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US judge: Art Created Solely by Artificial Intelligence Cannot be Copyrighted

立方竞争法周报 Weekly Competition Law News

北京集中清理妨碍统一市场和公平竞争政策措施

2023年8月24日，北京市市场监督管理局（“北京市市监局”）会同市发展改革委、市财政局、市商务局、市司法局联合印发工作方案，组织全面清理北京市妨碍统一市场和公平竞争的政策措施。此次清理范围涵盖北京市市、区两级人民政府及其所属部门在2022年12月31日前制定，现行有效的涉及市场主体经济活动的规章、规范性文件和其他政策措施，重点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、影响生产经营行为等妨碍建设全国统一大市场和公平竞争的规定和做法。（[查看更多](#)）

Beijing Concentratedly Cleans up Policies and Measures Impeding Unified Market and Fair Competition

On August 24, 2023, the Beijing Municipal Administration for Market Regulation (“Beijing AMR”), in conjunction with the Municipal Development and Reform Commission, Municipal Finance Bureau, Municipal Commerce Bureau, and Municipal Justice Bureau, jointly issued a work plan to organize a comprehensive review of policy measures in Beijing that hinder the unified market and fair competition. This review includes regulations, normative documents, and other policy measures related to the economic activities of market entities, which were formulated by the municipal and district governments in Beijing and their subordinate departments before December 31, 2022, and are currently in effect. The main focus of this review is to eliminate provisions and practices that hinder market access and exit, impede the free flow of goods and factors, impact production and operating costs, and affect production and business activities, all of which hinder the construction of a nationwide unified market and fair competition. ([More](#))

广西市监局纠正一起滥用行政权力排除、限制竞争行为案件

2023年8月22日，广西市场监督管理局（“广西市监局”）公布了一起广西壮族自治区内某市城市管理监督局滥用行政权力排除、限制竞争行为案件。广西市监局认为，当事人组织互联网租赁助力车运营遴选，仅准许2家企业3年内在该市城区范围内营运，这一行为限制了该市城区范围内的互联网租赁助力车用户的自由选择权，排除、限制了该市城区范围内的互联网租赁助力车营运企业之间的竞争，对当地互联网租赁助力车营运市场的公平竞争产生了限制影响，违反反垄断法。调查期间，当事人主动发布撤销公告，对互联网租赁助力车营运企业的自由进入不作排除限制，恢复和维护该市互联网租赁助力车营运市场的公平竞争环境。（[查看更多](#)）

Guangxi AMR Announces Case of Administrative Monopoly

On August 22, 2023, the Guangxi Provincial Administration for Market Regulation (“Guangxi AMR”) announced a case of abuse of administrative power and anti-competitive behaviour by a city management and supervision bureau within the Guangxi Zhuang Autonomous Region. The Guangxi AMR believed that the involved party organized the selection of internet rental electric-assist bicycles (e-bikes) and allowed only two companies to operate within the urban area of the city within a three-year period. This action limited the freedom of choice for internet rental e-bike users within the city and excluded or

restricted competition among internet rental e-bike companies operating within the city, thereby affecting fair competition in the local internet rental e-bike market, in violation of anti-monopoly laws. During the investigation, the involved party voluntarily issued a revocation notice, removed restrictions on the free entry of internet rental e-bike companies, and restored and maintained a fair competitive environment in the city's internet rental e-bike market. ([More](#))

浙江集中清理妨碍统一市场和公平竞争政策措施

2023年8月22日，浙江省市监局和有关部门启动开展妨碍统一市场和公平竞争政策措施清理工作，重点清理含有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4类19种情况的规定和做法。此次清理的范围是浙江省、市、县（市、区）政府及其所属部门在2022年12月31日前制定，现行有效的涉及经营主体经济活动的政策措施，包括要求经营主体使用指定的本地企业商品和服务，将本地业绩、纳税情况、获得奖项等作为信用评价加分条件阻碍外地经营主体进入本地市场，违规增设迁移条件限制企业自主迁移或退出，排除、限制民营企业公平参与市场竞争等。（[查看更多](#)）

Zhejiang Concentratedly Cleans up Policies and Measures Impeding Unified Market and Fair Competition

