NEWSLETTER
LIFANG & PARTNERS 立方观评
关注更多精彩内容
No.376
2024.2

立方要闻周报

Weekly News By Lifang & Partners

NO.114

立方竞争法周报 Weekly Competition Law News

海丝反垄断审查合规辅导中心完成首件经营者集案件审查

Maritime Silk Road Anti-Monopoly Review and Compliance Counseling Center Completes Review of the First Concentration of Undertakings Case

市场监管总局公布三起行政垄断案件

SAMR Announces Three Administrative Monopoly Cases

江西祥宇医药滥用市场支配地位被罚款约156万元

Jiangxi Xiangyu Pharmaceutical was Fined CNY 1.56 Million for Abusing Its Dominant Market Position

市场监管总局发布《经营者集中反垄断申报指导手册》

SAMR Releases *Guiding Manual for Anti-Monopoly Declaration of Concentrations of Undertakings*

最高法知识产权法庭发布成立五周年十大影响力案件

IP Court of SPC Releases Top Ten Influential Cases on Fifth Anniversary of Its Establishment

国新办发布会：国家层面知识产权案件上诉审理机制运行成效显著

SCIO Conference: Effective Operation of National-level Adjudication Mechanism for Intellectual Property Appeals

最高院发布日立金属与宁波四家稀土企业滥用市场支配地位纠纷二审判决

SPC Issues Second-Instance Civil Judgment on Dispute between Hitachi Metals and Four Ningbo Rare Earth Companies for Abusing Its Dominant Market Position

迪士尼在反垄断指控中为旗下ESPN电视台辩护

Disney Defends Its ESPN amid Antitrust Allegations

立律師方
NEWSLETTER
LIFANG & PARTNERS 立方观评
关注更多精彩内容
No.376
2024.2

法国竞争管理局对Chocolats De Neuville限制其加盟商销售产品的行为罚款406.8万欧元

French Competition Authority Fines Chocolates De Neuville EUR 4.068 Million for Restricting Sale of Products by its Franchisees

埃克森美孚和安桥公司因涉嫌在原油运输中违反反垄断法而被起诉

Exxon, Enbridge Sued over Alleged Antitrust Violations in Crude Oil Transportation

欧盟委员会附条件批准大韩航空收购韩亚航空

European Commission Conditionally Approves Acquisition of Asiana by Korean Air

欧盟委员会附条件批准Orange和MásMóvil成立合资企业

European Commission Conditionally Approves Joint Venture between Orange and Más Móvil

苹果因音乐流媒体反垄断案面临欧盟5亿欧元罚款

Apple Faces EUR 500 Million Fine from EU in Music Streaming Antitrust Case

FTC和HHS就仿制药短缺以及强大中间商之间的竞争征询公众意见

FTC and HHS Seek Public Comment on Generic Drug Shortages and Competition amongst Powerful Middlemen

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

工业和信息化部等十二部门关于印发《工业互联网标识解析体系“贯通”行动计划（2024-2026年）》的通知

The MIIT and Twelve Departments Issue Notice on *The Industrial Internet Identification Analysis System "through" Action Plan (2024-2026)*

财政部发布《关于加强行政事业单位数据资产管理的通知》

The MOF Issues *the Notice on Strengthening the Management of Data Assets of Administrative Institutions*

国家邮政局发布《寄递服务用户个人信息安全管理办法（征求意见稿）》

The SPB Issues *the Administrative Measures on the Security of Personal Information of Users of Delivery Services (Draft for Comment)*

立律師方 NEWSLETTER
LIFANG & PARTNERS 立方观评
关注更多精彩内容
No.376
2024.2

知识产权 Intellectual Property

立律師 立方 NEWSLETTER
LIFANG & PARTNERS 立方观评
关注更多精彩内容
No.376
2024.2

立律師 NEWSLETTER
LIFANG & PARTNERS 立方观评
关注更多精彩内容
No.376
2024.2

美国专利商标局：驳回OpenAI申请“GPT”商标的尝试

OpenAI’s application for the “GPT” trademark was rejected by USPTO

立方竞争法周报 Weekly Competition Law News

海丝反垄断审查合规辅导中心完成首件经营者集案件审查

据媒体报道，位于福建省厦门市海丝中央法务区的反垄断审查合规辅导中心（“合规辅导中心”），协助完成了成立以来的首件经营者集中反垄断案件审查，该案于2024年2月1日获得国家市场监督管理总局（“市场监管总局”）审查批准。该案是奇瑞汽车股份有限公司拟收购福州青口控股有限公司（东南汽车）股权，其收购行为达到法定的经营者集中申报标准，经依法申报后由市场监管总局委托上海市市场监督管理局（“上海市市监局”）审查。为提高审查效率，上海市市监局指派合规辅导中心协助核查相关事实。随后，合规辅导中心派专人第一时间联系交易双方企业，详细了解股权收购情况，指导申报企业及时修改完善材料，最终顺利通过经营者集中反垄断审查。（查看更多）

Maritime Silk Road Anti-Monopoly Review and Compliance Counseling Center Completes Review of the First Concentration of Undertakings Case

According to media reports, the Anti-Monopoly Review Compliance Counseling Center (“Compliance Counseling Center”) located in the Maritime Silk Road Central Legal District, Xiamen City, Fujian Province, assisted in completing the review of the first anti-monopoly case on the concentration of undertakings since its establishment. The case was reviewed and approved by the State Administration for Market Regulation (“SAMR”) on February 1, 2024. The case was that Chery Automobile Co., Ltd. plans to acquire the equity of Fuzhou Qingkou Holding Co., Ltd. (South East Motor). Its acquisition meets the legal standards for declaration of concentration of undertakings. After declaration per the law, the SAMR entrusts the Shanghai Municipal Administration for Market Regulation (“Shanghai AMR”) to review. To improve the efficiency of the review, the Shanghai AMR assigned the Compliance Counseling Center to assist in verifying relevant facts. Subsequently, the Compliance Counseling Center sent dedicated personnel to contact the companies on both sides of the transaction as soon as possible to learn more about the equity acquisition situation, guide the reporting company to modify and improve the materials promptly. And finally it successfully passed the anti-monopoly review of the concentration of undertakings. (More)

市场监管总局公布三起行政垄断案件

2024年2月6日，市场监管总局公布了两起来自辽宁和一起来自安徽的滥用行政权力排除、限制竞争行为案件。三起案件的当事人分别为辽阳市白塔区、盘锦市和凤阳县住房和城乡建设局。涉案行政垄断行为涉及利用行政权力，要求瓶装燃气经营企业需取得指定的第三方平台公司出具的确认书；制发文件直接指定两家企业为街道瓶装液化石油气唯一经营企业，导致其他企业无法在相应区域经营；通过公开招标方式确定两家企业进入县共享单车、助力车市场运营，排除了其他具有合格资质和服务能力的经营主体进入市场。相关行为均构成滥用行政权力排除、限制竞争行为，违反反垄断法。调查期间，当事人均积极整改，消除不良影响，废止、撤销有关文件，积极落实公平竞争审查制度。（查看更多）

SAMR Announces Three Administrative Monopoly Cases

On February 6, 2024, the SAMR announced two cases from Liaoning Province and one from Anhui Province regarding the abuse of administrative power to eliminate or restrict competition. The parties involved in these cases were the Housing and Urban-Rural Development Bureau of Baita District, Liaoyang City, Panjin City, and Fengyang County. The administrative monopoly involved in the case included using administrative power to require bottled gas operating companies to obtain a confirmation letter from a designated third-party platform; producing and distributing documents that directly designated two companies as the only bottled liquefied petroleum gas operating companies for the street, resulting in the inability of other companies to operate in the corresponding area; determining two companies to enter the county shared bicycle and e-bike market operations through public bidding, excluding other business entities with qualified qualifications and service capabilities from entering the market. These relevant behaviours constituted abuses of administrative power to eliminate or restrict competition and violated anti-monopoly laws. During the investigation, the parties actively made rectifications to eliminate adverse effects, abolished and revoked relevant documents, and actively implemented the fair competition review system. (More)

江西祥宇医药滥用市场支配地位被罚款约156万元

2024年2月4日，上海市市监局发布江西祥宇医药有限公司（“江西祥宇”）滥用市场支配地位行为行政处罚决定。2020年11月16日，上海市市监局经市场监管总局指定管辖对江西祥宇立案调查。经查，2016年6月至2020年3月期间，江西祥宇滥用中国碘化油原料药销售市场的支配地位，实施了以不公平的高价销售原料药的垄断行为。2023年11月17日，上海市市监局对江西祥宇处以2019 年销售额4%的罚款，计人民币1,563,625.54元。（查看更多）

Jiangxi Xiangyu Pharmaceutical was Fined CNY 1.56 Million for Abusing Its Dominant Market Position

On February 4, 2024, the Shanghai AMR issued an administrative penalty decision for Jiangxi Xiangyu Pharmaceutical Co., Ltd. (“Jiangxi Xiangyu”) for abusing its dominant market position. On November 16, 2020, the Shanghai AMR was designated by the SAMR to initiate an investigation into Jiangxi Xiangyu. According to the investigation, from June 2016 to March 2020, Jiangxi Xiangyu abused its dominant position in China’s lipiodol API sales market and implemented a monopoly of selling APIs at unfairly high prices. On November 17, 2023, the Shanghai AMR imposed a fine of 4% of 2019 sales on Jiangxi Xiangyu, totalling CNY 1,563,625.54. (More)

市场监管总局发布《经营者集中反垄断申报指导手册》

近日，市场监督管理总局发布《经营者集中反垄断申报指导手册》（“《指导手册》”），集中梳理、解答了经营者集中反垄断申报过程相关的重点问题。《指导手册》围绕经营者集中反垄断申报的整个流程，讲解了经营者集中反垄断申报涉及的23个问题，包括经营者集中反垄断申报的相关定义、申报标准、经营者认定、申报义务人、申报程序、考量因素、法律风险等重点问题。（查看更多）

SAMR Releases *Guiding Manual for Anti-Monopoly Declaration of Concentrations of Undertakings*

Recently, the SAMR issued the *Guiding Manual for Anti-monopoly Declaration of Concentrations of Undertakings* ("*Guiding Manual*"), which summarizes and answers the key issues related to the process of the anti-monopoly declaration of concentration of undertakings. The *Guiding Manual* focuses on the entire process of the anti-monopoly declaration of concentration of undertakings and answers 23 issues involved in the anti-monopoly declaration of concentration of undertakings, including relevant definitions of anti-monopoly declaration of concentration of undertakings, declaration standards, identification of undertakings, and declaration obligors, application procedures, considerations, legal risks and other key issues. (More)

最高法知识产权法庭发布成立五周年十大影响力案件

2024年2月23日，最高人民法院知识产权法庭（“最高法知识产权法庭”）发布成立五周年十大影响力案件。其中，“砖瓦协会”横向垄断协议案为十大影响力案件之一，该案中某市砖瓦协会通过与砖瓦企业广泛签订《停产整改合同》减少砖瓦供应量、提高砖瓦价格，其中一停产企业经营者以某市砖瓦协会等因故不再依照约定提供补偿为由提起诉讼。该案明确了横向垄断协议的自愿实施者并非反垄断法意图救济对象，对于依法打击横向垄断行为、维护公平竞争秩序具有指引意义。（查看更多）

IP Court of SPC Releases Top Ten Influential Cases on Fifth Anniversary of Its Establishment

On February 23, 2024, the Intellectual Property Court of the Supreme People's Court ("IP Court of SPC") released the top ten influential cases on its fifth anniversary. One of the top ten influential cases was the "Brick and Tile Association" Horizontal Monopoly Agreement Case, in which a municipal brick and tile association reduced the supply of bricks and tiles and increased the price of bricks and tiles by entering into the *Production Suspension for Rectification Agreement* (*"Agreement"*) with a wide range of brick and tile enterprises, and one of those suspended operators filed a lawsuit on the grounds that the municipal brick and tile association would no longer provide the compensation in accordance with the *Agreement*. The case clarified that the voluntary implementers of horizontal monopoly agreements are not the intended target of the antimonopoly law's remedies, which is of guiding significance in combating horizontal monopoly behaviours in accordance with the law and safeguarding the order of fair competition. (More)

