



NEWSLETTER

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Weekly Competition Law News

A Ningxia Natural Gas Company Was Fined Nearly CNY 1.2 Million for Abusing of Dominant Market Position

On May 26, 2022, the State Administration for Market Regulation (“SAMR”) issued a decision on administrative penalty for the abuse of dominant market position by Ningxia Changran Natural Gas Co., Ltd. (“Changran”). Previously, after investigation, the Administration for Market Regulation of Ningxia Hui Autonomous Region (“Ningxia AMR”) found that Changran had a dominant position in the pipeline gas supply market in Hongsibao District, Wuzhong City, and carried out tying and bundling without justifiable reasons. Changran required customers to purchase alarms and bellows as a prerequisite for the venting and ignition, which constitutes an abuse of dominant market position. Therefore, Ningxia AMR made a penalty decision of fines and confiscation of illegal gains, totaling CNY 1.11 million. A department head of Changran was fined CNY 50,000 individually for refusing and obstructing the antitrust law enforcement authority investigating and collecting evidence. ([More](#))

Liaoning AMR: Further Promote the Implementation of Fair Competition Review in the Field of Government Procurement and Bidding

On May 23, 2022, according to media report, the Liaoning Administration for Market Regulation (“Liaoning AMR”) will carry out special “clean-up” activities from this May to October to include all government procurement and bidding documents in 2022 in the scope of fair competition review, further promote the implementation of fair competition review in the above-mentioned fields, pay close attention to conducts that exclude or restrict operators’ participation in bidding and procurement with unreasonable conditions and resolutely stop the abuse of administrative power which excludes and restricts competition. ([More](#))

SAMR: Accelerate the Improvement of a Fair Competition Governance System Suitable for China’s National Conditions

Recently, the Publicity Department of the Central Committee of the Communist Party of China (“CCCPC”) held a press conference on “China’s Ten Years”. Pu Chun, deputy director of SAMR, summarized the achievements of SAMR in fair competition in the past ten years: the fair competition mechanism and the legislative system have been gradually completed and the law enforcement system has been unified; the market competition ecology has continued to improve, and 277 cases of monopoly agreements and abusing of dominant market position have been handled and 3822 merger filing cases have been concluded; the construction of a unified market has been further advanced, and the fair competition review system has achieved full coverage of the four levels of governments. In the future, SAMR will continue to improve the fair competition system and strengthen competition advocacy and corporate compliance construction. ([More](#))

UK Competition and Markets Authority Asks Liquefied Petroleum Gas Supplier BDS Fuels to Stop Exclusive Monopoly Acts

On May 24, 2022, the UK Competition and Markets Authority (“CMA”) issued an announcement stating that after scrutinizing contracts of the Liquefied Petroleum Gas (“LPG”) Supplier BDS Fuels, CMA found that BDS Fuels automatically renewed contracts to restrict customers’ free choice of suppliers. CMA alleged the automatic renewal clauses were not expressly agreed by customers, and customers were required to pay a GBP 350 fee if they wished to break the contracts. BDS Fuel has now agreed to remove unlawful automatic renewal clauses, inform customers that they can switch supplier freely and refund those customers who paid a fee to be released from their contract early. Should BDS Fuels fail to do either of these, CMA could step in and launch further enforcement action. ([More](#))

Google Reaches Agreement on Google Play Store Billing Rules, Allowing Match Group to Use Alternate Payment System

On May 22, 2022, according to reports media, Google reached an agreement with Match Group, the dating app provider behind Tinder, Hinge, and OkCupid, that will allow its apps to remain on the Google Play Store while offering alternate payment systems. Previously, Match Group filed a complaint against Google, alleging Google illegally monopolized the market for distributing apps by requiring app developers to use Google's billing system and then taking up to a 30 percent cut. Match Group later withdrew its request for temporary restraining order against Google after Google made those concessions. ([More](#))

Canada Competition Bureau Decides to Close Investigations to Potentially Anticompetitive Drug Patent Litigation Settlement Agreements

