



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.354

2023.7

立方要闻周报

Weekly News By Lifang & Partners

NO.93

立方竞争法周报 Weekly Competition Law News

市场监管总局总结经营者集中反垄断审查试点工作开局良好

SAMR Concludes Pilot Work of Anti-Monopoly Review of Concentration of Undertakings off to Good Start

中共中央国务院：全面落实公平竞争政策制度

CPC Central Committee and State Council: Fully Implement Fair Competition Policy System

广东省市监局与HKCC签署《备忘录》就大湾区竞争事宜加强合作

Guangdong AMR and HKCC sign MoU to Strengthen Cooperation on Competition Issues in Greater Bay Area

市场监管总局发布一起安徽省反行政垄断案件

SAMR Releases Administrative Monopoly Penalty in Anhui Province

美国FTC和DOJ就合并指南草案公开征求意见

FTC and DOJ Seek Comment on Draft Merger Guidelines

西班牙竞争管理机构对苹果和亚马逊处以1.941亿欧元罚款

CNMC fines Amazon, Apple €194 million

CMA发布2022/23年度报告和账目

CMA Presents Its Annual Report and Accounts 2022 to 2023

FTC起诉阻止艾昆纬收购PMI

FTC Sues to Block IQVIA's Acquisition of Propel Media



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

《铁路关键信息基础设施安全保护管理办法》公开征求意见

Regulations on Administration of the Security Protection of Railway Critical Information Infrastructure is Open for Public Comments

国家信息安全漏洞库发布《2022年度网络安全漏洞态势报告》

CNNVD Issued 2022 Cybersecurity Vulnerability Status Report

《上海市网络餐饮服务消费者个人信息保护合规指引》发布

Shanghai Compliance Guidelines on Personal Information Protection for Consumers of Online Food Ordering Services Were Released

北京网信办召开App收集使用个人信息整改指导会

Beijing Cyberspace Administration Held a Guidance Meeting on Rectification in Collection and Use of Personal Information by Apps

《广州市数据条例（征求意见稿）》公开征求意见

Guangzhou Data Regulations (Draft) Open for Public Comment

全国首例：广州某科技公司因虚假撤销网络安全等级保护测评备案被罚

First Case in China: One Guangzhou Technology Company Was Punished for Falsely Revoking Record-filing for Network Security Grade-based Protection Assessment

浙江省通信管理局发布关于侵害用户权益行为17款APP的通报

Zhejiang Communications Administration Issued a Notice Regarding 17 Apps That Infringe on User Rights

加拿大网络安全中心发布关于生成式AI的指南

Canada: CCCS Releases Guidance on Generative AI

知识产权 Intellectual Property

中国2023年上半年知识产权工作主要数据公布

Statistics on China's Intellectual Property Work in the First Half of 2023 Released



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.354

2023.7

最高法院：公证书所附产品照片可以作为现有设计抗辩的比对依据

Supreme Court: Photos of Products Attached to Notarial Certificates Can Serve as the Base for Comparison of Prior Design Defense

当事人将自主公开的现有设计申请取得外观设计专利权不能当然推定具有恶意

Shanghai High Court: Obtaining Design Patent Rights Based on a Voluntarily Disclosed Existing Design Application cannot be Deemed Malicious

格力再次起诉奥克斯，索赔9900万背后的八件专利

Gree has Filed Another Lawsuit Against AUX, Requesting the Transfer of Eight Patents to Gree and Seeking a Compensation of RMB 99 Million

金山办公再陷著作权侵权纠纷

Jinshan Office Software Involved in Copyright Infringement Dispute

未尽审慎义务肆意发函构成商业诋毁的不正当竞争

Nanjing Intermediate People's Court: Failure to Fulfill the Duty of Diligence that Constitutes Unfair Competition through Commercial Defamation

壳牌石油公司成功反击了Ensygnia公司的指控

Shell and Norton Rose Invalidate Ensygnia Mobile Payment Patent

YouTube新季度报告：版权保护系统的版权主张再创新高

YouTube's Recent Transparency Report Shows the Number of Content ID Copyright System Claims has Reached a New High — USD 826 Million Claims in Just Six Months

立方竞争法周报 Weekly Competition Law News

市场监管总局总结经营者集中反垄断审查试点工作开局良好

2023年7月20日，国家市场监督管理总局（“市场监管总局”）发布公告，总结经营者集中反垄断审查试点工作开局良好、稳步推进，为经济高质量发展注入新动能。自市场监管总局委托北京、上海、广东、重庆、陕西五省市市场监管部门（“试点省市局”）开展试点工作以来，共委托审查经营者集中案件287件，占同期申报简易案件40.7%。市场监管总局推动修订了《国务院关于经营者集中申报标准的规定》以优化申报标准，修订《经营者集中审查规定》以完善执法程序。此外，市场监管总局还指导试点省市局不断优化委托审查机制，试点省市局受委托审查的案件平均受理时间23.8天，平均审结时间18.5天，北京、上海等地从受理案件到审结最快11天。（[查看更多](#)）

SAMR Concludes Pilot Work of Anti-Monopoly Review of Concentration of Undertakings off to Good Start

On July 20, 2023, the State Administration for Market Regulation (“SAMR”) issues a notice summarizing that the pilot work of the anti-monopoly review of concentration of undertakings has started well and is progressing steadily, injecting new momentum into high-quality economic development. Since the SAMR entrusted the market supervision departments of Beijing, Shanghai, Guangdong, Chongqing, and Shaanxi (“pilot administration”) to carry out the pilot work, a total of 287 cases of concentration of undertakings have been entrusted to review, accounting for 40.7% of simple cases declared during the same period. The SAMR promoted the revision of the *Regulations of the State Council on the Standards for Concentration of Undertakings* to optimize the declaration standards and revised the *Regulations on the Review of Concentration of Undertakings* to improve the law enforcement procedures. In addition, the SAMR also instructed the pilot administration to continuously optimize the entrusted review mechanism. The average acceptance time for the cases entrusted by the pilot administration was 23.8 days, and the average trial time was 18.5 days. In Beijing, Shanghai and other places, the fastest time is 11 days from the acceptance of a case to the conclusion of the trial. ([More](#))