On August 22, 2023, the Zhejiang Provincial Administration for Market Regulation (“Zhejiang AMR”) and relevant departments initiated a campaign to clear policies and practices that obstruct unified markets and fair competition. The focus of this effort is to clear provisions and practices falling into four categories and comprising a total of 19 situations: hindering market access and exit, obstructing the free flow of goods and factors, impacting production and operating costs, and affecting production and operating behavior. The scope of this clearance includes policies and measures related to economic activities of business entities that were formulated by the government departments of Zhejiang Province, cities, counties (cities, districts), and their subordinate agencies before December 31, 2022, and are currently in effect. These policies and measures include requirements for business entities to use specified local goods and services, using local performance, tax payment status, awards, etc., as credit evaluation criteria to hinder non-local business entities from entering the local market, imposing improper additional conditions to restrict businesses from relocating or exiting independently, and excluding or limiting fair participation of private enterprises in market competition, among other things. ([More](#))

陕西省市监局就《陕西省建材行业反垄断合规指引》征求意见

2023年8月18日，陕西省市监局发布公告，就《陕西省建材行业反垄断合规指引》（“《指引》”）公开征求意见。《指引》共八章三十三条，对建材行业经营者合规作出了一般性指引，涉及垄断协议、滥用市场支配地位、经营者集中、滥用行政权力排除、限制竞争行为。意见反馈截止日期为9月4日。（[查看更多](#)）

Shaanxi AMR Solicits Opinions on Antitrust Compliance Guidelines for the Building Materials Industry in Shaanxi Province

On August 18, 2023, the Shaanxi Provincial Administration for Market Regulation (“Shaanxi AMR”)

issued a public notice regarding the *Antitrust Compliance Guidelines for the Building Materials Industry in Shaanxi Province* (“Guidelines”) and opened them for public comments. The Guidelines consist of eight chapters and thirty-three articles, providing general guidance for compliance by operators in the building materials industry. They cover topics such as monopoly agreements, abuse of market dominance, concentration of undertakings and abuse of administrative power to exclude and restrict competition. The deadline for submitting feedback is September 4th. ([More](#))

广州知产法院受理首例跨境电商企业诉境外电商平台滥用市场支配地位纠纷案

近日，广州知识产权法院（“广州知产法院”）受理了广州蒙变信息科技有限公司（“蒙变公司”）诉亚马逊欧洲服务公司（“亚马逊欧洲公司”）滥用市场支配地位纠纷案。该案是广州知产法院受理的首例跨境电商企业诉境外电商平台滥用市场支配地位纠纷案件。蒙变公司是一家从事跨境贸易代理、货物进出口等外贸型电商企业。蒙变公司诉称，亚马逊欧洲公司在欧洲范围内电子商务领域具有市场支配地位，其无正当理由关闭蒙变公司的网店，封禁账号，并拒绝交易等，请求判令亚马逊欧洲公司解封蒙变公司被冻结的账号；改变buy box及平台算法、数据，让蒙变公司可以自由选择物流服务企业并可以与亚马逊公司自营产品公平竞争；亚马逊欧洲公司向蒙变公司赔偿经济损失并退还账户余额。目前此案正在送达应诉阶段。（[查看更多](#)）

Guangzhou IP Court Accepts First Cross-Border E-commerce Company Lawsuit against Overseas E-commerce Platform for Abusing Market Dominance

Recently, the Guangzhou Intellectual Property Court (“Guangzhou IP Court”) accepted a case filed by Mengbian Company (Guangzhou Mengbian Information Technology Co., Ltd.) against Amazon European Services (Amazon Services Europe S.à r.l.) for an alleged abuse of market dominance dispute. This case marks the first instance in which the Guangzhou IP Court has accepted a cross-border e-commerce enterprise’s lawsuit against an overseas e-commerce platform for alleged abuse of market dominance. Mengbian Company is an e-commerce enterprise engaged in cross-border trade agency, goods import and export, and other foreign trade-related activities. Mengbian Company claims that Amazon European Services holds a dominant position in the e-commerce sector within Europe and has unjustifiably closed Mengbian Company’s online store, suspended their account, and refused transactions. They are requesting the court to order Amazon European Services to unblock Mengbian Company’s frozen account, and modify the buy box and platform algorithms and data, allowing Mengbian Company to freely choose logistics service providers and compete fairly with Amazon’s self-operated products. Additionally, they seek compensation for economic losses incurred by Mengbian Company and a refund of their account balance from Amazon European Services. Currently, this case is in the process of being served to the defendant for their response. ([More](#))