国新办发布会：国家层面知识产权案件上诉审理机制运行成效显著

2024年2月22日，国务院新闻办举行新闻发布会，介绍最高法知识产权法庭经过5年的实践运行，建立国家层面知识产权案件上诉审理机制的改革效果集中显现，丰富和完善了我国知识产权司法保护制度。5年来，最高法知识产权法庭受理的技术类知识产权和垄断案件年均增长率为27%。在垄断案件方面，最高法知识产权法庭在切实保护专利等合法垄断权利的同时，依法履行反垄断和反不正当竞争司法职责，在多起案件中认定被诉行为构成垄断，负责起草的反垄

断民事诉讼司法解释即将发布，有效维护市场公平竞争，助力构建全国统一大市场。（查看更多）

SCIO Conference: Effective Operation of National-level Adjudication Mechanism for Intellectual Property Appeals

On February 22, 2024, the State Council Information Office (SCIO) held a press conference to introduce that after five years of practice and operation of the IP Court of SPC, the reform effect of the establishment of the National-level adjudication mechanism for intellectual property appeals has become apparent, which enriches and improves China's judicial protection system of intellectual property rights. Over the past five years, the average annual growth rate of the intellectual property rights and monopoly cases of the SPC in the field of technology has increased by 27 percent. In terms of monopoly cases, the IP Court of SPC, while effectively protecting patents and other legitimate monopoly rights, has fulfilled its judicial duties in anti-monopoly and anti-unfair competition in accordance with the law, and has found in a number of cases that the accused behaviours constituted monopolies, and will soon issue a judicial interpretation of the anti-monopoly civil litigation drafted by the Court, which will effectively safeguard fair competition in the market and help build a unified national market. (More)

最高院发布日立金属与宁波四家稀土企业滥用市场支配地位纠纷二审判决

2024年2月21日，最高法发布日立金属与宁波四家稀土企业滥用市场支配地位纠纷二审民事判决书，撤销了认定日立金属拒绝许可行为构成滥用市场支配地位行为的一审判决，驳回原告全部诉讼请求。在本案中，相关商品市场应界定为烧结钕铁硼材料生产技术市场，包括具有紧密替代性的专利技术和非专利技术等，而非一审法院界定的“日立金属所拥有的烧结钕铁硼必需专利的专利许可相关市场”。（查看更多）

SPC Issues Second-Instance Civil Judgment on Dispute between Hitachi Metals and Four Ningbo Rare Earth Companies for Abusing Its Dominant Market Position

On February 21, 2024, the SPC issued the second-instance civil judgment on the dispute between Hitachi Metals and four Ningbo rare earth companies for abusing its dominant market position, revoking the first-instance judgment that found Hitachi Metals' refusal to license constituted an abuse of market dominance, and dismissed all the plaintiff's claims. In this case, the relevant commodity market should be defined as the sintered NdFeB material production technology market, including closely substitutable patented technologies and non-patented technologies, rather than "the related patent licensing market of essential patents for sintered NdFeB owned by Hitachi Metals" defined by the court of first instance. (More)

迪士尼在反垄断指控中为旗下ESPN电视台辩护

据媒体报道，迪士尼（Walt Disney Co.）在2月15日的庭审中请求驳回一项反垄断诉讼，该诉讼称迪士尼与流媒体直播电视供应商（streaming live television providers）的商业行为不当限制竞争并导致价格飙升。案件的核心问题在于迪斯尼对旗下ESPN电视台及流媒体平台Hulu的所有权。该集体诉讼原告由25名YouTube TV和DirecTV Stream的用户组成，主张迪斯尼通过ESPN电

视台与竞争对手的流媒体直播电视提供商签订协议，从事了反竞争行为。对此，迪士尼认为，ESPN电视台广受欢迎，是体育广播领域不可或缺的频道，其与流媒体直播电视提供商达成的协议并非反竞争行为，而是旨在维护ESPN电视台价值的战略性商业决策。（查看更多）

Disney Defends Its ESPN amid Antitrust Allegations

According to media reports, Disney (Walt Disney Co.) requested the dismissal of an antitrust lawsuit during a court hearing on February 15, which alleged that Disney's business practices with streaming live television providers (SLPTVs) had unjustly restricted competition and led to surging prices. The crux of the lawsuit centered around Disney's ownership of ESPN and its streaming platform Hulu. The plaintiffs, comprised of 25 subscribers to YouTube TV and DirecTV Stream, had initiated a potential class action lawsuit, arguing that Disney engaged in anti-competitive behaviour by forging agreements with rival SLPTVs. In response, Disney stated that ESPN was widely popular and an indispensable channel in the field of sports broadcasting and its agreements with live streaming TV providers were not anti-competitive manoeuvres but rather strategic business decisions aimed at safeguarding the value of ESPN. (More)

法国竞争管理局对Chocolats De Neuville限制其加盟商销售产品的行为罚款406.8万欧元

2024年2月15日，法国竞争管理局（Autorité de la Concurrence）宣布，因Chocolats De Neuville（"De Neuville"）实施了旨在限制其加盟商在线销售De Neuville巧克力以及向专业客户销售巧克力的行为而对其处以罚款。De Neuville专门从事巧克力产品的批发和零售。其拥有154家分店，是法国第三大巧克力专业分销网络。法国竞争管理局发现，在2006到2019年间，De Neuville与其加盟商之间的合同框架阻止了后者在网上自由销售其产品，而De Neuville则保留了网上销售的专有权。此外，在2006到2022年间，De Neuville还限制了特许经营商在开拓商业客户方面的商业自由。法国竞争管理局对De Neuville处以406.8万欧元的罚款，并发布了通信和出版禁令。（查看更多）

French Competition Authority Fines Chocolates De Neuville EUR 4.068 Million for Restricting Sale of Products by its Franchisees.

On February 15, 2024, the French Competition Authority (Autorité de la Concurrence) announced that Chocolats De Neuville ("De Neuville") was fined for implementing practices aimed at restricting the online selling of De Neuville brand chocolates and sales to professional customers by its franchisees. De Neuville specialises in the wholesale and retail sale of chocolate products. With 154 branches, it is the third largest specialised chocolate distribution network in France. The French Competition Authority found that from 2006 to 2019, the contractual framework between the franchisor and its franchisees prevented the latter from freely selling their products online, with De Neuville reserving exclusive rights to online sales. Additionally, from 2006 to 2022, De Neuville restricted its franchisees' commercial freedom in prospecting business customers. The French Competition Authority fined De Neuville EUR 4.068 million, together with a communication and publication injunction. (More)

埃克森美孚和安桥公司因涉嫌在原油运输中违反反垄断法而被起诉

据媒体报道，能源领域的主要企业埃克森美孚（Exxon Mobil Corporation）和加拿大安桥公司（Enbridge Inc.）于2月13日在伊利诺伊州联邦法院被提起反垄断起诉，该诉讼由能源基础设施开发商Ducere提起，称埃克森美孚和加拿大安桥公司禁止竞争对手建造码头以通过驳船将石油从芝加哥地区运往中西部和墨西哥湾的炼油厂，要求两家公司赔偿因开发停滞造成的经济损失和预期利润约1100万美元。（查看更多）

Exxon, Enbridge Sued over Alleged Antitrust Violations in Crude Oil Transportation

According to media reports, energy sector major Exxon (Exxon Mobil Corporation) and Canada's Enbridge (Enbridge Inc.) were sued in Illinois federal court on February 13 over claims filed by energy infrastructure developer Ducere, alleging that Exxon and Enbridge barred competitors from building a terminal to ship oil by barge from the Chicago area to refineries in the Midwest and Gulf of Mexico, seeking about USD 11 million in damages from the companies for economic losses and projected profits caused by the halted development. (More)

欧盟委员会附条件批准大韩航空收购韩亚航空

2024年2月13日，欧盟委员会附条件批准了大韩航空（Korean Air Lines Co., Ltd.）对韩亚航空（Asiana Airlines Inc.）的拟议收购，条件是大韩航空完全履行其提出的补救措施。该附条件批准是欧盟委员会对拟议收购进行进一步调查之后作出的。大韩航空是韩国最大的航空公司，提供国际航空旅客运输和货物运输服务；韩亚航空是韩国第二大航空公司，提供类似的服务。两家航空公司在欧洲经济区（EEA）都有都有大量业务。在调查期间，欧盟委员会担心该拟议收购会损害欧洲与韩国之间的航空货物运输服务，以及首尔与某些欧洲目的地之间航线的航空旅客运输服务市场上的竞争。对此，大韩航空在货物运输和旅客运输两方面提出补救措施以解决欧盟委员会提出的竞争担忧。（查看更多）

European Commission Conditionally Approves Acquisition of Asiana by Korean Air

On February 13, 2024, the European Commission conditionally approved Korean Air's (Korean Air Lines Co., Ltd.) proposed acquisition of Asiana Airlines (Asiana Airlines Inc.) on the condition that Korean Air fully carry out its proposed remedies. The conditional approval followed further investigation by the European Commission into the proposed acquisition. Korean Air is South Korea's largest airline, providing international air passenger and cargo services; Asiana Airlines is South Korea's second largest airline, providing similar services. Both airlines have significant operations in the European Economic Area (EEA). During the investigation, the European Commission was concerned that the proposed acquisition would harm competition in the markets for air cargo transport services between Europe and South Korea, as well as passenger air transport services on routes between Seoul and certain European destinations. In response, Korean Air proposed remedies in both cargo and passenger transport services to address the competition concerns raised by the European Commission. (More)

欧盟委员会附条件批准Orange和MásMóvil成立合资企业

2024年2月20日，据媒体报道，欧盟委员会在深入调查后附条件批准了Orange和MásMóvil在西班牙成立合资企业的提议，前提是双方完全遵守其提出的一揽子承诺。Orange公司是一家全移动网络运营商，而MásMóvil公司是一家混合移动网络运营商。经过调查后，欧盟委员会发现该交易将在西班牙创建用户数量最大的运营商，瓦解重要市场主体间的竞争，可能导致西班牙用户面临高于10%的价格上涨，并且该交易提升的经济效率不足以抵消该交易显著的反竞争效应。为了解决欧盟委员会的竞争担忧，Orange和MásMóvil提出将MásMóvil持有的部分频谱剥离给西班牙最大的移动虚拟网络运营商Digi，使Digi能够建立自己的移动网络并引入一份赋予Digi选择权的国内漫游协议（national roaming agreement），使其可以继续使用包括拟成立的合资企业在内的批发商的网络以补充自有网络。（查看更多）

European Commission Conditionally Approves Joint Venture between Orange and Más Móvil

On February 20, 2024, according to media reports, the European Commission conditionally approved the proposal of Orange and Más Móvil to establish a joint venture in Spain after an in-depth investigation, provided that both parties fully comply with their commitments package. Orange is a fully mobile network operator, while Más Móvil is a hybrid mobile network operator. During the investigation, the European Commission found that the transaction would create the largest operator by customer numbers in Spain, eliminate competition among important market entities, may cause Spanish consumers to face price increases well above 10%, and the economic efficiency improved by the transaction is not enough to offset the significant anti-competitive effects of the transaction. To address the European Commission's competition concerns, Orange and Más Móvil proposed to divest part of the spectrum held by Más Móvil to Digi, Spain's largest mobile virtual network operator, enabling Digi to build its own mobile network and introduce a national roaming agreement, which would allow it to continue to use the network of wholesale providers, including the proposed joint venture, to supplement its own network. (More)

苹果因音乐流媒体反垄断案面临欧盟5亿欧元罚款

2024年2月18日，据媒体报道，苹果（Apple Inc.）正面临来自欧盟的约5亿欧元（约39亿人民币）的反垄断罚款，起因是Spotify（Spotify Technology S.A. Ordinary Shares）投诉引发的音乐流媒体案件。欧盟委员会去年曾对苹果提出指控，指责其阻碍Spotify和其他音乐流媒体竞争对手向用户告知苹果App Store以外的其他选择。这一做法涉及禁止转介义务（anti-steering obligations），欧盟竞争监督机构认为苹果的行为造成了不公平的交易条件。除罚款之外，欧盟委员会预计还将要求苹果停止此类行为，以符合《数字市场法案》（DMA）中即将出台的规定，包括苹果在内的六大科技公司必须从3月7日起遵守该法案。（查看更多）

