



No. 277

2021.11

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Intellectual Property

The Beijing Stock Exchange recently began trading with the first 81 listed companies filing an average of 82 patents

On November 15, the first batch of 81 companies listed on the new Beijing Stock Exchange made their debut, collectively accepting the draft of institutions and qualified investors. According to data released by Wisdom Bud, a technological innovation intelligence SaaS service provider, as of November 14, 2021, the first batch of 81 listed companies had a total of more than 6,600 patent applications, with an average of about 82 per company; the total number of valid invention patents was more than 1,000, with an average about 13 for each company; the total number of software copyright registrations is more than 1,300, and the average is about 17.

Source: [IP Beijing](#)

Haidian Court: Descriptive use of words “Cloud Test” does not constitute trademark infringement, and Baidu is not responsible for providing keyword search

The People's Court of Haidian District of Beijing made a first-instance judgment on Beijing Yunce Information Technology Co., Ltd. v. Dane Times Technology Group Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. for trademark infringement and unfair competition disputes. The court dismissed the plaintiff claims. The court held that the use of the common words in the trademarks of others with good faith was to explain or describe the nature of the services provided, and did not constitute trademark infringement or unfair competition. Meanwhile, in this case, the Internet service provider Baidu Company did not constitute assistance infringement by providing keywords search on the accused words.

Regarding the use of the word "cloud platform test" in the promotion link involved in the case, the court held that the word "cloud platform test" used by the company in the title and description of the promotion link involved did not use "cloud test" alone. ", and the plaintiff failed to prove that the act of Dane Company was malicious. On the contrary, the act of Dane Company use the words to explain or describe the nature of the services it provided, which was not a trademark use. Regarding Darnet's act of setting up keyword promotion with Baidu, the court held that the accused act was a backstage act, and the relevant public will not be confused due to this. Although Dane Company added "cloud test" as the promotion keyword of the website involved, it resulted in the promotion link involved when entering "cloud test", but according to the evidence submitted by Dane Company, such words are being used by multiple cloud test platforms." "Cloud testing platform" and "cloud testing service" refer to the cloud testing services they provide, rather than distinguishing the source of the service provided; accordingly, "cloud testing" shall be treated as the abbreviation of the cloud testing industry to describe "cloud testing" services, which is a descriptive use. Therefore, when searching for "cloud test" as a keyword on Baidu.com, the public is searching for the service itself, rather than to search a brand.

LIFANG&PARTNERS: enterprises use the descriptive words which is also a trademark, if it is only to illustrate or describe the nature of the services provided, such use shall be regarded as non-trademark use, and therefore does not constitute trademark infringement; as malice of the company can be excluded, naturally it shall not constitute an act of unfair competition.

Source: [Zhichanli.com](#)

Baidu sues browser plug-in for hijacking traffic as unfair competition, gets RMB 800,000 in damages

Baidu filed lawsuit against Shanghai Zhengkai Information Technology Co to court for inserting a link in Baidu's webpage, and forcing the browser to jump to the relevant page of its New Media Manager website, which was operated by Zhengka. The court requested Zhengkai to stop such acts of unfair competition, and compensate Baidu for economic losses and reasonable expenses of RMB 830,000, and to eliminate the adverse impact.

LIFANG&PARTNERS: user traffic is crucial benefits and interest in the mobile internet era, and thus has become an extremely important object of competition among Internet operators, but such competition must be conducted through fair, reasonable and justified means, and must follow accepted business ethics. Improper traffic hijacking from other websites can not be justified by the business ethic, and confiscate the reasonably expected business expectation of others, such acts constitute violation of Anti-Unfair Competition Law, and shall be stopped and punished.

Source: [Intellectual Property Finance](#)

1.5 times punitive damages applied by Shandong Liaocheng Court, with total of \$810,000 awarded for using the trademark after the license contract expired

Shandong Liaocheng Intermediate People's Court concluded the first civil infringement case of application of punitive damages. The defendant signed a trademark license contract with the plaintiff in 2008 for the trademark "Benxiang", and continued to use the trademark after the expiration of the license contract.

