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Intellectual Property

The National Intellectual Property Administration issues *The Guidance for the Legal Protection and Enforcement of Trademarks of China*

On November 23, 2021, the directors of the National Intellectual Property Administration of China and the UK held a video meeting. After the meeting, both administrations issued guidance on the protection of intellectual property rights. The Guidance of China detailly introduces China's trademark protection system, covering the entire process of registration application, review, opposition, infringement, and relief, and provides online search, online application, trademark Protect practical information. The Guidance of UK covers major intellectual property areas such as copyrights, patents, and trademarks, and introduces the impact of exiting from the EU on the UK's intellectual property system.

Source: CNIPA

The Supreme People's Court of China proposed a "three-step method" to determine whether the contract is signed with fake intention

Recently, the Supreme People's Court of China made a second-instance judgment on a dispute over a trade secret license contract. The plaintiff claimed that the contract was a signed with fake intention of both parties. The court proposed a "three-step method": based on the true situation of the main payment obligation, the conditions before and after the parties signing the contract (especially the background of both parties), the performance of the contract and other relevant facts, and whether the first two situations can be carried out without reasonable doubt.

Based on this method, the court found there is a hidden true intention behind the trade secret license contract. Therefore, the trade secret license contract is signed with fake intention, and shall be invalidated. The defendant shall return the RMB 200 million paid by the plaintiff.

Lifang & Partners Comments:

It is usually difficult to identify whether the contract was signed with fake intention, which will lead to the invalidity of the contract, especially that the contract was performed with formality, and one of the parties of the contract claimed the invalidity of the contract. To solve this issue, SPC proposed the "three-step method", which can be applicable across China for the same type of cases, thus making a more explicit criteria for recognizing the invalidity of contract based on fake intention.

Source: IPHOUSE

The game and character names of "The King of Fighters" constitute well-known product names, and protected by the Anti-Unfair Competition Law

Recently, the Beijing Intellectual Property Court made a second-instance judgment on the infringement of the copyright of the "King of Fighters" game and unfair competition disputes, which upheld the first-instance judgment, ordering the defendant to stop the infringement, eliminate the impact, and compensate the plaintiff for economic losses of RMB 750,000 and reasonable expenses of RMB 104,989.45.

The court held that, the defendant used the plaintiff's copyrighted character image in the film and spread the film through the Internet without permission, infringing the plaintiff's copyright. The names of "The King of Fighters" and the characters have a high reputation, and the defendant used characters' name similar to the name of the plaintiff's game characters in the movie trailer, and used "King of Fighters" in the movie name and trailer name, which had obvious intention of confusing the public, and will cause confusion, and obtain illegitimate benefits from it. The court held that such acts of the defendant constitutes act of unfair competition.

Lifang & Partners Comments:

The adaptation of game IP into film and television is very popular. Adaptation without the permission of the IP owners usually infringes copyright of the game character image. However, the copyright law could not protect online game names, character names, and etc., as they can hardly works that can be protected by copyright law, due to limited expression and lack of originality. However, under context of Anti- Unfair Competition Law, game names and character names and other elements in the online games may constitute well-known names for goods or services. If the unauthorized use by others may cause confusion, it could constitute an act of unfair competition, and shall bear tort liability.

Source: [IPHOUSE](#)

The defendant refused to submit the actual sales account books and contracts, and the court supported the full claimed damages of RMB 2,8 million by the plaintiff

Recently, the Beijing Higher People's Court issued a second-instance judgment on a dispute over infringement of design patent rights, and the judgment upheld the first-instance judgment. Earlier, the Beijing Intellectual Property Court had decided in the first instance of the case: the defendants shall compensate the plaintiff for economic losses of RMB 2.8 million.

In this case, the two defendants jointly infringed the plaintiff's design patent. As the real sales data are only in the hand of the defendants, the court ordered the defendants to submit the actual sales account book and contract. But the two defendants refuse to submit. The court held that the amount of infringement damages shall be determined based on evidence submitted by the plaintiff, and fully support the claimed damages of RMB 2.8 million by the plaintiff.

