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立方竞争法周报 Weekly Competition Law News

山东发布国内首个省级反垄断行政司法衔接意见

2022年11月22日，山东省市场监督管理局、山东省高级人民法院和山东省人民检察院联合发布《关于加强反垄断行政执法与司法衔接协作的实施意见》（“《意见》”）。《意见》对反垄断行政执法标准和司法裁判标准、行政执法和公益诉讼办案规则和法律适用、违法企业侵害社会公共利益程度和量化标准、相关重点领域协作配合等方面作出了具体规定，进一步健全了反垄断执法与司法衔接协作机制。（[查看更多](#)）

Shandong Issues the First Domestic Provincial-Level Anti-Monopoly Administrative and Judicial Connection Opinion

On November 22, 2022, the Shandong Provincial Administration for Market Regulation, the Shandong Higher People's Court and the Shandong Provincial People's Procuratorate jointly issued the *Implementation Opinions on Strengthening Anti-Monopoly Administrative Law Enforcement and Judicial Adjudication Connection* (“Opinions”). The *Opinions* made specific provisions on anti-monopoly administrative law enforcement standards and judicial adjudication standards, case handling rules and legal applications of administrative law enforcement and public interest litigation, the extent and quantitative measuring standards of violations of social and public interests by illegal enterprises, and cooperation in relevant key areas, etc., further improving the connection mechanism between anti-monopoly law enforcement and judicial adjudication. ([More](#))

市场监管总局发布一批滥用行政权力处罚决定

2022年11月18日，国家市场监督管理总局（“市场监管总局”）发布了一批制止滥用行政权力排除、限制竞争的执法专项案件，涉及甘肃、云南、江西、青海、河南、上海、安徽、湖北、宁夏、湖南等多个省市，涉及应急管理、文旅、殡葬、卫生健康、汽车、教育、工程建设、政府采购等多个行业领域，加强了公平竞争市场环境的建设，进一步落实公平竞争政策。（[查看更多](#)）

SAMR Publishes a Batch of Administrative Penalty Decisions Against Administrative Monopoly

On November 18, 2022, the State Administration for Market Regulation (“SAMR”) issued a batch of special law enforcement cases stopping the abuse of administrative power which excludes and restricts competition, covering Gansu, Yunnan, Jiangxi, Qinghai, Henan, Shanghai, Anhui, Hubei, Ningxia, Hunan and other provinces and cities, involving emergency management, culture and tourism, funeral industry, health care, automobiles, education, engineering construction, government procurement and other industries, strengthening the construction of a fair competition market environment and further implementing fair competition policies. ([More](#))

金耀药业因滥用市场支配地位被罚2770万

2022年11月18日，津药药业股份公司发布公告，披露其子公司天津金耀药业有限公司（“金耀药业”）于2022年11月17日收到了天津市市场监督管理委员会（“天津市市监委”）下发的《行政处罚告知书》。天津市市监委认为，金耀药业滥用在中国卡莫司汀注射液市场的支配地位，以不公平高价销售卡莫司汀注射液，适用修改前的《反垄断法》第十七条和第四十七条规定，责令其停止违法行为，并处2019年销售额2%的罚款，计27721311.36元。（[查看更多](#)）

Tianjin Jinyao Pharmaceutical Got Fined CNY 27.7 Million for Abuse of Market Dominant Position

On November 18, 2022, Jinyao Pharmaceutical Co., Ltd. issued an announcement, disclosing that its subsidiary Tianjin Jinyao Pharmaceutical Co., Ltd. (“Tianjin Jinyao”) received the *Notice of Administrative Penalty* issued by the Tianjin Municipal Administration for Market Regulation (“Tianjin AMR”). The Tianjin AMR believes that Tianjin Jinyao abused its dominant position in China’s carmustine injection market and sold carmustine injections at unfairly high prices. Applying Article 17 and 47 of the 2008-version Anti-Monopoly Law, Tianjin AMR orders that such illegal conducts shall be immediately stopped and plans to impose a fine of 2% of the sales volume in 2019, totaling CNY 27721311.36. ([More](#))

江西省发布《江西省数字经济领域反垄断合规指引》

2022年11月17日，为引导数字经济领域的经营者增强反垄断合规意识，江西省市场监督管理局（“江西省市监局”）发布了《江西省数字经济领域反垄断合规指引》（“《指引》”）。《指引》共分七章，阐明了数字经济领域经营者可能涉及的垄断协议、滥用市场支配地位和违法实施经营者集中行为的风险和行为特点，列明了经营者应当注意的合规重点事项，并指导经营者建设反垄断合规制度。（[查看更多](#)）

Jiangxi Issues Jiangxi Guidelines for Anti-Monopoly Compliance in the Digital Economy Sector