中共中央国务院：全面落实公平竞争政策制度

2023年7月19日，新华社授权发布《中共中央 国务院关于促进民营经济发展壮大的意见》（“《意见》”）。《意见》提出全面落实公平竞争政策制度，应强化竞争政策基础地位，健全公平竞争制度框架和政策实施机制，坚持对各类所有制企业一视同仁、平等对待。强化制止滥用行政权力排除限制竞争的反垄断执法。未经公平竞争不得授予经营者特许经营权，不得限定经营、购买、使用特定经营者提供的商品和服务。定期推出市场干预行为负面清单，及时清理废除含有地方保护、市场分割、指定交易等妨碍统一市场和公平竞争的政策。优化完善产业政策实施方式，建立涉企优惠政策目录清单并及时向社会公开。（[查看更多](#)）

CPC Central Committee and State Council: Fully Implement Fair Competition Policy System

On July 19, 2023, the Xinhua News Agency was authorized to issue the *Opinions of the Central Committee of the Communist Party of China (“CPC Central Committee”)* and the *State Council on Promoting the Development and Growth of the Private Economy (“Opinions”)*. The *Opinions* proposes that the comprehensive implementation of the fair competition policy system should strengthen the basic position of the competition policy, improve the framework of the fair competition system and the policy implementation mechanism, and insist on treating enterprises of all types of ownership equally. Strengthen anti-monopoly law enforcement to prevent the abuse of administrative power to eliminate and restrict competition. Franchise rights shall not be granted to business operators without fair competition, and the operation, purchase, and use of goods and services provided by specific business operators shall not be restricted. Regularly launch a negative list of market intervention behaviours, and timely clean up and abolish policies that impede the unification of the market and fair competition, including local protection, market segmentation, and designated transactions. Optimize and improve the implementation methods of industrial policies, establish a list of enterprise-related preferential policies and disclose them to the public in a timely manner. ([More](#))

广东省市监局与HKCC签署《备忘录》就大湾区竞争事宜加强合作

2023年7月19日，广东省市场监督管理局（“广东省市监局”）与香港特别行政区竞争事务委员会（“HKCC”）《关于推进粤港澳大湾区竞争政策与法律有效实施备忘录》（“《备忘录》”）签署仪式在广州举行。《备忘录》旨在加强粤港两地及粤港澳大湾区竞争政策与法律的有效实施，合作内容主要包括定期举行工作会议以及开展与竞争政策与法律相关的交流及合作活动。广东省市监局表示，下一步将与HKCC一道全力推动《备忘录》合作事项落地见效，以竞争合规引领企业发展，以公平竞争规范市场行为，为粤港企业提供公平竞争的发展环境，促进两地企业创新发展壮大，推动湾区高质量发展。（[查看更多](#)）

Guangdong AMR and HKCC sign MoU to Strengthen Cooperation on Competition Issues in Greater Bay Area

On July 19, 2023, the Guangdong Administration for Market Regulation (“AMR”) signed a Memorandum of Understanding (“MoU”) with the Hong Kong Competition Commission (“HKCC”) to strengthen cooperation between the two authorities in the advancement of competition policy and law in the Guangdong-Hong Kong-Macao Greater Bay Area (“Great Bay Area”). The MoU aims to strengthen the effective implementation of competition policy and law in the Greater Bay Area. The collaboration consists of two major parts: holding regular meetings, and initiating exchanges and collaboration activities in relation to competition policy and law. The Guangdong AMR states that the next step will be to work with HKCC to fully promote the implementation of the MoU, to lead the development of enterprises with competition compliance, to regulate market behaviours with fair competition, to provide a fair competition development environment for Guangdong and Hong Kong enterprises, and to promote Enterprises in the two places innovate and grow stronger, promoting the high-quality development of the Greater Bay Area. ([More](#))

市场监管总局发布一起安徽省反行政垄断案件

2023年7月15日，市场监管总局发布了安徽省市场监督管理局（“安徽省市监局”）纠正当涂县人民政府滥用行政权力排除、限制竞争行为案件。安徽省市监局认为，当事人印发二次供水管理办法，要求涉及二次供水的新建开发小区的开发企业在项目实施前与取得特许经营权供水单位签订协议，在建的二次供水设施由建设单位委托取得特许经营权的供水单位进行施工，上述行为排除、限制了该县新建小区二次供水设施工程建设市场的竞争，构成滥用行政权力排除、限制竞争行为。调查期间，当事人主动采取措施停止相关行为，消除相关竞争限制，重新草拟二次供水管理办法，公开征求意见，并在经过合法性审查和公平竞争审查后重新印发。

[\(查看更多\)](#)

SAMR Releases Administrative Monopoly Penalty in Anhui Province

On July 15, 2023, the SAMR announced a case of administrative monopoly in Anhui Province. The case involved the correction of the Dangtu County People's Government's abuse of administrative power to exclude and restrict competition by Anhui AMR. After an investigation, the Anhui AMR found that the parties involved, issued the secondary water supply management measures, requiring the development enterprises of the newly-built development areas involved in the secondary water supply to sign an agreement with the water supply unit that has obtained the franchise right before the project is implemented, and the secondary water supply facilities under construction will be provided by the water supply unit. This hindered fair competition and constituted an abusive exercise of administrative power that excluded and restricted competition in the construction market of secondary water supply facilities in the county's newly built community. During the investigation, the party involved took the initiative to take measures to stop relevant behaviours, eliminate relevant competition restrictions, re-draft the secondary water supply management measures, solicit opinions publicly, and reissue them after legality review and fair competition review. [\(More\)](#)

美国FTC和DOJ就合并指南草案公开征求意见

2023年7月19日，美国联邦贸易委员会（FTC）和司法部（DOJ）联合发布了新版合并指南草案，向社会公开征求意见，意见反馈截止日期为2023年9月18日。本次对合并指南的更新旨在更好地反映两大机构在现代经济背景下如何认定合并对竞争的影响，如何评估拟议合并。合并指南围绕反映了合并审查中最常见问题的13条核心原则制定，在开头就提出了清晰的评估框架，在后文中则提供了适用于每项核心原则的更深入的分析 and 工具。本次修订针对2010年发布的《横向合并指南》和2020年发布的《纵向合并指南》，由FTC和DOJ在2022年1月发起。 [\(查看更多\)](#)

