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Weekly News By Lifang & Partners NO.39

Weekly Competition Law News

The State Administration for Market Regulation: To Accelerate the Revision of Basic Laws Such as Anti-Monopoly Law

Shanxi Issues Anti-Monopoly Compliance Guidelines for Business Operators

European Commission Issues New Vertical Block Exemption Regulations and Vertical Restraints Guidelines

FTC Requests to Divest Fiagon before Approval of Medtronic's Intersect Acquisition

Seattle Court Rules Game Maker Valve Must Continue to Face Antitrust Case

European Commission Seeks Feedback on Proposed Simplification Measures Regarding Merger Procedures

Cybersecurity and Data Protection

The Standing Committee of the National People's Congress Announces 2022 Legislative Working Plan, Further Review the *Law on Combating Telecom and Online Fraud*

The Ministry of Industry and Information Technology Issued 18 Standards concerning *Specification for the App User Rights Protection Evaluation* and *Specification for the Minimum Necessary Evaluation for the Collection and Use of Personal Information by Apps*

The Central Civilization Office, the Ministry of Culture and Tourism, the State Administration of Radio and Television, and the State Internet Information Office Jointly Issue the *Opinions on Regulating Online Live Donation and Strengthening the Protection of Minors*

The National Development and Reform Commission Issues *14th Five-Year Plan for Bioeconomic Development* to Promote Health Data Sharing and Development

Beijing Digital Economy Promotion Regulations Solicit Opinions



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EU Strengthens Cybersecurity Rules to Fight Cybercrime

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Weekly Competition Law News

The State Administration for Market Regulation: To Accelerate the Revision of Basic Laws Such as Anti-Monopoly Law

Recently, the State Administration for Market Regulation (“SAMR”) held a meeting, emphasizing that it is necessary to speed up the revision of fundamental laws and systems such as the *Anti-Monopoly Law* and the *Law against Unfair Competition*, fully implement the system of fair competition review, deeply promote the implementation of fair competition policies, build a national unified market, continuously improve a stable, transparent and predictable rule system of “traffic signals” and further stimulate the vitality of various types of capital, including non-public capital. ([More](#))

Shanxi Issues Anti-Monopoly Compliance Guidelines for Business Operators

Recently, the Shanxi Provincial Administration for Market Regulation issued the *Anti-Monopoly Compliance Guidelines for Business Operators* (“**Guidelines**”) and relevant interpretation. The *Guidelines* provides systematic guidance for operators to organize anti-monopoly compliance from multiple levels, such as reminding operators of anti-monopoly compliance risks, guiding operators to establish and improve compliance management systems, as well as to strengthen the compliance risk management. The *Guidelines* focuses on the identification and risk prevention of monopoly agreements, cartels organized by industry associations, abuse of dominant market position, monopolistic behaviors in special fields, overseas monopolistic behaviors and administrative monopoly. ([More](#))

European Commission Issues New Vertical Block Exemption Regulations and Vertical Restraints Guidelines

On May 10, 2022, the European Commission adopted the new *Vertical Block Exemption Regulation* (“**VBER**”) accompanied by the new *Guidelines on Vertical Restraints*. Under the new VBER rules, some agreements between manufacturers and distributors will be exempted, provided their agreements do not contain price-fixing and other hardcore restrictions and both do not have over a 30% market share. The revised rules will enter into force on June 1, 2022. ([More](#))

FTC Requests to Divest Fiagon before Approval of Medtronic’s Intersect Acquisition

On May 10, 2022, the Federal Trade Commission (“**FTC**”) approved the proposed acquisition of Intersect ENT Inc. (“**Intersect**”) by Medtronic Inc. (“**Medtronic**”), subject to conditions that Medtronic divests its subsidiary Fiagon. Medtronic and Fiagon are both providers of ear, nose and throat navigation systems, FTC are concerned that the deal would otherwise lead to higher prices and reduced innovation in the relevant market. Additionally, Medtronic and Intersect must obtain prior approval from the FTC for 10 years before buying ENT navigation systems and balloon sinus dilation assets. ([More](#))