On November 17, 2022, in order to guide operators in the digital economy to enhance their awareness of anti-monopoly compliance, the Jiangxi Provincial Administration for Market Regulation (“Jiangxi AMR”) issued the *Jiangxi Guidelines for Anti-monopoly Compliance in the Digital Economy Sector* (“*Guidelines*”). The *Guidelines* is divided into seven chapters, clarifying the risks and behavioral characteristics of monopoly agreements, abuse of market dominance, and illegal implementation of concentration of operators in the digital economy sector that operators may be involved in, listing key compliance issues that operators should pay attention to, and guiding operators to build an anti-monopoly compliance system. ([More](#))

苹果同意降低韩国应用开发者佣金

2022年11月22日，苹果公司（Apple）对外宣布将自愿纠正其对韩国应用开发者收取高佣金的不

公平政策。从2023年1月开始，苹果公司将在计算韩国应用开发者的佣金时，扣除应用内产生的销售额的增值税。此前，韩国公平贸易委员会正对苹果公司对韩国开发者收取高佣金的行为展开调查，在苹果公司宣布该佣金政策变化后，公平贸易委员会明确表示将继续调查苹果公司的不公平商业行为。（[查看更多](#)）

Apple Agrees To Lower Commission Fees To Korean App Developers

On November 22, 2022, Apple announced it will voluntarily correct its unfair policy of charging greater commission fees to South Korean app developers. Starting from January 2023, Apple will calculate the commission for Korean developers excluding value-added tax from app-generated sales. Previously, the Korean Fair Trade Commission was investigating Apple's high commissions for Korean developers. After Apple announced a change in the commission policy, the Fair Trade Commission made it clear that it would continue to investigate Apple's unfair business practices. ([More](#))

英国将调查苹果和谷歌在浏览器市场的支配地位

2022年11月22日，据媒体报道，英国竞争与市场管理局（“CMA”）宣布对苹果和谷歌在移动浏览器市场的支配地位展开调查。CMA表示，2021年，英国97%的网络浏览系由谷歌和苹果提供支持，它将探索苹果和谷歌对浏览器市场产生的束缚，以及了解苹果通过应用商店对云游戏的控制。（[查看更多](#)）

UK To Investigate Apple And Google's Browsing Dominance

On November 22, 2022, UK watchdog, the Competition and Markets Authority launched a new probe into Apple and Google's control of the mobile browser market. CMA said Google and Apple powered 97% of all web browsing that took place in the UK in 2021. The regulator said it will explore the companies' "stranglehold" over browsing, as well as Apple's control over cloud gaming through the App Store. ([More](#))

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

证监会发布《证券期货业数据安全管理与保护指引》

2022年11月18日，证监会发布《证券期货业数据安全管理与保护指引》、《证券期货业机构内部接口 证券交易》、《证券业登记结算核心术语》、《证券期货业信息技术服务连续性管理指南》、《场外通用传输接口》、《证券公司客户信息交换规范》、《证券经营机构投资者适当性管理 投资者评估数据要求》等7项金融行业标准，自公布之日起施行。其中，《证券期货业数据安全管理与保护指引》明确了数据安全管理的的基本原则、组织架构、制度、技术等方

面，规范行业机构开展数据安全管理和保护工作，提升行业数据安全水平，适用于证券期货业机构开展数据安全管理与保护工作的参考和指引。 ([查看更多](#))

CSRC Issues Guidance for Data Security Management and Protection of Securities and Futures Industry

On 18 November 2022, China Securities Regulatory Commission (CSRC) issued seven financial industry standards including *Guidance for data security management and protection of securities and futures industry*; *Internal interface of securities and futures institutions Stock exchange*; *Depository and clearing core vocabularies for securities industry*; *Guidance for information technology service continuity management of securities and futures industry*; *Transmission interface of off-market universal*; *Specification for exchange of customer information in securities company*; *Investor suitability management for securities institution—Investor rating data requirements*, which shall come into force as of the date of promulgation. Among them, the Guidance for data security management and protection of securities and futures industry (the “Guidance”) clarifies the basic principles, organizational structure, system, technology and other aspects of data security management. The Guidance aims to regulate the industry institutions as they carry out data security management and protection, and to improve the industry data security management level. The Guidance is to be applied as the reference and guidelines for the management and protection of data security by securities and futures institutions. ([More](#))

《北京市数字经济促进条例》表决通过

2022年11月25日，北京市第十五届人大常委会第四十五次会议表决通过了《北京市数字经济促进条例》（以下简称《条例》），该条例自2023年1月1日起施行。《条例》共九章五十八条，包括总则、数字基础设施、数据资源、数字产业化、产业数字化、智慧城市建设和数字经济安全、保障措施、附则。《条例》明确，将建立北京市公共数据共享机制，鼓励单位和个人依法开放非公共数据。《条例》还要求加强个人信息安全保护，防止非法滥用，提出不得利用数据优势限制其他平台独立运行等内容。 ([查看更多](#))

