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立方竞争法周报 Weekly Competition Law News

重庆市市监局开展经营者集中反垄断审查试点工作质效明显

2023年8月7日，重庆市市场监督管理局（“重庆市市监局”）发布公告，总结过去一年的经营者集中反垄断审查试点工作。2022年8月1日，国家市场监督管理总局（“市场监管总局”）试点委托重庆市市监局开展部分适用经营者集中简易程序案件的反垄断审查工作，审查范围辐射河南、湖北、湖南、重庆、四川、贵州、云南、西藏区域。一年来，重庆市市监局受理委托审查案件65件，已办结案件57件，案件交易金额超过1600亿元，平均审结时长18.7天。审查质效不断提升、服务发展成效初显。（[查看更多](#)）

Chongqing AMR Successfully Implements Pilot Anti-monopoly Reviews for Concentration of Undertakings

On August 7, 2023, the Chongqing Administration for Market Regulation (“Chongqing AMR”) issued an announcement summarizing the past year’s pilot work on the anti-monopoly review of concentration of undertakings. On August 1, 2022, the State Administration for Market Regulation (“SAMR”) initiated a pilot program entrusting the Chongqing AMR to conduct anti-monopoly reviews for certain cases applying the summary procedure for the review of concentration of undertakings. The review scope extended to regions including Henan, Hubei, Hunan, Chongqing, Sichuan, Guizhou, Yunnan, and Tibet. Over the past year, the Chongqing AMR accepted 65 entrusted review cases, with 57 cases concluded. The transaction value of these cases exceeded CNY 160 billion, and the average review period was 18.7 days. The quality and efficiency of the reviews have continuously improved, initially showcasing the results of service development. ([More](#))

宁夏市监厅纠正平罗县财政局滥用行政权力排除、限制竞争行为

2023年8月4日，宁夏回族自治区市场监督管理局（“宁夏市监厅”）发布公告，纠正平罗县财政局滥用行政权力、排除限制竞争行为。经调查，宁夏市监厅认为，当事人印发文件指定某保险公司作为各行政事业单位办理交通意外险的承保单位，排除了其他具备承保交通意外险资质和能力的保险公司，限制了相关保险市场公平竞争，构成滥用行政权力排除、限制竞争行为。调查期间，当事人及时废止了相关文件，同时进一步优化内部公平竞争审查工作机制，防止此类情况再次发生。（[查看更多](#)）

Ningxia AMR Releases Administrative Monopoly Penalty in Ningxia Hui Autonomous Region

On August 4, 2023, the Ningxia Administration for Market Regulation (“Ningxia AMR”) issued a notice addressing the abuse of administrative authority and the elimination of competitive restrictions by the Finance Bureau of Pingluo County. Following an investigation, the Ningxia AMR determined that the issuance of documents by the involved party designating a specific insurance company as the sole underwriting entity for traffic accident insurance among various administrative and public institutions, while excluding other insurance companies with the qualification and capability to provide such coverage, resulted in the restriction of fair competition in the relevant insurance market. This behaviour con-

stituted an abuse of administrative power to exclude or restrict competition. During the investigation, the involved party promptly revoked the relevant documents and further enhanced the internal mechanism for impartial competitive review to prevent the recurrence of similar incidents. ([More](#))

安徽四部门集中清理妨碍统一市场和公平竞争政策措施

近日，安徽省市场监督管理局（“安徽省市监局”）、省发展改革委、省财政厅、省商务厅四部门联合印发通知，部署全面清理妨碍统一市场和公平竞争的各种规定和做法。此次清理范围涵盖省、市、县（市、区）人民政府及所属部门、直属机构在2022年12月31日前制定，现行有效的涉及经营主体活动的政策措施，包括规章、规范性文件和其他政策性文件，以及“一事一议”形式的具体政策措施等，主要包括清理妨碍市场准入和退出、妨碍商品和要素自由流动、影响生产经营成本、影响生产经营行为四个方面。（[查看更多](#)）

Four Anhui Provincial Departments Collaborate to Rectify Measures Hindering Unified Market and Fair Competition Policies

Recently, the Anhui Provincial Administration for Market Regulation (“Anhui AMR”), together with the Anhui Provincial Development and Reform Commission, the Anhui Provincial Department of Finance, and the Anhui Provincial Department of Commerce, jointly issued a notification to comprehensively review various regulations and practices that hinder unified markets and fair competition. This review encompasses policies, measures, regulations, normative documents, and other policy-related materials related to the activities of business entities, formulated by provincial, municipal, and county (city, district) people’s governments and their affiliated departments and directly subordinate institutions before December 31, 2022. The main focus of this review is to eliminate obstacles in market entry and exit, hinder the free flow of goods and factors, impact production and operation costs, and affect business behaviour. ([More](#))

