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立方竞争法周报 Weekly Competition Law News

市场监管总局公布三起经营者集中反垄断审查典型案例

2025年12月4日，国家市场监督管理总局（“**市场监管总局**”）公布三起经营者集中反垄断审查典型案例。本次公开的是3起无条件批准的非简易案件典型案例，目的是充分发挥典型案例的示范引领作用，助力经营主体合规发展。本次公布的典型案例涉及不同交易类型与行业，分别涉及工业气体领域横向集中、药品零售领域纵向集中、钢铁行业同时涉及横向和纵向集中的案例。公开这些典型案例有利于帮助企业进一步提高申报效率和申报质量，为投资并购营造公开、透明、可预期的制度环境。（查看更多）

SAMR Releases Three Representative Concentration of Undertakings Review Cases

On December 4, 2025, the State Administration for Market Regulation (“**the SAMR**”) released three representative concentration of undertakings review cases. These are three non-simplified cases that were unconditionally cleared, published with the aim of leveraging their demonstrative and guiding effect to support law-compliant development by market participants. The cases involve different types of transactions and industries, including a horizontal concentration in the industrial gases sector, a vertical concentration in the pharmaceutical retail sector, and a transaction in the steel sector involving both horizontal and vertical concentrations. Publishing these representative cases helps enterprises further improve the efficiency and quality of their notification filings and fosters an open, transparent and predictable regulatory environment for investment and acquisitions. (More)

上海举办企业出海反垄断合规宣讲

2025年12月3日，为全面提升企业反垄断合规能力，防范反垄断合规风险，助力各类市场主体更好地参与国际竞争，上海市市场监督管理局联合市工商联、市国资委、市企业联合会等部门，举办了两场企业出海反垄断合规宣讲。宣讲会聚焦经营主体“走出去”过程中的合规挑战和难点，围绕海外反垄断法规重点变化、典型案例剖析、企业合规体系搭建等核心内容，为企业提供全链条合规参考。上海市全市200余家重点国企、民企代表报名参与本次宣讲。（查看更多）

Shanghai Hosts Compliance Briefings on Antitrust Issues for Companies Going Global

On December 3, 2025, to comprehensively enhance companies’ antitrust compliance capabilities, mitigate anti-monopoly compliance risks, and support market participants in better participating in global competition, the Shanghai Administration for Market Regulation, together with the Shanghai Federation of Industry and Commerce, the State-owned Assets Supervision and Administration Commission of Shanghai, and the Shanghai Enterprise Confederation, held two briefings on anti-monopoly compliance for companies going global. The sessions focused on compliance challenges and pain points encountered by businesses in the process of “going global”, covering key developments in anti-monopoly regimes abroad, analyses of representative cases, and guidance on building corporate compliance systems, thereby offering end-to-end compliance references. More than 200 major state-owned and private enterprises in Shanghai participated in the briefings. (More)

市场监管总局举办第十一期反垄断合规讲堂

2025年11月28日，市场监管总局在广东省广州市举办2025年第十一期反垄断合规讲堂。本期讲堂以“知识产权滥用的反垄断规制”为主题，深度解读知识产权领域反垄断制度规则，引导广大经营者依法行使知识产权加强反垄断合规管理。市场监管总局将坚持监管规范和促进发展并重，统筹保护知识产权和促进公平竞争，强化反垄断执法，防止滥用知识产权排除、限制竞争行为，助推科技创新、产业创新，营造更加公平、更有活力的市场环境。本次活动共100余家企业主体通过线下和线上形式参加。（查看更多）

SAMR Holds the Eleventh Antitrust Compliance Lecture

On November 28, 2025, the SAMR held the eleventh session of its 2025 Antitrust Compliance Lecture Series in Guangzhou, Guangdong Province. This session, themed “Antitrust Regulation of the Abuse of Intellectual Property Rights,” provided in-depth interpretation of antitrust rules in the field of intellectual property rights and guided businesses in exercising their intellectual property rights in accordance with the law and enhancing their anti-monopoly compliance management. The SAMR reiterated that it will continue to balance regulatory oversight and developmental objectives, coordinate intellectual property protection with the promotion of fair competition, strengthen anti-monopoly enforcement, and prevent the exclusion or restriction of competition through intellectual property abuse, thereby boosting technological and industrial innovation and fostering a fairer and more dynamic market environment. More than 100 enterprises participated in this session through both in-person and online formats. (More)

欧盟委员会对Meta启动反垄断调查，事关其人工智能供应商访问政策

2025年12月4日，欧盟委员会宣布对Mata启动反垄断调查，以评估其关于人工智能供应商访问 WhatsApp 的新政策是否违反欧盟竞争规则。Meta 于 2025 年 10 月宣布该新政策，内容是禁止人工智能供应商在人工智能是主要服务内容时使用“WhatsApp 商务解决方案”（WhatsApp Business Solution）——一项允许企业通过 WhatsApp 与客户沟通的工具；企业仍可将人工智能工具用于辅助性或支持性功能，例如通过 WhatsApp 提供的自动化客户支持。目前，有多家人工智能供应商通过 WhatsApp 提供其人工智能助手服务，使用户能够在应用内直接与对话式人工智能互动，以完成回答问题、生成内容或访问客户支持等任务。由于该新政策，竞争性人工智能供应商可能会被阻止通过 WhatsApp 接触其客户；相反，Meta 自有的人工智能服务“Meta AI”仍可在平台上供用户访问。此次正式调查将覆盖除意大利外的欧洲经济区，此举旨在避免与意大利竞争监管机构正在就 Meta 行为可能采取临时措施的程序产生重叠。（查看更多）

European Commission Launches an Antitrust Probe into Meta concerning AI Provider’s Access Policy

