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立方竞争法周报 Weekly Competition Law News

天津市市监委组织开展全市反垄断执法和公平竞争审查工作培训

2023年10月16日，天津市市场监管委员会（“天津市市监委”）发布消息，宣布已于10月11日至13日在南开大学组织开展了全市反垄断执法和公平竞争审查工作培训。天津市市监委副主任罗中棠参加培训班并作动员讲话，南开大学法学院院长宋华琳致开班辞，市场监管系统执法总队及全市16个区局从事反垄断执法和公平竞争审查工作的干部共计百余人参加培训。此次培训结合当下反垄断法修订、反垄断执法常态化、公平竞争审查入法等新形势、新变化进行授课。同时，由处室业务骨干结合工作实际对反垄断执法和公平竞争审查内容进行深度讲解，突出理论和实践相结合，努力提高反垄断执法和公平竞争审查工作水平。（[查看更多](#)）

Tianjin AMR Organises Training on Citywide Anti-Monopoly Enforcement and Fair Competition Review

On October 16, 2023, the Tianjin Municipal Administration for Market Regulation (“Tianjin AMR”) issues a newsletter, announcing that it organised a training course for the city’s anti-monopoly law enforcement and fair competition review work at Nankai University from October 11 to 13. Luo Zhongtang, Deputy Director of the Tianjin AMR, attended the training course and delivered a mobilising speech, Song Hualin, Dean of the Law School of Nankai University, delivered an opening speech, and a total of more than one hundred cadres engaged in anti-monopoly law enforcement and fair competition review work in the Law Enforcement General Team of the Market Regulation System and the 16 District Bureaus of the city participated in the training. The training was conducted in the light of the current new situation and changes such as the revision of the Antimonopoly Law, normalisation of antimonopoly enforcement, and the introduction of fair competition review into the law. At the same time, the business backbones of the office gave in-depth explanations on the contents of anti-monopoly enforcement and fair competition review in conjunction with the actual work, highlighting the combination of theory and practice, and endeavouring to improve the level of anti-monopoly enforcement and fair competition review work. ([More](#))

最高法：维护统一公平诚信的市场竞争环境，依法打击垄断行为

2023年10月10日，最高人民法院（最高法）举办新闻发布会，发布《最高人民法院关于优化法治环境 促进民营经济发展壮大的指导意见》（“《指导意见》”），并回答记者提问。《指导意见》全面梳理法治保障民营经济发展壮大的结合点和着力点，从六个方面对审判执行工作提出了明确要求，用27个条文对《中共中央 国务院关于促进民营经济发展壮大的意见》中的19项内容进行了落实和细化。《指导意见》提出维护统一公平诚信的市场竞争环境，依法打击垄断行为，完善竞争案件裁判规则，研究出台反垄断民事诉讼司法解释。依法严惩强制“二选一”、大数据杀熟、低价倾销、强制搭售等破坏公平竞争、扰乱市场秩序行为，引导平台经济向开放、创新、赋能方向发展。（[查看更多](#)）

SPC: Maintaining Unified, Fair and Honest Market Competition Environment and Cracking Down on Monopolies

On October 10, 2023, the Supreme People's Court (SPC) holds a press conference, releasing the *Guiding Opinions of the Supreme People's Court on Optimising the Rule of Law Environment to Promote the Development and Strengthening of the Private Economy* ("Guiding Opinions") and answered reporters' questions. The *Guiding Opinions* comprehensively sorted out the combination and focus of the rule of law to guarantee the development and growth of the private economy, put forward clear requirements for the trial and execution of work in six aspects, and implemented and detailed the 19 items in the *Guideline of the Central Committee of the Communist Party of China and the State Council for boosting the growth of the private economy* in 27 articles. The *Guiding Opinions* proposed to maintain a unified, fair and honest market competition environment, crack down on monopolistic behaviour in accordance with the law, improve the rules for adjudicating competition cases, and study and introduce judicial interpretations on anti-monopoly civil litigation. It also severely punishes, in accordance with the law, acts that undermine fair competition and disrupt market order, such as mandatory "pick one of two", big data-enabled price discrimination, dumping, and tying, and guides the development of the platform economy in the direction of openness, innovation, and empowerment. ([More](#))

新加坡监管部门就网约车平台Grab对Trans-cab的拟议收购提出竞争担忧

2023年10月16日，新加坡竞争与消费者委员会（CCCS）发布公告，宣布已完成对Grab（Grab Holdings Limited）收购Trans-cab（Trans-cab Holdings Ltd.）全部股份提议的第一阶段审查。2023年8月7日，CCCS接受双方的申请，就拟议收购是否会违反《竞争法》第54条开始了第一阶段的审查。Grab在新加坡主要通过移动应用程序在数字金融服务、快递和移动领域开展业务，包括网约车平台服务；Trans-cab则在其运营的出租车车队中向乘客提供出租车预订服务。在第一阶段审查结束时，CCCS认为鉴于规模在网约车平台行业的重要性，Grab获得Trans-cab车队可能会影响Trans-cab司机使用竞争对手的网约车平台，从而增加Grab的竞争对手在网约车平台的扩张和进入壁垒。因此，CCCS需要更详细地审查拟议收购对竞争的影响。（[查看更多](#)）

