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Intellectual Property

The CNIPA officially issued the Trademark General Illegal Acts Judgment Standards

The State Intellectual Property Office issued the Judgment Standards for General Trademark Violations on December 13, and will come into force on January 1, 2022. The Trademark General Illegal Judgment Standards provides a unified judgment standard for violations of trademark management order, and also provides more targeted guidelines for trademark enforcement departments to create transparent and predictable trademark management rules for market entity.

The Trademark General Illegal Judgment Standards issued this time have a total of thirty-five articles, refining the nine types of illegal acts against the trademark management order stipulated in the existing trademark laws, regulations and departmental rules.

Source: CNIPA

Revised Version of "Rules for Content Audit Standards for Internet Short Videos" Released

On December 15, the China Netcasting Services Association (CNSA) released the "Rules for Content Audit Standards for Short Network Videos" (2021).

The CNSA organized the relevant short video platforms to make a comprehensive revision of the 2019 version of the Rules. In response to the new manifestations of the problems of pan-entertainment, vulgarity and vulgarity, which are of great concern to society, as well as the typical prominent problems of pan-entertainment deteriorating the ecology of public opinion, using minors to produce undesirable programs, illegally disseminating broadcast TV and network audiovisual program clips, and introducing and broadcasting foreign programs without approval, more specific and clear working guidelines are provided for the front-line auditors of each short video platform, which is conducive to further improving Short video platforms on the Internet audiovisual programs of the basic gate-keeping capacity and level, to promote the network audiovisual space clear.

Source: CNSA

The second trial of the trademark "Daoxiangcun Bakery" was declared invalid. Beijing High Court: Beijing Daoxiangcun and Suzhou Daoxiangcun should draw a clear line of business marks

Recently, the Beijing High People's Court concluded the second instance of the administrative litigation between the State Intellectual Property Office, Beijing Daoxiangcun Food Co., Ltd. and Suzhou Daoxiangcun Food Co., Ltd. regarding the request for invalidation of trademark rights. The Court of Second Instance held that the disputed trademark "DaoXiangCun Bakery" and the cited trademark "DaoXiangCun" constituted similar trademarks used on the same or similar goods and should be invalidated.

The Court of Second Instance held that the goods approved for use in the disputed trademark and the goods approved for use in the cited trademark one were closely related to each other in terms of production departments, sales channels and consumer groups. The trademark in dispute and the cited mark one both contain the Chinese word "DaoXiangCun", which is similar in word composition, call and overall visual effect, and constitutes the similar trademarks. If the disputed trademark and the cited trademark are coexisting on the above-mentioned goods, it is very likely for the relevant public to confuse and misunderstand the source of the goods when applying general attention. In addition, considering the respective historical development and use of the trademarks of Beijing DaoXiangCun Company and

Suzhou DaoXiangCun Company, the established market order should be respected and the boundaries between commercial marks should be delineated as far as possible. Therefore, the trademark at issue and the cited trademark one constitute similar trademarks used on similar goods. Finally, the court of second instance reversed the judgment of the first instance.

Source: [China Judgements Online](#)

"KNAUF" meets "KUNFA", registering transformed well-known trademarks and used with malice was recognized infringement

The plaintiff Knauf Wuhu Company, with the permission of Knauf Gypsum Company, exclusively implemented the trademarks of "Knauf" and "KNAUF" in China. On September 16, 2020, the plaintiff discovered that the defendant Tianjin Yuanhang Shuanglong Decoration Material Trading Co.

The court held that the "KUNFA" logo and the "KNAUF" trademark use the same letters, arranged in a different order, with the general attention of ordinary consumers in the word shape is difficult to distinguish; the three defendants explained that "KUNFA" should be read in Chinese as “坤发”, but according to the rules of English pronunciation, this can also be read as similar pronunciation with "Knauf" .

Taking into account the distinctiveness and popularity of the trademark "KNAUF", as well as the similarity of the decoration of the certificate of conformity, handbag and self-tapping screw packaging of the plaintiff and the defendant, it is sufficient to determine that the defendant's use of "KUNFA" is likely to make the relevant public misunderstand the source of the goods or believe that its source has a specific connection with the goods claimed by the plaintiff's registered trademark "KNAUF", constituting the similar trademarks.

