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SPC Affirmed Principle of Judging Whether the Independent Claims Lack the Necessary Technical Features



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电商平台中侵权商品页面显示的捐赠笔数可作为计算销售量的依据

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最高院对免费使用软件做出侵权认定

SPC Affirmed the Infringement on Open-Source Software

“每日坚果”美术作品著作权案：法定赔偿判赔500万

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法院认定刮码销售正品为不正当竞争行为

Shenzhen Intermediate Court Ruled That Selling Genuine Products and Removing the Code Constitutes Unfair Competition

Avanci宣布与丰田、本田、日产等多家车企签署专利许可协议

Avanci Announced Signing Patent License Agreements with Toyota, Honda, Nissan and Other Auto Companies

固特异恶意窃取商业秘密，判赔近6500万美元

Goodyear Was Ordered to Pay Nearly \$65 Million for Malicious Theft of Trade Secrets

立方竞争法周报 Weekly Competition Law News

河南省市监局发布重点行业领域反垄断提示告诫函

2022年9月20日，河南省市场监督管理局（“河南省市监局”）向全省各相关行业协会和经营者发布了重点行业领域反垄断提示告诫函，提醒各行业协会和经营者不得从事垄断协议、滥用市场支配地位等垄断行为，明示现行法规对有关垄断行为的处罚规定，要求各行业协会、经营者认真对照提示函相关内容，立即开展自查和整改工作。河南省市监局将进一步加强监管，对发现的涉嫌垄断违法行为予以严肃查处。（[查看更多](#)）

Henan AMR Issues an Anti-Monopoly Warning Letter in Key Industry Sectors

On September 20, 2022, the Henan Administration for Market Regulation (“Henan AMR”) issued an anti-monopoly warning letter in key industry sectors to all relevant industry associations and operators in the province, reminding them not to engage in monopoly agreements, abuse of dominant market position and other monopolistic behaviors, specifying the penalty provisions under the existing regulations on monopolistic behaviors, requiring the relevant industry associations and operators to strictly follow the relevant contents of the warning letter and immediately carry out self-examination and rectification works. The Henan AMR will further strengthen regulations and strictly investigate and deal with the suspected monopolistic violations once found. ([More](#))

重庆市市监局已审查8起经营者集中申报案

2022年9月20日，重庆市市场监督管理局（“重庆市市监局”）发文称，截至目前，共接受市场监管总局委托案件8件。其中，玉溪市工业信息投资有限公司与云南恩捷新材料股份有限公司等经营者新设合营企业案已作出不实施进一步审查决定，另有2件案件已进入立案公示程序。受委托的8件案件涉及农业、采矿业、电子器械制造业等多个行业领域，涉及重庆、云南、湖北等多个省市。（[查看更多](#)）

Chongqing AMR Has Reviewed 8 Delegated Simple Cases

On September 20, 2022, Chongqing Administration for Market Regulation (“Chongqing AMR”) stated that so far, it has accepted a total of 8 cases delegated by the State Administration for Market Regulation. Among them, the clearance for the Yuxi City Industry Information Investment Co., Ltd./Yunnan Enjie New Materials Co., Ltd./other operators joint venture transaction has been announced, and two other cases have entered the filing public notification procedure. The delegated 8 cases involved agriculture, mining, electronic equipment manufacturing and other industry sectors, and involved Chongqing, Yunnan, Hubei and other provinces and cities. ([More](#))

江苏省市监局举办全省经营者集中合规培训班

2022年9月16日，江苏省市场监督管理局（“江苏省市监局”）在南京举办全省经营者集中合规培训班，省内61家企业、江苏省市监局反垄断处全体人员、各设区市市场监管部门业务骨干参加了培训。此次培训邀请了专家授课，重点解读经营者集中反垄断审查理论与实务，详细讲解经营者集中典型案例，针对性提出合规建议。培训要求全省企业要准确理解新修订的《反垄断

法》对经营者集中的最新要求，准确掌握了解经营者集中的基本条件、申报相应流程、申报材料准备和处罚规定。（[查看更多](#)）

Jiangsu AMR Holds a Provincial Compliance Training Course on Concentration of Undertakings

On September 16, 2022, Jiangsu Administration for Market Regulation (“Jiangsu AMR”) held a provincial compliance training course on concentration of undertakings in Nanjing. 61 enterprises in the province, all staff of the Anti-monopoly Division of Jiangsu AMR, and elite officials of market regulation departments in each city attended the training. The training invited experts to give lectures, focusing on the anti-monopoly theory and practices of merger review, explaining typical merger review cases in detail, and making targeted compliance suggestions. The training required enterprises in the province to accurately understand the latest requirements of the newly revised *Anti-Monopoly Law* on concentration of undertakings, and to accurately understand the basic conditions, the corresponding process of notification, the preparation of notification materials and the penalty provisions of concentration of undertakings. ([More](#))