CCCS Raises Competition Concerns on Proposed Acquisition by Grab of Trans-cab

On October 16, 2023, the Competition and Consumer Commission of Singapore (CCCS) has completed its Phase 1 review of the proposed acquisition by Grab Holdings Limited ("Grab") of 100 percent of the shares of Trans-cab Holdings Ltd. ("Trans-cab") On August 7, 2023, CCCS embarked on its Phase 1 review following the acceptance of an application from the Parties for a decision on whether the proposed acquisition, if carried into effect, would infringe section 54 of the Competition Act 2004. In Singapore, Grab operates primarily over a mobile application across the digital financial services, delivery and mobility sectors, which also include ride-hail platform services. Trans-cab is a licensed street-hail service operator in Singapore and also owns a fleet of private-hire cars for rental to drivers for the provision of ride-hail services. CCCS is unable to conclude at the end of its Phase 1 review that the proposed acquisition does not give rise to any competition concerns. Grab's ownership of the Trans-cab fleet on Trans-cab drivers' usage of rival ride-hail platforms, which may raise barriers to expansion and entry for Grab's rival ride-hail platforms, given the importance of scale in the ride-hail platform industry. Accordingly, CCCS needs to review the competition effects of the proposed acquisition in greater detail. ([More](#))

KFTC对3D打印企业Stratasys滥用市场支配地位行为罚款6.24亿韩元

2023年10月13日，韩国公平贸易委员会（KFTC）决定对3D打印企业Stratasys（Stratasys, Ltd.）和其他三家相关公司的滥用市场支配地位行为处以6.24亿韩元（约340万人民币）的罚款，并要求其采取改正措施。Stratasys是目前全球市场份额最大的3D打印企业。KFTC认为Stratasys滥用市场支配地位，强迫其分销商Prototech停止与其竞争对手Desktop Metal交易，不公平地干扰了分销商的内部管理。（[查看更多](#)）

KFTC Fines 3D Printing Firm Stratasys KRW 624 Million for Abuse of Dominant Market Position

On October 13, 2023, the Korea Fair Trade Commission (KFTC) decides to impose a fine of KRW 624 million (approximately CNY 3.4 million) on 3D printing company Stratasys, Ltd. and three other related companies for abusing their dominant market position, and to require them to take corrective measures. Stratasys is currently the 3D printing company with the largest market share in the world. The KFTC found that Stratasys abused its dominant market position by forcing its distributor, Prototech, to stop trading with its competitor, Desktop Metal, unfairly interfering with the distributors' internal management. ([More](#))

欧盟委员会指示基因测序巨头因美纳撤销对GRAIL71亿美元的收购交易

2023年10月12日，据媒体报道，欧盟委员会已指令美国基因测序巨头因美纳（Illumina, Inc.）撤销对癌症检测子公司GRAIL71亿美元（约518.63亿人民币）的收购交易，并对其处以创纪录的4.32亿欧元（约33.27亿人民币）的反垄断罚款。因美纳的收购行为未经欧盟委员会和美国联邦贸易委员会（FTC）批准，并在欧盟和美国都引起了相关反垄断诉讼。2023年4月3日，FTC裁定因美纳收购GRAIL损害了美国市场关于肿瘤检测的研发、商业化和市场竞争，应于180天内剥离GRAIL业务。欧盟委员会则于2023年10月12日指令因美纳剥离此前收购的GRAIL，并规定了该公司剥离的最后期限以及不按时剥离的潜在处罚。（[查看更多](#)）

EU Orders Genetic Testing Giant Illumina to Reverse USD 7.1 Billion Grail Buy-Out

On October 12, 2023, according to media, the European Commission has directed US-based genetic testing giant Illumina, Inc. to rescind its USD 7.1 billion (approximately CYN 51,863 million) acquisition of cancer testing subsidiary GRAIL and imposed a record antitrust fine of EUR 432 million (approximately CYN 3,327 million). The acquisition was not approved by the European Commission and the US Federal Trade Commission (FTC) and resulted in related antitrust litigation in both the EU and the U.S. On April 3, 2023, the FTC ruled that Illumina's acquisition of GRAIL harmed research and development, commercialisation and competition in the market for oncology tests in the U.S., and that Mena should divest itself of the GRAIL business within 180 days. The European Commission, in turn, on October 12, 2023, directed Illumina to divest its previously acquired GRAIL and set a deadline for the company to divest, as well as potential penalties for failure to divest on time. ([More](#))

澳大利亚监管部门批准博枫和MidOcean以187亿澳元收购澳大利亚最大能源零售商Origin Energy

2023年10月10日，澳大利亚竞争与消费者委员会（ACCC）宣布附条件批准私募股权巨头博枫（Brookfield Global Transition Fund）和液化天然气公司MidOcean以187亿澳元（约876亿人民币）收购该国最大的能源零售商Origin Energy。拟议收购包括两项相互依存的交易，博枫在交易后将拥有Origin Energy的能源市场业务，包括Origin Energy的发电及电力、天然气零售业务，MidOcean将拥有Origin Energy的上游天然气权益。ACCC认为，博枫是专门为向可再生能源转型而设立的企业，此次收购可能会加速可再生能源发电的推广，从而更快地减少澳大利亚的温室气体排放。在这种情况下，澳大利亚可再生能源转型可能带来的公共利益足以抵消拟议收购可能带来的公共损害。（[查看更多](#)）

ACCC Authorises Brookfield and MidOcean's AUD 18.7 Billion Acquisition of Origin Energy

On October 10, 2023, The Australia Competition and Consumer Commission (ACCC) conditionally grants authorisation with conditions for the proposed acquisition of Origin Energy by Brookfield and MidOcean. The proposed acquisition comprises two interdependent transactions. The transactions will result in a consortium led by the Brookfield Global Transition Fund owning Origin's energy markets business, including Origin's electricity generation and electricity and gas retail businesses. MidOcean will own Origin's upstream gas interests. The ACCC considers that the acquisition will likely result in an accelerated roll-out of renewable energy generation, leading to a more rapid reduction in Australia's greenhouse gas emissions. In this case, the likely gains for Australia's renewable energy transition amount to a public benefit sufficient to outweigh the likely public detriments. ([More](#))