Regulations of Beijing Municipality on Promotion of Digital Economy Has Been Approved

On 25 November 2022, the 45th Session of the Standing Committee of the 15th Beijing Municipal People's Congress adopted *the Regulations of Beijing Municipality on Promotion of Digital Economy (the "Regulations")*, which will come into force on January 1, 2023. The Regulations cover 59 articles in nine chapters, including general provisions, digital infrastructure, data resources, digital industrialization, industrial digitalization, smart city construction, security of digital economy, safeguard measures and supplementary provisions. The Regulations clarify that a public data-sharing mechanism will be established in Beijing, and entities and individuals will be encouraged to open non-public data in accordance with the law. The Regulations also require strengthening the security and protection of personal data to prevent its illegal uses and abuses, stating that the advantages in terms of data shall not be used to impose restrictions on the independent operation of other platforms. ([More](#))

深圳首个公共数据安全领域地方标准发布

2022年11月23日，深圳发布了《公共数据安全要求》（以下简称《要求》），这也是深圳首个公共数据安全领域的地方标准。《要求》全文共九章，全面覆盖数据安全的管理、技术及数据处理活动各环节，适用于公共管理和服务机构数据安全能力的建设、评估与监管，也适用于处理大量个人信息的服务平台数据安全能力的建设与评估。《要求》规范了在公共数据处理活动中的安全要求，数据处理活动围绕数据收集、存储、传输、使用、加工、开放共享、交易、出境、销毁及删除环节的执行标准。（[查看更多](#)）

Release of the First Local Standard of Shenzhen in the Field of Public Data Security

On 23 November 2022, Shenzhen released *the Requirements on Public Data Security (the "Requirements")*, which are also the first local standard for Public Data security in Shenzhen. The Requirements, comprised of nine chapters, cover all stages of data security management, technologies and data processing activities, and apply to the construction, evaluation and supervision of the data security capacity of public administration and service agencies as well as to the construction and evaluation of the data security capacity of service platforms processing a large amount of personal information. The Requirements regulate security requirements in public data processing activities and set forth implementation standards applicable to data processing activities covering data collection, storage, transmission, use, processing, open sharing, trading, export, destruction and deletion. ([More](#))

数据要素流通标准化白皮书（2022）发布

2022年11月25日，上海数据交易所发布数据要素流通标准化白皮书（2022）（以下简称《白皮书》），重点关注数据要素流通政策法规、制度、模式、技术、标准的发展趋势，重点聚焦数据要素流通过程中涉及的多角度发展现状，充分发挥标准化在推进数据要素市场化方面的基础性、引领性和战略性作用。《白皮书》提出的数据要素流通标准化工作建议包括：加快推进数据要素流通市场基础性制度建设、持续完善数据流通领域标准体系建设、保障数据流通平台构建和数据市场治理的有序推进、加快数据安全高效流通的技术创新和打造数据流通生态体系。（[查看更多](#)）

Release of the White Paper on Data Element Circulation Standardization (2022)

On 25 November 2022, Shanghai Data Exchange released *the White Paper on Data Element Circulation Standardization (2022) (the "White Paper")*. The White Paper focuses on the development trends of policies and regulations, systems, models, technologies, and standards concerning the circulation of data elements, especially with a focus on the multi-perspective development status involved in the circulation of data elements, and give full play to the fundamental, leading, and strategic role of standardization in promoting the marketization of data elements. The suggestions on data element circulation standardization put forward in the White Paper include: accelerating the construction of basic systems in the data element circulation market, continuously improving the construction of the standard system in the data circulation field, ensuring the orderly promotion of the construction of the data circulation

platform and data market governance, speeding up the technical innovation of safe and efficient data circulation, and building a data circulation ecosystem. ([More](#))

多地网信办发布开展2022年度汽车数据安全管理工作报送工作的通知

截止2022年11月25日，已有北京、上海、广东、天津、浙江、湖南、江西、四川、辽宁、山西、福建、山东等地网信办先后发布开展2022年度汽车数据安全管理工作报送工作的通知，报送内容可参考各地网信办发布的汽车数据安全管理工作报告，报送时间均截止至2022年12月15日。现将北京、上海、广东三地通知要点总结如下：

省/	报送对象	报送方式	报送单位	联系方式
北京	注册地为北京地区	纸质版+电	北京市互联	010-67676912
上海	注册地为上海的开	专人送达；	上海市互联	64743030-2708
广东	该省开展重要数据	专人送达；	广东省互联	020-87196492

([查看更多](#))

Notice on Carrying out the Reporting of the 2022 Automotive Data Security Management Information Issued by Cyberspace Administration Offices of Multiple Regions