瑞士竞争委员会对诺华滥用市场支配地位展开调查

2022年9月22日，据媒体报道，瑞士竞争委员会（COMCO）对瑞士制药公司诺华（Novartis）展开调查，认为诺华可能非法利用专利减少竞争压力。COMCO于2022年9月13日对诺华进行了突击检查，调查了诺华位于巴塞尔的公司总部。COMCO发布了一份声明，称该公司试图通过利用一项专利启动诉讼，以保护其治疗皮肤病的药物免受竞争产品影响。这项调查旨在确定该行为是否构成使用所谓的专利模块（blocking patent），根据瑞士卡特尔法，该行为可能构成非法滥用市场支配地位。（[查看更多](#)）

COMCO Probes Novartis for Abuse of Market Dominant Position

On September 22, 2022, it was reported that the Swiss Competition Commission (COMCO) has opened an investigation of Novartis over possible unlawful use of a patent to reduce competitive pressure. COMCO conducted a dawn raid on the company on September 13 at the company’s premises in Basel. COMCO issued a press release stating that the company allegedly attempted to protect its drug for the treatment of skin diseases against competing products by using one of its patents to initiate litigation proceedings. This investigation aims to determine whether the alleged behavior constitutes the use of a so-called blocking patent, which might amount to an unlawful abuse of an allegedly dominant position according to the Swiss *Cartel Act*. ([More](#))

英国通信管理局对亚马逊、微软和谷歌云服务业务启动竞争调查

2022年9月22日，英国通信管理局（Ofcom）发布通告，宣布在未来几周内，将根据《2002企业法案》对英国的云业务展开市场调查。该市场中最大的服务供应商为亚马逊网络服务（AWS）、微软和谷歌，三家企业合计占有英国公共云基础设施服务市场81%的营收。Ofcom将考察云服务市场中的总体竞争状况以及三家公司的市场地位。（[查看更多](#)）

Ofcom to Launch Competition Study on Amazon, Microsoft and Google’s Cloud Services Business

On September 22, 2022, the UK Ofcom released a statement, announcing to launch a market study under the *Enterprise Act 2002* into the UK's cloud sector in the coming weeks. The largest providers of cloud services are Amazon Web Services (AWS), Microsoft and Google. Collectively, these three firms generate around 81% of revenues in the UK public cloud infrastructure services market. Ofcom will examine the strength of competition in cloud services generally and the position the three companies hold in the market. ([More](#))

德国经济部拟扩张反垄断监管部门权限，可拆分大型产业集团

2022年9月19日，据媒体报道，德国经济部公布计划，拟赋予德国联邦卡特尔局更大权力，以打击在行业整体评估中发现的反竞争行为。经济部补充道，根据该提案，联邦卡特尔局将有权力把拆分产业集团作为最后的救济措施，该提案将很快进入政府内部表决程序。目前，联邦卡特尔局正对燃料市场进行评估，根据新规则，监管机构可能会命令对该产业进行有效的合规管理，并改变供应关系或剥离业务部门。（[查看更多](#)）

Germany Reveals Plan To Boost Competition Regulator Powers

On September 19, 2022, according to media, Germany's federal cartel authority will get expanded powers to crack down on anti-competitive practices found in its assessments on entire sectors, plans released by the economy ministry showed on Monday. The Federal Cartel Office would have the power to break up industry groups as a last resort under the proposal, which is to be put to an internal government vote soon, the ministry added. The office is conducting an assessment of fuel markets, for example, which under the new rules could lead to the regulator ordering effective compliance management, changes to supply relationships or the divestiture of business units. ([More](#))

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

《北京市数字经济促进条例（草案）》进行第二次审议：增加个人信息保护规定

2022年9月21日，北京市十五届人大常委会第四十三次会议召开，对《北京市数字经济促进条例（草案）》（以下简称“二审稿”）进行第二次审议，二审稿增加一款规定：任何组织、个人不得非法收集、使用、加工、传输他人个人信息，不得非法买卖、提供或者公开他人个人信息。同时，明确“发展改革、市场监管、网信等部门”对平台经济的监管责任，规定其应当建立健全平台经济治理规则和监管方式，保障平台从业人员、中小企业和消费者合法权益。针对“数据孤岛”问题，二审稿提出，应加强数据资源安全保护和开发利用，促进公共数据开放共享。建立公共数据开放清单并向社会公布，单位和个人可以通过本市公共数据开放平台获取公共数据。（[查看更多](#)）

Regulations of Beijing Municipality on Promotion of Digital Economy (Draft) on the Second Deliberation: Adding Provisions on Personal Information Protection