Seattle Court Rules Game Maker Valve Must Continue to Face Antitrust Case

On May 9, 2022, according to media report, a federal judge in Seattle ruled that Valve Corp. (“**Valve**”) must face antitrust litigation over claims that “most favored nation” policies for its Steam distribution platform have driven up video game prices across the industry. The Judge found that Valve enforces its “most favored nation” policies through a combination of written and unwritten rules, imposing conditions on how non-Steam-enabled games are sold and priced. It is plausible that Valve exploits its market dominance to threaten and retaliate against developers that sell games for less through other retailers or platforms. ([More](#))

European Commission Seeks Feedback on Proposed Simplification Measures Regarding Merger Procedures

Recently, the European Commission has launched a public consultation inviting all interested parties to comment on the draft revised *Merger Implementing Regulation* and the *Notice on Simplified Procedure*. In August 2016, the Commission launched a thorough review process of the merger procedural and jurisdictional rules, to target and simplify the Commission's merger review process for cases that are unlikely to raise competition concerns and to focus resources on the most complex and relevant cases. This process included an evaluation of the procedural and jurisdictional aspects of EU merger control rules and a public consultation on an inception impact assessment. ([More](#))

Cybersecurity and Data Protection

The Standing Committee of the National People's Congress Announces 2022 Legislative Working Plan, Further Review the *Law on Combating Telecom and Online Fraud*

On 6 May 2022, the Standing Committee of the National People's Congress ("NPC SC") announced its 2022 legislative working plan. According to the schedule, NPCSC will further review the *Law on Combating Telecom and Online Fraud* in this June, to accelerate the pace of legislation in the fields of digital economy, Internet finance, artificial intelligence, big data and cloud computing. ([More](#))

The Ministry of Industry and Information Technology Issued 18 Standards concerning *Specification for the App User Rights Protection Evaluation and Specification for the Minimum Necessary Evaluation for the Collection and Use of Personal Information by Apps*

On 7 May 2022, the Ministry of Industry and Information Technology of the People's Republic of China organized the China Academy of Information and Communications Technology and the Telecommunications Terminal Industry Association to formulate and release 10 standards of *Specification for the App Users' Rights Protection Evaluation* and 8 series of standards of *Specification for the Minimum Necessary Evaluation for the Collection and Use of Personal Information by Apps*. According to the standards, the Science and Technology Department of the Ministry of Industry and Information Technology formulated and revised the plan, and relevant standardization technical organizations have completed *Part 1: General Provisions*, *Part 2: Location Information*, *Part 3: Image Information* and *Part 11: SMS Messages*. ([More](#))

The Central Civilization Office, the Ministry of Culture and Tourism, the State Administration of Radio and Television, and the State Internet Information Office Jointly Issue the *Opinions on Regulating Online Live Donation and Strengthening the Protection of Minors*

On 8 May 2022, according to the laws and regulations including *Cybersecurity Law* and *Law of the People's Republic of China on the Protection of Minors*, Office of the Central Civilization, the Ministry of Culture and Tourism, the State Administration of Radio and Television, and the State Internet Information Office jointly issued the *Opinions on Regulating Online Live Rewards and Strengthening the Protection of Minors* ("the Opinions"). The Opinions put forward requirements such as prohibiting minors from participating in live broadcast donations and prohibiting minors from engaging in streamer activities. ([More](#))

The National Development and Reform Commission Issues *14th Five-Year Plan for Bioeconomic Development to Promote Health Data Sharing and Development*

On 10 May 2022, the National Development and Reform Commission issued the *14th Five-Year Plan for Bioeconomic Development* (“the Plan”). The Plan pointed out the requirement to improve the development of the bioinformatics industry, promote data sharing, utilize the fifth-generation mobile communication (5G), blockchain, Internet of Things and other cutting-edge technologies to realize the full life cycle management of drugs and vaccines from production to utilization, and build a traceability system of medicine. It is necessary to integrate multi-source heterogeneous data such as health wearable devices, Internet medical care and medical insurance to realize the interconnection of health state data and active health production data, to promote the safe, orderly aggregation and sharing of regional medical and health data, as well as to support the development of the regional health and health big data industry. ([More](#))

Beijing Digital Economy Promotion Regulations Solicit Opinions

On 9 May 2022, the Beijing Municipal Bureau of Economy and Information Technology issued the *Beijing Digital Economy Promotion Regulations (Draft)* (“the Regulations”) and widely solicited opinions from the public. The Regulations stipulate that the positioning of the data catalogue and the responsibilities of the compilation subjects, clarify the channels and rules for the opening and sharing of public data, as well as various data resources, and clarify that each subject has the right to process the data which has been collected legally, and enjoys the property income of data which is under protection of the law. The regulations also require to establish capitalization systems such as data element registration, evaluation, application, to establish and improve the data element market ecology, supporting the development of Beijing International Big Data Exchange, and promoting the efficient circulation of data resources. ([More](#))

