



NEWSLETTER

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2022.07

立方要闻周报

Weekly News By Lifang & Partners

NO.49

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Henan CCPC and 30 Credit Evaluation Enterprises Fined Totally About CNY 520,000 for Cartel

安徽芜湖一燃气公司因滥用市场支配地位被罚没约889万元

An Anhui Gas Company Fined About CNY 8.89 Million for Abusing Dominant Market Position

贵州一供水公司因滥用市场支配地位被罚没约230万元

A Guizhou Water Supply Company Fined About CNY 2.3 million for Abusing Dominant

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Apple Faces Antitrust Class Action Lawsuit Over Apple Pay

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信安标委公开征集2022年第二批ISO/IEC JTC1/SC27国际标准提案

The NISSTC Publicly Solicits the Second Batch of ISO/IEC JTC1/SC27 International Standard Proposals in 2022

CCIA数安委发布《“健康码”数据安全和个人信息保护措施与建议》

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海南省网信办对“同城单身”“蜜月”2款APP共处罚款40万元

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French Privacy Watchdog Calls for Clearer Rules on Smart Cameras

新加坡PDPC发布区块链应用和云平台的个人数据保护指引

Singapore PDPC Releases Guidelines on Personal Data Protection for Blockchain Applications and Cloud Platforms

优步承认曾掩盖数据泄露并与美国司法部达成协议

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The SPC Emphasized Again That "Reasonable Extension of Trademark Registration" Lacked Legal Basis in The Case of HOTATA



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最高院明确被诉侵权产品制造者的认定标准

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Li Ziqi Won The Case, and The Use of "Li Ziqi" Logo in Product Price Tags and Invoices Constitutes Infringement

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Guangzhou Intellectual Property Court: The Subsequent Use of The Adapted Works Is Still Under The Control of The Right of Adaptation

美国专利商标局将通过打击“增量”专利以降低药品价格

The USPTO Will Protect Against the Patenting of Incremental to Lower Drug Prices

虚拟现实公司 MetaX 起诉Meta Platforms (META.US)商标侵权

Meta Platform Inc Sued by MetaX for Using Meta Trademark

立方竞争法周报 Weekly Competition Law News

河南省信用建设促进会组织30家信用评估企业达成并实施垄断协议，共被罚约52万元

2022年7月22日，国家市场监督管理总局（“市场监管总局”）发布了河南省市场监督管理局（“河南省市监局”）就河南省信用建设促进会（“河南省信促会”）组织部分信用评估企业达成并实施垄断协议案作出的行政处罚决定书。据调查，自2015年至2019年，河南省信促会通过制定发布公约、组织召开会议等方式，组织部分会员单位达成并实施了固定/变更信用评估服务价格的垄断协议。鉴于当事人积极配合调查、主动整改，且受疫情影响收入较低，河南省市监局予以从轻处罚，责令当事人停止违法行为，对河南省信促会处以30万元罚款，对30家信用评估企业分别处以上一年销售额1%的罚款，总计约52万元。（[查看更多](#)）

Henan CCPC and 30 Credit Evaluation Enterprises Fined Totally About CNY 520,000 for Cartel

On July 22, 2022, the State Administration for Market Regulation (“SAMR”) issued the penalty decisions made by Henan Provincial Administration for Market Regulation (“Henan AMR”) on the case of Henan Credit Construction Promotion Committee (“Henan CCPC”) organizing some credit evaluation enterprises to reach and implement a monopoly agreement. According to investigation, from 2015 to 2019, Henan CCPC organized some of its members to reach and implement a monopoly agreement fixing/changing the price of credit evaluation services by formulating and publishing conventions and organizing meetings. Considering that the parties actively cooperated with the investigation and made rectification, and that their income was low due to the pandemic, Henan AMR imposed a mitigated penalty, ordered the parties to stop illegal acts, and imposed a fine of CNY 300,000 on Henan CCPC and a fine of 1% of the sales of the previous year on 30 credit evaluation enterprises, totaling about CNY 520,000. ([More](#))

安徽芜湖一燃气公司因滥用市场支配地位被罚没约889万元

2022年7月19日，市场监管总局发布了安徽省市场监督管理局（“安徽省市监局”）对芜湖湾沚中燃城市燃气发展有限公司（“中燃公司”）滥用市场支配地位案作出的行政处罚决定书。据调查，中燃公司在芜湖市湾沚区行政区域的城市管道燃气供应服务市场中具有市场支配地位。中燃公司没有正当理由，限定新建住宅小区管道燃气安装工程只能与其交易，损害了市场公平竞争及交易相对方权益。鉴于当事人存在积极配合调查、主动整改等情节，安徽省市监局决定没收中燃公司违法所得，并处以其2020年度销售额2%的罚款，总计约889万元。（[查看更多](#)）

An Anhui Gas Company Fined About CNY 8.89 Million for Abusing Dominant Market Position

On July 19, 2022, the SAMR issued the penalty decision made by Anhui Provincial Administration for Market Regulation (“Anhui AMR”) on the case of Wuhu Wanzhi China Gas Development Co., Ltd. (“China Gas”) abusing its dominant market position. According to investigation, China Gas has a dom-

inant market position in the city pipeline gas supply service market in the administrative area of Wanzhi District, Wuhu City. Without justifiable reasons, China Gas restricted the pipeline gas installation projects in new residential communities to trading with it only, which harmed the fair competition in the market and the rights and interests of the trading counterparts. Considering that the company actively cooperated with the investigation and took the initiative to rectify, the Anhui AMR decided to confiscate the illegal income and imposed a fine of 2% of China Gas' sales in 2020, totaling about CNY 8.89 million. ([More](#))

贵州一供水公司因滥用市场支配地位被罚没约230万元

2022年7月18日，市场监管总局发布了贵州省市场监督管理局（“**贵州省市监局**”）对贵州水投水务集团威宁有限公司（“**贵州水务集团**”）滥用市场支配地位案作出的行政处罚决定书。据调查，贵州水务集团拥有在威宁县城区域公共自来水供水服务市场的市场支配地位。贵州水务集团没有正当理由，限定新建商品房用水企业只能与其进行二次供水工程交易，排除、限制了市场竞争，损害了交易相对人合法权益。鉴于当事人存在积极配合调查、承担社会责任、主动整改等情节，贵州省市监局最终决定责令停止违法行为，没收违法所得，并处以其2020年度销售额3%的罚款，共计罚没约230万元人民币。（[查看更多](#)）

A Guizhou Water Supply Company Fined About CNY 2.3 million for Abusing Dominant Market Position

On July 18, 2022, the SAMR issued the administrative penalty decision made by Guizhou Provincial Administration for Market Regulation (“**Guizhou AMR**”) on the case of Guizhou Water Investment and Water Group Weining Co., Ltd. (“**Guizhou Water Group**”) abusing dominant market position. According to investigation, Guizhou Water Group had a dominant market position in the public tap water supply service market in Weining County. Without justifiable reasons, Guizhou Water Group limited the water enterprises of new commercial buildings to trading with it only for secondary water supply projects, which excluded and restricted market competition and harmed the rights and interests of the trading parties. Considering that the company actively cooperated with the investigation, took social responsibility, and took the initiative to rectify, Guizhou AMR finally decided to order it to stop its illegal acts, confiscate its illegal income and impose a fine of 3% of its sales in 2020, totaling about CNY 2.3 million. ([More](#))

上海市市监局发布《关于开展经营者集中简易案件反垄断审查的公告》

2022年7月15日，上海市市场监督管理局（“**上海市市监局**”）发布了《关于开展经营者集中简易案件反垄断审查的公告》（“**《公告》**”）。《公告》明确自2022年8月1日起，上海市市监局将主要负责上海、江苏、浙江、安徽、福建、江西和山东的简易案件的反垄断审查，《公告》明确了受委托审查案件的条件和审查程序，立案信息和无条件批准案件信息将在官网上进行公示。（[查看更多](#)）