On December 4, 2025, the European Commission announced the launch of a formal antitrust investigation into Meta to assess whether its new policy on artificial intelligence (“**AI**”) providers’ access to WhatsApp violates EU competition rules. Meta announced this new policy in October 2025, which

prohibits AI providers from using the "WhatsApp Business Solution"—a tool that allows businesses to communicate with customers via WhatsApp—when AI is the primary service offered; businesses may still use AI tools for ancillary or supporting functions, such as automated customer support offered via WhatsApp. At present, several AI providers offer their AI assistant services through WhatsApp, enabling users to interact directly with conversational AI within the app to perform tasks such as answering questions, generating content, or accessing customer support. Due to the new policy, competing AI providers may be blocked from reaching their customers through WhatsApp; by contrast, Meta's own AI service, "Meta AI" would remain available to users on the platform. The formal investigation will cover the European Economic Area except for Italy, in order to avoid overlap with the procedure being pursued by the Italian competition authority regarding possible interim measures related to Meta's conduct. (More)

美国司法部发布同意令，要求星座能源公司剥离资产以完成对卡尔派电业的266亿美元收购

2025年12月5日，美国司法部反垄断司发布同意令（consent decree），要求星座能源公司（Constellation Energy Corporation Inc.）剥离资产以完成对卡尔派电业（Calpine Corporation）的266亿美元收购，以解决该收购所引发的反垄断担忧，资产具体涉及特拉华州、宾夕法尼亚州和德克萨斯州的六座电厂。此前，美国司法部反垄断司在哥伦比亚特区联邦地区法院提起民事反垄断诉讼，寻求阻止该拟议收购；在起诉状中，美国司法部指控该收购将促成全美最大的批发电力生产商的诞生，并会提高合并后企业通过对其一家或多家电厂进行盈利性限供来操纵市场的可能性，进而推高电价，影响得克萨斯州以及新泽西州、特拉华州、宾夕法尼亚州东南部、马里兰州和弗吉尼亚州东岸地区的用户。美国司法部认为本同意令中剥离六座电厂的措施能够解决其竞争担忧，这也是美国反垄断司 14 年来在电力行业并购案件中提交的首份和解令判决。（查看更多）

US DOJ Issues Consent Decree Requiring Constellation Energy to Divest Assets to Complete Its $26.6 Billion Acquisition of Calpine Corporation

On December 5, 2025, the Antitrust Division of the U.S. Department of Justice ("**DOJ**") issued a consent decree requiring Constellation Energy Corporation Inc. ("**Constellation**") to divest certain assets in order to complete its $26.6 billion acquisition of Calpine Corporation ("**Calpine**"). The divestitures, which cover six power plants located in Delaware, Pennsylvania, and Texas, are designed to resolve the antitrust concerns raised by the transaction. Previously, the DOJ's Antitrust Division filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia seeking to block the proposed acquisition. In its complaint, the DOJ alleged that the transaction would create the largest wholesale power generator in the United States and increase the likelihood that the combined company could profitably manipulate electricity markets by withholding electricity from one or more of its power plants; such conduct would result in higher electricity prices for customers in Texas, as well as in New Jersey, Delaware, southeastern Pennsylvania, and the eastern shores of Maryland and Virginia. The DOJ determined that requiring divestiture of the six power plants would adequately address DOJ's competitive concerns. This marks the first settlement consent decree that the Antitrust Division has filed in an electricity-sector merger case in 14 years. (More)

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

国家网信办发布《网络数据安全风险评估办法（征求意见稿）》

2025年12月6日，国家互联网信息办公室（以下简称“国家网信办”）发布了《网络数据安全风险评估办法（征求意见稿）》（以下简称《办法》），向社会公开征求意见，意见反馈截止时间为2026年1月5日。《办法》旨在规范网络数据安全风险评估活动，保障网络数据安全，促进网络数据依法合理有效利用。《办法》明确，各有关主管部门应当按照“谁管业务、谁管业务数据、谁管数据安全”的原则，定期组织开展本行业、本领域风险评估，可以根据工作需要对本行业、本领域的重要数据处理者开展风险评估情况进行检查，并于每年1月底前向国家网信部门报送年度风险评估及检查计划。《办法》规定，重要数据处理者应当每年度对其网络数据处理活动开展风险评估。重要数据安全状态发生重大变化可能对数据安全造成不利影响的，应及时对发生变化及其影响的部分开展风险评估；《办法》鼓励一般数据处理者至少每3年开展一次风险评估。《办法》指出，风险评估工作应当按照《网络数据安全管理条例》有关要求和《数据安全技术 数据安全风险评估方法》（GB/T 45577）等有关国家标准开展。有关主管部门对本行业、本领域风险评估工作另有规定的，从其规定。（查看更多）

CAC Issues *Measures for the Risk Assessment of Cybersecurity and Data Security (Draft for Comments)*

On December 6, 2025, the Cyberspace Administration of China (CAC) issued the *Measures for the Risk Assessment of Cybersecurity and Data Security (Draft for Comments)* (Measures) to solicit public comments, with the deadline for submitting comments set as January 5, 2026. The Measures aim to regulate cybersecurity and data security risk assessment activities, ensure cybersecurity and data security, and promote the legal, reasonable, and effective use of network data. The Measures clarify that all relevant competent departments shall, in accordance with the principle of “whoever manages the business shall manage the business data and be responsible for data security”, regularly organize and conduct risk assessments in their respective industries and fields. They may inspect the risk assessment work carried out by important data processors in their industries and fields as needed, and submit the annual risk assessment and inspection plan to the national cyberspace administration department by the end of January each year. The Measures stipulate that important data processors shall conduct risk assessments on their network data processing activities annually. If there is a significant change in the security status of important data that may adversely affect data security, they shall promptly conduct a risk assessment on the changed part and its impact. The Measures encourage general data processors to conduct risk assessments at least once every three years. The Measures point out that risk assessment work shall be carried out in accordance with the relevant requirements of the *Regulations on the Administration of Cybersecurity and Data Security* and relevant national standards such as *Information Security Technology - Data Security Risk Assessment Method (GB/T 45577)*. If there are other provisions of the relevant competent departments on risk assessment work in their respective industries and fields, such provisions shall prevail. (More)