欧盟《班轮联盟集体豁免条例》将于2024年4月25日到期

2023年10月10日，欧盟委员会发布公告，宣布针对班轮航运服务的《班轮联盟集体豁免条例》（CBER）将于2024年4月25日到期。班轮航运服务包括在特定航线上提供定期、定时的非散装海上货物运输（绝大多数为集装箱运输）。班轮航运服务需要大量投资，因此通常由几家航运公司组成联盟合作提供。欧盟委员会在启动审查程序收集有关CBER自2020年以来的运作情况后，认为属于CBER范围内的联营集团数量较少、情况较差，CBER为承运商带来的合规成本节约有限，在承运商决定合作方面仅起到次要作用。此外，CBER已无法促进较小的运营商相互合作，使其与业内较大的运营商竞争。基于上述理由，欧盟委员会认为CBER已无法实现其促进行业内良性竞争的预期目的，决定不再延长CBER的有效期。（[查看更多](#)）

EU Consortia Block Exemption Regulation Expires on April 25, 2024

On October 10, 2023, the European Commission issues a notice, announcing that the Consortia Block Exemption Regulation (CBER) that exempts liner shipping consortia from EU antitrust rules, will expire on April 25, 2024. Liner shipping services comprise the provision of regular, scheduled non-bulk maritime cargo transport (the vast majority in containers) on a specific route. They require significant

levels of investment and therefore are regularly provided by several shipping companies cooperating in consortia. Having launched a call for evidence to gather information on the performance of the CBER throughout the 2020-2023 period, the European Commission concluded that given the small number and profile of consortia falling within the scope of the CBER, the CBER brings limited compliance cost savings to carriers and plays a secondary role in carriers' decision to cooperate. Furthermore, over the evaluation period, the CBER was no longer enabling smaller carriers to cooperate among each other and offer alternative services in competition with larger carriers. For the above reasons, the European Commission considers that CBER no longer fulfils its intended purpose of promoting healthy competition in the industry and has decided not to extend the validity of the CBER. ([More](#))

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

工信部等六部门联合印发《算力基础设施高质量发展行动计划》

2023年10月8日，工业和信息化部、中央网信办、教育部、国家卫生健康委、中国人民银行、国务院国资委等六部门近日联合印发《算力基础设施高质量发展行动计划》（以下简称《行动计划》）。

《行动计划》结合算力基础设施产业现状和发展趋势，明确了“多元供给，优化布局；需求牵引，强化赋能；创新驱动，汇聚合力；绿色低碳，安全可靠”的基本原则，制定了到2025年的主要发展目标，提出了完善算力综合供给体系、提升算力高效运载能力、强化存力高效灵活保障、深化算力赋能行业应用、促进绿色低碳算力发展、加强安全保障能力建设等六方面重点任务，着力推动算力基础设施高质量发展。在强化数据安全保护能力方面，《行动计划》要求，加强数据分类分级保护，根据监管要求对重要和核心数据实行精准严格管理。制定数据全生命周期安全防护要求和操作规程，配套建设数据安全风险监测技术手段，加强数据安全风险的分析、研判、预警和处置能力。（[查看更多](#)）

MIIT and other five Departments Jointly Issue the Action Plan for High-Quality Development of Computing Power Infrastructure

On 8 October 2023, six departments, including the Ministry of Industry and Information Technology (MIIT), the Cyberspace Administration of China, the Ministry of Education, the National Health Commission, the People's Bank of China, and the State-owned Assets Supervision and Administration Commission of the State Council, recently issued *the Action Plan for the High-quality Development of Computing Power Infrastructure* (the "Action Plan").

In view of the current situation and development trend of the computing power infrastructure industry, the *Action Plan* clarified the basic principles of "diversified supply, optimised layout; demand-driven, strengthened empowerment; innovation-driven, combined efforts; green and low-carbon, safe and reliable". It has set the main development goal by 2025, and put forward six key tasks such as perfecting the comprehensive computing power supply system, enhancing the efficient carrying capacity of computing power, strengthening the efficient and flexible guarantee of storage capacity, deepening compu-

ting power-enabled industry applications, promoting the development of green and low-carbon computing power, and strengthening the construction of security and guarantee capacity, etc., so as to promote the high-quality development of computing power infrastructure. On strengthening the capacity for data security protection, the Action Plan requires that data classification and protection be strengthened, and that precise and strict management of important and core data be implemented in accordance with regulatory requirements. The Action Plan also requires the formulation of data security protection requirements and operating procedures for the entire life cycle of data, the construction of technical means for monitoring data security risks, and the enhancement of the capacity for analysing, researching and judging data security risks, as well as for early warning and disposal of data security risks. ([MORE](#))

工信部发布《工业和信息化领域数据安全风险评估实施细则（试行）（征求意见稿）》

2023年10月9日，为贯彻落实《数据安全法》《工业和信息化领域数据安全管理办法（试行）》（以下简称《管理办法》），指导地方行业主管部门、工业和信息化领域数据处理者规范开展风险评估工作，工信部发布《工业和信息化领域数据安全风险评估实施细则（试行）（征求意见稿）》（以下简称《实施细则》），面向社会公开征求意见，征求截止时间为2023年11月8日。《实施细则》适用于中华人民共和国境内工业和信息化领域重要数据和核心数据处理者开展的数据安全风险评估活动，旨在进一步细化行业数据安全风险评估规则，规范风险评估活动，有效提升重要数据和核心数据保护水平。

《实施细则》共十七条，确定了部省两级数据安全风险评估工作体系，细化了重要数据和核心数据处理者的评估义务，明确了行业主管部门监督管理评估活动的机制流程。《实施细则》明确要求，重要数据和核心数据处理者每年完成至少一次数据安全风险评估，并形成评估报告。涉及跨境提供、转移、委托处理重要数据和核心数据的，或者跨主体提供、转移、委托处理核心数据的，地方行业监管部门对评估报告审查后，报工业和信息化部进行复核。涉及国家法律法规中规定需要申报的数据出境安全评估情形，数据处理者需要履行数据出境安全评估要求落实情况；已通过国家有关部门组织的数据出境安全评估且在有效期内的，实际数据出境的规模、范围、种类、敏感程度等要素与申报事项的符合情况。（[查看更多](#)）

