



No.335

2023.2

## 立方要闻周报

### Weekly News By Lifang & Partners

NO.74

#### 立方竞争法周报 Weekly Competition Law News

重庆燃气公司滥用市场支配地位被罚240万

A Chongqing Gas Company Fined CNY 2.4 Million for Abusing Dominant Market Position

中央政治局强调加强反垄断

Political Bureau of the Central Committee of the CPC Emphasizes Strengthening Anti-monopoly

江苏一燃气公司因滥用市场支配地位被罚没约5040万

A Jiangsu Gas Company Fined and Confiscated CNY 50.4 Million for Abusing Dominant Market Position

韩国更新并购审查标准及并购申报指南

KFTC Enforces its Amended M&A Review Standard and M&A Notification Guidelines

英特尔或面临新的欧盟处罚

Intel Could Face New EU Fine

英国就横向垄断协议指南草案公开征求意见

CMA Consults on Draft Guidance on Horizontal Agreements

美国司法部起诉谷歌垄断数字广告技术

DOJ Sues Google for Monopolizing Digital Advertising Technologies

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

最高检发布大数据赋能未成年人检察监督典型案例

SPP Release Typical Cases of Big Data Enabling Minors' Procuratorial Supervision



No.335

2023.2

上海市网信办发布数据出境安全评估申报工作实务问答（二）

Cyberspace Administration of Shanghai Municipality Issues the Questions and Answers (II) on the Practice of Declaration for Security Assessment for Cross-border Transfer of Data

上海市通信管理局发布《上海市信息通信行业加强集成创新持续优化营商环境二十条》

Shanghai Communications Administration Issues *the Twenty Articles of Shanghai Municipality on Strengthening Integrated Innovation and Continuous Optimization of Business Environment for Information and Communications Industry*

川渝两地通信主管部门发布2023年第一期侵害用户权益APP名单

Sichuan and Chongqing Communications Administrations Release the First Edition of List of Apps Infringing upon Users' Rights and Interests in 2023

安徽省通信管理局发布关于侵害用户权益APP的通报（2023年第1批）

Anhui Communications Administration Releases Bulletin on Apps Infringing upon Rights and Interests of Users (the First Batch in 2023)

因未落实信息使用授权审批程序等行为，中行安阳分行被罚40.3万元

The Anyang Branch of the People's Bank of China Is Fined RMB 403,000 for Failing to Implement the Approval Procedures for Authorization of the Use of Information

欧盟和新加坡启动数字合作伙伴关系

EU and Singapore launch Digital Partnership

ISO发布了31700-1和31700-2有关于消费品和服务中的消费者保护和隐私设计标准

ISO publishes 31700-1 and 31700-2 standards on consumer protection and Privacy by Design for consumer goods and services

## 知识产权 Intellectual Property

3月1日起，国家知识产权局不再接受传真方式提交PCT国际申请文件

Since March 1, CNIPA will no longer Accept the Submission of PCT International Application Documents by Fax

二审改判不侵权！“嗨吃家”不能被独占



# NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.335

2023.2

---

The Second Trial Changed the Verdict to no Infringement! "Hichijia" could not be Monopolized

擅将“华为”突出使用在自身产品的网售链接标题中构成侵权

Outstanding Use of "Huawei" in the Titles of the Online Sales Links to Own Products Constitutes Infringement

恶意注册商标后提起侵权诉讼，法院：违背诚实信用原则

Filing Infringement Lawsuit After Malicious Trademark Registration, Court: Against the Principle of Good Faith

仿冒游戏名称及添加关键词进行推广构成不正当竞争

Counterfeiting Game Names and Adding Keywords for Promotion Constitute Unfair Competition

利用“江南布衣”服装款式与款号的对应关系吸引流量构成不正当竞争

The Use of the Corresponding Relationship between the Style and the Item Number of "JNBY" to Attract Traffic Constitutes Unfair Competition

耐克起诉BAPE商标侵权，请求法院下达禁令

Nike Sued BAPE Trademark Infringement and Requested the Court to Issue an Injunction

爱马仕铂金包 NFT 商标侵权案开庭

Hermes Birkin Bag NFT Trademark Infringement Case Opens

## 立方竞争法周报 Weekly Competition Law News

### 重庆燃气公司滥用市场支配地位被罚240万

2023年2月1日，国家市场监督管理总局公布了重庆市市场监督管理局（“重庆市市监局”）对重庆永康燃气有限公司（“重庆永康”）作出的行政处罚决定。自2021年8月30日立案后，重庆市市监局调查发现重庆永康在重庆市永川区15个镇街的管道燃气供应服务市场具有市场支配地位。自2018年以来，当事人滥用市场支配地位，无正当理由，强制要求用户购买其推销的燃气灶、报警器和保险，在交易中附加不合理条件。2022年6月23日，经当事人申请，举行公开听证，当事人的陈述申辩未被采纳。最终，重庆市市监局决定责令当事人停止违法行为，并处以其2020年度销售额5%的罚款，约240万元。（[查看更多](#)）

### A Chongqing Gas Company Fined CNY 2.4 Million for Abusing Dominant Market Position

On February 1, 2023, The State Administration for Market Regulation (“SAMR”) announced the decision of Chongqing Municipal Administration for Market Regulation (“Chongqing AMR”) to impose administrative penalties on Chongqing Yongkang Gas Company Limited (“Chongqing Yongkang”). Since the filing of the case on August 30, 2021, the Chongqing AMR found that Chongqing Yongkang had a dominant market position in the piped gas supply service market in 15 towns and streets in Yongchuan District, Chongqing. Since 2018, the party has abused its dominant market position by forcing users to purchase gas stoves, alarms and insurance marketed by it, attaching unreasonable trading conditions without justifiable reasons. on June 23, 2022, upon the party’s application, a public hearing was held and the party’s arguments were not accepted. In the end, the Chongqing AMR decided to order the party to stop the violations and imposed a fine of 5% of its sales in 2020, about CNY 2.4 million. ([More](#))

