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

最高检：明确反垄断为公益诉讼检察补充基本业务

SPP: Clarifies that Anti-Monopoly is a Supplementary Basic Business of Public Interest Litigation Prosecution

新疆召开建材行业反垄断合规经营行政指导会

Xinjiang Holds an Administrative Guidance Meeting for Anti-monopoly Compliance in the Building Materials Industry

多省市开展2023年强化民生领域反垄断执法专项行动

Provincial AMRs Launch 2023 Special Campaigns to Strengthen Anti-Monopoly Law Enforcement in the People's Livelihood Area

墨西哥对惠普开出最高额罚单

Mexico Issues Highest-Ever Gun-Jumping Penalty Against HP

欧盟委员会就针对流媒体音乐供应商的应用商店规则向苹果发出异议声明

European Commission Sends Statement of Objections to Apple Clarifying Concerns over App Store Rules for Music Streaming Providers

日本反垄断机构对东京奥运会卡特尔提起刑事诉讼

Japan's Antitrust Watchdog Filed a Criminal Complaint Over Tokyo Olympics Cartel

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

国务院机构改革，组建国家数据局

Institutional Reform of the State Council and the formation of the National Data Administration



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证监会等四部门联合发布《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定》

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CSRC Issues Administrative Measures for Cybersecurity and Information Security in the Securities and Futures Industry

上海市开展“浦江护航”2023年电信和互联网行业数据安全专项行动

Shanghai Municipality Carries out "Pujiang Escort" Special Action of Data Security for Telecommunications and Internet Industries in 2023

《深圳市数据交易管理暂行办法》和《深圳市数据商和数据流通交易第三方服务机构管理暂行办法》发布

Release of the Interim Measures of Shenzhen for the Administration of Data Transactions and the Interim Measures of Shenzhen for the Administration of Data Merchants and Third-Party Service Institutions for Data Circulation Transactions

苏州市数据出境安全评估申报备案平台上线

Suzhou Data Cross-border Security Evaluation Declaration and Filing Platform Launched Online

欧盟数据保护委员会（“EDPB”）发布EDPB关于国家认证标准和欧洲数据保护印章标准意见采纳程序

EDPB Publishes a Procedure for the Adoption of EDPB Opinions on National Criteria for Certification and European Data Protection Seals

挪威数据保护机构发布关于Telenor ASA使用Google Analytics的初步决定

Norway: Datatilsynet Issues Preliminary Decision on the Use of Google Analytics by Telenor ASA



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知识产权 Intellectual Property

国家版权局等四部门发布“剑网2022”专项行动十大案件

Four Departments Including CNIPA Release Ten Cases in the Special Action of "Jianwang 2022"

黑龙江省哈尔滨市市场监管局立案查处三维立体商标侵权案

Harbin Administration of Market Regulation Recognized 3D Trademark Infringement on Shape of Lego

将商标展示在物联网配对设备上属于商标使用行为，可构成假冒注册商标罪

Displaying a Trademark on the Internet of Things Matching Device is Trademark Use and Constitutes the Crime of Counterfeiting

“相宜本草”诉“相依草方”侵权：商品装潢退出市场并非他人当然可以使用的理由

Court Affirms that Phasing out Market is not Legal Ground for Others to Use Commercial Decoration

法院：关于动物形象二次创作作品的侵权认定方法

Shanghai Court Ruled on Copyright Infringement Regarding Re-creation of Animal Images

欧洲《统一专利法院协议》2023年6月1日正式生效

European Unified Patent Court Agreement to be Effective on 1 June 2023

Meta要求法院驳回1.75亿美元侵权裁定，法官：证据充分 赔偿合理

Court Rejected Meta's Requests to Overturn the Verdict on the Awards of USD175 Million

立方竞争法周报 Weekly Competition Law News

最高检：明确反垄断为公益诉讼检察补充基本业务

2023年2月27日，最高人民检察院（“最高检”）召开公益诉讼新闻发布会。最高检表示，2022年，来随着反垄断法修订对检察机关提起公益诉讼作出规定，法定公益诉讼的范围进一步扩大。最高检的公益诉讼制度从最初仅涵盖四个领域，扩展到包含反垄断、个人信息保护、未成年人保护、妇女权益等多个领域，初步建立起了“4+N”的基本业务框架。（[查看更多](#)）

SPP: Clarifies that Anti-Monopoly is a Supplementary Basic Business of Public Interest Litigation Prosecution

On February 27, 2023, the Supreme People's Procuratorate (“SPP”) held a press conference on public interest litigation. The SPP stated that since 2022, with the revision of the *Anti-monopoly Law*, the scope of statutory public interest litigation has been further expanded. The public interest litigation system of the SPP has expanded from initially covering only four areas to include anti-monopoly, personal information protection, protection of minors, women's rights and other areas, initially establishing a “4+N” basic business framework. ([More](#))