FTC and DOJ Seek Comment on Draft Merger Guidelines

On July 19, 2023, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) are releasing a draft update of the Merger Guidelines, encouraging the public to review the draft and provide feedback through a public comment period until September 18, 2023. The goal of this update is to bet-

ter reflect how the agencies determine a merger's effect on competition in the modern economy and evaluate proposed mergers under the law. The Draft Guidelines are built around 13 core guidelines that reflect the most common issues that arise in merger review. The Draft Guidelines set forth a clear and digestible framework at the outset to help the reader assess whether a merger raises common issues. The document then provides more in-depth analysis and tools that may apply to each category. In January 2022, the agencies announced a broad initiative to evaluate potential updates and revisions to the Horizontal Merger Guidelines, issued in 2010, and the Vertical Merger Guidelines issued in 2020. ([More](#))

西班牙竞争管理机构对苹果和亚马逊处以1.941亿欧元罚款

2023年7月19日，据媒体报道，西班牙竞争管理机构（CNMC）因共谋操纵西班牙的电子设备在线市场对苹果（Apple Inc.）处以1.43亿欧元的罚款，对亚马逊（Amazon.com, Inc）处以5050万欧元的罚款，合计罚款1.941亿欧元。CNMC 在调查中发现，在授予亚马逊苹果授权经销商地位的合同中包括影响西班牙电子设备在线市场的反竞争条款，限制了西班牙亚马逊网站上苹果产品的卖家数量，导致超过90%利用亚马逊市场销售苹果设备的现有零售商被封锁。此外，亚马逊还降低了西班牙以外的欧盟零售商接触西班牙客户的能力，限制了苹果的竞争对手在用户搜索苹果产品时在其网站上投放的广告，苹果设备在西班牙的在线销售价格也在双方达成交易后上涨。目前，苹果与亚马逊对这一处罚结果均表示不认可，其有两个月时间提出上诉。（[查看更多](#)）

CNMC fines Amazon, Apple €194 million

On July 19, 2023, according to the media report, the Spanish National Markets and Competition Commission (CNMC) levied Apple with a penalty of €143.6 million and Amazon with a fine of € 50.5 million, for a total of € 194.1 million for colluding to fix the online market for electronic devices in Spain. The CNMC found in its investigation that the contract granting Amazon status of authorized Apple dealer included anti-competitive clauses that affected the online market for electronic devices in Spain, limiting the number of sellers of Apple products on the Spanish Amazon website, resulting in the existing retailers who were using Amazon's market place to sell Apple devices were blocked. In addition, Amazon has also reduced the capacity of retailers in the European Union based outside Spain to access Spanish customers, and restricted the advertising Apple's competitors were allowed to place on its website when users searched for Apple products. Following the deal between the two tech giants, the prices of Apple devices sold online rose in Spain. Both Apple and Amazon disagree with the punishment result, and they have two months to appeal. ([More](#))

CMA发布2022/23年度报告和账目

2023年7月17日，英国竞争与市场管理局（CMA）公布了2022/2023年度报告和账目。这一年中，CMA确立了促进竞争市场和处理不公平行为的新战略和后续三年的重点事项。CMA审查了大约700起在经营者集中案件，其中43起进入第一阶段调查，13起进入第二阶段调查，3起因竞争担忧而被阻止，其余进入第二阶段的案件或者在CMA接受其补救措施后获得批准，或者由企

业主动放弃交易。CMA于2022年4月发布了第二份竞争状况报告，以评估英国的竞争状况以及对个人和企业的影响。 ([查看更多](#))

CMA Presents Its Annual Report and Accounts 2022 to 2023

On July 17, 2023, The Competition and Markets Authority (CMA) presents its annual report and accounts for 2022 to 2023. During the year, the CMA launched a new medium strategy and priorities for the next three years to promote competitive markets and tackle unfair behaviour. The CMA has considered approximately 700 mergers, of which 43 entered the Phase 1 stage, 13 entered the Phase 2 stage, 3 were blocked due to competition concerns, and the rest were cleared following acceptance of remedies or the deals were abandoned by the businesses entered Phase 2. The CMA publishes the second edition of our State of UK Competition report, which examines how well competition is working across the UK economy and the impact on individuals and businesses. ([More](#))

FTC起诉阻止艾昆纬收购PMI

2023年7月17日，美国联邦贸易委员会（FTC）发布公告，称其正在寻求通过诉讼阻止全球最大的医疗保健数据提供商艾昆纬（IQVIA Holdings Inc.）收购PMI（Propel Media, Inc.）。艾昆纬旗下的Lasso（Lasso Marketing, Inc.）和PMI旗下的 DeepIntent均为针对医疗保健专业人员（HCP）和其他医疗保健消费者的需求方平台（DSP）。FTC认为拟议交易将消除Lasso和DeepIntent之间的正面竞争，推高价格并降低质量和选择。另外，作为领先提供商，艾昆纬控制着对于医疗保健DSP的竞争至关重要的身份和处方行为的数据，在收购完成后，艾昆纬将有能力和动力利用其对这些重要数据的控制来排除或以其他方式施加不利于DeepIntent和Lasso的当前或新兴竞争对手，提高其数据价格，降低数据质量或限制广告商使用其数据。 ([查看更多](#))

FTC Sues to Block IQVIA's Acquisition of Propel Media

On July 17, 2023, the FTC issued a notice stating its intention to file a lawsuit in order to block the acquisition of PMI (Propel Media, Inc.) by IQVIA (IQVIA Holdings Inc.), the world's largest healthcare data provider. IQVIA's Lasso (Lasso Marketing, Inc.) and PMI's DeepIntent are two providers of programmatic advertising, known as demand-side platforms, that specifically targets healthcare professionals (HCP) with advertising for pharmaceutical drugs and other healthcare products. The FTC's complaint alleges that the proposed transaction would eliminate head-to-head competition between Lasso and DeepIntent, driving up prices and reducing quality and choice. As the largest healthcare data provider, IQVIA controls leading provider identity and prescribing behaviour data that is essential for healthcare demand-side platforms to compete. If IQVIA and PMI merge, IQVIA will have the ability and incentive to leverage its control over these important datasets to foreclose or otherwise disadvantage current or emerging rivals to DeepIntent and Lasso, raising prices for its data, reducing data quality, or restricting advertisers from using its data. ([More](#))