On 21 September 2022, the 43rd meeting of the Standing Committee of the 15th Beijing Municipal People's Congress held the second deliberation of the *Regulations of Beijing Municipality on the Pro-*

motion of Digital Economy (the "Draft"). One paragraph is added to the Draft which reads: no organization or individual may illegally collect, use, process or transmit the personal information of others, or illegally buy or sell, provide or make public the personal information of others. The Draft also clearly sets forth the regulatory responsibilities of regulatory authorities in the areas of development and reform, market regulation, cyberspace administration etc. for the platform economy. Such regulatory responsibilities include establishing and improving governance rules and regulatory modes for the platform economy, and safeguarding the legitimate rights and interests of practitioners of the platform economy, small and medium-sized enterprises and consumers. In response to the "isolated data island" problem, the Draft states that it is necessary to strengthen the security protection, development and utilization of data resources and promote the opening and sharing of public data. A public data access list shall be established and made public. Entities and individuals may access public data through the public data access platform of the Beijing Municipality. ([More](#))

上海市通管局发布关于侵害用户权益行为App的通报（2022年第三批）

2022年9月23日，上海市通信管理局（以下简称“通管局”）发布关于侵害用户权益行为App的通报（2022年第三批）。通管局近期组织第三方检测机构对上海市App应用侵害用户权益行为开展检查。经检测发现91款App存在“违规收集个人信息”“超范围收集个人信息”“App强制、频繁、过度索取权限”等相关问题，通管局已通报相关App运营企业，督促存在问题的App进行整改。（[查看更多](#)）

Shanghai Communication Administration Releases a Notice on the Infringement of Users' Rights and Interests by Apps (The Third Batch in 2022)

On 23 September 2022, Shanghai Communication Administration ("Shanghai CA") releases a Notice on the Infringement of Users' Rights and Interests by Apps (the third batch in 2022). Shanghai CA has recently organized third-party testing agencies to inspect the infringement upon users' rights and interests by the Apps in Shanghai. Upon testing, 91 Apps were found to have problems such as "collecting personal information in violation of regulations", "collecting personal information beyond the scope", and "compulsory, frequent and excessive requests for authorization by Apps". Shanghai CA has notified the relevant App operators to urge the rectification of the problematic Apps. ([More](#))

国内首家数字资产保险创新中心在西安成立

2022年9月17日，由西安市碑林环大学创新产业带管委会、中国人保财险西安市分公司、因问科技共同发起并成立的“数字资产保险创新中心”签约仪式成功举行。碑林区探索成立数字资产保险创新中心，其主要目的和任务是帮助科研机构 and 科创企业及时、充分识别自己的无形资产，在借助创新中心平台进行充分数字化后，都具备转化成为数字资产的可能。数字资产保险创新中心以“数字化确权”作为知识财产保护的起点，有助于企业了解并管理好自身商业秘密、隐私数据等宝贵的无形资产。（[查看更多](#)）

The First Digital Asset Insurance Innovation Center in China Was Established in Xi'an

On 17 September 2022, the contract signing ceremony of the "Digital Asset Insurance Innovation Center" jointly sponsored and established by the Management Committee of Xian Beilin University-based

Innovation Industrial District, PICC Property and Casualty Company Limited Xi'an Branch Company and Yinwen Technology Co. was successfully held. The main purpose and task of exploring the establishment of a digital asset insurance innovation center in the Beilin District is to help scientific research institutions and scientific innovation enterprises timely and fully identify their own intangible assets. After the intangible assets have been fully digitized via the platform of the innovation center, all such intangible assets are capable of being transformed into digital assets. The digital asset insurance innovation center takes "digital right confirmation" as the starting point for the protection of intellectual property, which helps enterprises understand and manage their own trade secrets, private data, and other precious intangible assets. ([More](#))

上海数据交易市场一站通金融数据交易板块发布

2022年9月23日，上海数据交易所举行一站通金融数据交易板块发布会暨战略签约仪式。为了扩大数据市场产品供给，上海数据交易所23日推出一站通金融数据交易板块，并发布两项内容：一是金融板块银行数据全品类上线；二是上海数据交易所“2022金融数据交易茁壮计划”正式启动。当天，金融行业日常经营活动所需要的20个类型、近200个数据产品一次性集中挂牌。 ([查看更多](#))

Shanghai Data Exchange Held a Press Conference on the Introduction of Financial Data Trading Section

On 23 September 2022, Shanghai Data Exchange held a press conference on the introduction of a one-stop financial data trading section and the signing of strategic agreements. To expand the supply of products in the data market, Shanghai Data Exchange launched a financial data trading section on 23 September, with two announcements being made. The first is that the full array of banking data in the financial section have been made available online. Second, the "2022 Financial Data Trading Thriving Plan" of Shanghai Data Exchange was officially launched. On that day, 20 types and nearly 200 individual data products necessary for daily business operations in the financial industry were concurrently listed. ([More](#))