新疆召开建材行业反垄断合规经营行政指导会

2023年2月27日，据媒体报道，新疆维吾尔自治区市场监督管理局（“新疆市监局”）召开了建材行业反垄断合规经营行政指导会。此次行政指导会，新疆市监局指导建材行业通过健全合规管理组织、细化合规操作规范、推进问题闭环整改、持续监控合规风险、完善运行保障机制等五项举措，从合规组织体系、运行机制及保障机制等角度着手，持续增强建材行业经营者反垄断法律意识，尽早建立健全反垄断合规管理体系，助推建材行业健康发展。（[查看更多](#)）

Xinjiang Holds an Administrative Guidance Meeting for Anti-monopoly Compliance in the Building Materials Industry

On February 27, 2023, according to news report, the Xinjiang Uygur Autonomous Region Administration for Market Regulation (“Xinjiang AMR”) held an administrative guidance meeting for anti-monopoly compliance in the building materials industry. In this administrative guidance meeting, the Xinjiang AMR guided the building materials industry to adopt five measures, including improving the compliance management organization, refining the compliance operation specifications, promoting closed-loop rectification of problems, continuously monitoring compliance risks, and improving the operation guarantee mechanism. Starting from the perspective of organizational system, operating mechanism and guarantee mechanism, Xinjiang AMR continues to enhance the anti-monopoly legal awareness of building materials industry operators, establish and improve the anti-monopoly compliance management system as soon as possible, and promote the healthy development of the building materials industry. ([More](#))

多省市开展2023年强化民生领域反垄断执法专项行动

近日，多地（山西、重庆、上海、海南、陕西、湖南、北京、江西、天津、甘肃）市场监督管理局（“市监局”）发布公告，将在各自管辖范围内开展2023年民生领域反垄断执法专项行动，主要针对三种垄断行为：（1）建材、日用消费品、汽车、医药等领域的垄断协议行为；（2）公用事业等自然垄断领域和原料药等垄断问题多发领域的滥用市场支配地位行为；（3）教育、医疗卫生、交通运输、工程建设等领域的行政垄断行为。（[查看更多](#)）

Provincial AMRs Launch 2023 Special Campaigns to Strengthen Anti-Monopoly Law Enforcement in the People's Livelihood Area

Recently, the Administrations for Market Regulation (“AMRs”) of many provincial-level government (Shanxi, Chongqing, Shanghai, Hainan, Shaanxi, Hunan, Beijing, Jiangxi, Tianjin and Gansu) issued announcements, stating that they will carry out the 2023 special campaign to strengthen anti-monopoly law enforcement in the people's livelihood area within their respective jurisdictions, mainly focusing on: (1) monopoly agreement behaviors in areas like building materials, consumer goods, automobiles and pharmaceuticals; (2) abuse of dominant market position in natural monopolies such as public utilities and in fields where monopoly problems frequently occur, such as APIs; (3) administrative monopoly in fields like education, health care, transportation and engineering construction. ([More](#))

墨西哥对惠普开出最高额罚单

2023年3月2日，据媒体报道，墨西哥联邦经济竞争委员会（COFECE）对惠普（HP）开出了有史以来最高额的320万欧元罚单，是其此前最高罚款记录的十倍。COFECE表示惠普和缤特力（Plantronics, Poly）未及时通报其已交割的交易（交割时间为2018年10月1日），且两家公司在交易交割前也未取得COFECE的批准。COFECE认为两家公司的行为“损害了墨西哥个人电脑生产和销售市场中的竞争”。（[查看更多](#)）

Mexico Issues Highest-Ever Gun-Jumping Penalty Against HP

On March 2, 2023, according to news report, the Mexico's Federal Economic Competition Commission (COFECE) issued the largest ever penalty against HP, and is almost 10 times the size of the previous record penalty, which was EUR 320,000. The commission said that HP and Plantronics (Poly) failed to notify it of the deal's closing, which took place on October 1, 2018, and that the companies did not obtain the agency's approval before closing the deal. The commission said that the companies' actions “harmed competition in the market for the production and sale of Personal Computers in Mexico.” ([More](#))

欧盟委员会就针对流媒体音乐供应商的应用商店规则向苹果发出异议声明

2023年2月28日，欧盟委员会发布公告，对苹果就其应用商店中针对流媒体音乐供应商的规则发出异议声明。欧盟委员会初步认为苹果通过以下方式滥用了支配地位：（1）对流媒体音乐应用开发商强加应用内购买支付技术（“IAP义务”）；（2）限制应用开发商告知iPhone和iPad用户

替代性音乐订阅服务的能力（“反转向义务”）。欧盟委员会表明在本次调查中将不再就IAP义务的合法性采取立场，而将关注苹果施加给应用程序开发者的合同限制。欧盟委员会初步认为苹果的反转向义务构成违反《欧盟运行条约》第102条的不公平交易条件行为。（[查看更多](#)）

European Commission Sends Statement of Objections to Apple Clarifying Concerns over App Store Rules for Music Streaming Providers