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

《铁路关键信息基础设施安全保护管理办法》公开征求意见

2023年7月18日，为了保障铁路关键信息基础设施安全，维护网络安全，根据《中华人民共和国网络安全法》《关键信息基础设施安全保护条例》等法律、行政法规，国家铁路局起草形成《铁路关键信息基础设施安全保护管理办法（征求意见稿）》（以下简称“《办法（征求意见稿）》”）。并向社会公开征求意见。征求意见时间为2023年7月18日至8月17日。

《办法（征求意见稿）》共六章三十条，就铁路关键信息基础设施认定、运营者责任和义务、保障和监督及法律责任等作出了规定。关于铁路关键信息基础设施的认定，国家铁路局负责制定铁路关键信息基础设施认定规则，并根据认定规则，负责组织认定铁路关键信息基础设施，及时将认定结果通知铁路关键信息基础设施运营者，并通报国务院公安部门。运营者应当加强数据安全保护，明确重要数据和个人信息的保护措施，将在我国境内运营中收集和产生的个人信息和重要数据存储在境内。因业务需要，确需向境外提供数据的，应当按照国家相关规定和标准进行安全评估。法律、行政法规另有规定的，依照其规定执行。（[查看更多](#)）

Regulations on Administration of the Security Protection of Railway Critical Information Infrastructure is Open for Public Comments

On 18 July 2023, in order to ensure the security of railway critical information infrastructure and maintain network security, the National Railway Administration drafted *Regulations on Administration of the Security Protection of Railway Critical Information Infrastructure (Draft for Public Comments)* in accordance with the *Cybersecurity Law of the People's Republic of China*, *Security Protection Regulations for Critical Information Infrastructure* and other laws and administrative regulations. The Draft is open for public comments from 18 July to 17 August 2023.

The Draft consists of 6 chapters and 30 articles, which stipulate the designation of railway critical information infrastructure, the responsibilities and obligations of operators, protection and supervision, and legal liabilities. Regarding the designation of railway critical information infrastructure, the National Railway Administration is responsible for formulating the designation rules for railway critical information infrastructure, and, is responsible for organizing the designation of railway critical information infrastructure in accordance with the designation rules, timely notifying the operators of railway critical information infrastructure of the designation results and notifying the public security department of the State Council. Operators shall strengthen data security protection, clarify measures for protecting important data and personal information, and store personal information and important data generated and collected during operations within the territory of China. If it becomes necessary to provide data overseas due to business needs, a security assessment should be conducted in accordance with relevant national regulations and standards. If there are other applicable provisions in laws and administrative regulations, they shall be implemented accordingly. ([More](#))

国家信息安全漏洞库发布《2022年度网络安全漏洞态势报告》

2023年7月20日，国家信息安全漏洞库（CNNVD）发布《2022年度网络安全漏洞态势报告》（以下简称“报告”）。报告基于2022年国家信息安全漏洞库（CNNVD）发布的漏洞数据，统计数量增长、类型、严重等级、修复和攻击危害等情况，分析研判漏洞发展趋势和特点，并研究提出漏洞防范和缓解的工作思路。

报告显示，2022年度新增漏洞近2万5千个，达到历史新高，保持连年增长态势。超高危级漏洞占比呈持续上升趋势，漏洞修复率大幅提升，面临漏洞威胁形势依然严峻。（[查看更多](#)）

CNNVD Issued 2022 Cybersecurity Vulnerability Status Report

On 20 July 2023, China National Vulnerability Database of Information Security (CNNVD) issued *2022 Cybersecurity Vulnerability Status Report (the "Report")*. Based on the vulnerability data published by CNNVD in 2022, the Report provides statistics on the growth, types, severity levels, remediation and attack risks of vulnerabilities. It analyzes and assesses the trends and characteristics of vulnerability and proposes strategies for vulnerability prevention and mitigation.

The Report reveals that nearly 25,000 new vulnerabilities were found in 2022, reaching a historical high and maintaining a continuous growth trend. The proportion of ultra-high vulnerabilities continues to rise, while the vulnerability remediation rate has significantly improved. Despite these improvements, the threat posed by vulnerabilities remains severe. ([More](#))

《上海市网络点餐服务消费者个人信息保护合规指引》发布

2023年7月18日，在上海市网信办、市市场监管局和市商务委的支持下，上海市消费者权益保护委员会同上海市餐饮烹饪行业协会制定发布《上海市网络点餐服务消费者个人信息保护合规指引》（以下简称“《指引》”），自发布之日起实施。《指引》针对网络点餐不同场景下餐饮经营者收集、使用、保管消费者个人信息等提出了具体的合规要求和操作准则。

根据《指引》，餐饮经营者在进行网络点餐服务时，需在消费者首次使用时以弹窗或其他显著方式向消费者提示隐私政策，并征得消费者明确同意。同时，餐饮经营者也需严格按照其申明规则收集、使用消费者个人信息，收集的个人信息或打开的可收集个人信息权限不得超出消费者授权范围。（[查看更多](#)）

Shanghai Compliance Guidelines on Personal Information Protection for Consumers of Online Food Ordering Services Were Released

On 18 July 2023, with the support of Shanghai Cyberspace Administration, Shanghai Administration for Market Regulation and Shanghai Commission of Commerce, Shanghai Consumer Rights Protection Commission and Shanghai Restaurant and Culinary Industry Association jointly formulated and released the *Shanghai Compliance Guidelines on Personal Information Protection for Consumers of Online Food Ordering Services (the "Guidelines")*, effective from the date of release. The Guidelines provide specific compliance requirements for the collection, use and storage of consumer's personal

information by restaurant and cuisine operators according to the various scenarios of online food ordering services.