德国联邦卡特尔局发布2022/23年关于发电市场力量状况的报告

2023年8月9日，德国联邦卡特尔局（FCO）发布了2022到2023年发电行业竞争状况的报告，该报告分析了2021年10月1日至2023年3月31日期间发电和首次售电领域的市场力量状况，旨在帮助电力生产商更好地评估其市场力量，并了解相关监管规定的适用原则。报告指出，进口外国电厂闲置电力对于限制德国国内电力生产商市场力量的作用日益重要。此外，报告通过供给剩余系数（residual supply index）评估首次销售电力市场的市场力量情况，认为德国最大的电力生产商莱茵集团（RWE）已基本巩固其在首次售电市场上的市场力量。自四月德国永久关停核电厂以来，发电和首次售电领域的市场力量状况已经进一步恶化，并且由于未来更多电厂的关闭计划，市场力量状况在可预见的未来将持续恶化。（[查看更多](#)）

FCO Releases Report on Status of Market Power in Electricity Generation Sector for 2022/23

On August 9, 2023, the German Federal Cartel Office (FCO) releases a report on the competitive landscape of the electricity generation industry for the period from 2022 to 2023. The report analyses the

market power situation in the generation and first-time sale of electricity in the period from 1 October 2021 to 31 March 2023. The Report is to provide orientation to power generating companies so they can better assess whether they might be a norm addressee of the prohibitions of abusive practices applicable to dominant companies. The report highlights the increasing significance of idle power from foreign power plants as a means of curbing the market power of domestic German electricity producers. Additionally, the report assesses the market dynamics of the first-time sale of electricity through the residual supply index, indicating that the largest electricity producer in Germany, the RWE Group, has substantially solidified its market power in the sector. The permanent shutdowns completed in April and plans to shut down further power plants indicate that the market power situation has already aggravated even further and is bound to continue to do so in the foreseeable future. ([More](#))

谷歌在反垄断诉讼中提出紧急动议

2023年8月9日，据媒体报道，谷歌于2023年8月2日向美国第二巡回上诉法院提出了紧急动议（emergency motion），请求在加州审理指控其滥用广告技术领域市场支配地位的反垄断诉讼。2023年6月，美国多地区诉讼专门司法小组（JPML）批准得州的请求，将针对谷歌的反垄断诉讼退回得州联邦法院。对此，谷歌认为根据得州法律诉讼应继续由加州联邦法院审理，因此向第二巡回上诉法院提出了紧急动议。第二巡回上诉法院目前尚未作出决定，其决定可能对正在进行的反垄断诉讼造成显著影响。谷歌还在同时应对美国司法部（DOJ）和欧盟委员会（European Commission）发起的反垄断调查，以上多项法律程序的结果可能对谷歌的业务运营带来重大影响。（[查看更多](#)）

Google Files Emergency Motion in Antitrust Lawsuit

On August 9, 2023, media reports indicated that Google files an emergency motion with the United States Court of Appeals for the Second Circuit (“Second Circuit”) on August 2, 2023. The motion sought the consideration of its antitrust lawsuit, alleging abuse of dominant market position in the advertising technology sector, within the California jurisdiction. In June 2023, the Judicial Panel on Multidistrict Litigation (JPML) approved a request from the state of Texas to transfer the antitrust lawsuit against Google back to a federal court in Texas. Google contends that the proceedings should continue in a California federal court based on Texas law, filing the emergency motion with the Second Circuit. The Second Circuit’s decision is pending and could significantly impact the ongoing antitrust litigation. Concurrently, Google is also addressing antitrust inquiries initiated by the U.S. Department of Justice (DOJ) and the European Commission. The outcomes of these various legal proceedings could have substantial implications for Google’s business operations. ([More](#))

英国竞争上诉法庭支持CMA在Advanz药品定价案中的决定

2023年8月8日，英国竞争和市场管理局（CMA）发布公告，称英国竞争上诉法庭（CAT）支持CMA谴责Advanz Pharma、HgCapital和Cinven（“Advanz及相关公司”）过高定价的决定，其中HgCapital和Cinven分别为Advanz业务的前任所有人。Advanz及相关公司为治疗甲状腺激素缺乏必需药物利甲烯（liothyronine tablets）的唯一供应商，其在2009年至2017年间将药品价格从每盒20英镑提至248英镑，涨幅超过10倍。CMA认定其滥用垄断地位，对Advanz及相关公司处

以了总计8400万英镑的罚款。Advanz及相关公司向CAT提起上诉，但CAT支持了CMA的结论，认为提高利甲烯价格是一种旨在利用监管或竞争约束缺乏的蓄意策略，对英国国家医疗服务体系产生了重大影响。（[查看更多](#)）

UK Competition Appeal Tribunal Upholds Decision of CMA in Advanz Pharmaceutical Pricing Case

On August 8, 2023, the UK Competition and Markets Authority (CMA) announces that the UK Competition Appeal Tribunal (CAT) upholds the CMA's condemnation of Advanz Pharma, HgCapital and Cinven (referred to as "Advanz and associated companies") for excessive pricing. HgCapital and Cinven were former owners of Advanz's business. Advanz and associated companies were the sole suppliers of liothyronine tablets, an essential medicine to treat thyroid hormone deficiency. Between 2009 and 2017, they increased the drug's price from £20 per pack to £248, a more than tenfold increase. The CMA found them guilty of abusing their monopoly position and imposed a total fine of £84 million. Advanz and associated companies appealed to the CAT, but the CAT supported the CMA's conclusion, deeming the price increases were part of a deliberate strategy to exploit the lack of regulatory or competitive constraints and resulted in a significant impact on the UK's National Health Service. ([More](#))