国家计算机病毒应急处理中心检测发现69款违法违规收集使用个人信息的App

2025年12月4日，国家计算机病毒应急处理中心检测发现了69款违法违规收集使用个人信息的App，所涉问题包括但不限于：（1）在App首次运行时未通过弹窗等明显方式提示用户阅读隐私政策等收集使用规则；隐私政策难以访问；个人信息处理者在处理个人信息前，未以显著方式、清晰易懂的语言真实、准确、完整地向个人告知个人信息处理者的名称或者姓名、联系方式、个人信息的保存期限等；（2）隐私政策未逐一列出App（包括委托的第三方或嵌入的第三方代码、插件）收集使用个人信息的目的、方式、范围等；（3）个人信息处理者向其他个人信息处理者提供其处理的个人信息的，未向个人告知接收方的名称或者姓名、联系方式、处理目的、处理方式和个人信息的种类，并取得个人的单独同意；（4）未向用户提供撤回同意收集个人信息的途径、方式；个人信息处理者未提供便捷的撤回同意的方式；（5）未采取相应的加密、去标识化等安全技术措施。（查看更多）

National Computer Virus Emergency Response Center Detects 69 Apps for Illegally or Improperly Collecting and Using Personal Information

On December 4, 2025, the National Computer Virus Emergency Response Center detected 69 Apps that illegally or improperly collect and use personal information. The involved issues include but are not limited to: (1) Failed to prompt users to read privacy policies and other rules for collecting and using personal information through prominent means such as pop-up windows when the App is run for the first time; the privacy policy is difficult to access; before processing personal information, the personal information processor failed to truthfully, accurately, and completely inform individuals of the name or designation of the processor, contact information, retention period of personal information, etc., in a prominent manner and clear, understandable language. (2) The privacy policy failed to list one by one the purposes, methods, scope, etc., of collecting and using personal information by the App (including entrusted third parties or embedded third-party codes and plug-ins). (3) When providing the personal information it processes to other personal information processors, the personal information processor failed to inform individuals of the name or designation of the recipient, contact information, processing purposes, processing methods, and types of personal information, and obtain individuals' separate consent. (More)

《贵州省大数据发展应用促进条例》自2026年1月1日起施行

2025年12月3日，《贵州省大数据发展应用促进条例》（以下简称《条例》）经贵州省第十四届人民代表大会常务委员会第二十次会议修订通过，自2026年1月1日起施行。《条例》明确，贵州省坚持存算一体、智算优先，推动通用计算、智能计算、超级计算等多元算力资源协调发展，提高数据中心计算力和存储力，扩大算力规模，提升算力能级水平，打造面向全国的算力保障基地；鼓励算力相关企业在贵安数据中心集群建设智算中心，支持已建智算中心扩容升级。《条例》指出，贵州省人民政府数据主管部门应当加强数据统筹管理，按照国家和省的有关规定制定数据分类分级基本规则，建立数据资源目录编制规范。《条例》强调，开展大数据发展应用相关活动，应当遵守法律、法规，尊重社会公德和伦理，遵守商业道德和职业道德，

诚实守信，履行数据安全保护义务，承担社会责任，不得危害国家安全、公共利益，不得损害个人、组织的合法权益。（查看更多）

Regulations of Guizhou Province on Promoting the Development and Application of Big Data to Take Effect on January 1, 2026

On December 3, 2025, the *Regulations of Guizhou Province on Promoting the Development and Application of Big Data* (Regulations) was revised and adopted at the 20th meeting of the Standing Committee of the 14th Guizhou Provincial People's Congress, and shall take effect on January 1, 2026. The Regulations clarify that Guizhou Province adheres to the principle of "integration of storage and computing, priority to intelligent computing", promotes the coordinated development of diverse computing power resources such as general computing, intelligent computing, and supercomputing, improves the computing and storage capacity of data centers, expands the scale of computing power, enhances the level of computing power, and builds a national-oriented computing power support base; it encourages computing power-related enterprises to construct intelligent computing centers in the Gui'an Data Center Cluster and supports the expansion and upgrading of existing intelligent computing centers. The Regulations point out that the data competent department of the People's Government of Guizhou Province shall strengthen coordinated data management, formulate basic rules for data classification and grading in accordance with relevant national and provincial provisions, and establish standards for compiling data resource catalogs. The Regulations emphasize that activities related to the development and application of big data shall comply with laws and regulations, respect social morality and ethics, observe business ethics and professional ethics, act in good faith, fulfill data security protection obligations, assume social responsibilities, and shall not endanger national security or public interests, nor damage the legitimate rights and interests of individuals or organizations. (More)

湖南省网信办发布2025年度湖南省汽车数据报送工作的通知

2025年12月3日，湖南省互联网信息办公室（以下简称"湖南省网信办"）发布了2025年度湖南省汽车数据安全管理情况和风险评估报告报送工作的通知。根据《汽车数据安全管理若干规定（试行）》第十条、十三条、十四条的要求，开展重要数据处理活动的汽车数据处理者，应当在每年12月15日前向省级网信部门和有关部门报送年度汽车数据安全管理情况；应当按照规定开展风险评估，并向省级网信部门和有关部门报送风险评估报告。此次报送工作的对象为：注册地为湖南地区的开展重要数据处理活动的汽车数据处理者，包括汽车制造商、零部件和软件供应商、经销商、维修机构以及出行服务企业等。不涉及重要数据处理活动的汽车数据处理者，无需报送。（查看更多）

CAH Issues Notice on 2025 Automotive Data Submission Work in Hunan Province

On December 3, 2025, the Cyberspace Administration of Hunan (CAH) issued a notice on the submission of the 2025 annual automotive data security management status and risk assessment reports in Hunan Province. In accordance with the requirements of Articles 10, 13, and 14 of the *Several Provisions on the Administration of Automotive Data Security (Trial Implementation)*, automotive data processors engaged in important data processing activities shall submit the annual automotive data security management status to the provincial cyberspace administration department and relevant departments before December 15 each year; they shall conduct risk assessments in accordance with relevant provisions and

submit risk assessment reports to the provincial cyberspace administration department and relevant departments. The targets of this submission work are automotive data processors with their registered place in Hunan Province that engage in important data processing activities, including automotive manufacturers, component and software suppliers, distributors, maintenance institutions, and mobility service enterprises, etc. Automotive data processors that do not engage in important data processing activities are not required to submit the reports. (More)