According to the Guidelines, when providing online food ordering services, restaurant and cuisine operators are required to remind consumers of their privacy policies by pop-up windows or other prominent means to review the privacy policy, and obtain explicit consent from consumers. Additionally, restaurant and cuisine operators shall strictly comply with regulations for collecting and using consumer personal information and they shall ensure that the collection of personal information or permissions for collecting personal information does not exceed the scope authorized by consumers. ([More](#))

北京网信办召开App收集使用个人信息整改指导会

据北京市委网信办2023年7月21日报道，7月13日，北京市委网信办会同国家互联网应急中心北京分中心组织召开整改指导会，向“闪送”、“顺丰同城急送”等10家企业集中通报专项治理行动中检查发现的App违规收集个人信息问题，逐一下达《整改通知书》，指导企业开展产品合规改造，要求限期整改。

近期，市委网信办组织完成了本年度专项治理行动首轮监督检查工作，共对拍摄美化类、求职招聘类、邮件快件寄递类等58款下载使用量较大的App开展技术检测，检查发现“违反必要原则，收集与其提供的服务无关的个人信息”、“未明示收集使用个人信息的目的、方式和范围”、“未经用户同意收集使用个人信息”等问题较为突出。 ([查看更多](#))

Beijing Cyberspace Administration Held a Guidance Meeting on Rectification in Collection and Use of Personal Information by Apps

According to the report of Beijing Cyberspace Office on 21 July 2023, Beijing Cyberspace Administration and the Beijing branch of National Internet Emergency Center jointly held a guidance meeting and officially notified 10 enterprises, including “Flash Express” and “SF Express”, of the problems of illegal collection of personal information by APPs as identified in a special regulatory action. Each enterprise has been issued a Rectification Notice to guide the enterprises to carry out compliance efforts in products reconfiguration and is required to rectify the problems within a limit time.

Recently, the Beijing Cyberspace Administration has completed the first round of supervisory inspections as part of this year’s special regulatory action. A total of 58 apps with large download usage, such as photo-shooting and beautification, job hunting and recruitment, and mail express delivery, were tested. The inspection found that there were prominent problems such as violating the necessity principle, collecting personal information irrelevant to the services provided, failing to clearly state the purpose, method and scope of collecting and using personal information, and collecting and using personal information without users' consent. ([More](#))

《广州市数据条例（征求意见稿）》公开征求意见

2023年7月21日，为保护自然人、法人和非法人组织数据权益，推进数据要素依法有序流通，保障数据安全，发挥数据要素作用，推动高质量发展，广州市政务服务数据管理局牵头起草

了《广州市数据条例（征求意见稿）》（以下简称“《条例》”），并公开征求公众对《条例》的意见，征求意见时间为2023年7月21日至8月20日。

《条例》明确广州行政区域内的数据权益保护、数据流通应用、数据安全保障及监督管理等数据管理活动流程及要求，大力推行建立首席数据官制度。《条例》共分为总则、数据权益保护、公共数据、数据要素市场、数据应用、南沙深化粤港澳数据合作、数据安全、法律责任和附则九章，共五十五条。（[查看更多](#)）

Guangzhou Data Regulations (Draft) Open for Public Comment

On 21 July 2023, in order to protect data interest of individuals, legal persons and other entities, promote the circulation of data elements, ensure data security and promote the effect of data elements and further high-quality development, Guangzhou Municipal Government Affairs Data Administration drafted *Guangzhou Data Regulations* (the “Regulations”). The Regulations were open for public comments from 21 July to 20 August 2023.

The Regulations specify the processes and requirements of data administrative activities such as data rights protection, data circulation and application, data security guarantee and supervision and administration within Guangzhou, and vigorously promote the establishment of the chief data officer system. The Regulations are divided into nine chapters, with a total of 55 articles, including general provisions, protection of data rights and interest, data element market, data application, deepening data cooperation between Guangdong, Hong Kong and Macao in Nansha, data security, legal liability and supplementary provisions. ([More](#))

全国首例：广州某科技公司因虚假撤销网络安全等级保护测评备案被罚

据广州市公安局新闻办公室2023年7月18日通报，3月份，网警支队在检查中发现，广州某科技有限公司运营的某智慧办公管理软件未依法开展等级保护测评工作。经查，该系统于2020年7月定级为三级等级保护系统并取得备案证明，却在依然正常投入使用的情況下撤销等级保护测评备案，在2021年度、2022年度均未依法开展三级系统的等级保护测评，未履行网络安全等级保护测评的法定职责。为打击逃避履行等级保护测评而虚假撤销备案的行为，督促相关单位依法落实网络安全管理制度和保护技术措施，广州警方对该虚假撤销备案的违法行为给予警告的行政处罚，并责令限期改正。该案是全国首起对虚假撤销网络安全等级保护测评备案作出处罚的行政案件。（[查看更多](#)）

First Case in China: One Guangzhou Technology Company Was Punished for Falsely Revoking Record-filing for Network Security Grade-based Protection Assessment

According to the information office of Guangzhou Public Security Bureau on 18 July 2023, in March, the Internet police division found in their inspection that a smart office management software operated by a Guangzhou technology company did not carry out grade-based protection assessment. It was found that the system was rated as a third-grade protection system and made a record-filing as such in July 2020, but this record-filing was withdrawn while the system was still being put into use. Addi-

tionally, the system failed to perform the requisite third-grade network security grade-based protection assessment in 2021 and 2022, and failed to fulfill the legal responsibility of performing grade-based network security protection assessment. In order to crack down on the act of falsely revoking record-filing of network security grade-based protection assessment while evading the implementation of grade-based protection assessment, the company was urged to implement network security management system and technical protective measures in accordance with the applicable laws and regulations. Guangzhou Police imposed administrative penalties and ordered the company to rectify within a prescribed time limit. The case is the first administrative case in China to punish the false revoking of the record-filing for network security grade-based protection assessment. ([More](#))

浙江省通信管理局发布关于侵害用户权益行为17款APP的通报

2023年7月21日，浙江通管局通报17款侵害用户权益行为APP。近期，浙江省通信管理局组织第三方检测机构对群众关注的实用工具、网上购物类、学习教育等类型APP进行检查，并书面要求违规APP开发运营者限期整改。

通报中显示，截至2023年7月21日，尚有17款APP未按要求完成整改。通报要求APP开发运营者在7月31日前完成整改落实工作，整改落实不到位的，浙江省通信管理局将视情采取下架、关停、行政处罚等措施。（[查看更多](#)）

Zhejiang Communications Administration Issued a Notice Regarding 17 Apps That Infringe on User Rights

On 21 July 2023, Zhejiang Communications Administration Issued an official notice regarding 17 Apps that infringe on user rights. Recently, the Zhejiang Communications Administration organized third-party testing agencies to inspect Apps of various types, including practical tools, online shopping, educational apps, etc. The operators of Apps that infringe on user rights were given written notices to rectify the issues within a time limit.