大众汽车被零部件供应商Prevent提起7.5亿美元反垄断诉讼

2023年8月4日，据媒体报道，美国联邦法院法官于8月3日裁定，大众汽车（Volkswagen）将面临汽车零部件供应商Prevent（Prevent USA）提起的价值7.5亿美元的反垄断诉讼。Prevent指控大众汽车滥用市场支配地位，违反美国反垄断法。大众汽车对Prevent的指控提出异议，认为密歇根州相关诉讼的先前裁定应禁止Prevent进一步提出其主张，并表示此案在德国审理最为合适，请求驳回诉讼。美国得州东区联邦地区法院认为本案多项指控涉及美国境内的当事人、行为和伤害，驳回了大众汽车的主张。该案预计在明年年底之后进行审判。（[查看更多](#)）

Volkswagen Faces \$750 Million Antitrust Lawsuit by Components Supplier Prevent

On August 4, 2023, according to media reports, a U.S. federal court judge rules on August 3 that Volkswagen will face a \$750 million antitrust lawsuit brought by automotive components supplier Prevent (Prevent USA). Prevent alleges that Volkswagen abused its market dominance and violated U.S. antitrust laws. Volkswagen contested Prevent's allegations, arguing that prior rulings in the related litigation in Michigan should bar Prevent from further pressing its claims, and also stated that Germany was the proper forum for the case because the allegations involved foreign companies and foreign conduct. The U.S. District Court for the Eastern District of Texas determined that multiple allegations in this case concern parties, conduct, and harm in the United States, and dismissed Volkswagen's claims. The case is expected to go to trial not until late next year. ([More](#))

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

国家互联网信息办公室就《人脸识别技术应用安全管理规定（试行）（征求意见稿）》公开征求意见

2023年8月8日，国家互联网信息办公室发布《人脸识别技术应用管理规定（试行）（征求意见稿）》（以下简称《规定（征求意见稿）》），向社会公开征求意见，意见反馈截止时间为2023年9月7日。

《规定（征求意见稿）》指出，使用人脸识别技术应当遵守法律法规，遵守公共秩序，尊重社会公德，承担社会责任，履行个人信息保护义务，不得利用人脸识别技术从事危害国家安全、损害公共利益、扰乱社会秩序、侵害个人和组织合法权益等法律法规禁止的活动。《规定（征求意见稿）》强调，只有在具有特定的目的和充分的必要性，并采取严格保护措施的情形下，方可使用人脸识别技术处理人脸信息。实现相同目的或者达到同等业务要求，存在其他非生物特征识别技术方案的，应当优先选择非生物特征识别技术方案。在公共场所使用人脸识别技术，或者存储超过1万人人脸信息的人脸识别技术使用者，应当在30个工作日内向所属地市级以上网信部门备案。（[查看更多](#)）

Regulations on Security Management of Facial Recognition Technology Applications (for Trial Implementation) (Draft for Comments) Issued by CAC Open for Public Comments

On 8 August 2023, Cyberspace Administration of China (the “CAC”) issued a notice that the *Regulations on Security Management of Facial Recognition Technology Applications (for Trial Implementation) (Draft for Comments)* (the “Draft”) are open for public comments until 7 September 2023.

The Draft noted that the utilization of facial recognition technology shall comply with applicable laws and regulations, preserve public order, respect social morality, acknowledge social responsibility, fulfill personal information protection obligations, and refrain from engaging in activities prohibited by laws and regulations, such as jeopardizing national security, harming public interest, disrupting social order, and infringing on the rights and interests of individuals and organizations. The Draft highlighted that the technology can only be used to process facial information when there is a specific purpose and sufficient need, and when strict safeguards are in place. Where other non-biometric identification technology solutions exist that can meet the same demands, it is advisable to give preference to non-biometric identification technology solutions. Those who utilize facial recognition technology in public settings, or store more than 10,000 people's facial information, are required to make record-filing within 30 working days with the cyberspace administration office above the local municipal level. ([More](#))

全国信息安全标准化技术委员会就国家标准《信息安全技术 敏感个人信息处理安全要求》（征求意见稿）公开征求意见

2023年8月9日，全国信息安全标准化技术委员会秘书处发布国家标准《信息安全技术 敏感个

人信息处理安全要求》征求意见稿（以下简称《标准（征求意见稿）》），向社会公开征求意见，意见反馈截止时间为2023年10月8日。《标准（征求意见稿）》就敏感个人信息的界定、敏感个人信息处理通用安全要求以及特殊安全要求等方面作出了规定。（[查看更多](#)）

Information Security Technology: Security Requirements for Processing Sensitive Personal Information (Draft for Comments) Issued by National Information Security Standardization Technical Committee Open for Public Comments

On 8 August 2023, the Secretariat of the National Information Security Standardization Technical Committee issued a national standard, *Information Security Technology: Security Requirements for Processing Sensitive Personal Information (Draft for Comments)* (the “Draft Standard”), which is open for public comments until 8 October 2023. The Draft Standard sets forth provisions defining sensitive personal information and specifying general and specific security requirements for processing sensitive personal information. ([More](#))