MIIT Issues *Implementing Rules for Data Security Risk Assessment in the Industry and Information Technology Sector (for Trial) (Draft for Comments)*

On 9 October 2023, in order to implement the *Data Security Law* and the *Administrative Measures for Data Security in Industry and Information Technology (for Trial Implementation)* (the “*Administrative Measures*”), and to guide local industry authorities and data processors in industry and information technology to carry out risk assessment work in a standardised manner, the MIIT issued the *Implementing Rules for Risk Assessment of Data Security in Industry and Information Technology (for Trial Implementation) (Draft for Comments)* (the “*Implementing Rules*”), open for public comments until 8 November 2023. The *Implementing Rules* are applicable to data security risk assessment activities carried out by processors of important data and core data of industry and information technology in China, aiming to further refine the rules of data security risk assessment, standardise the risk assessment activities, and effectively enhance the protection level for important and core data.

The *Implementing Rules* consist of 17 articles, establishing a working system for data security risk assessment at the ministerial and provincial levels, refining the assessment obligations of processors of important and core data, and clarifying the mechanism and process for supervisory and management of assessment activities by competent industry authorities. The *Implementing Rules* clearly stipulate that important data and core data processors complete at least one data security risk assessment per year and develop an assessment report. For those involving outbound provision, transfer or entrustment of important data and core data, or cross-subject provision, transfer or entrustment of core data, the local industry regulatory authorities shall review the assessment report and submit it to the MIIT for review. In circumstances which require security assessment of outbound transfer of data under applicable laws and regulations, data processors are required to fulfil their obligations related to security assessment requirements for outbound transfer of data. Where the data transfer security assessment organised by the relevant national authorities has been passed and such assessment is in effect, data processors are required to ensure that the scale, scope, type, sensitivity and other elements of the actual outbound data are in conformity with the declared items. ([MORE](#))

信安标委发布《生成式人工智能服务安全基本要求》（征求意见稿）

2023年10月11日，全国信息安全标准化技术委员会发布《生成式人工智能服务安全基本要求》（征求意见稿）（以下简称《要求》），面向社会公开征求意见，征求截止时间为2023年10月25日。

《要求》首次提出生成式人工智能服务提供者需遵循的安全基本要求，涉及语料安全、模型安全、安全措施、安全评估等方面。《要求》适用于面向我国境内公众提供生成式人工智能服务的提供者提高服务安全水平，适用于提供者自行或委托第三方开展安全评估，也可对相关主管部门评判生成式人工智能服务的安全水平提供参考。《要求》支撑《生成式人工智能服务管理暂行办法》，提供者在向相关主管部门提出生成式人工智能服务上线的备案申请前，应按照国家各项要求逐条进行安全性评估，并将评估结果以及证明材料在备案时提交。在个人信息处理方面，要求遵循我国个人信息保护要求，并充分参考现行国家标准，如GB/T 35273《信息安全技术 个人信息安全规范》等，对个人信息进行保护。（[查看更多](#)）

National Information Security Standardization Technical Committee Issues *Basic Requirements for the Security of Generative Artificial Intelligence Services (Draft for Comments)*

On 11 October 2023, the National Information Security Standardization Technical Committee issued the *Basic Requirements for the Security of Generative Artificial Intelligence Services (Draft for Comments)* (the “Requirements”), which is open for public comments until 25 October 2023.

The *Requirements* propose, for the first time, basic security requirements for generative artificial intelligence service providers to follow, covering corpus security, model security, security measures, security assessment and other aspects. The *Requirements* are applicable to providers of generative artificial intelligence services aimed at the domestic public with a view to improving the safety level of their services, are applicable to providers to carry out safety assessment on their own or entrusted to a third party, and also provide reference for the relevant competent authorities to evaluate the safety level of generative artificial intelligence services. The *Requirements* underpin the *Interim Measures for the Admin-*

istration of Generative Artificial Intelligence Services, and providers shall carry out a security assessment in accordance with each of the Requirements before submitting a filing application to the relevant competent authority for purposes of putting a generative artificial intelligence service online. The providers shall submit the results of the assessment as well as the supporting materials at the time of filing. As for the handling of personal information, the Requirements stipulate that the providers shall follow the requirements for the protection of personal information in China and make full reference to the existing national standards, such as GB/T 35273, *Information Security Technology - Specification for Personal Information Security*, etc., to protect personal information. ([MORE](#))

国家金融监督管理总局发布《关于警惕利用AI新技术实施诈骗的风险提示》

2023年10月13日，国家金融监督管理总局发布《关于警惕利用AI新技术实施诈骗的风险提示》，提醒广大金融消费者警惕新型诈骗手段，维护个人及家庭财产安全。

当前，AI技术的广泛应用为社会公众提供了个性化、智能化的信息服务，也给网络诈骗带来可乘之机。如不法分子通过面部替换、语音合成等方式，制作虚假图像、音频、视频，仿冒他人身份实施诈骗，侵害消费者合法权益。消费者应增强个人信息保护意识，不随意下载陌生软件、注册陌生平台或添加陌生好友，对个人社交账户的安全状况保持警惕。尽量避免在互联网过多暴露个人照片、声音、视频等信息，不贪图方便把身份证、银行卡照片等直接存放在手机内。 ([查看更多](#))

National Financial Regulatory Administration Issued Risk Alerts on the Use of New AI Technology to Commit Fraud

On 13 October 2023, the National Financial Supervision and Administration (NFSA) issued *Risk Alerts on the Use of New AI Technology to Commit Fraud*, reminding the public of financial consumers to be alert to the new fraudulent means and to safeguard the safety of their personal and family property.

