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立方竞争法周报 Weekly Competition Law News

北京知识产权法院发文解读反垄断法下的安全港规则

2022年12月13日，北京知识产权法院刘义军法官撰文解读反垄断法下的安全港规则。新《反垄断法》下，安全港规则仅适用于纵向垄断协议；如需适用安全港规则，经营者的相关市场份额需低于国务院反垄断执法机构规定的标准；且在适用安全港规则时，除满足市场份额标准外，还需满足其他规定条件，但何为“其他条件”还需进一步明确。（[查看更多](#)）

Beijing IP Court Issues an Article on “Safe-Harbor” Rule under the Anti-Monopoly Law

On December 13, 2022, judge Liu Yijun of the Beijing Intellectual Property Court (“Beijing IP Court”) issued an article interpreting the “safe-harbor” rule under the anti-monopoly law. Under the new *Anti-Monopoly Law*, the “safe-harbor” rule is only applicable to vertical monopoly agreement; to apply the “safe-harbor” rule, the relevant market shares of the operators must be lower than the threshold stipulated by the anti-monopoly law enforcement agency of the State Council; and when applying the “safe-harbor” rule, in addition to meeting the market share threshold, other prescribed conditions need to be met, yet the specific contents of “other conditions” still need to be further clarified. ([More](#))

河南省市监局举办全省公平竞争审查与反垄断执法业务线上培训班

2022年12月13日，河南省市场监督管理局（“河南省市监局”）发布公告，12月8日至10日，河南省市监局举办了全省公平竞争审查与反垄断执法业务线上培训班。培训邀请了执法官员对公平竞争审查工作中的难点、疑点以及典型案例进行讲解；邀请了学界教授围绕竞争政策基础地位及其实现机制、新修订《反垄断法》的解读和分析、以及对滥用市场支配地位行为的认定和查处等内容进行讲解；并由河南省市监局一线工作人员对工作中好的经验及做法进行了交流分享。（[查看更多](#)）

Henan AMR Holds a Provincial-Wide Online Training Course on Fair Competition Review and Anti-Monopoly Law Enforcement

On December 13, 2022, the Henan Provincial Administration for Market Regulation (“Henan AMR”) issued an announcement. From December 8 to 10, Henan AMR held a provincial-wide online training course on fair competition review and anti-monopoly law enforcement. The training invited law enforcement officers to give lectures on the difficulties, issues and typical cases in the fair competition review work; invited academic professors to give lectures on the fundamental status of competition policy and its realization mechanism, the interpretation and analysis of the newly revised *Anti-Monopoly Law*, and the identification, investigation and handling of abuse of market dominance etc.; and invited the frontline staffs of Henan AMR to communicate and share good experiences and practices in work. ([More](#))

因滥用市场支配地位，东北制药将被罚1.33亿

2022年12月13日，东北制药集团股份有限公司（“东北制药”）发布公告，称于12月9日收到辽宁省市场监督管理局（“辽宁省市监局”）下发的《行政处罚告知书》，将被罚约1.33亿元。2019年11月4日，东北制药收到其被立案调查的通知，经调查，辽宁省市监局认为，公司于2018年11月至2019年6月期间滥用在中国左卡尼汀原料药市场的支配地位，实施了以不公平的高价销售左卡尼汀原料药行为。根据修改前的《反垄断法》，辽宁省市监局对东北制药处以罚款2018年度国内销售额2%的从轻处罚，共计13,300.44万元。（[查看更多](#)）

Northeast Pharm Fined CNY 133 Million for Abuse of Dominant Market Position

On December 13, 2022, Northeast Pharmaceutical Group Co., Ltd. (“Northeast Pharm”) announced that it had received the *Notice of Administrative Penalty* issued by the Liaoning Provincial Administration for Market Regulation (“Liaoning AMR”) on December 9 and will be fined for about CNY 133 million. On November 4, 2019, Northeast Pharm received a notification that it was investigated. After investigation, the Liaoning AMR believed that the company had abused its dominant market position in the Chinese levocarnitine API market from November 2018 to June 2019 by selling the levocarnitine API at unfairly high prices. According to the 2008 *Anti-Monopoly Law*, the Liaoning AMR imposed a mitigated penalty of 2% of the domestic sales in 2018 on Northeast Pharm, totaling CNY 133,004,400. ([More](#))

国内民用爆破企业涉嫌实施垄断协议，正接受反垄断调查

2022年12月12日，湖南南岭民用爆破器材股份有限公司（“南岭民爆”）发布公告，南岭民爆及其标的资产控股子公司威奇化工受到反垄断调查。根据公告内容，相关企业曾出席部分省级民爆行业协会组织的行业沟通会议，公告称企业并不存在从事分割市场、固定民爆产品价格等行为。目前，湖南省市监局已对南岭民爆进行立案调查，初步调查尚未发现有损害社会公共利益的情况及构成重大违法的情形。广西壮族自治区市监局对威奇化工展开了初步调查，企业积极配合并主动提供证据材料，目前尚未正式立案。（[查看更多](#)）