中央网信办印发《网站平台受理处置涉企网络侵权信息举报工作规范》

2023年8月10日，中央网信办印发《网站平台受理处置涉企网络侵权信息举报工作规范》（以下简称《规范》），以更好维护保障企业和企业家网络合法权益，建立“优化营商环境”长效工作机制。

《规范》适用于境内网站平台受理处置涉企网络侵权信息举报。《规范》指出，网站平台应当重点受理处置以下涉企网络侵权信息举报：混淆企业主体身份的仿冒性信息；影响公众公正评判的误导性信息；不符合企业客观实际的谣言性信息；贬损丑化企业或企业家的侮辱性信息；侵害企业家个人隐私的泄密性信息；其他恶意干扰企业正常经营发展的信息。（[查看更多](#)）

Office of the Central Cyberspace Affairs Issues Regulations on Receiving and Processing Cyber-Infringement Information Reports Involving Enterprises by Website Platforms

On 10 August 2023, Office of the Central Cyberspace Affairs Commission issued the *Regulations on Receiving and Processing Cyber-Infringement Information Reports Involving Enterprises by Website Platforms* (the “Regulations”). The Regulations aim to safeguard and protect the legitimate rights and interests of enterprises and entrepreneurs in cyberspace, and to establish a long-term working mechanism to optimize the network environment for business operations.

The Regulations apply to the receipt and processing of reports of online infringement information involving enterprises by website platforms within the territory of the PRC. The Regulations noted that website platforms should prioritize the receipt and processing of the following reports of cyberspace infringement-related information involving enterprises on the internet: fake information that confuses the identity of the subject enterprise; misleading information that affects the public's fair judgment; rumors that do not match the objective reality of the enterprise; insults that degrade and slander the enterprise or the entrepreneur; leaks that violate the privacy of the entrepreneur; and other information that deliberately interferes with the normal business operation and development of the enterprise. ([More](#))

公安部公布十起侵犯公民个人信息违法犯罪典型案例

2023年8月10日，公安部召开主题新闻发布会，通报部署全国公安机关打击整治侵犯公民个人信息违法犯罪行为的举措成效，并公布十起典型案例。据介绍，近年来，各种互联网应用平台层出不穷，相关APP、公众号、小程序呈井喷式增长，公民个人信息安全保护工作也成为公安机关关注的重点。党的十八大以来，全国公安机关按照网络安全法、个人信息保护法、数据安全法等法律法规的要求，全面强化重点互联网平台网络与数据安全监管工作，进一步压实网络运营主体的数据安全责任。（[查看更多](#)）

The Ministry of Public Security Releases Ten Typical Criminal Cases of Infringing Upon Personal Information of Individuals

On 10 August 2023, the Ministry of Public Security held a special press conference, briefing on the achievements that public security organs across the country have made in combating and rectifying violations of citizens' personal information, and announcing ten typical cases of infringing upon the personal information of individuals. Reportedly, in recent years a great number of Internet application platforms, including APPs, media platforms and mini programs, have emerged. The protection of the security of personal information has also become a major focus of public security organs. Following the Party's 18th National Congress, national public security organs have been working to comprehensively strengthen the supervision of key internet platforms in terms of networks and data security, in accordance with the *Cybersecurity Law*, *Personal Information Protection Law*, *Data Security Law* and others. They have also been reinforcing the data security responsibilities of network operators. ([More](#))

中国支付清算协会印发《个人支付信息保护指引》

2023年8月9日，中国支付清算协会发布关于印发《个人支付信息保护指引》（以下简称《指引》）的通知。

《指引》结合支付业务的参与主体和业务特点，在符合国家及行业监管要求，遵循GB/T 35273、JR/T 0171 等标准规范的基础上，提出了支付信息保护整体框架，细化了支付业务中个人信息的处理要求和相关机构的能力要求，为参与支付业务的机构提供指导。（[查看更多](#)）

PCAC Issues Guidelines for the Protection of Personal Payment Information

On 9 August 2023, Payment & Clearing Association of China (the "PCAC") issued the *Guidelines for the Protection of Personal Payment Information* (the "Guidelines").

The Guidelines, taking into account the subjects involved and the business characteristics of the payment business, and on the basis of compliance with national and industry regulatory requirements and following the standards and norms such as GB/T 35273 and JR/T 0171, put forward an overall framework for the protection of payment information, and refined the requirements for the processing of personal information in the payment business and the competence requirements of relevant organizations, so as to provide guidance to organizations involved in the payment business. ([More](#))

600余家互联网企业发出倡议：积极维护防汛救灾网络秩序

据2023年8月13日公安部网安局消息，在当前全国齐心聚力、携手救灾的特殊时期，针对少数网民编造传播涉灾情虚假信息、挑动地域对立歧视，严重扰乱网上舆论秩序，干扰妨碍抗险救灾工作的行为，为进一步净化网络环境，积极推动网络平台切实成为防汛救灾的参与者、助力者，公安部网安局部署各地网安部门压实压紧平台主体责任，号召网站平台和网民自觉抵制违法有害信息网上传播，坚持对违法有害信息“零容忍”，积极发动发挥网络平台的正能量。