Shanghai AMR Issues the Announcement on Conducting Merger Review of Simple Cases

On July 15, 2022, the Shanghai Municipal Administration for Market Regulation (“Shanghai AMR”) issued the *Announcement on Conducting Merger Review of Simple Cases* (“*Announcement*”). The *Announcement* clarifies that Shanghai AMR will be mainly responsible for the merger review of simple cases in Shanghai, Jiangsu, Zhejiang, Anhui, Fujian, Jiangxi and Shandong from August 1, 2022. The *Announcement* specifies the conditions and review procedures of entrusted cases, and the filing information and unconditionally approved cases will be publicized on the official website. ([More](#))

陕西省市监局组织开展涉水领域专项治理反垄断检查

近日，陕西省市场监督管理局（“陕西省市监局”）印发了《关于做好涉水领域专项治理反垄断检查的通知》（“《通知》”）和配套指引文件。《通知》明确，此次检查应注重将全面梳理投诉举报线索和开展重点检查相结合，将反垄断监管和其他市场监管相结合，将纠正行政垄断和制止市场垄断相结合，全面排查涉水领域的市场经营行为，维护公平公正的市场竞争秩序。（[查看更多](#)）

Shaanxi AMR Organizes Anti-monopoly Inspection of Special Governance in Water-related Fields

Recently, the Shaanxi Provincial Administration for Market Regulation (“Shaanxi AMR”) issued the *Notice on Doing a Good Job in Anti-monopoly Inspection of Special Governance in Water-related Fields* (“*Notice*”) and supporting guidance documents. The *Notice* makes it clear that the inspection should combine comprehensive sorting of complaint clues and key inspections, combine anti-monopoly regulation and other market regulation, combine correcting administrative monopolies and stopping market monopolies, comprehensively investigate business practices in the field of water, and maintain a fair and just market competition order. ([More](#))

辉瑞和弗林因收取不公平高价被CMA罚款7000万英镑

2022年7月21日，英国竞争和市场管理局（“CMA”）发布一则新闻，称制药公司辉瑞（Pfizer）和弗林因（Flynn）滥用市场支配地位，就苯妥英钠胶囊（用于抗癫痫治疗）向英国国家医疗服务体系（“NHS”）收取不公平高价，被处以总计7000万英镑（约合人民币5.66亿元）的罚款。2016年12月，CMA发布了一项侵权认定，随后两家公司在英国竞争上诉法庭（“CAT”）对该决定提出了挑战。经过一系列诉讼程序，CAT维持了CMA的决定，并将关于这些公司的定价构成非法“滥用”市场支配地位的结论发回CMA进一步审议。之后，CMA决定重新调查CAT移交的事项，并于2020年6月展开了调查，最终做出本次决定。（[查看更多](#)）

Pfizer and Flynn Fined GBP 70 Million by CMA for Charging Unfairly High Prices

On July 21, 2022, the Competition and Market Authority (“CMA”) released a press release, stating that it had fined pharmaceutical companies Pfizer and Flynn totaling GBP 70 million (about CNY 566 million) for abusing their dominant market position by charging unfairly high prices to the UK National Health Service (“NHS”) for phenytoin sodium capsules (used for anti-epileptic treatment). In December 2016, CMA issued an infringement decision, which was later challenged by the companies at

the UK Competition Appeal Tribunal (“CAT”). After a series of proceedings, CAT upheld CMA’s decision and referred the conclusion that the companies’ prices were an unlawful “abuse” of dominance back to CMA for further consideration. Following this, the CMA decided to re-investigate the matters and opened its current investigation in June 2020, which led to the current decision. ([More](#))

美国众议院司法委员会发布关于数字市场竞争的最终报告

2022年7月19日，美国众议院司法委员会正式发布了题为《数字市场竞争调查：委员会报告和建议》的报告。该报告最初于2020年10月作为多数员工报告发布，此前由反垄断小组委员会牵头对数字经济的竞争状况进行了为期16个月的调查，重点关注亚马逊、苹果、Facebook和谷歌的主导地位带来的挑战。2021年4月，委员会进行了一次讨论，并正式通过该报告。该报告超过450页，详细介绍了主导平台如何滥用其垄断地位破坏竞争、剥削其他经营者、损害消费者利益并阻碍颠覆性创新。通过该报告，委员会呼吁国会对这些问题采取行动。 ([查看更多](#))

US Judiciary Committee Issues Final Report on Competition in the Digital Marketplace

On July 19, 2022, the House Judiciary Committee formally published the Committee’s Report, entitled *Investigation of Competition in the Digital Marketplace: Committee Report and Recommendations*. The report was initially released in October 2020 as a Majority Staff Report following a 16-month investigation, led by the Antitrust Subcommittee, into the state of competition in the digital economy, with a focus on the challenges presented by the dominance of Amazon, Apple, Facebook, and Google. In April 2021, the Committee held a markup and formally adopted the Report. The Report totals more than 450 pages, details at length how dominant platforms abuse their monopoly power to destroy competition, exploit other businesses, harm consumers, and impede disruptive innovation. Through the report, the Commission calls on Congress to act on these issues. ([More](#))

欧委会指控因美纳和 GRAIL 提前实施收购违反了欧盟合并规则

2022年7月19日，欧盟委员会发出异议声明，指控因美纳（Illumina）和GRAIL提前实施收购违反了欧盟合并规则。2021年7月22日，委员会因担心该交易可能损害竞争，对交易展开深入调查。2021年8月18日，当委员会的审查仍在进行时，因美纳公开宣布已完成对GRAIL的收购，这违反了《欧盟合并条例》中规定的“静止义务”。2021年8月20日，委员会就因美纳是否违反了静止义务开启调查评估。在今天的异议声明中，委员会初步认定，因美纳和GRAIL在委员会对交易的深入调查结束之前实际上已经完成了收购。如果委员会最终认定因美纳和GRAIL确实在委员会深入调查结束之前实施了该交易，可以对每家公司各自处以高达其全球年营业额10%的罚款。 ([查看更多](#))

Commission Alleges Illumina and GRAIL Breach EU Merger Rules by Early Implementation of Their Acquisition

On July 19, 2022, the European Commission sent a Statement of Objections alleging that Illumina and GRAIL breached the EU Merger Regulation by early implementing the acquisition. On 22 July 2021,

the Commission opened an in-depth investigation over concerns that the proposed transaction may harm competition. On 18 August 2021, while the Commission's review was still ongoing, Illumina publicly announced that it had completed its acquisition of GRAIL, which may violates the "standstill obligation" in the *EU Merger Regulation*. On 20 August 2021, the Commission opened an investigation to assess whether Illumina breached this obligation. In today's Statement of Objections, the Commission takes the preliminary view that Illumina and GRAIL actually implemented the acquisition prior to the conclusion of the Commission's in-depth investigation into the transaction. If the Commission were to conclude that Illumina and GRAIL did implement the transaction prior to the conclusion of the Commission's in-depth investigation, it could impose a fine of up to 10% of each companies' annual worldwide turnover. ([More](#))

欧盟理事会最终通过《数字市场法》

2022年7月18日，欧盟27个成员国一致通过《数字市场法》（“DMA”）。DMA旨在确保和维护数字市场中的公平竞争环境，定义了数字市场大型在线平台“守门人”的概念和标准，并对“守门人”企业提出了一系列新规则。如果“守门人”违反DMA的规定，则可能会被处以高达其全球总营业额10%的罚款。对于累犯，可处以高达其全球营业额20%的罚款。（[查看更多](#)）

European Council Gives Final Approval to the Digital Markets Act

On July 18, 2022, the 27 member states of the European Union unanimously approved the *Digital Marketplace Act* (“DMA”), which aims to ensure and maintain a level playing field in the digital marketplace. The DMA defines the concept and standard of “gatekeepers”, the large online platforms in digital market, and puts forward a series of new rules for the “gatekeepers”. If a gatekeeper violates the rules laid down in the DMA, it risks a fine of up to 10% of its total worldwide turnover. For a repeat offence, a fine of up to 20% of its worldwide turnover may be imposed. ([More](#))

苹果公司Apple Pay遭反垄断集体诉讼

2022年7月18日，据报道，苹果公司因 Apple Pay 涉嫌垄断而面临反垄断集体诉讼。该诉讼由美国信贷联盟Affinity Credit Union向加州圣何塞的联邦法院提起，指控苹果公司利用在移动设备市场的垄断地位，抵御来自其他支付卡发行机构的竞争，并迫使4000多家使用Apple Pay的银行和信用社每年为这一特权支付至少10亿美元的额外费用。（[查看更多](#)）

