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## Weekly News By Lifang & Partners NO.35

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## Weekly Competition Law News

### Zhejiang Launches Special Campaign on Administrative Monopoly Against Local Protection and Market Segmentation

On April 14, 2022, in order to accelerate the construction of a national unified market and stimulate the vitality of market players, the Zhejiang Administration for Market Regulation (“**Zhejiang AMR**”) launched a special campaign against local protection and market segmentation, focusing on rectifying abuse of administrative power to restrict transactions directly or in disguise, hinder the free circulation of goods, services and factors, exclude or restrict out-of-town operators, formulate regulations that exclude and restrict competition, especially in education, health care, engineering construction, transportation, insurance, government procurement, bidding and other industries or fields. ([More](#))

### Hebei AMR Looks for Clues about Antitrust Violations from Public

On April 12, 2022, the Hebei Administration for Market Regulation (“**Hebei AMR**”) announces that it is wildly looking for clues about violations of the *Anti-Monopoly Law* from the public: (1) illegal monopoly agreements, including horizontal monopoly agreements between industry associations or similar enterprises fixing prices, restricting output, dividing market and refusing to deal, and vertical monopoly agreements between upstream and downstream suppliers maintaining resale prices, restricting sales areas and customers or other exclusive arrangements; (2) illegal abuse of market dominance, such as unfair pricing, refusing to deal, tying and bundling or discriminatory treatments; (3) illegal administrative monopoly conducts. ([More](#))

### The State Council Issues Opinions on Accelerating the Construction of a National Unified Market, Emphasizing Antitrust Law Enforcement in Key Areas

On April 10, 2022, the State Council of China issued the *Opinions on Accelerating the Construction of a National Unified Market* (“**Opinions**”). The *Opinions* specifically emphasized that authorities should improve the rules for the determination of monopolistic behaviors and complete the classification and grading system for merger review; resolve issues such as platform data monopolies, and prevent platform companies from utilizing data, algorithms and technical methods to exclude and restrict competition; strengthen merger control in the fields of finance, media, science technology, people’s livelihood as well as in the fields involving start-ups, new business forms and labor-intensive industries; steadily promote the reform of natural monopoly industries; enhance the protection of original innovation and intellectual property rights of small and medium enterprises. ([More](#))

### New York Lawmakers Call for Antitrust Bill to Crack Down on Corporate Consolidation and Unfairly High Prices

On April 13, 2022, according to media reports, the lawmakers in New York are pushing for a new anti-trust bill to crack down on corporate consolidation and abuse of market dominance for unfairly high prices. The bill of *21st Century Antitrust Act*, which is sponsored by New York State Senate Deputy Leader Michael Gianaris, “would further empower the attorney general to investigate corporate price gouging and allow consumers to sue when corporate monopolies use their market power to unfairly increase prices”. ([More](#))

### Italy to Set up Unit to Scrutinize Takeovers of Strategic Firms

On April 11, 2022, according to media reports, Italy plans to form a new unit at the cabinet office to oversee merger deals involving strategic companies. One of the tasks of the new unit will be strategic analysis of what is happening in relevant markets, to strengthen the government’s capacity to police any changes to the ownership structure of strategic firms. The government plans to finalize by the end of

May new rules forcing companies that own sensitive assets to inform it of preliminary discussions with potential suitors. ([More](#))

### **Scania Appeals to ECJ against Judgment in Antitrust Ruling**

On April 11, 2022, Scania, a Swedish manufacturer of vans and buses, issued a statement that it had appealed against EU General Court's judgment in a former antitrust ruling, to the European Court of Justice ("ECJ"). In September 2017, the EU Commission adopted a decision holding Scania liable to pay a fine of over EUR 880 million (around CNY 6.06 billion) for allegedly having participated in inappropriate exchanges of information and collusion with regard to pricing and the introduction of emissions technologies. Scania appealed to the General Court later the same year. On February 2, 2022, the General Court rendered a judgment that upheld the number of fines as set by the EU Commission and dismissed Scania's appeal. The ECJ's judgment will be the last court of instance. ([More](#))