On February 28, 2023, the European Commission published an announcement, stating that it had sent a Statement of Objections to Apple clarifying its concerns over App Store rules for music streaming providers. The Commission preliminarily decides that Apple abused its dominant position by: (i) imposing its own in-app purchase payment technology on music streaming app developers (“IAP obligation”), and (ii) restricting app developers’ ability to inform iPhone and iPad users of alternative music subscription services (“anti-steering obligations”). The Statement of Objections clarifies that the Commission does no longer take a position as to the legality of the IAP obligation for the purposes of this antitrust investigation but rather focuses on the contractual restrictions that Apple imposed on app developers. The Commission takes the preliminary view that Apple’s anti-steering obligations are unfair trading conditions in breach of Article 102 of the *Treaty on the Functioning of the European Union* (“TFEU”). ([More](#))

日本反垄断机构对东京奥运会卡特尔提起刑事诉讼

2023年2月28日，据媒体报道，日本反垄断机构已向检察机关提起刑事诉讼，指控六家公司和七个人合谋操纵数十项为东京夏季奥运会做广告和规划测试活动的投标项目。日本公平交易委员会在声明中表示被告被指控参与了固定77份合同投标价格的卡特尔，总价值合计13.6亿日元。被告包括东京奥运会组委会的主要广告代理机构电通公司的代表，以及东京都政府和管理体育设施的日本体育委员会的管员。（[查看更多](#)）

Japan’s Antitrust Watchdog Filed a Criminal Complaint Over Tokyo Olympics Cartel

On February 28, 2023, according to news report, Japan’s antitrust authority has filed a criminal complaint to the country’s public prosecutor against six companies and seven individuals that allegedly conspired to rig dozens of bids to advertise and plan test events for the recent Tokyo Summer Olympics. The defendants are accused of engaging in a cartel to fix prices for bids on 77 contracts worth a combined 1.36 billion yen, the Japan Fair Trade Commission said in a statement. The defendants include representatives of Dentsu Inc., the organizing committee’s main advertising agency, and officials from the Tokyo metropolitan government and the Japan Sport Council, which manages sports facilities. ([More](#))

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

国务院机构改革，组建国家数据局

根据2023年3月7日新华社报道，根据国务院关于提请审议国务院机构改革方案的议案，组建国家数据局。国家数据局负责协调推进数据基础制度建设，统筹数据资源整合共享和开发利用，统筹推进数字中国、数字经济、数字社会规划和建设等，由国家发展和改革委员会管理。中央网络安全和信息化委员会办公室承担的研究拟订数字中国建设方案、协调推动公共服务和社会治理信息化、协调促进智慧城市建设和协调国家重要信息资源开发利用与共享、推动信息资源跨行业跨部门互联互通等职责，国家发展和改革委员会承担的统筹推进数字经济发展、组织实施国家大数据战略、推进数据要素基础制度建设、推进数字基础设施布局建设等职责划入国家数据局。（[查看更多](#)）

Institutional Reform of the State Council and the formation of the National Data Administration

According to the report of the Xinhua News Agency on 7 March 2023, the National Data Administration will be established in accordance with the proposal of the State Council on the institutional reform plan of the State Council for deliberation. The National Data Administration is in charge of coordinating and promoting the development of the data basic institutional improvement, coordinating the integration, sharing, development and utilization of data resources, and coordinating and promoting the planning and development of Digital China, Digital Economy and Digital Society, which shall be administered by the National Development and Reform Commission. Part of the responsibilities of the Office of the Central Cyberspace Affairs Commission are transferred to the National Data Administration, including studying and formulating the construction plan of Digital China, coordinating and promoting the informatization of public services and social governance, coordinating and promoting the construction of smart cities, coordinating the development, utilization and sharing of important national information resources, and promoting the interconnection of information resources across industries and departments. Part of the responsibilities of the National Development and Reform Commission are also transferred to the National Data Administration, including coordinating and promoting the development of the digital economy, organizing the implementation of the national big data strategy, promoting the construction of data element infrastructure system and the layout of digital infrastructure. ([More](#))

中共中央、国务院印发《数字中国建设整体布局规划》

新华社2023年2月27日电，近日，中共中央、国务院印发了《数字中国建设整体布局规划》（以下简称《规划》）。《规划》指出，建设数字中国是数字时代推进中国式现代化的重要引擎，是构筑国家竞争新优势的有力支撑。《规划》明确，数字中国建设按照“2522”的整体框架进行布局，即夯实数字基础设施和数据资源体系“两大基础”，推进数字技术与经济、政治、文化、社会、生态文明建设“五位一体”深度融合，强化数字技术创新体系和数字安全屏障“两大能力”，优化数字化发展国内国际“两个环境”。《规划》强调，要强化数字中国关键能力。一是构筑自立自强的数字技术创新体系。二是筑牢可信可控的数字安全屏障。切实维护网络安全，完