Apple Faces EUR 500 Million Fine from EU in Music Streaming Antitrust Case

On February 18, 2024, according to media reports, Apple (Apple Inc.) was facing an antitrust fine of approximately EUR 500 million (CNY 3.9 billion) from the EU due to a music streaming case instigat-

ed by a complaint from Spotify (Spotify Technology S.A. Ordinary Shares). The European Commission last year brought charges against Apple, accusing it of impeding Spotify and other music streaming competitors from informing users of alternative options outside of Apple's App Store. This approach involved anti-steering obligations, and the EU competition watchdog believed that Apple's actions created unfair trading conditions. Alongside the fine, the EU was expected to mandate Apple to cease such practices, aligning with forthcoming regulations outlined in the Digital Markets Act (DMA), which six major tech companies, including Apple, must adhere to starting March 7. (More)

FTC和HHS就仿制药短缺以及强大中间商之间的竞争征询公众意见

近日，联邦贸易委员会（FTC）和美国卫生与公众服务部（HHS）联合发布了信息征询书（Request for Information），以了解集团采购组织（group purchasing organizations）和药品批发商这两类药品中间商团体的做法可能以何种方式导致仿制药短缺。集团采购组织是制药行业的中间人，在医疗服务提供者（包括医院、医生、疗养院和家庭保健机构）与制造商、分销商和其他向医疗服务提供者销售产品的其他人员之间就仿制药和其他医疗用品进行谈判。药品批发商则是另一种中介团体，直接从制造商那里购买药品并将其运送给医疗服务提供者。信息征询书旨在了解集团采购组织和药品批发商如何影响整个仿制药市场，包括这两类群体如何影响药品的定价和供应。（查看更多）

FTC and HHS Seek Public Comment on Generic Drug Shortages and Competition amongst Powerful Middlemen

Recently, the Federal Trade Commission (FTC) and the U.S. Department of Health and Human Services (HHS) jointly issued a Request for Information (RFI) to understand how the practices of two types of pharmaceutical drug middlemen groups—group purchasing organizations (GPOs) and drug wholesalers—may be contributing to generic drug shortages. GPOs serve as intermediaries in the pharmaceutical industry by negotiating deals for generic drugs and other medical supplies between health care providers—including hospitals, physicians, nursing homes, and home health agencies—and manufacturers, distributors, and others who sell to health care providers. Drug wholesalers are another type of intermediary group that purchases drugs directly from manufacturers and delivers them to health care providers. The RFI seeks to understand how GPOs and drug wholesalers impact the overall generic drug market, including how these two groups influence the pricing and availability of medicines. (More)

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

工业和信息化部等十二部门关于印发《工业互联网标识解析体系“贯通”行动计划（2024-2026年）》的通知

2024年1月31日，工业和信息化部等十二部门联合发布《工业互联网标识解析体系“贯通”行动计划（2024-2026年）》（以下简称“《行动计划》”），《行动计划》致力于服务构建新

发展格局，着力推动工业互联网高质量发展，提升工业互联网标识解析体系应用赋能水平，加速工业大数据循环，优化全产业链、全价值链、全生命周期管理与服务，为推进新型工业化，加快建设制造强国、网络强国、数字中国提供有力支撑。《行动计划》分为总体要求、重点任务、能力支撑、组织保障等四个主要部分，目标到2026年，建成自主可控的标识解析体系，在制造业及经济社会重点领域初步实现规模应用，对推动企业数字化转型、畅通产业链供应链、促进大中小企业和一二三产业融通发展的支撑作用不断增强。《行动计划》其中一项重点任务为贯通产业链供应链，实现全产业链上下游数据互通，有效提升供应链协同效率、准时交货率、供货速度和库存周转率等。（查看更多）

The MIIT and Twelve Departments Issue Notice on *The Industrial Internet Identification Analysis System "through" Action Plan (2024-2026)*

On 31 January 2024, the MIIT and twelve departments jointly issued the *Industrial Internet Identification Analysis System "through" Action Plan (2024-2026)* (hereinafter referred to as the" *Action Plan* "). The *Action Plan* is committed to serving the construction of a new development pattern and strive to promote the high-quality development of the industrial Internet, also committed to improve the application of the industrial Internet identification analysis system, accelerate the industrial big data cycle, optimize the management and services in the whole industrial chain, the whole value chain, and the whole life cycle, and provide strong support for promoting new industrialization and to accelerate the construction of a manufacturing power, a network power, and a digital China. The *Action Plan* is divided into four main parts, including overall requirements, key tasks, capacity support, and organizational security, which aims to build an independent and controllable identification analysis system by 2026, and initially achieve large-scale application in the manufacturing industry and key areas of economic and social development. The *Action Plan* will play a stronger role in supporting the digital transformation of enterprises, smooth industrial and supply chains, and promote the integrated development of large, small, and medium-sized enterprises and primary, secondary and tertiary industries. One of the key tasks of the *Action Plan* is to connect the industrial and supply chain, realize the upstream and downstream data interflow of the entire industrial chain, and effectively improve the supply chain synergy efficiency, on-time delivery rate, supply speed and inventory turnover.(More)

财政部发布《关于加强行政事业单位数据资产管理的通知》

2024年2月8日，财政部印发《关于加强行政事业单位数据资产管理的通知》（以下简称“《通知》”），《通知》明确，行政事业单位数据资产是各级行政事业单位在依法履职或提供公共服务过程中持有或控制的，预期能够产生管理服务潜力或带来经济利益流入的数据资源。《通知》要求行政单位加强数据资产源头管理，依法按照预算管理规定科学配置数据资产购置，规范使用数据资产，提高数据资产质量和管理水平。在确保公共安全和保护个人隐私的前提下，积极推动数据资产开放共享，对数据资产要审慎处置，严格收益，并加强数据资产登记，在预算管理一体化系统中建立并完善资产信息卡。《通知》同时提出严格防控风险，确保数据安全。要求各部门及其所属单位要维护安全、加强监督，将数据资产管理情况逐步纳入行政事业性国有资产管理情况报告。（查看更多）

The MOF Issues *the Notice on Strengthening the Management of Data Assets of Administrative Institutions*

On 8 February 2024, the MOF issued the *Notice on Strengthening the Management of Data Assets of Administrative Institutions* (hereinafter referred to as the "*Notice*"), which clearly states that data assets of administrative institutions are data resources held or controlled by administrative institutions at all levels in the process of performing their duties or providing public services according to law, and that are expected to generate the potential for management services or an inflow of economic benefits. The *Notice* requires administration to strengthen the source management of data assets, scientifically allocate the purchase of data assets in accordance with the provisions of budget management, standardize the use of data assets, and improve the quality and management level of data assets. Under the premise of ensuring public safety and protecting personal privacy, administration should actively promote the open sharing of data assets, prudently dispose of data assets, strictly implement income, strengthen data asset registration, and establish and improve asset information cards in the integrated budget management system. The *Notice* also proposed strict prevention and control of risks to ensure data security. All departments and their affiliates are required to maintain security, strengthen supervision, and gradually incorporate the management of data assets into the report on the management of administrative state-owned assets. (More)

国家邮政局发布《寄递服务用户个人信息安全管理办法（征求意见稿）》

2024年2月1日，国家邮政局公开就《寄递服务用户个人信息安全管理办法（征求意见稿）》（以下简称“《办法（征求意见稿）》”）公开征求意见，意见反馈截止于2024年3月2日。

《办法（征求意见稿）》明确，办法所称寄递服务用户个人信息是指寄递企业在提供寄递服务过程中获取的，以电子或者其他方式记录的，与已识别或者可识别的自然人有关的各种信息，不包括匿名化处理后的信息。办法所称寄递服务用户个人信息处理活动，是指寄递企业在提供寄递服务过程中收集、存储、使用、加工、传输、提供、公开、删除用户个人信息等活动。《办法（征求意见稿）》明确要求：寄递企业用户个人信息处理活动应当坚持合法、正当、必要、诚信原则，不得非法收集、使用、加工、传输用户个人信息，不得非法买卖、提供或公开用户个人信息，不得从事危害国家安全、公共利益的用户个人信息处理活动。邮政管理部门依法履行寄递服务用户个人信息保护的监督管理职责。（查看更多）

The SPB Issues the Administrative Measures on the Security of Personal Information of Users of Delivery Services (Draft for Comment)

On 1 February 2024, the SPB publicly solicited comments on the *Administrative Measures on the Security of Personal Information of Users of Delivery Services (Draft for Comment)* (hereinafter referred to as the "*Measures (Draft for Comment)*"), and the feedback was due on March 2, 2024.

The *Measures (Draft for Comments)* clearly states that the personal information of users of delivery services referred to in the *Measures* refers to all kinds of information related to identified or identifiable natural persons obtained by delivery enterprises in the process of providing delivery services, recorded electronically or by other means, excluding information after anonymization. The term "processing activities of the personal information of users of delivery services " as mentioned in the *Measures* refers to the activities such as collection, storage, use, processing, transmission, provision, disclosure and de-

letion of user personal information by delivery enterprises in the process of providing delivery services. The *Measures (Draft for Comments)* clearly requires that the processing activities of personal information of enterprise users shall adhere to the principles of legality, legitimacy, necessity and good faith, and shall not illegally collect, use, process and transmit user personal information, shall not illegally trade, provide or disclose user personal information, and shall not engage in user personal information processing activities that endanger national security and public interests. Postal administrative departments shall, in accordance with law, perform the supervision and administration duties for the protection of personal information of users of posting and delivery services.(More)

天津市印发《天津市公共数据授权运营试点管理暂行办法》

2024年1月30日，天津市政府办公厅印发《天津市公共数据授权运营试点管理暂行办法》（以下简称“《办法》”），据悉，这是自天津市数据局挂牌成立以来发布的第一份文件。

《办法》围绕解决“如何释放数据要素价值”和“如何保障数据安全”，提出了“场景牵引、试点先行、市区联动、权责清晰”的公共数据授权运营思路，从“授权运营程序及要求”“数据管理和利用”“安全管理”“考核评估”等方面明确了运营试点建设的实践路径，促进公共数据多场景应用、多主体复用。《办法》聚焦保障数据安全，压实数据持有单位、严格数据使用标准试点建设单位、运营机构等重点参与方的安全责任，从严把准入关口、严格数据使用标准、强化安全监管等三个维度筑牢数据安全底线。下一步，天津市数据局将开展授权运营试点遴选、提升公共数据供给能力、开展“数据要素×”典型案例征集、强化授权运营安全监管等行动。（查看更多）

Tianjin Issues *the Interim Measures for the Pilot Administration of Authorized Operation of Public Data in Tianjin*

On 30 January 2024, the General Office of the Tianjin Municipal Government issued *the Interim Measures for the Pilot Administration of Authorized Operation of Public Data in Tianjin* (hereinafter referred to as the "*Measures*"), which is reported to be the first document issued since the establishment of the Tianjin Municipal Data Bureau.