Up to 25 November 2022, cyberspace administration offices in Beijing, Shanghai, Guangdong, Tianjin, Zhejiang, Hunan, Jiangxi, Sichuan, Liaoning, Shanxi, Fujian and Shandong successively issued the notice on carrying out the work of reporting the automotive data security management situation for 2022. The contents of the report shall refer to the templates released by the respective cyberspace administrative offices. The deadline for the submission shall be December 15, 2022. The key points of the notices in Beijing, Shanghai and Guangdong are summarized as follows:

Province/	Submission	Submis-	Submitting Unit	Contact In-
Beijing	Automotive data	Paper ver-	Cyberspace Admin-	010-
Shanghai	Automotive data processors registered in Shanghai carrying out important data processing activities, including	Delivered by hand; mail (Paper version and CD of electronic version)	Cyberspace Administration of Shanghai, Division of Cyberspace Security (Address: No. 315, Wanping Road, Xuhui District, Shanghai)	64743030-2708
Guangdong	Automotive data processors in Guangdong province carrying out important data processing activities, including motor vehicle	Delivered by hand; mail (Paper version and CD of electronic version)	Cyberspace Administration of Guangdong (Address: Building 4, Provincial Committee Courtyard, No. 26, Hequnsan Road, Yuexiu District, Guangzhou)	020-87196492

([More](#))

北京市通管局通告2022年车联网网络安全定级审核结果

2022年11月25日，北京市通信管理局（以下简称“北京市通管局”）通告2022年车联网网络安全定级审核结果。2022年11月，北京通管局对北京地区3家单位的10个网络单元的定级情况进行了审核，并予以通过。3家单位包括：国网智慧车联网技术有限公司、北京罗克维尔科技有限公司、梅赛德斯-奔驰（中国）汽车销售有限公司。（[查看更多](#)）

Announcement of BCA on the Results of Internet Security Grading Examination of Internet of Vehicles in 2022

On 25 November 2022, the Beijing Communications Administration (the "BCA") announced the results of internet security grading examination of internet of vehicles in 2022. In November 2022, the BCA reviewed and approved the grading of 10 network units of 3 companies in Beijing. The 3 companies are: State Grid Smart Internet of Vehicles Co., Ltd., Beijing Co Wheels Technology Co., Ltd., Mercedes-Benz (China) Automotive Sales Co., Ltd. ([More](#))

北京市通管局通报22款问题APP

北京通管局持续开展APP隐私合规和网络数据安全专项整治，并于2022年11月24日通报，经查，有22款APP存在侵害用户权益和安全隐患等问题，北京通管局发现相关APP未明示收集使用个人信息的目的方式和范围、在移动应用程序前后端数据传输过程中，未对用户身份证号、鉴权信息等敏感数据进行加密等问题。北京通管局要求有关APP运营企业立即整改，并于12月8日前提交整改报告。逾期不整改或整改不到位的，将依法依规予以处置。（[查看更多](#)）

BCA Circulates List of 20 Problematic APPs

The Beijing Communications Administration (the "BCA") has continuously carried out special rectification of APP privacy compliance and network data security. On 24 November 2022, the BCA announced that, upon investigation, 22 APPs are found to have problems such as infringement upon users' rights and interests and security hazards. The BCA has found that relevant APPs fail to expressly state the purposes, methods and scope of collecting and using personal information, and fail to encrypt sensitive data such as user identity card numbers and authentication information during the process of front-end data transmission of the mobile APPs. The BCA requested the relevant APP operators to immediately rectify and submit rectification reports before 8 December. If the rectification is still not in place after the deadline or is not complete, the BCA will deal with these APPs in accordance with the law. ([More](#))

广东省通信管理局公开通报48款未按要求完成整改APP

2022年11月23日，广东省通信管理局（以下简称“广东通管局”）持续开展APP隐私合规和数据安全专项整治行动，近期共监测发现280款APP存在侵害用户权益和安全隐患问题，责令APP运营者限期整改，并通知相关应用商店协助督促APP运营者整改。截至目前，尚有48款APP未完成整改，发现相关APP违规收集个人信息、超范围收集个人信息、强制、频繁、过度索取权

限等问题。广东通管局要求有关APP在11月30日前完成整改及反馈工作，逾期不整改的将依法处置。（[查看更多](#)）

GCA Circulates a Notice of 48 Problematic APPs

The Guangdong Communications Administration (the "GCA") has continuously carried out special rectification of APP privacy compliance and network data security. On 23 November 2022, the GCA announced that it recently found through monitoring a total of 280 APPs that infringe upon users' rights and interests and have hidden safety hazards, and ordered the APP operators to make rectification within a prescribed time limit, and informed the relevant APP stores to assist and urge the APP operators for rectification. Up to now, there are still 48 APPs that have not been rectified, and it is found that relevant APPs engage in collecting personal information in violation of regulations, collecting personal information beyond the scope, and force, frequently and excessively asking for permission. The GCA requested the relevant APP operators to immediately rectify and submit rectification reports before 30 December. If the rectification is still not in place after the deadline, GCA will deal with these APPs in accordance with the law. ([More](#))