上海发布5起不履行个人信息保护义务的典型案例

2025年12月1日，上海网信部门、市场监管部门联合发布了5起不履行个人信息保护义务的典型案例，所涉违法违规行为包括：（1）某新能源科技企业用户数据泄露案：该企业因测试需要，将已生成的换电日志和用户数据导入测试数据库并允许互联网访问，未采取相应安全防护措施，涉嫌个人信息数据泄露；（2）某医疗科技公司患者数据泄漏案：该企业所开发的系统主要用于为互联网医院提供服务，存储患者诊疗数据（包含病情、开药信息等敏感个人信息），且均未采取加密措施存储，相关数据库在未采取防护措施的情况下对互联网开放访问服务，涉嫌个人信息数据泄露；（3）某装修服务企业客户数据泄露案：该企业提供室内装修装饰服务，其业务系统中存有合同信息、报价信息、客户信息等相关数据，内部人员为工作便利将内部数据库向互联网开放，涉嫌个人信息数据泄露；（4）某餐饮企业变相强制消费者同意收集与经营活动无直接关系的个人信息案：消费者在使用该餐饮企业运营的扫码点餐小程序进行“到店点餐”时必需提供个人手机号码，如不提供则无法完成点餐；（5）某药店违法使用消费者个人信息销售处方药案：该药店先后2次在未经消费者本人同意情况下，使用前期经营过程中获取的消费者姓名、联系方式、地址等个人信息，以前述消费者名义在外卖平台下单并申请虚假处方，再向其他消费者现场销售处方药。（查看更多）

Shanghai Releases 5 Typical Cases of Failure to Fulfill Personal Information Protection Obligations

On December 1, 2025, the Shanghai cyberspace administration department and market supervision department jointly released 5 typical cases involving failure to fulfill personal information protection obligations. The illegal and irregular acts involved are as follows: (1) User Data Leakage Case of a New Energy Technology Enterprise: For testing purposes, the enterprise imported generated battery swap logs and user data into a test database and allowed internet access without adopting corresponding security protection measures, and is suspected of personal information leakage. (2) Patient Data Leakage Case of a Medical Technology Company: The system developed by the enterprise is mainly used to provide services for internet hospitals, storing patient diagnosis and treatment data (including sensitive personal information such as medical conditions and medication information), none of which is stored with encryption measures. The relevant database provides open access services to the internet without protective measures, and the enterprise is suspected of personal information leakage. (3) Customer Data Leakage Case of a Decoration Service Enterprise: The enterprise provides interior decoration services, and its business system stores relevant data such as contract information, quotation information, and customer information. For work convenience, internal personnel opened the internal database to the internet, and the enterprise is suspected of personal information leakage. (4) Case of a Catering Enterprise Using Disguised Coercion to Force Consumers to Consent to Collecting

Personal Information Unrelated to Business Activities: When consumers use the QR code ordering mini-program operated by the catering enterprise for "in-store ordering", they must provide personal mobile phone numbers; otherwise, they cannot complete the ordering process. (5) Case of a Pharmacy Illegally Using Consumers' Personal Information to Sell Prescription Drugs: Twice successively, without the consumers' personal consent, the pharmacy used the personal information (such as name, contact information, and address) obtained in previous business operations to place orders and apply for fake prescriptions on food delivery platforms in the name of the aforementioned consumers, and then sold prescription drugs on-site to other consumers (More)

欧盟：欧盟委员会依据DSA对X处以1.2亿欧元罚款

2025年12 月5日，欧盟委员会因X违反《数字服务法案》（DSA）项下的透明度义务，对其处以1.2亿欧元罚款。违法行为包括：（1）X"蓝色对勾"的欺骗性设计：X 将"蓝色对勾"用于"认证账号"的做法对用户构成欺骗，违反了DSA中关于在线平台应禁止其服务中存在欺骗性设计行为的义务。在 X上，任何人只需付费即可获得"认证"状态，而X并未对账号背后的主体进行实质性核验，这使得用户难以判断其所互动账号及内容的真实性；（2）X 广告数据库缺乏透明度：X的广告数据库未达到DSA规定的透明度及可访问性要求。X设置了设计特征及访问障碍（例如处理流程存在过度延迟），这些均削弱了广告数据库的核心功能。此外，其广告数据库还缺失关键信息，包括广告内容、广告主题以及付费法律主体等，这阻碍了研究人员及公众独立审查在线广告中存在的潜在风险；（3）未向研究人员提供获取公开数据的途径：X未履行DSA项下的义务，未向研究人员提供获取平台公开数据的途径。（查看更多）

EU: European Commission Fines X €120 Million Under the DSA

On December 5, 2025, the European Commission issued a fine of €120 million to X for breaching its transparency obligations under the Digital Services Act (DSA). The breaches include: (1) Deceptive design of X's "blue checkmark": X's use of the "blue checkmark" for "verified accounts" deceives users. This violates the DSA obligation for online platforms to prohibit deceptive design practices on their services. On X, anyone can pay to obtain the "verified" status without the company meaningfully verifying who is behind the account, making it difficult for users to judge the authenticity of accounts and content they engage with. (2) Lack of transparency in X's advertisement repository: X's advertisement repository fails to meet the transparency and accessibility requirements of the DSA. X incorporates design features and access barriers, such as excessive delays in processing, which undermine the purpose of ad repositories. X's ads repository also lacks critical information, such as the content and topic of the advertisement, as well as the legal entity paying for it. This hinders researchers and the public to independently scrutinize any potential risks in online advertising. (3) Failure to provide researchers access to public data: X fails to meet its DSA obligations to provide researchers with access to the platform's public data. (More)