### 中央政治局强调加强反垄断

2023年1月31日，中共中央政治局进行第二次集体学习活动。会议提出要深化要素市场化改革，建设高标准市场体系，加快构建全国统一大市场。完善产权保护、市场准入、公平竞争、社会信用等市场经济基础制度，加强反垄断和反不正当竞争。（[查看更多](#)）

### Political Bureau of the Central Committee of the CPC Emphasizes Strengthening Anti-monopoly

On January 31, 2023, the Political Bureau of the Central Committee of the CPC conducted its second collective study activity. The meeting proposed to deepen the market-oriented reform of factors, build a high-standard market system, and accelerate the construction of a large national unified market. Improve the protection of property rights, market access, fair competition, social credit and other basic systems of the market economy, and strengthen anti-monopoly and anti-unfair competition. ([More](#))

## 江苏一燃气公司因滥用市场支配地位被罚没约5040万

近日，江苏省市场监督管理局（“江苏省市监局”）发布行政处罚公告，南京中燃城市燃气发展有限公司被认定滥用市场支配地位，自2016年起，强制要求开发商购买燃气保险等产品，并收取不合理的工程安装费，无正当理由施加不合理交易条件。江苏省市监局最终决定对该公司罚款20,837,566.20元，没收违法所得29,563,108.91元，共计罚没约5040万元。（[查看更多](#)）

## A Jiangsu Gas Company Fined and Confiscated CNY 50.4 Million for Abusing Dominant Market Position

Recently, the Jiangsu Provincial Administration for Market Regulation (“Jiangsu AMR”) issued an administrative penalty notice, finding Nanjing Zhongran City Gas Development Co., Ltd. abused its dominant market position. Since 2016, the company has forced real estate developers to purchase products like gas insurance, and charged unreasonable project installation fees, imposing unreasonable trading conditions without justifiable reasons. The Jiangsu AMR finally decided to fine the company CNY 20,837,566.20 and confiscated the illegal income of CNY 29,563,108.91, totaling about CNY 50.4 million. ([More](#))

## 韩国更新并购审查标准及并购申报指南

2023年1月30日，韩国公平交易委员会（KFTC）发布公告，宣布修订《企业合并审查标准》和《企业合并申报指南》。根据新的指南和标准，简易审查范围扩大至包含仅出于投资目的的合并，非横向合并交易的安全港规则适用范围也扩大至适用10%的市场份额门槛。修订后的标准细化了对不影响韩国国内市场的外国合并交易的审查标准，并扩大了可以适用简易申报程序的合并交易范围。（[查看更多](#)）

## KFTC Enforces its Amended M&A Review Standard and M&A Notification Guidelines

On January 30, 2023, the Korea Fair Trade Commission (KFTC) issued a statement, announcing that it had amended its Review Standard for Combination of Enterprises and Guidelines for Reporting Business Combinations. According to the new guidelines and standards, the scope of simplified review is expanded to include mergers solely for investment purposes, the scope of safe-harbor regulations for non-horizontal mergers is also expanded to apply market share threshold of 10%. The amended standard refined standards for foreign mergers that do not affect the domestic market and expanded scope of mergers subject to simplified notification. ([More](#))

## 英特尔或面临新的欧盟处罚

2023年1月29日，据媒体报道，英特尔（Intel）在其年报中披露或面临新的欧盟罚款。此前，欧盟普通法院于2022年1月驳回了欧盟委员会于2009年5月对英特尔作出的10.6亿欧元反垄断罚款。对此，欧盟委员会上诉至欧洲法院。而由于欧盟普通法院并未否定欧盟委员会认定的“英特尔支付款项以阻止特定竞争产品的销售”行为，欧盟委员会基于此重新开启行政调查程序并将根

据指控的行为确定对英特尔的罚款，目前英特尔尚无法对此事可能造成的潜在损失或损失范围（如有）作出合理评估。（[查看更多](#)）

## Intel Could Face New EU Fine

On January 29, 2023, according to news report, Intel said in its annual report that it could face new EU fine. Previously in January 2022, the EU General Court rebutted the EUR 1.06 billion penalty decision made against Intel by the European Commission in May 2009. Later, the European Commission appealed to EU's top court. Since the judges had backed one part of the regulator's original findings stating that "Intel made payments to prevent sales of specific rival products", the European Commission may still reopened its administrative procedure to determine a fine against Intel based on that alleged conduct. Intel said. "We are unable to make a reasonable estimate of the potential loss or range of losses, if any, that might arise from this matter." ([More](#))

## 英国就横向垄断协议指南草案公开征求意见

2023年1月25日，英国竞争与市场管理局（Competition and Markets Authority, CMA）就横向垄断协议指南草案公开征求意见。该草案主要解释了CMA如何适用《1998竞争法》第一章中对禁止横向垄断协议的规定，此外还对如何适用《2022特殊协议集体豁免令》及《2022研发集体豁免令》做出了规定。指南列出了如何评估一般性横向协议的法律框架，并分章节对评估采购协议、生产协议、商业化协议、标准化协议等不同类型协议进行了指导。（[查看更多](#)）