Guangzhou Issues Digital Economy Promotion Regulations to Create a New Ecology of Characteristic Data Transactions

On 13 May 2022, the Guangzhou Municipal Government Information Office Issued the *Guangzhou Digital Economy Promotion Regulations* (“the Regulations”) and held a press conference. The Regulations are the first urban digital economy local regulation and have distinctive local characteristics. Taking the promulgation of the Regulations as an opportunity, Guangzhou government will clarify the responsible department for data collection, establish “a government version of natural person data space”, and explore innovative applications of data integration in the next step. At the same time, together with relevant departments, the Guangzhou government will actively cultivate the data element trading market and create a new ecology and new model of data trading with Guangzhou characteristics. ([More](#))

China Academy of Information and Communications Technology released the Foundation Plan - Series of Standards for Office Instant Messaging Software Security

On 6 May 2022, the China Academy of Information and Communications Technology released the *Foundation Plan - Series of Standards for Office Instant Messaging Software Security* and launched the first batch of the evaluation. Among them, *Office Instant Messaging Software Part 1: Security Requirements and Test Methods* established an office instant messaging software security evaluation system, based on the security risk challenges faced by office instant messaging software companies in the process of development and operation. According to laws, regulations and industry characteristics, this series of standards were formulated to clarify safety requirements, goals, applicable subjects, etc., to ensure the healthy and sustainable development of the industry. ([More](#))

The National Information Security Standardization Technical Committee Issues Notice on the Requirements of Two National Network Security Standards

On 7 May 2022, in order to strengthen the fundamental, normative, and leading role of National Network Security Standard in national cybersecurity assurance, according to the urgent need of related work for national network security, the Secretariat of the National Information Security Standardization Technical Committee proposed 2 standard preparation requirements. Among them, the *Information Security Technology: Network Attack and Network Attack Event Determination Criteria* intended to clearly illustrate the identification indicators of different types of network attacks and network attack events. The *Information Security Technology: Network Cyber Resilience Evaluation Criteria* intended to define the cyber resilience index system and propose cyber resilience evaluation criteria, which are suitable for network operators to design network information systems to prevent and mitigate cyber security risks. ([More](#))

The National Computer Virus Emergency Response Center Discovers 18 Mobile APPs Collecting Personal Privacy Information Beyond the Scope

On 12 May 2022, according to the media report, the National Computer Virus Emergency Response Center recently discovered through Internet monitoring that 18 mobile APPs have privacy non-compliance issues, violating the relevant provisions of the *Cybersecurity Law* and the *Personal Information Protection Law*. They are suspected of collecting personal privacy information beyond the scope, which mainly include: Failing to list all the privacy rights of the users that they applied for; Starting to collect personal information before obtaining the user's consent; Failing to provide effective functions for correcting, deleting personal information and canceling the user account, or setting unreasonable conditions for canceling the user account; Failing to establish or publish complaint or reporting channels for personal information security or exceeding the promised time limit for service handling and replying. ([More](#))

China's First Public Hearing of Non-Prosecution Case Concerning Data Compliance

Recently, the Putuo District Procuratorate invited hearing officers, investigators, third-party inspectors of corporate compliance and victim companies to join in the non-prosecution public hearing of the Case of Illegal Acquisition of Computer Information System Data by Z Network Technology Co., Ltd. In this case, Z Network Technology Co., Ltd. illegally obtained data from a food delivery platform through data crawler technology. There are three suggestions from the Procuratorate. First, it is necessary to build a data compliance management system, set up a special management department, formulate and continuously improve data compliance plans. Second, it is essential to improve the ability to identify and respond to data compliance risks, to standardize the approval process and establish a compliance assessment system. Third, it is important to stabilize data compliance operation, establish a data compliance consultation and data non-compliance discovery mechanism, as well as establish a data classification and data security management system. ([More](#))