爱尔兰：CnaM对LinkedIn和TikTok展开DSA潜在违法调查

2025年12月2日，爱尔兰媒体监管机构，爱尔兰媒体委员会（CnaM）宣布将依据DSA，对LinkedIn和TikTok展开调查，因其涉嫌内容举报机制不符合相关规定。此次新调查将重点核查TikTok和LinkedIn实施的非法内容举报机制是否易于获取且用户友好，以及这些机制是否允许

用户匿名举报疑似儿童性虐待材料。此外，调查还将核查上述内容举报机制是否存在“欺骗”用户、阻碍其举报潜在非法内容的情况。此次调查的启动源于CnaM去年对多家在线平台展开的合规审查，审查依据为DSA第 16 条的相关要求。（查看更多）

Ireland: CnaM Launches Investigation into LinkedIn and TikTok Over Potential DSA Breach

On December 2, Ireland’s media regulator, Coimisiún na Meán (CnaM), will be investigating LinkedIn and TikTok under the DSA over suspicions that the platforms’ content reporting mechanisms are not up to code. This new investigation will look into whether reporting mechanisms for illegal content implemented by TikTok and LinkedIn are easy to access and user friendly, and whether the mechanisms allow users to anonymously report suspected child sexual abuse material. In addition, the investigations will also probe whether the content reporting mechanisms “deceive” users from reporting potentially illegal material. The investigations materialized after CnaM began reviewing a number of online platforms last year to check their compliance under DSA’s Article 16. (More)

知识产权 Intellectual Property

国家市场监督管理总局发布直播电商领域典型案例

近日，国家市场监督管理总局发布一批直播电商领域典型案例，涵盖虚假宣传、价格欺诈、商标侵权、违法广告等多类违法情形，涉及食品、保健品、化妆品、服装饰品等多种商品。公布案例主要包括：

涉及虚假宣传的减肥药类案件。减肥产品是直播电商热门赛道，消费需求旺盛，但部分商家借势夸大功效、虚假营销；或者利用老年消费者追求健康的迫切心理，通过私域直播虚假宣传等。

商标侵权案件，直播电商领域侵犯注册商标专用权的行为时有发生，如在商品包装、直播画面中使用与知名品牌近似的商标、图案或宣传语，误导消费者。

通过直播引流，为侵犯他人知识产权提供便利条件等案件。

来源：国家市场监督管理总局

State Administration for Market Regulation Releases Typical Cases in the Live-Streaming E-commerce Sector

Recently, the State Administration for Market Regulation released a series of typical cases within the live-streaming e-commerce sector, covering various illegal practices including false advertising, price fraud, trademark infringement, and unlawful advertising. These cases involve multiple product categories such as food, health supplements, cosmetics, and apparel accessories. The published cases primarily include:

1.Cases involving false advertising of weight-loss products. Weight-loss products constitute a popular segment within live-streaming e-commerce, driven by strong consumer demand. However, some merchants capitalise on this trend by exaggerating efficacy claims and engaging in deceptive marketing practices. Others exploit elderly consumers' urgent pursuit of health through false promotions in private live-streaming channels.

2.Trademark infringement cases. Violations of registered trademark rights frequently occur within the live-streaming e-commerce sector, such as the use of trademarks, designs, or slogans similar to well-known brands on product packaging or within live-streaming content, thereby misleading consumers.

3.Cases involving the facilitation of intellectual property rights infringements through live-streaming traffic diversion.

Source: State Administration for Market Regulation

最高院：惩治虚假诉讼，维护司法公信

最高人民法院在审理两起关联专利权权属案件时，发现当事人涉嫌在另案中进行虚假诉讼，遂依职权提审相关著作权侵权案。该著作权侵权案中，何某耀起诉严某高侵害其技术图纸著作权，并在一审获支持后，持该判决加入严某高与东莞某公司的专利权权属诉讼，主张专利权应归其所有。

最高法经再审认定本案构成虚假诉讼：首先，何某耀与严某高关系密切，具备串通基础；其次，何某耀无法证明其系图纸著作权人，却捏造事实提起诉讼，且起诉时间点与专利权属案高度关联，严某高亦未作实质抗辩，双方在诉讼中隐瞒关联案件，行为反常；最后，二人目的在于以虚假著作权判决影响专利权属案审理，企图侵占本应属东莞某公司的职务发明专利权。

最高法据此判决撤销原著作权侵权一审判决，并对何某耀、严某高分别处以顶格10万元司法罚款，涉嫌犯罪线索已移送公安机关立案侦查。

来源：最高人民法院

Supreme People's Court: Punishing False Litigation to Uphold Judicial Credibility

The Supreme People's Court（SPC）, while adjudicating two related patent ownership cases, discovered that the parties were suspected of engaging in fraudulent litigation in another case. It therefore exercised its authority to review the relevant copyright infringement case. In that copyright infringement case, He Mouyao sued Yan Mougao for infringing his technical drawing copyright. After obtaining a favourable judgement at first instance, he used that judgment to join Yan Mougao's patent ownership litigation with a Dongguan-based company, asserting that the patent rights should belong to him.

Upon retrial, the SPC determined this constituted fraudulent litigation: firstly, He and Yan maintained close ties, establishing a basis for collusion; secondly, He failed to substantiate his authorship of the drawings yet fabricated facts to initiate proceedings, with the timing of his lawsuit closely aligning with the patent ownership case. Yan offered no substantive defence, and both parties concealed the related

litigation during proceedings—conduct deemed anomalous; Finally, their objective was to use the fraudulent copyright judgment to influence the patent ownership case, thereby attempting to usurp the employee invention patent rights rightfully belonging to a Dongguan-based company.

Accordingly, the SPC overturned the original first-instance copyright infringement judgment, imposing maximum judicial fines of RMB 100,000 on both He Mouyao and Yan Mougao. Suspected criminal leads have been transferred to public security authorities for investigation.