欧盟理事会考虑在《网络弹性法案》中引入国家安全排除条款

2022年11月18日，欧盟理事会主席国捷克发布《网络弹性法案》（Cyber Resilience Act，下文简称CRA）的新文本，该文本对此前提案中的适用范围和自由流动条款进行了大幅修改。CRA是一部横向立法，旨在对联网设备及其相关服务提出基本网络安全要求。《网络弹性法案》提案于2022年9月公布后，欧盟委员会成员国代表展开了初步磋商。此次新文本中增加的表述称，该法规不应阻止成员国以国家安全为由，对具有数字元素的产品实施国家层面的限制，包括禁止它们进入本国市场。本次CRA新文本同时对可能损害欧盟成员国国家安全、公共安全或国防利益的信息披露义务进行了限制。后续，成员国强调需要明确该草案与其他相关立法的相互作用，例如网络与信息安全指令2（NIS 2 Directive）和《欧盟网络安全法》（EU Cybersecurity Act）。（[查看更多](#)）

EU Council Considering the Introduction of a National Security Carveout in CRA

On 18 November 2022, the Czech presidency of the EU Council has issued a compromise text of the *Cyber Resilience Act (the "CRA")*, making hefty editing to the proposal's scope and free movement clause. The CRA is horizontal legislation intended to introduce essential cybersecurity requirements for connected devices and their related services. After the publication of the proposal of the CRA in September 2022, representatives of the member states of the European Council held preliminary discussions. The new text states that the regulation should not prevent member states from imposing national restrictions on products with digital elements based on national security grounds, including by banning them from their markets. It also limits the reporting obligations from information whose disclosure might go against an EU country's national security, public security or defence interest. Member states also underlined the need for clarity on the interaction with other relevant legislation, such as the NIS 2 Directive or the Cybersecurity Act. ([More](#))

亚洲航空500万乘客数据泄露

2022年11月22日，据Databreaches.net报道，亚洲航空公司最近成为Daixin勒索软件组织攻击的受害者，黑客窃取了亚洲航空全体员工的信息和500万乘客的个人数据。亚洲航空总部位于吉隆坡附近，是马来西亚最大的航空公司，其航班运营国内和国际航班，目的地超过165个，覆盖25个国家。Daixin随后在暗网上泄露了被盗数据的样本，包括姓名、出生日期、医疗记录号码、患者帐号、社会保障号码（SSN）以及其他个人和医疗信息等。（[查看更多](#)）

5 Million Passenger Data Leakage of Asian Airlines

On 22 November 2022, as reported by Databreaches.net, AirAsia recently fell victim to a ransomware attack by the Daixin Team, with the hackers stealing information of AirAsia's entire staff and personal data of 5 million passengers. AirAsia, headquartered near Kuala Lumpur, is the largest airline in Malaysia by fleet size and destinations, operating scheduled domestic and international flights to over 165 destinations across 25 countries. Daixin later leaked samples of the stolen data on the dark web, including names, dates of birth, medical record numbers, patient account numbers, Social Security Numbers (SSNs), and other personal and medical information. ([More](#))

近5亿WhatsApp用户数据泄露

2022年11月16日，一名黑客在一个著名的黑客社区论坛上发布了一则广告，声称他们正在出售一个包含4.87亿WhatsApp用户手机号码的2022年数据库。据报道，WhatsApp在全球拥有超过20亿月活跃用户。据称，该数据库包含来自84个国家的WhatsApp用户数据。该黑客声称，其中包含超过3200万条美国用户记录。这类数据通常被用于短信息语音网络钓鱼等欺诈活动，建议用户对来自未知号码、未经请求而打来的电话和未经请求而发来的信息保持警惕。（[查看更多](#)）

Nearly 500 Million WhatsApp Users Data Leaked

On 16 November 2022, a hacker posted an ad on a well-known hacking community forum, claiming they were selling a 2022 database of 487 million WhatsApp user mobile numbers. WhatsApp is reported to have more than two billion monthly active users globally. The dataset allegedly contains WhatsApp user data from 84 countries. The threat actor claims there are over 32 million US user records included. Such information is mostly used by attackers for smishing and vishing attacks, so it is recommended that users remain wary of any calls from unknown numbers, unsolicited calls and messages. ([More](#))

知识产权 Intellectual Property

《中华人民共和国反不正当竞争法（修订草案征求意见稿）》向社会公开征求

意见

11月22日，市场监管总局发布公告，就《中华人民共和国反不正当竞争法（修订草案征求意见稿）》向社会公开征求意见。意见反馈截止时间为2022年12月22日。本次征求意见稿将新经济、新业态及新模式下出现的新型不正当竞争行为纳入规制范围，重点加强对数字经济反不正当竞争规则，规范治理新经济、新业态、新模式发展中出现的扰乱竞争秩序的行为的打击，并细化了不正当竞争行为的识别特征，合理调整了不同主体及不正当竞争行为的法律责任，强化了对消费者和社会公共利益的维护。