*A*round the solution of "how to release the value of data elements" and "how to ensure data security", the *Measures* put forward "scene traction, pilot first, urban linkage, clear rights and responsibilities" public data authorization operation ideas, and clarify the practice path of the operation of the pilot construction from the "authorization operation procedures and requirements", "data management and utilization", "security management", "assessment and evaluation" and other aspects, which promote multi-scenario application and multi-agent reuse of public data. *Measures* focus on ensuring data security, compacting the security responsibilities of key participants such as data holders, pilot construction units of strict data use standards, and operating institutions, and strengthening the bottom line of data security from three dimensions, such as strict access gates and strict data use standards and strengthening security supervision. In the next step, the Tianjin Data Bureau will carry out the pilot selection of authorized operations, improve the capacity of public data supply, carry out the collection of typical cases of "data elements ×", and strengthen the safety supervision of authorized operations.(More)

广东公布打击整治网络谣言和网络暴力十大典型案例

2024年2月3日，据公安部网安局消息，广东公安机关公布10起典型案例，具体包括：冯某恶意捏造“某公司骗取投资人资金”网络谣言案、汤某某编造“西藏阿里献血事件”网络谣言案、郑某某编造“女朋友要跳楼自杀”网络谣言案、余某某编造“某学校篮球场偷小孩事件”网络谣言案、刘某某编造“东莞大火烧死十多人”网络谣言案、黄某某编造“江门2名女子被强奸”网络谣言案、庄某某编造“开发区有失踪女孩在垃圾桶里被杀”网络谣言案、吴某某编造“八台车连撞基本上全是女司机”网络谣言案、林某某对郭某某实施网络暴力案、李某某对梁某某实施网络暴力案等，上述行为人被公安机关依法采取行政处罚，其中情节严重的，已被采取刑事强制措施。（查看更多）

Guangdong Announces 10 typical Cases of Cracking Down on Online Rumors and Online Violence

On 3 February 2024, according to the Network Security Bureau of the Ministry of Public Security, Guangdong public security organs announced 10 typical cases, including: Feng maliciously fabricated "a company defrauding investors of funds", Tang fabricated "Tibet Ali blood donation incident", Zheng fabricated "girlfriend to leap to her own death", Yu fabricated "a child was stolen at a school basketball court ", Liu fabricated "Dongguan fire burned more than 10 people", Huang fabricated "two women in Jiangmen were raped ", Zhuang fabricated " a missing girl in the development zone was killed in the trash can", Wu fabricated "drivers in an eight-car crash are basically all female drivers", Lin committed Internet violence against Guo, Li committed Internet violence against Liang, etc.. The above perpetrators were taken administrative punishment by the public security organs according to law. Among others, for the serious cases, criminal coercive measures have been taken. (More)

内蒙古查获某侵犯公民个人信息犯罪团伙，14家机构因未履行个人信息保护义务受到处罚

2024年1月30日，据公安部网安局消息，近期，内蒙古赤峰市喀喇沁旗公安机关成功捣毁张某为首的以“信息共享”为名侵犯公民个人信息的犯罪团伙，共抓获犯罪嫌疑人18名，查获公民个人信息100余万条，扣押涉案电脑、手机等物品68件。经查，该犯罪团伙依托涉案售楼企业、装修公司，通过“买卖、交换”等非法途径获取特定自然人信息，以“数据分筛、介绍客户、品牌融推”等所谓的“信息共享”方式传播扩散，并以此为目标客户进行“精准”业务推销，严重干扰居民正常生活秩序，对公民个人信息安全构成威胁。经法院审判，张某因犯侵犯公民个人信息罪，被处有期徒刑六个月，并处罚金人民币六万元。未构成犯罪的温某、王某、马某等16人，根据《中华人民共和国网络安全法》第四十四条、第六十四条第二款之规定，依各违法情节，分别处2千到一万元不等罚款。14家相关企业因未全面履行《中华人民共和国个人信息保护法》规定的个人信息保护义务，被喀喇沁旗公安网安部门依法责令进行改正并给予行政警告，相关责任人员被处以罚款总计6.8万元。（查看更多）

A Crime Syndicate Infringed on Citizens' Personal Information are Tracked Down in Inner Mongolia, and 14 Organization are Punished for Failing to Fulfill Personal Information Protection Obligations

On 30 January 2024, according to the Network Security Bureau of the Ministry of Public Security, recently, the public security organs in Harqin Banner, Chifeng City, Inner Mongolia successfully destroyed the crime syndicate headed by Zhang, which violated citizens' personal information in the name of "information sharing", arrested 18 suspects, seized more than 1 million citizens' personal information, and seized 68 items such as computers and mobile phones involved. After investigation, the crime syndicate relied on the sales enterprises and decoration companies involved in the case to obtain specific natural person information through illegal means such as "sale and exchange", spread the personal information through the so-called "information sharing" such as "data screening, customer introduction, brand promotion", and carried out "precise" business sales promotion for the target customers, which seriously interfere with the normal life order of residents and threat to the security of citizens' personal information. After a court trial, Zhang was sentenced to six months in prison and fined RMB 60,000 for violating citizens' personal information; the other 16 people who did not constitute a crime were fine RMB 2,000 to 10,000, according to the provisions of Article 44 and Article 64 of the Network Security Law of the People's Republic of China, depending on the circumstances of the violation. Further, the 14 relevant enterprises for failing to fulfill the personal information protection obligations stipulated in the Personal Information Protection Law of the People's Republic of China were ordered by the Harqin Banner public security network security department to make corrections and were given administrative warnings, and the responsible personnel were fined a total of RMB 68,000. (More)

上海案例：网络发布未成年人隐私，法院判决平台担责

2024年1月30日，上海松江法院发布一则涉未成年人网络欺凌的民事案件，基本案情为：2022年，李某因将部分女友不雅照片及视频发布在某网络视频APP，被法院判决认定构成寻衅滋事罪，被判处有期徒刑一年三个月。后李某女友一家人发现涉案照片、视频仍以“仅自己可见”的形式留存于李某该网络APP的账号后台，遂致电平台要求删除，但被平台客服以“该信息已不处于公开状态，无法删除”为由拒绝。2023年10月，女友作为原告、其父母作为法定代理人向上海松江法院提起民事诉讼，松江检察院支持起诉。

法院经审理认为：李某网络欺凌行为情节严重，已构成寻衅滋事罪，应当承担侵权责任。法院同时指出，被告某科技公司对于李某的侵权事实构成“应当知道”，却未做处理，应当承担连带责任。被告作为网络平台，对于避免其用户发布的信息侵害未成年人权益，尤其涉及色情等严重侵权信息应负有更高的注意义务。涉案信息明显侵权，审核难度较低，且已公开发布数天，发现该信息并非难事，尤其对于某科技公司这样全国知名的头部网络短视频平台，应具备充分的审核、信息管理能力及技术可能性。但被告不仅未能审核阻止，甚至任由其在平台留存数天，未做任何处置，最终李某“看到有很多人看，自己有点害怕了”，主动转为“仅自己可见”。平台的不作为显然不符合社会对其平台管控能力的预期。法院一审判决李某、某科技公司承担侵权责任，分别向原告书面赔礼道歉。（查看更多）

Shanghai Case: Publishing Minors' Privacy Online, the Court Rules the Platforms be Responsible

On January 30, 2024, Shanghai Songjiang Court issued a civil case involving cyber bullying of minors. In 2022, Li, who posted some indecent photos and videos of his girlfriend on an online video APP, was found by the court to constitute the crime of picking quarrels and provoking trouble, and was sentenced to one year and three months in prison. After Li's girlfriend's family found that the photos and videos involved were still retained in the background of Li's network APP account in the form of "only visible to himself", they asked the platform to delete the content, but were refused by the platform customer service on the grounds that "the information is no longer in a public state and cannot be deleted". In October 2023, Li's girlfriend, as the plaintiff, and her parents, as legal agents, filed a civil lawsuit with the Songjiang Court in Shanghai, and the Songjiang Procuratorate supported the prosecution.

The court held that: as an online platform, the defendant should have a higher duty of care to avoid the information released by its users from infringing on the rights and interests of minors, especially involving serious infringing information such as pornography. The information involved is obviously infringing and the audit difficulty is low. Furthermore, the information has been publicly released for a few days, and it is not difficult to find the information, especially for the national well-known head network short video platform such as the defendant, who should have sufficient audit, information management capabilities and technical possibilities. However, the defendant not only failed to review and stop it, but even allowed it to remain on the platform for several days without any disposal. The platform's inaction is obviously not in line with society's expectations of its platform control ability. The court of first instance ruled that Li and the network platform bear the infringement liability and respectively made a written apology to the plaintiff. (More)

工信部印发《工业领域数据安全能力提升实施方案（2024—2026年）》

2024年2月23日，工业和信息化部（“工信部”）印发《工业领域数据安全能力提升实施方案（2024—2026年）》，提出到2026年底，基本建立工业领域数据安全保障体系。具体目标包括，基本实现各工业行业规上企业数据安全要求宣贯全覆盖；开展数据分类分级保护的企业超4.5万家，至少覆盖年营收在各省（区、市）行业排名前10%的规上工业企业；立项研制数据安全国家、行业、团体等标准规范不少于100项；遴选数据安全典型案例不少于200个，覆盖行业不少于10个；数据安全培训覆盖3万人次，培养工业数据安全人才超5000人。（查看更多）

MIIT Issues *Implementation Plan for Improving Data Security Capabilities in the Industrial Sector (2024-2026)*

On 23 February 2024, the Ministry of Industry and Information Technology (“MIIT”) issued the *Implementation Plan for Improving Data Security Capabilities in the Industrial Sector (2024-2026)*, which proposes to basically establish a data security system in the industrial field by the end of 2026. Specific goals include basically achieving full coverage of the publicity and implementation of data security requirements for industrial enterprises above designated size in various industrial sectors; carrying out a category-based and class-based data protection system for more than 45,000 companies, covering at least the top 10% of industrial enterprises above designated size in each province (autonomous region, municipality) in terms of annual revenue; establishing projects to develop no less than 100 national, industry, group and other standard specifications of data security; selecting no less

than 200 typical data security cases, covering no less than 10 industries; data security training covering 30,000 people, cultivating more than 5,000 industrial data security talents. (More)

中国电子信息行业联合会发布《数据合规审计 指南》

2024年2月18日，中国电子信息行业联合会（“电子联合会”）发布《数据合规审计 指南》团体标准。《指南》主要包括数据合规审计的总则、审计项目分类、审计要素、审计事项、审计流程和审计报告等内容。《指南》旨在充分发挥审计的监督作用，明确提出审计的业务依据。在监督作用方面，《指南》通过规范化、标准化的方式开展数据合规审计活动，评价组织履行数据合规管理义务的情况，发现数据合规风险，提供合理的改进建议，促进组织数据合规水平的提升。在业务依据方面，《指南》明确数据合规审计的技术方案、具体的管理流程、严格的操作规范和规章制度，为数据合规审计业务和技术的发展提供方向性引领和规范性指导。（查看更多）

China Electronic Information Industry Federation Releases *Data Compliance Audit Guidelines*

On 18 February 2024, the China Electronic Information Industry Federation (“Electronic Information Federation”) released the *Data Compliance Audit Guidelines* group standard. The *Guidelines* mainly includes the general principles of data compliance audit, audit project classification, audit elements, audit matters, audit processes and audit reports, etc. The *Guidelines* aims to give full play to the supervisory role of audit and clearly propose the business basis for auditing. In terms of supervision, the *Guidelines* conducts data compliance audit activities in a standardized manner, evaluates the organization’s performance of data compliance management obligations, discovers data compliance risks, provides reasonable suggestions for improvement, and promotes the improvement of organization’s data compliance level. In terms of business basis, the *Guidelines* clarifies the technical solutions, specific management processes, strict operating specifications and rules and regulations for data compliance auditing, providing directional guidance and normative guidance for the development of data compliance audit business and technology. (More)

贵州省大数据局印发《贵州算力券管理办法（试行）》

2024年2月19日，贵州省大数据局印发《贵州算力券管理办法（试行）》（“《管理办法》”）。《管理办法》包括总则、算力券相关主体、算力券相关规定、监督、附则五个章节，共22条内容。贵州算力券是经贵州省人民政府批准，由贵州省大数据局实施的一种政策工具和数字化凭证，用于购买符合条件的贵州算力服务或贵州数据交易产品时，给予综合政策激励。《管理办法》主要说明了省大数据局、平台服务方、算力提供方、数据提供方、需求方五方主体的责任及义务，算力券申领范围、使用期限、发放原则等问题，并明确了算力券工作开展情况受各方监督。（查看更多）

Guizhou Provincial Big Data Bureau Issues *Measures for the Administration of Guizhou Arithmetic Vouchers (for Trial Implementation)*

On 19 February 2024, the Guizhou Provincial Big Data Bureau issued the *Measures for the Administration of Guizhou Arithmetic Vouchers (for Trial Implementation)* (“*Administrative Measures*”). The

Administrative Measures comprise five chapters, including the General Provisions, Arithmetic Voucher-Related Subjects, Arithmetic Voucher-Related Provisions, Supervision, and Supplementary Provisions, with a total of 22 articles. The Guizhou Arithmetic Voucher is a policy tool and digital voucher approved by the Guizhou Provincial People's Government and implemented by the Guizhou Provincial Big Data Bureau, which is used to grant comprehensive policy incentives for the purchase of eligible Guizhou Arithmetic Services or Guizhou Data Transaction Products. The *Administrative Measures* mainly explain the responsibilities and obligations of the five main parties, namely, the Guizhou Provincial Big Data Bureau, the platform service provider, the arithmetic provider, the data provider and the demand side, the scope of the arithmetic voucher application, the use period, the principle of issuance, and other issues, and make it clear that the implementation of the work on arithmetic vouchers is subject to the supervision of all parties. (More)