The court held that such use of trademark after license contract expired, is obviously malicious, and the defendant used the trademark after expiration of contract for a long time, and punitive damages shall be applied. The court calculated the base amount of punitive damages as license fee for RMB 15,000 / month based on the sales territory of the infringing flour and the license fee in the trademark license agreement for RMB 30,000 /month; with consideration of malice of the defendant, the infringement circumstances and the reputation of the trademark involved in the case, the compensation amount of the case was determined as RMB 810,000 based on 1.5 times of the base amount.

LIFANG&PARTNERS: This is a rather special case. The court affirmed the defendant's bad faith based on the contractual relationship of trademark licensing, and affirmed the base amount of punitive damages based on the licensing fee regarding punitive damages. This judgment can encourage trademark owners to proceed external licensing without concern of the licensee continuing to use the trademark without compensation after expiration of the license.

Source: [Liaocheng Intermediate People's Court](#)

Employees still use the original company name to promote business after resignation, the court: this is unfair competition

In February 2020, the plaintiff sued its former salesperson Mr. Wang and Mr. Wang 's new employment Moule company to the court, claiming that Mr. Wang still used Moule's corporate email address to send emails to foreign customers to sell Moule's products by email after he resigned from the plaintiff.

The court held that both companies were engaged in the wholesale, retail and manufacturing of amusement and entertainment products, and had a competitive relationship. After Wang left the plaintiff, he continued to use the plaintiff's company name in emails and invoices without authorization, which led to confusion of the clients, and led to the misconception that the defendant had a specific connection with the plaintiff. The court ruled that Mr. Wang shall stop using the name of the plaintiff's trade name, and compensate the plaintiff RMB 40,000, and that both defendants shall undertake joint liabilities.

LIFANG&PARTNERS: After leaving the company, employees of the company use the relationship and information with the original company to explore transactions with previous clients, the clients is very likely to be confused and misled, and even if the client was not confused eventually, and realized the actual relationship, it is possible that the client may have spent much time on the transactions, and reluctant to resort to the previous company, the business opportunities of which was therefore confiscated. Considering the business ethics and the justification of such acts, the court shall issue order to stop such acts.

Source: [Yangcheng Evening News](#)

Malicious use of "Xi Bao Deer King" registered trademark, the court awarded RMB 1 million in damages

Jiangsu High People's Court made a second-instance judgment on Inner Mongolia Deer King Cashmere Co., Ltd. v. Nanjing Xinjiekou Department Store Co., Ltd., et. al, in a trademark infringement case, and the plaintiff was awarded RMB 1 million. The clothing produced and sold by the defendants use the " Xi Bao Deer King " trademark of the plaintiff, and the word "Deer King" is prominently used on the product.

The court held that the alleged infringing goods were produced and sold by jointly by the defendants, and they shall undertake joint liabilities, regardless of specific acts during the infringing process by the specific defendant.

Source: [IPHOUSE](#)

ORBEC was accused of 5 patent infringement lawsuits by Ningbo Yingxin, with total claimed damages of RMB 78.5 million, and settled within two months

ORBEC, an innovative company with AI 3D sensing technology as its core, AI 3D perception is a key fundamental technology that provides 3D vision capability for artificial intelligence. It has served more than 2,000 customers worldwide, including well-known brands such as Ant Group, OPPO, China UnionPay, HP and Meizu.

Since June 29, 2021, after ORBEC application to be listing on Science and Technology Stock Exchange (Chinese version of NASDAQ) was accepted, , a series of patent infringement cases with Ningbo Yingxin amounting to more than RMB 78.5 million yuan was disclosed by ORBEC.

Ningbo Yingxin filed five patent infringement lawsuits against ORBEC in Shenzhen Intermediate People's Court from August to October, 2021, which claimed total damages of RMB 78.5 million, on the grounds that ORBEC had used its four invention patents, and requested the company to stop manufacturing, selling and offering to sell the infringing products, which are the core products of ORBEC.

However, according to the latest disclosure by ORBEC, the five lawsuits have been settled by the two parties.