善网络安全法律法规和政策体系。增强数据安全保障能力，建立数据分类分级保护基础制度，健全网络数据监测预警和应急处置工作体系。《规划》还指出，统筹谋划数字领域国际合作，建立多层面协同、多平台支撑、多主体参与的数字领域国际交流合作体系，积极参与数据跨境流动等相关国际规则构建。（[查看更多](#)）

Issuance of the Overall Layout Plan for the Construction of Digital China by the Central Committee of the CPC and the State Council

According to the Xinhua News Agency on 27 February 2023, the Central Committee of CPC and the State Council issued *the Overall Layout Plan for the Construction of Digital China (The Plan)*. *The Plan* points out that the construction of Digital China is an important engine to promote Chinese-style modernization in the Digital Age and a powerful support to build new competitive advantages of the country. *The Plan* clearly states that the construction of Digital China will be arranged according to the overall framework of "2522", that is, to consolidate the foundations of digital infrastructure and data resource system, promote the "five in one" deep integration of digital technology and economic, political, cultural, social and ecological civilization construction, strengthen the capabilities of digital technology innovation system and digital security barrier, and optimize the environments of digital development at home and abroad. *The Plan* emphasizes the need to strengthen the key capabilities of Digital China. First, build an independent and self-reliant digital technological innovation system. Second, build a credible and controllable digital security barrier. It will enhance the ability to guarantee network and data security, improve the system of cyber security laws, regulations and policies, establish a basic system for data protection upon category and grade, and perfect the system for monitoring, early warning and emergency response work for network data. Furthermore, *the Plan* sets forth the need to plan the international cooperation in the digital field, form the international exchange and cooperation system for the digital field that is characterized by multi-layer collaboration, multi-platform support and participation of multiple subjects, and actively participate in the construction of relevant international rules on the cross-border flow of data. ([More](#))

证监会等四部门联合发布《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定》

2023年2月24日，证监会、财政部、国家保密局、国家档案局联合发布《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定》（以下简称《规定》），《规定》自2023年3月31日起施行。本次修订主要包括：根据上位法调整统一相关表述；将“境内企业”定义为包括直接境外发行上市的境内股份有限公司和间接境外发行上市主体的境内运营实体；要求境内企业境外发行上市过程提供、披露文件资料时，遵守保密等相关法律法规。要求境内企业向有关证券公司、证券服务机构提供文件、资料时，就提供的涉密敏感信息具体情况提供书面说明，证券公司、证券服务机构妥善保存上述书面说明以备查；明确境内企业向单位和个人提供会计档案或会计档案复制件的，应当按照国家有关规定履行相应程序；明确境外证券监督管理机构及有关主管部门提出就境内企业境外发行上市相关活动对境内企业以及为该等企业提供相应服务的境内证券公司、证券服务机构进行检查或调查取证的，应当通过跨境监管合作机制进行，证监会或有关主管部门依据双多边合作机制提供必要的协助等。（[查看更多](#)）

Provisions on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities by Domestic Enterprises Jointly promulgated by Four Authorities Including CSRC

On 24 February 2023, the China Securities Regulatory Commission (CSRC), the Ministry of Finance, the National Administration of State Secrets Protection and the National Archives Administration of China jointly issued the *Provisions on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities (The Provisions)*, which will come into force as of March 31, 2023. The revisions mainly include unifying the relevant expressions in accordance with the higher-level laws; defining "domestic enterprises" to include the domestic companies limited by shares that directly issue shares overseas and the domestic operating entities that indirectly issue shares overseas; requiring domestic enterprises to comply with the requirement of confidentiality in relevant laws and regulations when providing and disclosing documents and materials in the process of overseas public offering and listing; when providing documents and materials to the relevant securities company or securities service institution, requiring the domestic enterprises to provide a written explanation on the specific circumstances of the confidential and sensitive information provided and requiring the securities company or securities service institution to properly keep the aforesaid written explanation for future reference; clarifying that domestic enterprises which provide accounting records or their duplicates to entities and individuals shall go through corresponding procedures in accordance with relevant provisions; clarifying that if the overseas securities regulatory authority and relevant competent authorities propose to inspect or collect evidence from domestic enterprises, domestic securities companies and securities service institutions that provide corresponding services for such enterprises in respect of the activities related to the overseas issuance and listing of domestic enterprises, it shall be conducted through the cross-border regulatory cooperation mechanism, and the CSRC or relevant competent authorities shall provide necessary assistance in accordance with the bilateral and multilateral cooperation mechanism, etc. ([More](#))

证监会发布《证券期货业网络和信息安全管理办法》

2023年2月27日，证监会正式发布《证券期货业网络和信息安全管理办法》（以下简称《办法》），《办法》自2023年5月1日起施行。《办法》适用于核心机构和经营机构在中华人民共和国境内建设、运营、维护、使用网络及信息系统，信息技术系统服务机构为证券期货业务活动提供产品或者服务的网络和信息安全保障，以及证券期货业网络和信息安全监督管理。