### **EU Commission Approves Parker's Acquisition of Meggitt, Subject to Conditions**

On April 11, 2022, the EU Commission has approved the proposed acquisition of Meggitt by Parker, subject to conditions that Parker committed to divest its entire aircraft wheels and brakes division. Through investigation, the EU Commission recognized the remedy package offered by Parker will preserve competition in these markets and ensure that customers will continue benefitting from competitive prices. The approval is conditional on full compliance with commitments offered by Parker. ([More](#))

## **Cybersecurity and Data Protection**

### **The CPC Central Committee and the State Council Issue *Opinions on Accelerating the Construction of the National Unified Market, Establishing Basic System for Data Element Markets***

On 10 April 2022, the *Opinions on Accelerating the Construction of the National Unified Market* ("Opinions") was officially released, which aims to promote the digital economic compliance from the aspects of technology and data market construction, anti-monopoly and anti-unfair competition, and intellectual property protection. The Opinions propose to accelerate the cultivation of a unified technology and data market, establishing a national technology trading market, improving the intellectual property evaluation and trading mechanism, encouraging the interconnection of technology information in various regions, promoting the sharing of major scientific research infrastructure and instruments, and increasing international cooperation in the field of science and technology. The Opinions also emphasize the accelerating of data element market cultivation, establishing and improving basic systems and standards for data security, rights protection, cross-border transmission management, transaction circulation, open sharing, security certification, etc., conducting in-depth data resource investigations, as well as promoting data resource development and utilization. ([More](#))

### **CAICT Releases *White Paper on Artificial Intelligence (2022)***

On 12 April 2022, China Academy of Information and Communications Technology ("CAICT") released the *White Paper on Artificial Intelligence (2022)* ("White Paper"), which comprehensively reviewed the latest trends in global artificial intelligence in policy, technology, application and governance since 2021. It focuses on analyzing the new development situation faced by artificial intelligence and its new development stage. The White Paper believes that AI technology and applications continue to evolve along the three directions of "innovation, engineering, and trustworthiness". The world pays great attention to AI governance. AI security and trustworthiness have become the focal points. ([More](#))

## **NIFA, CBA and SAC Jointly Launch *Proposal on Preventing Financial Risks Related to NFT***

On 13 April 2022, in order to prevent financial risks, protect the legitimate rights and interests of consumers, and maintain the healthy ecology of the industry, the National Internet Finance Association, the China Banking Association and the China Securities Association jointly launched a *Proposal on Preventing Financial Risks Related to NFT* (“Proposal”), calling on members to adhere to integrity for innovation supporting the real economy, and stick to the line to prevent financial risks. The Proposal also calls on consumers to establish a correct consumption concept, consciously resist speculative conducts, stay away from NFT-related illegal financial activities, and effectively protect their own property safety. ([More](#))

## **The Office of the Industrial Internet Special Action Releases the *2022 Work Plan***

On 13 April 2022, the Office of the Industrial Internet Special Action released the *2022 Work Plan* (“Plan”). The Plan includes 15 aspects namely network system strengthening, identification resolution enhancement, platform system expansion, data aggregation empowerment and other actions, as well as 83 specific measures such as accelerating the construction of 5G fully connected factories. Among them, in terms of deepening the integration application, the Plan specifically emphasizes a batch of reference guides for the integration application of the industrial Internet and sub-sectors will be released. It will promote the implementation of the key special projects of industrial software in the *14th Five-Year Plan* and accelerate the innovation of key technologies for digital transformation of enterprises. In terms of strengthening technological innovation, it will actively promote standard pre-research in the fields of 5G+ industrial Internet, industrial Internet identification, as well as key industry application and security. Besides, it will organize the *implementation of the 2022 Industrial Internet Innovation and Development Project*, promote key technological innovations in the industrial Internet industry chain, and launch no less than 30 public service platforms. ([More](#))