Apple Faces Antitrust Class Action Lawsuit Over Apple Pay

On July 18, 2022, according to news report, Apple was facing an anti-monopoly class action lawsuit because of the alleged monopoly of Apple Pay. The lawsuit was filed by Affinity Credit Union, an American credit union, in the federal court in San Jose, California. Apple was accused of using its dominant position in the mobile device market to fend off competition from other payment card issuers, and forcing more than 4,000 banks and credit unions that use Apple Pay to pay at least USD 1 billion of excess fees annually for the privilege. ([More](#))

韩国三家火车制造商因实施卡特尔被处以4300万美元罚款

2022年7月17日，据报道，韩国仅有的三家火车制造商——现代-罗特姆、宇进产电和Dawonsys，因实施串通招投标行为，被处以总计4300万美元（约合人民币2.9亿元）的罚款。据韩国公平贸易委员会调查，三家企业自2013年便开始进行合谋，先后在11个项目中串通投标。

[\(查看更多\)](#)

Three South Korean Train Manufacturers Fined USD 43 Million for Cartel

On July 17, 2022, according to news report, the only three train manufacturers in South Korea-Hyundai Rotem, Woojin Industrial Systems and Dawonsys-were fined a total of USD 43 million (about CNY 290 million) for colluding in bidding. According to Korea Fair Trade Commission, the three companies have been colluding since 2013, and have coordinated on bidding for 11 accounts. [\(More\)](#)

网络安全与数据合规 Cybersecurity and Data Protection

滴滴公司因网络安全问题被网信办罚款80.26亿元

2022年7月21日，国家互联网办公室（“网信办”）发布了对滴滴全球股份有限公司（“滴滴公司”）依法作出网络安全审查相关行政处罚的决定。经查实，滴滴公司违反了《网络安全法》《数据安全法》《个人信息保护法》的违法违规行为事实清楚、证据确凿、情节严重、性质恶劣。网信办依据《网络安全法》《数据安全法》《个人信息保护法》《行政处罚法》等法律法规，对滴滴公司处80.26亿元罚款，对滴滴公司董事长兼CEO程维、总裁柳青各处100万元罚款。

根据网信办有关负责人就对滴滴全球股份有限公司依法作出网络安全审查相关行政处罚的决定答记者问，滴滴公司共涉及16项8个方面的违法行为：一是违法收集用户手机相册中的截图信息1196.39万条；二是过度收集用户剪切板信息、应用列表信息83.23亿条；三是过度收集乘客人脸识别信息1.07亿条、年龄段信息5350.92万条、职业信息1633.56万条、亲情关系信息138.29万条、“家”和“公司”打车地址信息1.53亿条；四是过度收集乘客评价代驾服务时、App后台运行时、手机连接桔视记录仪设备时的精准位置（经纬度）信息1.67亿条；五是过度收集司机学历信息14.29万条，以明文形式存储司机身份证号信息5780.26万条；六是在未明确告知乘客情况下分析乘客出行意图信息539.76亿条、常驻城市信息15.38亿条、异地商务/异地旅游信息3.04亿条；七是在乘客使用顺风车服务时频繁索取无关的“电话权限”；八是未准确、清晰说明用户设备信息等19项个人信息处理目的。 [\(查看更多\)](#)

Didi Fined CNY 8.026 Billion by the CAC for Cyber Security Issues

On 21 July 2022, the Cyberspace Administration of China (“CAC”) issued an administrative penalty decision on Didi Global Co., Ltd. (“Didi”) related to cyber security review according to law. It was verified that Didi had violated the *Cyber Security Law*, *Data Security Law* and *Personal Information Protection Law* with clear facts, conclusive evidence, gravity of the circumstances and bad nature. In accordance with the *Cyber Security Law*, *Data Security Law*, *Personal Information Protection Law*, Ad-

ministrative Punishment Law and other laws and regulations, the CAC imposed a fine of CNY 8.026 billion on Didi, and a fine of CNY 1 million each on Didi's Chairman and CEO Cheng Wei and Didi's President Liu Qing.

According to the answers given by an official from the CAC to the journalists' questions regarding the decision of imposing administrative penalties related to cyber security review on Didi, Didi was involved in 16 violations in eight aspects: (1) illegally collected 11.9639 million pieces of screenshot information in users' mobile phone photo albums; (2) excessively collected 8.323 billion pieces of information on the users' clipboard and on the application list; (3) excessively collected 107 million pieces of information on passenger face recognition, 53.5092 million pieces of information on age, 16.3356 million pieces of information on occupation, 1.3829 million pieces of information on family relationship, and 153 million pieces of information on "home" and "company" as taxi addresses; (4) excessively collected 167 million pieces of precise location (longitude and latitude) information when passengers evaluated driving services, when the App was running in the background, and when the mobile phone was connected to the orange vision recorder device; (5) excessively collected 142,900 pieces of drivers' education information and 57.8026 pieces of drivers' identity card number information stored in the form of plain text; (6) without clearly informing passengers, analyzed 53.976 billion pieces of information on passengers' traveling intention, 1.538 billion pieces of information on resident cities and 304 million pieces of information on non-local business or non-local tourism; (7) frequently requested irrelevant "telephone authorization" when passengers used hitchhiking services; (8) failed to accurately and clearly specify the purposes of disposing of 19 types of personal information, including users' equipment information. ([More](#))

市场监管总局发布《关于开展网络安全服务认证工作的实施意见（征求意见稿）》

2022年7月21日，国家市场监督管理总局（“市场监管总局”）发布了由市场监管总局联合网信办、公安部联合研究起草的《关于开展网络安全服务认证工作的实施意见（征求意见稿）》（“《征求意见稿》”），向社会公开征求意见。《征求意见稿》明确指出，从事网络安全服务认证活动的认证机构应当依法设立，符合《认证认可条例》、《认证机构管理办法》规定的基本条件，具备从事网络安全服务认证活动的专业能力，并经市场监管总局征求中央网信办、公安部意见后批准取得资质。 ([查看更多](#))

The SAMR Issues the Implementation Opinions on Carrying Out the Certification of Cyber Security Services (Draft for Comments)

On 21 July 2022, the State Administration for Market Regulation (“SAMR”) issued the *Implementation Opinions on Carrying Out the Certification of Cyber Security Services (Draft for Comments)* (“*Draft for Comments*”) jointly researched and drafted by the SAMR, the CAC and the Ministry of Public Security, and publicly solicited comments from the public. The *Draft for Comments* clearly pointed out that the certification bodies engaged in cyber security service certification activities shall be established according to law, meet the basic conditions stipulated in the *Regulations on Certification and Accreditation* and the *Administrative Measures for Certification Bodies*, and shall have the professional ability to engage in cyber security service certification activities, and obtain the qualifications approved by the SAMR upon consultations with the CAC and the Ministry of Public Security. ([More](#))

中央网信办等部门启动暑期未成年人网络环境整治专项行动

2022年7月18日，由中央网信办等部门联合组织的“清朗·2022年暑期未成年人网络环境整治”专项行动启动。此次专项行动将持续2个月，主要聚焦于未成年人使用频率高的短视频直播、社交、学习类APP，网络游戏、电商、儿童智能设备等平台，集中解决群众反映强烈的涉未成年人问题乱象，整治重点主要包括严格管控侵犯未成年人个人隐私问题、严厉查处诱导未成年人参与直播打赏等10个方面。（[查看更多](#)）

The OCCAC and Other Authorities Launches a Special Action to Rectify the Cyberspace Environment of Minors in Summertime

On 18 July 2022, a special action “Clean and Rectification of Minors’ Cyberspace Environment in the Summer of 2022” jointly organized by the Office of the Central Cyberspace Affairs Commission (“OCCAC”) and other authorities was launched. The special action is expected to last for two months and mainly focuses on short live video broadcast, social and learning apps, online games, e-commerce, children’s smart devices and other platforms which are frequently used by minors. This action was intended to focus on solving the problem of the disorderly situation involving minors as to address the public’s strong concerns. The remediation focuses on 10 aspects, such as strictly monitoring and addressing the infringement of minors’ personal privacy, investigating and severely punishing the activities of inducing minors to participate in the practice of rewarding live streamers and so on. ([More](#))