《办法》共8章75条，对证券期货业网络和信息安全监督管理体系、网络和信息安全运行、投资者个人信息保护、网络和信息安全应急处置、关键信息基础设施安全保护、网络和信息安全促进与发展、监督管理与法律责任等方面提出了要求。 ([查看更多](#))

CSRC Issues Administrative Measures for Cybersecurity and Information Security in the Securities and Futures Industry

On 27 February 2023, the CSRC issued *Administrative Measures for Cybersecurity and Information Security in the Securities and Futures Industry (The Measures)*, which will come into force as of May 1, 2023. *The Measures* shall apply to the development, operation, maintenance and use of network and information systems by core agencies and business operators within the territory of the People's Republic of China, the protection of cybersecurity and information security by information technology system

service providers when providing products or services for securities and futures business activities, and the supervision and administration of cybersecurity and information security in the securities and futures industry. *The Measures*, with 8 chapters and 75 articles in total, put forward requirements for the supervision and management system of network and information security in the securities and futures industry, the safe operation of network and information, the protection of investors' personal information, the emergency disposal of network and information security, the security protection of critical information infrastructure, the promotion and development of network and information security, supervision and management and legal responsibilities. ([More](#))

上海市开展“浦江护航”2023年电信和互联网行业数据安全专项行动

2023年2月22日，上海市通信管理局面向上海市各电信和互联网企业、各相关单位，发布《上海市通信管理局关于开展“浦江护航”2023年电信和互联网行业数据安全专项行动的通知》，本次专项行动主要包括：试点实施电信和互联网行业首席数据官制度、开展重要数据和核心数据识别认定及目录管理、开展电信和互联网行业数据安全风险评估管理、开展常态化数据安全监测预警与通报处置、加强企业数据全生命周期安全管理、加强数据安全能力建设和人才培养等六方面任务。 ([查看更多](#))

Shanghai Municipality Carries out "Pujiang Escort" Special Action of Data Security for Telecommunications and Internet Industries in 2023

On 22 February 2023, the Shanghai Communications Administration has promulgated the Circular of the Shanghai Communications Administration on Carrying out the Special Action of "Pujiang Escort" for Data Security in the Telecommunications and Internet Industries in 2023 for all telecommunications and Internet enterprises and related entities in Shanghai. This special action mainly includes pilot implementation of the chief data officer regime in the telecommunications and internet industries, identification of important data and core data and directory management, data security risk assessment and management in the telecommunications and internet industries, normalization of data security monitoring, pre-warning and notification disposal, strengthening of enterprise data lifecycle security management, strengthening data security capacity building and talent training. ([More](#))

《深圳市数据交易管理暂行办法》和《深圳市数据商和数据流通交易第三方服务机构管理暂行办法》发布

2023年3月2日，深圳市发展和改革委员会发布《深圳市数据交易管理暂行办法》（以下简称《交易管理暂行办法》 [查看更多](#)）和《深圳市数据商和数据流通交易第三方服务机构管理暂行办法》（以下简称《机构管理暂行办法》 [查看更多](#)）。其中，《交易管理暂行办法》共8章35条，规制在经深圳市政府批准成立的数据交易场所内进行的数据交易及其相关管理活动。《交易管理暂行办法》自2023年3月1日起施行，有效期三年。《机构管理暂行办法》共5章27条，规制在经深圳市政府批准成立的数据交易场所内开展业务活动的数据商和第三方服务机构。《机构管理暂行办法》自2023年3月10日起施行，有效期三年。

Release of the Interim Measures of Shenzhen for the Administration of Data Transactions and the Interim Measures of Shenzhen for the Administration of Data Merchants and Third-Party Service Institutions for Data Circulation Transactions

On 2 March 2023, the Shenzhen Development and Reform Commission issued *the Interim Measures of Shenzhen for the Administration of Data Transactions (the Interim Measures for the Administration of Transactions)*([More](#)) and *the Interim Measures of Shenzhen for the Administration of Data Merchants and Third Party Service Institutions for Data Circulation Transactions (the Interim Measures for the Administration of Institutions)*([More](#)). In particular, *the Interim Measures for the Administration of Transactions* consist of eight chapters and 35 articles, regulating the data transactions and the relevant management activities carried out within the data exchange venues established upon the approval of the Shenzhen municipal government, which will be implemented from March 1, 2023 and remain valid for three years. *The Interim Measures for the Administration of Institutions*, comprised of five chapters with a total of 27 articles, regulates the data merchants and third-party service agencies that carry out business activities in the data exchange venues established upon approval of the Shenzhen municipal government, which shall come into force as of March 10, 2023 and remain valid for three years.