Source: [IP Economy](#)

In a trade secret infringement case, Supreme Court of China extract financial information of the defendant to affirm the damages of RMB 5 million plus RMB 1 million reasonable expenses

In the case of the "Optimal Saw" infringement of trade secrets, the Supreme People's Court ruled in second instance that the defendant shall compensate the plaintiff Youkai Company for economic losses of RMB 5 million and reasonable expenses of RMB 1 million.

Due to the large size of the alleged infringing product that could not be transported, the collegiate panel of the Supreme People's Court conducted an on-site inspection, the results of the inspection overturned the appraisal conclusion of the first instance. The court determined that the accused infringing product used the plaintiff's trade secrets.

Since the plaintiff has exhausted for the evidences of infringement, the court extract financial information of the defendants from different government agencies, including defendant's export data, the financial information, and etc., and made the above decision.

Source: [China Trial](#)

Leaking the company's business secrets, three suspects were criminally sentenced and fined

The Xihe District Court of Xinyang City, Henan Province publicly closed a criminal case of infringement of trade secrets on October 15, 2021. The defendant was in charge of R & D of the victim, and sent confidential files of the victim to the other two defendants, and cooperated with the two to conduct research and development. According to Judicial appraisal, it was found that the loss of the victim was

RMB 16,561,462.61. The court ruled that the three defendants guilty of infringement of commercial secrets were sentenced to fixed-term imprisonment, suspended sentence and criminally fined.

Source: [Higher People's Court of Henan Province](#)

Subway sues Indian Tax Department to Court over GST on Intellectual Property Right

Recently, American fast food chain Subway has sued the indirect tax department to court over allegedly forcing it to pay differential Goods and Services Tax (GST) on services before issuing any notices. In its writ petition filed in the High Court of Punjab and Haryana Subway Systems India said that the tax department had issued multiple summonses to top management over taxability of intellectual property rights.

Source: www.latestlaws.com

EU Parliament's key Committee passes Proposal for the Digital Market Act

Recently, the European Parliament's Internal Market and Consumer Protection Committee passed the "Digital Market Act" proposal aimed at restricting the unfair competition of international Internet giants. This proposal will have a market value of more than 80 billion euros and an annual turnover in Europe of more than 80 Social networks, search engines, operating systems, and e-commerce operators with billions of euros are classified as "core platform service providers" or "gatekeepers", which obviously include international Internet giants such as Google, Facebook, and Amazon. The proposal stipulates that such companies are not allowed to use data advantages to place targeted advertisements to users within the European Union unless they obtain explicit permission from users. At the same time, mergers, and acquisitions of such companies in the same industry within the EU will also be restricted and supervised, and the intention of mergers and acquisitions must be approved by the European Commission in advance. If such companies violate the above regulations, they will be fined 4% to 20% of their annual turnover.

The plenary session of the European Parliament plans to vote on the "Digital Market Law" in December. If it is passed, further consultations will be held with the governments of the European Union. The bill is expected to be implemented in Europe during the first half of next year during the French presidency of the European Union.

Source: CCTV.COM

Weekly Competition Law News

The Opinions of the State Council on Carrying out Innovational and Pilot Work of Business Environment Formally Issued

On November 25, 2021, the Opinions of the State Council on Carrying out Innovational and Pilot Work of Business Environment formally issued. The whole document contains 17 articles. In the Article of "protecting fair competition order", it is specially mentioned that relevant authorities shall strengthen and improve the enforcement of antitrust, eliminate enterprise-related fees and rectify intermediary agencies' monopolistic operation and mandatory services. ([More](#))

Guangdong Intellectual Property Court Dismisses 13 Litigations against Monopolistic Penalty Decisions