Recently, Canada Competition Bureau (“CCB”) issued statement regarding its proactive monitoring of patent litigation settlement agreements between branded and generic drug manufacturers. CCB alleged that, while generic drugs help to control prescription drug costs, the branded drug manufactures may pay to generic drug manufacturers to delay competition, in order to make more profit as a monopolist. Under sections 79 and 90.1 of the *Competition Act*, agreements will be regarded as anti-competitive if they contain clauses serving to delay the entry of the generic drug into the Canadian market, or payments as compensation from the brand manufacturer to the generic manufacturer. CCB recently decided to close the investigations as the evidence suggested that the agreements under review did not contravene the *Competition Act*. ([More](#))

CMA's Investigation Shows the Property Search Services Merger Could Lessens Competition

Recently, CMA issues its in-depth Phase 2 investigation on the property search services merger acquisition of TM Group by Dye & Durham, stating that Dye & Durham and TM Group are 2 of the largest players in the supply of property search services in the UK and competed closely before the merger. The combined business would be by far the largest player in the market and face only limited competition, which could result in higher prices for property search services or lower quality services. On this basis, CMA set out its view that the only effective way to address the issues would be for Dye & Durham to sell TM Group to another buyer. ([More](#))

Cybersecurity and Data Protection

The National Development and Reform Commission Responds to the Conference on Promoting the Sustainable and Healthy Development of the Digital Economy

On 24 May 2022, the National Development and Reform Commission released an announcement to respond to the suggestions put forward by members of the National Committee of the Chinese People's Political Consultative Conference at the special consultation meeting on Promoting the Sustainable and Healthy Development of the Digital Economy on May 17. It will Deploy new infrastructure in advance to consolidate the foundation for the development of the digital economy; dig deep into the value of digital elements to expand the development space of the digital economy; accelerate digital transformation to promote high-quality development of the real economy; explore and improve the policy environment to promote the standardized and healthy development of the platform economy. ([More](#))

Shanghai Legislation Guarantees that Personal Information Collected for the Epidemic Prevention shall not be Leaked

On 24 May 2022, the 40th Meeting of the Standing Committee of the 15th Shanghai Municipal People's Congress passed the *Decision on Further Promoting and Guaranteeing the Construction of "Unified Network, Unified Management" for Urban Operation* ("Decision"). The Decision clarifies that the collection and processing of personal information for verification in epidemic prevention and control shall comply with the relevant laws and regulations on personal information protection. The collected personal information is only used for epidemic prevention and control needs, and no organization or individual may disclose it. ([More](#))

The Supreme People's Court issued the *Opinions on Strengthening Blockchain Application in the Judicial Field*

On 25 May 2022, the Supreme People's Court ("SPC") issued the *Opinions on Strengthening Blockchain Application in the Judicial Field* ("Opinions"), stating the overall requirements and specific requirements on building the blockchain platforms of the people's courts. The Opinions propose to make the most of the data tamper-proof technology of blockchain to further enhance judicial credibility, to give full play of the essential role of blockchain in optimizing business processes to constantly improve judicial efficiency, to excavate the tremendous potential of blockchain connectivity to enhance judicial collaboration and to leverage properties of the blockchain alliance of mutual recognition and trustworthiness to facilitate economic and social governance. ([More](#))

The National Information Security Standardization Technical Committee issues the *Privacy Agreement Requirements for Internet Platforms, Products and Services of Information Security Technology (Draft)*

On 26 May 2022, the National Information Security Standardization Technical Committee issued the *Privacy Agreement Requirements for Information Security Technology on Internet Platforms, Products and Services (Draft)* ("Requirements"). The Requirements stipulate the demands of the preparation procedures, specific content and released form of the privacy agreements for Internet platforms, products and services, as well as the necessities of increasing the readability and transparency of the privacy agreements and handling disputes related to the privacy agreements. The Requirements apply to regulating the process of personal information processors formulating and publishing privacy agreements, as well as the supervision, management and evaluation of privacy agreements by competent regulatory authorities and third-party evaluation agencies. ([More](#))

Hong Kong Prosecutes the First Case of Non-Consent Disclosure of Personal Data

On 24 May 2022, the Hong Kong Office of the Privacy Commissioner for Personal Data ("PCPD") prosecuted the first case of non-consensual disclosure of personal data. The defendant is suspected of breaching Section 64(3A) of the *Personal Data (Privacy) Ordinance* ("PDPO") by disclosing personal information such as name, mobile phone number, occupation, residential address and employer name without consent. This is the first case in which the PCPD has prosecuted the crime of disclosing personal data without consent since PDPO came into effect in October 2021.