According to the notice, as of 21 July 2023, there were still 17 Apps that have not completed the required rectification. The notice requires the App developers and operators to complete the rectification by 31 July 2023. If the rectification and implementation are not in place by then, Zhejiang Communications Administration will take measures such as removing the App from the App store, shutting it down and imposing administrative penalties depending on the circumstances. ([More](#))

加拿大网络安全中心发布关于生成式AI的指南

加拿大网络安全中心（CCCS）于2023年7月14日发布了生成式人工智能（AI）使用指南。CCCS详细介绍了与使用生成人工智能相关的风险，包括数据隐私问题、有偏见的内容以及错误信息和虚假信息。

此外，关于数据集，CCCS建议无论数据集是从外部获取的还是由内部开发的，均应实施稳定的流程来验证和核实数据集，并使用多样化和有代表性的数据来避免不准确和有偏见的内容。此外，CCCS表示，组织应该建立一个流程，让整个组织的不同团队对输出内容进行审查，以识别

系统内的固有偏差，并利用适当的外部反馈不断微调或重新训练人工智能系统以改善产出的质量。 ([查看更多](#))

Canada: CCCS Releases Guidance on Generative AI

The Canadian Centre for Cyber Security (the “CCCS”) released, on 14 July 2023, guidance on the use of generative artificial intelligence (AI). The CCCS detailed risks associated with the use of generative AI including data privacy concerns, biased content, as well as misinformation, and disinformation.

Furthermore, in regard to datasets, the CCCS suggested implementing a robust process for validating and verifying the datasets, whether they are externally acquired or developed internally, and using diverse and representative data to avoid inaccurate and biased content. Moreover, the CCCS continued, organizations should establish a process for outputs to be reviewed by a diverse team from across the organization to look for inherent biases within the system, and continuously fine-tune or retrain the AI system with appropriate external feedback to improve the quality of outputs. ([More](#))

知识产权 Intellectual Property

中国2023年上半年知识产权工作主要数据公布

国务院新闻办公室于2023年7月18日上午10时举行新闻发布会，请国家知识产权局副局长胡文辉、战略规划司司长葛树、知识产权保护司司长张志成、知识产权运用促进司司长雷筱云介绍2023年上半年知识产权工作有关情况，并答记者问。

专利方面：上半年共授权发明专利43.3万件，实用新型专利110.4万件，外观设计专利34.4万件。受理PCT国际专利申请3.5万件。专利复审结案3.3万件，无效宣告结案4433件。中国申请人通过海牙体系共提交外观设计国际申请957件。截至今年6月底，我国发明专利有效量达456.8万件，同比增长16.9%。

商标方面：上半年共注册商标201.8万件。完成商标异议案件审查8.7万件，完成各类商标评审案件审理18.2万件。收到国内申请人马德里商标国际注册申请3024件。截至今年6月底，我国有效注册商标量达4423.5万件，同比增长9.1%。

2023年1—6月，市场监管部门共查处商标、专利等违法案件1.7万件。

来源：国务院新闻办

Statistics on China's Intellectual Property Work in the First Half of 2023 Released

The State Council Information Office held a press conference on 18 July 2023, which introduced the intellectual property work in the first half of 2023.

In terms of patents, a total of 433,000 invention patents, 1,103,000 utility model patents and 344,000 design patents were granted in the first half of this year. 35,000 PCT international patent were accepted. 33,000 cases patent reexamination closed, and 4,433 invalidation cases closed. Chinese applicants submitted a total of 975 international design applications through the Hague System. As of the end of June 2023, the number of valid invention patents in China reached 4.586 million, a year-on-year increase of 16.9%.

Regarding trademark, a total of 2.018 million trademarks were registered in the first half of the year. 87,000 trademark opposition cases were completed, as well as 182,000 cases of various trademark review. 3,024 international trademark registration applications were received from domestic applicants for Madrid System. As of the end of June 2023, China had a total of 44.235 million valid registered trademarks, a year-on-year increase of 9.1%.

From January to June 2023, market supervision departments investigated and dealt with a total of 17,000 cases of trademark, patent, and other intellectual property rights infringement cases.

Source: [The State Council Information Office](#)

最高法院：公证书所附产品照片可以作为现有设计抗辩的比对依据

近日，最高人民法院发布了江苏苏萨食品有限公司与海南苏克萨哈饮品有限公司、徐志群、诸暨市阮市恒客隆食品商店侵害外观设计专利权纠纷案的再审判决书，支持了徐志群、海南苏萨公司关于现有设计抗辩的再审主张。

法院认为，在市场流通环境中，作为盛装饮料产品的包装物，被诉侵权产品通常会包覆有包含文字、图案等设计要素在内的标贴。对于一般消费者而言，饮料瓶整体形状差异带来的视觉效果，相对于瓶身之上线条组数的细微差异，更容易受到关注。而瓶底设计等在使用状态下不易被观察到的部分，不会对二者的视觉效果产生显著影响。法院认为，被诉侵权设计与涉案专利构成近似，落入涉案专利权保护范围。

本案中，从公证书照片所示内容看，该饮料瓶虽表面包覆有瓶贴，但并不影响一般消费者基于对该类产品的通常认知，凭借照片中公开的产品实物识别前述产品设计特征。因此，公证书照片可以作为本案现有设计抗辩的比对依据。二审法院关于因瓶身整体覆盖包装纸无法体现产品全面、不能作为现有设计抗辩比对依据的结论不成当，最高院予以纠正。

来源：最高人民法院

Supreme Court: Photos of Products Attached to Notarial Certificates Can Serve as the Base for Comparison of Prior Design Defense

Recently, Supreme People's Court issued the retrial judgement of design patent infringement between Jiang Susu Limited versus Hainan Sukesaha Limited, and others. Supreme Court supported the claim of defendants on existing design defenses.