Recently, Guangzhou Intellectual Property Court issued its first instance judgements against 13 cases filed by 13 concrete companies who were fined by the Administration for Market Regulation for Guangdong Province on June 1, 2020 for reaching and implementing horizontal monopoly agreement. These 13 companies did not agree with the penalty decisions and filed administrative litigations before the court. Upon hearing, it was found by the court that the applications of law contained in the penalty decisions were right and in consistent with judicial procedures. Therefore, the court dismissed all the claims, and these companies has appealed. ([More](#))

FTC Sues to Block USD 40 Billion Semiconductor Chip Merger

On December 2, 2021, the Federal Trade Commission sued to block U.S. chip supplier Nvidia Corp.'s USD 40 billion acquisition of U.K. chip design provider Arm Ltd. The proposed vertical deal would give one of the largest chip companies control over the computing technology and designs that rival firms rely on to develop their own competing chips. The FTC's complaint alleged that the combined firm would have the means and incentive to stifle innovative next-generation technologies, including those used to run datacenters and driver-assistance systems in cars. Throughout the investigation, FTC staff has cooperated closely with staff of the competition agencies in the European Union, United Kingdom, Japan, and South Korea. ([More](#))

EU Commission Fines UBS, Barclays, RBS, HSBC and Credit Suisse EURO 344 Million for Participating in a Foreign Exchange Spot Trading Cartel

On December 2, 2021, EU Commission adopted a decision imposing a total fine of EURO 261 million on the four banks that decided to settle the case, namely UBS, Barclays, RBS and HSBC. EU Commission has also fined Credit Suisse € 83 million under the ordinary procedure. EU Commission's investigation revealed that some traders in charge of the Forex spot trading of G10 currencies, acting on behalf of the fined banks, exchanged sensitive information and trading plans, and occasionally coordinated their trading strategies through an online professional chatroom called Sterling Lads. Under EU Commission's 2006 Leniency Notice, UBS received full immunity for revealing the existence of the cartels, thereby avoiding the fine. ([More](#))

CMA Directs Facebook to Sell Giphy

On November 30, 2021, the Competition and Markets Authority ("CMA") concluded that Facebook's acquisition of Giphy would reduce competition between social media platforms and concluded that Facebook would be able to increase its already significant market power in relation to other social media platforms by denying or limiting other platforms' access to Giphy GIFs. Therefore, CMA concluded that its competition concerns can only be addressed by Facebook selling Giphy in its entirety to an approved buyer. ([More](#))

Cybersecurity and Data Protection

MIIT Issued the "14th Five-Year Plan" for the Big Data Industry

On 30 November 2021, the Ministry of Industry and Information Technology (MIIT) issued the "14th Five-Year Plan" for the Big Data Industry" (the "Plan"), which further emphasizes the value of data elements on the basis of the definition and connotation of the Big Data Industry in the 13th Five-Year Plan. The Plan puts forward six key tasks, including: accelerating the cultivation of the data element market; making use of the advantages of big data characteristics; consolidating the foundation for industrial development; building a stable and efficient industrial chain; creating a prosperous and orderly industrial ecology; and building a firm line of defense for data security. ([More](#))

CFSTC Issued the *Financial Data Security Data Security Assessment Specification (Draft for Comments)*

On 3 December 2021, China Financial Standardization Technical Committee (CFSTC) published a news release announcing the industry standard document *Financial Data Security Data Security Assessment Specification (Draft for Comments)* (hereinafter referred to as the "Specification") drafted by the People's Bank of China for public comments. The Specification stipulates the triggering conditions, principles, participants, contents, processes and methods for financial data security assessment, specifies the three main assessment domains of data security management, data security protection and data security operation and maintenance, as well as the main contents and methods of its security assessment, specifies data security assessment for financial industry institutions, and provides reference for third-party security assessment agencies and other units in conducting financial data security inspection and assessment. ([More](#))