广东今年年底前将全面推广政府首席数据官制度

2022年9月22日，广东省人民政府新闻办公室在广州举行广东省推进数据要素市场化配置改革工作新闻发布会。广东省政务服务数据管理局局长杨鹏飞在会上表示，广东将从组织架构、工作抓手、职能职责等方面完善政府首席数据官工作体系，今年年底前在全省全面推广政府首席数据官制度，从体制机制上助推数据要素新业态新模式。当前，广东在广东省委政法委、省公安厅等13个省有关部门和广州、深圳、珠海、佛山等11个地市开展首席数据官制度试点，为数据资源“一网共享”管理体系落地提供了坚实的组织保障。 ([查看更多](#))

Guangdong Province to Fully Promote the Government Chief Data Officer System by the End of this Year

On 22 September 2022, the Information Office of Guangdong Provincial People's Government held a press conference in Guangzhou on promoting the reform of market-oriented allocation of data elements in Guangdong Province. Yang Pengfei, director of the Bureau of Government Service Data Administration of Guangdong Province, was quoted as saying at the meeting that Guangdong Province

will improve the work system of the government chief data officer in terms of organizational structure, working mechanism and functions, and responsibilities, and by the end of this year, the government chief data officer system will be fully promoted in the whole province to promote new business forms and models of data elements from the perspective of systems and mechanisms. At present, Guangdong Province is implementing the pilot program for the system of chief data officers in 13 provincial governmental departments, including the Political and Legal Affairs Commission of the Guangdong Provincial Party Committee and the Provincial Public Security Department, as well as 11 prefectures and cities, including Guangzhou, Shenzhen, Zhuhai, and Foshan, providing a solid organizational foundation for the implementation of the management system for sharing data resources via one network. ([More](#))

重庆市消委会提起公益诉讼：因倒卖学生及家长个人信息

2022年9月21日，根据中国消费者报报道，费某扬在网上购买学生及家长信息1.1万条，然后将这些信息转卖给他人，非法获利2000元。重庆市消委会提起公益诉讼，将费某扬诉至重庆市第一中级人民法院，请求判令被告在《中国消费者报》上公开赔礼道歉，并在1年内参加两次消费领域的公益活动，且每次活动支付的经费不低于1000元。9月19日，重庆市第一中级人民法院开庭审理此案，被告费某扬对原告重庆市消委会提出的诉求、事实及理由均无异议。原被告双方当庭达成和解协议。被告在公开道歉信中表示，将履行调解协议，自愿参加消费领域的公益活动，以此赔偿广大消费者受到的损失，弥补社会公共利益受到的损害。（[查看更多](#)）

Chongqing Consumers' Commission Filed a Public Interest Lawsuit for The Illegal Sale of Personal Information of Students and Their Parents

On 22 September 2022, according to the China Consumer Newspaper, one person named Fei bought online 11,000 pieces of information about students and their parents and then resold for an illegal profit of RMB2,000. The Consumers' Commission filed a public interest lawsuit in the First Intermediate People's Court of Chongqing to request the defendant to publicly apologize in the China Consumer Daily, and to participate in two public welfare activities in the consumption field within one year, each of which will require payment of no less than RMB1000. On 19 September, the First Intermediate People's Court of Chongqing held a court session to hear the case, and the defendant had no objection to the appeal, facts, and reasons proposed by the plaintiff Chongqing Municipal Consumer Committee. The plaintiff and defendant reached a settlement agreement in court. The defendant undertook in the public apology to perform the settlement agreement, volunteer to take part in public welfare activities in the consumption field, so as to compensate for the damages suffered by the consumers and damages to public interest. ([More](#))

男子利用公民个人信息“薅羊毛” 构成侵犯公民个人信息罪获刑罚

2022年9月14日，根据河北法制网报道，河北省行唐县人民检察院对付某侵犯公民个人信息提起刑事附带民事公益诉讼，法院依法判处被告人付某有期徒刑一年，缓刑一年六个月，并处罚金4.5万元，退缴违法所得3.5万元，并在国家级新闻媒体上向社会公开赔礼道歉。2021年4月份以来，付某通过QQ多次大量购买实名手机号数据，非法获取公民个人信息7000余条，非法出售给他人用于在某支付平台“薅羊毛”，或用于在某支付平台“薅羊毛”，批量注册新用户给商品砍

价。付某的行为侵犯公民个人信息安全，侵害不特定社会公众的合法权益，其应承担赔礼道歉、停止侵害并赔偿损失的侵权责任。付某的行为构成侵犯公民个人信息罪，依法应当追究刑事责任。（[查看更多](#)）

One Man Was Sentenced for Infringing on Citizens' Personal Information by Using Citizens' Personal Information to Take Advantage of a Loophole