来源：市场监管总局

Amendment Draft of Anti-Unfair Competition Law Open to the Public for Comments

On November 22, the State Administration for Market Regulation (the SAMR) issued *the Amendment Draft of Anti-Unfair Competition Law (the Draft)*, and sought public comments by 22 December 2022. The Draft includes new unfair competition acts under the new economy, new business types and new models. It focuses on strengthening the rules against unfair competition in the digital economy, and new models of unfair competition. The Draft also specifies the identification characteristics of unfair competition, reasonably adjusts the legal liabilities of different subjects and unfair competition and strengthens the protection of the interests of the consumers and the public.

Source: SAMR

农业农村部发布关于《中华人民共和国植物新品种保护条例（修订征求意见稿）》公开征求意见的通知

为进一步加大种业知识产权保护力度，激励种业原始创新，农业农村部牵头对原植物新品种保护条例进行修订，形成《中华人民共和国植物新品种保护条例（修订征求意见稿）》（以下简称征求意见稿），向社会公开征求意见，意见反馈截止时间为2022年12月22日。

意见稿修订内容重点扩展了植物新品种保护的环节和范围，建立了实质性派生品种（EDV）制度，将保护范围由授权品种的繁殖材料延伸到收获材料。意见稿还包括以下修订内容：延长了保护期限；完善侵权假冒案件处理措施；明确权利恢复的情形；增加对不诚信行为处罚的规定；建立植物新品种保护专业队伍等。

来源：农业农村部

Ministry of Agriculture and Rural Affairs Seeks Public Comments on *Amendment Draft of Regulations on Protection of New Varieties of Plants*

The Ministry of Agriculture and Rural Affairs seeks public comments on *Amendment Draft of Regulations on Protection of New Varieties of Plants (the Regulations)* by 22 December 2022. The Regulations expand the stages and scope of the protection of new plant varieties and establish the substantial derived variety (EDV) system. The Regulations also extend the scope of protection from propagating materials of licensed varieties to harvested materials. The Regulations include the following revisions: extending the protection period; improving the measures to deal with infringement and counterfeiting cases; clarifying the circumstances under which rights may be restored; adding provisions on the penalties on dishonest acts; establishing professional teams for the protection of new plant varieties.

Source: Ministry of Agriculture and Rural Affairs

北京高院：“湘西黄金茶”不属于带有欺骗性、使相关公众对产地产生误认的标志

近日，北京市高级人民法院就“湘西黄金茶”地理标志证明商标无效宣告行政纠纷案作出二审判决，判决撤销国家知识产权局作出的“湘西黄金茶”商标无效宣告请求裁定书。

北京高院认为：带有欺骗性是指商标标志的文字、图形等掩盖了该标志所使用商品在质量、主要原料、功能、用途或产地等方面的真实情况，使得公众对商品的真实情况产生错误认识。判断诉争商标是否“带有欺骗性”，应当从社会公众的普遍认知水平及认知能力出发，结合指定使用的商品或者服务进行界定。

本案中，诉争商标是由汉字“湘西黄金茶”构成的地理标志证明商标，核定使用在“茶”商品上。《吉首市经果技术推广站“湘西黄金茶”地理标志证明商标使用管理规则》所载生产地域范围位于湖南省湘西土家族苗族自治州境内，与诉争商标“湘西”的含义能够明确对应，所载黄金茶品种与诉争商标“黄金茶”的表述一致，诉争商标没有对其指定使用的商品的质量、功能、产地等特点作足以引人误解的表示并使相关公众产生错误认识，未违反2013年商标法第十条第一款第（七）项的规定。

来源：北京高院

Beijing High People's Court: Xiangxi Gold Tea is not Deceptive Certification Trademark

The Beijing High People's Court made a second instance judgment on the administrative dispute case of the invalidation of the GI certification trademark of "Xiangxi Golden Tea", and decided to cancel the ruling of the request for invalidation of the trademark of "Xiangxi Golden Tea" made by CNIPA.

The Court held that the deceptive words and figures of the trademark mark cover up the real situation of the products used in the mark in terms of quality, main raw materials, functions, uses or origin, making the public have a wrong understanding of the true situation of the products. To judge whether the trademark in dispute is "deceptive", it shall be defined from the general level and cognitive ability of the public, combined with the products or services designated for use.