截至目前，包括百度、微博、抖音、快手、小红书、哔哩哔哩、阿里、腾讯等8家超大型互联网平台在内的600余家企业发出倡议书，唱响了万众一心、聚力救灾救援的网上主旋律。（[查看更多](#)）

More than 600 Internet Companies Issues an Advocacy: Actively Maintain the Online Order of Flood Control and Disaster Relief Efforts

According to the Cyber Security Department of the Ministry of Public Security (the “CSD”) on 13 August 2023, in the current special period of helping disaster relief, a small number of netizens fabricated and disseminated false information related to the disaster, stirring up regional antagonism and discrimination, seriously disrupting the order of public opinion on the Internet, hindering the rescue and relief work. In order to further purify the network environment, and to actively promote network platforms to effectively become participants and helper in the flood control and disaster relief efforts. The CSD instructed cyber security offices to reinforce the primary responsibility of the platforms, calling on websites and platforms and netizens to consciously resist the dissemination of illegal and harmful information online, and have "no tolerance" to the illegal and harmful information, so as to maintain positive energy of the network platform. So far, more than 600 enterprises, including the eight mega internet platforms, i.e., Baidu, Weibo, TikTok, Kuaishou, Xiaohongshu, Bilibili, Alibaba, Tencent have joined the advocacy to actively maintain the online order of flood control and disaster relief efforts. ([More](#))

欧盟：理事会轮值主席国发布文件，概述《人工智能法》草案三方谈判进展

2023年8月3日，欧盟理事会主席国公布了一份包含 2023 年 6 月 15 日开始的关于《人工智能法》草案的三方谈判的信息，包括就以下内容进行的讨论：

- 高风险人工智能系统的提供者和使用者/部署者以及其他各方的义务；
- 通知机关和被通知机构；
- 标准、合格评估、证书和登记。

（[查看更多](#)）

EU: Council Presidency Releases Document Outlining Draft AI Act Trilogue Negotiations Progress

On 3 August 2023, the Presidency of the Council of the European Union released a document containing information on the trilogue negotiations on the draft AI Act, which began on 15 June 2023. The following parts of the draft AI Act were discussed:

- obligations of providers and users/deployers of high-risk AI systems and other parties.
- notifying authorities and notified bodies.
- standards, conformity assessment, certificates, and registration.

[\(More\)](#)

印度电子和信息技术部发布《数字个人数据保护法案》的显著特色

2023年8月9日，印度电子和信息技术部（MeitY）发布了《2023年数字个人数据保护法案》的显著特色。MeitY指出，该法案旨在以最低干扰的方法改变数据受托人（即数据处理者）处理数据的方式，促进生活和营商便利性，并赋能印度的数字经济。MeitY强调了数据处理原则、数据主体权利以及数据受托人的义务。此外，MeitY还讨论了该法案规定的豁免、未成年人权利以及数据保护委员会的职能。（[查看更多](#)）

India: MeitY Publishes Salient Features of Digital Personal Data Protection Bill

On 9 August 2023, the Ministry of Electronics and Information Technology (the “MeitY”) published the salient features of the Digital Personal Data Protection Bill, 2023. The MeitY noted that the bill seeks to change the way in which data fiduciaries process data with minimum disruption, enhance ease of living and doing business, and enable India’s digital economy. The MeitY highlighted the data processing principles, data subject rights, as well as obligations for data fiduciaries. In addition, the MeitY discussed exemptions, rights of children, and the functions of the Data Protection Board as provided by the bill. ([More](#))

知识产权 Intellectual Property

“贵宾”商标具有显著性，贵矛合公司使用“贵宾”构成侵权

近日，北京知识产权法院发布了贵州贵矛合酒业有限公司与吉林贵宾酒业有限公司、贵州贵祈承酒业有限公司、北京口袋时尚科技有限公司侵害商标权纠纷案的判决书，维持一审原判。

法院认为，“贵宾”一词作为汉语中的固有词汇，将其作为商标使用在酒类上，依照社会通常观念，容易将其认知为对商品消费对象的一种描述，显著性较弱，故贵宾公司作为该商标的权利人，不能阻止他人在同类产品上正当使用“贵宾”标志作为宣传。然而，当这种使用已经不仅仅是作为描述性使用而具有标明商品来源的作用时，就会进入贵宾公司的商标权保护范围。在无证据表明“贵宾”系某一类酒的通用名称的情况下，本案被诉侵权白酒外包装正面及酒瓶瓶身正面上均突出且醒目地使用了“贵宾”文字，属于用于识别商品来源的商标性使用行为，容易导致相关公众的混淆，并非是对“贵宾”文字的描述性使用。

来源：北京知识产权法院

The Trademark Guibin was Recognized as Distinctive and the Use of Guibin Constituted Trademark Infringement

Recently, Beijing Intellectual Property Court issued a second-instance judgement of trademark infringement between Maohe Limited versus Guibin Limited and other appellees.