Source: [Corporate Patent Watch](#)

Unauthorized use of "STOKKE" trademark and trade name, the court awarded RMB 2.5 million in damages

The Jiangsu High People's Court made a second-instance judgment on Stokke Co., Ltd. (Stokke) v. Stoke (Shanghai) Biotechnology Co., Ltd. (Stoke) and other defendants for trademark infringement and unfair competition disputes.

The plaintiff is the world famous producer of baby stroller, with registered trademark on the same products.

The defendant, Stoke, purchased Stokke trademarks registered for cosmetics and other similar products. Stoke opened an outlets on JD.com platform, and later, JD opened "Stoke Jingdong Self-operation Official Flagship Store" on the platform of "Jingdong Mall", to sell the infringing goods of baby cosmetic products.

Stokke filed infringement lawsuit to the court, claiming that Stoke shall stop infringing acts, and pay damages of RMB 4 million, and Jingdong related companies shall stop selling the infringing products, and jointly and severally liable for damages of RMB 1 million, as they assisted infringement by not blocking or deleting the infringing links.

The specific of this case is that the plaintiff did not sell or produce the infringing products, and can not affirm loss due to infringement, or the profits of the infringement. The court took into account the high popularity and influence of Stokke, and that the infringement of Stoke involved multiple aspects, including the squatted trademarks on multiple classes, the trade name, trade dress, packaging and decoration of the products, and etc., the malice of the defendants is quite obvious, and the plaintiff spent much for stopping infringing acts of the plaintiff, and finally awarded judicial damages of RMB 2.5 million.

LIFANG&PARTNERS: The total sales of infringing products, the sales price of infringing products, the profit margin of infringing products, the contribution rate of intellectual property rights of the right products, and the license royalty of intellectual property rights are not only the calculation elements involved in the formula of lost benefits or infringing profits, but also the key elements of affirming judicial damages by the court.

Source: [IPHOUSE](#)

New Balance's "N" trademark rights were infringed, and Jiangsu Court awarded damages of RMB 18 million

Jiangsu High People's Court made a second instance judgment on the case of New Balance Athletics, Inc, New Balance Trading (China) Co. v. Putian Shengfeng Sheng Shoes Co., Ltd, Putian Wobaili Trading Co., Ltd, Wang Jinbiao, and Gusu District Meibailu Shoes Store for infringement of trademark rights and unfair competition dispute, in which New Balance was awarded RMB 18 million.

The court held that the infringing logo on the infringing products was similar to the "N" trademark in question, which was likely to cause confusion among the relevant public, and shall constitute trademark infringement. As for unfair competition, New Balance Athletics and New Balance used the "N" letter decoration in bold capital letters on both sides of the "New Balance" sports shoes, shall constitute the unique packaging decoration of famous goods. The use of similar packaging and decorations on both sides of the infringing sneakers will misled the public into believing that they were New Balance Athletics or New Balance products or that there was a specific connection with them, and therefore, the defendants' acts shall constitute unfair competition.

LIFANG&PARTNERS: The court awarded in this case the discretionary damages, which is not judicial damages with maximum amount of RMB 5 million, nor the loss of plaintiff, or the profit of the plaintiff, but rather the minimum assumption of the profits of the defendants. Therefore, the court contemplated multiple aspects of the case, including the defendant's actual production and sales of infringing products, the basis for calculating profits and calculation standards, especially the examination of the defendant's shipping records through the courier company, and finally make such awards, which could reduce the burden of proof the plaintiff, and deter the malicious infringing acts.

Source: [Jiangsu High People's Court](#)

ZTE Joins HEVC Advance Patent Pool as Licensor/Licensee

Access Advance, an independent licensing administrator, has announced that ZTE has joined the HEVC Advance patent pool as a licensor and licensee.

As a licensor, it is reported that all of ZTE's HEVC/H.265 essential patents are now included in the HEVC Advance patent pool. As a licensee, ZTE has access to over 16,000 global patents necessary to implement the HEVC/H.265 video codec standard.

Marco Tong, ZTE's Chief Licensing Officer, said, "We are pleased to join the HEVC Advance patent pool and our participation and collaboration with Access Advance is another example of the strong commitment of both parties to the FRAND principles and good faith negotiations."