The disputed trademark was a certification trademark of GI constituted by the Chinese characters "Xiangxi Golden Tea" and approved for use on "tea" products. The scope of geographical production stated in the relevant administrative rules can clearly correspond to the definition of the disputed trademark "Xiangxi", the description of the type of golden tea set therein is consistent with the description of the disputed trademark "Golden Tea". The trademark in dispute does not make misleading indications on the quality, function, place of production and other characteristics of the designated commodities so as to lead the relevant public to misunderstand, which does not violate the provisions of the Trademark Law.

Source: Beijing High People's Court

使用近似标识制售口罩，构成商标侵权并被判赔百万元

近日，江苏省苏州市中级人民法院依法审结了原告广东某医疗用品股份有限公司与被告江苏某医疗用品有限公司侵害商标权及不正当竞争纠纷案，判决被告停止侵权，并依法适用4倍惩罚性赔偿，责令赔偿原告经济损失及合理开支共计102万余元。

法院认为，被告公司在生产的口罩产品上使用与涉案注册商标近似的商标，在其官网、网店等处大量使用被控侵权标识，并销售带有上述标识的被控侵权口罩，容易使相关公众误认为是原告公司产品，属于侵犯注册商标专用权的行为。被告擅自使用原告具有一定影响力的企业名称，让人误认为与原告公司存在特定联系，构成不正当竞争。

关于损害赔偿数额的确定，法院采用综合计算模式。其一，对于能够明确被控侵权产品销量的部分，适用被告获利的计算规则。其二，在符合适用惩罚性赔偿条件的情况下，以被告获利金额作为惩罚性赔偿的计算基数。其三，对于无法查明具体销量的部分，适用法定赔偿进行酌定。

本案中，被告在疫情暴发初期即注册成立，实施被控侵权行为的同时还在原告举报后多次向市场监督管理部门作不实陈述，严重违反诚实信用原则和基本的商业道德。同时，被告生产销售的口罩价格低廉、质量堪忧，未经正规的检验程序，更是存在重大的危害人民群众人身健康的安全隐患，侵权情节严重，法院确定适用4倍的惩罚性赔偿倍数，确定被告总赔偿金额为1021655元。

来源：江苏省苏州市中级人民法院

Application of Punitive Damages and Statutory Damages in the Same Case, the Court Awards Comprehensive Damages against Trademark Infringer

Recently, the Intermediate People's Court of Suzhou City, Jiangsu Province, concluded the case of trademark infringement and unfair competition disputes, deciding that the defendant shall stop the infringement, apply four times of punitive damages plus statutory damages, and order the defendant to pay the damages of more than RMB 1.02 million.

The court held that the defendant used a trademark similar to the registered trademark on its mask products, , and used the plaintiff's enterprise name without authorization, causing the relevant public to misunderstand that it had a connection with the plaintiff's company, which constituted unfair competition.

As for the determination of the amount of damages, the court adopts a comprehensive calculation model. First, the calculation rules for the defendant's profit shall be applied to the part that can clearly identify the sales volume of the alleged infringing products; Second, where conditions of the application of punitive damages are met, the amount of profit obtained by the defendant shall be used as the basis for calculating punitive damages; Third, the statutory damages shall be applied to the part where the specific sales volume cannot be ascertained.

Source: Intermediate People's Court of Suzhou City, Jiangsu Province

最高院：侵害计算机软件著作权纠纷中权利人的举证义务

最高人民法院就东方匹克（北京）科技有限公司（原审原告）与北京中科鼎拓信息技术有限公司、张威、孙仁川、北京网信未来信息技术有限公司（原审被告）侵害计算机软件著作权纠纷案作出二审判决，驳回上诉，维持原判。此前，一审法院判决驳回原告的全部诉讼请求。

最高院认为，侵害计算机软件著作权纠纷的原告，应首先提交证据证明其享有主张权利软件的著作权。当事人未能提供证据或者证据不足以证明其事实主张的，应自行承担不利的诉讼后果。在各被告提交了足以证明的相反证据的情况下，匹克公司所提交的在案证据，无论著作权登记证书或是软件开发协议载明的项目名称，均与其在本案中主张权利的加密软件无法形成对应关系，其证据尚不足以证明其系涉案软件的独立开发者，未就其权属证明尽到充分的举证义务，因此在不能认定匹克公司系涉案软件著作权人的前提下，其所提出的各被告涉案行为构成侵权的诉讼请求亦不能成立。

来源：最高院

SPC Clarifies the Burden of Proof in the Computer Software Copyright Infringement Dispute

The Supreme People's Court made a judgment of second instance on the case of computer software copyright infringement, upholding the original judgment. Previously, the court of first instance ruled against all the plaintiff's claims.