苏州市数据出境安全评估申报备案平台上线

2023年3月2日起，苏州市互联网信息办公室在“苏商通”门户网站、移动端APP推出苏州市数据出境安全评估申报备案平台，为企业“一站式”申报数据出境安全评估开通便捷通道，提供工作指引、申报备案、异议申报、申报咨询、政策动态五类服务。（[查看更多](#)）

Suzhou Data Cross-border Security Evaluation Declaration and Filing Platform Launched Online

Since 2 March 2023, the Suzhou Internet Information Office launched the Suzhou Data Cross-border Security Evaluation Declaration and Filing Platform on the "Susanton" portal and mobile APP, opening a convenient channel for enterprises to apply for security assessment of outbound data transfer in a "one-stop" manner, and providing five types of services including work guidance, application and filing, objection application, application and consultation, and policy dynamics. ([More](#))

欧盟数据保护委员会（“EDPB”）发布EDPB关于国家认证标准和欧洲数据保护印章标准意见采纳程序

2023年2月27日，欧洲数据保护委员会（下称“EDPB”）宣布其在2月份的全体会议上，公布了EDPB关于国家认证标准和欧洲数据保护印章标准意见的采纳程序。该文件适用于所有认证标准的申请人，旨在通过明确国家和欧盟范围内的认证标准的批准程序，以及作为跨境传输工具的认证标准的批准程序，简化和促进EDPB关于认证标准意见的采纳。（[查看更多](#)）

EDPB Publishes a Procedure for the Adoption of EDPB Opinions on National Criteria for Certification and European Data Protection Seals

On 27 February 2023, during its February plenary, the EDPB adopted a procedure for the adoption of EDPB Opinions on national criteria for certification and European Data Protection Seals. This document is addressed to all applicants of certification criteria and aims to streamline and facilitate the adoption of EDPB Opinions on certification criteria by clarifying the approval process of national and EU-wide certification criteria, as well as criteria for certification meant as tools for international transfers. ([More](#))

挪威数据保护机构发布关于Telenor ASA使用Google Analytics的初步决定

继2022年1月启动调查后，挪威数据保护机构（下称“Datatilsynet”）于2023年3月1日宣布了关于Telenor ASA使用Google Analytics的初步决定。此前，None of Your Business（下称“NOYB”）投诉挪威公司Telenor的网站，指控Telenor通过Google Analytics向美国非法传输个人数据。在调查的最后，Datatilsynet解释称，其对本案的初步结论为：Telenor对Google Analytics的使用违反了《通用数据保护条例》（欧盟第2016/679号条例）下关于数据传输的规定。（[查看更多](#)）

Norway: Datatilsynet Issues Preliminary Decision on the Use of Google Analytics by Telenor ASA

The Norwegian data protection authority ('Datatilsynet') announced, on 1 March 2023, the issuance of its preliminary decision on the use of Google Analytics by Telenor ASA, following the launch of its investigation in January 2022. None of Your Business's ('NOYB') complaint that alleged the unlawfulness of the transfers of personal data to the US via Google Analytics by Telenor. At the end of its investigation, the Datatilsynet explained that its preliminary conclusion on the case in question is that Telenor's use of Google Analytics took place in breach of the transfer provisions under the General Data Protection Regulation (Regulation (EU) 2016/679) ('GDPR'). ([More](#))

知识产权 Intellectual Property

国家版权局等四部门发布“剑网2022”专项行动十大案件

2月27日上午，在成都举办的第七届中国网络版权保护与发展大会主论坛上，国家版权局、工业和信息化部、公安部、国家互联网信息办公室联合发布了“剑网2022”专项行动十大案件。“剑网2022”专项行动聚焦网络重点领域，加大打击网络侵权盗版力度，查处了一批网络侵权盗版大要案件。其中涉及运营盗版网络文学APP、制造销售盗版“剧本杀”、微信小程序侵权等。

来源：国家版权局

Four Departments Including CNIPA Release Ten Cases in the Special Action of "Jianwang 2022"

On 27 February 2020, the China National Intellectual Property Administration (CNIPA), the Ministry of Industry and Information Technology, the Ministry of Public Security and the Cyberspace Administration of China jointly released ten cases involved in the special action of "Jianwang 2022" at the main forum of the 7th China Network Copyright Protection and Development Conference held in Chengdu. The special action of "Jianwang 2022" focused on key online areas, intensified crackdown on online copyright infringement and piracy, and investigated and punished a number of key online copyright infringement and piracy cases. The special action involved operation of pirated online literature APPs, production and sale of pirated "kill scripts", WeChat applet infringement, etc.