市场监管总局发布7篇反垄断法实施十五周年系列文章

近日，国家市场监督管理总局（“市场监管总局”）发布7篇反垄断法实施十五周年系列文章，总结反垄断法实施15年来我国反垄断工作的成果。文章重点关注医药领域反垄断执法、行业协会反垄断监管、垄断协议监管执法、滥用市场支配地位反垄断监管执法、平台经济领域反垄断监管以及完善反垄断法律制度体系。15年来，我国已形成以反垄断法为核心，以1部行政

法规、8部国务院反垄断指南、6部部门规章为主要框架的法律规范体系，中国特色反垄断法律制度已然成形。同时，反垄断执法机构持续加强和改进民生领域反垄断执法，查处垄断协议、滥用市场支配地位案件340件，罚没款总额超过379亿元，持续改革经营者集中审查体制机制，审结经营者集中案件5400多件，禁止3件，附加限制性条件批准59件。（[查看更多](#)）

SAMR Releases Seven Articles on 15th Anniversary of Implementation of *Anti-Monopoly Law*

Recently, the State Administration for Market Regulation (“SAMR”) in China released a series of seven articles to commemorate the fifteenth anniversary of the implementation of the *Anti-Monopoly Law*. These articles summarize China’s achievements in anti-monopoly work over the past 15 years. The articles focus on various aspects of anti-monopoly enforcement, including enforcement in the pharmaceutical sector, regulation of industry associations regarding anti-monopoly measures, enforcement against monopolistic agreements, enforcement against abuses of market dominance, anti-monopoly regulation in the platform economy sector, and the improvement of the anti-monopoly legal framework. Over the past 15 years, China has developed a legal regulatory system with the *Anti-Monopoly Law* at its core. This system is built around 1 administrative regulation, 8 State Council anti-monopoly guidelines, and 6 departmental regulations, forming the primary legal framework. China's distinctive anti-monopoly legal system has taken shape. At the same time, the anti-monopoly enforcement agencies have continually strengthened and improved their enforcement efforts in areas affecting people's livelihoods. They have investigated and handled 340 cases involving monopoly agreements and abuses of market dominance, resulting in total fines exceeding CNY 37.9 billion. There have been ongoing reforms in the examination and approval mechanisms for business concentrations, with over 5,400 cases concluded, 3 of them prohibited, and 59 cases approved with additional restrictive conditions. ([More](#))

CMA批准博通收购VMware

2023年8月21日，英国竞争和市场管理局（CMA）批准博通（Broadcom Inc.）对VMware（VMware, Inc.）的拟议收购。博通是一家全球技术公司，制造并销售用于计算机服务器的硬件组件。VMware则销售使服务器工作更高效的软件产品和服务。由于该拟议收购存在需要深入审查的竞争问题，CMA将其转入了第二阶段的调查。在调查过程中，CMA认定博通对VMware的拟议收购不会显著减少英国服务器硬件组件供应上的竞争。具体而言，CMA认定博通在合并后令VMware软件与竞争对手产品不适配所获得的潜在经济利益小于等于因不适配而失去业务的潜在经济成本；博通的竞争对手与VMware分享新产品改进的时间较迟，不会在合并后为博通带来商业利益，因此博通不太可能通过上述方式损害竞争。（[查看更多](#)）

CMA Approves Broadcom’s Acquisition of VMware

On August 21, 2023, the Competition and Markets Authority (CMA) in the United Kingdom approved Broadcom’s (Broadcom Inc.) proposed acquisition of VMware (VMware, Inc.). Broadcom is a global technology company that manufactures and sells hardware components for computer servers, while VMware offers software products and services that make servers operate more efficiently. Since this proposed acquisition raised competition concerns that required further examination, the CMA initiated a second-stage investigation. During the investigation, the CMA determined that Broadcom’s proposed

acquisition of VMware would not significantly reduce competition in the supply of server hardware components in the UK. Specifically, the CMA found that Broadcom's potential economic benefits from making the VMware software incompatible with competitors' products after the merger were less than or equal to the potential economic costs it might incur due to this incompatibility-related business loss. Also, information about new product adaptations only needs to be shared with VMware at a stage when it is too late to be of commercial benefit to Broadcom. Therefore, Broadcom is unlikely to harm competition through the means mentioned above. ([More](#))