## CMA Consults on Draft Guidance on Horizontal Agreements

On January 25, 2023, the UK Competition and Markets Authority (CMA) publicly consulted on draft guidance on horizontal agreements. The guidance is mainly on the application of the Chapter I prohibition in the *Competition Act 1998* to horizontal agreements. The guidance also describes the application of the *Specialisation Agreements Block Exemption Order 2022* and the *Research and Development Block Exemption Order 2022*. The guidance sets out the legal framework to assess general horizontal agreements, and gives instructions on how to assess different agreements such as purchasing agreements, production agreements, commercialization agreements and standardization agreements etc. ([More](#))

## 美国司法部起诉谷歌垄断数字广告技术

2023年1月24日，美国司法部发布公告，宣布与美国八个州的检察长一道起诉谷歌（Google）违反《谢尔曼法》第一和第二条规定，垄断多个数字广告技术产品。被诉的谷歌反竞争行为包括：（1）收购竞争对手：通过系列收购获得对网站发布商用以销售广告空间的关键数字广告工具的控制权；（2）强迫使用谷歌工具：一方面通过限制谷歌广告交易平台上独有的广告商需求，将网站发布商锁定在谷歌新获得的工具上，反之另一方面，限制只有使用谷歌自己的发布商广告服务才能达成对谷歌广告交易平台的有效实时访问；（3）扭曲竞拍竞争，限制对广告交易平台上的媒体资源库的实时竞价，并阻碍竞争广告交易平台以同等条件与谷歌竞争的能

力；（4）操纵竞拍，操纵多个产品的拍卖机制从而使得谷歌免于竞争，削弱竞争对手的规模，阻止竞争技术崛起。美国司法部认为谷歌的反竞争行为压制了替代技术，阻碍了出版商、广告商和竞争对手采用竞争技术。（[查看更多](#)）

## DOJ Sues Google for Monopolizing Digital Advertising Technologies

On January 24, 2023, the U.S. Department of Justice (DOJ) issued an announcement, stating that it had, along with Attorneys General of 8 other states, filed a civil antitrust suit against Google for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the *Sherman Act*. Google's alleged anticompetitive conduct has included: (a) Acquiring Competitors: Engaging in a pattern of acquisitions to obtain control over key digital advertising tools used by website publishers to sell advertising space; (b) Forcing Adoption of Google's Tools: Locking in website publishers to its newly-acquired tools by restricting its unique, must-have advertiser demand to its ad exchange, and in turn, conditioning effective real-time access to its ad exchange on the use of its publisher ad server; (c) Distorting Auction Competition: Limiting real-time bidding on publisher inventory to its ad exchange, and impeding rival ad exchanges' ability to compete on the same terms as Google's ad exchange; and (d) Auction Manipulation: Manipulating auction mechanics across several of its products to insulate Google from competition, deprive rivals of scale, and halt the rise of rival technologies. DOJ concludes that Google's anticompetitive conduct has suppressed alternative technologies, hindering their adoption by publishers, advertisers, and rivals. ([More](#))

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

### 最高检发布大数据赋能未成年人检察监督典型案例

2023年2月2日，最高人民检察院发布大数据赋能未成年人检察监督典型案例。该批案例聚焦未成年人保护工作中存在的堵点、难点问题，以大数据赋能驱动未检工作提质增效。该批典型案例共5件，案例中数据分析的关键点分别在于根据不同部门所掌握校车数据之间的“差异项”，找准监管盲区，通过行政公益诉讼，督促行政机关强化校车安全管理；根据强制报告制度执行的要求在诊疗系统中发现需要强制报告的案件，进一步优化强制报告制度落地的路径；通过数据分析找出符合保障救助条件的事实无人抚养儿童；通过比对位置信息，对校园周边是否存在违规设置的不适宜未成年人活动场所开展全覆盖、动态化监督；及时确定声音是否超标、噪声污染行为是否得到行政机关的有效治理，保护校园正常教学秩序和学生健康成长。（[查看更多](#)）

### SPP Release Typical Cases of Big Data Enabling Minors' Procuratorial Supervision

On 2 February 2023, Supreme People's Procuratorate ("SPP") released typical cases of big data enabling minors' procuratorial supervision. The said batch of cases focus on problems and difficulties in the protection of minors, and drive the quality and efficiency of the minor's supervision work to be enhanced by big data. This batch of typical cases consists of five cases. The key points of the data analysis of the cases lie in identifying the blind areas of supervision based on the "discrepancies" between the

school bus data held by different departments and urging the administrative authority to strengthen school bus safety management through administrative public interest litigation; further optimize the path for implementing the mandatory reporting system for cases that need to be reported compulsorily found out in the diagnosis and treatment system in accordance with the implementation requirements for the mandatory reporting system; and find out the unaccompanied children in reality that meet the assistance conditions through data analysis; by comparing the location information, carry out full coverage and dynamic supervision on whether there are illegal and inappropriate places for minors around the campus; timely determine whether the sound exceeds the standard and whether the noise pollution behavior has been effectively controlled by the administrative organ, so as to protect the normal teaching order on campus and the healthy growth of students. ([More](#))