Today, the wide application of AI technology provides the public with personalised and intelligent information services, and also provides opportunities for online fraud, such as when criminals produce fake images, audio, video, through facial replacement, voice synthesis, etc. so as to pose as imposters assuming the identity of others to implement fraud, infringing consumers' rights and interests. Consumers should improve their awareness of personal information protection by not downloading unfamiliar software, registering on unfamiliar platforms or adding unfamiliar friends on social platforms, and keeping a vigilant eye on the security status of their personal social accounts. Consumers should avoid exposing too much information such as personal photos, voices, videos, etc. on the Internet, and do not store ID cards, bank card photos, etc. directly in mobile phone for the sake of convenience. ([MORE](#))

2023年中国5G发展大会将在沪举办

据新华网2023年10月12日消息，由工业和信息化部主办的2023年中国5G发展大会将于10月20-21日在上海国际会议中心举办。

本次大会以“5G扬帆促新质，产业升级创未来”为主题，聚焦5G技术产业、网络建设、应用创新等方面的最新成果和发展趋势，通过会议论坛、展览展示等多种形式，推动产业合作，深化国际交流，促进5G高质量发展。大会将邀请工业和信息化部、上海市政府负责同志出席，部省联动共谋5G技术产业与应用发展。同时邀请领域内顶尖院士、国际权威组织嘉宾发表主旨报告，解析全球5G发展新趋势。在企业嘉宾方面，大会还将邀请基础电信企业，华为、中兴、中国信科、VIVO、诺基亚等行业龙头企业及产业链各方代表共聚，群策群力推动5G产业高质量发展，构建互利共赢良好态势。（[查看更多](#)）

China 5G Development Conference 2023 to be Held in Shanghai

The China 5G Development Conference 2023, hosted by the Ministry of Industry and Information Technology, will be held on 20-21 October at the Shanghai International Convention Centre, according to Xinhua on 12 October 2023.

Under the theme of *5G Sailing for New Quality, Industry Upgrading for Future*, the conference focuses on the latest achievements and development trends of 5G technology industry, network construction, application innovation, etc., in an effort to promote industrial cooperation, to deepen international communications, and to promote the high-quality development of 5G through various forms of conferences, forums, exhibitions and displays. Officials from the Ministry of Industry and Information Technology and the Shanghai Municipal Government will be invited to attend the conference, to jointly plan the development of 5G technology, industry and application. At the same time, top academicians and international authoritative organisations will be invited to deliver keynote reports to analyse new trends in global 5G development. On the corporate guest side, the conference will also invite basic telecom companies, Huawei, ZTE, China Information and Communication Technology, VIVO, Nokia and other industry leading enterprises and industry chain representatives to get together, make collective efforts to promote the high-quality development of the 5G industry, and build ground conducive to mutual benefit and a win-win situation. ([MORE](#))

中国互联网联合辟谣平台2023年9月辟谣榜综述

近日，中国互联网联合辟谣平台对9月网络谣言进行了梳理分析。当月网上数据监测和网民举报显示，旧谣新炒、无中生有等造谣现象有所增多；冒用权威名义诈骗牟利、夸大谎报灾情编造谣言，以及利用“卖惨带货”营销套路虚假摆拍视频在网上时有传播，严重误导公众认知，造成不良社会影响。中国互联网联合辟谣平台提醒，10月，受中秋国庆假期“长尾效应”的影响，涉及旅游消费、交通出行、食品安全、文艺影视等方面的热点信息或持续较长时间，一些谣言亦可能随之产生。（[查看更多](#)）

Summary of China Internet Joint Rumour Dispelling Platform's Disinformation List for September 2023

Recently, the China Internet Joint Rumour Dispelling Platform (CIJRDP) conducted a compilation and analysis of online rumours in September. Online data monitoring and netizen reports during the month showed that there was an increase in rumour-mongering phenomena, such as the rehashing of old rumours and the creation of new rumours out of thin air; the impersonating of authority to defraud

for profit, the fabrication of rumours that exaggerated and lied about disaster conditions, and the use of the “selling misery with goods” marketing approach to falsely pose for videos disseminated on the Internet, which seriously mislead the public's perceptions and had an unfavourable impact on society. The CIJRDP reminds that in October, under the influence of the “long-tail effect” of the Mid-Autumn and National Day holidays, hotspot information involving tourism and consumption, traffic and travel, food safety, arts and culture, film and television, etc. may continue for a long period of time, and some rumours may be generated accordingly. ([MORE](#))

加利福尼亚州州长签署《删除法案》

2023年10月10日，加利福尼亚州州长Gavin Newsom宣布已签署参议院第362号法案，即与数据经纪人相关的《删除法案》，该法案现已正式成为法律。

《删除法案》要求加州隐私保护局（CPPA）在2026年1月1日前建立“一站式删除机制”，允许消费者提交单一可验证的删除请求，要求每个维护个人信息的数据经纪人，删除有关消费者的个人信息。此外，根据《删除法案》，从2026年8月1日起，数据经纪人必须至少每45天访问该机制一次。自2026年7月1日起，在消费者提交删除请求并且数据经纪人删除消费者数据后，数据经纪人必须至少每45天删除一次消费者的所有个人信息。除非消费者另有要求，否则数据经纪人也不得出售或共享消费者的新个人信息。（[查看更多](#)）

Delete Act Signed by Governor

On 10 October 2023, the Governor of California, Gavin Newsom, announced that they had signed Senate Bill 362 for an act relating to data brokers (the “Delete Act”) into law.