On 22 September 2022, according to the Hebei Legal Network, the People's Procuratorate of Xingtang County, Hebei Province, filed a criminal proceeding supplemented by civil public interest lawsuit against a person who infringed on citizens' personal information. According to the law, the court sentenced the defendant to a one-year fixed term imprisonment, suspended for one year and six months, and ordered the defendant to pay a fine of RMB45,000 and return RMB35,000 in illegal profits, and to publicly apologize to the public on the national news media. Since April 2021, the defendant has purchased a large number of real name mobile phone numbers through QQ many times, illegally obtained more than 7,000 pieces of citizens' personal information, and illegally sold them to others for taking advantage of a loophole on a payment platform, or for taking advantage of a loophole on a payment platform by the defendant himself through registering new users in batches to bargain for goods. The act of the defendant has infringed the security of citizens' personal information and infringed on the legitimate rights and interests of the unspecified social public, and therefore he should bear the tort liability of apologizing, stopping the infringement, and compensating for losses. The defendant's act also constitutes a crime of violating citizens' personal information, and should bear criminal responsibility according to the law. ([More](#))

美国加州州长签署《加州适龄设计规范法案》成为法律，加强网络儿童隐私保护

2022年9月15日，据报道，加利福尼亚州州长加文·纽森签署了《加州适龄设计规范法案》（The California Age-Appropriate Design Code Act, AB 2273），该法案于2024年6月生效，旨在保护使用在线平台的儿童的健康、数据和隐私。该法案将对美国儿童实施一些最严格的隐私要求，尤其是在社交媒体方面。法案限制应用程序收集18岁或以下任何人的数据的能力，并要求他们为儿童和青少年实施“最高隐私保护标准”。此外，法案还将要求以技术为重点的公司具备在允许访问其平台之前验证用户年龄的技术。（[查看更多](#)）

California Governor Signs Into Law Internet Privacy Legislation to Boost Children's Safety Online

On 15 September 2022, according to reporting, California governor Gavin Newsom signed *The California Age-Appropriate Design Code Act* into law. The law will go into effect on June 2024. The law aims to protect the health, data, and privacy of children using online platforms and will implement some of the strictest privacy requirements for children in the US, especially in relation to social media. The law restricts Apps' ability to collect data on anyone 18 or younger and requires them to implement their highest privacy standards for children and teenagers. Additionally, the law will also require technology-focused companies to incorporate technology to verify a user's age before allowing access to their platforms. ([More](#))

印度尼西亚通过个人数据保护法案

2022年9月20日，据报道，印度尼西亚议会通过了一项个人数据保护法案（以下简称“法案”），

法案共16章76条，分别从个人数据主体权利、行政处罚、国际合作、刑事规定等方面展开。法案规定，非法收集或使用他人个人资料的数据处理者，可能面临最高五年的监禁；发生数据泄露的情况下，公司可能被处以多达年收入2%的行政罚款。在个人权利方面，法案的部分条款借鉴了《通用数据保护条例》（GDPR），例如数据可携权以及撤回同意权的规定。（[查看更多](#)）

Indonesia Parliament Passes Data Protection Bill

On 20 September 2022, according to reporting, Indonesia's parliament passed *Data Protection Bill*. The bill consists of 16 chapters and 76 articles, which cover areas including personal data subject rights, administrative penalties, international cooperation, criminal provisions, etc. According to the legislation, data processors who illegally collect or use the personal data of others may face up to five years imprisonment; in case of data leakage, a company may be fined up to 2% of its annual revenue. In terms of individual rights, some provisions of the law draw on the General Data Protection Regulation (GDPR), such as the provisions on data portability and the right to withdraw consent. ([More](#))

澳大利亚运营商Optus用户数据库遭网络攻击，涉及近1000万用户个人信息

2022年9月24日，据报道，澳大利亚电信巨头Optus表示，该运营商遭网络攻击，并正就此与用户取得联系。这次网络攻击导致近1000万用户个人信息被窃取，受影响的用户数量相当于该国人口的40%左右。此次涉案信息包括用户数据库中用户的家庭住址、驾照号码、护照号码等。此次网络攻击是该国历史上最大的网络安全事件之一。Optus指出，由于执法部门正在调查此事，因此它可以发布的与此网络攻击事件有关的信息量有限的。该运营商指出，属于黑客的IP地址在欧洲不同国家之间移动。（[查看更多](#)）

Optus Contacts Customers Caught in Cyber-attack Involving Nearly 10 Million Users' Personal Information

On 20 September 2022, according to reporting, Australian telecom giant Optus said it was contacting customers about a cyberattack that accessed personal details of up to 10 million customers, and the number of affected users was equivalent to about 40% of the country's population. The information involved in this case includes the user's home address, driver's license number, passport number, etc. in the user database. The cyber-attack is one of the largest cyber security incidents in the country's history. Optus pointed out that because the law enforcement department is investigating this matter, the amount of information it can release about this cyber-attack is limited. The operator pointed out that the hacker's IP address moved between different countries in Europe. ([More](#))