## 上海市网信办发布数据出境安全评估申报工作实务问答（二）

2023年2月1日，上海市互联网信息办公室（下称“上海市网信办”）发布数据出境安全评估申报工作实务问答（二）（下称“问答（二）”）。问答二明确，数据处理者不能自行变更申报材料模板、不得变更自评估报告框架，同时建议增加目录并注明页码。如有第三方机构参与自评估，须在自评估报告中说明第三方机构的基本情况及其参与评估的情况，并在相关内容页上加盖第三方机构公章。数据处理者申报的出境数据应为未来两年的拟出境数据，包括数据规模和涉及自然人数量，自然人数量应按人数计算，并标注是否去重等。（[查看更多](#)）

## Cyberspace Administration of Shanghai Municipality Issues the Questions and Answers (II) on the Practice of Declaration for Security Assessment for Cross-border Transfer of Data

On 1 February 2023, the Cyberspace Administration of Shanghai Municipality has issued the Questions and Answers (II) on the Practice of Declaration for Security Assessment for Cross-border Transfer of Data (the "Q&A (II)"). The Q&A (II) specify that the data processors shall not change the application materials template or the framework for self-assessment reports at their own discretion, and it is suggested to add a catalogue with page numbers indicated. If any third-party institution has participated in the self-assessment, it is required to state the basic information of the third-party institution and its participation in the self-assessment report, and affix the official seal of the third-party institution to the relevant content page. The data declared by processor shall be the data to be transmitted abroad in the following two years, including the scale of the data and the number of natural persons involved. The number of natural persons shall be calculated based on the number of persons and be marked whether repeated data have been eliminated. ([More](#))

## 上海市通信管理局发布《上海市信息通信行业加强集成创新持续优化营商环境二十条》

2023年2月7日，上海市通信管理局发布《上海市信息通信行业加强集成创新持续优化营商环境二十条》（下称“《二十条》”）。《二十条》提出，启动数据安全“浦江护航”行动，服务上海安全产业发展。具体而言，包括制定工业和信息化领域重要数据认定、分类分级保护、监督检查、安全评估等地方标准并开展贯标试点及推广，进一步加大政策扶持力度，保护广大企业核心数据资产，推动上海市网络和数据安全产业蓬勃发展。（[查看更多](#)）



## **Shanghai Communications Administration Issues the Twenty Articles of Shanghai Municipality on Strengthening Integrated Innovation and Continuous Optimization of Business Environment for Information and Communications Industry**

On 7 February 2023, the Shanghai Communications Administration promulgated the *Twenty Articles of Shanghai Municipality on Strengthening Integrated Innovation and Continuous Optimization of Business Environment for Information and Communications Industry* (the "Twenty Articles"). It is proposed in the Twenty Articles that the "Pujiang Escort" action of data security shall be started to serve the development of security industry in Shanghai. Specifically, it includes developing local standards for the identification of important data, classified and hierarchical protection, supervision and inspection, security evaluation, and other aspects in the field of industry and information technology, and carrying out the pilot implementation of such standards and promoting the implementation thereof. It will further increase policy support to protect the core data assets of enterprises and promote the prosperous development of the network and data security industry in Shanghai. ([More](#))

### **川渝两地通信主管部门发布2023年第一期侵害用户权益APP名单**

2023年1月31日，重庆市通信管理局发布消息称，重庆市通信管理局和四川省通信管理局近期组织第三方检测机构对川渝两地主流应用商店移动互联网应用程序(APP)进行了检查。截至目前，仍有16款APP未按要求完成整改。APP主要涉及问题包括：违规收集个人信息；未公开收集使用规则；APP强制、频繁、过度索取权限；强制用户使用定向推送功能等。 ([查看更多](#))

## **Sichuan and Chongqing Communications Administrations Release the First Edition of List of Apps Infringing upon Users' Rights and Interests in 2023**

On 31 January 2023, Chongqing Communications Administration announced that the Chongqing Communications Administration and the Sichuan Communications Administration have recently organized third-party inspection institutions to inspect the mobile Internet applications (APP) of the mainstream application stores in Sichuan and Chongqing. Up to now, there are still 16 Apps that have not completed the required rectification. The main issues involved in Apps include illegal collection of personal information; non-disclosure of collection and use rules; forced, frequent and excessive requests for authority by Apps; forced users to use targeted push function by Apps, etc. ([More](#))

### **安徽省通信管理局发布关于侵害用户权益APP的通报（2023年第1批）**

2023年2月2日，安徽省通信管理局发布公告称，近期对安徽省内APP进行了拨测检查，共检测到26款APP存在违法违规收集使用个人信息的问题，对上述违规APP企业下达了责令改正通知书，要求限期完成整改工作。截至目前，尚有17款APP存在未整改问题，包括：违规收集个人信息；超范围收集个人信息；强制用户使用定向推送功能；APP强制、频繁、过度索取权限等。 ([查看更多](#))

## **Anhui Communications Administration Releases Bulletin on Apps Infringing upon Rights and Interests of Users (the First Batch in 2023)**

On 2 February 2023, the Anhui Communications Administration said in an announcement that it has

recently conducted call testing and inspection on the Apps in Anhui Province and detected 26 types of Apps that collect or use personal information in violation of laws and regulations, and has issued a notice to order the above-mentioned App enterprises in violation of laws and regulations to complete the rectification within a prescribed time limit. So far, there are 17 types of Apps that have not been rectified yet, including illegal collection of personal information; collection of personal information beyond the scope; forcing users to use the targeted push function; and forced, frequent and excessive claims for permissions by Apps. ([More](#))

### 因未落实信息使用授权审批程序等行为，中行安阳分行被罚40.3万元

2023年1月30日，中国人民银行郑州中心支行公布的行政处罚信息公示表显示，中国银行股份有限公司安阳分行因涉及虚报金融统计数据、未按照规定履行客户身份识别义务、漏报投诉数据、未合理确定本机构工作人员调取信息的范围、权限，以及未严格落实信息使用授权审批程序等8项违法行为，被人民银行安阳市中心支行予以警告，并处罚款40.3万元。 ([查看更多](#))

### The Anyang Branch of the People's Bank of China Is Fined RMB 403,000 for Failing to Implement the Approval Procedures for Authorization of the Use of Information.