信安标委公开征集2022年第二批ISO/IEC JTC1/SC27国际标准提案

2022年7月19日，全国信息安全标准化技术委员会（“信安标委”）发布了《关于征集2022年第二批ISO/IEC JTC1/SC27国际标准提案的通知》（“《通知》”）。《通知》表明，信安标委秘书处现组织开展SC27国际标准提案（“提案”）征集工作，面向网络安全领域产学研用等相关单位征集提案，重点聚焦数据安全、个人信息保护、关键信息基础设施、消费物联网、工业互联网、车联网、IPv6等我国具有技术优势和丰富实践应用经验等领域，提案优先但不限于上述领域，并明确了提案的具体要求。（[查看更多](#)）

The NISSTC Publicly Solicits the Second Batch of ISO/IEC JTC1/SC27 International Standard Proposals in 2022

On 19 July 2022, the National Information Security Standardization Technical Committee (“NISSTC”) issued the *Notice on Soliciting the Second Batch of ISO/IEC JTC1/SC27 International Standard Proposals in 2022* (the “Notice”). The Notice indicates that the NISSTC is now organizing the collection of SC27 international standard proposals, which is open to relevant units from industry, academia, research and application in the field of cyber security, focusing on data security, personal information protection, key information infrastructure, consumer Internet of Things, industrial Internet, car networking, IPv6 and other fields where China has technological advantages and rich practical application experience. Proposals in the above fields are preferred, but in no way limited to such fields. The Notice also specifies the specific requirements for the proposals. ([More](#))

CCIA数安委发布《“健康码”数据安全和个人信息保护措施与建议》

2022年7月18日，中国网络安全产业联盟数据安全工作委员会（“CCIA数安委”）发布了《“健康码”数据安全和个人信息保护措施与建议》（“《措施与建议》”），以供“健康码”运营者参考。《措施与建议》以安全风险、现状、案例为视角，以法律法规、规章和规范性文件、标准等为参考，对“健康码”涉及的数据收集、存储、使用、共享等数据处理的各个环节进行分析，对数据安全和个人信息保护方面可采取的措施与建议进行研究、归纳，从数据接口安全、个人信息权利保障、数据安全管理等关键节点提出控制建议。（[查看更多](#)）

The CCIA Data Security Committee Issues Measures and Recommendations on Data Security and Personal Information Protection for “Health Code”

On 18 July 2022, the China Cybersecurity Industry Alliance Data Security Working Committee (the “CCIA Data Security Committee”) issued the *Measures and Recommendations on Data Security and Personal Information Protection for “Health Codes”* (the “*Measures and Recommendations*”) for the reference of health code operators. The *Measures and Suggestions* analyzes all aspects of data processing such as data collection, storage, use and sharing involved in “health codes”, studies and summarizes measures and suggestions that can be taken in data security and personal information protection, and puts forward control suggestions from key nodes such as data interface security, personal information rights protection and data security management, from the perspective of security risks, current situation and cases, and taking laws, regulations, normative documents and standards as references. ([More](#))

《上海市消费者权益保护条例》最新修订，大数据杀熟等被规制

2022年7月21日，经上海市十五届人大常委会第四十二次会议表决通过，《上海市消费者权益保护条例》完成修订，将于今年8月1日起施行。其中，针对“大数据杀熟”、互联网广告竞价排名，修订后的条例明确，经营者不得通过自动化决策对消费者实行不合理的差别待遇，经营者对竞价排名等互联网广告负有依法标明义务，以及对弹出等形式发送广告应当确保可以一键关闭等。（[查看更多](#)）

The Latest Revision of the Regulations of Shanghai Municipality on the Protection of Consumer Rights and Interests Regulates the “Big Data Bias” and Others

On 21 July 2022, the latest revision of the *Regulations of Shanghai Municipality on the Protection of Consumer Rights and Interests* was approved at the 42nd meeting of the Standing Committee of the 15th Shanghai Municipal People’s Congress, and will come into force on 1 August 2022. Among them, for “big data bias” and Internet advertising bidding ranking, the revised regulations specify that operators shall not apply unreasonable differential treatment to consumers through automated decision-making, and that operators shall have the obligation to clearly label Internet advertisements such as bidding rankings in accordance with the law, as well as to ensure that pop-ups and other forms of sending advertisements can be shut off with a single click. ([More](#))

海南省网信办对“同城单身”“蜜月”2款APP共处罚款40万元

2022年7月22日，海南省互联网信息办公室（“海南省网信办”）依法对“同城单身”

“蜜月”2款APP 处罚款共计40万元。经查，海南亚普网络科技有限公司、海南云通网络科技有限公司未切实履行主体责任，对运营开办的“同城单身”“蜜月”2款APP上用户账号及其发布信息管理不力，导致用户账号发布违法违规信息，影响网络信息内容生态，违反《网络安全法》和《网络信息内容生态治理规定》相关规定，情节严重。因此，海南省网信办依法对2主体分别处以20万元罚款，并约谈相关负责人，责令立即注销违法违规账号、限期全面整改、健全完善内容安全管理机制、从严处罚责任人。（[查看更多](#)）

Hainan CAC Fines a Total of CNY 400,000 on Two Apps “Single in the same city” and “Honeymoon”

On 22 July 2022, Cyberspace Administration of Hainan Province (the “Hainan CAC”) fined a total of CNY 400,000 on two apps, namely “Single in the same city” and “Honeymoon” according to law. Upon investigation, it was found that the Hainan Yapu Cyber Technology Co., Ltd. and Hainan Yuntong Cyber Technology Co., Ltd. failed to fulfill their responsibilities and ineffectively managed the user accounts on the two Apps (“Single in the Same City” and “Honeymoon”) they respectively operate and the information released on such Apps, resulting in the user accounts releasing illegal information and affecting the ecology of cyber information contents, which violated the relevant provisions of the *Cyber Security Law* and the *Regulations on Ecological Governance of Cyber Information Content* with serious circumstances. Therefore, the Hainan CAC imposed a fine of CNY 200,000 on the these two entities respectively, interviewed the relevant persons in charge and ordered them to immediately cancel the accounts in violation of laws and regulations, make comprehensive rectifications within a prescribed time limit, improve the content security management mechanism and strictly punish the persons in charge. ([More](#))

安徽省信管局开展2022年电信和互联网行业网络和数据安全检查

2022年7月18日，安徽省通信管理局（“安徽省信管局”）发布了《关于开展2022年电信和互联网行业网络和数据安全检查的通知》（“《通知》”）。《通知》表明，此次安全检查持续时间约为两个月，分阶段进行自查整改、抽查和整改总结。《通知》明确，本次安全检查的对象为安徽省内面向社会提供通信和互联网服务的各类企业，重点是基础电信企业、增值电信企业、重点互联网企业、工业互联网平台企业以及工业互联网标识解析企业。主要检查的内容包括通信网络单元定级备案情况、存在的漏洞等风险隐患、数据安全保护情况、个人信息保护工作情况和工业互联网企业网络安全防护情况。（[查看更多](#)）

ACA Launches 2022 Cyber and Data Security Inspections in the Telecom and Internet Industry

On 18 July 2022, the Anhui Communications Administration (“ACA”) issued the *Notice on Launching 2022 Cyber and Data Security Inspections in the Telecom and Internet Industry* (the “Notice”). The *Notice* indicates that the security inspection will last for about two months, with self-investigation and rectifications, spot checks and rectification summaries to be conducted in phases. The *Notice* clarifies that the targets of the security inspection are all kinds of enterprises in Anhui province that provide communications and Internet services to the public, especially basic telecom enterprises, value-added telecom enterprises, key internet enterprises, industrial internet platform enterprises and industrial internet identifier and resolution enterprises. The main contents of the inspection include the classification and filing

of communication cyber units, potential risks such as loopholes, data security protection, personal information protection and cyber security protection of industrial Internet enterprises. ([More](#))