Source: SPC

浙江高院：商标事后注册不能成为在先侵权抗辩理由

在成都天某公司与天某（广东）公司、余姚市爱某经营部等侵害商标权及不正当竞争纠纷案中，法院明确：在商标民事侵权纠纷中，一种构成对他人在先民事权利的侵害行为，除非法律另有明确例外性规定，不能因获得某种形式上、程序上所谓的合法授权而改变其侵权行为的性质，对于在获取所谓合法授权之前就存在的行为，已经可以认定构成对他人民事权利侵害的，不能因其事后获得所谓的合法授权而否定其侵权行为的性质。对于那些实际使用行为在先而获得商标注册在后的被诉侵权行为，人民法院可以直接受理，并对获得商标注册后的被诉侵权行为一并审理，而不应将获得商标注册前后的被诉侵权行为割裂开来；对于被诉侵权人有关属于双方注册商标之间的权利冲突、权利人应寻求商标行政途径解决争议的主张，不应予以支持。如果不允许人民法院对获得商标注册前后的全部被诉侵权行为一并审理，必然会导致权利人民事权利救济的不及时和对侵权人规避侵权行为的放任。

具体而言，本案中，法院认为，广东天某公司在同一种商品上使用近似商标、销售侵权商品，爱某经营部销售侵权商品，均侵害成都天某公司涉案商标专用权。广东天某公司以其使用自有注册商标为由抗辩不能成立，原因在于，其自有商标在本案侵权行为发生时尚未核准注册，即便后来获得注册，其在实际使用中改变显著特征、拆分等方式使用标识，不属于规范使用，不能对抗在先权利。侵权行为性质不因事后获得商标注册而改变。

来源：浙江高院

Zhejiang High Court: Subsequent Trademark Registration Cannot Serve as Grounds of Defence for Prior Infringement

In the case concerning trademark infringement and unfair competition disputes between Chengdu Tianmo Company, Tianmo (Guangdong) Company, Yuyao Aimo Business Department and others, the court explicitly ruled: In trademark civil infringement disputes, an act constituting an infringement of another party's prior civil rights shall not, unless expressly provided otherwise by law, alter its nature as an infringing act merely by obtaining some form of purportedly lawful authorisation, whether procedural or otherwise. Where acts existing prior to obtaining such purportedly lawful authorisation can already be deemed to constitute an infringement of another party's civil rights, the nature of the infringing act shall not be negated by the subsequent acquisition of such purportedly lawful authorisation. Where the alleged infringing acts involve prior actual use followed by subsequent trademark registration, the Peo-

ple's Court may directly accept the case and adjudicate both the pre-registration and post-registration alleged infringements together, rather than treating them as separate matters. Arguments by the alleged infringer that the dispute constitutes a conflict between registered trademarks and that the rights holder should seek resolution through administrative trademark channels shall not be upheld. Failure to permit the People's Court to adjudicate all alleged infringements occurring both before and after the trademark registration would inevitably result in untimely civil remedies for the rights holder and condone the infringer's evasion of liability.

Specifically, in this case, the court held that Guangdong Tian Company's use of a similar trademark on identical goods and its sale of infringing goods, alongside Aiming Business Department's sale of infringing goods, both infringed upon Chengdu Tian Company's exclusive rights to the relevant trademark. Guangdong Tian Company's defence based on its use of its own registered trademark was deemed invalid. This is because its own trademark had not yet been approved for registration at the time the infringement occurred in this case. Even if it was subsequently registered, its actual use of the mark—altering its distinctive features and splitting it into separate elements—did not constitute proper use and could not preclude prior rights. The nature of the infringement is not altered by the subsequent acquisition of trademark registration.

Source: Zhejiang High Court

无锡中院：高知名度产品应更注重整体近似性比对，全面打击叠加侵权行为

菓子熟了公司与果子肥猫公司等侵害商标权及不正当竞争纠纷案中，法院认定菓子熟了公司通过大量使用与宣传，使其“果子熟了”商标具有较高显著性与知名度；“栀栀乌龙”构成有一定影响的商品名称；其无糖茶产品的特定瓶型及瓶贴设计构成有一定影响的商品包装装潢；“果子熟了”字号亦构成有一定影响的企业名称。

关于侵权认定，法院指出商业标识的保护强度应与其显著性和知名度相适应。对于知名度高、显著性强的标识，应采取更宽的保护范围，在近似性判断上采取更宽松的标准，注重整体视觉效果对比，忽略细微差异。经比对，果子肥猫公司使用的“果子肥猫”标识与“果子熟了”构成近似商标，易导致相关公众混淆。其在相同商品上使用相同的“栀栀乌龙”商品名称及近似的包装装潢，亦构成不正当竞争。此外，其使用相近字号，并结合使用侵权商标、相同商品名称及近似包装等一系列叠加行为，进一步加剧了混淆可能性。

综上，果子肥猫公司等的系列行为侵害了菓子熟了公司的商标权，并构成擅自使用他人有一定影响的商品名称、包装装潢及企业名称的不正当竞争行为。

来源：无锡中院

Wuxi Intermediate Court: Greater Emphasis shall be placed on Overall Similarity Comparisons for High-profile Products in Combating Cumulative Infringements

In the case concerning trademark infringement and unfair competition disputes between Fruit Ripened Company and Fruit Plump Cat Company, the court determined that Fruit Ripened Company had,

through extensive use and promotion, endowed its 'Fruit Ripened' trademark with considerable distinctiveness and renown; 'Zhi Zhi Wulong' constituted a trade name of some influence; The specific bottle shape and label design of its sugar-free tea products constituted packaging decoration with a certain degree of influence; and the trade name 'Fruit Ripened' also constituted an enterprise name with a certain degree of influence.

Regarding the determination of infringement, the court pointed out that the level of protection afforded to commercial identifiers should be commensurate with their distinctiveness and reputation. For highly reputed and distinctive identifiers, a broader scope of protection should be adopted, with a more lenient standard applied in assessing similarity, focusing on the overall visual effect comparison and disregarding minor differences. Upon comparison, the 'Guozi Feimao' mark used by Guozi Feimao Company constitutes a similar trademark to 'Guozi Shule', likely causing confusion among relevant consumers. Its use of the identical 'Zhizhi Wulong' product name and similar packaging decoration on identical goods also constitutes unfair competition. Furthermore, its use of a similar business name, combined with the infringing trademark, identical product name, and similar packaging, constitutes a series of cumulative acts that further heighten the likelihood of confusion.