跨国制药公司Teva和Glenmark支付共计2.55亿美元与DOJ达成和解

2023年8月21日，美国司法部（DOJ）发布公告，宣布跨国制药公司Teva（Teva Pharmaceuticals USA, Inc.）、Glenmark（Glenmark Pharmaceuticals Inc., USA）已经与其达成和解协议，两家公司承诺将剥离涉及不端行为的药品生产线，Teva将支付2.25亿美元的刑事罚款，并向人道主义组织捐赠价值5000万美元的药物，Glenmark将支付3000万美元的刑事罚款，共计罚款2.55亿美元。此次Teva将支付的2.24亿罚款在目前美国针对国内卡特尔行为的罚款处罚中金额最高。作为协议的一部分，Teva公司承认参与了三项影响基本药物的反垄断共谋，包括普伐他汀（pravastatin）、克霉唑（clotrimazole）和妥布霉素（tobramycin），而Glenmark则承认参与了操纵普伐他汀价格的共谋。反垄断部门及其执法伙伴已经就仿制药价格操纵问题起诉了7家仿制药公司，所有7家公司均与司法部达成和解，支付的罚款总额达6.81亿美元。（[查看更多](#)）

Multinational Pharmaceutical Companies Teva and Glenmark Agree to Pay Total of \$255 Million in Settlement with DOJ

On August 21, 2023, the U.S. Department of Justice (DOJ) issued an announcement, declaring that multinational pharmaceutical companies Teva (Teva Pharmaceuticals USA, Inc.) and Glenmark (Glenmark Pharmaceuticals Inc., USA) have reached a settlement agreement with them. Both companies have committed to divesting drug production lines associated with illicit activities. Teva will pay a criminal fine of \$225 million and donate medicines worth \$50 million to humanitarian organizations. Glenmark will pay a criminal fine of \$30 million, making the total fines amount to \$255 million. This \$225 million fine paid by Teva is the highest among fines imposed in the United States for domestic cartel behaviour. As part of the agreement, Teva admits involvement in three antitrust conspiracies affecting essential drugs, including pravastatin, clotrimazole, and tobramycin. Glenmark acknowledges its involvement in the price manipulation of pravastatin. The antitrust division and its enforcement partners have sued seven generic drug companies over allegations of manipulating generic drug prices. All seven companies have reached settlements with the DOJ, resulting in a total fine of \$681 million. ([More](#))

欧盟委员会审查高通收购以色列汽车芯片制造商Autotalks

2023年8月20日，据媒体报道，美国芯片制造商高通（Qualcomm Inc.）对以色列汽车芯片制造商Autotalks的拟议收购虽未达到规定的营业额门槛，但仍需获得欧盟反垄断监管机构的批准。欧盟委员会表示，此次交易将合并EEA（欧洲经济区）的两家主要V2X半导体供应商。V2X技术对于改善道路安全、交通管理和减少二氧化碳排放以及部署自动驾驶汽车都至关重要。包括

法国、爱尔兰、意大利、荷兰、波兰、西班牙和瑞典在内的15个欧盟国家要求委员会审查这项交易。（[查看更多](#)）

European Commission Reviews Qualcomm's Acquisition of Israeli Automotive Chip Manufacturer Autotalks

On August 20, 2023, according to media, American chip manufacturer Qualcomm (Qualcomm Inc.) is planning to acquire Israeli automotive chip manufacturer Autotalks. Although the proposed acquisition did not reach the required revenue threshold, it still needs approval from the European Union's antitrust regulatory authorities. The European Commission states that this transaction would merge two major V2X semiconductor suppliers in the European Economic Area (EEA). V2X technology is crucial for improving road safety, traffic management, reducing carbon dioxide emissions, and deploying autonomous vehicles. Fifteen EU countries, including France, Ireland, Italy, the Netherlands, Poland, Spain, and Sweden, have requested the Commission to review this transaction. ([More](#))