Domestic Civil Explosive and Blasting Companies Being Investigated for Allegedly Implementation of Monopoly Agreement

On December 12, 2022, Hunan Nanling Industrial Explosive Materials Co., Ltd. (“Nanling Explosive”) announced that Nanling Explosive and its underlying asset holding subsidiary Weiqi Chemical were subject to anti-monopoly investigations. According to the content of the announcement, the relevant enterprises have attended some industry communication meetings organized by provincial-level civil explosive and blasting industry associations. The announcement stated that the enterprises did not engage in market segmentation or price fixing behaviors of civil explosive products. At present, the Hunan Provincial Administrative for Market Regulation has initiated an investigation into Nanling Explosive, and the preliminary investigation has not found any damage to the public interest or any serious violation of the law. Guangxi Autonomous Region Administration for Market Regulation has launched a preliminary investigation on Weiqi Chemical, and the company actively cooperated and provided evidential materials, and the case has not yet been formally filed. ([More](#))

日本钢制对焊管件制造商实施价格协议，被罚约1.5亿日元

2022年12月15日，日本公平贸易委员会（JFTC）发布公告，称对钢制对焊管件制造商发出了停产令和附加费支付令。此前，JFTC发现了FURUBAYASHI焊接管件制造有限公司、AWAJI材料有限公司和BENKAN KIKOH公司协同提高了FSGP和PT370专用的钢制对焊管件的售价，实质性限制了在该领域的竞争，违反了日本《反垄断法案》第三条的规定。JFTC开出的附加费支付令总额为1.4966亿日元。（[查看更多](#)）

Japan Manufactures of Steel Butt-Welding Pipe Fittings Fined for About 150 Million Yen for Price Cartel

On December 15, 2022, the Japan Fair Trade Commission (JFTC) issued a cease and desist order and surcharge payment orders to the manufactures of steel butt-welding pipe fittings. Previously, the JFTC found that FURUBAYASHI WELDING PIPE FITTINGS MFG.CO., LTD., AWAJI MATERIA CO., LTD. and BENKAN KIKOH Corporation substantially restrained competition in the field of the specific steel butt-welding pipe fittings of FSGP and PT370 by agreeing to raise the selling price of them. The conduct violated the Article 3 of the *Antimonopoly Act*. The total amount of the surcharge is 149.66 million yen. ([More](#))

意大利竞争机构调查7家能源集团违法调涨能源价格

2022年12月13日，据媒体报道，意大利竞争机构正在调查7家能源集团涉嫌非法提高电力和天然气价格的行为，受调查的企业包括意大利国家电力公司（ENEL）、意大利埃尼集团（ENI）和法国ENGIE集团（由法国燃气集团和苏伊士集团合并而成）等大型能源集团企业。竞争机构表示，这些供应商大约占据80%的市场份额，单方面非法提高了电力和天然气价格，无视意大利政府8月9日发布的关于缓解能源价格上涨措施的法令。目前，已有超过260万消费者受到了“不合理的价格上涨”的影响。（[查看更多](#)）

Italian Regulator Opens Energy Price Hikes Probe

On December 13, 2022, according to news report, Italy's competition watchdog is investigating seven energy groups, including Enel, Eni and France's Engie, for allegedly illegally ramping up electricity and gas prices. The suppliers, which account for around 80 percent of the market, stand accused of making "unilateral illegal changes" to electricity and gas prices without taking into account a decree issued by the government on August 9 on measures to mitigate price hikes, the watchdog said. More than 2.6 million consumers have "already suffered an unjustified price increase", the authority said in a statement. ([More](#))

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

工信部发布《工业和信息化领域数据安全管理办法（试行）》

2022年12月13日，工业和信息化部（以下简称“工信部”）发布《工业和信息化领域数据安全管理办法（试行）》（以下简称“《办法》”）。办法共计8章41条，自2023年1月1日起施行。主要内容包括七个方面：一是界定工业和信息化领域数据和数据处理者概念，明确监管范围和监管职责。二是确定数据分类分级管理、重要数据识别与备案相关要求。三是针对不同级别的数据，围绕数据收集、存储、加工、传输、提供、公开、销毁、出境、转移、委托处理等环节，提出相应安全管理和保护要求。四是建立数据安全监测预警、风险信息报送和共享、应急处置、投诉举报受理等工作机制。五是明确开展数据安全监测、认证、评估的相关要求。六是规定监督检查等工作要求。七是明确相关违法违规行为的法律责任和惩罚措施。（[查看更多](#)）

MIIT Issues Administrative Measures for Data Security in Industry and Information Technology Sectors (for Trial Implementation)

