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立方竞争法周报 Weekly Competition Law News

日照市供水公司因滥用市场支配地位被罚218.57万

2022年12月21日，山东省市场监督管理局（“山东省市监局”）发布公示信息，对日照市水务集团供水有限公司罚款218.57万元。2022年12月15日，山东省市监局作出处罚决定，认定日照市水务集团供水有限公司滥用市场支配地位，向用户收取本该由其自身承担的费用，根据《反垄断法》和《禁止滥用市场支配地位行为暂行规定》，对其作出罚款2020年度销售额1%的处罚决定，计218.57万元。（[查看更多](#)）

Rizhao Water Supply Company Fined CNY 2.1857 Million for Abusive Practices

On December 21, 2022, the Shandong Provincial Administration for Market Regulation (“Shandong AMR”) issued a statement, announcing to fine the Rizhao Water Supply Company Limited CNY 2.1857 million. On December 15, 2022, Shandong AMR made a penalty decision, finding that Rizhao Water Supply Company Limited abused its dominant market position and charged users fees that should have been borne by itself. According to the *Anti-monopoly Law* and the *Interim Regulations on Prohibiting the Abuse of Dominant Market Position*, Shandong AMR fined the company 1% of its 2020 sales volume, totaling CNY 2.1857 million. ([More](#))

浙江民爆企业实施多项垄断协议，共被罚没约5300万元

2022年12月16日，国家市场监督管理总局发布了浙江省市场监督管理局（“浙江省市监局”）对浙江省民用爆破器材行业协会组织会员企业达成并实施垄断协议案的行政处罚决定。浙江省市监局自2021年9月23日对该案进行立案调查，发现自2015年以来，在行业协会组织下，浙江省民爆器材生产企业之间以及民爆器材生产企业和经销企业之间达成并实施了固定或变更民用爆炸物品价格，固定转售价格，限制民用爆炸物品生产或销售数量、种类、产量及销售市场，以及联合抵制民用爆炸物品交易的垄断协议。浙江省市监局最终对涉案企业均处以2020年度销售额2%的罚款，对涉案行业协会罚款40万元，总计罚没款约5300万元。（[查看更多](#)）

Zhejiang Civil Explosive Enterprises Implementing Multiple Monopoly Agreements, Fined and Confiscated a Total of About CNY 53 Million

On December 16, 2022, the State Administration for Market Regulation issued the administrative penalty decision of the Zhejiang Provincial Administration for Market Regulation (“Zhejiang AMR”) on the case of reaching and implementing monopoly agreements organized by Zhejiang Civil Explosive Materials Trade Association. The Zhejiang AMR launched an investigation into the case on September 23, 2021, and found that since 2015, under the organization of the industry association, civil explosive materials manufacturers in Zhejiang Province and civil explosive equipment distribution companies coordinated to conclude and implement multiple monopoly agreements, including fixing or changing the price of civil explosives, fixing the resale prices, limiting the production or sales quantity, type, output and sales market of civil explosives, and jointly refusing to trade. The Zhejiang AMR finally imposed a

fine of 2% of the companies' 2020 annual sales, and fined CNY 400,000 on the industry association involved in the case, with a total fine of about CNY 53 million. ([More](#))

北京知识产权法院发文解读垄断协议抗辩条款

2022年12月16日，北京知识产权法院刘月庆法官撰文解读新反垄断法中垄断协议的抗辩条款。根据新反垄断法，排除、限制竞争是垄断协议不可或缺的构成要件，新反垄断法还赋予了经营者在纵向垄断协议案中主张其行为不具有排除、限制竞争效果的个案抗辩权。刘月庆法官认为，根据体系解释原则，个案抗辩权应同样适用于包括横向垄断协议在内的其他全部垄断协议。 ([查看更多](#))

Beijing IP Court Issues an Article on the Defense Clause of Monopoly Agreement

On December 16, 2022, Judge Liu Yueqing of the Beijing Intellectual Property Court ('Beijing IP Court') wrote an article to interpret the defense clauses of monopoly agreements in the new *Anti-Monopoly Law*. According to the new anti-monopoly law, the exclusion and restriction of competition are indispensable constituent elements of a monopoly agreement, and the new anti-monopoly law also gives operators the right of defense in individual cases to claim that their actions do not have the effect of excluding or restricting competition in vertical monopoly agreements. Judge Liu Yueqing believes that, according to the principle of systematic interpretation, the right of defense in individual cases should also apply to all other monopoly agreements, including horizontal monopoly agreements. ([More](#))

德国结束对谷歌在线新闻服务调查

2022年12月21日，德国联邦卡特尔局发布公告，称在谷歌作出系列有利于新闻出版商的行为调整后，决定结束对谷歌在线新闻服务“Google News Showcase”的调查。Google News Showcase是谷歌的一项新闻服务，为出版商提供在谷歌设置的框架内展示新闻内容的选项。2021年6月，德国联邦卡特尔局对谷歌展开调查，担忧其他类似服务供应商可能会被挤出市场，而参与项目的新闻出版商可能会被谷歌不合理地置于不利地位。为解决竞争担忧，谷歌放弃将Showcase整合至谷歌搜索服务中，谷歌搜索结果排名将与新闻出版商是否参与Showcase无关。谷歌还调整了合同条款，确保新闻出版商在主张其附属版权时不会遇到困难，并确保更多出版商能在未来参与Google News Showcase。 ([查看更多](#))