The court held that when, as a common word in Chinese, used as a trademark on alcohol may be easily perceived as a description of the target consumers of the goods, which may weaken the significance. Therefore, as the trademark rights holder, Guibin Limited cannot prevent others from using Guibin in a legitimate way for similar goods as a means of promotion. However, when such usage goes beyond mere descriptive use, and serves as an indication of the source of the goods, it shall fall within the scope of trademark protection for Guibin Limited. In the absence of evidence indicating that Guibin is a generic name for a specific type of alcohol, the prominent and conspicuous use of Guibin on the front of the accused liquor packaging and bottle, constitutes a trademark use for identifying the source of goods, which may lead to confusion among the relevant public and is not a descriptive use of the term.

Source: Beijing Intellectual Property Court

“特斯拉”起诉“特斯拉二手车”侵权

近日，特斯拉起诉“特斯拉二手车”商标与著作权侵权以及不正当竞争一案判决结果公布，法院认定特斯拉系列商标为驰名商标。

被告在场所大量突出使用涉案标识，在店铺门头及内部装潢大量使用与原告商标相同或近似标识，且被告总公司的关联公司曾大量申请注册与原告商标相同或近似的商标，会让消费者对销售者与商标权人身份关系的混淆，并非简单地指示商品销售服务。这一定程度上会遏制了商标权人与销售商在销售环节的横向竞争，损害商标权人的利益。

原告“特斯拉图形”系以字母“T”为基础，进行的艺术加工，以线条、色彩所形成的具有一定艺术美感的图形，具有独创性。商标权和著作权属于不同法益，原告同时主张两种权利并不构成竞合，均可予以评价，被告行为系对原告作品著作权中复制权与署名权的侵权。

被告将原告有一定知名度的注册商标及企业字号核心要素“特斯拉”作为企业字号，主观上显然具有攀附特斯拉品牌已建立声誉的故意。同时，进行“全国唯一特斯拉二手车连锁专营”宣传，容易引人误解。被告搭便车的行为，会导致消费者混淆或误认，构成不正当竞争。

来源：长沙市天心区人民法院

TESLA Won Lawsuit against TESLA Second-Hand Vehicle

Recently, the first-instance judgement of trademark and copyright infringement and unfair competition between TESLA and TESLA Second-Hand Vehicle was issued, and the court recognized Tesla series of trademarks as well-known trademarks.

The defendant extensively and prominently used the disputed trademarks in their premises, and on signs that are identical or similar to the plaintiff's trademark on their storefronts and interior decorations. Moreover, the defendant's affiliated companies had applied for registration of trademarks identical or similar to the plaintiff's trademark in large numbers. This may confuse consumers regarding the relationship between the seller and the trademark holder, rather than simply indicating the sale of goods or service. To some extent, it may restrain the competition between the trademark holder and the sellers, causing harm to the interests of the trademark holder.

The plaintiff's Tesla logo is an artistic processing based on the letter 'T', a graphic with certain aesthetics formed by lines and colors, which is original. Trademark rights and copyright belong to different legal interest. The plaintiff asserted that trademark rights and copyright does not constitute a conflict and can be evaluated separately. The act of the defendant constitutes infringement on the plaintiff's copyright, specifically the right of reproduction and the right of authorship.

The defendant used the plaintiff's well-known trademark and the core element of the trade name 'Tesla' as the tradename, indicating an intention to associate with the reputation established by TESLA. Additionally, the defendant's promotion of being the 'sole national chain specializing in Tesla used car' may easily lead to misunderstandings. The defendant's acts can lead to consumer confusion or misidentification, which constitutes unfair competition.

Source: Tianxin District People's Court, Changsha

剧目演出侵犯环球公司和梦工场公司商标权，商业宣传构成不正当竞争

2023年7月，北京市市场监督管理局对涉及演出领域的一起商标侵权和不正当竞争案件作出行政处罚。

处罚公告显示，本案中，该剧团在其网页端、微信公众号、演出门票上使用了“疯狂原始人”“THE CROODS”“侏罗纪时代”等标识，并制作带有上述标识的海报宣传图片，属于未经权利人许可，在类似商品上使用相同或近似注册商标的行为，容易导致相关消费者的混淆，构成商标侵权行为。处罚公告显示，本案中，该剧团在制造的儿童剧《疯狂原始人》宣传海报上使用法国阿维尼翁戏剧节亲子互动类推举剧目““英文版 编剧/导演Ariane Mnouchkine、中文版 改编/导演 成伟 (中国香港)、艺术总监 Herbert Mdash、出品制作 Pamir performance, France”等

内容进行宣传，但这一儿童剧并不具有上述推荐文件，也不存在与所列导演及人员的合作协议文件，更没有进行任何改编，编剧和导演都是该剧场人员，属于内部自编自导完成。上述行为构成了对《疯狂原始人》演出剧目的虚假商业宣传，构成不正当竞争行为。

来源：北京市市场监督管理局

The Theatrical Performance Infringed the Trademark of Universal Company and DreamWorks with, Unfair Competition

In July 2023, Beijing Administration of Market Regulation issued an announcement of an administrative penalty on a trademark infringement and unfair competition case involving performance field.