On 13 December 2022, the Ministry of Industry and Information Technology (“MIIT”) issued the *Administrative Measures for Data Security in Industry and Information Technology Sectors (for Trial Implementation)* (the “Measures”). The measures consist of 8 chapters and 41 articles, which shall come into force on January 1, 2023. The Measures mainly includes seven aspects. First, define the concept of data and data processors in the field of industry and information technology, specify regulatory scope and responsibilities. Second, determine the data classification and grading management, important data identification and filing requirements. Third, for data of different grades, put forward corresponding security management and protection requirements in respect of the data collection, storage, processing, transmission, provide, public, destruction, outbound processing, transfer, entrusted processing and other aspects. Fourth, establish working mechanisms such as data security monitoring and early warning, risk information reporting and sharing, emergency response, and complaints and reports handling. Fifth, clarify the requirements for carrying out data security monitoring, certification, and evaluation. Sixth, provide supervision, inspection and other work requirements. Seventh, clarify the legal liability and penalties for relevant violations. ([More](#))

信安标委发布《网络安全标准实践指南—个人信息跨境处理活动安全认证规范 v2.0》

2022年12月16日，全国信息安全标准化技术委员会（以下简称“信安标委”）发布了《网络安全标准实践指南—个人信息跨境处理活动安全认证规范v2.0》（以下简称“《认证规范v2.0》”）。信安标委曾于2022年6月24日正式发布《网络安全标准实践指南 个人信息跨境处理活动安全认证规范》（《认证规范v1.0》）。作为《个人信息保护法》（以下简称“《个保法》”）第三十八条第二款提出的个人信息保护认证的依据之一，《认证规范v2.0》在正式发布后将成为个人信息跨境传输、认证机构开展工作的重要参考和指引。（[查看更多](#)）

NISSTC Issues the Practice Guidelines on Cyber Security Standards - Specification for Security Certification of Cross-border Processing of Personal Information V2.0

On 16 December 2022, the National Information Security Standardization Technical Committee (the "NISSTC") published the *Practice Guidelines on Cyber Security Standards - Specification for Security Certification of Cross-border Processing of Personal Information V2.0* (the "Guidelines V2.0"). Previously on 24 June 2022 NISSTC had officially released the *Practice Guidelines on Cyber Security Standards - Specification for Security Certification of Cross-border Processing of Personal Information* (the "Guidelines V1.0"). As one of the bases for personal information protection certification proposed in Article 38(2) of the *Personal Information Protection Law* ("PIPL"), the Guidelines V2.0 are expected to become an important reference and guide for the certification authorities, as well as for personal information processors engaged in cross-border processing of personal information. ([More](#))

工信部、网信办发布《关于进一步规范移动智能终端应用软件预置行为的通告》

2022年12月14日，工信部、国家互联网信息办公室（以下简称“网信办”）发布《关于进一步规范移动智能终端应用软件预置行为的通告》（以下简称“《通告》”），该通告自2023年1月1日起执行。《通告》要求，移动智能终端应用软件预置行为应遵循依法依规、用户至上、安全便捷、最小必要的原则，依据谁预置、谁负责的要求，落实企业主体责任，尊重并依法维护用户知情权、选择权，保障用户合法权益。生产企业应确保移动智能终端中除基本功能软件外的预置应用软件均可卸载，并提供安全便捷的卸载方式供用户选择。《通告》还要求生产企业完善移动智能终端权限管理机制，提升操作系统安全性，采取技术和管理措施预防在产品流通环节发生置换操作系统和安装应用软件的行为。 ([查看更多](#))

MIIT and CAC Issue A Notice on Further Regulating the Pre-Setting of Mobile Intelligent Terminal Application Software

On December 14, 2022, the MIIT and the Cyberspace Administration of China ("CAC") issued *A Notice on Further Regulating the Pre-Setting of Mobile Intelligent Terminal Application Software* ("Notice"), which will be implemented from 1 January 2023. The Notice requires that the pre-installation of mobile intelligent terminal application software shall follow the principles of compliance with laws and regulations, user first, safety and convenience, minimum necessity, and shall follow the requirements that the person who pre-installed shall be responsible to implement the responsibility of the relevant enterprises, respect and safeguard the user's right to know and the right to choose, and protect the legitimate rights and interests of users. Manufacturers shall ensure that mobile intelligent terminals' pre-installed applications can be uninstalled except for the basic functions of the software, and provide a safe and convenient way to uninstall for users. The Notice also requires manufacturers to improve the mobile intelligent terminal rights management mechanism, improve the security of the operating system, and take technical and management measures to prevent the replacement of the operating system and installation of application software during the product circulation phase. ([More](#))