浙江地方法院判决支持个人信息权利人撤回同意的权利

2022年7月18日，温州市中级人民法院官方公众号发布文章显示在一起涉及个人信息处理案件中，瑞安市人民法院判决支持个人信息权利人撤回同意的权利。在本案中，卓某在某公司工作期间，同意提供其个人信息用于公司抖音账号的实名认证。后来卓某离职，发现其个人信息无法再实名认证用于绑定其他抖音账号，除非注销原账号。双方就是否要注销原账号产生争议，卓某将某公司诉至法院。法院认为，根据《个人信息保护法》，原告作为其个人信息权利人，有权同意他人使用其个人信息，也有权撤回同意，被告作为个人信息使用者应当尊重原告意愿，并且，抖音公司作为个人信息处理者应当提供便捷的撤回同意的方式。 ([查看更多](#))

Local Court in Zhejiang Supports the Right of Owner of Personal Information to Withdraw Consent

On 18 July 2022, the official WeChat official account of Wenzhou Intermediate People's Court published an article showing that in a case involving personal information processing, the court supported the right of owner of personal information to withdraw consent. In this case, Zhuo agreed to provide his personal information for the real-name authentication of the company's Tik Tok account while working in the company. Later, Zhuo left his job and found that his personal information could no longer be authenticated by real name to bind other Tik Tok accounts, unless the original account was cancelled. There was a dispute between the two parties about whether to cancel the original account, and Zhuo sued the company in the court. The court held that, according to the *Personal Information Protection Law*, the plaintiff, as the right holder of personal information, has the right to consent to others' use of his personal information, as well as the right to withdraw such consent, and the defendant company, as the user of personal information, should respect the plaintiff's wishes, and Tik Tok Company, as the processor of personal information, should provide a convenient way to withdraw consent. ([More](#))

欧盟理事会最终批准《数字市场法》

2022年7月18日，欧盟27个成员国一致批准《数字市场法》（“DMA”）。DMA旨在确保和维护数字市场上公平的竞争环境，定义了数字市场大型在线平台“守门人”的概念和标准，并对被定义为“守门人”的企业提出了一系列新规则。如果“守门人”违反DMA的规定，则可能会被处以高达其全球总营业额10%的罚款。对于累犯，可处以高达其全球营业额20%的罚款。下一步欧洲理事会主席和欧洲议会议长将分别签署这项法律，随后在欧盟公报颁布后6个月生效实施。 ([查看更多](#))

European Council Gives Final Approval to the *Digital Markets Act*

On 18 July 2022, the 27 member states of the European Union unanimously approved the Digital Marketplace Act (“DMA”), which aims to ensure and maintain a level playing field in the digital marketplace. The DMA defines the concept and standard of “gatekeepers”, the large online platforms in digital market, and puts forward a series of new rules for the “gatekeepers”. If a gatekeeper violates the

rules laid down in the DMA, it risks a fine of up to 10% of its total worldwide turnover. For a repeat offence, a fine of up to 20% of its worldwide turnover may be imposed. After being signed by the President of the European Parliament and the President of the Council, it will be published in the Official Journal of the European Union and will start to apply six months later. ([More](#))

欧盟委员会因违反欧盟数据保护规则被起诉

2022年7月19日，据报道，欧盟委员会被指控其作为“欧洲未来论坛”网站的官方运营方，在将公民的数据从该网站传输到美国时违反了欧盟一般数据保护条例（“GDPR”）。该诉讼由一名德国公民发起，指控欧盟非法转移数据，因为该网站由美国供应商“亚马逊网络服务（Amazon Web Services, AWS）”负责维护，因此在该网站进行注册时，IP地址等个人数据将传输到美国。此外，原告曾两次要求欧盟委员会提供有关其如何处理个人数据的信息，其中一次未得到充分答复，另一次根本没有得到答复。因此原告还主张欧盟委员会未能充分披露有关其数据处理活动的有关信息，侵犯了GDPR规定的知情权。（[查看更多](#)）

European Commission Sued for Violating EU's Data Protection Rules

On 19 July 2022, it was reported that the European Commission, as the official operator of the “Conference of the Future of Europe” website, was accused of violating the EU General Data Protection Regulation (“GDPR”) when transmitting citizens’ data from this website to the United States. The suit was initiated by a German citizen accusing the European Commission of illegally transferring data. Because the website is hosted by the American supplier “Amazon Web Services (AWS)”, personal data such as IP address will be transmitted to the United States when the website is registered. The plaintiff had asked for information on how personal data is processed in two inquiries, one of the which was answered incompletely, and the other was not answered at all. So the plaintiff also claimed that the European Commission failed to disclose sufficient information on its data processing practices, which violated the information rights under the GDPR. ([More](#))

法国隐私监管机构呼吁对智能相机制定更明确的规则

2022年7月19日，法国国家信息与自由委员会（“CNIL”）在其发表的一份意见中表示，这些所谓的“增强”或“智能”相机在不识别个人的情况下通过AI处理图像，虽然法国法律对此不予禁止，但需要更新监控设备的监管框架，以便能够适应所谓的“智能摄像头”的兴起。CNIL表示，虽然使用这些智能相机有时是“合法的”，但它们的使用可能违反GDPR规定的个人拒绝相机处理其图像的权利。CNIL提出了唯一解决方案，即通过立法来排除这种权利。例如，法国政府在去年发布了一项法令，允许智能相机测量交通工具上的口罩佩戴率，使得合法性可以得到判断。（[查看更多](#)）

French Privacy Watchdog Calls for Clearer Rules on Smart Cameras

On 19 July 2022, the French National Commission for Information and Freedom (“CNIL”) said in an opinion that the so-called “augmented” or “smart” cameras that process images using AI without uniquely identifying a person, while not prohibited under French law, would need to be accompanied by an updated framework, so it can accommodate the rise in so-called “smart cameras”. While pointing

to the use of these smart cameras as being sometimes “legitimate”, CNIL indicated that their use could contravene the individual’s right to refuse the processing of their image by a camera, as provided by the GDPR. The only solution proposed by the CNIL is for such a right to be set aside through legislation – like in the form of a decree – which would exclude such a right. Last year, for instance, the French government published a decree allowing smart cameras to measure the rate of mask-wearing in transport, thus enabling the measurement of compliance with the obligation. ([More](#))

新加坡PDPC发布区块链应用和云平台的个人数据保护指引

2022年7月18日，新加坡个人数据保护委员会（“PDPC”）发布《区块链设计中的个人数据保护注意事项指南》（“《指南》”）与“保护云平台个人数据安全的良好实践”信息图（“信息图”）。《指南》第一部分介绍了区块链及其可能产生的个人数据保护风险，第二部分区分“非许可链”和“许可链”，分别提出了设计建议。信息图分析了三种常见的云平台数据泄露原因，并有针对性地就企业应如何正确配置云平台、防范恶意软件和钓鱼软件、采取措施保护密钥以保护个人数据安全提出建议。 ([查看更多](#))

Singapore PDPC Releases Guidelines on Personal Data Protection for Blockchain Applications and Cloud Platforms

On 18 July 2022, the Personal Data Protection Commission of Singapore (“PDPC”) released the *Guide on Personal Data Protection Considerations for Blockchain Design* (“Guide”) and the *Good Practices to Secure Personal Data in the Cloud Platform Infographic* (“infographic”). The first part of the *Guide* introduces what is a blockchain and what personal data protection risks and considerations might arise with blockchains. The second part distinguishes between “permissionless blockchain networks” and “permissioned blockchain networks” and puts forward considerations and recommendations respectively. The *infographic* analyzes three common reasons for data leakage in cloud platforms. It puts forward targeted suggestions on how enterprises should correctly configure cloud platforms, prevent malicious software and phishing software, and take measures to protect keys to protect personal data security. ([More](#))