([More](#))

Guizhou Releases China's First Data Transaction Rules System

On 27 May 2022, the Guiyang Big Data Exchange's Release Event of *Data Trading Rules* was held in Guiyang. On the event, a series of documents such as *Data Element Circulation Trading Rules*, *Data Product Cost Evaluation Guidelines*, *Data Product Transaction Price Evaluation Guidelines*, *Data Asset Value Evaluation Guidelines*, *Data Transactions Compliance Review Guidelines*, *Data Transaction Security Evaluation Guidelines*, *Data Provider Access and Operation Management Guidelines* etc., to explore and solve problems such as difficulty in confirming data rights, data pricing and data supervision. ([More](#))

A Real Estate Company's Sales Office is Fined CNY 200,000 for Unauthorized Use of Facial Recognition Technology to Collect Personal Information

On 27 May 2022, the Administration for Market Regulation of Yuzhou, Henan issued a notice stating that in a law enforcement action against infringement of consumer's personal information, a case of above-mentioned area was investigated and handled. The sales office of a real estate company used facial recognition technology to collect personal information of consumers without their authorization, stored a large number of face-captured pictures and videos of visiting customers to analyze the number of visiting customers on the day and the specific visit time of customers, as well as to study the similarity of their face recognition and other information. Those conducts violated the provisions of the first paragraph of Article 29 of the *Consumer Protection Law of the People's Republic of China* and therefore the company was fined CNY 200,000. ([More](#))

European Commission Publishes Q&A on Standard Contractual Clauses for Data Transfers

On 25 May 2022, the European Commission published a Q&A on Standard Contractual Clauses ("SCCs") for data transfers under the EU General Data Protection Regulation ("GDPR"). On 4 June 2021, the Commission issued new SCCs under the GDPR for data transfers from controllers or processors in the EU/EEA or otherwise subject to the GDPR to controllers or processors established outside the EU/EEA and not subject to the GDPR. On 27 December, the new set of SCCs for international data transfers will replace the existing SCCs. These Q&As provide practical guidance on the use of the SCCs and assist stakeholders in their compliance efforts under the GDPR. ([More](#))

Zuckerberg Is Sued by Washington D.C. Attorney General for Participating in the Cambridge Analytica Data Breach

On 23 May 2022, the Washington D.C. attorney general has sued Mark Zuckerberg in an attempt to hold the Facebook co-founder accountable for his actions in the 2016 election for allowing political consulting firm Cambridge Analytica to collect the personal data of millions of Americans. The lawsuit alleges that Zuckerberg was directly involved in a policy that allowed Cambridge Analytica to collect personal data on U.S. voters without their knowledge. The indictment against Zuckerberg, based on hundreds of thousands of documents, including testimony from employees and whistleblowers, said Zuckerberg was aware of the data breach risks associated with the strategy and still opened Facebook to third-party developers. ([More](#))

Facial Recognition Company Clearview AI is Fined GBP 7.55 Million for Breaching of UK's General Data Protection Regulation

On 23 May 2022, the U.K. Information Commissioner's Office ("ICO") announced a GBP 7.55 million fine against facial recognition company Clearview AI over the use of U.K. citizens' facial images in its global database. ICO found that Clearview AI breached UK's data protection laws by: failing to use the information of people in the UK in a way that is fair and transparent; failing to have a lawful reason for collecting people's information; failing to have a process in place to stop the data being retained indefinitely; failing to meet the higher data protection standards required for biometric data; and asking for additional personal information, including photos, when asked by members of the public if they are on their database. ICO has also issued an enforcement notice, ordering the company to stop obtaining and using the personal data of UK residents that is publicly available on the internet, and to delete the data of UK residents from its systems. ([More](#))