The *Delete Act* requires the *California Privacy Protection Agency* (CPPA) to establish, by 1 January, 2026, an accessible deletion mechanism that allows a consumer, through a single, verifiable consumer request, to ask that every data broker that maintains any personal information to delete any personal information related to the consumer. In addition, under the *Delete Act*, starting from 1 August 2026, data brokers must access the mechanism at least once every 45 days. Moreover, from 1 July 2026, after a consumer has submitted a deletion request and a data broker has deleted the consumer's data, a data broker must delete all personal information of the consumer at least once every 45 days. Data brokers are also prohibited from selling or sharing new personal information of the consumer unless the consumer requests otherwise. ([MORE](#))

新泽西州总检察长就数据泄露与Blackbaud达成4,950万美元的和解协议

2023年10月5日，美国新泽西州总检察长与其他49位总检察长共同发布了《合规自愿保证书》，与Blackbaud公司达成了4950万美元的和解协议，起因是该公司在发生数据泄露事件后违反了1996年《健康保险可携性和责任法案》《新泽西州个人信息保护法》《数据泄露通知法》和《消费者保护法》。

总检察长指出，此次数据泄露事件影响了涉及13,000多名Blackbaud客户的超过100万份文档。除了要求Blackbaud支付和解金外，总检察长还要求Blackbaud加强其未来的数据安全和泄露通知程序。（[查看更多](#)）

New Jersey Attorney General Publishes \$49.5M Settlement with Blackbaud over Data Breach

On 5 October 2023, the New Jersey Attorney General (AG) alongside 49 other AGs published an *Assurance of Voluntary Compliance*, in which it came to a settlement of \$49.5 million with Blackbaud, Inc., for violations of the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, the *New Jersey Personal Information Protection law*, *Data Breach Notification Law*, and *Consumer Protection Law*, following a data breach.

The AG provided that the data breach affected over 1 million files relating to over 13,000 Blackbaud customers. In addition to the settlement of \$49.5 million, the AG stated that Blackbaud is required to strengthen its future data security and breach notification procedures. ([MORE](#))

知识产权 Intellectual Property

中国专利申请人可继续选择欧洲专利局作为国际检索单位

2023年10月13日，国知局发布《中国国家知识产权局-欧洲专利局关于专利合作条约国际检索单位试点项目延期的联合公报》（以下简称《公报》）。

《公报》明确，中华人民共和国的国民和居民按照专利合作条约（PCT）以英文提交的国际申请可继续选择欧洲专利局作为国际检索单位至2026年11月30日。该试点项目自2020年12月成功启动，根据中国国家知识产权局和欧洲专利局达成的共识，项目将延期三年。通过选择欧洲专利局进行国际检索，试点项目参与者可在进入欧洲阶段前享有更大的法律确定性并在欧洲阶段享有更快的审查进程。

来源：国家知识产权局

Applicants in China May Continue to Designate EPO as International Searching Authority

On 13 October, 2023, the China National Intellectual Property Administration (CNIPA) issued the EPO-CNIPA Joint Communiqué on the Extension of the Pilot Project on International Search Units under the Patent Cooperation Treaty (PCT) (the Communiqué).

The Communiqué clarifies that nationals and residents of the People's Republic of China will continue to have the option to select the EPO as their International Searching Authority (ISA) for international patent applications filed in English under the Patent Cooperation Treaty (PCT) until 30 November

2026. This follows the success of the pilot scheme first started in December 2020, which is being extended for a further three years as mutually agreed between the European Patent Office (EPO) and the China National Intellectual Property Administration (CNIPA). By taking the European Patent Office for international searches, participants in the pilot project can enjoy greater legal certainty before entering the European phase and a faster examination process during its European phase.

Source: CNIPA

最高法院改判格兰仕专利侵权案，判赔1000万

2023年10月12日，根据广州日报消息，最高法就广东格兰仕微波炉电器制造有限公司（原告）诉中山市美格电子科技有限公司（被告）发明专利权纠纷一案作出终审判决，判决撤销原判，判令被告停止侵权并赔偿损失1000万元。

法院认为，原审法院对涉案专利的发明点的认定有误，必要技术特征既可以包括与最接近现有技术共有的特征，也可以包括与之区别的技术特征，其总和构成了区别于背景技术方案的一个方案，而体现技术贡献的发明点通常指为解决发明或者实用新型技术问题的一个或多个特征，必要技术特征与发明点有一定关联性，但不能将其必然视为发明点特征，发明点的确定还应该回归到专利说明书中进行综合判断。

来源：广州日报公众号

"Galanz" Case of Patent Infringement Awarded RMB10 Million by the Supreme People's Court

On 12 October 2023, the Supreme People's Court issued a final judgement of invention patent infringement between Guangdong Galanz Microwave Oven Electrical Appliance Manufacturing Co., Ltd. (Plaintiff) v. Zhongshan Meige Electronic Technology Co., Ltd. (Defendant). The court revoked the original judgment and ordered the Defendant to stop infringement with damages of RMB10 million.

The court held that the original judgement erred in its determination of the invention point of the patents-in-suit. Necessary technical features may include both the common features most close to and distinct from prior art features, the sum of which constitutes a solution that is distinct from the background technical solution. The invention point, which embodies the technical contribution, usually refers to one or more features for solving the technical problem of the invention or utility model. Necessary technical features are related to the invention point to a certain extent, but they cannot necessarily be regarded as invention point features, and the determination of the invention point shall be made in a comprehensive manner by resorting to the patent specification.