中国互联网协会就《个人数据云存储应用技术要求 and 测试方法》团体标准公开征求意见

2022年12月15日，中国互联网协会就《个人数据云存储应用技术要求 and 测试方法》（以下简称“《方法》”）团体标准公开征求意见，意见反馈截止至2023年1月14日。《方法》用于规范个人信息云存储应用的技术要求及相关测试评价方法，指导云存储应用对个人信息的安全防护。规定了个人信息云存储应用的技术要求和测试方法，包括个人信息保护要求、用户体验保障要求 and 安全保障要求等，并提供相应的测试评价方法等。（[查看更多](#)）

ISC Seeks Public Comments on the Group Standard *Technical Requirements and Test Methods for Personal Data Cloud Storage Applications*

On 15 December 2022, the Internet Society of China (“ISC”) seeks Public Comments on the group standard *Technical Requirements and Test Methods for Personal Data Cloud Storage Applications* (the “Methods”) by 14 January 2023. The Methods aim to regulate the technical requirements of personal information cloud storage applications and related testing and evaluation methods to guide the cloud storage applications for the security protection of personal information. The Methods also specify the technical requirements and test methods for personal information cloud storage applications, including personal information protection requirements, user experience protection requirements and security requirements, and provide the corresponding test evaluation methods, etc. ([More](#))

浙江通管局通报47款侵害用户权益App

2022年12月19日，浙江省通信管理局（以下简称“浙江通管局”）发布《关于侵害用户权益行为的APP通报（2022年第八、九、十批）》（以下简称“《通报》”）。《通报》显示，浙江通管局近期组织第三方检测机构对384款手机应用软件开展检测工作，其中225款APP存在“违规收集个人信息”、“超范围收集个人信息”、“违规使用个人信息”、“强制用户使用定向推送功能”等相关问题，已书面要求相关企业限期整改。截至目前，尚有47款APP未完成整改，上述APP应在12月23日前完成整改落实工作。逾期不整改的，浙江通管局将依法依规组织开展处置工作。（[查看更多](#)）

Zhejiang Communications Administration Notified 47 Apps That Violate the Rights of Users

On December 19, 2022, Zhejiang Communications Administration issued the *Notice of APPs Infringing on Users' Rights and Interests (8th, 9th and 10th Batches in 2022)* (the “Notice”). According to the Notice, Zhejiang Communications Administration recently organized a third-party testing agency to test 384 mobile applications, among which 225 APPs had illegal collection of personal information, excessive collection of personal information, illegal use of personal information, and forcing users to use targeted push function and others. The relevant enterprises have been asked in writing to rectify before deadline. So far, 47 APPs are yet to complete the rectification, which rectification shall be completed by December 23. If rectification is not made by the deadline, Zhejiang Communications Administration will punish the relevant companies in accordance with the law. ([More](#))

中国信通院、三大运营商删除通信行程卡用户数据

2022年12月12日，中国信息通信研究院（以下简称“中国信通院”）、中国电信、中国联通、中国移动三大运营商先后表示，按照《中华人民共和国数据安全法》《中华人民共和国个人信息保护法》等有关法律规定，“通信行程卡”系统自12月13日0时下线相关服务后，将同步删除用户行程相关全部数据，依法保障个人信息安全。“通信行程卡”由中国信息通信研究院联合中国电信、中国移动、中国联通联合推出，于2020年3月6日正式上线。（[查看更多](#)）

CAICT and Three Major Operators Delete User Data of Digital Itinerary Card

On 12 December 2022, China Academy of Information and Communications Technology (“CAICT”), and the three major operators, namely, China Telecom, China Unicom, and China Mobile, successively stated that in accordance with the *Data Security Law of the People's Republic of China*, PIPL, and other relevant laws and regulations, after the Digital Itinerary Card service was taken offline at 00:00 on December 13, all data related to the user's trip will be deleted simultaneously to protect the security of personal information in accordance with the law. The Digital Itinerary Card is jointly launched by the CAICT, China Telecom, China Mobile and China Unicom, and had been officially launched on March 6, 2020. ([More](#))

欧洲委员会发布《关于欧盟-美国数据隐私框架的充分性决定草案》

2022年12月13日，欧盟委员会启动了通过“欧盟-美国数据隐私框架充分性决定”（Adequacy decision for the EU-U.S. Data Privacy Framework）（“充分性决定”）的程序。充分性决定草案的结论认为，美国确保了对从欧盟转移到美国的个人数据的充分保护水平。充分性决定是《一般数据保护条例》（GDPR）提供的数据跨境传输工具之一，用于将个人数据从欧盟转移到第三国。充分性决定可以证明根据欧盟委员会的评估，这些国家对个人数据的保护水平与欧盟相当。

一旦充分性决定获得通过，欧洲实体将能够向美国参与公司转移个人数据，而不需要设置额外的数据保护保障措施。美国公司将能够通过承诺遵守一套详细的隐私义务（如目的限制和数据保留，以及有关数据安全和与第三方共享数据的具体义务），来证明其已参与欧盟-美国数据隐私框架。（[查看更多](#)）

European Commission Launched the Process to Adopt An Adequacy Decision for the EU- U.S. Data Privacy Framework

On 13 December 2022, the European Commission launched the process to adopt an *Adequacy Decision for the EU- U.S. Data Privacy Framework*. The draft adequacy decision concludes that the United States ensures an adequate level of protection for personal data transferred from the EU to the US. An adequacy decision is one of the tools provided under the General Data Protection Regulation (“GDPR”) to transfer personal data from the EU to third countries which, in the assessment of the Commission, offer a comparable level of protection of personal data to that of the European Union.