The court held that the accused products, as packaging beverage products, are usually covered with labels including design elements such as text and patterns. For common consumers, the visual effect brought by the overall shape difference of the beverage bottle is more likely to attract attention than the subtle differences in the number of lines on the bottle body. Parts such as the bottle bottom design that are not easily observed in use, will not have a significant impact on the visual effect of the two. The court held that the accused infringing design was similar to the patent involved, and fell within the scope of protection of the patent involved.

In this case, the defendants raised the prior design defense, based on the product photos attached to notarial certificates. The court found that, from the content of the notarial photos, although the surface of the beverage bottle was covered with stickers, it did not affect the average consumers' recognition of products' features based on their cognition of such products. Therefore, the notarial certificate photos could be used as a comparative basis for the defense of prior design defense in this case. The prior design and the accused product has a visual effect that is quite similar to the overall design of the prior design. The Supreme Court held that the design implemented by the defendant falls under the prior design as stipulated in Article 62 of Patent Law.

Source: Supreme People's Court

当事人将自主公开的现有设计申请取得外观设计专利权不能当然推定具有恶意

近日，上海市高级人民法院发布了驼翁公司与英乔公司恶意提起知识产权损害责任纠纷案的二审判决书，驳回上诉，维持原判。

驼翁公司主张英乔公司利用自己已在先展览和销售公开的现有设计申请取得涉案外观设计专利权，明显违反诚实信用原则，对此，法院认为，当事人在自己的专利产品展览或销售后，将该产品外观设计申请专利权，不能当然推定其主观上存在恶意。

驼翁公司主张英乔公司在诉讼中明知其专利权不受法律保护，仍然坚持不撤诉，具有明显借助诉讼程序打击竞争对手正常经营活动的主观恶意，且其在一审败诉后，明知其专利属于现有设计不受法律保护，仍然提起上诉，恶意拖延一审判决生效等行为，已经严重超出了正当维权边界，违反诚实信用原则，严重干扰和损害了驼翁公司对相关产品的正常经营活动和市场利益，对此，法院认为，相关专利侵权案件系当庭宣判，英乔公司未当庭就撤诉与否向法庭明确答复尚属合理范畴，而英乔公司对一审判决提起上诉，亦系其正当行使诉讼权利，前述情形均难以认定英乔公司违反诚实信用原则，具有侵害对方合法权益的不正当诉讼目的。

来源：上海高级人民法院

Shanghai High Court: Obtaining Design Patent Rights Based on a Voluntarily Disclosed Existing Design Application cannot be Deemed Malicious

Recently, Shanghai High People's Court issued the judgement of IP Abuse between Tuo Weng Company(TWC) versus Ying Qiao Company(YQC). The court rejected the appeal and upheld the judgement.

The Court held that obtaining design patent rights after the products being exhibited and sold, cannot be deemed malicious.

The court further held that the relevant patent infringement cases were announced in the court immediately after the trial, and it was reasonable for YQC not to give a clear reply to the court on whether to withdraw the lawsuit or not at the site. YQC's appeal against the first-instance judgement was its legitimate rights. Therefore, to the court did not recognize YQC is in violation of the principle of good faith, with the purpose of infringing the legitimate rights and interests of the other party.

Source: Shanghai High People's Court

格力再次起诉奥克斯，索赔9900万背后的八件专利

7月16日，人民法院网公告显示，格力电器已经向广州知识产权法院起诉奥克斯、宁波奥胜及古汤汤等五名自然人侵害商业秘密，并请求法院将八件专利的专利权从奥克斯转移到格力电器名下，并赔偿经济损失及合理维权费用9900万元。

在格力提出争议的八件专利权权属纠纷中，主要涉及空调的送风装置、空调面板、空调蒸发器管道结构、壁挂式空调等。对这八件专利进行比较，会发现，这些专利都采用了“一案双申”的策略，即同一日就相同的技术方案分别申请发明专利和实用新型专利。本案具体的专利权权属纠纷缘由并未公开，不过一般情况下，多是原单位技术人员跳槽到新单位不满一年内做出的发明或实用新型，如果是承担原单位的本职工作或原单位分配的任务有关的发明，则根据《专利法》的规定，原单位可以主张专利权的。

来源：人民法院网

Gree has Filed Another Lawsuit Against AUX, Requesting the Transfer of Eight Patents to Gree and Seeking a Compensation of RMB 99 Million

On 16 July, it was shown that Gree had filed a lawsuit against Ningbo Aosheng and five natural persons. Gree requested the court to transfer 8 patent rights from AUX to Gree, and to compensate for economic losses and reasonable rights protection costs of RMB 99 million. Among the eight disputed patent rights proposed by Gree, they mainly involve air supply device of air conditioner, air conditioner panel, air conditioner evaporator pipe structure, and wall-mounted air conditioner and so on.

Source: People's Court Website

金山办公再陷著作权侵权纠纷

7月18日晚，金山办公披露一则该公司及其子公司涉及诉讼的公告称，公司于近日收到北京知识产权法院通知，今年6月7日，北京冠群信息技术股份有限公司（下称“冠群公司或原告”）对公司及子公司北京数科网维技术有限责任公司（下称“数科公司”）提起诉讼，案由为侵害计算机软件著作权纠纷，目前该案件已受理，尚未开庭审理。

冠群公司认为，金山公司在金融行业销售数科OFD产品构成著作权侵权和不正当竞争。金山公司作为数科公司的控股股东，数科公司许可金山公司在金融行业的销售行为应视为两被告的共同销售行为，应参照代理合作协议约定的2倍销售价格让两被告承担惩罚性赔偿责任，即要求其共同赔偿冠群公司1.5亿元的损失，同时立即停止侵权行为。

来源：[上海证券交易所](#)

Jinshan Office Software Involved in Copyright Infringement Dispute

On 18 July, Jinshan Office disclosed an announcement, that the company and its subsidiaries are involved in copyright infringement litigation. The notice declared that the company recently received a notice from the Beijing Intellectual Property Court, that on 7 June 2023, Beijing Guanqun Limited (Guanqun) filed a lawsuit against Beijing Shuke Limited (Shuke). The case is a dispute over infringement on computer software copyright. The case has been accepted but not been scheduled for trial yet.