美国联邦法院驳回对NAR和Zillow的反垄断指控

2023年8月17日，据媒体报道，美国华盛顿州西区联邦地方法院做出了一项具有里程碑意义的裁决，驳回了REX房地产（REX Real Estate Exchange, Inc.）针对全国房地产经纪人协会（NAR）和Zillow（Zillow Group, Inc.）的所有反垄断指控。法院认为，没有证据支持两家公司和其他相关实体之间存在秘密协议，用以降级和隐藏Zillow网站和移动平台上的非MLS列表。目前，REX房地产仍在根据兰哈姆法案对起诉Zillow进行虚假广告行为，并根据华盛顿消费者保护法案（CPA）指控Zillow进行不公平或欺骗性贸易以及诽谤行为。（[查看更多](#)）

US Federal Court Dismisses Antitrust Charges against NAR and Zillow

On August 17, 2023, according to media reports, a significant milestone was reached when the U.S. District Court for the Western District of Washington issued a ruling. The court dismissed all antitrust charges brought by REX Real Estate Exchange, Inc. against the National Association of Realtors (NAR) and Zillow Group, Inc. The court found that there was no evidence to support the existence of secret agreements between these two companies and other related entities to demote and conceal non-MLS listings on the Zillow website and mobile platforms. Currently, REX Real Estate is continuing its lawsuit against Zillow for false advertising under the Lanham Act and claim for unfair or deceptive trade practices under Washington's Consumer Protection Act (CPA) and a claim alleging defamation. ([More](#))

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

财政部印发《企业数据资源相关会计处理暂行规定》

2023年8月21日，为规范企业数据资源相关会计处理，强化相关会计信息披露，财政部制定并印发了《企业数据资源相关会计处理暂行规定》（以下简称《暂行规定》），自2024年1月1日起施行。

《暂行规定》将有助于进一步推动和规范数据相关企业执行会计准则，准确反映数据相关业务和经济实质。在列示和披露要求方面，《暂行规定》要求企业应当根据重要性原则并结合实际情况增设报表子项目，通过表格方式细化披露，并规定企业可根据实际情况自愿披露数据资源（含未作为无形资产或存货确认的数据资源）的应用场景或业务模式、原始数据类型来源、加工维护和安全保护情况、涉及的重大交易事项、相关权利失效和受限等相关信息，从而引导企业主动加强数据资源相关信息披露。（[查看更多](#)）

Ministry of Finance Issues *Interim Provisions on Accounting Treatment of Enterprise Data Resources*

On 21 August 2023, the Ministry of Finance issued *Interim Provisions on Accounting for Enterprise Data Resources (the "Interim Provisions")* to unify the accounting treatment of enterprise data resources and enhance the disclosure of relevant accounting information. The *Interim Provisions* will come into effect on 1 January 2024.

Interim Provisions will help to further promote and regulate the implementation of accounting standards by data-related enterprises and accurately reflect data-related operations and economic substance. In terms of presentation and disclosure requirements, the *Interim Provisions* require that enterprises shall, based on the principle of materiality and in conjunction with the actual situation, set up additional disclosure sub-projects and refine the disclosure by means of tables. The *Interim Provisions* also provide that enterprises may voluntarily disclose, based on the actual situation, the application scenarios or business modes of data resources (including data resources not recognized as intangible assets or inventory), the sources of the original data types, data processing, maintenance and security protection, the information on significant transactions, invalidation and restriction of related rights, etc., thereby encouraging companies to take the initiative to strengthen the disclosure of information related to data resources. ([More](#))

国务院办公厅印发《政务服务电子文件归档和电子档案管理办法》

2023年8月22日，国务院办公厅发布关于印发《政务服务电子文件归档和电子档案管理办法》（以下简称《办法》）的通知，以深入贯彻落实党中央、国务院关于加强数字政府建设、深化政务服务的决策部署。

《办法》适用于政务服务机构开展的政务服务电子文件归档和电子档案管理工作。行政处罚、行政检查等电子文件归档和电子档案管理工作可参照执行。政务服务电子文件，是指政务服务机构在履行职责过程中通过政务服务办理系统形成、办理、传输和存储的数字格式的信息记录，由内容、结构、背景等组成。政务服务电子档案，是指具有凭证、查考价值，对国家以及社会具有保存价值，并归档保存的政务服务电子文件。《办法》要求，政务服务电子文件归档和电子档案管理工作应当遵循统一规划、全程管理、规范标准、高效利用、安全可控的原则。