Source: [China Judgements Online](#)

Lifang & Partners: The trademark owner should register the trademark in good faith and should regulate the use on the approved registered trademark and the approved goods for use. By transforming well-known trademarks for trademark registration, but actually used with malice, causing confusion of the consumers, trademark infringement can still be found by the court.

The Supreme Court: "Three Steps" Principle for Judgment of Inventiveness of Patent

Sichuan Honghua Petroleum Equipment Co. (Honghua) filed an administrative lawsuit with the Beijing Intellectual Property Court for the invalidation of a patent entitled "a kind of top drive" by the CNIPA, which was rejected and then appealed. Honghua filed an administrative lawsuit with the Beijing Intellectual Property Court for the invalidation of a patent entitled "a kind of top drive" by the State Intellectual Property Office, which was rejected and then appealed. Recently, the case was upheld by the final judgment of the Supreme Court, which ruled that the patent was not inventive and the patent right was invalid.

In this case, the patent in question discloses a top-drive design of the outer casing of the motor that is not affected by alternating stresses such as hook load and jump drilling, and contains five claims in total. Claim one defines "a top drive, characterized in that: the motor is connected to the lifting box above it, the lifting box is provided with a rotating load-bearing device, the rotating load-bearing device is connected to the spindle, the lifting box is a box-type structure, the lower outer end of the box is connected to the outer casing of the stator of the motor, the rotating load-bearing device inside the lifting box is The upper part is provided with a disc brake assembly, and the disc brake of the said disc brake assembly is connected to the spindle".

The Supreme Court applied the principle of "three-step method" to determine that claims one to five did not possess the inventive step stipulated in Article 22(3) of the Patent Law. This case is a typical case of applying the "three-step" principle to determine the inventiveness of a patent.

Source: [International Intellectual Property Watch](#)

Lifting & Partners: The judgment of patent inventiveness is not unequivocal. In order to achieve more certainty in judging inventiveness, China Patent Examination Guidelines specifically provide guidelines, i.e., the "three-step" principle: 1. determine the closest prior art; 2. determine the distinguishing technical features of the invention and the technical problem actually solved by the invention; 3. determine whether the invention claimed for protection is Obvious. In this case, the Supreme Court clarified the specific application of the three-step approach principle, which helps to clarify and determine the evaluation criteria for patent inventiveness.

USPTO will Issue Digital Certificates for Patents and Trademarks Beginning Next Year

The U.S. Patent and Trademark Office (USPTO) will begin issuing digital certificates for patents and trademark registrations in 2022 to meet the needs of inventors and entrepreneurs seeking intellectual property protection from the USPTO.

For patents, the USPTO will soon issue a Notice of Proposed Rule Making (NPRM) seeking public comment on amending the rules of practice to issue digital patents. Under the current rules, the USPTO must deliver or mail patent certificates to the mailing address on file. Under the proposed changes, the USPTO would no longer deliver patents by mail to a mailing address, but would instead issue digital patents through the Patent Document Access System.

While similar changes to the trademark rules are not required, the USPTO believes that the public may also express its opinion regarding the availability of electronic certificates of trademark registration only. To that end, the USPTO quickly sought public comment on replacing paper certificates of registration with electronic certificates. This change is in response to strong demand from the trademark community. the USPTO will begin offering electronic certificates of trademark registration in the spring of 2022.

Source: [USPTO](#)

Facebook Pays \$60 Million for Meta Trademark Assets

Facebook's parent company Meta Platforms Inc has paid \$60 million to Meta Financial Group, a U.S. regional bank, to acquire the trademark assets in question. Facebook announced the name change to "Meta" at the Connect conference in late October, and earlier reports indicated that the company had been working on various legal preparations for several months. Now, according to a recent filing by Meta Financial, Beige Key LLC, a Delaware-based company, has agreed to buy the worldwide rights to the company's name for \$60 million in cash.

Source: [IP Finance](#)

PCT filing fees in Euros to be fine-tuned from January 1 next year

According to the website of the Finnish Patent and Registration Office (PRH), due to a change in the exchange rate of the euro to the Swiss franc, the World Intellectual Property Organization (WIPO) has decided to revise the following fees related to PCT applications.