In summary, the series of actions by Fruit Fat Cat Company infringe upon Fruit Ripe Company's trademark rights and constitute unfair competition through the unauthorised use of another party's product name, packaging, and business name that have gained a certain degree of influence.

Source: Wuxi Intermediate Court

宿城法院：华为FreeClip构成有一定影响的耳机装潢，两公司被判赔偿90万元

近日，宿城法院在华为技术有限公司与被告深圳市某某实业有限公司、深圳市某某科技有限公司侵害商标权及不正当竞争纠纷案中，认定华为FreeClip构成有一定影响的耳机装潢。

华为公司系“华为”“FreeClip”“Histen”等注册商标权利人。其推出的FreeClip耳机因独特设计及宣传，通过多渠道宣传，迅速在一定消费者群体中积累了较高的市场知名度，。被告某某实业公司、某某科技公司在生产销售的耳机上使用与华为耳机高度近似的整体造型装潢，并在电商宣传中使用“华为FreeClip同款”“Histon音效”等标识，发布误导性宣传语。华为公司认为二被告的行为构成商标侵权及不正当竞争，诉至宿城法院，请求判令停止侵权并赔偿经济损失及合理费用150万元。

法院审理认为，华为耳机装潢具有区别来源的显著特征，属于“有一定影响的商品装潢”。被诉耳机造型与其高度近似，易导致相关公众混淆，构成擅自使用他人有一定影响商品装潢的不正当竞争。被告在商品标题中使用“华为FreeClip同款”等，系商标性使用，侵犯华为相关商标权；“Histon”标识与“Histen”高度近似，亦构成商标侵权。其关于技术关联、性价比的虚假宣传，构成不正当竞争。两被告共同侵权，判决某某实业公司赔偿华为公司经济损失及合理费用90万元，某某科技公司在50万元范围内承担连带责任。

来源：宿城法院

Sucheng Court: Huawei's FreeClip Constitutes Headphone Decorations with Significant Influence; Two Companies Ordered to Pay RMB 900,000 in Damages

Recently, in the case concerning trademark infringement and unfair competition disputes between Huawei Technologies Co., Ltd. and defendants Shenzhen XX Industrial Co., Ltd. and Shenzhen XX Technology Co., Ltd., the Sucheng Court ruled that Huawei's FreeClip constitutes headphone packaging with a certain degree of influence.

Huawei holds registered trademarks including 'Huawei', "FreeClip", and 'Histen'. Its FreeClip headphones, distinguished by unique design and promotional campaigns across multiple channels, rapidly gained significant market recognition among certain consumer groups. The defendants, XX Industrial Co. and XX Technology Co., employed overall styling highly similar to Huawei's headphones in their own products. Furthermore, they utilised labels such as 'Same as Huawei FreeClip' and 'Histen Sound Effects' in their e-commerce promotions, disseminating misleading claims. Huawei contended that the defendants' actions constituted trademark infringement and unfair competition, filing suit with the Sucheng Court to seek cessation of infringement and compensation for economic losses and reasonable expenses totalling RMB 1.5 million.

The court held that the decoration of Huawei's earphones possesses distinctive features enabling source differentiation, qualifying as 'product decoration with a certain degree of influence'. The design of the contested earphones bears a high degree of similarity, likely causing confusion among relevant consumers and constituting unfair competition through unauthorised use of another party's product decoration with established influence. The defendants' use of phrases such as 'same as Huawei FreeClip' in product titles constitutes trademark use, infringing Huawei's relevant trademark rights. The 'Histon' mark, being highly similar to 'Histen', also constituted trademark infringement. Their false advertising regarding technical affiliation and cost-effectiveness constituted unfair competition. Both defendants were found jointly liable for infringement. The court ordered XX Industrial Company to compensate Huawei for economic losses and reasonable expenses amounting to RMB 900,000, with XX Technology Company bearing joint and several liability within the scope of RMB 500,000.

Source: Sucheng Court

南山法院：APM独特的店铺装潢和商品包装获反法保护，APM饰品设计获著作权保护

在柏丽德珠宝公司与哈芮饰品店等著作权权属、侵权纠纷纠纷案中，APM以独特的店铺装潢和商品包装获反法保护，饰品设计获著作权保护。

法院认为，原告APMMonaco的店铺装潢形象（包括内嵌式陈列柜、背景墙人物装饰画、波浪纹立柱、鱼骨形装饰地板、展柜陈列布局、书形收纳盒及道具布局等核心元素）经过长期统一使用与广泛宣传，已形成具有识别意义的整体商业形象，构成反不正当竞争法所保护的"有一定影响的装潢"。被告使用的装潢在整体风格及核心元素组合上与之高度近似，易引起相关公众混淆，构成不正当竞争。

同时，原告的商品包装因具备独特设计及市场知名度，同样作为"有一定影响的装潢"受保护。即便被告使用不同商标，其包装的近似性仍足以导致混淆。

此外，原告主张的“流星系列”等产品设计具备独创性与艺术性，构成美术作品，受著作权法保护。被告销售近似商品的行为侵害了原告的著作权。

来源：南山法院

Nanshan Court: APM's Distinctive Shop Fittings and Product Packaging are Protected under the Anti-Counterfeiting Law, while APM Jewellery Designs Protected by Copyright

In the copyright ownership and infringement dispute case involving Peridot Jewellery Company and Harri Jewellery Shop, APM secured protection under French law for its distinctive shop fittings and product packaging, while its jewellery designs received copyright protection.

The court held that the shop fittings of plaintiff APM Monaco (including core elements such as recessed display cabinets, decorative wall murals featuring figures, wave-patterned columns, herringbone-patterned decorative flooring, display cabinet layouts, book-shaped storage boxes, and prop arrangements) had, through prolonged consistent use and extensive promotion, formed a recognisable overall commercial image. This constituted ‘fittings of some influence’ protected under the Anti-Unfair Competition Law. The defendant's use of fittings bore a high degree of similarity in overall style and core element combinations, likely to cause confusion among the relevant public and thus constituting unfair competition.