知识产权 Intellectual Property

最高院对判断独立权利要求是否缺少必要技术特征进行认定

最高人民法院对东莞友华通信配件有限公司与中华人民共和国国家知识产权局、原田工业株式会社发明专利权无效行政纠纷案作出二审判决。

最高人民法院认为，判断独立权利要求是否缺少必要技术特征，原则上只能基于说明书中记载的发明所要解决的技术问题进行判断。为解决发明所要解决的技术问题所必不可少的技术手段，属于必要技术特征。并且仍需考虑说明书中记载的发明目的等内容，基于对权利要求的合理解释得出结论。只有当本领域技术人员通过阅读权利要求书、说明书和附图对独立权利要求进行合理解释后仍不能认为其可以解决发明所要解决的技术问题时，才能认定独立权利要求缺少必要技术特征。

来源：最高人民法院

SPC Affirmed Principle of Judging Whether the Independent Claims Lack the Necessary Technical Features

The Supreme People's Court (SPC) made a judgment of second instance on the administrative dispute over the invalidation against an invention patent.

The court held that whether an independent claim lacks necessary technical features shall, in principle, be judged only on the basis of the technical problem to be solved by the invention recorded in the specification. The technical means necessary for solving the technical problems to be solved by the invention are the necessary technical features. In addition, it is necessary to consider the contents such as the invention purpose recorded in the specification and draw a conclusion based on a reasonable interpretation of the claims. Only when a person skilled in the art cannot consider that the independent claims can solve the technical problems to be solved by the invention after reading the claims, the specification and the drawings to reasonably explain the independent claims, can he determine that the independent claims lack the necessary technical features.

Source: SPC

电商平台中侵权商品页面显示的捐赠笔数可作为计算销售量的依据

杭州市中级人民法院就海信家电集团股份有限公司（原告）与慈溪浩森电子商务有限公司、宁波欧品科技有限公司（被告）侵害商标权及不正当竞争纠纷案作出一审判决，判决被告停止侵权并赔偿原告经济损失

法院认为，被告在网店名称、商品宣传图片、宝贝详情页面等处使用涉案标识，属于在同种商品上使用与原告注册商标的近似商标，构成商标侵权。被告在被控商品实物外包装及产品参数标签上标注“深圳市科隆容声电子有点公司”字样，系明知“容声”品牌的影响力并试图利用该品牌声誉，客观上势必导致相关公众混淆，违反诚实信用原则，构成不正当竞争。

关于赔偿数额的确定，法院综合考虑了涉案注册商标的知名度、两被告公司侵权行为的性质、发生的范围、侵权所造成的影响及主观过错、原告为制止侵权所支付的合理费用等因素，适用法定赔偿方法确定赔偿数额。同时，法院以电商平台中侵权商品页面显示的捐赠笔数作为计算侵权商品销售量的依据，超出法定赔偿上限判赔。最终，两被告公司共计赔偿570万元。

来源：江苏省高级人民法院

The Amount of Donations Displayed on the Page of Infringing Products on an E-commerce Platform can be Used as the Basis for Calculating the Sales Volume

Hangzhou Intermediate People's Court made a first instance judgment on trademark infringement and unfair competition disputes, ordering the defendant to cease the infringement with damages of RMB 5.7 million.

The court held that the defendant's use of logos in the online shop name, product publicity pictures, detail pages, etc. is a trademark similar to the plaintiff's registered trademark used on the identical products, which constitutes trademark infringement. The defendant is aware of the influence of the "Rongsheng" brand, but still used the mark on the packaging and product parameter labels, which would inevitably lead to confusion of the relevant public, which violate the principle of good faith, and constitute unfair competition.

As for the damages, the court considered such factors as the popularity of the registered trademark, the nature and scope of the infringement of the defendant, the impact of the infringement, the fault, and the reasonable expenses for stopping the infringement, and applied the judicial damages. Meanwhile, the court took consideration of the number of donations displayed on the web pages of infringing products on the e-commerce platform, as the basis for calculating the sales volume of infringing products, and ordered the defendant pay the damages beyond the legal limit.