(a) The international filing fee is adjusted from Euro 1233 to Euro 1235 in 2021.

(b) For electronic applications, the international filing fee is slightly reduced - to EUR 279 for a full application in character-coded format (including application form, description, claims and abstract) and to EUR 186 for an application form in character-coded format only, both by EUR 1 compared to 2021.

(c) The processing fee (designating the PRH as the international preliminary examination unit) is adjusted to €186, also a reduction of €1 from 2021.

The new fees will take effect on January 1, 2022, and more information is available through the WIPO website.

Source: PRH

Cybersecurity and Data Protection

MIIT Makes Experiments on Data Security Management in the Industrial Area

On 14 December 2021, the Ministry of Industry and Information Technology (MIIT) issued a notice to make experiments on data security management in the industrial area. It will implement laws and regulations such as the *Data Security Law of the People's Republic of China* and the *Cybersecurity Law of the People's Republic of China*, guide provincial industrial and information technology authorities in organizing pilot data security management, urge enterprises to implement the subject responsibility of data security, strengthen data classification and grading management, security protection, security assessment, security monitoring and other work, and improve data security protection capabilities. Strengthen the transformation and application of pilot results, improve the data security system specification and working mechanism in the industrial field, select a number of effective solutions, form a high-quality management model, and promote the improvement of data security protection in the industry. ([More](#))

CAC Instructs and Urges Website Platforms to Dispose of Illegal "Head ID" in Accordance with the Law

On 15 December 2021, Cyberspace administration of china ("CAC") has targeted some "Head ID" of website platforms with large number of followers, high influence and weak sense of law and discipline, abusing their online influence, spreading misguided content and polluting the network ecology. CAC, in conjunction with relevant departments, instructed local cyberspace administrations to require website platforms to effectively fulfill their responsibilities, punish illegal "Head ID" in accordance with the law, and carry out a special rectification action in October to "clear up the chaos in the operation of Internet user accounts" in response to the prominent problems such as fake fans of celebrity accounts. Since 2021, the rectification efforts have been continuously increased, more than 20,000 "Head ID" have been shut down and suspended from updating by the website platforms. ([More](#))

CAICT Released the Internet Law White Paper

On 17 December 2021, China Academy of Information and Communication Technology (CAICT) released the *Internet Law White Paper*. 2021 is the fifth year of the release of the *Internet Law White Paper*, whose main contents include: an overview of the development of the domestic Internet legal system during the 13th Five-Year Plan period, China's Internet legislation in 2021, international Internet legislation in 2021, and the outlook for future rule of law construction. It not only reviews the important results achieved in the field of Internet rule of law during the 13th Five-Year Plan period, but also summarises the latest progress of China's Internet legislation and some law enforcement in the past year and the latest legislative trends in the field of international Internet rule of law, and provides an outlook on the future development of the field of Internet rule of law. ([More](#))

Regulations on the Development of Big Data in Fujian Province published, to Come into Effect on 1 February 2022

On December 15, 2021, the 30th meeting of the Standing Committee of the 13th National People's Congress of Fujian Province voted to adopt the *Regulations on the Development of Big Data in Fujian Province* (the "Regulations"), which will come into effect on 1 February 2022. The Regulations make specific provisions on the development of big data in terms of data resources, infrastructure, development and application, data security, safeguards and legal responsibilities. The Regulations clearly propose that the provincial people's government shall establish and improve the data classification and grading protection and security review system, and clarify the scope boundary, responsible subject and specific requirements for data security in each aspect. ([More](#))

NISSTC Issued the Information Security Technology Network Security Information Sharing Guidelines (Draft for Comments)

On 17 December 2021, National Information Security Standardization Technical Committee ("NISSTC") issued the *Information Security Technology Network Security Information Sharing Guidelines (Draft for Comments)* ("The Guide"). The Guide aims to clarify the principles and modes of cybersecurity information sharing, unify the implementation standards for cybersecurity information sharing activities and propose guidelines applicable to the organisation and implementation of sharing activities by various relevant parties. The main contents of the Guide include clarifying the scope of cybersecurity information sharing in China, including sharing scenarios, sharing participant roles and sharing models, standardizing the classification and scope of sharing of cybersecurity common information, formulating sharing principles applicable to participants in cybersecurity information sharing activities, and guidelines for organizing and implementing sharing activities. ([More](#))