The Court ruled that the plaintiff of the computer software copyright dispute must first submit evidence to prove that it is entitled to the copyright of the software for which it claims. In the event that the defendants submitted evidence sufficient to prove the contrary, none of the documented evidence submitted by the plaintiff could form a corresponding relationship with the encryption software claimed for rights in the case, regardless of whether it was the copyright registration certificate, or the project name indicated in the software development agreement. The evidence submitted by the plaintiff was insufficient to prove that it was an independent developer of the software in question, and that it had failed to fully fulfill its obligation of proof of his ownership. Therefore, under the premise that

the plaintiff could not be recognized as the copyright owner, its litigation claims could not be established.

Source: SPC

员工离职后带走技术配方构成侵犯企业商业秘密被判刑

近日，湖南省长沙县人民法院审结了一起湖南首例侵犯国家级专精特新“小巨人”企业商业秘密犯罪案件。

主要案情：王某和阳某某曾供职于工信部公布的一家国家级专精特新“小巨人”企业，分别为技术人员与销售人员，陈某某是该企业的客户。三人于2020年2月成立了某贸易公司，随后王某违反保密规定，离职时将该“小巨人”企业多种石材胶技术配方私自截留存于自己笔记本电脑并带离。此后，三人利用该技术配方使“小巨人”损失160余万元。

法院认为，王某违反保密义务及该“小巨人”企业关于保守商业秘密的要求，使用其掌握的商业秘密；被告人陈某某明知王某、阳某某存在侵犯商业秘密的行为，仍然使用该商业秘密，给“小巨人”企业造成重大损失，三被告的行为均构成侵犯商业秘密罪，对被告人王某、阳某某、陈某某均判处有期徒刑一年三个月，累计并处罚金85万元。同时责令3名被告人退赔被害公司直接经济损失1635740.04元。

来源：湖南省长沙县人民法院

An Employee Takes Away the Technical Formula After Resignation, Constituting Infringement on Trade Secrets and is Criminally Sentenced

Recently, the People's Court of Changsha County, Hunan Province concluded the first criminal case of infringing on the business secrets of national enterprises in Hunan Province.

The court held that the defendants violated the confidentiality obligation and the requirements of the enterprise on keeping business secrets and used the trade secrets; The other defendant, knew that the defendants had violated the trade secret, but still used the trade secret, causing losses to the enterprise. The acts of the three defendants all constituted the crime of misappropriation of the trade secret. The three defendants were sentenced to one year and three months in prison, with a cumulative fine of RMB 850,000. At the same time, the three defendants were ordered to pay the damages of more than RMB 1.6 million.

Source: People's Court of Changsha County, Hunan Province

欧洲专利局与欧盟统一专利法院签署数据交换协议

近日，欧洲专利局（EPO）和欧盟统一专利法院（UPC）签署了一份两机构之间的数据交换协

议。该协议为促进EPO欧洲专利注册簿和UPC注册簿之间的数据交换提供了法律依据，也为EPO为UPC的培训框架提供的业务支持奠定了法律基础。

该协议将成为建立UPC用户友好型案例管理系统的一个重要因素。UPC是专门负责执行“传统”欧洲专利和统一专利的专门法院。该法院将审理与EPO授予的专利的侵权和有效性相关的案件。此次签署的协议将随着UPC协议效力的发生而生效，预计正式生效时间为2023年4月1日。

来源：EPO

EPO and UPC sign agreement on data exchange

Recently, the EPO and the Unified Patent Court (UPC) signed an agreement on the exchange of data between the two institutions. The agreement provides the legal basis for facilitating the exchange of data between the EPO's European Patent Register and the UPC's Register, as well as for possible operational support from the EPO for the UPC's training framework.

The agreement will be an important element in establishing the UPC's user-friendly case management system. The UPC is a dedicated court for the enforcement of both "classic" European patents and Unitary Patents. It will hear cases related to infringement and the validity of the patents granted by the EPO. The agreement will take effect with the entry into operation of the UPC Agreement, which is expected as of 1 April 2023.

Source: EPO

晶电告亚马逊电视侵权

近日，中国台湾LED厂晶元光电（晶电）日前发布公告称，近日已在美国就美商亚马逊Fire TV产品线的4系列43英寸与50英寸电视提出专利诉讼。晶电指出，亚马逊电视产品线侵害晶电至少13件专利，涵盖范围包括从晶粒到LED背光模块所用到的基板、磊晶、透明导电层、及金属电极等关键技术，并提出一系列证据。要求法院令被告停止销售等侵权行为，且就过去的侵权行为进行损害赔偿。

来源：雪球网

Jingdian v. Amazon for TV Patent Infringement

Recently, the Taiwan, China LED Factory Jingdian announced that it has recently filed a patent lawsuit in the United States on the 4 series 43 inch and 50 inch televisions of Amazon Fire TV product line. Jingdian pointed out that the Amazon TV product line infringed on at least 13 patents of Jingdian, covering key technologies such as baseboard, Epitaxy, transparent conductive layer, and metal electrodes used from crystal grain to LED backlight modules, and provided a series of evidence.

Source: Xueqiu

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