Once the adequacy decision is adopted, European entities will be able to transfer personal data to participating companies in the United States, without having to put in place additional data protection safeguards. US companies will be able to certify their participation in the EU-U.S. Data Privacy Framework by committing to comply with a detailed set of privacy obligations (such as purpose limitation and data retention, as well as specific obligations concerning data security and the sharing of data with third parties). ([More](#))

因涉嫌侵犯隐私，苹果公司或面临600万欧元罚款

2022年12月12日，据报道，法国数据保护监管机构的首席顾问建议，因为未经用户同意而追踪他们的应用程序，苹果公司应被罚款600万欧元（约4416万元人民币）。据悉，苹果公司禁止广告商在未经用户明确同意的情况下访问其所谓的广告商标识符（IDFA）——广告商标识符是一种独特的设备标识符，可用于为每台设备投放广告。然而，根据行业游说团体France Digitale的说法，苹果公司并没有对自己的应用程序和服务适用同样的事先同意标准。（[查看更多](#)）

Apple May Be Faced With €6 Million Fine for Privacy Violations

On 12 December 2022, as reported, Apple should be fined €6 million (¥ 44.16 million), the chief adviser to the French data protection regulator has recommended, for failing to properly notify users of apps tracking them. It is said that Apple prohibits advertisers from accessing what it calls the Identifier for Advertisers (IDFA) — a unique device identifier which can be used to target ads to each device — without explicit consent from users. However, it did not apply the same standards of prior consent to its own apps and services, according to France Digitale. ([More](#))

葡萄牙数据保护局对葡萄牙国家统计局多次违反GDPR的行为罚款430万欧元

2022年12月12日，葡萄牙数据保护局（以下简称“CNPD”）公布了其对第2022/1072号案件的决定，其中列明对葡萄牙国家统计局处以430万欧元的罚款，原因是CNPD在调查后认为葡萄牙国家统计局违反了《通用数据保护条例》（下称“GDPR”）第9(1)、12等多条的规定。这一决定与葡萄牙国家统计局在2021人口普查中收集公民个人信息有关。CNPD指出，国家统计局在处理与健康 and 宗教有关的特殊数据时，没有提供明确和完整的信息说明公民可以有选择性地提供这些数据，也没有充分解释一些问题是可以选择是否作答的，因此公民未能被允许形成自己的意愿，而这对于推定处理这些特殊类别数据的合法性至关重要。（[查看更多](#)）

Portugal: CNPD Fines National Institute of Statistics €4.3m for Multiple Violations of GDPR

On 12 December 2022, the Portuguese data protection authority (“CNPD”) published its decision in case No. 2022/1072, in which it imposed €4.3 million on the Portuguese National Institute of Statistics, for violations of Articles 9(1), 12 and other articles of the General Data Protection Regulation (“GDPR”), following an investigation. The decision relates to the National Institute conduct in col-

lecting the personal data of citizens during the 2021 census. The CNPD stated that the National Institute, while processing special data relating to health and religion, did not provide clear and complete information on the optional nature of its provision by citizens and did not sufficiently explain that some of the questions were optional, thus not allowing citizens to form their will, which was essential for the assumptions of the legality of processing of those special categories of data. ([More](#))

知识产权 Intellectual Property

白皮书显示中国成为车联网关键技术专利最大产出国

在四川成都发布的《车联网知识产权白皮书(2022年)》显示，中国已成为车联网关键技术专利最大产出国。白皮书显示，截至2022年5月，全球车联网领域专利申请累计达到125326件。主要申请人集中分布在传统车厂、汽车元器件企业、通信企业和互联网高科技企业。从各国的研究实力看，日本和美国企业仍占据较高地位；中国是最大的专利产出国，部分公司(如华为、中兴、百度等)表现突出。

来源：中国新闻网

China Has Become the Largest Producer Of Patents for Key Technologies Related to the Internet of Vehicles (IoV), According to a White Paper on IoV Intellectual Property (2022)

China has become the largest producer of patents for key technologies related to the IoV, according to a White paper on IoV intellectual Property (2022) released in Chengdu, Sichuan province. According to the white paper, as of May 2022, the total number of global patent applications in the field of Internet of Vehicles reached 125,326. The applicants are mainly distributed in traditional vehicle factories, automobile components enterprises, communication enterprises and Internet high-tech enterprises. In terms of the research strength of countries, Japanese and American enterprises still occupy a higher position; China is the largest producer of patents, with some companies (such as Huawei, ZTE and Baidu) standing out.