According to the announcement, in this case, the infringers used the logos ‘疯狂原始人’(The Croods), ‘THE CROODS’ and ‘侏罗纪时代’(Jurassic Age) on its website, Wechat public account and performance tickets, and produced posters with the above logos, which is the act of using the same and or similar trademarks on similar goods without authorization of the rights holders. The acts of the defendant may easily lead to the confusion among relevant consumers and constitute trademark infringement. According to the announcement, the theater company used the promotional poster for the children’s play ‘疯狂原始人’(The Croods) to advertise its inclusion in Avignon Theatre Festival's recommended interactive family plays, with credits to ‘English version Playwright/Director Ariane Mnouchkine, Chinese version Adaptation/Director Cheng Wei (Hong Kong, China), Artistic Director Herbert Mdash, Produced by Pamir Performance, France’. However, this play did not possess the recommended documentation and it did not have any cooperation agreements with the listed directors and personnel. Furthermore, the play was internally created by the playwright and director who are members of the theater company, without adaptation. These acts constituted false commercial promotion of the play and constituted unfair competition.

Source: Beijing Municipal Bureau of Market Supervision and Administration

肆意爬取新闻数据构成不正当竞争

近日，天津自贸区法院审结了一起天津某数码公司等与上海某公司不正当竞争纠纷案。

法院经审理认为，原告在本案中主张保护的客体是其平台内的新闻数据。经过原告长期大量的商业投入和经营，形成了存储于其新闻平台上的海量数据信息。其整体上构成的数据集合，本身具有投资巨大、信息规模大、商业价值高等特点。同时，这种新闻数据集合的聚集效应所产生的市场吸引力，系原告的市场竞争力重要部分，具有巨大的商业价值，能够为原告带来竞争优势，在其权益遭受侵害时可以通过反不正当竞争法获得相应救济。

上海某公司未经原告许可，整体搬运涉案数据并直接用于涉案产品的新闻栏目中，该行为既非实现涉案产品正常运营的必要手段，亦不符合社会公共利益的价值需求，其所实现的效果并不足以弥补被诉行为给原告所造成的损失，影响了正常的市场竞争秩序和健康公平的行业生态，降低了消费者的福利，超出了数据利用的合理限度，具有不当性。

来源：天津自由贸易试验区人民法院

Crawling News Data Indiscriminately Constitutes Unfair Competition

Recently, Tianjin Free Trade Zone Court closed a case involving unfair competition between a digital company in Tianjin and a company in Shanghai.

The court held that the object of protection claimed by the plaintiff in this case is the news data within its platform. The plaintiff has accumulated a vast amount of data stored in its news platform. The overall collection of the data possessed significant characteristics, such as substantial investment, large-scale information and high commercial value. Additionally, the market attractiveness generated by the aggregation effect of the news data collection is an important part of the plaintiff's market competitiveness and can bring competitive advantages to the plaintiff. Therefore, the plaintiff can seek legal remedies through Anti-Unfair Competition Law when its legitimate rights and interests are encroached

The defendant transported the entire set of relevant data and directly used in the news section of their product without the authorization of the plaintiff. This act not only did not serve as the necessary means for the normal operation of the accused product but also exceeded the reasonable limits of data utilization, which shall be deemed inappropriate.

Source: Tianjin Free Trade Zone Court

TCL华星与SEL签署专利许可协议，结束全球诉讼

近日，TCL华星宣布与日本半导体能源研究所(Semiconductor Energy Laboratory Co., Ltd.,“SEL”) 签署专利许可协议，获得SEL在半导体显示领域的专利许可，其中还包括结晶氧化物半导体技术。

SEL于2021年开始陆续在日本、美国和德国对TCL华星或其客户发起专利侵权诉讼。此后TCL华星积极应诉，并采取了提起反诉、专利无效等法律手段有效应对。现双方同意撤回在全球各地的诉讼，结束双方自2021年以来在多个国家的专利诉讼与争议。

来源：TCL华星

TCL Signed Patent License Agreement with SEL and Ended Global Litigations

Recently, TCL announced that it signed a patent license agreement with Semiconductor Energy Laboratory (SEL) to obtain SEL's patent license in the field of semiconductor display which also includes crystalline oxide semiconductor technology.

SEL has gradually filed patent infringement lawsuit against TCL or its consumers in Japan, the United States and Germany since 2021. TCL then has actively responded to the lawsuit and adopted legal means such as filing counterclaims and invalidation of patents. Now, both parties have agreed to withdraw their lawsuits worldwide, thereby ending the patent litigation and disputes that have been ongoing since 2021 in multiple countries.

Source: TCL

美国法院认定专利诉讼费不属于获批仿制药成本

近日，法院对美国国税局诉迈兰公司一案作出了最终裁决——驳回美国国税局的上诉。迈兰公司因此不必再向国税局补缴高达5000万美元的税额。

此前，美国国税局对美国税务法院的一项裁决提出上诉，该裁决允许仿制药制造商迈兰公司 (Mylan, Inc.) 在计算应纳税所得额时，根据《哈奇-韦克斯曼法案》(Hatch-Waxman Act, Pub)，因提起的专利侵权诉讼所产生的法律费用应作为普通和必要的业务费用，予以扣除。

国税局认为，迈兰在专利侵权诉讼案件中所支出的必要费用促进了该企业仿制药获得FDA上市许可的进程，因此应计入应纳税所得额。美国税务法院为此清晰地解释道，当像迈兰这样的仿制药制造商在专利侵权诉讼中为自己辩护时，他们没有从成功的结果中获得任何权利。他们既没有获得专利的无形资产，也没有获得FDA的批准。事实上，专利侵权诉讼的结果并不会对FDA的批准许可发挥任何作用。因此，这不属于为获得FDA批准销售的成本，国税局的上诉理由并不成立。

来源：美国第三巡回上诉法院

US Court Recognized Patent Litigation Fees are not Considered Approved Generic Drug Costs

Recently, US Court issued a final ruling in the case of IRS v. Mylan Inc., dismissing the appeal by IRS. As a result, Mylan Inc. is no longer required to pay up to USD 50 million to IRS.