On 30 January 2023, the administrative punishment information announcement form made public by the Zhengzhou Central Sub-branch of the People's Bank of China shows the Anyang Branch of Bank of China Limited committed eight illegal acts including misstating financial statistical data, failing to perform its obligations of identifying clients according to regulations, failing to report complaint data, failing to reasonably determine the scope and authority of its staff to access information and failing to strictly implement approval procedures for authorization of the use of information. Such violations shall be given a warning and a fine of RMB 403,000 by the Anyang Central Branch of the People's Bank of China. ([More](#))

### 欧盟和新加坡启动数字合作伙伴关系

2023年2月1日，欧盟发布消息称，欧盟和新加坡作为战略伙伴正在加强合作。继2022年12月的欧盟-东盟峰会上宣布欧盟和新加坡之间的新数字伙伴关系之后，内部市场专员蒂埃里·布雷顿 (Thierry Breton) 和新加坡工业和贸易部长 S·伊斯瓦兰 (S Iswaran) 签署了一项数字伙伴关系，这将加强欧盟和新加坡在数字技术领域的合作。欧盟-新加坡数字伙伴关系反映了欧盟与开放和外向型经济以及东南亚蓬勃物流和金融枢纽所建立的充满活力的关系。双方同意在半导体、可信数据流和数据创新、数字信托、标准、数字贸易便利化、工人数字技能以及企业和公共服务的数字转型等关键领域进行合作。 ([查看更多](#))

### EU and Singapore launch Digital Partnership

On 2 February 2023, as reported by European Commission, the EU and Singapore are strengthening their cooperation as strategic partners. Following the announcement of a new Digital Partnership between the EU and Singapore at the EU-ASEAN summit in December 2022, Commissioner for the Internal Market Thierry Breton and Singapore Minister of Industry and Trade S Iswaran signed a Digital

Partnership that will strengthen cooperation between the EU and Singapore on digital technology areas. The EU-Singapore Digital Partnership reflects the dynamic relation the EU has built with an open and outward-oriented economy and a vibrant logistics and financial hub in South-East Asia. Both sides have agreed to work together on critical areas such as semiconductors, trusted data flows and data innovation, digital trust, standards, digital trade facilitation, digital skills for workers, and the digital transformation of businesses and public services. ([More](#))

## ISO发布了31700-1和31700-2有关于消费品和服务中的消费者保护和隐私设计标准

2023年1月31日，国际标准化组织（下称“ISO”）发布有关于消费品和服务中的消费者保护和隐私设计标准ISO 31700-1:2023和ISO/TR 31700-2:2023。其中，ISO 31700-1对隐私设计设定了较高的要求，以确保在消费产品的整个生命周期中保护隐私，包括保护消费者处理的数据。ISO 31700-2则是基于“消费者中心”制定，消费者的权利和偏好被置于产品开发和运营的核心位置，并通过说明性的使用案例及相关分析，帮助理解ISO31700-1的要求。最后，ISO 31700-1将“隐私设计”定义为一种设计方法，其中隐私被纳入并整合到最初的设计阶段，并且贯穿涉及处理个人身份信息的产品、流程或者服务的整个生命周期中，包括产品报废和最终相关个人身份信息的删除。 ([查看更多](#))

## ISO publishes 31700-1 and 31700-2 standards on consumer protection and Privacy by Design for consumer goods and services

On 31 January 2023, the International Standards Organization ('ISO') published its standards ISO 31700-1:2023 and ISO/TR 31700-2:2023. In particular, ISO 31700-1 provides high level requirements for Privacy by Design to protect privacy throughout the lifecycle of a consumer product, including data processed by the consumer. ISO 31700-2 is grounded in a consumer-focused approach, in which consumer privacy rights and preferences are placed at the heart of product development and operation, ISO 31700-2 provides illustrative use cases, with associated analysis, chosen to assist in understanding the requirements of the ISO 31700-1. Lastly, ISO 31700-1 defines Privacy by Design as design methodologies in which privacy is considered and integrated into the initial design stage and throughout the complete lifecycle of products, processes or services that involve processing of personally identifiable information, including product retirement and the eventual deletion of any associated personally identifiable information. ([More](#))

## 知识产权 Intellectual Property

### 3月1日起，国家知识产权局不再接受传真方式提交PCT国际申请文件

2月3日，国家知识产权局发布了《关于不再接受传真方式提交PCT国际申请文件的通知》。宣布自2023年3月1日起，中国国家知识产权局作为受理局不再接受传真方式提交的PCT国际申请文件以及在申请之后提交的与其有关的任何文件或者信函。PCT国际申请人可以使用“专利业

务办理系统”客户端和网页版(<https://cponline.cnipa.gov.cn>)以电子方式或以纸件方式向中国局提交PCT国际申请文件和办理相关业务。

来源：国家知识产权局

## **Since March 1, CNIPA will no longer Accept the Submission of PCT International Application Documents by Fax**

On February 3, the CNIPA issued the Notice on Not Accepting the Submission of PCT International Application Documents by Fax. It is announced that from March 1, 2023, the CNIPA, as the receiving office, will no longer accept the PCT international application documents submitted by fax and any documents or letters related to it submitted after the application. PCT international applicants may use the client-side and webpage of the "Patent Service Handling System" (<https://cponline.cnipa.gov.cn>) to submit the PCT international application documents and handle the relevant business to the CNIPA in electronic or paper form.