EDPS and EDPB Publish Joint Opinion to Ensure Empowerment of Data Subjects

On 5 May 2022, The European Data Protection Supervisor (“EDPS”) and the European Data Protection Board (“EDPB”) published their Joint Opinion on the proposed *Data Act*. The *Data Act* aims to establish harmonized rules on the access to, and use of, data generated from a broad range of products and services, including Internet of Things, medical or health devices and virtual assistants. The *Data Act* also aims to enhance data subjects' right to data portability under Art. 20 of the *General Data Protection Regulation* (“GDPR”). At the same time, since the *Data Act* would also apply to highly sensitive personal data, the EDPS and EDPB urge the co-legislators to ensure that data subjects' rights are duly protected. ([More](#))

U.S. Issues the Fifth State-Level Privacy Law Concerning Consumer and Child Data Protection

On 5 May 2022, the Connecticut House of Representatives passed a sweeping privacy bill. That means Connecticut is on the verge of becoming the fifth state to have a comprehensive privacy law. The bill mainly involves the applicable subject, consumer rights, privacy design principles, and the law enforcement power of the state attorney general. According to the Act, subjects who control or process the personal data of 100,000 consumers, and who control or process the personal data of 25,000 consumers and receive more than 25% of their income from the sale of personal data, will be the objects to which the Act applies. At the same time, the Act also provides a wide range of individual rights, including the right to know, the access right, the erasure right, the portability right, the right to refuse automated decision-making, etc., but does not include the right to private action. ([More](#))

UK Issues the First *Data Reform Bill* to Create a World-Class Data Rights Regime

On 10 May 2022, the opening ceremony of UK's National Parliament was held. As part of the Queen's Speech, the UK government introduced the *Data Reform Bill* ("the Bill"). The purpose of the Bill is to "take advantage of the benefits of Brexit to create a world class data rights regime" and it will be used to reform the UK's existing General Data Protection Regulation and the Data Protection Act, to streamline data-protection laws and cut red tape, reducing the burden on businesses by creating a more flexible, outcomes-focused approach while also introducing clearer rules around personal data use. ([More](#))

EU Strengthens Cybersecurity Rules to Fight Cybercrime

On 13 May 2022, EU countries and lawmakers agreed to impose tougher cyber-security rules for large energy, transport and financial firms, as well as digital providers and medical device makers, amid concerns about malicious cyber-attacks. The new policy builds on existing rules proposed by the European Commission in 2020, known as the NIS 2 Directive, which expands on the scope of the current NIS Directive. The new rules cover all medium and large companies in essential sectors such as energy, transport and financial firms, online search engines and social networking service platforms will also fall under the rules. The companies are required to assess their cyber-security risk, notify authorities and take technical and organizational measures to counter the risks, facing fines of up to 2 per cent of global turnover should they fail to do so. ([More](#))

IKEA Canada Leaks Personal Information of About 95,000 Customers

On 6 May 2022, according to media report, IKEA Canada notified Canada's privacy watchdog following a large data breach involving the personal information of approximately 95,000 customers. The compromised data included customer names, email addresses, phone numbers and postal codes, and IKEA Family loyalty program numbers may have also been visible. IKEA Canada stated that they have proactively notified the Office of the Privacy Commissioner of Canada about this incident, as well as any applicable customers. Internal processes have also been reviewed and updated to prevent such incidents in the future. ([More](#))

U.S. Facial Recognition Company Clearview AI Agrees to Restrict Sales of Facial Recognition Data in America

On 9 May 2022, according to media report, facial recognition company Clearview AI has agreed to permanently stop selling its vast biometric database to all private companies and individuals in the United States in a partial legal settlement with the American Civil Liberties Union ("ACLU"). The settlement agreement marks the end of a two-year legal dispute brought against the company by the ACLU and privacy advocate groups in May 2020. In the dispute, Clearview was accused of violating the Illinois Biometric Information Privacy Act of 2008 ("BIPA"). The act requires companies to obtain

permission before capturing a person's biometric information, such as fingerprints, pace data, iris scans and facial prints, and authorizes users to sue companies that do not. ([More](#))

France's Data Privacy Watchdog Triggers Investigation of Clearview AI

On 11 May 2022, according to media report, the France's data privacy watchdog was considering triggering the process of fining Clearview AI. The regulator said Clearview AI's collection of publicly-available facial images on social media and the internet breached European Union rules on data privacy. Under EU law, the regulatory framework of the GDPR can apply in some cases where data of EU-based users of internet services are tracked and processed, even if the provider has no physical presence inside the bloc. The software Clearview AI, which is used as a search engine for faces to help law enforcement and intelligence agencies in their investigations, failed to ask for the prior consent of those whose images it collected online. ([More](#))

Intellectual Property

RMB 1 million of damages was awarded: The departing employee shall bear damage liability for filing patent according to the former company's technology

The Shenzhen Intermediate People's Court made a judgment on patent ownership dispute between Emerson Electric (Zhuhai) Co., Ltd. and Shenzhen A.R. Electric Co., Ltd., ruling that the involved patent belong to the plaintiff, and the defendant shall pay damages and reasonable expenses totaling RMB 1 million.