Previously, IRS appealed a ruling by the United States Tax Court that allowed the generic drug manufacturer Mylan Inc. to deduct legal expenses incurred from patent infringement lawsuits as ordinary and necessary business expenses when calculating taxable income, under Hatch-Waxman Act, Pub.

IRS argued that the expenses incurred by Mylan in the patent infringement lawsuits facilitated the process of obtaining FDA approval for their generic drugs and shall be included in the tax income. The United States Tax Court clearly explained that companies like Mylan, as generic drug manufactures, did not acquire intangible assets from the patents nor they gain FDA approval. In fact, the result of patent infringement lawsuits did not play any role in FDA approval of the license. Therefore, it is not the cost of obtaining FDA approval for sales, and IRS appeal was not valid.

Source: United States Court of Appeals, Third Circuit

远藤国际制药起诉Zydus，指控其戒烟仿制药侵权

近日，远藤国际在美国特拉华州联邦法院起诉Zydus制药公司，称Zydus公司生产的辉瑞戒烟药Chantix的仿制药侵犯了其专利权。

远藤公司的仿制药子公司Par Pharmaceutical在2023年8月9日公布的一份诉状中表示，Zydus公司的仿制药侵犯了远藤公司新近获得的一项美国专利，该专利涵盖了远藤公司生产该药的过程。远藤公司于8月8日获得了这项专利，该专利涵盖了一种制造 Chantix 的活性成分varenicline（伐尼克兰）的方法，其中的杂质含量达到了安全水平，而这种杂质曾导致辉瑞公司将 Chantix 从市场上撤下。远藤公司要求法院阻止Zydus公司在美国销售其仿制药，并要求未指明金额的赔偿。

来源：路透社

Endo Sues Zydus in Attempt to Block its Generic Version of Chantix

Recently, Endo International has sued Zydus Pharmaceuticals in Delaware federal court, claiming Zydus violated its patent rights with a generic version of Pfizer's recalled smoking-cessation drug Chantix.

Endo International Plc accused Zydus Lifesciences Ltd. of making its generic version of Pfizer Inc.'s recalled Chantix using a process that infringes a new patent covering what for two years had been the only approved version of the blockbuster smoking-cessation tablets. Endo received the patent on Tuesday, covering a method of manufacturing Chantix's active ingredient varenicline with safe levels of the impurities that caused Pfizer to take Chantix off the market. Endo asked the court to block Zydus' U.S. sales of its generic and requested an unspecified amount of money damages.

Source: Reuters

罗氏起诉诺华子公司仿制药侵犯其肺部药物专利

近日，瑞士制药商罗氏(Roche)旗下的基因泰克(Genentech)指控诺华(Novartis)旗下的山德士公司(Sandoz)所销售的仿制药，侵犯了其肺部疾病治疗药物Esbriet专利。

基因泰克的Esbriet用于治疗特发性肺纤维化(IPF)，这是一种无法治愈的致命慢性肺部疾病。山德士于2019年向美国食品和药物管理局提交了生产Esbriet仿制药的申请。基因泰克随即起诉山德士，称该仿制药将侵犯其多项专利，试图以此阻止拟议的仿制药。但一名联邦法官最终裁定基因泰克败诉。基因泰克于2019年公开了Esbriet专利，该专利被添加到了FDA的橙皮书中。基因泰克在上周一向新泽西州纽瓦克联邦法院提交的诉状中表示，山德士公司(Sandoz)明知案涉侵权药物侵犯了基因泰克的专利，但仍于2022年5月推出了该药物。

来源：路透社

Roche Sues Novartis Unit over Generic Lung Disease Drug

Recently, Swiss drugmaker Roche's Genentech subsidiary has accused a Novartis unit of infringing one of its patents by selling a generic version of its blockbuster lung disease drug Esbriet, after an earlier lawsuit failed to keep the generic drug off the market.



Genentech's Esbriet is used to treat idiopathic pulmonary fibrosis (IPF), a fatal chronic lung disease with no cure. Sandoz filed an application with the U.S. Food and Drug Administration to make generic Esbriet in 2019. Genentech sued the company in an effort to block the proposed generic, saying it would infringe several of its patents. A federal judge ruled against Genentech. The patent in the lawsuit was issued in 2019 and added to the FDA's "Orange Book". In a complaint filed on Monday in federal court in Newark, New Jersey, Genentech said Sandoz, a unit of Switzerland-based Novartis, had launched its drug in May 2022 despite knowing that it infringed Genentech's patent.

Source: Reuters

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