《办法》指出，来源可靠、程序规范、要素合规的政务服务电子文件，可以以电子形式归档并向档案部门移交，除法律、行政法规另有规定外，不再以纸质形式归档和移交。电子档案与传统载体档案具有同等效力，可以以电子形式作为凭证使用。各级政务服务机构应当在符合国家

网络安全、数据安全等有关法律法规要求的前提下，依托政务服务平台积极推进本单位政务服务电子文件和电子档案共享利用。（[查看更多](#)）

General Office of the State Council Issues *Measures for the Management of Electronic Documents Archiving and Electronic Records for Government Services*

On 22 August 2023, the General Office of the State Council issued the *Measures for the Management of Electronic Documents Archiving and Electronic Records for Government Services* (the “Measures”), in order to thoroughly implement the policy of the Central Committee of the Party and the State Council on strengthening the construction of digital government and deepening the decision-making deployment of government services.

The *Measures* apply to the management of electronic documents archiving and electronic records for government services performed by government service agencies. Management of electronic documents archiving and electronic records with respect to administrative penalties and administrative inspections can be implemented with reference to the Measures. An electronic document of government services is a record of information in digital format that is formed, processed, transmitted and stored through a government service processing system by a government service agency in the course of performing its duties, and consists of content, structure and context. A government electronic record is a government electronic document that has value as credentials, value for auditing, preservation value to the state and society, and is therefore archived and preserved. The *Measures* require that the archiving of electronic documents and the management of electronic records of government services shall be guided by the principles of unified planning, whole-process management, normative standards, efficient use, security and control. The *Measures* noted that electronic documents of government services with reliable sources, standard procedures and compliant elements could be archived in electronic form and transferred to the archives, and that they would no longer have to be archived and transferred in paper form, unless expressly provided for by applicable laws and administrative regulations. Electronic records have the same validity as records on traditional carriers and can be used as evidence in electronic form. Government service agencies at all levels shall rely on the government service platform to actively promote the sharing and use of electronic documents and electronic records, on the premise of complying with the requirements of relevant laws and regulations on network and data security. ([More](#))

信安标委发布国家标准《信息安全技术 数据安全风险评估方法》征求意见稿

2023年8月21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 数据安全风险评估方法》征求意见稿（以下简称《评估方法（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20日。

《评估方法（征求意见稿）》适用于指导数据处理者、第三方评估机构开展数据安全风险评估，也可供有关主管监管部门实施数据安全检查评估时参考。《评估方法（征求意见稿）》提供了数据安全风险评估的基本概念、要素关系、分析原理、实施流程、评估内容、分析与评价方法等，明确了数据安全风险评估各阶段的实施要点和工作方法。（[查看更多](#)）

Information Security Technology - Risk Assessment Methods for Data Security (Draft for Comments) Issued by National Information Security Standardization Technical Committee

On 21 August 2023, the National Information Security Standardization Technical Committee issued national standard *Information Security Technology - Risk Assessment Method for Data Security (the Draft for Comments)* (the “Draft”), which is open for public comments until 20 October 2023.

The *Draft* applies to guiding data processors and third-party assessment organizations in performing data security risk assessments and may also be used as a reference by relevant regulatory authorities when performing data security inspections and assessments. The *Draft* provides the basic concepts, elemental relationships, analytical principles, implementation processes, assessment contents, analysis and evaluation methods, etc., of data security risk assessment, and specifies the implementation points and methods for each stage of data security risk assessment. ([More](#))

国家市场监督管理总局就《市场监督管理行政执法电子数据取证暂行规定》公开征求意见

2023年8月22日，国家市场监督管理总局起草了《市场监督管理行政执法电子数据取证暂行规定（征求意见稿）》（以下简称《暂行规定（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22日。

《暂行规定（征求意见稿）》适用于市场监督管理部门及其执法人员在行政执法过程中对电子数据的收集提取、查封扣押、检查分析、证据存储，以解决市场监管行政执法中电子数据取证难题，为市场监管行政执法电子数据取证工作提供清晰指引和有效方案。（[查看更多](#)）

Interim Regulations on Taking of Electronic Data Evidence for Market Supervision and Administration Enforcement (Draft for Comments) Issued by State Administration of Market Regulation Open for Public Comments

On 22 August 2023, the State Administration of Market Regulation (the “SAMR”) issued the *Interim Regulations on Taking of Electronic Data Evidence for Market Supervision and Administration Enforcement (Draft for Comments)* (the “Draft”), which is open for public comments until 22 September 2023.