German Federal Cartel Office Agrees to Establish Data Network for Automotive Industry

On 24 May 2022, German Federal Cartel Office issued an announcement that it has no objections to the planned start of the Catena-X cooperation. Catena-X is a first major component of the GAIA-X initiative to create a competitive data infrastructure in Europe. Catena-X aims to create a data network for collaboration in the automotive industry, to establish a European data infrastructure by developing interfaces and standards for connecting different cross-industry cloud services. This is intended to reduce dependence on American and Chinese IT providers. ([More](#))

Twitter Will Pay USD 150 Million for Alleged Violation of User Data Privacy

On 25 May 2022, Twitter has agreed to pay USD 150 million to solve its allegations of misuse of private information such as phone numbers for advertising. Previously, DOJ and FTC alleged that although Twitter told users that it collected their phone numbers and email addresses to ensure the security of their accounts, but it did not disclose that it also used users' contact information to help targeted advertisers reach their audiences. Twitter's deception violates a 2011 FTC consent order that explicitly prohibited the company from misrepresenting its privacy and security practices. Under the proposed order, Twitter must pay a \$150 million penalty and is banned from profiting from its deceptively collected data. ([More](#))

Intellectual Property

SPC: Identification of the Use Environmental Technical Features in Patent Claims

Recently, The Supreme People's Court (SPC) made a second instance judgment on the dispute over utility model patent infringement, ordering the defendant to stop the infringement and pay damages of RMB 150,000.

In this case, SPC further clarified the identification of use environment technical features in the patent claims. SPC held that the use environment features refers to technical features to describe the background or conditions of the invention, which are used to limit the patent technical solution by limiting technical content other than the patented technical solution itself, generally manifested as limiting the use background, conditions, application objects, etc. The common use environment features include limiting the installation, connection, use and other conditions and environment of the patented technical solution, but are not limited to the structural features directly related to the installation position or connection structure of the protected technical solution. For product claims, the technical features used to illustrate the use of the protected technical solution, the object of application, the way of use, etc., also belong to the use environmental features. The use environment features in the claims are necessary technical features of the claims and have a limiting effect on the scope of protection of the claims, and the degree of limitation is determined according to the circumstances of each case. Generally, if the infringing technical solution can be applied to the use environment defined by the use environment features, it is deemed to have the use environment features.

In this case, the court, based on the actual use of the infringing products and the understanding of ordinary technicians in the field, held that the infringing technical solution could be applied to the use environmental features in claim 1 of the patent, and shall be deemed to have the technical features. This case clarifies the identification of the use environment features and whether it has the use environment features, which is of guidance for similar cases.

Source: [The Supreme People's Court](#)

Guangdong High People's Court Award the Maximum Statutory Damages of RMB 10,000,000 in the "Yongquan" Trademark Case for both Trademark Infringement and Unfair-Competition

Guangdong High People's Court made a second instance judgment on the dispute over trademark infringement and unfair competition for "Yongquan" between Guangdong Yongquan Valve Technology Co., LTD. (Guangdong Yongquan) and Yongquan Valve Co., LTD. (Dongguan Yongquan), revoking the first instance judgment, ordering the defendant to stop the infringement and pay damages of RMB 10,000,000.

Regarding the amount of damages, this case focused on the following factors:

- (1) The strength of judicial remedies is consistent with the reputation of Guangdong Yongquan;
- (2) More than ten Guangdong Yongquan trademarks been infringed, the circumstances were serious, and the mark "Yongquan valve" constituted the use of a trademark identical to a registered trademark on the same type of commodities, which may even violate the *Criminal Law*;
- (3) Dongguan Yongquan simultaneously implemented a number of unfair competition acts such as enterprise name misleading, domain names misleading and false promotion;
- (4) The infringing products are large in quantity, high in value and large in scale;
- (5) The infringement lasted a long time, and the defendant continued to infringe even during the second trial;
- (6) Guangdong Yongquan spent a lot of time and money to defend its right;
- (7) The serious infringement shall be severely punished.