Source: CNIPA

## **二审改判不侵权！“嗨吃家”不能被独占**

近日，河南省高级人民法院就河南嗨吃家企业管理有限公司（下称“河南嗨吃家公司”）与河南乐达食品有限公司（下称“乐达公司”）、郑州市惠济区佳选百货商行、深圳市龙岗区麦可香食品屋侵害商标权纠纷案作出二审判决，改判驳回河南嗨吃家公司的全部诉讼请求。

二审法院认为，本案中，嗨吃家公司通过受让等方式享有“嗨吃客”等嗨吃系列商标，乐达公司申请注册了“嗨吃家”商标，上述商标核定使用的范围均涵盖国际分类第30类，被控侵权商标与嗨吃家公司的注册商标相比较，读音、文字含义较为相似，但从显著性与知名度看不构成商标法意义上的近似。此外，“嗨吃家”商标系众多企业通过长期使用而逐渐形成的品牌，承载着相关实体企业的商誉。嗨吃家公司成立后，通过受让、申请等方式取得“嗨吃”系列商标，现其对在先使用的企业提起系列侵权诉讼，诉请独享对“嗨吃”系列商标包括“嗨吃家”的专用权，有悖于诚实信用原则，不符合商标法的价值取向，也不利于实体经济的发展，不应得到鼓励和支持。

来源：河南省高级人民法院

## **The Second Trial Changed the Verdict to no Infringement! "Hichijia" could not be Monopolized**

Henan High People's Court has issued the second-instance judgment in a trademark infringement dispute, according to which all claims of the plaintiff are rejected.

The court held that, the plaintiff enjoyed the "Hichike" and other Hichi series trademarks by means of assignment, and the defendant applied for the registration of the "Hichijia" trademark. The scope of

use of the above trademarks covered the 30th category of international classification. Compared with the plaintiff's registered trademark, the accused infringing trademark had similar pronunciation and literal meaning, but it did not constitute the similarity in the meaning of trademark law from the perspective of significance and popularity. In addition, the "Hichijia" trademark is a brand gradually developed by numerous enterprises through the long-term use by them, bearing the goodwill of relevant entities. After the company was established, the plaintiff has obtained the "Hi Chi" trademark series by means of assignment, application etc. Now the plaintiff has filed a series of infringement lawsuits against the prior enterprise (s), requesting for an exclusive exclusive right to the "Hi Chi" trademark series including "Hi Chi". This is contrary to the principle of good faith and does not comply with the value orientation of the Trademark Law.

Source: Henan High People's Court

### 擅将“华为”突出使用在自身产品的网售链接标题中构成侵权

上海市金山区人民法院就华为技术有限公司与暨奢服饰（上海）有限公司侵害商标权、虚假宣传纠纷案作出判决，责令被告暨奢服饰（上海）有限公司停止侵害“华为”商标的注册商标专用权以及不正当竞争的行为，赔偿经济损失200万元。

法院认为，被告暨奢公司将“华为适用”、“华为正品”、“华为手机适用”、“华为正品手机适用”等文字作为自身产品网络销售链接标题的首部使用，并在标题的显著位置予以凸显，其自身产品品牌却不予显示，标题中伴有“正品”词汇，容易导致网络用户产生混淆。被告暨奢公司对自身产品网络销售链接标题的取名方式既不符合电商平台的产品标题发布规范，也不符合行业通用做法，其行为构成商标侵权。原告华为公司与被告暨奢公司同为智能手表的经营者，具有市场竞争关系。原告华为公司所拥有的“华为”商标具有广泛的市场知名度。被告暨奢公司在自身产品的网络销售链接标题的首部，突出使用“华为正品”文字，该行为系引人误解的商业宣传，容易误导消费者，故被告暨奢公司的行为构成虚假宣传。

来源：上海市金山区人民法院

### Outstanding Use of "Huawei" in the Titles of the Online Sales Links to Own Products Constitutes Infringement

The Shanghai Jinshan District People's Court made a judgment on trademark rights and false promotion disputes, ordering the defendant to stop infringing on the exclusive right to use the registered trademark of "Huawei" trademark and unfair competition, and pay the damages of RMB 2 million.

The court held that the defendant used the words "Huawei applicable", "Huawei Genuine", "Huawei mobile phone applicable", "Huawei Genuine mobile phone applicable" and other words as the first part of the title of the online sales link of its own product, and highlighted them in the prominent position of the title, but its own product brand was not displayed. The title was accompanied by the words "genuine", which easily led to confusion among users. The defendant's naming method for the link title of the online sales of its own products did not comply with the product title publishing rules of the e-commerce platform, nor did it comply with the general industry practice, and its conduct constituted

trademark infringement. The plaintiff Huawei and the defendant are both smartwatch operators and there is a market competitive relationship. The trademark "Huawei" owned by the Plaintiff Huawei Corporation has wide market popularity. The defendant prominently used the words "Huawei Genuine" in the title of the links of its own products' online sales. Such act was misleading commercial promotion, which would easily mislead consumers; therefore, the act of the defendant constituted false promotion.