The Bundeskartellamt Concludes its Proceedings Against Google News Showcase

On December 21, 2022, the Bundeskartellamt has concluded its proceeding against Google/Alphabet with regard to the “Google News Showcase” online news service after Google made a number of important adjustments to the benefit of publishers. Google News Showcase is a Google news service which offers publishers options to present their content within a specific framework set by Google. In June 2021, the Bundeskartellamt initiated the proceedings against Google, finding that similar services offered by other providers could be squeezed out of the market and that participating publishers could be unreasonably disadvantaged by Google. To address the concerns, Google proposed to abandon its plans to integrate Showcase into the general Google search service. It will continue to be irrelevant for

the ranking of the search results whether or not a publisher participates in Showcase. Google has changed its contractual practice in such a way that press publishers will not face difficulties in asserting their general ancillary copyright. It has also been ensured that further publishers will be able to participate in Google News Showcase in the future. ([More](#))

欧盟委员会正式宣布接受亚马逊的承诺救济方案

2022年12月20日，欧盟委员会发布公告，接受亚马逊（Amazon）承诺的救济方案。2019年7月，欧盟委员会对亚马逊利用其平台市场中商家的非公开数据行为展开正式调查；2020年11月，欧盟委员会对亚马逊启动了第二项调查，认定亚马逊滥用了在法国、德国和西班牙的为第三方卖家提供在线服务市场的支配地位，不当利用Buy Box（黄金购物车）和Prime规则标准优待自有零售业务以及使用亚马逊物流和快递服务的卖家。为解决欧盟委员会在这两项调查中的竞争担忧，亚马逊承诺修改非公开数据的使用规则，在Buy Box进行报价排序时和Prime系统中给予各卖家公平待遇，并允许Prime卖家自由选择物流和快递服务提供商。此外，亚马逊还追加承诺进一步提高数据保护和数据透明度，并引入集中投诉机制以确保承诺履行。（[查看更多](#)）

The European Commission Formally Accepts Amazon's Remedy Commitments

On December 20, 2022, the European Commission issued a statement, accepting remedy commitments proposed by Amazon. In July 2019, the Commission opened a formal investigation into Amazon's use of non-public data of its marketplace sellers. In November 2020, the Commission opened a second investigation, finding that Amazon abused its dominant position on the French, German and Spanish markets for the provision of online marketplace services to third-party sellers, and that Amazon's rules and criteria for the Buy Box and Prime unduly favor its own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services. To address the Commission's competition concerns in relation to both investigations, Amazon offered to modify the rules for the use of non-public data; treat all sellers equally when ranking the offers in the Buy Box and the Prime; and allow Prime sellers to freely choose any carrier for their logistics and delivery services and negotiate terms directly with the carrier of their choice. Besides, Amazon further committed to improve the data protection and data transparency, and introduce a centralized complaint mechanism to ensure the compliance with the commitments. ([More](#))

欧盟委员会对博通收购VMware展开第二阶段调查

2022年12月20日，欧盟委员会发布公告，称对博通（Broadcom）对VMware的拟议收购展开深入调查。博通是一家硬件公司，主要提供网卡（NIC）、光纤通道卡（FC HBA）和存储适配器等产品，近期开始进军软件市场。VMware是一家软件供应商，主要提供可与硬件互操作的虚拟化软件，两家公司的投资组合在相当程度上互补。经过初步调查，欧盟委员会认为该交易可能导致博通得以限制在网卡、光纤通道卡和存储适配器供应市场中的竞争。此外，欧盟委员会还将审查博通是否可能阻碍其他供应商开发智能网卡（Smart NIC），以及博通是否会将自身

的主机软件和安全软件和VMware的虚拟化软件进行捆绑，从而减少选择并封锁竞争对手的软件供应。 ([查看更多](#))

The European Commission Opens In-depth Investigation into the Acquisition of VMware by Broadcom

On December 20, 2022, the European Commission issued a statement, stating that the Commission has opened an in-depth investigation into the proposed acquisition of VMware by Broadcom. Broadcom is a hardware company that offers, among other products, Network Interface Cards ('NICs'), Fibre Channel Host-Bus Adapters ('FC HBAs') and storage adapters. Broadcom recently started expanding into software markets. VMware is a software provider offering mainly virtualization software which interoperates with a wide range of hardware. The companies' portfolios are largely complementary. After the preliminary investigation, the Commission finds that the transaction may allow Broadcom to restrict competition in the market for the supply of NICs, FC HBAs and storage adapters. In addition, the Commission will also examine whether Broadcom may hinder the development of Smart NICs by other providers and whether Broadcom may start bundling VMware's virtualization software with its own software (namely mainframe and security software) and potentially foreclosing rival software providers. ([More](#))

欧盟委员会向Meta发送滥用市场支配地位行为异议声明

2022年12月19日，欧盟委员会发布公告，称已告知Meta有关委员会的初步观点，即Meta扭曲在线分类广告市场竞争的行为违反了欧盟反垄断规则。Meta是一家美国跨国科技公司，拥有个人社交网络产品Facebook，还提供名为Facebook Marketplace的在线分类广告服务，用户可以在其中买卖商品。欧盟委员会初步认定，Meta在欧洲个人社交网络市场以及社交媒体在线展示广告国别市场中具有支配地位，并实施了两种滥用市场支配地位行为：（1）将在线分类广告服务Facebook Marketplace与其具有市场支配力的个人社交网络产品Facebook进行捆绑；（2）单方面对在Facebook或Instagram上投放广告的竞争性在线分类广告服务施加不公平交易条件。 ([查看更多](#))