Source: [The High People's Court of Jiangsu Province](#)

最高法院对免费使用软件做出侵权认定

近日，最高人民法院就长沙米拓信息技术有限公司（以下简称米拓公司）与合肥思位实验室设备有限公司（以下简称思位公司）等侵害计算机软件著作权纠纷案作出二审判决，维持一审判决，认定被告构成侵权。

最高法院认为，思位公司在被诉侵权网站提供的软件与原告的涉案软件构成实质性相似，米拓公司在涉案软件设定的《最终用户授权许可协议》中明确要求用户保留原告的版权标识，思位公司在其所建网站中去除涉案软件中版权标识和网站链接信息，损害了米拓公司的身份权益，同时也割裂了米拓公司与涉案软件之间的联系，对米拓公司广告效益等财产性权益产生影响，侵害了米拓公司享有的署名权。

来源: [最高人民法院](#)

SPC Affirmed the Infringement on Open-Source Software

The Supreme People's Court (SPC) made a judgment of second instance on the case of computer software copyright infringement, upholding the judgment of first instance, and affirmed that the defendant constituted infringement.

The court held that the software provided by the defendant on the infringing website is substantially similar to that of the plaintiff. The plaintiff clearly required the user to retain the plaintiff's copyright logo in the user agreement set by the software, and the defendant removed the copyright logo and website link information in the software from its website, which damaged the plaintiff's personal rights and interests, but also cut off the relationship between the plaintiff and the software, affecting the plaintiff's advertising benefits and other property rights and interests, and infringed the plaintiff's right of authorship.

Source: SPC

“每日坚果”美术作品著作权案：法定赔偿判赔500万

浙江省高级人民法院就青岛沃隆食品有限公司（以下简称沃隆公司）与夏邑县唯品贸易有限公司（以下简称唯品公司）、河南汇吃坊商贸有限公司（以下简称汇吃坊公司）、夏邑县亦淘食品有限公司（以下简称亦淘公司）等著作权侵权纠纷案作出二审判决，以法定赔偿最高限额酌情责令被告赔偿500万元。

法院认为，唯品公司、汇吃坊公司在未经沃隆公司许可的情形下，在其开设的网络店铺的商品宣传中使用被诉侵权图案，并销售以被诉侵权图案为包装的被诉侵权产品，侵害了沃隆公司享有的美术作品著作权即复制权、发行权和信息网络传播权，亦淘公司在未经沃隆公司许可的情形下，生产上述以被诉侵权图案为包装的被诉侵权产品，侵害了沃隆公司享有的美术作品著作权即复制权、发行权。

关于判赔数额的认定，鉴于各被诉侵权人因侵权所获得的利益及沃隆公司因被侵权所受到的损失均难以确定，法院综合考量涉案作品知名度较高、侵权美术作品对侵权产品销售具有显著贡献、侵权产品销量大、销售金额高、侵权性质后果较为严重、相关行业企业的利润情况、沃隆公司为制止侵权申请公证保全证据并委托律师参与诉讼等因素，以法定赔偿最高限额酌情判赔500万元。

来源：浙江省高级人民法院

Copyright Case of Art Works of “Daily Nuts” with Damages of RMB 5 million

Zhejiang High People's Court made a second-instance judgment on a copyright infringement dispute case, and ordered the defendant to pay RMB 5 million in damages, the maximum amount of judicial damages.

The court held that the defendant used the infringing pattern in the product promotion of its online shops, and sold the infringing products packed with the infringing pattern, which infringed the plaintiff's copyright, namely the right of reproduction, right of distribution and right of information network transmission. The other defendant produced the above-mentioned products packed with the infringing pattern, which infringed the plaintiff's copyright, namely the right of reproduction, right of distribution

With regard to the determination of the amount of damage awarded, because it is difficult to determine the profits of the defendant and the plaintiff's losses, the court considered the high popularity of the plaintiff's works, the significant contribution of infringing art works to the sales of infringing products, the large sales volume of infringing products, the high sales amount, the serious consequences of the nature of infringement, and the profits of enterprises in related industries, and that the plaintiff applied for notarization and preservation of evidence, and engaged lawyers, and order the defendant pay the damages according to the maximum amount of statutory damage.

Source: Zhejiang High People's Court

法院认定刮码销售正品为不正当竞争行为

日前，深圳中院对完美（中国）有限公司（以下简称完美公司）与深圳市福田区利婷滋补商行（以下简称利婷公司）不正当竞争纠纷案作出二审判决。责令利婷公司赔偿完美公司经济损失及合理开支合计20万元。

法院认为，利婷公司的刮码销售行为既侵害了消费者的知情权，同时也构成了对完美公司的不正当竞争。利婷公司对于刮码销售未作任何事先说明，且客服事后不恰当的回复已经实际导致购买者对被刮码芦荟胶商品的真伪、是否原装正品产生怀疑，一方面损害了消费者的知情权，另一方面，该种行为在破坏了完美公司利用二维码实现产品溯源及营销管控的同时也导致消费者对生产、销售芦荟胶商品的原告的产品质量及信誉产生质疑、贬损。利婷公司的该种行为明显违反诚实信用原则，难言正当。因此，利婷公司销售刮码产品的行为破坏了权利人的产品经营体系，扰乱了正常的市场竞争秩序，使其他经营者和消费者的合法权益受到损害，构成不正当竞争。

来源：[深圳市中级人民法院](#)

Shenzhen Intermediate Court Ruled That Selling Genuine Products and Removing the Code Constitutes Unfair Competition

The Shenzhen Intermediate Court made a second instance judgment on the case of unfair competition dispute and ordered the defendant to pay damages of RMB 200,000.