## **CAC, STA and SAMR Jointly Launch the *Special Action of Qinglang 2022 to Rectify the Field of Online Live Broadcasting and Short Video***

On 15 April 2022, in accordance with the arrangements of the *Special Action of Qinglang 2022*, the Cyberspace Administration of China, the State Taxation Administration and the State Administration for Market Regulation announced that they will start a two-month Special Action of Qinglang 2022 to rectify the field of online live broadcasting and short video. The Special Action will focus on rectifying illegal contents include lustful, ugly, strange, fake, vulgar and gambling, further standardize the functions of key links, and strictly rectify outstanding issues such as functional anomie, Internet celebrity chaos, illegal profits and malicious marketing. ([More](#))

## **NRTA and Publicity Dept. of CPC Issue the *Notice on Strengthening Management of the Online Audio-Visual Live Broadcasting Platforms of Games***

On 15 April 2022, the National Radio and Television Administration and Publicity Department of the CPC Central Committee issued the *Notice on Strengthening Management of the Online Audio-Visual Live Broadcasting Platforms of Games* (“Notice”). The Notice regulates game live broadcasts from six aspects, including strictly prohibiting the dissemination of illegal games, strengthening the management of game live broadcasting content, improving the guidance of game anchors' behavioral norms, strictly prohibiting illegal and immoral personnel from using live broadcasts and urging online live broadcast platforms to establish and implement a juvenile protection mechanism and strictly fulfill a classified reporting system. ([More](#))

## **Key Points of Digital Economy in Guangdong 2022 Released**

On 14 April 2022, the Guangdong Department of Industry and Information Technology released the *Key Points of Digital Economy in Guangdong 2022* (“Key Points”), focusing on comprehensively building a strong digital economy province. The Key Points proposes a series of measures to give full play to data elements, to promote digital industrialization vigorously and to accelerate industrial digitalization. The Key Points emphasize that it is necessary to establish and improve the data legal system, to promote the development and utilization of data resources, and to improve the flow of data transactions. Among them, it is proposed to accelerate the resourceization, capitalization and capitalization of data, to implement digital value-added and data enrichment projects, as well as to establish a project of “Brain for the Development of Digital Economy and Industry”. ([More](#))

### **The First Domestic Data-Hosting Platform Available for Enterprise Data Cross-Border Flow Officially Put into Use**

On 14 April 2022, the first domestic data-hosting platform available for enterprise data cross-border flow officially put into use (“Platform”). The Bureau of Science, Technology and Information of Chao-yang District, together with the Beijing International Big Data Exchange, developed the Platform. When data processors provide important data and personal information collected and generated during domestic operations to oversea operators, they shall conduct security assessments in accordance with relevant regulations. The platform is characterized by unified standards, efficient management, and customized services. It supports data-hosting, output desensitization, fusion computing and filing, which realizes the encryption of data and model systems, also ensures the security of cross-border data flow. ([More](#))

### **SPC Typical Cases of Personality Rights after Civil Code: AI Algorithms and Facial Recognition Apps May Cause Infringement**

On 11 April 2022, the First Civil Division of the Supreme People's Court issued nine typical civil cases concerning protection of personality rights. The nine typical cases, of which the judgements have already come into effect after the promulgation of the Civil Code, have significant social impact and typical demonstration significance. They include cases concerning infringement of name rights by online bidding ranking, infringement of personality rights by intelligent algorithm software, infringement of privacy rights by neighbor's video doorbell, as well as Public Interest Litigation concerning illegal trading of personal information. It is clearly stated that the application of AI algorithms and face recognition technology may cause infringement. ([More](#))