The European Commission Sends Statement of Objections to Meta over Abusive Practices

On December 19, 2022, the European Commission issued a statement, stating that it has informed Meta of its preliminary view that the company breached EU antitrust rules by distorting competition in the markets for online classified ads. Meta is a US multinational technology company. Its flagship product is its personal social network "Facebook". Meta also offers an online classified ads service, called "Facebook Marketplace" where users can buy and sell goods. The Commission preliminary finds that Meta is dominant in the market for personal social networks, which is across Europe, as well as the national markets for online display advertising on social media. The Commission finds that Meta abused its dominant position in the following two ways: (1) Meta ties its online classified ads service Facebook Marketplace with its dominant personal social network Facebook; and (2) Meta unilaterally imposes unfair trading conditions on competing online classified ads services which advertise on Facebook or Instagram. ([More](#))

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

中共中央、国务院印发《关于构建数据基础制度更好发挥数据要素作用的意见》

2022年12月19日，中共中央、国务院印发《关于构建数据基础制度更好发挥数据要素作用的意见》（以下简称《意见》）。《意见》从数据产权、流通交易、收益分配、安全治理四个方面提出20条政策举措，初步搭建了我国数据基础制度体系。一是建立保障权益、合规使用的数据产权制度。二是建立合规高效、场内外结合的数据要素流通和交易制度。三是建立体现效率、促进公平的数据要素收益分配制度。四是建立安全可控、弹性包容的数据要素治理制度。（[查看更多](#)）

The Central Committee of the Communist Party of China and the State Council Issue the Opinions on Building a Data Base System to Give Better Play to the Role of Data Elements

On 19 December 2022, the Central Committee of the Communist Party of China and the State Council issued the *Opinions on Building a Data Base System to Give Better Play to the Role of Data Elements (the "Opinions")*. The Opinions set out 20 policy measures in four aspects, including data property rights, circulation and transactions, profit distribution, and security governance, preliminarily building a basic data infrastructure for China. The first is to establish a data property rights system to protect rights and interests and ensure use in compliance with laws and regulations. The second is to establish a data element circulation and trading system that complies with laws and regulations and is efficient, combining elements both inside and outside the market. The third is to establish a system for distributing profits arising from data elements that reflects efficiency and promotes fairness. The fourth is to establish a safe, controllable, flexible and inclusive data element governance system. ([More](#))

《非法证券活动网上信息内容治理工作方案》发布

2022年12月23日，中央网信办秘书局和中国证监会办公厅发布《关于印发<非法证券活动网上信息内容治理工作方案>的通知》（以下简称《方案》）。《方案》督促网站平台加强账号管理，有关账号在推广证券投资咨询服务、发布证券投资咨询文章、报告或者意见时，要求明示所在证券投资咨询机构或证券公司名称、个人真实姓名及其登记编码。未明示合法身份的，要限期整改。对整改不及时不到位的，网站平台不得再为其提供证券投资咨询信息发布服务等内容。（[查看更多](#)）

Release of Work Proposals for the Administration of Online Information Contents of Illegal Securities Activities

On 23 December 2022, the Secretary Bureau of the Cyberspace Administration and the General Office of the China Securities Regulatory Commission released the Circular on Issuing the *Work Proposals for the Administration of Online Information Contents of Illegal Securities Activities (the "Proposals")*. The Proposals urge website platforms to strengthen account management. The Proposals require that

the names of the securities investment consulting institutions or the securities companies, as well as the real names and registration numbers of individuals, shall be specified with respect to the relevant accounts when such accounts promote securities investment consulting services or publish securities investment consulting articles, reports or opinions. If such identity information is not disclosed, rectification shall be made within a time limit. If the rectification is not made in time or appropriately, website platforms shall not provide it with any further securities investment advisory information release services and other contents. ([More](#))

上海市发布关于车联网网络安全防护定级备案审核结果的通告

根据上海网信办2022年12月19日发布信息，上海市通信管理局会同上海市经济和信息化委员会定期对本市各车联网信息系统的定级情况进行审核。截至2022年12月，共审核通过了上海蔚来汽车有限公司、上汽大众汽车有限公司等23家企业的32个车联网信息系统定级申请，并予以备案登记。12月20日，两部门共同发布了上海市车联网网络安全防护定级备案审核结果。 ([查看更多](#))

Announcement of Shanghai Municipality on the Examination and Approval Results of the Filing of the Security Protection Grading of Internet of Vehicles Network

According to the information released by the Shanghai Cyberspace Administration on December 19, 2022, the Shanghai Communications Administration in concert with the Shanghai Municipal Commission of Economy and Informatization regularly examine the grading of all the vehicle networking information systems in Shanghai. By December 2022, the grading applications for 32 vehicle networking information systems filed by a total of 23 enterprises including NIO Co., Ltd. and Shanghai Volkswagen Automotive Co., Ltd. have been approved, and duly filed on record. On December 20, the two authorities jointly released the examination and approval results of the filing of security protection grading of internet of vehicles in Shanghai Municipality. ([More](#))