最高检召开“依法惩治网络犯罪 助力网络空间综合治理”新闻发布会

2024年2月23日，最高人民检察院（“最高检”）以“依法惩治网络犯罪 助力网络空间综合治理”为主题召开新闻发布会，通报2023年检察机关惩治网络犯罪工作情况，并发布8件相关典型案例。为依法严惩网络犯罪，检察机关采取了一系列工作举措，包括聚焦非法获取、提供个人信息成为网络犯罪黑产的严峻形势，加强对上游信息收集、提供、倒卖等环节犯罪行为的全链条打击。2023年1月至11月，起诉侵犯公民个人信息犯罪7300余人；聚焦数字经济发展，重点惩治非法获取企业经营数据和网络平台用户数据犯罪，以及网络侵权盗版犯罪。2023年1月至11月，起诉危害计算机信息系统安全类犯罪1300余人、网络侵犯知识产权犯罪1400余人。（查看更多）

SPP Holds Press Conference on “Punishing Cybercrimes in accordance with the Law to Facilitate the Comprehensive Governance of Cyberspace”

On 23 February 2024, the Supreme People's Procuratorate (SPP) held a press conference with the theme of “Punishing cybercrimes in accordance with the law to facilitate the comprehensive governance of cyberspace”. The meeting reported on the procuratorial organs' work in punishing cybercrimes in 2023 and released 8 relevant typical cases. In order to severely punish cybercrimes in accordance with the law, the procuratorial organs have adopted a series of measures, including focusing on the severe situation where illegal acquisition and provision of personal information has become dark industry chain of cybercrimes, and strengthening the entire chain of a crackdown on criminal activities in upstream information collection, provision, reselling and other links. From January to November 2023, more than 7,300 people were prosecuted for crimes of infringing on citizens' personal information; focusing on the development of the digital economy, focusing on punishing crimes of illegally obtaining corporate operating data and network platform user data, as well as online infringement and piracy crimes. From January to November 2023, more than 1,300 people were prosecuted for crimes endangering the security of computer information systems, and more than 1,400 people were prosecuted for crimes involving Online infringement of intellectual property rights. (More)

上海“数易贷”首笔数据资产质押贷款发放

2024年2月22日，据媒体报道，中国建设银行上海市分行与上海数据交易所深度合作，成功发放了首笔基于上海数据交易所“数易贷”服务的数据资产质押贷款。“数易贷”服务是上海数据交易所推出的数据资产信贷服务，实现了贯穿贷前、贷中及贷后的全生命周期管理。通过上

海数据交易所发布的可信数据资产凭证（Data-Capital Bridge, DCB），“数易贷”全面、动态、实时、准确地描述数据资产形成、流通和交易的全过程，能够确保数据资产的真实性、合法性和不可篡改性，为数据资产的质押提供了坚实的保障。在此基础上，中国建设银行基于“数易贷”给出的数据资产价值评估意见开展授信，并据此审慎发放贷款。（查看更多）

Shanghai First Data Asset Pledge Loan “Shuyidai” Was Issued

On 22 February 2024, according to media reports, the Shanghai Branch of China Construction Bank and Shanghai Data Exchange deeply cooperated and successfully issued the first data asset pledge loan based on Shanghai Data Exchange’s “Shuyidai” service. “Shuyidai” service is a data asset credit service launched by Shanghai Data Exchange, which realizes full life cycle management across pre-lending, lending and post-lending. Through the credible Data-Capital Bridge (DCB) issued by Shanghai Data Exchange, “Shuyidai” describes the whole process of formation, circulation and transaction of data assets comprehensively, dynamically, accurately and in real time, which can ensure the authenticity, legitimacy and tamperability of data assets and provide a solid guarantee for the pledge of data assets. On this basis, China Construction Bank conducted credit granting based on the opinion of data asset value assessment given by “Shuyidai”, and issued loans prudently and accordingly. (More)

国家数据局等四部门开展全国数据资源调查

2024年2月19日，国家数据局、中央网络安全和信息化委员会办公室、工业和信息化部、公安部联合开展全国数据资源情况调查，调研各单位数据资源生产存储、流通交易、开发利用、安全等情况，为相关政策制定、试点示范等工作提供数据支持。调查对象包括：（1）省级数据管理机构、工业和信息化主管部门、公安厅（局）；（2）各省重点数据采集和存储设备商、消费互联网平台和工业互联网平台企业、大数据和人工智能技术企业、应用企业、数据交易所、国家实验室等单位；（3）中央企业；（4）行业协会商会；（5）国家信息中心。（查看更多）

National Data Bureau and Four Other Departments Conduct National Data Resources Survey

On 19 February 2024, the National Data Bureau, the Office of the Central Committee for Network Security and Information Technology, the MIIT, and the Ministry of Public Security jointly conducted a national survey on the situation of data resources, to investigate the situation of production, storage, circulation, trading, exploitation, utilisation and security of data resources of various units, and to provide data support for relevant policy formulation, pilot demonstration and other work. The survey targets include (1) provincial data management agencies, departments in charge of industry and information technology, and public security departments (bureaus); (2) key data collection and storage equipment vendors, consumer Internet platform and industrial Internet platform enterprises, big data and artificial intelligence technology enterprises, application enterprises, data exchanges, national laboratories and other units in each province; (3) central enterprises; (4) industry associations and chambers of commerce; and (5) the National Information Centre. (More)

国家网信办发布第四批深度合成服务算法备案信息

2024年2月18日，国家互联网信息办公室（“国家网信办”）根据《互联网信息服务深度合成管理规定》，现公开发布第四批境内深度合成服务算法备案信息，具体信息可通过互联网信息服务算法备案系统（https://beian.cac.gov.cn）进行查询。（查看更多）

CAC Releases Fourth Batch of Deep Synthesis Service Algorithm Filling Information

On 18 February 2024, the Cyberspace Administration of China (“CAC”), in accordance with the *Provisions on the Administration of Deep Synthesis of Internet-based Information Services*, now publicly released the fourth batch of deep synthesis service algorithm filling information domestically. Specific information can be queried through the Internet Information Service Algorithm Filling System (https://beian.cac.gov.cn). (More)

法国数据保护局对PAP数据处理的违规行为处以100,000欧元罚款

2024年2月13日，法国数据保护局（以下简称“CNIL”）发布消息称：基于未能遵守其在数据保留期限和数据安全方面的义务，CNIL对 pap.fr （De Particulier à Particulier） 网站的经营者 PAP 处以10万欧元的罚款。

PAP是paper .fr网站的经营公司，个人可以在该网站中咨询和发布房地产广告。2022年3月和4月，CNIL对该公司进行了两次调查。调查揭示了有关数据保留期限、向个人提供信息、PAP与用户之间关系框架和数据安全的违规行为。因此， CNIL限制委员会对该公司处以10万欧元的罚款，理由是该公司违反了《通用数据保护条例》(GDPR)，这笔罚款是与相关的欧洲监管机构合作发出的。

CNIL指出，该公司的违规行为主要包括：

未能履行在预期目的范围内保留数据的义务（GDPR 第 5.1.e 条）

该公司为使用该网站付费服务的某些客户帐户的数据设定了十年的保留期，而该公司所依赖的《消费者法》的规定并没有证明这一期限是合理的。相关数据包括广告内容、客户的名字和姓氏、电话号码和电子邮件地址。该公司还为与该网站免费服务用户相关的数据设定了五年的保留期，但未能应用，因为它保留了更长的时间。

未能遵守告知个人的义务（GDPR 第 13 条）

在其网站上，该公司通过不完整和不精确的隐私政策告知个人：

- 未能就所指明的法律依据提供解释，

- 未能具体说明其处理的类别或处理者，

- 未表明有权向CNIL提出投诉，

- 以及提及不准确的数据保留期。

未能履行为代表数据控制者进行的处理提供法律框架的义务（GDPR 第 28 条）

这些安全缺陷使数据面临计算机攻击和泄漏的风险。（查看更多）

Data Retention Period and Data Security: the CNIL Fined PAP 100,000 Euros

On 31 January2024, the CNIL imposed a penalty of 100,000 euros on PAP, publisher of the pap.fr (De Particulier à Particulier) website, notably for failing to comply with its obligations in terms of data retention periods and data security.

PAP is a company that publishes the pap.fr website, enabling individuals to consult and publish real estate advertisements. In March and April 2022, CNIL carried out two investigations into the company. Its investigations revealed breaches concerning data retention periods, the provision of information to individuals, the framework for relations between PAP and a processor and data security.

As a result, the restricted committee - the CNIL body responsible for imposing sanctions - imposed a fine of 100,000 euros on the company for breaches of the General Data Protection Regulation (GDPR). This fine was issued in cooperation with the relevant European supervisory authorities.

The CNIL noted that the company's violations mainly include:

Failure to comply with the obligation to retain data for a period limited to the intended purpose (Article 5.1.e of the GDPR)

The company had set a retention period of ten years for data of certain customer accounts that used the site's paid services, without this period being justified by the provisions of the Consumer Code that the company was relying on. The data in question included ad content, customers' first and last names, telephone numbers and e-mail addresses. The company had also set a five-year retention period for data relating to users of the site's free services, but failed to apply it, since it retained data for longer periods.

Failure to comply with the obligation to inform individuals (Article 13 of the GDPR)

On its website, the company informed individuals by means of an incomplete and imprecise privacy policy:

- by failing to provide explanations relating to the legal bases indicated,

- by failing to specify the categories or processors with which it dealed,

- by failing to indicate the right to lodge a complaint with the CNIL,

- and by mentioning inaccurate data retention periods.

Failure to comply with the obligation to provide a legal framework for processing carried out on behalf of the data controller (Article 28 of the GDPR)

A contract concluded between the company and a processor did not include the information required by the GDPR.

Failure to ensure the security of personal data Article 32 of the GDPR)

The rules governing the complexity of passwords for site user accounts were insufficiently robust. It was also the case for the confidential credentials transmitted by the company, after a real estate ad had been placed on the site, to users who did not have an account in order to access that ad.

Furthermore, the unencrypted storage of user account passwords (associated with their IDs and e-mail addresses) and confidential references (associated with a personal space) did not guarantee data security.

Finally, all data relating to inactive user accounts was stored unsorted.

These security shortcomings exposed the data to risks of computer attacks and leaks.(More)

韩国跨境转移专家委员会成立

2024年2月5日，韩国个人信息保护委员会（以下简称“PIPC”）发布消息，称其在2024年1月30日举行了跨境传输专家委员会的启动仪式。该委员会旨在加强对韩国公民个人信息的保护，以应对由于国际上提供的数字服务范围不断扩大而对跨境数据传输日益增长的需求。该委员会由12名成员组成，其中包括一名PIPC委员，以及代表学术界、法律界、工业界和民间社会的隐私和数据保护事务专家。这些成员的任期为三年。委员会的主要职责包括评估认证、国家或国际组织提供的个人信息保护水平，然后PIPC确定该认证、国家或国际组织是否可以被认为“处于与个人信息保护法规定的个人信息保护水平基本相等的水平”。（查看更多）

Korea Expert Committee for Cross-border Transfer Launched

On January 30 2024, the Personal Information Protection Commission ("PIPC") held a ceremony to launch the Expert Committee for Cross-Border Transfer (“Committee”). The commission aims to strengthen the protection of the personal information of South Korean citizens in response to the growing demand for cross-border data transfers due to the expanding range of digital services offered internationally.

The Committee is composed of twelve members, including one commissioner of the PIPC and experts on privacy and data protection matters, representing academia, the legal profession, industry, and civil society. The members will serve three year-terms.