### **Singapore: *Licensing Framework* for Cybersecurity Service Providers Enters into Effect**

On 11 April 2022, the Cyber Security Agency of Singapore has announced the launch of its *Licensing Framework* for cybersecurity service providers under Part 5 of the *Cybersecurity Act*. The intent of the framework is to better safeguard consumers' interests and address the information asymmetry between consumers and cybersecurity service providers. At the same time, the regulatory regime is also envisaged to improve service providers' standards and standing over time. Under the *Licensing Framework*, existing cybersecurity service providers who are already engaged in the businesses of providing either or both licensable cybersecurity services will be given six months to apply for a license. Any person who engages in the business of providing any licensable cybersecurity services without a license after 11 October 2022 shall be guilty of an offence and liable on conviction to a fine not exceeding SGD 50000 or to imprisonment for a term not exceeding 2 years or to both. ([More](#))

### **Higher Fines for Breach of PDPA in Singapore**

On 11 April 2022, according to the media reports, from 1 October 2022, companies that breach the Personal Data Protection Act (“PDPA”) may face fines of up to SGD 1 million or where the organization’s annual turnover in Singapore exceeds SGD 10 million, 10% of the organization’s Singapore turnover. Penalties imposed under the PDPA could potentially be more stringent compared to the GPDR, which currently imposes fines of up to EUR 20 million or 4% worldwide turnover, whichever is higher. Given these higher financial penalties, organizations collecting, using or disclosing personal data in Singapore are recommended to carefully review their existing data protection programs and processes to ensure compliance with the PDPA. ([More](#))

### **Dutch DPA Fines Tax Authorities EUR 3.7 Million for Violating GDPR**

On 12 April 2022, the Dutch data protection authority (“DPA”) fined tax authorities EUR 3.7 million for violating GDPR. The fine, the highest the DPA has ever imposed, was based on 6 violations including: (1) No legal basis for the processing of personal data; (2) The goal of lists containing personal data being not specifically defined in advance; (3) Containing incorrect and non-updated data; (4) Storing data for far too long; (5) Insufficient security of personal data; (6) Waiting too long before asking the internal privacy supervisor for advice. The tax authorities can appeal the decision. ([More](#))

### **Brazilian Senate Announces Incoming Approval of the *Bill Regulating Cryptocurrency Market***

On 13 April 2022, according to the media reports, the *bill regulating the cryptocurrency market* in Brazil is expected to be approved by the National Congress in the first half of this year. The proposed law would empower the Brazilian president to determine which federal entity should be responsible for the establishment of rules for cryptocurrencies. The president would either create a new regulator or delegate this function to the nation’s Securities and Exchange Commission or the Central Bank of Brazil. The bill also proposes a penalty of four to eight years in prison, in addition to a fine for those who commit fraud in the provision of virtual asset services. ([More](#))

### **Sony and Nintendo Improve Gaming Subscription Rules**

On 13 April 2022, the Competition and Markets Authority has announced to conclude the investigations into the online video gaming sector, where people automatically continue to be charged indefinitely. As a result, Sony has agreed to put in place measures to protect customers who haven’t used their memberships for a long time but are still paying, such as contacting these customers to remind them how to stop payments; Nintendo has changed its business practices during the course of the investigation so that Nintendo Switch Online Service is no longer sold with automatic renewal set as the default option. ([More](#))

### **Source Music Fined KRW 3 Million by PIPC for Accidentally Leaking Fans’ Personal Information**

On 13 April 2022, Source Music has been ordered to pay a fine of KRW 3 million (approximately RMB 16000) by South Korea’s Personal Information Protection Commission (“PIPC”), for its violation of the Personal Information Protection Act. Back in last year, Source Music used a Google questionnaire in the process of refunding fan club membership fees. However, due to the questionnaire’s privacy settings being accidentally set to public, the personal information of 22 fans who filled out the questionnaire was leaked. Source Music apologized for the leak in a statement addressing various issues with the refund process, stating, “We apologize for this negligence. In response to this incident, the error was corrected immediately after it was discovered and a report was filed with the Personal Information Protection Commission.” ([More](#))