Source: CNIPA

黑龙江省哈尔滨市市场监管局立案查处三维立体商标侵权案

根据注册商标权利人乐高博士有限公司（LEGO JURIS A/S）投诉，黑龙江省哈尔滨市市场监管局执法人员对哈尔滨市松北区某用品批发部开展现场检查，检查中发现该经销部经销的韩国生产的“乐高小人”儿童水杯、儿童筷子、儿童勺叉三件套等商品，涉嫌存在侵犯乐高博士公司三维立体注册商标专用权违法行为。该案已正式立案，执法人员对该批发部开展调查取证。

“乐高小人”立体商标，经过长期的宣传和使用，已经成为相关公众迅速辨识商品来源的重要标志，在消费者中已经有良好的声誉。松北区某用品批发部在经营中利用1688网络平台在互联网销售未经授权的“乐高小人”儿童水杯、儿童筷子、儿童勺叉三件套等商品的行为，涉嫌侵犯了注册商标权利人的知识产权。

来源：黑龙江省知识产权局

Harbin Administration of Market Regulation Recognized 3D Trademark Infringement on Shape of Lego

According to the complaint of LEGO JURIS A/S, the enforcement officers of the Harbin Administration of Market Regulation (AMR) discovered that the alleged products, such as children's water cup, children's chopsticks and children's spoon and fork, which were made in South Korea, infringe upon the 3D trademark of LEGO JURIS A/S. AMR affirms that, after long-term promotion and use, the 3D trademark "LEGO Minifigures 3D trademark" has the function for the relevant public to identify the source of products. The act of infringer using the 1688 network platform to sell the products on the internet infringed on the 3D trademark of Lego, and a penalty decision is to be issued.

Source: HeiLongJiang Intellectual Property Administration

将商标展示在物联网配对设备上属于商标使用行为，可构成假冒注册商标罪

深圳市中级人民法院审结一起假冒注册商标案件。“AIRPODS”“AIRPODS PRO”商标权人为苹果公司，核定使用商品包括耳机等。被告人罗某洲、马某华伙同被告人明某等生产假冒苹果注册

商标的蓝牙耳机并对外销售牟利。部分涉案假冒苹果蓝牙耳机及包装上无商标，连接苹果手机后弹窗显示“Airpods”或“Airpods Pro”，部分耳机及包装上有商标信息，连接后弹窗显示“Airpods”或“Airpods Pro”。经查明，本案非法经营数额为22741044.72元。原审法院认为，被告人罗某洲、马某华等人均构成假冒注册商标罪，分别判处被告人罗某洲、马某华等人有期徒刑及罚金。二审维持原判。

法院认为，假冒注册商标犯罪中“使用”商标行为不限于将商标用于商品、商品包装或者容器及交易文书或广告宣传等有形载体上的行为。物联网环境下通过配对链接等无线通信技术将商标展示在配对设备上的行为，同样属于商标使用行为。

来源：深圳市中级人民法院

Displaying a Trademark on the Internet of Things Matching Device is Trademark Use and Constitutes the Crime of Counterfeiting

Shenzhen Intermediate People's Court concluded a criminal case of counterfeiting registered trademark. Apple Inc has the trademark "AIRPODS" and "AIRPODS PRO" on the approved products including earphones. The defendants produced Bluetooth earphones that counterfeited the registered trademark of Apple and sold them for profit. Some of the counterfeit Apple Bluetooth earphones and their packaging had no trademark on them, but when connected to an iPhone, a pop-up window displayed "Airpods" or "Airpods Pro." Some of the counterfeit earphones and their packaging had trademark information on them, and when connected to an iPhone, a pop-up window displayed "Airpods" or "Airpods Pro." After investigation, the amount of illegal turnover in this case was found to be more than RMB 20 million. The court of first instance held that the defendants had committed the crime of counterfeiting registered trademark. The court of second instance upheld the original judgment. The court held that the act of "using" the trademark in the crime of counterfeiting a registered trademark is not limited to the act of using the trademark on tangible carriers such as products, the act of displaying the trademark on the paired device through the wireless communication technology, such as the paired link, is also the act of trademark use.

Source: Shenzhen Intermediate People's Court

“相宜本草”诉“相依草方”侵权：商品装潢退出市场并非他人当然可以使用的理由

上海市高级人民法院就上海相宜本草化妆品股份有限公司与上海百萱棠化妆品有限公司（下称“百萱棠公司”）、白凤祥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。原审法院责令被告停止侵害原告的注册商标专用权以及不正当竞争行为。

法院认为，他人具有一定影响力的商品包装退出市场并非他人当然可以使用的理由。本案中，原告的第6代商品包装设计独特、显著性较高，相关公众可以依据该装潢关联到原告的产品，自2016年开始逐步更换包装，但其影响力完全消除可能需要很长的时间，在被告侵权行为发生

时，只要该使用行为容易引人误认为是原告商品或者与原告存在特定联系，仍然属于不正当竞争性行为。

来源：上海市高级人民法院

Court Affirms that Phasing out Market is not Legal Ground for Others to Use Commercial Decoration

The Shanghai High People's Court made a second judgment on trademark infringement and unfair competition disputes, and upheld the original judgment. The court of first instance ordered the defendant to stop infringing on the plaintiff's trademark and unfair competition.