Source: chinanews.com.cn

北京互联网法院发布网络音乐著作权案件审理情况报告

12月15日北京互联网法院召开网络音乐著作权案件审理情况报告新闻发布会，通报此类纠纷审理情况并发布典型案例。自2018年9月9日建院至2022年11月30日，北京互联网法院受理网络音乐著作权纠纷案件4560件，同期审结4046件，被许可人为主要起诉主体，平台运营商为主要被诉主体，案件调撤比例保持在较高水平。北京互联网法院立案庭庭长赵长新表示，音

乐著作权集体管理组织应进一步发挥职能，对于各大网络平台来说，可主动对接音乐著作权集体管理组织、唱片公司等解决批量授权问题，并利用技术措施强化音乐版权保护。

来源：北京互联网法院

The Beijing Internet Court Released a Report on the Trial of Online Music Copyright Cases

On December 15, the Beijing Internet Court held a press conference to report on the trial of online music copyright cases to inform the hearing of such disputes and typical cases.

From September 9, 2018, when the court was established, to November 30, 2022, the Beijing Internet Court accepted 4,560 cases of online music copyright disputes, and concluded 4,046 cases during the same period. The licensee was the main plaintiff, and the platform operator was the main defendant, and the proportion of case withdrawal kept at a high level.

Zhao Changxin, president of the Beijing Internet Court, said that music copyright collective management organizations should further play their functions. For major online platforms, they can take the initiative to cooperate with music copyright collective management organizations and record companies to solve the problem of mass licensing, and use technical measures to strengthen music copyright protection.

Source: [Beijing Internet Court](#)

上海浦东法院作出首例世界杯诉前禁令

12月7日，上海市浦东新区人民法院收到卡塔尔世界杯赛事的授权方央视国际网络有限公司（下称央视国际公司）提出的行为保全申请。法院在接受申请的24小时内即作出裁定，责令被申请人沈阳盘球科技有限公司（下称沈阳盘球公司）立即停止并不得在其运营的“盘球吧”网站提供2022年卡塔尔世界杯赛事节目，被申请人上海悦保信息科技有限公司（下称上海悦保公司）立即停止并不得在其运营的“足球直播网”上设置链接跳转至“盘球吧”网站的卡塔尔世界杯的赛事观看页面。两被申请人的被诉行为发生在2022年卡塔尔世界杯举办期间，结合被诉行为模式判断，两被申请人未来仍可能通过相同的方式进行世界杯赛事在线直播。若不及时制止该行为，可能对申请人的竞争优势、经济利益等带来难以弥补的损害。

来源：上海浦东法院

Shanghai Pudong Court Issued the First Preliminary Injunction on World Cup

On December 7, Shanghai Pudong Court received an application for preliminary injunction from CCTV International, the licensee of the Qatar World Cup. The court made a ruling within 24 hours of the acceptance of the application, ordering the respondent to immediately stop and shall not provide the 2022 Qatar World Cup events on the "Bowling bar" website operated by it, and the other respondent to immediately stop and shall not set a link on the "Football Live network" operated by it to go to the Qatar World Cup watching page of the "Bowling Bar" website.

The accused acts of the two defendants occurred during the 2022 Qatar World Cup. According to the accused acts pattern, the two defendants may still live-broadcast World Cup events online in the same way in the future. If this act is not stopped in time, it may bring irreparable damage to the applicant's competitive advantage and economic interests.

Source: Pudong People's Court of Shanghai

“林肯”诉“凌肯”仿冒其商标、企业字号及商品装潢

江苏省高级人民法院就林肯环球有限公司、林肯电气公司、林肯电气管理（上海）有限公司诉上海凌肯电气有限公司等侵害商标权及不正当竞争纠纷案作出二审判决，驳回上诉，维持原判。一审法院认定上海凌肯公司构成商标侵权，并且违反了经营者在市场交易中应遵守的诚实信用原则和公认的商业道德，构成不正当竞争。

法院认为，本案中，林肯环球公司商标注册时间较早，实际使用时间较长，上海凌肯公司等相同商品上使用与林肯环球公司相近似的标识，易使相关公众混淆误认，构成商标侵权。上海凌肯公司申请登记企业名称时，林肯电气公司等电焊机行业已具有相当高的知名度，其仍注册并使用与“林肯”相近似字号的企业名称。林肯电气公司、林肯上海公司等长期宣传和使用红色机器外壳配前后黑色面板组合的电焊机装潢设计，已足以使相关公众将该装潢设计与其电焊机产品相联系，具有识别商品来源的作用和较强的显著性，属于有一定影响的商品装潢。上海凌肯公司等作为同业竞争者，明知涉案产品具有极高的知名度，仍擅自使用与其高度近似的产品装潢，主观上具有搭便车的恶意，客观上容易导致消费者的混淆与误认，违反了经营者在市场交易中应遵守的诚实信用原则和公认的商业道德，构成不正当竞争。