The *Draft* applies to the collection and extraction of electronic data, seizure, inspection and analysis, and storage of evidence by the market supervision and administration department and its law enforcement officials. The *Draft* is aimed at solving the problem of electronic data evidence in the administrative enforcement of market regulation, and provides clear guidelines and effective solutions for it. ([More](#))

信安标委印发《网络安全标准实践指南——生成式人工智能服务内容标识方法》

2023年8月25日，为贯彻落实《生成式人工智能服务管理暂行办法》中对生成内容进行标识的

要求，指导生成式人工智能服务提供者等有关单位做好内容标识工作，全国信息安全标准化技术委员会秘书处发布了《网络安全标准实践指南——生成式人工智能服务内容标识方法》（以下简称《实践指南》）。

《实践指南》围绕文本、图片、音频、视频四类生成内容给出了内容标识方法，可用于指导生成式人工智能服务提供者提高安全管理水平。《实践指南》指出，在人工智能生成内容的显示区域中，应在显示区域下方或使用者输入信息区域下方持续显示提示文字，或在显示区域的背景均匀添加包含提示文字的显式水印标识。提示文字应至少包含“由人工智能生成”或“由 AI 生成”等信息。由人工智能生成图片、视频时，应采用在画面中添加提示文字的方式进行标识。

[\(查看更多\)](#)

Practice Guide to Cybersecurity Standards - Generated Artificial Intelligence Service Content Identification Methods Issued by National Information Security Standardization Technical Committee

On 25 August 2023, the National Information Security Standardization Technical Committee issued the *Practice Guide to Cybersecurity Standards - Generated Artificial Intelligence Service Content Identification Methods (the "Practice Guide")*, to comply with the *Interim Measures for the Management of Generated Artificial Intelligence Services*, instruct relevant units, including generative artificial intelligence service providers, and to label content appropriately.

The *Practice Guide* provides a content identification approach around four types of generated content - text, picture, audio, and video - that can be used to guide generative AI service providers in improving security management. The *Practice Guide* notes that in the display area of AI-generated content, prompt text should be displayed continuously below the display area or below the user input area, or an explicit watermark identifier containing the prompt text should be added evenly in the background of the display area. Tip text should contain at least information such as "generated by artificial intelligence" or "generated by AI". Images and videos generated by artificial intelligence should be identified by adding prompt text to the screen. [\(More\)](#)

北京市卫健委就《北京市互联网诊疗监管实施办法（试行）》公开征求意见

2023年8月17日，为规范互联网诊疗活动，加强互联网诊疗监管，北京市卫生健康委起草了《北京市互联网诊疗监管实施办法（试行）》（征求意见稿）（以下简称《办法（征求意见稿）》），向社会公开征求意见，意见反馈截止时间为9月16日。

在数据安全方面，《办法（征求意见稿）》规定医疗机构应建立网络安全、数据安全、个人信息保护、隐私保护等制度，并与相关合作方签订协议，明确各方权责关系。医疗机构发生患者个人信息、医疗数据泄露等网络安全事件时，应当及时向相关主管部门报告，并采取有效应对措施。 [\(查看更多\)](#)

Measures for the Supervision and Implementation of Internet Diagnosis and Treatment in Beijing (for Trial Implementation) (Draft for Comments) Issued by Beijing Health Commission

On 17 August 2023, in order to regulate and strengthen the supervision of internet diagnosis and treatment, the Beijing Health Commission issued the *Measures for the Supervision and Implementation of Internet Diagnosis and Treatment in Beijing (for Trial Implementation) (Draft for Comments) (the “Draft”)*, which is open for public comments until 16 September 2023.