CAICT Released *Cybersecurity Threat Information Research Report 2020 (2021)*

On December 3, 2021, China Academy of Information and Communication Technology (CAICT) and Threatbook Jointly released the *Cybersecurity Threat Information Research Report 2020 (2021)* (the "**Report**"). The Report elaborates on the concept and development status of cybersecurity threat information from various aspects such as definition connotation, application value, standardization progress, policy and industrial support. Combined with the global cyber security threat information in 2020, the report systematically analyses the domestic and international cyber security situation in 2020 from the current situation of cyber environment security, common cyber-attack techniques, the distribution of attacked industries and regions, and the serious domestic cyber threats and attacks. The report also sorts out the typical application cases of cyber security threat information in key industries in China in stages. Finally, exploratory thinking is conducted around many problems found in the development, such as the lack of implementation of standardization, the lack of sharing mechanism and the low maturity of the industry, and targeted opinions and suggestions are put forward in conjunction with the current situation of the industry. ([More](#))

Haidian District Procuratorate Releases *White Book of Cyber Security Protection Procuratorate (2016-2021)*

On 2 December 2021, the Haidian District People's Procuratorate released the *White Book of Cyber Security Protection Procuratorate (2016-2021)* ("**The White Book**"), which first introduced the overall situation of cyber technology crime cases from the perspective of the number of cases, crimes involved and persons involved, and then analysed the characteristics and trends of cyber technology crimes in six specific areas, including telecommunications network fraud, cyber pornography, gambling and drugs, cyber crimes of personal information infringement, theft crimes arising from the new digital economy, crimes related to enterprise data security and crimes related to virtual currency. In order to address the challenges posed by cyber-technology crimes, The White Book innovatively proposes the "Four Plus" working model of cyber-technology prosecution, namely the "Prosecutor + Data Examiner" case-handling model, the "Cross-border Integration + Data Compliance" governance model, the "Customized Legal Teach + Prosecution Geeks" legal publicity model and the "Practice Accumulation + Cutting-Edge Research" talent cultivation model. At the end of white book it looks forward to the transformation and development of prosecution services in a cyber-technology scenario. ([More](#))

Liaoning's First Public Interest Litigation Case on Personal Information Protection Declared

On December 1, 2021, the first civil public interest litigation case of Liaoning province for infringement of personal information, brought by the Shenyang People's Procuratorate in accordance with the law, was heard and adjudicated. In March 2021, the Shenyang City People's Procuratorate received a case tip that Ning and six other people lured players with free game equipment to obtain their WeChat accounts, login passwords, bound mobile phone numbers and payment passwords and then sold those information, making a large amount of illegal profit. Shenyang City Procuratorate filed a civil public interest lawsuit by law, and the court pronounced the judgment on the spot, upholding all the litigation requests of the procuratorial authorities. ([More](#))

Bank of Beijing Fined ¥400,000 for Failing to Report an Important Information System Emergency

On 29 November 2021, the official website of the Beijing Supervisory Bureau of the China Banking and Insurance Regulatory Commission ("CBIRC") published an administrative punishment notice, showing that Bank of Beijing was fined RMB 400,000 for "failing to report to the regulators the occurrence of an important information system emergency, which is a serious violation of prudent operation".

In response to the issue, Article 35(5) of the *Emergency Management Rules on Important Information Systems in Banking Industry (for Trial Implementation)* stipulates that "A banking financial institution shall report the conditions about an emergency to the information system emergency management department of the CBIRC or the local CBIRC dispatched office within 60 minutes after the emergency occurs to an important information system, and shall submit a formal written report within 12 hours after the emergency occurs".

This is not the first fine issued by the CBIRC to a financial institution in recent years for information and network security issues. In January of 2021, the CBIRC issued a fine of RMB 4.2 million to Agricultural Bank of China Limited for violations including "failure to report important information system emergencies", "irregular retention of card production data", "vulnerabilities in network information systems", etc. ([More](#))