《数据安全治理白皮书5.0》启动会召开

2022年12月20日，由中国计算机学会计算机安全专业委员会等共同指导，中关村网络安全与信息化产业联盟数据安全治理专业委员会牵头组织《数据安全治理白皮书5.0》（以下简称“白皮书”）启动会暨编委会专家研讨会（2022）举行。白皮书将从国家总体安全观出发研究阐述数据安全治理，从如何将数据安全治理与网络安全、信息安全、关键信息基础设施保护、等级保护、个人信息保护治理之间相互融合、相互支撑的关系从供给侧进行研究分析，尝试从实践和服务的角度进行思考和分析。据悉，2018年在中国数据安全治理峰会上，数据安全治理委员会正式成立并对外发布《数据安全治理白皮书1.0》，这是国内首个关于数据安全治理概念、理论和技术介绍的普及类技术文著。此后，从2019年到2022年，数据安全治理委员会相继发布了白皮书2.0、3.0、4.0版。 ([查看更多](#))

White Paper on Data Security Governance 5.0 Launching Conference Held

On 20 December 2022, under the joint guidance of the Computer Security Committee of the Computer Society of China and other departments and under the leadership of the Data Security Governance Committee of Zhongguancun Internet Security and Information Technology Industry Alliance, the *White Paper on Data Security Governance 5.0* (the "White Paper") Launching Conference as well as an Editorial Board Experts Seminar (2022) was held. The White Paper will study and elaborate on data security governance from the perspective of overall national security, and analyze how to integrate and support the relationship among data security governance and network security, information security, key information infrastructure protection, graded protection, and personal information protection governance from the supply side, while trying to think and analyze from the perspective of practice and service. It is reported that at the China Data Security Governance Summit in 2018, the Data Security Governance Committee was formally established and released the White Paper on Data Security Governance 1.0, which was the first popular technical paper on the introduction of data security governance concepts, theories and technologies in China. Since then, from 2019 to 2022, the Data Security Governance Committee has released white papers 2.0, 3.0 and 4.0. ([More](#))

蔚来汽车部分用户数据泄露被勒索225万美元

2022年12月20日，蔚来在其官方社区发布《关于数据安全事件的声明》称，2022年12月11日，蔚来公司收到外部邮件，声称拥有蔚来内部数据，并以泄露数据勒索225万美元等额比特币。在收到勒索邮件后，公司当天即成立专项小组进行调查与应对，并第一时间向有关监管部门报告此事件。《声明》表示，经初步调查，被窃取数据为2021年8月之前的部分用户基本信息和车辆销售信息。蔚来首席信息安全科学家、信息安全委员会负责人卢龙随后补充回复：本次事件不涉及车辆使用中产生的数据（如行车轨迹、座舱数据），也不影响车辆的驾乘或远程控制。
([查看更多](#))

NIO Was Extorted US\$2.25 Million for the Breach of Partial User Data

On 20 December 2022, NIO posted the *Statement about Data Security Incident* in its official community, and said that on 11 December 2022, NIO received an external email claiming to have NIO's internal data, and extorted US \$2.25 million in bitcoins for the leaked data. After receiving the blackmail, NIO established a special team to investigate and respond on the same day, and reported the incident to the relevant regulatory authorities at the earliest possible time. According to the statement, after preliminary investigation, the stolen data are the basic information of some users and vehicle sales information prior to August 2021. Lu Long, the chief information security scientist of NIO and the person in charge of its Information Security Committee, subsequently added that this incident does not involve data generated in the use of vehicles (such as driving track and cockpit data), nor does it affect the driving or remote control of vehicles. ([More](#))

《堡垒之夜》游戏开发者因违反儿童隐私保护等行为而同意支付5.2亿美元的罚款和退款

2022年12月19日，美国联邦贸易委员会（Federal Trade Commission, FTC）宣布，FTC与流行游

戏《堡垒之夜》（Fortnite）的开发者 Epic Games（“Epic”）达成协议，Epic将支付罚金与退款总计5.2亿美元，其中2.75亿美元因违反《儿童在线隐私保护法》（Children’s Online Privacy Protection Act, COPPA）的罚款是FTC有史以来因违反其规则而获得的最大一笔罚款。Epic被指控违反COPPA，在未通知玩家父母或获得监护人明确同意的情况下收集13岁以下游戏玩家的个人信息，并利用所谓的“黑暗模式”（dark pattern），欺骗数百万玩家在游戏内进行消费。（[查看更多](#)）

Epic Games, Inc., Creator of the Popular Video Game Fortnite, to Pay a Total of US\$520 Million in Monetary Penalty and Refunds over Allegations of Violating the Children’s Online Privacy Protection Act and Other Actions

On 19 December 2022, the Federal Trade Commission announced it has secured agreements requiring Epic Games, Inc., creator of the popular video game Fortnite, to pay a total of US\$520 million in monetary penalty and refunds, among which the US\$275 million monetary penalty for violating the *Children’s Online Privacy Protection Act* (“COPPA”) is the largest penalty ever obtained for violating an FTC rule.. The FTC alleged that Epic violated COPPA by collecting personal information from children under 13 who played Fortnite, a child-directed online service, without notifying their parents or obtaining their parents’ verifiable consent and deployed design tricks, known as dark patterns, to dupe millions of players into making unintentional purchases. ([More](#))