Guanqun claimed that, Jinshan Office sold OFD products in the financial industry, which constituted copyright infringement and unfair competition. Jinshan Office, as the controlling shareholder of the company, was authorized by Shuke to sell products in the financial industry, which shall be considered as joint sales activities. Guanqun claimed that according to provisions of the agency cooperation agreement, both defendants shall be liable for punitive damages at twice the sales price. Additionally, Guanqun demanded that both defendants shall jointly compensate Guanqun for a loss of RMB 150 million, while immediately ceasing infringement.

Source: [Shanghai Stock Exchange](#)

未尽审慎义务肆意发函构成商业诋毁的不正当竞争

近日，江苏省南京市中级人民法院发布了南京蓝泰交通设施有限责任公司与地洲新能源科技（上海）有限公司、地洲智慧能源（浙江）有限公司不正当竞争纠纷案的判决书，判决地洲上海、地洲浙江构成商业诋毁的不正当竞争行为。

本案中，地洲公司在知悉蓝泰公司即将在中央电视台科教频道《我爱发明》栏目组免费录制专题片后，地洲浙江在没有专利权的情况下以专利权人名义向蓝泰公司及栏目组分别发送函件，编造蓝泰公司侵犯其专利权等虚假、误导性信息，导致蓝泰公司丧失节目组的免费录制机会。在前述两次发函行为之后不到一个月，地洲上海又再次以同样内容向蓝泰公司的客户发函，导致蓝泰公司丧失与该客户的交易，此后业务开展也陷入困境。地洲浙江、地洲上海发送的告知函传播了虚假信息，贬损了蓝泰公司的商誉，导致蓝泰公司的社会评价降低。地洲上海、地洲浙江未尽审慎义务，不依客观事实肆意发函诋毁竞争对手的行为不仅损害了蓝泰公司的商业信誉，更是违背了法律和商业道德，严重扰乱公平的市场竞争秩序，构成商业诋毁的不正当竞争行为。

来源：[江苏省南京市中级人民法院](#)

Nanjing Intermediate People's Court: Failure to Fulfill the Duty of Diligence that Constitutes Unfair Competition through Commercial Defamation

Recently, Nanjing Intermediate People's Court issued the judgement on unfair competition dispute between Lantai Limited (Plaintiff) versus Shanghai Dizhou Limited (Defendant 1) and Zhejiang Dizhou Limited (Defendant 2).

In this case, after knowing that Plaintiff was about to record the feature film for free in CCTV channel 10, Defendant2 sent letters to Plaintiff and related parties respectively, in name of the patentee, who does not have patent right. Defendant2 made up false and misleading information such as Plaintiff's infringement of its patent. As a result, Plaintiff lost the opportunity to record the feature. Less than a month after the above two letters, Defendant 1 sent another letter to the customer of Plaintiff, causing Plaintiff to lose the transaction with the customer, and then the business development was also in trouble. The notification letters sent by the two defendants, spread false information, tarnished the reputation of Plaintiff, and lowered its social evaluation. The two defendants failed to fulfill their duty of diligence. Their acts of sending letters with false information damaged the business reputation of Plaintiff, which constituted unfair competition through commercial defamation.

Source: Nanjing Intermediate People's Court, Jiangsu

壳牌石油公司成功反击了Ensygnia公司的指控

近日，壳牌石油公司成功反击了Ensygnia公司的指控。在此之前，Ensygnia曾控诉一种由壳牌研制出的、允许消费者经由应用软件在加油站支付加油费的系统侵犯了其所拥有的一项专利权。英国高等法院最终对涉案专利作出了无效判决。

在这个涉及移动应用程序支付系统的专利案件中，英国高等法院驳回了科技公司Ensygnia对壳牌石油公司提出的侵权索赔要求。编号为GB2489332C1的涉案专利涉及一种用于经由二维码识别用户的方法和系统，这个方法和系统可以允许用户使用注册服务。

来源: Juve Patent

Shell and Norton Rose Invalidate Ensygnia Mobile Payment Patent

Shell Oil has successfully repelled accusations that a system which allows customers to pay for their petrol at the pump, via an app, infringes a patent belonging to Ensygnia. The UK High Court had reached a decision of invalidity on the patent in question. Ensygnia develops multiple solutions for mobile payment systems.

In a case concerning a patent which covers a mobile app payment system, the UK High Court has rejected technology company Ensygnia's claims of infringement against oil company, Shell. GB 2 489 332 C1 concerns a method and system for identifying a user via QR code, allowing them to obtain access to a registered service.

Source: Juve Patent

YouTube新季度报告：版权保护系统的版权主张再创新高

YouTube新发布的季度报告显示，来自其版权保护系统Content ID系统的版权主张数量已经达到了新高。2022年下半年，这一先进的版权工具标记了超过8.26亿个有问题的视频，几乎全部是自动标记的。通过将这些视频“货币化”的选择，这些Content ID系统的版权主张每年可以为版权所有人带来大约15亿美元的额外收益。

为了保护版权所有人，YouTube会定期移除、停用涉嫌包含侵权内容的视频或使其不能获利。多年以来，版权所有人在YouTube上提出的版权主张数量一直不为人知。两年前，当该平台发布其第一份季度报告时，情况发生了变化。自那时起，版权主张的数量稳步上升。这份新的季度报告显示，在去年的下半年，版权所有人在YouTube上对超过8.26亿个视频提出了权利主张。这是自YouTube开始报告这些数据以来的最高水平，比上一年同期的7.59亿个被标记视频增长了9%。

来源：[Digital Music News](#)

YouTube's Recent Transparency Report Shows the Number of Content ID Copyright System Claims has Reached a New High — USD 826 Million Claims in Just Six Months

YouTube's latest transparency report reveals that the number of Content ID system claims has hit a new high during the latter half of 2022. The advanced copyright tool flagged over 826 million issues, nearly all automated. These claims generate roughly \$1.5 billion in additional annual payouts to rightsholders through monetization options.

To protect copyright holders, YouTube regularly disables, removes, or demonetizes videos allegedly containing infringing content based on these claims. The number of claims rightsholders made on YouTube was unknown for years, but this changed two years ago when the platform launched its first transparency report. Since then, the number of claims has risen steadily. That is the highest figure since YouTube began reporting these figures and a 9% uplift over the same period the previous year when 759 million videos were flagged.

Source: [Digital Music News](#)

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

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



Subscribe to our WeChat community

扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 首尔

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

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261