The court held that the phasing out of decoration with influence from the market is not a legitimate ground that others can use it without authorization. The decoration design of the sixth generation of the plaintiff's Xiangyi Bencao products is unique and conspicuous, and the relevant public can associate the plaintiff's products based on the decoration. Since 2016, the plaintiff has gradually changed the decoration, however, it may take a long time for its influence to completely disappear. When the defendant's infringement occurs, as long as the use is easily mistaken for the plaintiff's products or has a specific relationship with the plaintiff, it is still an unfair competition act.

Source: Shanghai High People's Court

法院：关于动物形象二次创作作品的侵权认定方法

上海市杨浦区人民法院就上海萌泉贸易有限公司与山东葛洛伯时家具有限公司侵害作品复制权、发行权、信息网络传播权纠纷案作出判决，责令被告停止侵犯原告美术作品著作权的行为。

法院认为，基于动物形象进行二次创作，选择对动物特定身体部分进行简约或夸张处理，使整体动物形象呈现特有姿势和姿态，该创作成果具有一定的独创性，构成立体美术作品。被告在阿里巴巴及淘宝平台经营的店铺中，生产及销售多款商品及展示该商品的图片中，与原告主张保护的作品相比，虽在颜色、抬头姿势、身体长短上有所区别，但是，在整体动物形象线条、身体部位的比例等方面，构成实质性相似；虽被告抗辩涉案的动物本在自然界就存在，故不存在侵权。但被告对于被控侵权产品所呈现的动物姿态、缝制手法、表现方式与原告基本相同无法给出合理解释。在被告未能提供其创作手稿或合理解释的情形下，应认定著作权侵权成立。

来源：上海市杨浦区人民法院

Shanghai Court Ruled on Copyright Infringement Regarding Re-creation of Animal Images

The Shanghai Yangpu District People's Court made a judgment on the case of infringement of the copyright owner's right of reproduction, distribution and information network dissemination, ordering the defendant to stop the infringement.

The court held that the re-creation based on the animal image, which chooses to simplify or exaggerate the specific body part of the animal, so that the overall animal image presents its unique posture and posture, has certain originality and constitutes a three-dimensional art work. In the shops operated by Alibaba and Taobao platforms, the defendant produced and sold a variety of products and displayed the pictures of the products. Compared with the works claimed by the plaintiff to be protected, although there were differences in color, head up posture, body length, etc., the defendant formed substantial similarities in the overall animal image lines, body part proportion, etc. The defendant defended that the animals involved in the case exist in nature and therefore there was no infringement. However, the defendant was unable to give a reasonable explanation as to the animal's pose, sewing technique and expression method of the infringing products were basically the same as those of the plaintiff. It shall be determined that the copyright infringement is established when the defendant fails to provide its creation manuscript or reasonable explanation.

Source: [Shanghai Yangpu District People's Court](#)

欧洲《统一专利法院协议》2023年6月1日正式生效

德国政府向欧盟理事会交存了其对《统一专利法院协议》（UPCA）的批准。该协议的生效将标志着欧洲创新的一个新时代，即联合专利法院和统一专利的成立。很快，将实现几个成员国向一家法院提起侵犯欧洲专利的诉讼，而不必同时向几个国家法院提起诉讼。这将降低成本，避免不可调和的判决的风险。《统一专利法院协议》将于2023年6月1日正式生效。

来源: [欧洲专利局官网](#)

European Unified Patent Court Agreement to be Effective on 1 June 2023

Recently, Germany has ratified the Agreement on a Unified Patent Court (UPC Agreement) (the Agreement), as confirmed by a statement of its Federal Ministry of Justice. The Agreement's entry into force will mark a new era for European innovation with the launch of the Unified Patent Court and the Unitary Patent. It will soon be possible to sue for infringement of a European patent in several Member States before only one court instead of having to litigate before several national courts in parallel. This will reduce costs and avoid the risk of irreconcilable judgments. The Agreement will enter into force on 1 June 2023.

Source: [EPO](#)

Meta要求法院驳回1.75亿美元侵权裁定，法官：证据充分 赔偿合理

对讲机App公司Voxer此前起诉Meta侵权，法院判定Meta赔偿1.745亿美元，Meta不服，希望法院驳回裁定，不过美国德州奥斯汀（Austin）法官驳回了Meta的请求，他认为证据充分，足以支持陪审团的裁定。陪审团认为Meta旗下Facebook Live、Instagram Live所使用的直播流媒体技术侵犯了Voxer公司两项专利，专利与视频流媒体制作方法和视频信息服务基础设施有关。虽然奥斯汀法院维持原判，Meta仍然可以向更高一级法院上诉。

来源: [路透社](#)

Court Rejected Meta's Requests to Overturn the Verdict on the Awards of USD175 Million

A federal judge in Austin, Texas rejected a request by Meta Platforms Inc's to throw out a USD175 million jury patent verdict for walkie-talkie app maker Voxer Inc. The judge said there was enough evidence to support the jury's verdict. The jury found that Meta's Facebook Live and Instagram Live live-streaming technology infringed two Voxer patents related to video streaming and messaging. Meta can still appeal the verdict to a higher court.

Source: Reuters

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