The key responsibilities of the Committee include evaluating the level of protection for personal information provided by a certification, a country, or an international organization before the PIPC determines whether such certification, country, or international organization can be considered to be “at a level substantially equal to the level of personal information protection under the Personal Information Protection Act”.(More)

欧盟《数字服务法》全平台正式生效

2024年2月16日，欧盟委员会发布公报，为了使网络环境更安全、更公平、更透明，欧盟里程碑式规则手册《数字服务法案》（Digital Services Act，DSA）将于2月17日开始适用于欧盟

的所有在线中介机构。根据DSA相关规定，欧盟用户在与其他用户建立联系、分享信息或购买产品的在线平台上将受到更好的保护，免受非法商品和内容的侵害，其权利也将得到维护。自2023年8月底起，DSA已适用于2023年4月指定的19家平均每月用户超过4,500万的超大型网络平台（Very Large Online Platforms，VLOPs）和搜索引擎（Very Large Online Search Engine，VLOSEs）。另外三个在2023年12月被指定为VLOP的平台需在4月底前履行DSA规定的最严格义务。不过，这些平台必须自2月17日起遵守DSA的一般义务。（查看更多）

EU Digital Services Act Officially Comes into Effect across All Platforms

On 16 February 2024, the European Commission issued a notice, to make the online environment safer, fairer, and more transparent, the EU landmark rulebook Digital Services Act (DSA) started applying to all online intermediaries in the EU from 17 February. Under the DSA, EU users are better protected against illegal goods and content and have their rights upheld on online platforms where they connect with other users, share information, or buy products. Since the end of August 2023, the DSA has already applied to the 19 Very Large Online Platforms (VLOPs) and Search Engines (VLOSEs) designated in April 2023 (with more than 45 million monthly users on average). Three other platforms designated as VLOPs in December 2023 have until the end of April to comply with the most stringent obligations under the DSA. However, they will have to comply with the general DSA obligations from 17 February. (More)

东盟发布《东盟示范合同条款和欧盟标准合同条款联合指南》

近日，东南亚国家联盟（“东盟”）发布了《东盟示范合同条款（Model Contractual Clauses）和欧盟标准合同条款（Standard Contractual Clauses）联合指南》（“《联合指南》”），详细说明了如何处理其成员国与欧盟之间的示范合同条款。东盟示范合同条款和欧盟标准合同条款是示范性数据保护条款，数据出口商和进口商可将其纳入合同安排，作为准许个人数据跨境转移的基础。《联合指南》的目的是帮助在东盟和欧盟地区运营的公司，了解各自合同条款之间的异同，从而促进遵守东盟和欧盟的数据保护法。（查看更多）

ASEAN Releases Joint Guidelines on ASEAN Model Contractual Clauses and EU Standard Contractual Clauses

Recently, the Association of Southeast Asian Nations (ASEAN) issued the Joint Guide to ASEAN Model Contractual Clauses (ASEAN MCCs) and EU Standard Contractual Clauses (EU SCCs), detailing how to handle disputes between its member states and the EU. The ASEAN MCCs and EU SCCs are model data protection clauses that can be incorporated by data exporters and importers in their contractual arrangements as a basis to allow the transfer of personal data across borders. The objective of the Joint Guide is to help companies operating across the ASEAN and EU regions understand the similarities and differences between the respective contractual clauses, thereby facilitating compliance with ASEAN and EU data protection laws. (More)

知识产权 Intellectual Property

最高院案例：离职1年内专利权权属为新老单位共有案改判

近日，最高人民法院就杭州海康机器人股份有限公司（原审原告，下称原告）与杭州易博特科技有限公司（原审被告，下称被告）专利权权属纠纷一案作出二审判决，判决撤销一审中认定涉案专利为两家公司共有的判决，裁决涉案专利归原告所有。

法院认为，案外人刘某等系涉案专利的研发人员，其在原告公司离职后投资设立被告公司，然而根据在案证据，涉案专利的完成时间大致为2018年9月17日，案外人于2018年7月31日从原告公司离职。因涉案专利实际发明人为案外人，且涉案专利为其离职后1年内完成，与其在原告公司的本职工作具有相关性，因此可以认定原告为涉案专利的权利人。

来源：最高人民法院

SPC Case: The Case of Patent Ownership Belongs Jointly to the Old and New Employer within One Year of Resignation Reversed

Recently, SPC issued a second instance judgment in a patent dispute between Hangzhou Hikvision Robotics Co., Ltd. (the plaintiff) and Hangzhou Ebot Technology Co., Ltd. (the defendant), holding that the patent in question belongs to the plaintiff.

SPC held that Mr. Liu, the third party was the research and development personnel of the patent in question. He invested and established the defendant company after resigning from the plaintiff company. However, according to the evidence on record, the patent was completed on approximately September 17, 2018, while Mr. Liu resigned from the plaintiff company on July 31, 2018. Since the actual inventor of the patent is Mr. Liu, and the patent was completed within one year of his resignation, which is related to his primary duties at the plaintiff company, it can be held that the plaintiff is the Patentee of the patent in question.

Source: SPC

最高院案例：发明专利具有“突出的实质性特点”判断“三步法”

近日，最高人民法院就宁波方太厨具有限公司（原审原告，下称原告）与国家知识产权局（原审被告，下称被告）发明专利权无效行政纠纷一案作出二审判决，判决驳回上诉，维持一审判决，撤销国知局作出的无效审查决定，并重新作出决定。

法院认为，本案争议焦点在于涉案专利是否具备创造性，在判断一项发明是否具有突出的实质性特点时，采“三步法”，即第一步确定现有技术中与请求保护的发明最密切相关的一项技术方案；第二步确定请求保护的发明相对于现有技术的区别特征，并由此确定该发明实际解决的技术问题；第三步从最接近的现有技术和发明实际解决的技术问题出发，判断请求保护的发明

对本领域技术人员来说是否显而易见。结合该标准，法院认为涉案专利具有创造性，被诉决定作出不具备创造性的结论有误，应予纠正。

来源：最高人民法院

SPC Case: The "Three-Step Approach" to Determine the Invention Patent's "Prominent Substantive Features"

Recently, SPC issued a second instance judgment in an administrative dispute between Ningbo Fangtai Kitchen Appliances Co., Ltd. (the plaintiff) and CNPIA(the defendant) regarding the invalidation of an invention patent. The court overruled the defendant's decision on invalidation and ordered a reexamination.

SPC held that the key of the case was whether the patent in question possessed inventiveness. When determining whether an invention possesses prominent substantive features, SPC adopted a "three-step approach." The first step is to identify the closest prior art related to the claimed invention. The second step is to determine the distinguishing features of the claimed invention over the prior art and, subsequently, the technical problem actually solved by the invention. The third step involves evaluating whether the claimed invention would be obvious to a person skilled in the art, considering the closest prior art and the technical problem actually solved by the invention. According to this standard, SPC held that the patent in question possessed inventiveness and that the defendant's decision was erroneous and shall be corrected.

Source: SPC

浙江法院案例：攀附“百丽”“BELLE”商标，判决惩罚性赔偿2214万余元

近日，浙江省高级人民法院就新百丽鞋业（深圳）有限公司等（原审原告，下称原告）与刘某阳、温州光缘电子商务有限公司（原审被告，下称被告）侵害商标权及不正当竞争纠纷一案作出二审判决，判决维持原判，被告承担消除影响的责任，并适用一倍惩罚性赔偿赔偿原告经济损失及合理开支22143338元。

法院认为，被告通过购买的方式成为被诉商标注册商标权人，注册“温州市鹿城区汇步鞋行”等多个个体工商字号，并通过这些个体工商户在抖音app上注册了“澳州百丽官方旗舰店”等多个账号以直播的方式销售标有“澳州百丽”“AOZHOUBELLE”等图案的鞋子，该等行为已构成对涉案商标专用权的侵害，不再以不正当竞争予以重复评判。本案中，被告的行为导致侵权商品销售数量巨大，主观恶意明显，给原告在经济上，尤其是品牌价值上造成较大损失，法院对原告要求适用一倍惩罚性赔偿的诉请予以支持，最终判决赔偿2214万余元。

来源：浙江省高级人民法院

Zhejiang Court Case: Infringement of “Baili” and “BELLE” Trademarks Leads to Punitive Damages of Over RMB 22.14 Million

Recently, Zhejiang High People's Court issued a second instance judgment in a case of trademark infringement and unfair competition between Xinbaili Shoes Industry (Shenzhen) Co., Ltd. (the plaintiff) and Wenzhou Guangyuan E-commerce Co., Ltd. (the defendant). The court held the defendant to bear the responsibility of eliminating the adverse impact and awarded punitive damages of RMB 22,143,338.

The court held that the defendant became the registered trademark owner of the disputed trademark through purchase and registered multiple individual business names such as "Wenzhou Lucheng Huibu Shoes Store". Through these individual businesses, the defendant registered multiple accounts on the Douyin app, including "Australia Baili Official Store", and sold shoes labeled with patterns such as "Australia Baili" and "AOZHOUBELLE" through live streaming. These behaviors constituted an infringement of the exclusive right to use the trademark involved in the case, and there was no need for repeated evaluation of unfair competition. In this case, the defendant's behaviors resulted in a large number of infringing products being sold, with obvious malice, causing significant economic losses to the plaintiff, especially in terms of brand value. The court ultimately awarded punitive damages equal to one time the amount of the loss, totaling over RMB 22.14 million.

Source: Zhejiang High People's Court

浙江法院案例：洲际酒店集团（IHG）旗下“皇冠假日酒店”首次被认定为驰名商标

近日，浙江省杭州市中级人民法院就六洲酒店集团（下称原告）与深圳雅兰电子商务有限公司等（下称被告）侵害商标权纠纷一案作出一审判决，判决被告立即停止侵权行为、刊登声明消除影响，并赔偿经济损失及合理费用共计50万元。

法院认为，在案证据可以证明涉案“皇冠假日酒店”注册商标经过原告使用和宣传，已为相关公众广泛知晓，在本案被诉侵权行为发生前，已达到驰名程度，在其核定服务项目第42类“提供住宿服务”上构成驰名商标。被告在其产品链接中使用“皇冠假日酒店款”字样，商品详情显示型号为“皇冠假日·尊享版”(或“假日皇冠”)，颜色分类为“皇冠假日”,图片中使用相关字样；床垫标签使用“皇冠假日·尊享版”字样，该等行为构成对涉案商标的侵害。

来源：浙江省杭州市中级人民法院

Zhejiang Court Case: The “Crowne Plaza” Brand Under InterContinental Hotels Group (IHG) Recognized as a Well-Known Trademark for the First Time

Recently, the Hangzhou Intermediate People's Court issued a first instance judgment in a trademark infringement dispute between Liuzhou Hotel Group (the plaintiff) and Shenzhen Yalan E-commerce Co., Ltd. and others (the defendants). The court held the defendants to immediately stop the infringing behavior, publish a statement to eliminate the adverse impact, and awarded damages of RMB 500,000.

The court held that the evidence on record demonstrated that the registered trademark "Crowne Plaza" had been widely recognized by the relevant public through the plaintiff's use and promotion. Before the occurrence of the alleged infringing behavior in this case, it had reached a well-known status and constituted a well-known trademark in its designated service category of Class 42, "providing accommodation services." The defendants' use of the terms "Crowne Plaza" in their product links, displaying the model as "Holiday Crown," color classification as "Crowne Plaza," and using related wording in the product images; as well as the use of the term "Crowne Plaza" on the mattress labels, constituted infringement of the trademark involved in the case.

Source: Hangzhou Intermediate People's Court

陕西法院案例：企业与高校结束合作后不得再使用高校名称进行宣传

近日，陕西省高级人民法院就西安交通大学（原审原告，下称原告）与西交思创智能科技研究院（西安）有限公司等（原审被告，下称被告）不正当竞争纠纷一案作出二审判决，判决被告的被诉行为构成不正当竞争，承担停止侵权、消除影响的责任，并赔偿原告经济损失共计100000元。

法院认为，被告所涉行业和经营范围与原告的业务范围、科研领域存在部分重合，企业命名时应当清楚知晓“西交”与西安交通大学之间的联系并进行合理避让，然其将“西交”作为企业名称的重要组成部分，容易引人误认其与西安交通大学之间存在特定联系从而造成混淆，该行为亦不属于对其注册商标的规范使用，故认定构成不正当竞争。本案中，原告与被告战略合作协议届满后并未续签，被告使用原告的校名全称、校徽对外宣传校企合作的行为容易造成他人对其之间关系的误认，构成不正当竞争，法院认为被告应停止上述不正当竞争行为。

来源：陕西省高级人民法院

Shaanxi Court Case: Enterprises Are Not Allowed to Use University Names for Promotion After Ending Cooperation

Recently, the Shaanxi High People's Court issued a second instance judgment in a case of unfair competition between Xi'an Jiaotong University (the plaintiff) and Xijiao Siemens Smart Technology Research Institute Co., Ltd. and others (the defendants). The court held that the defendants' behavior constituted unfair competition, ordering them to stop the infringement, eliminate the adverse impact, and awarding damages of RMB 100,000.