新加坡个人数据保护委员会因RedMart公司未能确保安全控制而对其罚款7.2万新元

2022年12月19日，新加坡个人数据保护委员会（下称“PDPC”）公布了对RedMart Pte., Ltd.的处罚决定，因其违反了《2012年个人数据保护法》（下称“PDPA”）第24条的规定，被处以7.2万新元的罚款。经调查，PDPC发现在2020年9月，一个身份不明的威胁者未经授权访问了RedMart运营团队的数据库并窃取数据。[PDPC](#)称该数据库包含了大约898,791人的信息，其中的个人信息类型包括姓名、电子邮件地址、部分信用卡信息以及属于RedMart客户账户的哈希密码。鉴于涉及大量个人信息，并考虑到RedMart未对员工的GitHub账户实施合理的访问控制，PDPC认定 [RedMart](#) 未能提供合理的安全措施，从而违反了PDPA的第24条。（[查看更多](#)）

Singapore: PDPC Fines RedMart SGD 72,000 for Failure to Ensure Security Controls

On 19 December 2022, the Personal Data Protection Commission (“PDPC”) in Singapore published its decision, in which it imposed a fine of SGD 72,000 on RedMart Pte., Ltd. for violation of Section 24 of the Personal Data Protection Act 2012 (“PDPA”, following a security incident. Following its investigation, the PDPC found that in September 2020 an unidentified threat actor gained unauthorised access to the RedMart operations teams’ database, and proceeded to exfiltrate the affected database. According to the PDPC, the database contained the information of around 898,791 individuals, with the types of personal information including, among others, name, email address, partial credit card information, and hashed passwords belonging to RedMart customer accounts. Considering the

high volume of personal data and failure to implement reasonable access controls on employees' GitHub accounts in particular, the PDPC found RedMart to have failed to implement reasonable security arrangements, thereby violating Section 24 of the PDPA. ([More](#))

澳大利亚通信和媒体管理局对Binance Australia公司的电子营销行为罚款200万澳元

2022年12月15日，澳大利亚通信和媒体管理局（下称“ACMA”）宣布，Investbybit Pty Ltd.（以Binance [Australia](#)公司的名义进行交易）已经支付了200万澳元的侵权罚款，起因系该公司发送的商业电子邮件在某些情况下使消费者难以进行“退出”操作，且在部分情况下未经同意向消费者发送商业信息，该等行为违反了《2003年垃圾邮件法》第16(1)和18(1)条。ACMA特别指出，经过调查发现，Binance Australia在2021年10月至2022年5月期间非法发送了570多万封商业电子邮件，宣传Binance Australia的加密货币交易服务和其他加密货币金融产品。（[查看更多](#)）

Australia: ACMA Fines Binance Australia AUS 2 Million for Emarketing Practices

On 15 December 2022, the Australian Communications and Media Authority (“ACMA”) announced that Investbybit Pty Ltd., trading as Binance Australia, had paid an infringement notice of AUS 2 million for sending commercial emails that made consumer opt-outs difficult in some instances, and commercial messages without consent in other circumstances, in breach of Sections 16(1) and 18(1) of the Spam Act of 2003. In particular, the ACMA stated that, following its investigation, it had found that Binance had sent over 5.7 million commercial emails unlawfully between October 2021 and May 2022, promoting Binance's crypto currency trading services and other crypto financial products. ([More](#))

Facebook母公司 Meta将支付7.25亿美元解决剑桥分析的隐私诉讼

据2022年12月23日报导，Facebook母公司 Meta同意支付7.25亿美元，以了结一起集体诉讼，该诉讼称 Meta与剑桥分析公司不当共享用户信息。Meta不承认不当行为，并坚持认为其用户同意这种做法，并且用户没有遭受实际损害。Facebook向剑桥分析泄露的数据引发了全球的强烈反应，政府也对该公司过去几年的隐私泄露行为展开了调查。据悉，Facebook在2015年首次获悉数据泄露，剑桥大学的一位心理学教授通过一款应用收集了Facebook用户的数据，创建了一项性格测试，并将数据传递给了剑桥分析。法庭将于2023年3月2日举行听证会，届时联邦法官预计将对和解做出最终批准。（[查看更多](#)）

Facebook Parent Meta Will Pay US\$725 Million to Settle a Privacy Suit over Cambridge Analytica

On 23 December 2022, Facebook parent company Meta has agreed to pay US\$725 million to settle a

class-action lawsuit claiming it improperly shared users' information with Cambridge Analytica. Meta did not admit wrong doing and maintains that its users consented to the practices and suffered no actual damages. Facebook's data leak to Cambridge Analytica sparked global backlash and government investigations into the company's privacy practices the past several years. Facebook first learned of the leak in 2015, tracing the violation back to a Cambridge University psychology professor who harvested data of Facebook users through an app to create a personality test and passed it on to Cambridge Analytica. The court has set a hearing for March 2, 2023, when a federal judge is expected to give the settlement final approval.[\(More\)](#)