CBIRC Reports: Huaxia Bank's Irregular Access, Storage, Transmission and Use of Personal Customer Information

On 16 December 2021, the Consumer Rights Protection Bureau of the China Banking and Insurance Regulatory Commission (CBIRC) published the *Report on the Infringement of Consumer Rights and Interests by Huaxia Bank*, which stated that Huaxia Bank had, inquired into personal customer savings and deposit transaction information without the authorization of customers on the grounds of "business marketing needs", "verification of loan fund entry" and "employee's abnormal behaviour checking". And stored personal customer information such as name, identity card number, bank account number and credit records on public Internet computers and transmitted them to its partners via Internet mailboxes, posing a risk of information leakage. The credit card centre of Huaxia Bank called and marketed insurance products to 19,900 customers who had cancelled their credit card accounts, and the bank continued to telemarket to them even though some customers had repeatedly and explicitly declined the calls. This constituted a breach of the right to access, store, transmit and use personal customer information and infringed on the security of consumer information. ([More](#))

CCA Releases 50 APP Account Cancellation and Automated Recommendation Unsubscription Evaluation Report

On 14 December 2021, the China Consumers Association (CCA) released the *50 APP Account Cancellation and Automated Recommendation Unsubscription Evaluation Report*, which shows that in terms of whether the APP account can be cancelled smoothly, the problems are: the cancellation conditions

are not specified; the cancellation conditions are not set reasonably; the cancellation process is not set reasonably; the cancellation can be made only after manual review, but the manual review is not accepted, the commitment time limit is too long (more than 15 working days) or the commitment time limit is unknown; the cancellation cannot be made directly through the APP. In terms of automated recommendation unsubscription, the problems were: the APP did not provide users with a way to close automated recommendations; the way to close automated recommendations in the APP was too hidden. In response to the problems found in this evaluation, the CCA will also send a deadline for rectification suggestions and conduct interviews with the APP companies. If the enterprises concerned fail to rectify the situation in time, the CCA will carry out follow-up supervision in accordance with the law. ([More](#))

Digital Services Act Approved by Committee in European Parliament Committee

On December 14, 2021, the European Parliament issued a press release indicating that the European Parliament's Internal Market and Consumer Protection Committee The Internal Market and Consumer Protection Committee has adopted on the Digital Services Act (DSA) proposal. The DSA will define clear responsibility and accountability rules for providers of intermediary services, and in particular online platforms, such as social media and marketplaces. The DSA provides for the following points:

Measures to counter illegal products, services and content online, including clearly defined procedures for removals

Stringent obligations for the biggest online platforms

Recipients of services would have the right to seek compensation for damages

Mandatory risk assessments and more transparency over "recommender systems" to fight harmful content and disinformation

([More](#))

France Has Ordered Clearview AI to Delete Facial Data

On 16 December 2021, French National Data Protection Commission (CNIL) issued a press release indicating that the president of the CNIL gave her formal notice to stop this unlawful processing and to delete the data within 2 months. The company CLEARVIEW AI has developed facial recognition software whose database is based on the extraction of photographs and videos publicly accessible on the Internet. Consequently, the president of the CNIL decided to put the company CLEARVIEW AI in default of:

cease the collection and use of data from people on French territory in the absence of a legal basis;

facilitate the exercise of the rights of data subjects and to comply with requests for erasure made. ([More](#))

Data Protection Against Competition: Polish Regulators Examine Apple

On 14 December 2021, Apple faces an investigation in Poland over whether its new rules on privacy and personal data processing for iOS devices violate competition law, Polish antimonopoly watchdog UOKiK.

Apple rolled out an update of its iOS operating system in April with new privacy controls designed to limit digital advertisers from tracking iPhone users.

The Polish regulator said Apple's new rules have significantly reduced the ability of third-party apps to obtain personal data in order to send personalised adverts.

"We want to examine whether Apple's actions may be aimed at eliminating competitors in the market for personalised advertising services, the objective being to better sell their own service," UOKiK President Tomasz Chrostny said in a statement.

"We will investigate whether this is a case of exclusionary abuse of market power." ([More](#))

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