Concurrently, the plaintiff's product packaging, possessing distinctive design and market recognition, likewise qualifies as ‘decoration of a certain influence’ deserving protection. Even with differing trademarks, the similarity of the defendant's packaging remains sufficient to cause confusion.

Furthermore, the plaintiff contends that product designs such as the ‘Meteor Series’ possess originality and artistic merit, constituting artistic works protected under copyright law. The defendant's sale of similar goods infringes upon the plaintiff's copyright.

Source: Nanshan Court

武汉东湖新技术开发区法院：大量低价转售88VIP音乐会员权益，构成不正当竞争

某音乐平台经营主体甲公司发现乙公司经营的“某生活娱乐店”在某APP商城以67.8元的低价大量转售其官方定价178元的“VIP年卡”，销量已达万余个。该会员权益来源于乙公司向他人批量收购某购物平台88VIP”附赠的音乐会员权益并进行拆分转售。因认为自身合法权益受损，甲公司以“不正当竞争为由将乙公司诉至法院，请求法院判令其立即停止侵权行为，并赔偿经济损失及维权合理开支。

法院审理认为，被告作为互联网经营者，应当知晓原告以会员费为核心的盈利模式。其以远低于官方的价格规模化转售会员权益，直接吸引本应在官方渠道消费的用户，导致原告会员收入及用户流量受损。被告行为主观过错明显，突破了平台协议对虚拟权益使用范围的合理限制，

侵犯了原告的经营自主权。该行为同时误导消费者对权益来源产生误解，且转售的会员权益存在被收回的风险，损害消费者合法权益。长期来看，此类拆分转售行为不仅侵占原告交易机会，还破坏了“88VIP”生态互通模式，扰乱数字内容市场正常秩序，阻碍行业健康发展。

综上，法院认定乙公司的行为构成不正当竞争，判决其赔偿甲公司经济损失及合理维权开支共计4万元。该判决已生效。

来源：武汉东湖新技术开发区法院

Wuhan East Lake High-Tech Development Zone Court: Mass Resale of 88VIP Music Membership Benefits at Low Prices Constitutes Unfair Competition

Company A, the operating entity of a music platform, discovered that Company B's ‘Certain Lifestyle Entertainment Store’ was reselling its officially priced ‘VIP Annual Pass’ (priced at RMB 178) at a significantly discounted rate of RMB 67.8 via a certain app marketplace, with sales exceeding ten thousand units. These membership benefits originated from Company B bulk-purchasing music membership entitlements bundled with ‘88VIP’ status from a shopping platform, subsequently splitting and reselling them. Believing its legitimate rights infringed, Company A sued Company B for unfair competition, demanding an immediate cessation of infringing activities alongside compensation for economic losses and reasonable legal expenses.

The court ruled that as an internet operator, the defendant should have been aware of the plaintiff's membership-fee-based profit model. By reselling membership benefits at significantly discounted rates on a large scale, it directly diverted users who would otherwise have consumed through official channels, causing damage to the plaintiff's membership revenue and user traffic. The defendant's conduct demonstrated clear subjective fault, breaching reasonable restrictions on the scope of virtual benefit usage stipulated in the platform agreement and infringing upon the plaintiff's operational autonomy. This behaviour also misled consumers regarding the origin of the benefits, while the resold membership rights carried the risk of revocation, thereby harming consumers' legitimate rights and interests. Long-term, such disaggregated resale practices not only usurp the plaintiff's transactional opportunities but also undermine the ‘88VIP’ ecosystem's interoperability model, disrupting the normal order of the digital content market and impeding the industry's healthy development.

In summary, the court determined that Company B's actions constituted unfair competition, ordering it to compensate Company A for economic losses and reasonable legal expenses totalling RMB 40,000 . This judgment has taken effect.

Source: Wuhan East Lake High-Tech Development Zone Court

英国高等法院：关于诺基亚与流媒体巨头视频专利纠纷，以“合同承诺”取代“法庭禁令”

英国高等法院于12月1日就华纳、派拉蒙与诺基亚之间的流媒体专利许可纠纷作出裁决，拒绝了华纳和派拉蒙要求诺基亚作出“法庭承诺”以禁止其在海外提起侵权诉讼的严厉请求，转而采纳了诺基亚提出的“相互通知机制”合同方案。

根据该方案，若诺基亚计划在海外起诉并寻求针对英国诉讼的禁令，需提前21天通知对方；流媒体公司若计划申请新的禁诉令，则需提前7天通知诺基亚。法官援引先例认为，此举足以维持诉讼期间现状，避免“平行诉讼”升级，而无须施加更严苛的司法干预。

这一裁决对诺基亚具有重要战略意义，使其仅承担合同违约责任，而非“藐视法庭”风险，保留了在后续许可谈判中的灵活性。

来源：IP Fray

English High Court: Nokia and Streaming Giant Settle Video Patent Dispute, Replacing Court Injunction with Contractual Commitment

On 1 December, the English High Court ruled on the streaming patent licensing dispute between Warner, Paramount and Nokia. It rejected Warner and Paramount's stringent request for Nokia to provide a ‘court undertaking’ prohibiting it from initiating infringement proceedings overseas, instead adopting Nokia's proposed contractual ‘mutual notification mechanism’.

Under this arrangement, should Nokia intend to pursue overseas litigation seeking an injunction against the UK proceedings, it must provide 21 days' prior notice to the opposing party. Conversely, should the streaming companies seek a new injunction, they must notify Nokia seven days in advance. The judge cited precedent in concluding that this approach adequately preserves the status quo during litigation, preventing the escalation of ‘parallel proceedings’ without necessitating more stringent judicial intervention.

This judgement holds significant strategic importance for Nokia, limiting its liability to contractual breach rather than risking contempt of court, thereby preserving flexibility in subsequent licensing negotiations.

Source: IP Fray

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