Standards Organizations (SSOs) may be the more directly related parties to solve the FRAND issue, and that it might be possible to address these difficulties through their intellectual property policies.

Source: [AUTONEWS](#)

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