优步承认曾掩盖数据泄露并与美国司法部达成协议

2022年7月24日，据报道，Uber承认其掩盖了2016年的数据泄露事件，在此期间，黑客可以访问近6000万条用户记录和数十万个驾驶执照号码。美国司法部在一份新闻稿中表示：“作为解决调查的不起诉协议的一部分，优步承认其官员、董事、员工和代理人向美国联邦贸易委员会（“FTC”）隐瞒了其2016年数据泄露的行为，并为此承担责任。”美国司法部表示，该公司将需要支付1.48亿美元的和解费，并同意实施新的企业诚信计划、数据安全保障措施和数据泄露通知计划，以及其他强制性改革措施。 ([查看更多](#))

Uber Admits To Data Breach Cover-Up and Enters Agreement With DOJ

On 24 July 2022, it was reported that Uber admitted to covering up a 2016 data breach, during which hackers gained access to nearly 60 million user records and hundreds of thousands of drivers’ license numbers. “As part of a non-prosecution agreement to resolve the investigation, Uber admitted to and

accepted responsibility for the acts of its officers, directors, employees, and agents in concealing its 2016 data breach from the Federal Trade Commission”, the U.S. Attorney’s Office said in a news release. The U.S. Department of Justice said that the company will have to pay USD 148 million in settlement fees and agreed to implement a new corporate integrity program, data security safeguards and data breach notification plans, among other mandated reforms. ([More](#))

特斯拉因数据保护问题面临德国消费者团体的诉讼

2022年7月19日，据报道，德国消费者组织联合会（“vzbv”）已在柏林地区法院对特斯拉提起诉讼，指控其涉嫌数据保护违规行为。vzbv主张特斯拉汽车在哨兵模式下会记录周围环境，涉嫌侵犯路人隐私。vzbv表示：“特斯拉的哨兵模式旨在保护车辆。但是，特斯拉没有提及这一功能实际上不可能在符合数据保护要求的前提下使用。用户必须征得碰巧经过汽车的路人的同意才能处理个人数据。因此，任何使用该功能的人都违反了数据保护法，并可能面临罚款。” ([查看更多](#))

Tesla Faces Lawsuits from German Consumer Groups over Data Protection Issues

On July 19, 2022, it was reported that the Federation of German Consumer Organisations (“vzbv”) has filed a lawsuit against Tesla at the Berlin Regional Court, accusing it of data protection violations. Vzbv claimed that Tesla Motors will record the surrounding environment in guard mode, which is suspected of violating the privacy of passers-by. Vzbv said that “Tesla’s guard mode is designed to protect the vehicle. However, Tesla conceals the fact that data protection-compliant use is practically impossible, users would have to obtain consent for the processing of personal data from passers-by who happen to pass by the car. Anyone who uses the function therefore violates data protection law and risks a fine.” ([More](#))

知识产权 Intellectual Property

国知局：将是否明显不具备创造性纳入实用新型初步审查范围

2022年7月20日，国家知识产权局发布对十三届全国人大五次会议第8842号建议答复的函。答复中提到，要推进实用新型明显创造性审查，提升授权质量。

目前，我国实用新型采用“初步审查+评价报告”的审查制度。在初步审查中，审查员可以根据其获得的有关现有技术或者抵触申请的信息，审查实用新型专利申请是否明显不具备新颖性。为进一步提升实用新型授权质量，国家知识产权局积极推进实用新型制度改革，在《专利法实施细则》修改草案中，将明显不具备创造性纳入实用新型初步审查范围，并配套修改《专利审查指南》，进一步细化完善相关审查标准。

来源：国家知识产权局

CNIPA: The Judgement of Whether Obvious Lack of Inventiveness Was Incorporated into The Scope of Preliminary Examination of Utility Models



On July 20, 2022, CNIPA issued a reply letter to Recommendation No.8842 of the Fifth Session of the




13th National People's Congress. At present, the examination system of "preliminary examination and evaluation report" is adopted for utility models in China. In the preliminary examination, the examiner can examine whether the utility model patent application obviously does not possess novelty according to the information about the existing technology or the conflicting application. To further improve the quality of utility model authorization, CNIPA actively promotes the reform of the utility model system. In the revised draft of the *Detailed Rules for the Implementation of the Patent Law*, the obvious lack of creativity is included in the scope of the preliminary examination of utility models, and the *Patent Examination Guide* is amended to further refine and improve the relevant examination standards.

Source: CNIPA

好太太案件，最高法院再次明确“商标合理延伸注册”缺乏法律依据

2022年6月，最高法院对广东好太太科技集团股份有限公司（下称“好太太公司”）与国家知识产权局及佛山市凯达能企业管理咨询有限公司（下称“凯达能公司”）商标无效宣告请求行政纠纷一案作出再审判决。判决中最高法院支持了好太太公司全部再审诉讼请求，推翻了原审判决、被诉裁定，认为商标合理延伸注册缺乏法律依据。

好太太公司拥有第1407896号商标“”，该商标自1999年2月开始使用在“晾衣架”等商品上。凯达能公司在“抽油烟机”商品上注册有第3563073号“”商标（申请日：2003年5月21日）。

2011年，凯达能公司在“餐具柜”等商品上申请注册第9501078号“”商标。好太太公司对该商标提起无效宣告，国家知识产权局认为第1407896号引证商标与第3563073号商标均具有较高知名度，争议商标指定的“餐具柜”等商品与第3563073号商标指定的“抽油烟机”等商品关联性更强，争议商标是对第3563073号“”商标的合理延伸，未构成对第1407896号驰名商标的复制、摹仿，没有支持好太太公司的无效请求。好太太公司不服提起诉讼，但一审及二审法院均在考虑凯达能公司第3563073号“”商标的注册及知名度的情况下，认定争议商标与好太太公司在先商标不构成近似、不会混淆，驳回了好太太公司的请求。

好太太公司遂提起再审，最高法院认为，诉争商标能否注册应当依据商标法的有关规定进行判断，被诉裁定认定诉争商标是凯达能公司在先商标权利的合理延伸注册，此认定没有法律依据；原审判决将第3563073号商标作为诉争商标注册的关联关系，并作为诉争商标注册的因素考虑亦缺乏法律依据；原审判决考虑第3563073号商标的有关认定不当，缺乏法律依据。

来源：立方律师事务所公众号



立方短评：




商标申请人希望以“商标合理延伸”或“延续性注册”作为理由，将在先基础商标作为权利基

础，从而获得商标延伸或延续注册，笔者认为均缺乏明确的法律依据。在出现近似商标争议时，仍应当以审查混淆可能性为原则，予以解决。如果随意允许“商标合理延伸”、“商标延续性注册”，必将冲击申请在先、诚实信用等《商标法》基本原则与规定，冲击通过商标无效宣告程序、异议程序等解决争议的制度架构。在上述案件中，最高院再次在提审判决中明确指出“商标合理延伸注册”缺乏法律依据，对于后续类似案件的处理具有一定指导意义。

The SPC Emphasized Again That "Reasonable Extension of Trademark Registration" Lacked Legal Basis in The Case of HOTATA

In June 2022, the SPC made a retrial judgment on the administrative dispute over trademark invalidation between Guangdong Hotata Technology group Co., Ltd (Hotata) and the China National Intellectual Property Administration (CNIPA) and Zhongshan Haoshenghuo Electric Appliance Co., Ltd. (The Third Party). In the judgment, the SPC supported all the retrial claims of HOTATA, overturning the judgments and the ruling of CNIPA, and held that there was no legal basis for the “reasonable extension of trademark registration”.

HOTATA is the trademark owner of No.1407896 "  Haotaitai 好太太 ", which has been used on "drying racks" and other commodities since February 1999. The Third Party registered the trademark No.3563073 "  Haotaitai 好太太 " on the product of "Range Hood" (application date: May 21, 2003).

In 2011, The Third Party applied for registration of trademark No.9501078 "  Haotaitai 好太太 " on "sideboard" and other commodities. HOTATA filed an invalidation of the trademark, and CNIPA considered that the cited trademark No.1407896 and trademark No.3563073 were both well-known. The "sideboard" and other commodities designated by the disputed trademark were more closely related to those designated by trademark No.3563073, and the disputed trademark was a reasonable extension of trademark No.3563073 "  Haotaitai 好太太 ", which did not constitute reproduce and imitation of the well-known trademark No.1407896. HOTATA then filed the lawsuit, but the courts of first and second instance, considering the registration and popularity of the trademark No.3563073 "  Haotaitai 好太太 " of The Third Party, held that the disputed trademark was not similar to the prior trademark of HOTATA and will not cause confusion of the public, and rejected the request of HOTATA.