The court held that the industry and business scope of the defendants overlapped partially with the plaintiff's business scope and research field. When naming their enterprise, the defendants shall clearly aware of the connection between "Xijiao" and Xi'an Jiaotong University and made reasonable avoidance. However, they used "Xijiao" as an important part of their enterprise name, which could easily mislead people into believing that there was a specific connection between Xijiao and Xi'an Jiaotong University, causing confusion. This behavior did not constitute a legal use of their registered trademark and was therefore consitute unfair competition. In this case, after the strategic cooperation agreement between the plaintiff and the defendants expired and was not renewed, the defendants continued to use the plaintiff's full university name and emblem for external promotion of school-enterprise coopera-

tion, which could easily lead others to misunderstand the relationship between them. This constituted unfair competition. The court held that the defendants shall cease such unfair competition.

Source: Shaanxi High People's Court

江苏法院案例：施耐德电气诉施耐德电梯判赔4000万

近日，江苏省高级人民法院就施耐德电气（中国）有限公司（原审原告，下称原告）与苏州施耐德电梯有限公司（原审被告，下称被告）侵害商标权及不正当竞争纠纷一案作出二审判决，判决维持原判，被告立即停止侵权及不正当竞争行为，赔偿经济损失4000万元及合理开支15万元。

法院认为，原告第9类“施耐德”构成驰名商标，被告施耐德电梯公司构成商标侵权，同时被告将“施耐德”用于企业名称以及使用www.schneider-elevator.cn和www. schneider-elevator.com域名的行为构成不正当竞争。基于被告属于以侵害涉案权利商标及“施耐德”字号为业的企业，在确定侵权获利时应参考毛利率，而非营业利润率，电梯行业上市公司年度平均毛利率为29%，按其从低主张的20%计算，侵权获利达1.18亿元；如果按被告财务报表审计报告及企业所得税年度纳税申报表反映的平均利润率5%计算，侵权获利亦有2955 万元等，法院最终确定赔偿金额为4000万元。

来源：江苏省高级人民法院

Jiangsu Court Case: Schneider Electric Sues Schneider Elevator, Awarding damages of RMB 40 Million

Recently, the Jiangsu High People's Court issued a second instance judgment in a case of trademark infringement and unfair competition between Schneider Electric (China) Co., Ltd. (the plaintiff) and Suzhou Schneider Elevator Co., Ltd. (the defendant). The court held the defendant to immediately cease its infringing and unfair competition behaviors and awarded damages of RMB 40.15 million.

The court held that the plaintiff's "Schneider" trademark in Class 9 constituted a well-known trademark, and the defendant's use of "Schneider" in its corporate name and the domains www.schneider-elevator.cn and www.schneider-elevator.com constituted trademark infringement and unfair competition. Since the defendant was engaged in the business of infringing on the plaintiff's trademark rights and the "Schneider" trade name, the court held that the calculation of infringing profits shall be based on gross profit margin rather than operating profit margin. With an average gross profit margin of 29% for listed elevator companies in the industry, and a lower claim of 20% by the plaintiff, the infringing profits reached RMB 118 million. Alternatively, if calculated based on the average profit margin of 5% reflected in the defendant's financial statement audit report and corporate income tax annual tax return, the infringing profits were RMB 29.55 million. The court ultimately held the compensation amount to be RMB 40 million.

Source: Jiangsu High People's Court

最高院案例：原则上不宜拆分权利要求分别确定专利申请权归属

近期，最高人民法院知识产权法庭对一起专利申请权权属纠纷案作出终审裁定，撤销拆分诉争专利的权利要求并分别确定不同权利要求归属的一审判决，发回重审。该案终审裁定指出，一项专利申请作为一个整体只能存在一项专利申请权，一般不能根据不同的权利要求对一项专利申请进行人为分割，否则就会导致在一项专利申请上产生多项专利申请权。

该案基本案情是：广东某动力公司（下称原告）以杭州某科技公司（下称被告）将双方合作期间所掌握的原告关于某浸渗透系统的非公知技术信息披露给关联企业长兴某科技公司用以申请诉争专利为由，提起本案诉讼。原告请求诉争专利申请权归其所有，且明确主张其单独所有，不同意共有。诉争专利申请的技术方案包括10项权利要求，其中权利要求1为独立权利要求，权利要求2-10均为从属权利要求。最高院认为，本案系专利申请权权属纠纷，虽然在一项专利申请中可以存在多项权利要求，且每一项权利要求均为一个完整的技术方案，但是专利申请具有整体性，如果这些权利要求在同一主题下，符合单一性要求，原则上不能将不同的权利要求分别赋予不同的专利申请权，否则就会在一项专利申请上产生多项专利申请权，故判决一审法院对于涉案专利上的权利要求予以分别处理，致使原告放弃两项权利要求的专利申请权权属主张的判决存在法律使用错误，最高院最终判决发回重审。

来源：最高人民法院

SPC Case: It Is Not Appropriate to Determine the Ownership of Patent Application Rights by Splitting Claims

Recently, the Intellectual Property Tribunal of the SPC issued a second instance judgment in a patent application ownership dispute case, reversing the first instance judgment and remanding it for retrial. The court held that a patent application, as a whole, shall only have one patent application right, and generally shall not be artificially divided according to different claims. Otherwise, it will lead to multiple patent application rights arising from one patent application.

The basic facts of the case are as follows: Guangdong Power Company (the plaintiff) sued Hangzhou Technology Company (the defendant) for disclosing the plaintiff's non-public technology information regarding a certain infiltration system to an affiliated company, Changxing Technology Company, for the purpose of applying for the patent in dispute. The plaintiff requested that the patent application in dispute be granted to them as the sole owner, expressing a clear preference for exclusive ownership and rejecting any form of joint ownership. The technical solution covered by the patent application consisted of 10 patent claims, with Claim 1 serving as an independent claim, and Claims 2 to 10 serving as dependent claims. SPC held that this case involved a dispute over the ownership of patent application rights. Although multiple patent claims can exist within a single patent application, and each claim represents a complete technical solution, patent applications are inherently holistic. If these claims fall under the same theme and meet the requirement of unity, it is generally not permissible to assign different patent application rights to different claims. Otherwise, multiple patent application rights would arise from a single patent application. Therefore, the Supreme Court found that the first instance court had erred in treating the patent claims involved in the case separately, resulting in the

plaintiff abandoning their claim to the ownership of two patent claims. The Supreme Court ultimately remanded the case for retrial.

Source: SPC

最高院案例：中美医药领域6年专利纠纷案，判赔2000万

近日，最高人民法院就美国某公司（原审原告，下称原告）与岳阳某生物科技公司等（原审被告，下称被告）侵害发明专利权纠纷一案作出二审判决，判决被告赔偿原告经济损失1850万元及合理开支150万元。

2017年10月25日，原告在上海知识产权法院（下称“一审法院”）发起专利侵权诉讼，指控被告侵犯其第200480036105.7号名称为“内切葡聚糖酶STCE和含有内切葡聚糖酶的纤维素酶配制品”的发明专利，2021年5月31日，一审法院就该案件做出一审判决，判决金额合计1100万元，原被告双方均不服一审判决向最高院提起上诉。最高院认为依据在案证据，不能将原告主张的所有型号的纤维素酶或被告生产的所有纤维素酶都认定为侵权产品，但可以认定涉案侵权产品的范围包括但不限于GC-66/99/863、LS-68/98/868型号的产品；此外，最高院根据被告提供的部分产品型号的财务账册，认定被告在2016年5月至2021年3月期间，对GC-66、GC-99、LS-68、LS-98四种型号产品的最低销售收入应为197910204元（约2亿），侵权获利至少23749224元（约2375万），超出了原告在本案中主张的经济损失数额，故对原告关于经济损失的诉讼请求予以全额支持。

来源：最高人民法院

SPC case: Six-Year Patent Dispute in the Sino-US Medical Field, Awarding Damages of RMB 20 Million

Recently, SPC issued a second instance judgment in a patent infringement dispute between a US company (the plaintiff) and Yueyang biotechnology company, among others (the defendants). The court held the defendants to pay economic damages of RMB 20 million.

On October 25, 2017, the plaintiff filed a patent infringement lawsuit in the Shanghai Intellectual Property Court (the first instance court), accusing the defendants of infringing its invention patent. On May 31, 2021, the court issued a first instance judgment, awarding damages of RMB 11 million RMB. Both the plaintiff and the defendants appealed to SPC. SPC held that based on the evidence presented, not all the products claimed by the plaintiff shall be identified as infringing products. In addition, SPC, relying on the financial ledgers provided by the defendants for some product models, held that the defendants' minimum sales revenue during the period from May 2016 to March 2021 shall be RMB 197,910,204 (approximately RMB 200 million). The profit from infringement was at least RMB 23,749,224 RMB (approximately RMB 23.75 million), which exceeded the amount of damages claimed by the plaintiff in this case. Therefore, SPC fully supported the plaintiff's claim for damages.

Source: SPC

北京法院案例：二审判决作出后引证商标被撤销，再审保护诉争商标权利

近日，北京市高级人民法院就某公司（原审原告，下称原告）与中华人民共和国国家知识产权局（原审被告，下称被告）商标申请驳回复审行政纠纷一案作出再审判决，判决撤销在先行政判决及被告出具的商标驳回复审决定书，裁决被告重新作出复审决定。

法院认为，二审判决作出后，引证商标二十一、二十二被宣告无效的裁定已生效，引证商标二十六、二十七被被告决定不予注册，亦已生效，均已不再构成诉争商标的在先权利障碍。在商标授权确权行政案件中，当引证商标的状态发生变化，不再构成诉争商标的权利障碍时，法院应基于新的事实撤销原裁决，并指令国家知识产权局重新作出决定。再审过程中，法院应依据相关司法解释的规定，对原审判决进行改判，确保商标权的合理授予与保护。故法院最终判决被告根据变更后的事实重新作出复审决定。

来源：北京市高级人民法院

Beijing Court Case: Reexamination Decision on Trademark Protection Issued After the Revocation of Cited Trademarks in Second Instance Judgment

Recently, the Beijing High People's Court issued a retrial judgment in an administrative dispute between the plaintiff and CNIPA（the defendant) regarding the rejection of a trademark application for reconsideration. The court overruled the previous judgments and held the defendant to make a new reconsideration decision.

The court held that after the second instance judgment, the decisions declaring the cited trademarks 21 and 22 invalid had become effective, and the cited trademarks 26 and 27 had been decided by the defendant not to be registered, which had also become effective. These trademarks no longer constituted obstacles to the prior rights of the disputed trademark. In administrative cases involving trademark authorization and confirmation, when the status of the cited trademarks changes and no longer poses an obstacle to the rights of the disputed trademark, the court shall overrule the original decision based on new facts and order CNPIA to make a new decision. During the retrial process, the court shall modify the original judgment in accordance with relevant judicial interpretations to ensure the reasonable grant and protection of trademark rights. Therefore, the court ultimately ordered the defendant to make a new reconsideration decision based on the changed facts.

Source: Beijing High People's Court

河北法院案例：特许经营合同有效性不受“两店一年”等条件限制

近日，河北省石家庄市中级人民法院就史某群（原审原告，下称原告）与河北纳齐餐饮管理有限公司（原审被告，下称被告）特许经营合同纠纷一案作出二审判决，判决驳回上诉、维持原判，即驳回原告全部诉讼请求。

法院认为，《商业特许经营管理条例》要求特许人必须满足“两店一年”、合同备案及信息披露等条件，核心目的是防止特许人以欺诈方式骗取被特许人钱财。该规定为行政法规管理性规范，特许人不具备上述条件，并不当然导致其与他人签订的特许经营合同无效。本案中，原告主张被告未向其披露商标、特许经营资质等信息，该等信息并未影响被告特许人资质的确认及案涉合同目的的实现，被告亦无隐瞒的故意，案涉合同不符合《中华人民共和国民法典》第五百六十三条及《商业特许经营管理条例》中的关于解除合同的规定，故此对于原告提出解除合同的主张，法院不予认可。

来源：河北省石家庄市中级人民法院

Hebei Court Case: Validity of Franchise Contract Not Limited by "Two Stores, One Year" Requirement

Recently, the Shijiazhuang Intermediate People's Court issued a second instance judgment in a franchise contract dispute between Mr.Shi(the plaintiff) and Hebei Naqi Catering Management Co., Ltd. (the defendant), rejecting all the plaintiff's claims.