Source: Shanghai Jinshan District People's Court

### 恶意注册商标后提起侵权诉讼，法院：违背诚实信用原则

近日，上海知识产权法院对李某诉利锦公司、欧若迪公司侵害商标权案作出驳回上诉、维持原判的二审判决。

法院认为，李某在无任何使用意图和使用行为的情况下，在与欧若迪公司经营产品相同的商品类别申请注册与欧若迪公司在先使用的字号及商标相同的商标，且涉及的是气体分离设备等较为专业、生产能力要求较高的领域。李某还申请了包括涉案商标在内的一百多个商标，涉及领域较为广泛，其中不乏如涉案商标核定使用商品所涉较为专业的领域，其申请注册涉案商标难谓正当，该行为违反了诚实信用原则。李某基于涉案商标提起本案诉讼涉嫌滥用权利，明显具有不正当性，违背了民事诉讼诚实信用原则。

来源：上海知识产权法院

### Filing Infringement Lawsuit After Malicious Trademark Registration, Court: Against the Principle of Good Faith

Recently, the Shanghai Intellectual Property Court made a second instance judgment rejecting the appeal and upholding the original judgment in the case of trademark infringement. The court held that the plaintiff applied for registration of a trademark identical to the trade name and trademark previously used by the defendant under the category of products of the same category as the products operated by the defendant without any intention of use and in connection with the registration of such trademark. The registration involves gas separation equipment and fields with a high requirement for production capacity. The plaintiff had also applied for registration of more than one hundred trademarks, including the trademark involved in a wide range of fields, some of which were approved to use the trademark involved in professional fields. Therefore, it is difficult to deem the application for registration of the trademark involved as justified as such act violated the principle of good faith.

Source: Shanghai IP Court

### 仿冒游戏名称及添加关键词进行推广构成不正当竞争

北京知识产权法院就上海天奎网络技术有限公司（下称“天奎公司”）与广州游城网络科技有限公司（下称“游城公司”）、杨振海、北京百度网讯科技有限公司侵害著作权及不正当竞争纠纷案作出二审判决，责令游城公司立即停止涉案侵害信息网络传播权及不正当竞争的行为，赔偿天奎公司经济损失50万元及合理开支5万元。

法院认为，首先，关于仿冒游戏名称的行为，根据在案证据可以认定权利手游的名称“奇迹觉醒”、“奇迹MU：觉醒”系天奎公司具有一定影响的商品名称，游城公司将“奇迹封神”作为游戏名称，并结合“MU”标识进行宣传，易使相关公众对被诉手游与权利手游产生混淆误认，或者认为二者存在特定的联系。作为同业竞争者，游城公司应当知道权利手游的存在，但其选择了与权利手游极为近似的名称，易使相关公众产生混淆，其行为构成反不正当竞争法第六条第一项所规制的不正当竞争行为。

其次，关于关键词推广行为，对被诉手游添加关键字进行百度推广的行为系使用游城公司的账户完成，上述添加关键词“奇迹觉醒手游”进行推广的行为，使得被诉网站优先于权利手游官网的搜索结果展示，达到利用网络用户的初始混淆争夺潜在客户的效果，易使部分本应访问权利手游相关网站的用户通过被诉推广链接访问被诉网站，从而使被诉网站获得更多的点击量，将造成天奎公司游戏用户的流失和商业机会的丧失。该行为有悖诚实信用原则和公认的商业道德，属于违反反不正当竞争法第二条之规定的不正当竞争行为。

来源：北京知识产权法院

## Counterfeiting Game Names and Adding Keywords for Promotion Constitute Unfair Competition

The Beijing Intellectual Property Court made a second judgment on the copyright and unfair competition dispute case, ordering the defendant to stop infringing on the right of network dissemination of information and unfair competition, and pay the damages of RMB 550,000.

The court held that, first of all, with respect to the passing-off of game name, it can be recognized based on the documented evidence that the mobile game names "miracle awakening" and "miracle MU: awakening" are product names of Plaintiff that have certain influence. Defendant's promotion of the game name containing the word "miracle" together with the "MU" mark is easy to cause the relevant public to be confused or to believe that there is a specific connection between the two. The defendant's act constitutes unfair competition as regulated by Item 1 of Article 6 of the Anti-Unfair Competition Law.

Secondly, with regard to the keyword promotion act, the act of adding the keyword "Miracle Awakening Mobile Game" to the accused mobile game for Baidu promotion will make the accused website take precedence over the display of search results on the official website of the right mobile game, which will cause initial confusion of users, and easily make some users who should visit the right mobile game related websites access the accused website through the accused promotion link, so that the accused website can get more hits. It will cause the loss of the plaintiff's game users and the loss of business opportunities. This act is contrary to the principle of good faith and recognized business ethics, and is an unfair competition act in violation of the provisions of Article 2 of the Anti-Unfair Competition Law.

Source: Beijing IP Court

## 利用“江南布衣”服装款式与款号的对应关系吸引流量构成不正当竞争

近日，浙江省高级人民法院就杭州江南布衣服饰有限公司（下称“江南布衣公司”）与姜建飞不正当竞争纠纷案作出再审判决，撤销二审判决，维持一审判决，即姜建飞在www.taobao.com上刊登声明，消除影响，并于判决生效之日起十日内赔偿江南布衣公司经济损失及合理开支150万元。

再审法院认为，江南布衣公司对涉案服装款式和款号享有合法竞争性利益，姜建飞销售与江南布衣公司相同款式的服装以及使用相同服装款号的行为违反诚信原则和商业道德，具有不正当性。姜建飞的被诉行为损害了江南布衣公司以及相关消费者的合法权益，扰乱了市场竞争秩序。其行为明显挤占了江南布衣公司的交易机会，已经对江南布衣公司的商品构成实质性替代，给江南布衣公司造成实质损害。从消费者利益角度看，相关消费者虽然在短时间内能买到更便宜的流行服饰，但如果对此类大规模仿冒行为不予规制，必然导致原创设计动力衰退，长期来看并不利于消费者利益。