CAC Talked and Fined Douban in Accordance with Law

On 1 December 2021, the head of the Cyberspace administration of China ("CAC") talked with the person in charge & chief editor of Douban.com, in response to the recent severe infringement cases that Douban.com and its user accounts repeatedly publish and spread information that prohibited by laws and regulations, and ordered it to immediately rectify the situation and deal with those responsible in accordance with the *Network Security Law of the People's Republic of China* and other laws and regulations. The Beijing Cyberspace administration immediately imposed administrative penalties totaling RMB 1.5 million in fines on its operating entity, Beijing Douban.com Technology Co. From January to November 2021, the CAC instructed the Beijing Cyberspace administration to impose 20 disposal penalties on Douban.com, repeatedly imposing top-level fines of RMB 500,000, for a total cumulative fine of RMB 9 million. ([More](#))

DiDi: To Launch the US delisting and preparations for Hong Kong listing

On December 3, 2021, the official Weibo post of "DiDi" said, "After thorough consideration, the company starts the work of delisting from the New York Stock Exchange as of today and started the preparatory work for listing in Hong Kong." Previously, on the evening of 2 July, 2021, the Network Security Review Office initiated a network security review of DiDi, during which DiDi stopped registering new users. On July 4, the CAC said that after testing and verification, the "DiDi" app had serious illegal and irregular collection and use of personal information, and requested DiDi to make rectification with reference to the relevant national standards and take down 25 APPs under DiDi. On 16 July, 2021, the CAC

together with the Ministry of Public Security and other departments, jointly stationed DiDi to carry out a network security review. ([More](#))

EU Parliament and Council of the EU Reach Agreement on Data Governance Act

On November 30, 2021, the European Commission issued a press release indicating that the European Parliament and the Council of the EU reached political agreement on the proposed *EU Data Governance Act*. The political agreement now will be subject to final approval by the European Parliament and the Council of the EU.

In its press release, the European Commission highlights the main elements of the *Data Governance Act*, which include:

- Measures to increase trust in data sharing;
- New EU rules on neutrality to allow novel data intermediaries to function as trustworthy organisers of data sharing ;
- Measures to facilitate the reuse of certain data held by the public sector. For example, the reuse of health data, under clear conditions, could advance research to find cures for rare or chronic diseases;
- Tools to give Europeans control over the use of the data. ([More](#))

UK: ICO announces provisional intent to fine Clearview AI over £17 million

On 29 November 2021, the Information Commissioner's Office (ICO) announced, its provisional intent to impose a potential fine of just over £17 million on Clearview AI, Inc., as well as having issued a provisional notice to stop further processing of the personal data of people in the UK and to delete it following alleged serious breaches of the UK's data protection laws.

The ICO's preliminary view is that Clearview AI appears to have failed to comply with UK data protection laws in several ways including by:

- failing to process the information of people in the UK in a way they are likely to expect or that is fair;
- failing to have a process in place to stop the data being retained indefinitely;
- failing to have a lawful reason for collecting the information;
- failing to meet the higher data protection standards required for biometric data which is classed as special category data under the GDPR and the UK GDPR;
- failing to inform people in the UK about what is happening to their data; and
- asking for additional personal information, including photos. ([More](#))

Germany: TTDSG Enters into Force

On 1 December 2021, the *Federal Act on the Regulation of Data Protection and Privacy in Telecommunications and Telemedia* (TTDSG) entered into force. The TTDSG regulates the protection of confidentiality and privacy when using telecommunications services and telemedia services, such as websites, messengers, or smart home devices, and also changes the legal framework for the use of cookies and comparable technologies, implementing the requirements of the *Directive on Privacy and Electronic Communications (Directive 2002/58/EC)* into national law. Moreover, the TTDSG applies in addition to the GDPR. ([More](#))

France: CNIL Publishes Guidance for Use of Multi-Factor Authentication Online

On 1 December 2021, the French data protection authority (CNIL) published guidance on the use of multi-factor authentication online. In particular, the guidance describes what multi-factor authentication consists of and recommends that it should be chosen by users at all instances where it is offered by an online service provider. More specifically, the guidance outlines that single factor authentication poses risks as data security depends upon merely one aspect, the guidance recalls that banks and payment services providers are required to implement multi-factor authentication for the majority of online payments, remote access to bank accounts, and for any such operation of a sensitive nature. ([More](#))

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