The court held that the "Two Stores, One Year" requirement, contract registration, and information disclosure provisions in the "Regulations on the Administration of Commercial Franchising" are primarily aimed at preventing franchisors from defrauding franchisees by fraudulent means. These provisions are administrative regulations and management norms. The franchisor's failure to meet these conditions does not automatically render the franchise contract invalid. In this case, the plaintiff claimed that the defendant failed to disclose information such as trademarks and franchising qualifications, which did not affect the confirmation of the defendant's franchisor qualifications and the achievement of the purpose of the contract. The defendant also did not intentionally conceal the information. The contract did not comply with the provisions on the termination of contracts in Article 563 of the Civil Code and the "Regulations on the Administration of Commercial Franchising". Therefore, the court did not recognize the plaintiff's claim for termination of the contract.

Source: Shijiazhuang Intermediate People's Court

浙江法院案例：销售山寨“三养”火鸡面构成商标侵权

近日，浙江省嘉兴市中级人民法院就三养食品（上海）有限公司（原审原告，下称原告）与三养食品（福建）有限公司等（原审被告，下称被告）侵害商标权及不正当竞争纠纷一案作出二审判决，判决被告立即停止侵权及不正当竞争行为，共计赔偿原告经济损失、合理费用25万余元。

法院认为，被告在火鸡面包装和自媒体宣传中突出使用的卡通图案、三养食品等标识，能够起到指示商品来源的作用，应属于商标意义上的使用，且被告在火鸡面包装上使用的被诉标识在鸡冠、嘴巴、翅膀、喷火焰等辨识性要素和整体视觉效果上与原告产品构成近似，容易使得相关公众对商品的来源产生误认或者认为其来源与原告方注册商标有特定的联系，构成商标侵权；同时，被告虽经合法注册，但因原告以及其商标已经具有一定知名度，被告将“三养”在

其企业字号中使用，其行为违反了《中华人民共和国反不正当竞争法》第六条第二、四项的规定，构成不正当竞争行为。

来源：浙江省嘉兴市中级人民法院

Zhejiang Court Case: Selling Fake "Samyang" Noodle Constitutes Trademark Infringement

Recently, the Jiaxing Intermediate People's Court issued a second instance judgment in a trademark infringement and unfair competition dispute between Samyang Foods (Shanghai) Co., Ltd. (the plaintiff) and Samyang Foods (Fujian) Co., Ltd., among others (the defendants). The court held the defendants to compensate the plaintiff for damages and reasonable expenses totaling RMB 250,000.

The court held that the cartoon patterns and "Samyang Foods" logos prominently used by the defendants on the packaging and social media promotion of their noodles served to indicate the source of the goods, which shall be considered as trademark use. The court further held that the defendants' identified logos on the packaging of their fire noodles were similar to the plaintiff's product in terms of identifiable elements such as the comb, beak, wings, and flaming effect, as well as overall visual effects. This similarity could easily lead relevant members of the public to misidentify the source of the goods or believe that there was a specific connection between the source and the plaintiff's registered trademark, thus constituting trademark infringement. Additionally, although the defendants were legally registered, their use of "Samyang" in their enterprise name violated Article 6(2) and (4) of the Anti-Unfair Competition Law, as the plaintiff and its trademark had already achieved a certain level of popularity. Therefore, the defendants' behavior constituted unfair competition.

Source: Jiaxing Intermediate People's Court

四川法院案例：产品的装潢多次变化，难以认定为“有一定影响的商品装潢”

近日，四川省成都市武侯区人民法院就河北养元智汇饮品股份有限公司（下称原告）诉石家庄市珍好食品有限公司（下称被告）擅自使用与他人有一定影响的商品名称、包装、装潢等相同或者近似的标识纠纷一案作出一审判决，判决驳回原告全部诉讼请求。

法院认为，原告主张的“六个核桃”核桃乳产品的装潢多次变化，且未提供充分证据证明其对特定装潢有长期、持续的使用，并仍被公众所熟知，因此难以认定其装潢为“有一定影响的商品装潢”；被告的“养生核桃”核桃乳产品与原告产品装潢中的文字部分明显不同，配色和设计要素亦有差异，相关公众可以区分两者；在案证据不足以证明原告产品装潢具有影响力和持续性，故法院认定被告不构成不正当竞争。

来源：四川省成都市武侯区人民法院

Sichuan Court Case: The decoration of a product with multiple changes cannot be recognized as "a commodity decoration with certain influence"

Recently, the Wuhou District People's Court of Chengdu issued a first instance judgment in an unfair competition dispute between Hebei Yangyuan Zhihui Beverage Co., Ltd. (the plaintiff) and Shijiazhuang Zhenhao Food Co., Ltd. (the defendant). The court rejected all of the plaintiff's claims.

The court held that the decoration of the plaintiff's "Six Kernels of Nuts" walnut milk product had undergone multiple changes and that the plaintiff had not provided sufficient evidence to prove that it had used a specific decoration for a long and continuous period and was still well-known to the public. Therefore, it was difficult to determine that its decoration qualified as "influential product decoration." The court further held that the defendant's "Nourishing Walnut" walnut milk product differed significantly from the plaintiff's product in terms of wording, color schemes, and design elements, and the relevant public could distinguish between the two. The evidence presented was insufficient to prove that the plaintiff's product decoration had influence and continuity. Therefore, the court held that the defendant did not constitute unfair competition.

Source: Wuhou District People's Court

美国法院：无聊猿NFT作品侵权案最终判决赔偿6477万元

近日，美国地区法官就概念艺术家Ryder Ripps、Jeremy Cahen与NFT公司Yuga Labs著作权纠纷一案作出最终判决，认定两名艺术家参与了侵权作品的创作和传播过程，侵犯了该公司的著作权，要求Ripps和Cahen支付900万美元（约合人民币6477万元）的赔偿，其中包含150万美元的罚款。

Yuga Labs成立于2021年，主要业务范围是铸造非同质化货币（NFT）艺术品。2022年5月，Ripps与Cahen推出了NFT项目Ryder Ripps BAYC（RR/BAYC）系列作品，两人未经授权将属于Yuga Labs公司的Bored Ape Yacht Club（BAYC）系列作品制成NFT。2023年4月，美国加利福尼亚州联邦法院作出判决，认定两名艺术家侵犯了Yuga Labs的著作权，后Ripps和Cahen向美国第九巡回法院提出上诉，但上诉被驳回，在近日发布的最终判决中，Ripps和Cahen被要求在两周内将所有侵权作品转让给Yuga Labs。

来源：Cryptopolitan

U.S. Court: Awarding Damages of $9 Million for Infringement of Bored Ape Yacht Club NFTs

Recently, a district court in the United States has issued a final judgment in a copyright infringement case between conceptual artists Ryder Ripps and Jeremy Cahen and NFT company Yuga Labs. The court held hat the two artists were involved in the creation and distribution of infringing works, violating the company's copyright, and ordered Ripps and Cahen to pay 9million(approximately RMB 64.77 million)in damages, including a 1.5 million fine.

Yuga Labs, founded in 2021, specializes in minting non-fungible token (NFT) art. In May 2022, Ripps and Cahen launched the NFT project Ryder Ripps BAYC (RR/BAYC) series, which included unau-

thorized replicas of Yuga Labs' Bored Ape Yacht Club (BAYC) series made into NFTs. In April 2023, a federal court in California ruled that the two artists had infringed on Yuga Labs' copyright. Although Ripps and Cahen appealed the decision to the Ninth Circuit Court of Appeals, their appeal was denied. In the recent final judgment, Ripps and Cahen were ordered to transfer all infringing works to Yuga Labs within two weeks.

Source: Cryptopolitan

美国法院案例：美国二手奢侈品电商WGACA被判商标侵权、虚假关联等四项罪名成立

近日，纽约联邦法院对香奈儿诉What Goes Around Comes Around（以下简称“WGACA”）商标侵权案做出判决，陪审团支持了香奈儿的四项诉求：基于WGACA使用香奈儿商标及其他品牌标识和标签的商标侵权、虚假关联和不正当竞争；基于WGACA销售/提供非香奈儿正品产品的商标侵权、虚假关联和不公平竞争；基于WGACA销售/提供假冒商品的商标侵权；以及虚假广告。

法国奢侈品公司香奈儿（Chanel）于2018年3月首次对美国二手奢侈品电商WGACA提起诉讼，指控后者构成了商标侵权、虚假关联、不正当竞争以及虚假广告行为。今年1月9日，该案再次开庭审理，陪审团在所有四项指控上一致投票支持香奈儿，他们裁定香奈儿在商标侵权、虚假关联、不正当竞争以及虚假广告四项指控中胜诉，并获得赔偿400万美元。香奈儿将在庭审后提交的诉状中考虑追加非法定损害赔偿。

来源：fashionlaw

U.S. Court Case: Secondhand Luxury E-commerce Company WGACA Found Guilty of Trademark Infringement, False Association, and Other Charges

Recently, the United States District Court issued a judgment in the Chanel vs. What Goes Around Comes Around (WGACA) trademark infringement case. The jury sided with Chanel on all four of its claims: trademark infringement, false association, and unfair competition based on WGACA's use of Chanel's trademarks and other brand identifications and labels; trademark infringement, false association, and unfair competition based on WGACA's sale/offering of non-Chanel authentic products; trademark infringement based on WGACA's sale/offering of counterfeit goods; and false advertising.

Chanel first sued WGACA in March 2018, alleging trademark infringement, false association, unfair competition, and false advertising. On January 9th of this year, the case went to trial again, and the jury unanimously voted in favor of Chanel on all four counts. They held that Chanel prevailed on all four counts of trademark infringement, false association, unfair competition, and false advertising, and awarded Chanel $4 million in damages. Chanel will consider seeking additional non-statutory damages in its pleadings following the trial.

Source: fashionlaw

美国专利商标局：驳回OpenAI申请“GPT”商标的尝试

美国专利商标局（U.S. Patent and Trademark Office）驳回了 OpenAI 申请"GPT"商标的尝试，裁定该词“仅仅是描述性的”，因此不能注册。这对 OpenAI 的品牌形象是一个打击。

ChatGPT无疑是目前人工智能领域最知名的品牌，它是市场上最受欢迎的会话模型，也是最明显地将大型语言模型从好奇变成全球趋势的品牌。但美国专利商标局认为，该名称不符合注册商标的标准，也不符合在名称后加上"TM"的保护规定。正如拒绝文件所说：注册被驳回的原因是所申请的商标仅仅描述了申请人商品和服务的特征、功能或特点。OpenAI 认为，它已经普及了 GPT 这个术语，在这里它代表“生成式预训练转换器”，描述了机器学习模型的性质。说它“生成”，是因为它能产生新的（等同于）材料；说它“预训练”，是因为它是一个在专有数据库上集中训练的大型模型；而“转换器”则是构建人工智能的一种特殊方法的名称（由Google研究人员于2017年定义），这种方法可以训练出更大的模型。

来源：cnBeta

OpenAI’s application for the “GPT” trademark was rejected by USPTO

USPTO has rejected OpenAI's attempt to register the trademark "GPT," holding that the term is "merely descriptive" and therefore ineligible for registration. This is a blow to OpenAI's brand identity.

Chat GPT, undoubtedly one of the most recognizable brands in the field of artificial intelligence, is the most popular conversation model on the market and the most prominent brand to have turned large language models from a curiosity into a global trend. However, USPTO has determined that the name does not meet the criteria for trademark registration and does not qualify for the protection afforded by adding "TM" after the name. As stated in the denial document: "The registration is refused because the applied-for mark merely describes a feature, function, or characteristic of the applicant's goods and/or services. "OpenAI maintains that it has popularized the term "GPT," which stands for "Generative Pre-trained Transformer" and describes the nature of the machine learning model. The term "generative" refers to its ability to produce new (equivalent) material, "pre-trained" refers to the fact that it is a large model trained intensively on proprietary databases, and "transformer" is the name of a specific method (defined by Google researchers in 2017) for building artificial intelligence that can train larger models.

Source: cnBeta

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