知识产权 Intellectual Property

最高院：关于本国优先权的主体认定

近日，最高人民法院就林鸿贵与国知局发明专利权无效行政纠纷案作出二审判决，撤销一审判决与国知局的无效宣告请求审查决定。此前一审判决驳回原告的全部诉讼请求。

本案主要焦点在于一审判决以及被诉决定关于本国优先权不能成立的认定是否正确，最高院认为，首先，优先权所针对的主体是专利申请人。其次，对于申请要求优先权的主体，法律规定该申请人要与在先申请的申请人相同。对于存在不同申请主体的情况下，当事人可以通过专利申请权转让的方式进行权利继受成为同一个申请主体，但该转让行为应当签订书面合同并进行登记公告。权利继受关系的形成属于法律关系的变动，需要通过法律文件确认，不应当通过发明人变更的事实以及个人陈述，推定存在权利继受关系，继而将不同专利申请的申请人视为相同主体。根据在案证据，不能证明本专利的申请人与美国专利申请人之间存在权利继受关系。最后，申请优先权的主体必须与在先申请一致，不应当仅以存在相同主题的申请为由，不审查申请人的主体是否为相同，就将首次申请作为享有优先权的基础。被诉决定以及一审判决关于“即使申请人不同，也只有该多份专利申请中具有相同主题的首次申请，可以作为优先权基础”的认定，于法无据。因此被诉决定和一审判决关于中国在先申请不可以作为本专利优先权基础的认定错误。林鸿贵关于优先权的该上诉主张成立。

来源：最高院

SPC Clarifying Domestic Priority of Patents

Recently, the Supreme People's Court ("SPC") has rendered its second-instance judgment in the administrative dispute between Lin and the China National Intellectual Property Administration ("CNIPA") over invalidation of patent for invention. The first-instance judgment and the review decision made by the CNIPA to declare patent invalidation are cancelled.

The focus of this case is whether the first-instance judgment and the ruling are correct in concluding that domestic priority right cannot be established. The SPC holds that, first of all, the subject of the

right of priority is the patent applicant. Secondly, for the subject who claims for the right of priority in an application, the applicant shall be the same as the applicant of the earlier application in accordance with the law. In the event that there are different application subjects, the parties concerned may inherit their rights to the same application subject by way of assignment of the patent application right, provided that a written contract be signed and the public announcement be made on the assignment. The formation of inheritance of rights is a legal change and shall be confirmed by legal documents, so the existence of inheritance of rights shall not be presumed through facts changed by inventors and personal statements, and the applicants of different patent applications shall be deemed as the same subject. Documented evidence could not prove the existence of a succession of rights relationship between the applicant of this patent and the applicant of a US patent. Finally, the subject of priority application shall be the same as that of the prior application, and the first-time application shall not be taken as the basis for the right of priority only on the grounds that there are two applications with the same subject without examining whether the subject of the applicants is the same. The determination in the ruling and the first-instance judgment that "even if the applicant is different, only the first-time application concerning the same subject matter among the multiple patent applications can serve as the basis of a right of priority" has no legal basis. Therefore, the ruling and the first instance judgment are wrong in determining that Chinese prior applications cannot serve as the basis of priority for this patent.

Source: SPC

河南高院：地名并非绝对不可被注册为商标

河南高院就贵州金沙窖酒酒业有限公司（以下称“金沙窖酒公司”）诉贵州省金沙县贵奇酒厂（以下称贵奇酒厂）、贵州金沙回沙老酱酒业有限责任公司（以下称回沙老酱公司）等侵害商标权纠纷案作出二审判决，驳回上诉，维持原判。此前一审判决贵奇酒厂、回沙老酱公司连带赔偿金沙窖酒公司经济损失及合理维权支出共计870992.02元。

河南高院二审认定，地名并非绝对不可被注册为商标。因地名本身具有的描述性特征，拥有地名商标的权利人在行使其注册商标专用权时应受到合理限制，不得以其注册商标专用权对抗他人正当使用与该商标相同的地名的行为。因此判定贵奇酒厂、回沙老酱公司是否构成商标侵权，应认定其使用被控侵权标识的行为是否正当，即其是作为地名使用还是作为商标使用。贵奇酒厂明知金沙窖酒公司的涉案“金沙”相关商标具有较高知名度，未尽到合理的注意义务，在生产“金沙梦”酒时未加注区别金沙窖酒公司案涉注册商标的合理标识，容易使一般消费者认定为具有标识商品来源的商标，从而产生混淆误认，构成商标侵权。

来源：河南高院

Henan High People's Court: Geographical Names Are not Prohibited from Registration as Trademarks

Henan High People's Court made a second instance judgment on the case of trademark infringement and upheld the original judgment. In the first instance, the court ordered the defendants to pay the damages of RMB 870,992.

The court held that geographical names are not prohibited from being registered as trademarks. Due to the descriptive characteristics of a geographical name, the right holder of a trademark for a geographical name shall reasonably refrain from exercise of the exclusive right to use the registered trademark, and shall not refuse others' fair use of the place name identical with the trademark. Therefore, to judge whether the defendants constituted trademark infringement, it shall determine whether the defendants' acts of using the trademark accused of infringement are proper, i.e., whether they were used as a geographical name or as a trademark. The defendant is fully aware of the high popularity of the relevant "Jinsha" trademark of the plaintiff, but fails to fulfill its reasonable duty of care. The defendant did not mark a reasonable mark to distinguish the plaintiff's registered trademark when producing "Jinsha Dream" wine, which easily led consumers to identify it as a trademark with the source of identified products, thus causing confusion and constituting trademark infringement.