Source: The Supreme People's Court

优酷诉喜马拉雅：算法推荐技术不必然突破避风港原则

近日，上海知识产权法院就优酷信息技术（北京）有限公司诉上海喜马拉雅科技有限公司、喜大（上海）网络科技有限公司（被告）侵害作品信息网络传播权纠纷案作出二审判决，判决驳回原告全部诉讼请求。

法院认为，被告作为网络服务提供者，对用户侵权行为不存在应知。原因在于，首先，喜马拉雅公司未针对涉案侵权音频进行人工选择、编辑、修改、推荐。不应基于个性化推荐内容中涉及涉案音频，即认定存在主动推荐行为。而且，涉案音频不属于可以明显感知的侵权信息。无论是通过涉案音频本身，还是通过涉案专辑名称、图片、简介等均较难识别是否属于侵权信息。再次，喜马拉雅公司未从侵权内容中获得直接经济利益。网络服务提供者因提供网络服务而收取一般性广告费、服务费等，与特定作品无关联，不属于直接经济利益。最后，在案证据不能证明喜马拉雅公司未尽到与其能力相应的注意义务。算法推荐区别于人工推荐，不能因算法推荐技术的使用而当然推定网络服务提供者信息管理能力的提高，亦不能因算法推荐内容涉及侵权，而当然推定网络服务提供者知悉该内容的存在。

来源：上海知识产权法院

Youku v. Himalaya: Algorithmic Recommendation Technology Not Inevitably Breach the Safe Harbor Principle

Recently, the Shanghai IP Court issued a second instance judgement of infringement on network dissemination of information between Youku information technology (Beijing) Co., LTD. (Plaintiff) and Shanghai Himalaya Technology Co. Ltd. et. al (Defendants). The court rejected the plaintiff's appeal.

The court held that the defendant, as an Internet Service Provider (ISP), was not supposed to know about the users' infringing behaviour. The reason is that, firstly, the Defendant did not manually select, edit, modify or recommend the infringing audio in question. Based on the personalised recommendation content involving the infringing audio, it shall not be concluded that there is an active recommendation behaviour. Moreover, the audio in question does not belong to the infringing information that can be clearly perceived. Whether through the audio itself, or through the name of the album, pictures, synopsis, etc., are relatively difficult to identify whether the infringing information. Further, the defendant did not acquire a direct financial benefit from the infringing content. ISP receive general advertising fees and service fees for providing Internet services, which are not related to the particular work and do not constitute a direct economic benefit. Finally, the evidence does not prove that the Defendant has not fulfilled the duty of care corresponding to its ability. Algorithmic recommendation is different from manual way, it cannot be presumed that the ISP's information management ability has been improved due to the use of algorithmic recommendation technology, nor can it be presumed that the ISP is aware of infringing content because the algorithm has recommended it.

Source: The Shanghai IP Court

仿冒“海螺万家”酱油判赔100万元

近日，浙江省高级人民法院就浙江海螺万家调味品有限公司诉浙江荆山酒业有限公司、温州海陆汇食品有限公司、温州市新纪元食品有限公司侵害商标权及不正当竞争纠纷（被告）一案作出二审判决，判决驳回上诉，维持原判，被告需共同承担赔偿责任及合理开支共计100万元。

法院认为，被告主张温州市场上“海螺”文字已逐渐淡化到接近调味品通用名称的程度，但其提交的证据不足以证明“海螺”已成为调味品的代名词而不再具有指示商品来源的作用。在一

定历史时期包含有“海螺”字样的商业标识在市场上共存，受到核定使用类别、商标文字样式组成、商标注册行政审查程序等多种因素的影响，并不能由此得出“海螺”文字属于酱油、醋商品类别的通用名称，或涉案商标的显著识别部分并非“海螺”字样的结论，亦不影响法院对被诉侵权标识与涉案商标近似性进行独立判断。

来源：浙江省高级人民法院

"Conch" Soy Sauce Case: Damages of RMB1 Million Awarded

Recently, the Zhejiang High Court issued a second instance judgement on trademark and unfair competition infringement between Zhejiang Hailuwanjia Seasoning Co. Ltd. v. Zhejiang Jingshan Wine Co. Ltd. et. al (Defendants). The court ordered the Defendants to stop infringement with damages of RMB1 million.

The court held that the Defendants' claim that, in the Wenzhou market, "Conch" has gradually faded to the extent that it is close to the generic name of condiments, but the evidence submitted cannot to prove that "Conch" has become synonymous with condiments, and therefore no longer has the function of indicating the origin of the goods. In a certain period of history, commercial signs containing the word "Conch" coexisted in the market. This is affected by the approved categories of use, the composition of the trademark character style, trademark administrative review procedures and other factors, but it cannot be concluded that the word "Conch" belongs to the common name of soy sauce, vinegar commodity category, or that the distinctive part of the trademark in question is not the word "Conch". It also did not influence the court to make an independent judgement on the similarity between the infringing mark and the trademark related.

Source: The Zhejiang High Court

节选未生效判决误导相关公众或构成商业诋毁

近日，上海知识产权法院就上海底特精密紧固件股份有限公司（被告）与上海螺克机械科技有限公司（原告）商业诋毁纠纷一案作出二审判决，判决驳回上诉，维持原判。

法院认为，一审判决在二审审理中双方已经通过调解的方式解决纠纷，故一审判决并未生效。而被告采用红色字体提示、节选一审判决书中有被上诉人信息的内容，并对被上诉人企业名称以红色下划线加注的方式，使被上诉人企业名称醒目，以引起相关公众的注意，被告的行为足以误导相关公众认为被上诉人存在仿冒上诉人产品且存在质量问题，从而对被上诉人商业信誉、商品声誉造成不良影响。因此，上诉人的行为构成反不正当竞争法规定的商业诋毁，应承担消除影响、赔偿损失的民事责任。

来源：上海知识产权法院

Excerpts from Pending Judgements to Mislead the Relevant Public May Constitute Commercial Defamation

Recently, the Shanghai IP Court issued a second instance judgement of unfair competition of commercial defamation between Shanghai Detroit Precision Fastener Co., Ltd. (Defendant) and Shanghai

Luohe Machinery Technology Co., Ltd. (Plaintiff). The court rejected the Defendant's appeal.