## **Louis Vuitton Sued for Alleged Violation over Virtual Try-On Feature**

On 13 April 2022, according to media reports, fashion brand Louis Vuitton is facing a class-action lawsuit filed in U.S. District Court for the Southern District of New York by a customer who alleged its Virtual Try-On feature violates the Illinois Biometric Information Privacy Act. The feature is used for eyewear and customers provide an image of their face, which the customer alleged is collected and stored without their knowledge or consent. ([More](#))

## **Intellectual Property**

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### **China National Intellectual Property Administration (CNIPA) issued Notice on Continuously Cracking Down on Malicious Trademark Registrations**

CNIPA recently issued the "Notice on Continuously Cracking Down on Malicious Trademark Registration", proposing that to further implement the deployment of the 2022 National Conference of Directors of CNIPA, CNIPA will continue cracking down on malicious trademark registration with "zero tolerance", and eight notices on specific measures were issued.

Source: [China National Intellectual Property Administration](#)

### **The first pharmaceutical patent linkage case in China was announced**

On April 15, the Beijing Intellectual Property Court announced the judgement of first instance of Chugai Pharmaceutical Co., Ltd. v. Wenzhou Haihe Pharmaceutical Co., Ltd. The case was the first case of pharmaceutical patent linkage litigation in China, since the implementation of the new Patent Law.

The plaintiff, Chugai Pharmaceutical Co., Ltd., was the patentee of the patent No. 200580009877.6 (hereinafter, the patent), entitled "ED-71 Preparation", and the holder of the marketing license for the related patented medicine. The plaintiff registered the above medicine and the patent on the China Listed Pharmaceutical Patent Information Registration Platform. The defendant had applied to the regulatory authority for listing permit of a generic medicine, and made a Class 4.2 declaration, that its generic medicine did not fall within the scope of protection of the relevant patent rights on the China Listed Pharmaceutical Patent Information Registration Platform. The plaintiff requested the court to affirm that the generic medicine fall into the protection scope of the patent.

The court held that the technical solution of the defendant's generic medicine was different from the plaintiff's patent technical solution, and did not fall within the scope of protection of the patent, and dismissed the plaintiff's claims. The plaintiff claimed that it would appeal against the judgment.

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

### **Shanghai prosecutors approved the arrest of copyright infringement suspects who alleged "play all games on one machine"**

Recently, the Shanghai Songjiang District Procuratorate approved the arrest of Li Moulu and other suspects for the crime of copyright infringement.

In May 2021, Nintendo Co., Ltd. reported to the police that some e-commerce companies were selling game machine with built-in games such as Super Mario and other nintendo's games, which were suspected of copyright infringement. PSB investigated and found that many of the stores were run by a Shenzhen technology company. In September 2021, police officers went to Shenzhen, Foshan and other places, and arrested a number of suspects, including the company's deputy general manager, and seized



more than 7,700 game machines. In November 2021, the company's shareholder surrendered to the police. At present, the case is still under further investigation.

Source: Procuratorial Daily

### **The employee forwarding the company's technical secret to the private mailbox without permission constitutes the infringement on technical secret**

The Intellectual Property Tribunal of the Supreme People's Court (SPC) recently made a judgement of a case involving the mis-appropriation of technical secrets from a company, ruling that sending emails to private mailbox without the company's permission constitutes the mis-appropriation of technical secrets. SPC also affirmed that amount of damages for infringement stipulated in the terms of keeping business secrets agreed upon by the company and the employees can be regarded as an important basis for determining the infringement damages.

In January 2021, the plaintiff filed a lawsuit to the court, claiming that its former employee violated the confidentiality agreement and the company's information security regulations to send the crawler platform data information to his personal mailbox without permission, resulting in serious information leakage. The first-instance court held that the defendant's acts constituted infringement on business secrets, and ordered the defendant to stop infringement and pay damages of RMB 50,000.