In summary, the court awarded the maximum judicial damage in this case, i.e., RMB 5,000,000 for trademark infringement and RMB 5,000,000 for unfair competition, totaling RMB 10,000,000.

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

SPC: Decorative Patterns on Similar Goods Shall Reasonably Evade Others' Trademarks

SPC made a retrial judgment on the dispute over trademark infringement between Fila Sports Co., LTD. and Pengcheng Leather Shoes Shop, revoking the first instance judgment, ordering the defendant to stop the infringement and pay damages of RMB 10,000.

The first and second instance judgments both held that the "EILA" pattern only played a decorative role on the infringing products, which was different from the composition of the Fila's trademark, and the defendant also marked "Ritai Leather Shoes" and "Ritai" logo on the store sign and the shoe boxes, etc., which was not easy to mislead public, thus did not constitute trademark infringement.

SPC held that:

- (1) The infringing product is black sports shoes with "EILA" pattern on the heel. This pattern is only slightly different from the NO.163333 trademark in text composition, font, design style and overall appearance. Secondly, although the defendant marked "Ritai shoes" and "Ritai" logo in the store sign and shoe boxes, etc., it does not affect the nature of its use of "EILA". For the infringing products, "EILA" is not a descriptive feature with special meaning, and it is difficult to associate it with the goods characteristics or the factual description for the public with general attention. The function of "EILA" is to identify the source of goods rather than a simple decorative pattern.
- (2) Both the manufacturers and the sellers shall reasonably avoid others' trademarks when use decorative patterns.

Source: [The Supreme People's Court](#)

The Incident of "Audi's Seasonal Greetings Advertisement Plagiarism" Arouse Dis-

ussions

On May 21, Audi and Andy Lau collaborated on an advertisement titled "*Today is Lesser Fullness, Life is good when it is less full*", which was questioned after released. A blogger named "Peking University Mange" (Mange) pointed out that the work of the video plagiarized his video work released last year, and compared the two videos sentence by sentence, which showed that the work of the two was highly similar.

On May 22, relevant parties successively issued statements: Audi admitted that "supervision is weak and audit is not strict", and Shangsi Advertising Company admitted that it directly used the copywriting of Mange's work without communicating with him, Andy Lau expressed his deep regret for the trouble brought to Mange.

In the early morning of May 25, Mange responded again, saying that he accepted the face-to-face apology from Audi and Shangsi. At present, the three parties have reached an agreement that Mange will license his work for free, and he said that he did not request monetary compensation, commercial claims were never his purpose.

[Source: People's Daily](#)

Lifang & Partners:

Does Andy Lau's use of the work to shoot the advertisement constitute copyright infringement?

There is a view that Andy Lau violated the "performance rights" of Mange's writing works. However, we believe that this "performance" is not the "performance" in the *Copyright Law*. Andy Lau's act of shooting the advertising video is just a performance in the usual sense in life, but the performance in life is not the same as the "performance right" in the *Copyright Law*.

According to the *Copyright Law*, the right of performance is "the right to publicly perform works and to publicly broadcast the performance of works by various means". The "performance right" in *Copyright Law* refers to live transmission, which only regulates live performance and mechanical performance. In this incident, Andy Lau's act was not a live performance, and mechanical performance in China only refers to the act that using machines to broadcast the performance to the public (such as playing music in a shopping mall, which is a typical mechanical performance), excluding public screening of movies and the performances of works transmitted by radio, cable and the Internet. Andy Lau's act obviously did not fall within the scope of performance rights. Therefore, we believe that Andy Lau's participation in the filming does not infringe on the copywriting of Mange.

Does Andy Lau's advertisement belong to an advertising endorsement? Is there an endorsement responsibility?