The court held that the Defendant used red fonts, to suggest and excerpt the content of the judgement that contained information about the Plaintiff, and underlined the Plaintiff's enterprise name in red to make it conspicuous, to attract the attention of the relevant public. The Defendant's behaviour would mislead the relevant public to believe that the Plaintiff has imitated the Defendant's products and there are quality problems, thus adversely affecting the Plaintiff's commercial credibility and product reputation. Therefore, the defendant's acts constitute commercial defamation as stipulated by the Anti-Unfair Competition Law, and shall bear civil liability for eliminating the impact and compensating for the losses.

Source: The Shanghai IP Court

美国ITC确认终止Ouster对禾赛科技提起的专利侵权调查

美国国际贸易委员会（ITC）于10月10日裁决终止了由禾赛的同业竞争者Ouster提起的有关涉嫌专利侵权的调查行动（以下简称“ITC诉讼”），该裁决维持了ITC行政法官在今年8月24日作出的初裁，批准了禾赛终止ITC诉讼的动议。

据外媒报道，今年4月，Ouster向ITC提起一项申诉，指控中国竞争对手禾赛科技侵犯其技术专利。公司声称在市场转向Ouster的数字激光雷达后，禾赛科技窃取了Ouster的革命性专利技术，并将其整合到了自己的产品中，使得Ouster遭受了销量、利润以及市场份额的损失。Ouster以此要求禾赛赔偿经济损失，并要求美国禁止进口禾赛的激光雷达。根据禾赛方面的公告，此次专利侵权争议与Ouster、Velodyne两家同业公司的合并动作有关。禾赛科技此前曾与Velodyne签订过交叉许可协议，而该协议对合并后的Ouster/Velodyne公司同样具有约束力。因此，Ouster对禾赛提起诉讼的行为实际上违反了前述协议。

来源: GlobalNewswire

International Trade Commission Confirms to Terminate Patent Infringement Investigation Brought by Ouster Against Hesai

On October 10, 2023 the ITC Commissioners affirmed an August 24, 2023 initial determination by the presiding ITC Administrative Law Judge granting Hesai's motion to terminate the ITC Action.

According to foreign media, Ouster filed a complaint with the ITC in April this year, alleging that Chinese competitor Hesai Technology was infringing on its technology patents. The company claims that after the market shifted to Ouster's digital LiDAR, Hesai Technology has stolen Ouster's revolutionary patented technology and integrated it into its own products, causing Ouster to suffer a loss of sales, profits, and market share, and that Ouster has used this to demand that Hesai compensate for its damages and that the US ban the importation of Hesai's LiDAR. According to the announcement of Hesai, this patent infringement dispute is related to the merger action of Ouster and Velodyne, two companies in the same industry. Hesai Technology had previously entered into a cross-licence agreement with Velodyne, which was equally binding on the merged Ouster/Velodyne company. Therefore, Ouster's actions in bringing this action against Hershey were in fact a breach of the foregoing agreement.

Source: GlobalNewswire

搜诺思在与谷歌的音频专利战中胜出

谷歌（Google）与智能扬声器制造商搜诺思（Sonos）之间的法律纠纷已延续数年之久，近日谷歌再次败诉，美国国际贸易委员会（ITC）的法官驳回了它的侵权指控。

去年8月，就在谷歌在加利福尼亚州指控搜诺思侵犯其4项专利的一天之后，谷歌又向ITC就相同的专利投诉搜诺思。ITC法官表示，初步判断是，搜诺思硬件没有以任何方式侵犯谷歌专利，因此产品进口并不违法。

来源：Billboard

Sonos Wins Audio Patent Infringement Victory over Google

The legal drama between Google and smart speaker maker Sonos, which has been going on for years, has recently been lost again, with the US International Trade Commission (ITC) judge dismissing its infringement claims.

Google's ITC complaint alleging four violated patents was filed in August last year, just one day after it made allegations of the same patent infringements against Sonos in California. The ITC judge said that the initial determination is that there's nothing in Sonos hardware that's violating a Google patent in any manner that would make importation of products illegal.

Source: Billboard

魔爪能量诉Vital Pharmaceuticals广告纠纷案：获赔共计3.36亿美元

10月9日，法官在能量饮料制造商Monster Energy（魔爪能量）与现已破产的竞争对手“Bang功能饮料”制造商Vital Pharmaceuticals（Vital公司）的最新一轮诉讼中，判决Vital公司向Monster Energy公司支付近2760万美元的律师费和诉讼费，以及1500万美元的额外赔偿金。

2022年9月，陪审团判决被告Vital公司及其首席执行官应为虚假广告负责。Monster Energy公司声称，Vital公司在Bang功能饮料的“超级肌酸”的成分和健康益处方面误导了消费者，特别是“超级肌酸”的标签，而该产品不含肌酸。陪审团于2022年9月就虚假广告作出共计2.93亿美元赔偿的判决。在这基础上，最新的判决使赔偿总额达到3.36亿美元，这是美国联邦虚假广告法下最大数额的赔偿之一。

来源：路透社

Monster Energy Co. v. Vital Pharmaceuticals Inc.: Damages Totaling RMB100 Million Awarded

On 13 October, Monster Energy is entitled to nearly \$27.6 million in attorneys' fees and costs and more than \$15 million in additional damages in the latest round of litigation with its now bankrupt former rival Vital Pharmaceuticals (Vital), manufacturer of Bang Energy, according to the judge.



In September 2022, a jury found defendant Vital and its CEO liable for false advertising. Monster Energy claims that Vital misled consumers about the ingredients and health benefits of Bang's "Super Creatine" functional drink, specifically the "Super Creatine" label, which does not contain creatine. The jury made a judgement in September 2022 totaling \$293 million in damages for false advertising. The new awards increase Monster's damages total in the case to \$336 million, one of the largest in the history of federal false advertising law.

Source: REUTERS

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