来源：江苏高院

“Lincoln” v. “Lingken” on Infringement Trademark, Enterprise Name and Merchandise Decoration

The Jiangsu High People's Court made a second judgment on a dispute over trademark infringement and unfair competition, rejecting the appeal and upholding the original judgment. The court of first instance found that the defendant constituted trademark infringement and unfair competition.

The court held that the plaintiff's trademark was registered earlier and actually used for a longer time. The defendants used similar marks on the same goods, which could easily confuse the relevant public and constituted trademark infringement.

When the defendants applied for the registration of the enterprise name, the plaintiffs in the welding machine industry has been quite famous, they still registered and used the enterprise name similar to the plaintiff's brand name.

The welder decoration design has been advertised and used by the plaintiffs for a long time, and enough to make the relevant public associate the decoration design with its welder products, which is

the products decoration with certain influence. As competitors in the same industry, the defendants, knowing that the products involved in the case have a high reputation, still used the decoration of products highly similar to plaintiffs, which is malicious, and easily leads to confusion and misidentification of consumers, and constituted unfair competition.

Source: Jiangsu High People's Court

北京知识产权法院：关于反法中“给他人造成损害”的认定

北京知识产权法院就北京快手科技有限公司（下称“快手公司”）与荣阳市康泰路雨虹防水材料门市部（原审被告）不正当竞争纠纷案作出二审判决，认定原审被告构成不正当竞争。

平台针对运营并销售网络“刷量”商品行为的起诉，《反不正当竞争法》第八条第二款和第十七条构成一个完整的请求权基础条款。本判决依照法条规定，对平台是否构成受到损害的“他人”进行了认定。

二审法院认为，根据《反不正当竞争法》第十七条第一款的规定，“他人”是指合法权益受到不正当竞争行为损害的经营者。判断快手公司是否属于该条规定的“他人”，首先应当判断快手公司是否享有可能受到侵害且应受法律保护的合法权益。如上所述，快手短视频平台上关于用户粉丝数量以及短视频的播放量、点赞量系快手短视频平台用户评价的展示方式。快手公司以及快手短视频平台的用户可通过高点击量、高播放量获得流量和关注度，进而通过广告等途径获得收益。此外，快手公司作为快手短视频平台的经营者，其创制和维护的短视频平台评价体系、运行规则，以及基于平台数据的真实性和相关公众对平台数据的信任而获得的商业利益等均应受法律保护。原审被告运营被诉网站，通过销售“快手-快刷双击100个”等商品的方式帮助快手平台上的用户进行“刷量”的行为将会危害快手短视频平台的评价体系，破坏平台的正常运行规则，快手公司作为快手短视频平台的经营者，其基于点赞、评论及播放量等流量数据享有的商业利益亦会受到虚假“刷量”行为的危害。因此，快手公司属于《反不正当竞争法》第十七条第一款中的“他人”。

来源：北京知识产权法院

Beijing Intellectual Property Court: on the Determination of "Causing Harm To Others" in Anti-Unfair Competition Law

The Beijing Intellectual Property Court issued judgement of second instance in a dispute over unfair competition, finding that the defendant constituted unfair competition.

According to the court of second instance, the term "others" in Article 17, paragraph 1, of the Anti-Unfair Competition Law refers to operators whose legitimate rights and interests are harmed by acts of unfair competition. To judge whether the plaintiff belongs to the "others" stipulated in this article, we should first judge whether the plaintiff enjoys the legitimate rights and interests that may be infringed

and should be protected by law. As mentioned above, the number of users' fans, the number of short videos played, and the number of likes on the short video platform are the display methods of users' comments on the platform. Users of Kuaishou Company and Kuaishou short video platform can gain traffic and attention through high clicks and high playback volume, and then gain revenue through advertising and other ways. In addition, as the operator of Kuaishou short video platform, the evaluation system and operation rules of the short video platform created and maintained by Kuaishou Company, as well as the commercial interests obtained based on the authenticity of the platform data and the trust of the relevant public on the platform data, shall be protected by law.

The defendant operated the sued website and helped users on Kuaishou platform to "brush" by selling "Kuaishou - Kuaishou Double click 100" and other commodities, which would harm the evaluation system of Kuaishou short video platform and destroy the normal operation rules of the platform. As the operator of Kuaishou short video platform, Its business interests based on traffic data such as likes, comments and streams are also jeopardized by fake "brushing". Therefore, Kuaishou belongs to "others" under Article 17, Paragraph 1 of the Anti-Unfair Competition Law.