The court held that the defendant's acts of selling genuine products which removed the code not only violated the consumers' right to know, but also constituted unfair competition against the plaintiff. The defendant's act has led the buyer to doubt the authenticity of the products on which the code for authentication is removed. On the one hand, it has damaged the consumer's right to know. On the other hand, this act has destroyed the plaintiff's use of QR codes to achieve product traceability and marketing control, and at the same time, it has led consumers to question and derogate from the plaintiff's product quality and reputation. Such act of the defendant violates the principle of good faith. Therefore, the defendant's act has damaged the plaintiff's product business system, disrupted the normal market competition order, damaged the legitimate rights and interests of other operators and consumers, and constituted unfair competition

Source: [Shenzhen Intermediate Court](#)

Avanci宣布与丰田、本田、日产等多家车企签署专利许可协议

9月21日，Avanci专利池官方宣布，日本丰田、日产、本田，以及Stellantis（旗下涵盖品牌：标致、雪铁龙、道奇、玛莎拉蒂、蓝旗亚等）已经签署了入池协议，获得了Avanci的2G、3G、4G许可，该许可来自51个专利权人及未来加入该专利池权利人的所有相关专利。Avanci宣布全球80多个汽车品牌销售的超过1亿辆联网汽车已经获得Avanci的专利许可。预计明年还将会有3到4千万辆联网汽车获得Avanci专利许可。在成功将2G、3G和4G蜂窝通信技术的专利许可给全球绝大多数联网汽车后，Avanci下一步将重点放在了5G及IoT相关许可项目当中。

来源：[avanci.com](#)

Avanci Announced Signing Patent License Agreements with Toyota, Honda, Nissan and Other Auto Companies

On September 21, the Avanci patent pool officially announced that Toyota, Nissan, Honda, and Stellantis (brands covered by the company: Peugeot, Citroen, Dodge, Maserati, Lanqiya, etc.) had signed the pool entry agreement and obtained Avanci's 2G, 3G, 4G licenses, which came from 51 patentees and all related patents of future patentees joining the pool. Avanci announced that more than 100 million connected vehicles sold by more than 80 auto brands around the world have obtained the patent license of Avanci. It is estimated that 30 to 40 million connected vehicles will obtain Avanci patent license next year. After successfully licensing 2G, 3G and 4G cellular communication technology patents to most connected vehicles in the world, Avanci will focus on 5G and IoT related licensing projects in the next step.

Source: avanci.com

固特异恶意窃取商业秘密，判赔近6500万美元

9月19日，俄亥俄州联邦陪审团裁定美国固特异轮胎橡胶公司（The Goodyear Tire & Rubber Co.）窃取了欧洲一位发明家的自充气轮胎创意，固特异被判赔近6500万美元。

捷克发明家Frantisek Hrabal及其公司Coda Development SRO（以下简称Coda）要求固特异对其窃取创意的行为负责，并声称固特异或可从中获取巨额利润，要求固特异赔偿8900万美元至2.46亿美元作为补偿性赔偿，并附加惩罚性赔偿。该审判目前还未彻底结束，Coda还要求对固特异下达禁令，禁止固特异使用Coda主张的被窃取信息。陪审员裁定固特异盗用了Hrabal及其Coda的5项商业秘密。陪审团还裁定固特异是恶意窃取商业秘密，并判给Coda 6200万美元作惩罚性赔偿和280万美元补偿性赔偿。

来源: tyrepress.com

Goodyear Was Ordered to Pay Nearly \$65 Million for Malicious Theft of Trade Secrets

On September 19, the federal jury in Ohio ruled that Goodyear Tire & Rubber Company of the United States had stolen the idea of a European inventor's self inflating tire, and Goodyear was ordered to pay nearly \$65 million by the court.

Czech inventor Frantisek Hrabal (Hrabal) and his company Coda Development SRO (Coda) require Goodyear to be responsible for its stealing of ideas, claim that Goodyear may obtain huge profits from it, and require Goodyear to compensate \$89 million to \$246 million as compensatory damages, with additional punitive. The trial is not yet complete, and Coda is seeking an injunction against Goodyear to prevent it from using the stolen information that Coda claims. Jurors ruled that Goodyear had stolen five trade secrets of Hrabal and Coda. The jury also found that Goodyear stole trade secrets maliciously, and awarded Coda \$62 million in punitive damages and \$2.8 million in compensatory damages.

Source: tyrepress.com

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 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261