Both sides appealed to the SPC. SPC affirmed that the amount of damages agreed by both parties could be taken as an important reference factor for determining the infringement damages. Considering the factors of the case, the Supreme People's Court ruled that the defendant was prohibited from disclosing, using or allowing others to use the technical secret, and awarded damages of RMB 265,000, increasing the amount of damages.

Source: Intellectual Property Court of the Supreme People's Court

### **VPX was fined USD 175 million in America for overuse of the "Bang" trademark**

In an arbitration in the U.S. District Court for the Central District of California, an arbitrator arbitrated that Vital Pharmaceuticals, Inc. (VPX) should pay damages of USD 175 million to two infringed beverage manufacturers. This case is one of the trademark infringement cases with high damages in the United States.

In 2009, Orange Bang sued VPX, claiming that Bang Energy drink sold by VPX caused consumer confusion. In 2019, Orange Bang and Master Energy applied for arbitration, accusing VPX of violating the 2010 settlement agreement and infringing Orange Bang's trademark. On April 4th an arbitrator ruled that VPX had breached the settlement agreement and infringed Orange Bang's trademark, and affirmed that Bang Energy RTD was not a drink "based on creatine".

Source: Intellectual Property Specialist

### **The United States Copyright Office (USCO) issued applicable rules for the initial phase of the CCB Process**

After several extensions of the notice and comment period for the establishment of the Copyright Claims Board (CCB), the USCO issued final rules for the CCB Initiation Process (CCB Process). The CCB, established under the Copyright Alternative in Small-Claims Enforcement ( "CASE" Act ), is a voluntary tribunal where litigants can resolve disputes worth USD 30,000 or less.

The final rule establishes the procedures and requirements applicable to the initial phase of the CCB process, including filing claims, opt-out, compliance review, notice, service, reply and counterclaim. USCO emphasizes that the final rule charges two part fees for filing a claim. It standardizes require-

ments for claims, replies and counterclaims, requests the certifier to confirm the accuracy of the claim information.

Source: [www.jdsupra.com](http://www.jdsupra.com)

### **The amendments to the German Patent Law will take effect on May 1, 2022**

In the Second Patent Law Modernization Act (Act) passed on August 10, 2021, a number of amendments were made to the German Patent Law, which will take effect on May 1, 2022.

After the Act takes effect, the time limit for PCT applications to enter the national phase in Germany will be extended from 30 months to 31 months from the filing date or priority date. If the international application is not filed in German, a German translation is required. The change of parties in opposition proceedings will be simplified if the patent owner changes. The newly registered rights holder may replace the former in ongoing proceedings without the consent of the other parties.

For all IP proceedings, it generally regulates that the option to participate in hearings, proceedings and testimony by means of image and sound transmission should be provided. All public holidays applicable at one or more Das Deutsche Patent- und Markenamt (DPMA) locations will be recognized in order to extend the time limit and eliminate legal uncertainty. A moderate increase in the annual fee for patent application or patent maintenance will take effect on July 1, 2022.

Source: [www.lexology.com](http://www.lexology.com)

### **U.S. is outnumbering global rivals including China on patents filed in Europe**

Data released by the European Patent Office (EPO) show that new ideas percolated at a record pace despite the isolation forced upon many people by the global pandemic. U.S. companies and inventors filed 5.2% more patent applications in Europe in 2021, helping to reverse the overall decline in 2020.

U.S. inventors filed a record 46,533 patents, almost three times more than China. The U.S. patent growth was driven by increased patent applications in five fields: medical technology, computer technology, digital communications, pharmaceuticals and biotechnology. The U.S. led in semiconductor patent aspect ahead of both China and South Korea

Source: [www.bloombergquint.com](http://www.bloombergquint.com)

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