The court found that the inventor of the patent and the founder of the defendant company had worked for the plaintiff's affiliated company and had access to the technical solution and drawings of the patent, and the technical solution of the defendant's patent was substantially the same as that of the plaintiff's drawings, which formed before the application date of the subject patent. Combined with the statement of the inventor on the hearing, it was sufficient to determine that the technical solution was not independently developed by the defendant, but from the plaintiff's affiliated company. So, the court confirmed that the patent belonged to the plaintiff.

At the same time, the court of first instance found that the defendant had obvious malice, actually considered the huge economic loss suffered by the plaintiff and the reasonable expenses incurred, dealt with the related ownership dispute and the malicious infringement liability together, and broke through to fully support the damage amount the plaintiff claimed in this ownership dispute case.

Source: Shenzhen Intermediate People's Court

Setting "Huawei" as the commodity search keyword constitutes trademark infringement

The Futian District People's Court made a judgment on the trademark infringement dispute between the plaintiff Huawei Technologies and the defendant Shenzhen Mingyu Technologies, and ordered the defendant to pay damages of more than RMB 500,000.

The court held that, firstly, the accused infringing products and the goods approved for use of Huawei's registered trademark belonged to the same kind of goods. Secondly, the defendant set "Huawei" as the search keyword, and used "Huawei" and the logo in many places in the product parameters and the main picture, which belongs to the trademark use action. Although the defendant indicated its own brand in the product and page details, and there was no "Huawei" or Huawei trademark logo on the accused infringing products, it set "Huawei" as the search keyword and used "Applicable for Huawei" and "Original and authentic Huawei earphones" in the product name, used Huawei trademark logo on the display picture, and marked "Huawei" in the product name and model in the product details, which are obviously malicious in trying to steal the trademark popularity of the plaintiff. It is easy to mislead the

relevant public to believe that the earphone of the defendant has a specific connection with the plaintiff. Therefore, the defendant constituted trademark infringement.

Source: Futian District People's Court

"Xinyang Mao Jian" geographical indications trademark case: Bulk tea sold in boxes, the newly added packaging still should bear liability

Beijing Xicheng District People's Court made a judgment on the trademark infringement dispute between the plaintiff Xinyang Tea Association and the defendant Chen Tea Co., Ltd., and ordered the defendant to pay damages of RMB 25,000.

The court held that the defendant purchased bulk tea-leaves and gift boxes with the "Xinyang Mao Jian" logo, and then sold the "Xinyang Mao Jian" products on the e-commerce platform after repackaging them, which constituted using the same or similar trademark on the same goods without authorization. The defendant failed to prove that the products it sold originated from the designated production area designated by "Xinyang Mao Jian" or met the specific quality requirements, which constituted the infringement of the exclusive right of the trademark. The court took into account the popularity of the trademark, publicity efforts, the defendant's sales price, sales duration, sales amount, infringement methods and other factors, and awarded damages of RMB 25,000.

Source: Beijing Xicheng District People's Court

The first network "Crawler" case in the field of short video platform in China was announced

On May 10, 2022, the Liangxi District People's Court sentenced the defendant Ding to one year and six months in prison, suspended for two years, and fined RMB 30,000 for the crime of invading computer information system programs. This case is the first case of network "crawler" in the field of short video platform in China.

In this case, Ding bought the "crawler" software on 2021 to be an agent, the "crawler" software can be used to invade some short video server platform, quickly grab information of the platform through searching keyword, mainly including the user name, UID, signature and comments, and then convert the UID into QR code to accurately locate the customer. Ding repackaged and sold the software, gained illegal income of more than RMB 24,000, which constituted the crime of invading computer information system programs.