本案中，江南布衣公司未提供证据证明其因被侵权所受到的实际损失和姜建飞因侵权所获得的利益，故本案应当适用法定赔偿方式确定赔偿数额，根据在案证据，再审法院认为一审法院确定的150万元赔偿数额合理，应予维持。

来源：浙江省高级人民法院

## The Use of the Corresponding Relationship between the Style and the Item Number of "JNBY" to Attract Traffic Constitutes Unfair Competition

Recently, the Zhejiang High People's Court made a retrial judgment on the unfair competition dispute case, rescinded the second trial judgment, and maintained the first trial judgment, that is, the defendant published a statement on www.taobao.com to eliminate the impact and pay the damages of RMB 1.5 million.

The court held that the plaintiff had legitimate and competitive interests in the style and the item number of the clothes involved in the case, and the defendant's act of selling clothes of the same style as the plaintiff and using the same style of clothes violated the principle of good faith and business ethics, which was unfair. The defendant's sued act damaged the legitimate rights and interests of the plaintiff and relevant consumers. Its behavior has obviously squeezed the plaintiff's trading opportunities, and has substantially replaced the plaintiff's products, causing substantial damage to the plaintiff. From the perspective of consumer interests, although relevant consumers can buy cheaper fashion clothes in a short time, if such large-scale counterfeiting is not regulated, it will inevitably lead to the decline of original design motivation, which is not conducive to consumer interests in the long run.

Source: Zhejiang High People's Court



## 耐克起诉BAPE商标侵权，请求法院下达禁令

知名运动品牌耐克在曼哈顿联邦法院对潮流品牌BAPE(下称猿人头)提起诉讼，指控该品牌直接抄袭其运动鞋设计，耐克提交的诉讼中的图形图表将Bape的Bape Sta与Air Force 1, Bape Sta Mid与Air Force 1 Mid, Sk8 Sta与Dunk, Court Sta High与Air Jordan 1以及Court Sta与Air Jordan 1 Low进行了比较。

报道称，在耐克多达28页的起诉书中，横向对比了耐克部分经典款式以及猿人头当下在售热门款式，以证明对方多个鞋款都能在耐克产品线上找到对应产品。耐克要求法院下令禁止猿人头继续出售相关侵权鞋款，并向其索要相应赔偿金。

来源：[complex.com](https://www.complex.com)

## Nike Sued BAPE Trademark Infringement and Requested the Court to Issue an Injunction

Nike, a well-known sports brand, filed a lawsuit against BAPE, a fashion brand, in the federal court in Manhattan, accusing the brand of directly copying its sneaker design. The graphic diagrams submitted by Nike compared Bape Sta with Air Force 1, Bape Sta Mid with Air Force 1 Mid, Sk8 Sta with Dunk, Court Sta High with Air Jordan 1, and Court Sta with Air Jordan 1 Low.

According to the report, in Nike's 28-page indictment, some of Nike's classic styles and BAPE's current popular styles were compared horizontally to prove that the other side's multiple shoes could find corresponding products on the Nike product line. Nike asked the court to order BAPE to continue to sell relevant infringing shoes and claim corresponding damages from it.

Source: [China News](https://www.chinaneews.com)

## 爱马仕铂金包 NFT 商标侵权案开庭

爱马仕起诉艺术家 Mason Rothschild 商标侵权一案于 1 月 30 日在纽约南区法院开庭。这起长达 1 年多的 NFT 侵权案将迎来最终的判定结果。

Mason Rothschild 创作了包含 100 个造型高度类似爱马仕标志性铂金包 Birkin 的虚拟产品 MetaBirkins NFT，这个系列于 2021 年 12 月在迈阿密巴塞尔艺术展上首次亮相，爱马仕于 2022 年 1 月首次提起法律诉讼，爱马仕称 Rothschild 不仅没有获得使用其 Birkin 商标的许可，而且还通过销售具有该商标的产品获利。3 月时，Rothschild 上诉称他的艺术创作受到第一修正案的保护，出售它并不会削弱这些权利，但该上诉后来被驳回。

来源：[华尔街日报](https://www.nytimes.com)

## Hermes Birkin Bag NFT Trademark Infringement Case Opens

The case of Hermes suing artist Mason Rothschild for trademark infringement opened in the South District Court of New York on January 30. This NFT infringement case, which lasted for more than one year, will usher in the final judgment result. Mason Rothschild created a virtual product MetaBirkins NFT, which contains 100 virtual products with a shape highly similar to Hermes' iconic Birkin bag. This series made its debut at the Art Basel in Miami in December 2021. Hermes first filed legal proceedings in January 2022. Hermes said Rothschild not only did not obtain the license to use its Birkin trademark, but also made profits by selling products with the trademark. In March, Rothschild appealed that his artistic creation was protected by the First Amendment and that selling it would not weaken these rights, but the appeal was later rejected.

Source: [The Wall Street Journal](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.




Subscribe to our WeChat community


扫码关注公众号“立方律师事务所”和“竞争法视界”


北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 首尔

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Seoul

 [www.lifanglaw.com](http://www.lifanglaw.com)

 Email: [info@lifanglaw.com](mailto:info@lifanglaw.com)

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261