HOTATA filed a retrial, and SPC held that the conclusion that the disputed trademark was a reasonable extension of the registered trademark rights of The Third Party, has no legal basis, registrability of the trademarks shall still be based on the comparison of the cited trademarks, and made the retrial judgment.

[Source: Lifang & Partners WeChat Official Account](#)

Lifang & Partners:

Trademark applicants want to take the prior basic trademark as the basis of their rights on the grounds of "reasonable extension of trademark" or "continuous registration", so as to obtain trademark extension or continuous registration. However, there is no legal basis on this notion. When similar trademark disputes occur, they shall still be resolved on the principle of examining the likelihood of confusion. If "reasonable extension of trademarks" and "continuous registration of trademarks" are applied at will, it will impact the basic principles and regulations of *Trademark Law* such as prior application, honesty and credit, and the institutional framework of dispute resolution through trademark invalidation procedure and objection procedure. In the above-mentioned cases, SPC clearly pointed out again in the ar-

raignment judgment that the so-called "reasonable extension of trademark registration" lacks legal basis, which has guiding significance for the subsequent handling of similar cases.

最高法院明确被诉侵权产品制造者的认定标准

最高人民法院对江苏剪式锚固技术有限公司与天津市恒丰达五金贸易有限公司、邯郸市曲鸿贸易有限公司侵害发明专利权纠纷一案做出二审裁判，最高院在本案中明确被诉侵权产品制造者的认定标准。

最高院认为在专利侵权纠纷中，销售者合法来源抗辩的成立，需要同时满足被诉侵权产品具有合法来源的客观要件和销售者无主观过错的主观要件。被诉侵权产品具有合法来源，是指销售者通过合法的进货渠道、通常的买卖合同等正常商业方式取得所售产品。对于客观要件，销售者应当提供符合交易习惯的相关证据；对于主观要件，销售者应当证明其实际不知道且不应知道其所售产品系制造者未经专利权人许可而制造并售出。上述两个要件相互关联。如果该销售者能够证明其遵从合法、正常的市场交易规则，取得所售产品的来源清晰、渠道合法、价格合理，其销售行为符合诚信原则，合乎交易惯例，则可推定该销售者实际不知道且不应知道其所销售产品系制造者未经专利权人许可而制造并售出，即可以推定该销售者无主观过错。在权利人未进一步提供足以推翻上述推定的相反证据的情况下，应认定销售者的合法来源抗辩成立。关于制造专利产品，如果被诉侵权产品已经明确标注了诸如生产企业名称、商标等能够据以确定制造者身份的信息，则在无充分相反证据的情形下，可以认定该对外标注信息的企业即为专利法所界定的被诉侵权产品的制造者。但如果该标注信息与在案其他证据相矛盾，并不足以认定制造者身份，且被诉侵权人提供了比较充分的反驳证据的，则应当依个案查明的事实进行认定。

来源：最高人民法院

SPC Clarified the Identification Standard of The Accused Infringing Product Manufacturer

The Supreme People's Court (SPC) made a final judgment on the dispute over infringement on invention patent, where SPC clarified the identification standard of the accused infringing product manufacturer. SPC held that in patent infringement disputes, the establishment of the seller's legal source defense needs to meet both the requirement that the accused infringing product has a legal source, and the requirement that the seller has no fault. The accused infringing product has a legal source, which means that the seller obtains the sold product through legal purchase channels, usual sales contracts and other normal commercial ways. For the objective requirements, the seller shall provide relevant evidence in line with the trading habits. As for the subjective elements, the seller should prove that he did not know and should not know that the products he sold were manufactured and sold by the manufacturer without the permission of the patentee. The above two elements are interrelated. If the seller can prove that it complies with the legal and normal market trading rules, obtains the products sold with clear sources, legal channels and reasonable prices, and its sales behavior conforms to the principle of good faith and trading practices, it can be presumed that the seller actually does not know and should not know that the

products it sells are manufactured and sold by the manufacturer without the permission of the patentee, that is, it can be presumed that the seller has no subjective fault. If the obligee fails to provide further evidence to the contrary sufficient to overturn the above presumption, the legal source defense of the seller shall be deemed to be established. With regard to the manufacture of patented products, if the accused infringing product has been clearly marked with information such as the name and trademark of the manufacturing enterprise, which can be used to determine the identity of the manufacturer, in the absence of sufficient evidence to the contrary, the enterprise that externally marked the information can be identified as the manufacturer of the accused infringing product as defined in the patent law. However, if the marked information contradicts other evidence in the case, which is not enough to identify the manufacturer, and the accused infringer provides sufficient rebuttal evidence, it should be identified according to the facts ascertained in the case.

Source: SPC

再审反转，最高法院明确域外自然人姓名权的保护要件

近日，最高人民法院对马诺娄·布拉尼克与国家知识产权局、方方舟商标权无效宣告请求行政纠纷一案做出再审裁判，判决撤销一审、二审判决，撤销原中华人民共和国国家工商行政管理总局商标评审委员会对涉案商标无效宣告请求裁定，并判令国家知识产权局就涉案商标重新作出裁定。

最高院认为，在先姓名权保护的核心在于特定商品、服务领域内的商标标识与自然人姓名之间的指代关系是否成立且为相关公众所知悉。衡量域外自然人的知名度，首先要考虑其对大陆地区的直接影响力，同时对通过杂志宣传、巡回演出、影视作品等方式将形成于域外以及香港地区的知名度辐射到内地的情况也应予以考量。

马诺娄·布拉尼克 (MANOLO BLAHNIK) 为世界知名的鞋履设计师，其姓名为西班牙语非固定搭配词汇。诉争商标“MANOLO BLAHNIK/马诺罗·贝丽嘉”外文部分与之完全相同。作为从业近二十年的同业经营者，方方舟将诉争商标注册在第25类“鞋、靴”等商品上，难谓巧合。该商标注册损害了马诺娄·布拉尼克的姓名权，应予无效。

来源：最高人民法院

SPC Clarified the Protection Elements of The Name Right of Foreign Individuals

Recently, SPC made a retrial judgment on the administrative dispute between MANOLO BLAHNIK and CNIPA and Fang Yuzhou on the request for invalidation of trademark rights. It ruled that the first and second judgments were revoked, the ruling of the Trademark Review and Adjudication Board of the former State Administration for Industry and Commerce of the People's Republic of China on the request for invalidation of the trademark involved was revoked, and CNIPA was ordered to make a new ruling on the trademark involved. SPC held that the core of the protection of the prior name right lies in whether the referential relationship between the trademark logo and the natural person's name in specific goods and services is established and known by the relevant public. To measure the popularity of foreign natural persons, first of all, we should consider their direct influence on the mainland. At the same time, we should also consider the situation of spreading the popularity of foreign natural persons and Hong Kong to the mainland through magazine propaganda, tour performances, film and television

works, etc. MANOLO BLAHNIK is a world-famous shoe designer, and his name is Spanish unfixed collocation vocabulary. The foreign language part of the trademark "MANOLO BLAHNIK/马诺罗·贝丽嘉" is exactly the same. As a peer operator for nearly 20 years, Fang Yuzhou registered the trademark in the 25th category of "shoes, boots" and other commodities, which is hardly a coincidence. The trademark registration damaged Manolo Branik's right to name and should be invalid.