Source: ijiwei.com

EU trademark application for Basmati rice raises issues of Brexit and opposition based on UK law

On June 14, 2017, Chakari filed an application for registration of an EU trademark in the following classes 30 and 31 for goods bearing the graphic mark "Abresham Super Basmati Sela Grade One World's Best Rice ": Class 30: rice flour; rice based snacks; rice cakes; rice paste for cooking; puffed foodstuffs made of rice; Class 31: "rice flour feed".

On October 13, 2017, Indo-European Foods Limited (the applicant) filed an opposition based on the prior unregistered UK trademark "BASMATI", which was used to refer to rice. Pursuant to Article 8(4) of the EU Trade Marks Regulation, the opponent stated that it was entitled under applicable UK law to block the applied-for mark by an "extended" claim of counterfeiting. The opposition was rejected in the Opposition Division on April 5, 2019, and by the BoA (Fourth Board of Review) on April 2, 2020, and was subsequently filed with the General Court of the EU.

The EU General Court considered the admissibility of the claim before addressing the defences relied upon by the applicant. In the course of the proceedings, the EUIPO (EU Intellectual Property Office) argued that the expiry of the transition period provided for in the UK Withdrawal Agreement would deprive the opposition procedure and existing acts under its purpose, so that references to Member States and their laws in the EUTMR would no longer refer to the UK and its laws. It was also argued that the rights based on the "counterfeiting claim" would no longer constitute "prior rights" within the meaning of Article 8(4) of the EUTMR.

Therefore, the EU General Court noted that the UK Withdrawal Agreement provides for a transitional period from February 1 to December 31, 2020, during which EU law will continue to apply in the UK. Although the EUIPO has made several observations, the General Court of the EU was content with its conclusion that the UK's withdrawal from the EU would not result in a complete mootness of the conduct, as both the application and the prior decision of the Review Commission were made before the end of the transition period.

The fact that the applicant did not intend to initiate proceedings would also not affect the enforcement of the legal decision, and the EU General Court further insisted that the Review Commission should not put itself in a position to make a new decision in order to assess the facts of the case.

The issue of the UK's exit from the EU has resurfaced, providing another point of discussion and raising the long-standing question of when Brexit will end.

Source: [International IP Watch](https://www.internationalipwatch.com/)

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China Launches Its National Anti-Monopoly Bureau

On November 18, 2021, China inaugurated its new National Anti-monopoly Bureau in Beijing. Ganlin was appointed as the leader, taking charge of this newly established bureau. The establishment of the National Anti-monopoly Bureau, which reflects the China's further improvement of the anti-monopoly system and mechanism, will strengthen the anti-monopoly supervision force, effectively regulate market competition behaviors, promote the construction of a strong domestic market, and create a fair, transparent and predictable good competition environment for all kinds of market players. ([More](#))

State Council's Anti-Monopoly Committee's Anti-monopoly Guideline for Active Pharmaceutical Ingredients Published Issued

On November 18, 2021, the State Council's Anti-Monopoly Committee's Anti-monopoly Guideline for Active Pharmaceutical Ingredients ("APIs Guideline") was formally issued. The APIs Guideline aims to prevent and stop monopolistic behaviors in the field of APIs, further clarify the market competition rules, maintain the market competition order in the field of APIs, and protect the interests of consumers and social public interests. The APIs Guideline contains six Chapters (29 Articles in total), which respectively provides provisions from the perspectives of general provisions, monopoly agreement, abuse of dominant market position, concentration of operators, abuse of administrative power to exclude and restrict competition, and supplementary provisions. ([More](#))

The Guidelines for Overseas Anti-Monopoly Compliance for Enterprises Issued by SAMR

On November 18, 2021, the State Administration of Market Regulation ("SAMR") issued the Guidelines for Overseas Anti-Monopoly Compliance for Enterprises ("Guideline"). This Guideline serves the purposes of encouraging enterprises to foster fair competition compliance culture, guide enterprises to establish and strengthen the foreign antitrust compliance management system, enhance enterprise overseas business antitrust compliance management consciousness, improve the level of overseas business antitrust compliance management and guard against foreign anti-monopoly law risks. The Guidance consists of five Chapters (27 Articles in total), which respectively provide provisions from the perspectives of general provisions, overseas anti-monopoly compliance management system, overseas anti-monopoly compliance risks, overseas anti-monopoly compliance risks management and supplementary provisions. ([More](#))