The court held that the "web crawler" as a technical means is not illegal, but the software in this case adopted the security protection measures to avoid or break through the computer information system, unauthorized access to the victim's computer system, that is, the "invading" action of the crime of illegal acquiring the computer information system data.

Source: Legal Daily

Website pages was plagiarized, the court contended website pages constitute compilation works and enjoy copyright

The Beijing Internet Court recently heard a website "plagiarism" case, ruled that the plaintiff's website constituted compilation works and that the defendant infringed on the originality of the plaintiff's website and constituted unfair competition, ordering the defendant to publicly explain its infringement and commercial confusion in the top position of its official website and pay damages of RMB 206,390.

In this case, the court held that the defendant's website are highly consistent with the plaintiff's in the six pages of the text, picture placement, proportion, title content, etc, constituting substantial similarity. And the defendant repeatedly quoted the source code of the plaintiff's web page, which substantially

infringed the original part of the plaintiff's web page, and the defendant placed the page on the Internet, which constituted infringement of the right of information network dissemination of the work. Meanwhile, the defendant directly used the plaintiff's Chinese name and English logo, and copied display wall photo of the plaintiff's clients list to its website, which caused confusion to the plaintiff's clients and constituted unfair competition.

In terms of the damage amount, the court took the plaintiff's website service contract as the benchmark, compared with the infringement act involved, determined the plaintiff's loss based on the service actually occurred and supported by the bill, awarded the corresponding damages.

[Source: Beijing Internet Court](#)

Japan issued The Report on Patent Technology Applications Trends in 2021

Recently, the Japan Patent Office (JPO) issued The Report on Patent Technology Applications Trends in 2021, analyzing four technology themes including information and communication technology (ICT) in education, gallium nitride (GaN) power devices, surgery-assisted robots, and viral infectious diseases.

The report shows that ICT-related patent applications in education are on the rise, mostly from China, those from Japanese and Korean are increasing, while those from U.S. are declining. Technology related to optimizing individual learning and assisting teachers in teaching has received attention, and the development and application of technology for artificial intelligence has made progress.

For gallium nitride (GaN) power devices, there are 15,008 patent families, with 6,582 Japanese applicants, accounting for 43.9%, followed by China, the U.S., Europe and Korea. The number of patent families from Japanese, U.S. and European has decreased, while the number of Chinese applicants has increased from 2016. Among Chinese applicants, the largest number of applications are related to the automotive filed, followed by radar, aerospace, base stations and military applications.

For surgery-assisted robots, the largest number of patent applications were filed by U.S. applicants (5,370), accounting for 52.5%, followed by China (1,530, 15.0%), Europe (1,199, 11.7%), and Japan (915, 8.9%). The trend of patent applications in technology category shows that the number of patent applications related to data utilization including surgical navigation, simulation, and AI image recognition and automation/semi-automation is increasing.

For viral infectious diseases, the report takes preventive/treatment technologies (antiviral drugs, vaccines, drugs to alleviate/suppress complication symptoms) and detection/diagnostic technologies (nucleic acid analysis technologies, antigen analysis technologies, etc.) as the targets, the largest number of patent family were filed by China (15,990), accounting for 65.4%, followed by the U.S. (3,810, 15.6%), Europe (1,993, 8.1%), Korea (1,127, 4.6%) and Japan (790, 3.2%).

[Source: Japan Patent Office](#)

2 Billion USD of damages was awarded: The trade secret stealing dispute between two "Low-Code" software companies in the U.S.

According to Appian's official website, on May 10, 2022, a jury in the U.S. Circuit Court for Fairfax County ordered Pegasystems, Inc. to pay damages of 2.04 billion USD for stealing the trade secrets of its rival Appian Corp. The damage amount may set a record for Virginia.

In May 2020, Appian sued Pegasystems, alleging that Pegasystems hired an employee between 2012 and 2014 and used the employee to gain access to Appian's software to improve Pegasystems' products and train sales staff. Meanwhile, a number of Pegasystems employees used false qualifications to gain access to Appian software, included Pegasystems' founder. Using the stolen trade secrets, Pegasystems won contracts worth 3 billion USD with clients including Amazon, Lockheed Martin, Bank of America, and the U.S. Air Force, etc.

Pegasystems plans to appeal and intends to ask the judge to revoke the judgment, which includes 1 USD in damages for the company's violation of the Virginia Computer Crimes Act.

Source: <https://appian.com/>

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