Source: Henan High People's Court

上海警方侦破一起侵犯剧本杀著作权案，涉案金额5000余万元

近日，上海公安机关近日联合相关行政执法部门，在多地公安机关的协助下，在全国多地开展集中收网行动，成功侦破一起侵犯剧本杀著作权案，抓获盗版印刷、网络分销、线下门店等全环节犯罪嫌疑人39名，查处盗版剧本生产工厂3家，捣毁仓储、销售窝点15处，查获待销售的盗版剧本杀盒装剧本8万余盒，涉案金额5000余万元。

2021年5月以来，犯罪嫌疑人苏某为牟取非法利益，伙同长期从事印刷行业的林某，从线上平台采购正版剧本杀盒装剧本后，在未经著作权人授权许可的情况下，通过林某名下一家包装制品公司，雇佣多名犯罪嫌疑人对正版剧本杀包装礼盒进行盗版复刻设计。随后，苏某、林某又在浙江当地专门租借厂房和仓库，雇人盗版印刷300余种剧本杀盒装剧本。截至案发，该团伙累计印刷盗版剧本10万余盒。该团伙以官方发行价一成至二成，即每盒20元至150元不等的价格，将盗版剧本出售给肖某等27名售假网店经营人。肖某等人再通过网店，对外宣称“1:1复刻”，以每盒100元至200元不等的价格，销售给全国150余家线下剧本杀门店。

目前，苏某等4名主要犯罪嫌疑人因涉嫌侵犯著作权罪被警方依法执行逮捕，其余犯罪嫌疑人被依法取保候审。

来源：新京报

Shanghai Police Conducting a Criminal Raid against Copyright Infringement on Script Murder with Case Value More Than RMB 50 Million

Recently, the Shanghai Public Security Bureau, in collaboration with relevant law enforcement administrative departments, has conducted criminal raid on copyrights infringement of script murder, and arrested 39 criminal suspects, investigated and punished 3 producers of pirated scripts, and seized more than 80,000 boxes of pirated boxed scripts to be sold, with a total value of more than RMB 50 million.

Since May 2021, for the purpose of seeking illegal interests, the criminal suspect Su has, in concert

with Lin engaged in the printing industry, made pirated copies of the gift box of the original scripts after purchasing original scripts for script murder from the online platform. Subsequently, Su, Lin printed more than 300 kinds of pirated scripts, and the pirated scripts sold to the shop operators, and then sold to the more than 150 offline scripts to script murder stores.

Source: Beijing News

北京海淀法院：信息网络侵权行为，侵权结果发生地包括被侵权人住所地

北京海淀法院就一起信息网络侵权行为作出管辖裁定，驳回了被告的管辖权异议。

本案中，原告快跑公司认为，被告飞翔公司在网络平台店铺内产品简介中使用了“官方合作品牌快跑公司”的图文介绍以及“快跑”品牌商标，侵犯了其注册商标专用权，故诉至法院，要求飞翔公司停止侵权、赔礼道歉并赔偿损失。飞翔公司提出管辖权异议，认为本案飞翔公司的注册地及主要办事机构所在地均位于广东省深圳市某区，故申请将本案移送至具有管辖权的深圳市某区人民法院审理。

北京海淀法院认为，信息网络侵权行为的侵权结果发生地包括被侵权人住所地，该条所称信息网络侵权行为，包括利用信息网络侵害他人合法权益的行为。本案被诉行为系通过信息网络实施，属于信息网络侵权行为，本案侵权结果发生地应包括快跑公司的住所地北京市海淀区，故海淀法院对本案具有管辖权。

来源：北京海淀法院

Haidian District People's Court: On Information Network Infringement, the Place of Infringement Results Occurred Includes the Domicile of the Plaintiff

Recently, Haidian District People's Court issued a ruling on jurisdiction in respect of an information network infringement, and dismissed the defendant's jurisdictional objection.

The plaintiff claimed that the defendant had used the graphic and text introduction of "Official Cooperative Brand" and the brand trademark in the product profile of the stores on the online platform, which infringed upon the plaintiff's trademark. Therefore, the plaintiff filed a lawsuit with the court to require the defendant to cease the infringement and pay the damages for its losses. The defendant raised the jurisdictional objection and applied to transfer the case to the court in Shenzhen, considering that the registration place and the principal place of business of the defendant are both in Shenzhen.

The court clarified that the place of the infringement results occurred of the information network includes the domicile of the plaintiff. Information network infringement, including the use of information network to infringe upon the legitimate rights and interests of others. The alleged act in this case was implemented through information network, which is information network infringement. The place where the infringement result of this case occurred shall include Haidian District, Beijing, where plaintiff is located. Therefore, Haidian District People's Court has jurisdiction over this case.

Source: Haidian District People's Court

上海知产法院：仿冒“清风”牌“原木纯品”（金装）纸巾包装装潢构成不正当竞争

上海知产法院就金红叶纸业集团有限公司与嘉兴雅芝商贸有限公司、嘉兴宝洁纸业有 限公司不正当竞争纠纷案作出二审判决，驳回上诉、维持原判。此前一审判决嘉兴雅芝商贸有限公司、嘉兴宝洁纸业有 限公司停止侵权，连带赔偿金红叶纸业集团有限公司经济损失136万元。

上海知产法院认为，金红叶纸业集团有限公司最早于2014年就开始在权利商品上使用涉案包装、装潢，虽曾有变化，但起识别作用的主要元素基本保持不变，根据权利商品使用时间、宣传推广情况、权利商品的市场占有率、品牌价值、权利商品使用的“清风”商标的知名度及该商标对权利商品知名度的提升和促进作用，足以认定权利商品系具有一定影响的商品，权利商品所使用的包装、装潢能够作为我国反不正当竞争法保护的具有一定影响的商品包装、装潢。以相关公众的一般注意力为标准对权利商品及被控侵权商品使用的包装、装潢进行隔离比对，两者构成近似，故本案侵权行为成立。

来源：上海知产法院

Shanghai IP Court: the Packaging and Decoration of Counterfeit "Qingfeng" Brand "Pure Log" (Gold Package) Tissue Constitutes Unfair Competition

The Shanghai Intellectual Property Court made a second instance judgment on the case of unfair competition disputes and upheld the original judgment. The first instance judgment ordered the defendant to stop the infringement and pay the damages of RMB1.36 million for the plaintiff.