Source: SPC

李子柒维权胜诉，在产品价签、发票中使用“李子柒”标识构成侵权

四川省宜宾市中级人民法院对四川子柒文化传播有限公司与宜宾绿源食品有限公司侵害商标权及不正当竞争纠纷一案作出一审判决，认定被告绿源食品公司误在商品发票上标注“李子柒”字样的行为构成不正当竞争，判决被告赔偿损失7元，驳回原告其他诉讼请求。

法院认为，绿源食品公司在涉案商品的促销价签上标注“李子柒”字样，让消费者误认为涉案商品与“李子柒”品牌存在关联，其行为属于不正当竞争行为，故支持原告子柒文化公司诉请被告绿源食品公司赔偿损失7元的请求；但被告绿源食品公司未实施编造、传播虚假信息或者误导性信息的行为，也未诋毁原告子柒文化公司的商业信誉及其商品信誉，因此驳回原告要求被告绿源食品公司在其经营的绿源超市以及《宜宾日报》、《四川日报》或者其他省级报刊中缝以外的版面上发布声明以消除影响的诉请。

来源：四川省宜宾市中级人民法院

Li Ziqi Won The Case, and The Use of "Li Ziqi" Logo in Product Price Tags and Invoices Constitutes Infringement

The Intermediate People's Court of Yibin City, Sichuan Province made a first-instance judgment on the case of trademark infringement and unfair competition dispute between Sichuan Ziqi Culture Communication Co., Ltd. and Yibin Lvyuan Food Co., Ltd., and found that the defendant Luyuan Food Company's acts of marking the words "Liziqi" on the commodity invoice constituted unfair competition, and decided the defendant to compensate RMB 7 for the loss, rejecting other claims of the plaintiff. The court held that Luyuan Supermarket's use of the logo on the price tag and invoice of the product was not a trademark use, but it still constituted unfair competition. Luyuan supermarket is not a simple counter lessor, but the actual operator of the products involved. If it fails to fulfill its duty of examination, it should bear the legal responsibility for unfair competition. However, Luyuan Supermarket did not fabricate and disseminate false information or misleading information, nor did it slander the plaintiff's commercial reputation and commodity reputation. Only when the infringer did damage the commercial reputation or commodity reputation, should it undertake to eliminate the impact.

Source: The Intermediate People's Court of Yibin City, Sichuan Province

广知院：对改编作品的后续利用仍属改编权控制范围

近日，广州知识产权法院对上海菲狐网络科技有限公司与霍尔果斯侠之谷信息科技有限公司、

深圳侠之谷科技有限公司、广州柏际网络科技有限公司侵害著作权纠纷一案做出二审判决，在维持责令被告停止侵权并赔礼道歉的基础上，将赔偿数额由150万改判为500万。

广知院认为，改编权作为著作权人的财产权，不仅仅控制改编行为，而且还规制改编作品的后续财产性利用行为，被诉侵权人未经许可，对改编作品的后续使用包括复制权、发行权和信息网络传播权均被改编权吸收而不再成为后续作品独立的权利类型。

因此，未经游戏著作权人许可，对改编形成的被诉游戏画面的后续财产性利用仍属侵犯改编权。网络游戏联合运营方是否能以合法来源作为侵权抗辩，需要综合考虑其参与程度、游戏行业监管规定等因素判断其主观上是否具有善意，进而认定合法来源抗辩是否成立。考虑到被告两公司作为网络游戏市场主体，持有相关证据却不披露构成证据妨碍，被告与相关平台合作期限较长、相关平台规模较大、平台数量较多，以及法律所规定的举证妨碍的根本目的在于破解举证难、赔偿低的实际情况，广知院根据证据妨碍规则推定原告主张的赔偿金额500万元成立。

来源：广州知识产权法院

Guangzhou Intellectual Property Court: The Subsequent Use of The Adapted Works Is Still Under The Control of The Right of Adaptation

Recently, Guangzhou Intellectual Property Court (GIPC) made a second-instance judgment on the copyright infringement dispute. In addition to ordering the defendant to stop the infringement and apologize, the compensation amount was increased from RMB 1.5 million to 5 million.

GIPC affirms that the right of adaptation, as the property right of the copyright owner, not only controls the adaptation behavior, but also regulates the subsequent property use of the adapted works. Without permission, the subsequent use of the adapted works by the accused infringer, including the right of reproduction, distribution and information network transmission, is absorbed by the right of adaptation, and no longer becomes an independent right type of subsequent works.

Therefore, without the permission of the copyright owner, the subsequent property use of the sued game screen formed through adaptation is still an infringement on the right of adaptation. Whether the network joint operator can take legal source as defense, shall require consideration of the degree of participation in the infringement acts, as well as the regulation of the game industry and other factors. Considering that the two defendants are the main players in the online game market, refusing to disclose relevant evidences constitutes evidence obstruction. GIPC affirms that the compensation amount claimed by the plaintiff was RMB 5 million can be supported.

Source: GIPC

美国专利商标局将通过打击“增量”专利以降低药品价格

7月6日，美国专利商标局（USPTO）与美国食品和药品管理局（FDA）联合宣布计划按照美国总统乔·拜登（Joe Biden）2021年7月《关于促进美国经济竞争的行政命令》的指示，实施一系列旨在降低药品价格的措施。

拜登的行政命令将对一些制药企业的做法进行限制，例如USPTO将禁止那些对不符合专利资格的现有药物进行增量、明显变更的专利申请。这一做法可能会使药品价格下调，因为制药企业将

无法基于对药物产品的微小变更而不合理地推迟仿制药竞争的到来。此外，USPTO还将“改进获取专利的程序，以便USPTO能够颁发可信且有效的专利，对数量较大的同族专利中的继续申请（continuation applications）、专利驳回的使用声明性证据（declaratory evidence）进行更加严格的审查”，力求最大限度地减少双重专利的影响，并对美国与其他国家之间的药物和生物专利审查和颁发情况进行比较分析以确定改进美国专利制度的方法。该命令呼吁USPTO和FDA“利用他们在促进创新、竞争和安全有效药品的批准、监管方面的集体专业知识，帮助缓解美国家庭在药店购买药品的压力”。

来源：USPTO

The USPTO Will Protect Against the Patenting of Incremental to Lower Drug Prices

The USPTO and the FDA recently completed an exchange of letters outlining numerous initiatives to execute on the President's agenda. President Biden has outlined a multipoint plan to increase access and reduce the cost of prescription drugs in his July 2021 *Executive Order on Promoting Competition in the American Economy*.

The USPTO will protect against the patenting of incremental, obvious changes to existing drugs that do not qualify for patents. This effort can lead to lower drug prices because drug companies will not be able to unjustifiably delay generic competition based on trivial changes to a drug product.

The USPTO will work to ensure that patent examiners have the time and resources they need to conduct a thorough review of patent applications for pharmaceutical inventions. The FDA will assist the USPTO in providing patent examiners with training on the state of the art in the pharmaceutical and biologics fields, and the USPTO will provide new tools for patent examiners to search enormous and growing global databases of technical information—including publicly available sources maintained by the FDA—to determine whether similar innovations already exist.

Source: USPTO

虚拟现实公司MetaX起诉Meta Platforms (META. US) 商标侵权

近日，美国沉浸式虚拟现实体验公司MetaX LLC以商标侵权为由起诉Facebook母公司Meta Platforms (META. US)，称扎克伯格为公司更名侵犯了其权益。

MetaX在法庭上表示Facebook的更名侵害其权益，且其以Meta的名义运营的能力已被彻底削弱。MetaX指控Meta Platforms侵犯了其“Meta”商标，要求法院下令禁止这家社交媒体公司在与MetaX重叠的商品和服务中使用“Meta”商标，并支付赔偿金。MetaX表示，“Meta Platforms危及其业务，同时危及到整个行业以及创新者的知识产权，Meta Platforms的更名已导致人们误认其是Meta Platforms的附属公司。”

来源：VOI

Meta Platform Inc Sued by MetaX for Using Meta Trademark

JAKARTA - Facebook owner Meta Platforms Inc. is in the midst of a trademark lawsuit in Manhattan

federal court on Tuesday from MetaX LLC, a company that creates immersive virtual reality experiences. Meta is being sued for allegedly stealing his name for his pivot to the metaverse.

New York-based MetaX told the court it had been "destroyed" by Facebook's rebranding and said its "ability to operate as Meta has been destroyed."

They also accused Meta Platform of infringing on the federal trademark "Meta", and sought a court order blocking social media companies from using the "Meta" brand for goods and services that overlapped with MetaX as well as an unspecified amount of damages. MetaX founder Justin "JB" Bolognino said in a statement, quoted by Reuters, that Meta Platforms "is jeopardizing not only their business, but the entire industry and the intellectual property rights of the innovators who have helped build it."

[Source:VOI](#)

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