Source: Beijing Intellectual Property Court

“野格”商标侵权及不正当竞争案宣判

北京知识产权法院就审结了一起关于“野格”商标侵权及不正当竞争的案件。法院经过审理，一审判令三被告圣罗拉（青岛）酒业有限公司（简称圣罗拉公司）、合肥葡园商贸有限公司（简称葡园公司）、唱某立即停止商标侵权及不正当竞争行为，并赔偿原告马斯特·扎格米斯特欧洲公司（简称马斯特公司）经济损失、惩罚性赔偿、合理支出共计人民币1000万余元。

法院认为，原告的“野格”商标在利口酒商品上为我国相关公众所熟知，已构成驰名商标。被告唱某作为酒业公司的负责人，理应知晓原告商标，却在与原告“野格”商标据以知名的利口酒商品等同类商品上申请与之近似的“野格哈古雷斯”商标，攀附原告品牌的意图十分明显。因此，三被告使用“野格哈古雷斯”商标的行为构成对原告驰名商标权利的伤害。

来源：北京知识产权法院

“Jager” Well-Known Trademark Infringement and Unfair Competition Case Closed

The Beijing Intellectual Property Court concluded a case concerning the trademark infringement and unfair competition of "Jager", the court ordered the three defendants to stop trademark infringement and unfair competition immediately, and compensate the plaintiff for economic losses, punitive damages and reasonable expenses of more than RMB 10 million.

The court held that the plaintiff's trademark "Jager" was well known to the Chinese public in liqueur products and constituted a well-known trademark. As the person in charge of a wine company, one of the defendants should know the plaintiff's trademark, but applied for the trademark of "Jaghagurez" which is similar to the plaintiff's "Jager" trademark on the same kind of goods such as liqueur, which is famous for the plaintiff's "Jager" trademark, and the intention of attached the plaintiff's brand is very

obvious. Therefore, the behavior of the three defendants to use the trademark of "Jager Hagues" constitutes an infringement of the plaintiff's well-known trademark rights.

Source: Beijing Intellectual Property Court

辉瑞BioNTech要求裁定莫德纳新冠专利无效

近日，辉瑞公司及其德国合作伙伴 BioNTech SE（BioNTech SE）在mRNA新冠疫苗的专利诉讼中回击了美国疫苗公司莫德纳，辉瑞公司（PFE. N）寻求在波士顿联邦法院驳回诉讼，并判令莫德纳的专利无效且不构成侵权。莫德纳于8月首次起诉辉瑞，指控该公司侵犯了其在三项专利中的权利，而这些专利是总部位于马萨诸塞州剑桥市的莫德纳所说的在新冠流行之前率先开展的创新技术。莫德纳还在德国对辉瑞公司和BioNTech公司提起了相关的诉讼。这三家公司都卷入了与其他公司有关疫苗的专利纠纷。

来源：路透社

Pfizer and Biontech Requested an Injunction Invalidating the Moderna Novel Coronavirus Patent

Pfizer Inc and its German partner BioNTech SE have hit back at U.S. vaccine company Modner in a patent lawsuit over its mRNA coronavirus vaccine, with Pfizer seeking a dismissal in federal court in Boston and an injunction that Moderna's patent is invalid and not infringing.

Modena first sued Pfizer in August, accusing the company of violating its rights in three patents for innovations it said were pioneered before the coronavirus pandemic. Moderna has also filed related lawsuits in Germany against Pfizer and BioNTech. All three are involved in patent disputes with other companies over vaccines.

Source: Reuters

英特尔要求美国联邦法官驳回VLSI专利侵权诉讼

近日，英特尔要求美国特拉华州一名联邦法官驳回VLSI 41亿美元的专利侵权诉讼，称VLSI故意向法院隐瞒其不透明的所有权结构。英特尔在一份文件中要求美国地区法官Colm Connolly驳回此案，声称VLSI未能遵守他的长期命令，即各方应列出与他们有直接或间接利益的每一个个人和公司。英特尔指出，VLSI拒绝透露其投资者的详细信息并非偶然，如果没有充分的披露，Connolly无法确定VLSI是否与本案有任何利益冲突。

来源：集微网

Intel Requested to Dismiss a VLSI Patent Infringement Lawsuit

Intel recently asked a federal judge in Delaware to dismiss a \$4.1 billion patent infringement lawsuit filed by VLSI, claiming that the chipmaker deliberately hid its opaque ownership structure from the court. And claimed that VLSI had failed to comply with his standing order that the parties should list every person and company with which they had a direct or indirect interest.

Intel noted that VLSI's refusal to disclose details about its investors was no accident and that without adequate disclosure, Connolly could not determine whether VLSI had any conflict of interest in the case.

Source: ijiwei.com

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