We hold that it certainly belongs to commercial advertising endorsement. However, according to the provisions of the current *Advertising Law*, an advertising spokesperson may only bear legal liability as a spokesperson jointly and severally with the advertiser if he conducts false advertisements and causes damage to consumers, therefore, we believe that Andy Lau is not legally liable as an advertising spokesperson. We can't help but think of another recent incident of artists endorsement, that is, the recent "Jing Tian advertising endorsement illegal punishment" incident. According to the report, it was because the "fruit and vegetable" food products of the company involved in the endorsement were only ordinary food products and there was no valid evidence to prove their effectiveness in "blocking the absorption of fats and sugars", resulting in corresponding penalties for endorsement artists involved in false advertising.

Shandong High People's Court: Dissemination of "Articles with Non-Objective Comment on Pending Cases" Constitutes Commercial Defamation

Recently, Shandong Higher People's Court made a final judgement on the case of Sunshine Paper Co., LTD. (Sunshine Paper) v. Shanying International Co., LTD. (Shanying) and Zhejiang Shanying Paper Co., LTD. (Zhejiang Shanying) over commercial defamation, rejecting the application for a retrial. Previously, the second instance judgment ordered the defendants to pay damages of RMB 1,000,000.

In this case, Shanying issued an article on its website: *“The first instance judgment was revoked, paper patent dispute lasted for 7 years and was sentenced to retrial in another place”*. Although Shanying was not the author or the initial publisher of the article, the court held that commercial defamation is not limited to fabrication, but also includes dissemination.

The article was based on the litigation situation of Sunshine Paper v. Zhejiang Shanying over patent infringement, and made comments on the pending case. The comments were not based on an objective and neutral position, but used negative language without factual basis to comment on Sunshine Paper's litigation behavior, which was sufficient to make the relevant public to misunderstand that Sunshine Paper was maliciously suppressing its competitors by means of patent litigation, etc. It infringed on the commercial reputation of Sunshine Paper and constituted commercial defamation.

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

Lex Machina Released 2022 Patent Litigation Report

On May 19, 2022, Lex Machina released its annual Patent Litigation Report. The report examines patent litigation trends in federal district and appellate courts, as well as the Patent Trial and Appeal Board (PTAB). This is the first report to showcase the newest federal appellate analytics and trends in patent litigation in the federal courts of appeals.

Findings from the report include:

Highlights in District Court

Patent case filings, and federal appellate case filings originating from patent cases, have remained relatively stable for the last three years, with the exception of ANDA filings that continue to decline.

Patent case filings are consolidating more into the top three courts, from 47% in 2019 to 57% in 2021.

Judge Albright was assigned to 23% of all patent cases filed in 2021.

For patent cases filed from 2019 to 2021, WSOU Investments LLC was the top plaintiff and Samsung was the top defendant.

34% of federal patent appellate cases that terminated from 2019 to 2021 were ultimately reversed.

Highlights in PTAB

Federal PTAB appellate case filings fell 40% between 2020 and 2021.

23% of federal PTAB appellate cases that terminated from 2019 to 2021 were ultimately reversed.

Samsung was the most active petitioner in PTAB petitions filed from 2019 to 2021.

Source: [Lex Machina](#)

Huawei Reached a Global Patent License Agreement with Solaredge Technologies, Ending Their Lawsuits Pending in Germany and China

On May 20, Huawei announced that it reached a global patent license agreement with Israeli smart energy solutions provider SolarEdge Technologies, allowing the two companies to use each other's patented technologies based on the recognition of their innovation capabilities. The agreement includes a cross license that covers patents relating to both companies' products, and other rights ar-

rangements. In addition, the agreement will facilitate the settlement of patent litigation between the two parties, which will end their lawsuits pending in Germany and China. The specific terms of the patent license agreement are not revealed.

The Israel-based SolarEdge Technologies is a global leading photovoltaic inverter manufacturer founded in 2006. In 2018, the company accused Huawei and German distributor Wattkraft of infringing three of its patents involving solar inverter and optimizer technology. In October 2021, the Board of Appeal of the European Patent Office rejected SolarEdge's appeal against the patent revocation procedure EP 29 30 839 B1, stating that the multilevel inverter patent is outdated.

Source: ithome.com

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