A Jiangsu Gas Company Fined and Confiscated over CNY 40 Million for Abuse

On November 17, 2021, the Administration for Market Regulation of Jiangsu Province ("Jiangsu AMR") issued its decision against Yixing Towngas. Upon the investigation, it was found that Yixing Towngas abused its dominant market position in relevant market, selling its products at unfair price, restricting trade and imposing unreasonable trading conditions. As a result, Jiangsu imposed a fine of around CNY 35 million and confiscated its illegal gains over CNY 5 million. ([More](#))

A Nanjing APIs Company Fined and Confiscated over CNY 6.5 Million for Abuse

On November 17, 2021, the Administration for Market Regulation of Shanghai Municipality ("Shanghai AMR") issued its decision against Nanjing Ningwei Medicine Co., Ltd ("Nanjing Ningwei"). According to the investigation by Shanghai AMR, Nanjing Ningwei abused its dominant position in relevant APIs area, selling API at unfair price and imposing unreasonable trading conditions. As a

result, Shanghai AMR imposed a fine of over CNY 4 million and confiscated illegal gains over CNY 2.5 million. ([More](#))

Google Loses Key Appeal against EU 2.4 billion Shopping Antitrust Case

Recently, the EU's second-most senior court, the General Court, has upheld a 2017 ruling by the European Commission which found that Google broke antitrust law in how it used its search engine to promote its shopping comparison service and demote those of its rivals. Google and its parent company Alphabet appealed the decision, but the General Court dismissed that appeal and upheld a fine of EU 2.4 billion. Google and Alphabet now have the option to appeal the decision yet again with the EU's highest court, the European Court of Justice. ([More](#))

Cybersecurity and Data Protection

Political Bureau of the CCCPC Held a Meeting to Review *the National Security Strategy*

On 18 November 2021, Political Bureau of the Central Committee of the Communist Party of China ("CCCPC") held a meeting to review *the National Security Strategy (2021-2025)*. Xi Jinping, General Secretary of the CCCPC, presided over the meeting. The meeting stressed that it is imperative to put political security in the first place, and coordinate and effectively carry out state security work in key areas, key areas and key directions, including political security, economic security, social security, science and technology security, and security in new areas. Efforts shall be made to continue to effectively prevent and control the COVID-19 epidemic, and accelerate the improvement of the governance capacity in such fields as biosafety, cyber security, data security and artificial intelligence security. ([More](#))

Vice-Premier Liu He: Promoting Data Validation and Classification Management to Enable Smooth Flow of Data Transactions

On 20 November 2021, The China 5G+ Industrial Internet Conference opened in Wuhan, Hubei Province. LIU He, a member of the Political Bureau of the CCCPC and Vice Premier of the State Council, delivered a written speech. In the speech, LIU He pointed out that data is becoming a key essential productive factor. It is necessary to promote data rights, classification and grading management, smooth the data transactions, realize the market allocation of data elements and reasonably allocate the benefits of data elements. Localities and industries shall explore the establishment of institutional systems and circulation platforms that meet the characteristics of data elements, while accelerating the construction of a new model of governance that combines government regulation and industry self-regulation. ([More](#))

MIIT Will Further Deepen Data Security Protection in the Field of Industry and Information Technology

On 16 November 2021, the Ministry of Industry and Information Technology ("MIIT") stated at the press conference of the *14th Five-Year Plan for the Development of the Information and Communications Industry (the "Plan")* that during the 14th Five-Year Plan period, MIIT will, on the basis of summarizing and consolidating the preliminary work, further deepen the data security protection in the field of industry and information technology through the following four points: The first is to establish an industrial data security system and accelerate the introduction of the *Administrative Measures for Data Security in the Field of Industry and Information Technology*; the second is to strengthen the top-level design and overall formulation of standards and establish an industrial data security standard system; the third is to strengthen data security supervision; and the fourth is to vigorously develop the data security industry and promote the introduction and promotion of data security. ([More](#))