The court held that the plaintiff began using the packaging and decoration involved in the case on the products as early as 2014. Although there have been changes, the main elements that play a role in identification remain basically unchanged. Based on the use period, publicity and promotion status, market share, brand value and popularity of the plaintiff's products, it is sufficient to identify that the plaintiff's products have certain influence, and the packaging and decoration used in the products can be deemed as the packaging and decoration of products with certain influence as protected by the anti-unfair competition law. The packaging and decoration of the plaintiff's and the defendant's products are similar in the packaging and decoration, and the infringement of the case is established.

Source: Shanghai IP court

利用同行业竞争者的产品为自己的产品进行虚假宣传并牟利构成不正当竞争

近日，河南高院就巩义市建设机械制造有限公司与许昌远方工贸有限公司、云南省烟草公司红河州公司、许昌市烟草公司禹州市分公司不正当竞争纠纷案作出二审判决，驳回上诉，维持原判，此前一审判决被告停止不正当竞争行为，赔偿原告经济损失及维权合理费用45万元。

河南高院认为，被告公司利用原告公司生产制造的设备，拍摄了用于被告公司设备投标的宣传

视频，并在有关招标项目中中标。被告公司拍摄视频用于宣传其商品，参加项目招投标，获得交易机会，从而获取利益，系经营活动，属于商业宣传行为。原告公司属于与被告公司存在可能争夺交易机会、损害竞争优势的市场主体。故被告公司利用其他同行业竞争者的产品为自己公司的产品虚假宣传、提供不实商品信息并牟利的行为，扰乱市场竞争秩序，损害其他经营者的合法权益，欺骗误导消费者，属于不正当竞争行为。

来源：河南高院

Using Competitors' Products in the Same Industry to Make False Publicity for Its Own Products for Profit Constitutes Unfair Competition

Recently, Henan High People's Court issued a second judgment, upholding the judgment of the first instance on an unfair competition dispute, which ordered the defendant to stop unfair competition acts and pay damages of RMB 450,000.

The court held that the defendant used the equipment produced by the plaintiff to shoot a promotional video for the defendant company's equipment bidding, and won the bid in the relevant bidding projects. The defendant's acts are business activities by shooting video for the purpose of publicizing its products, participating in project bidding, obtaining trading opportunities and making profits. The plaintiff is a market entity that may compete for the transaction opportunity with the defendant and damage its competitive advantage. Therefore, the defendant's act of using the products of other competitors in the same industry to make false publicity for its company's products, and provide false products information and make profits, and damaged the legitimate rights and interests of other operators, deceiving and misleading consumers, which constitutes unfair competition.

Source: Henan High People's Court

华为在德国起诉亚马逊侵犯WiFi专利权

继华为在中国起诉亚马逊专利侵权后，德国杜塞尔多夫地区法院确认了华为在德国起诉亚马逊的4b 65/22号未决案件，指控该公司侵犯其路由器的两项 Wi-Fi专利。此外，据德媒《经济周刊》报道，华为已在德国曼海姆和慕尼黑对Stellantis提起诉讼，指控Stellantis将其专利用在汽车导航或软件更新功能上，构成侵权。

来源：fospatents.com

Huawei Suing Amazon in Germany over WiFi Patent Infringement

After Huawei sued Amazon for patent infringement in China, the Dusseldorf Regional Court has confirmed the pendency of case no. 4b 65/22 and accused the company of infringing two Wi-Fi patents for its routers. In addition, Huawei has reportedly filed lawsuits against Stellantis in Mannheim and Munich, Germany, alleging that Stellantis is infringing by limiting its use to car navigation or software updates.

Source: FOSS Patents

韩华向法庭申请临时禁令，称天合德国侵犯其专利权

近日，HANWHA Q CELLS（下称“韩华”）声称天合光能旗下天合德国有某些产品侵犯其专利权，向法庭申请在德国区域的临时禁令生效。这是继2019年诉晶科能源、隆基股份涉嫌钝化技术专利侵权后，韩华再一次向中国组件企业发难。

对此，天合光能表示，天合的相关产品在德国拥有自己的专利，拥有自己的技术，韩华公司的控诉没有任何依据，与事实不符。其正在与律师进行协商。

来源：[知联社综合时代周报](#)

Hanwha Sought a Preliminary Injunction against Trina, Claiming Trina Infringed Its Patent

Recently, HANWHA Q CELLS ("Hanwha") asserts that certain products of Trina Germany, a subsidiary of Trina Solar, infringe its patent right and applies to the court for entry into force of a preliminary injunction in Germany. This is Hanwha's another challenge to Chinese module enterprises after it sued Jinko Solar and Longji Stock for alleged infringement of its passivation technology patent in 2019. Trina stated that Trina has its own patents and technologies in Germany in respect of the relevant products and Hanwha's complaint lacks any basis and is inconsistent with the facts. Trina is negotiating with its lawyers.

Source: [ZAKER](#)

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