MIIT: 2049 Non-Compliant Apps Have Been Notified, and 540 Apps That Refuse to Rectify Have Been Taken Off Shelves

On 16 November 2021, in its press conference on the development plan of the information and communication industry for the 14th Five-Year Plan, MIIT introduced the results of the app personal information governance action: up to now, 21 batches total 2.44 million apps have been tested, 2,049 non-compliant apps have been notified, 540 apps that refuse to rectify have been removed from apps shops, and non-compliant have been continuously deterred. At the same time, MIIT has been strengthening the management of the key responsibility chain of application shops, urging them to strengthen self-examination and clean-up, and they have taken the initiative to take down more than 400,000 non-compliant APPs. MIIT has also recently launched a service perception improvement campaign to promote industry-wide service optimization initiatives, improve service capabilities, establish a "double list" of personal information protection, and continuously increase the protection of user information. ([More](#))

NNSPCO Withdrew Recommended Certificates of Network Security Level Assessment Bodies

On 19 November 2021, In order to implement the State Council's "streamline administration" reform requirements, and constantly improve the standardization, professionalism and socialization of the management of network security level assessment organizations, the Office of the National Network Security Level Protection Coordination Group ("NNSPCO") has determined to withdraw the recommended certificates of network security level assessment bodies and no longer issue the *Recommended List of National Network Security Level Assessment Organizations*. Relevant work is integrated into the national certification system. ([More](#))

EDPB Announced Guidelines Related to "Cumulative Criteria"

On 19 November 2021, the European Data Protection Board (EDPB) announced guidelines related to the interplay between data transfers and territorial scope under the *EU General Data Protection Regulation* and seek comments from public. The guidance offers three "cumulative criteria" that would categorize data processing as a transfer. Notably, the board explicitly said it does not consider a transfer to be the "collection of data directly from data subjects in the EU at their own initiative." ([More](#))

CISA Launches Government Cybersecurity Incident and Vulnerability Response Playbooks

On 16 November 2021, the U.S. Cybersecurity Infrastructure and Security Agency published the *Federal Government Cybersecurity Incident and Vulnerability Response Playbooks*. CISA said the playbooks are intended for federal civilian agencies as well as contractors or other organizations on behalf of federal agencies. They provide "a standard set of procedures to identify, coordinate, remediate, recover, and track successful mitigations from incidents and vulnerabilities affecting (federal civilian) systems, data, and networks". ([More](#))

UK: Government Releases National Security and Investment Act Guidance on Notifiable Acquisitions

On 15 November 2021, The Department for Business, Energy & Industrial Strategy released, guidance on notifiable acquisitions under the *National Security and Investment Act*, which will enter into force on 4 January 2022. In particular, the guidance reiterates that the Act requires 17 areas of the economy deemed to be 'sensitive' organisations including data infrastructure to notify the government about ac-

quisitions of certain entities. In addition, the guidelines further clarify what companies need to be reported for acquisitions in the "data infrastructure" sector:

owns or operates relevant data infrastructure

manages relevant data infrastructure on behalf of other entities

manages facilities where relevant data infrastructure is located

provides specialist or technical services to entities involved in any of the above activities

produces or develops software for entities involved in any of the above activities and

is given administrative access to relevant data infrastructure.

[\(More\)](#)

CNIL Published a Guide on the Role of the DPO

On 16 November 2021, The French data protection authority (CNIL) published, a guide on the role of the data protection officer (DPO) under the General Data Protection Regulation (GDPR). In particular, the guide focuses on the role of the DPO, the designation of the DPO, the exercise of the tasks of the DPO, and support for the DPO by CNIL. In addition, CNIL outlined that guidance on each of these themes is supplemented by concrete examples and answers to frequently asked questions. In addition, the CNIL highlights that the guidance provides details on how to ensure that DPOs are able to carry out their tasks completely independently and without any conflict of interest. [\(More\)](#)

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