In terms of data security, the *Draft* stipulate that medical institutions shall establish systems for network security, data security, personal information protection, privacy protection, etc., and enter into agreements with relevant partners to clarify the rights and responsibilities of each party. In the event of a breach of a patient’s personal information or medical data and other cybersecurity incidents, the affected medical institution shall promptly report to the relevant competent authorities and take effective countermeasures. ([More](#))

欧洲数据保护监管机构发布关于支付服务法规和指令提案的意见

2023年8月22日，欧洲数据保护监管机构（EDPS）发布关于内部市场支付服务法规提案（PSR提案）以及支付服务和电子货币服务指令提案（PSD3提案）（统称为提案）的第39/2023号意见。

EDPS正面肯定PSR提案关于要求服务账户的支付服务提供商（ASPSP）为支付服务用户配备仪表板来监督和控制用户授权的规定。为了进一步降低支付服务提供商传播未经授权的个人数据的风险，EDPS建议：

- 在仪表板中纳入对用户已授权的特定支付服务的引用；
- 将访问请求限制为提供特定服务所必需的范围；
- 提供有关访问请求的法律依据的明确信息；
- 允许支付服务提供商验证支付服务用户授予的权限或在PSR提案中实施适当的替代保护措施。

([查看更多](#))

EDPS Issues Opinion on Proposed Regulations and Directive for Payment Services

On 22 August, 2023, the European Data Protection Supervisor (EDPS) published its Opinion 39/2023 regarding the Proposal for a Regulation on payment services within the internal market (the PSR Proposal) and the Proposal for a Directive on payment services and electronic money services (the PSD3 Proposal) (together the Proposals).

The EDPS positively acknowledged the PSR Proposal’s provision mandating account servicing payment service providers (ASPSPs) to equip users with a dashboard to oversee and control granted per-

missions. To further mitigate risks of unsanctioned personal data dissemination by ASPSPs, the EDPS advised:

- incorporating references in the dashboard to particular payment services that the user has committed;
- restricting access requests to what is needed to provide the specific service;
- providing clear information regarding the legal basis for access requests; and
- allowing ASPSPs to verify permissions given by the payment service user or to implement suitable alternative protective measures in the PSR Proposal.

[\(More\)](#)

知识产权 Intellectual Property

最高院就西门子诉SIMBMC商标侵权及不正当竞争案作出判决，判赔1亿元

近日，最高院就上诉人宁波奇帅电器有限公司（以下简称“奇帅公司”）、龚某其、王某与被上诉人西门子股份公司（以下简称“西门子公司”）、西门子（中国）有限公司（以下简称“西门子中国公司”）及一审被告昆山新维创电器有限公司（以下简称“新维创公司”）、武某志侵害商标权及不正当竞争纠纷一案作出判决：驳回上诉，维持原判。此前，该案一审判决：新维创公司、奇帅公司立即停止侵害涉案商标专用权及不正当竞争行为，奇帅公司、龚某其、王某连带赔偿西门子公司、西门子中国公司经济损失1亿元及合理开支163000元；新维创公司、武某志就上述款项在50万元范围内承担连带赔偿责任。

最高院认为，奇帅公司在被诉侵权产品机身上使用“上海西门子电器有限公司”的行为侵害了西门子公司及西门子中国公司的注册商标专用权。奇帅公司在被诉侵权产品的外包装及宣传活动中使用“上海西门子电器有限公司”的企业名称，由于该企业名称中的字号“西门子”与西门子公司、西门子中国公司的字号及其已注册的中文商标“西门子”均一致，容易使相关公众将被诉侵权产品误认为系西门子公司或西门子中国公司的产品，或误认为与西门子公司或西门子中国公司存在关联关系，故其行为属于擅自使用他人有一定影响的企业名称及将他人的注册商标作为企业名称中的字号使用的行为，符合2017年修订的反不正当竞争法第六条第二项、第四项规定的情形，构成不正当竞争。

关于判赔额，法院认为，综合考虑西门子公司及西门子中国公司企业名称具有较高的知名度，奇帅公司具有明显的主观恶意，且侵权规模大、侵权持续时间长，并结合洗衣机产品的利润率以及西门子公司、西门子中国公司为维权支出的合理费用等因素，本案应在法定最高限额以上确定赔偿额。

来源：最高人民法院

The Supreme People's Court Made a Judgement on Trademark Infringement and Unfair Competition Dispute Between Siemens and SIMBMC, Awarding Damage of RMB 100 million

Recently, the Supreme People's Court issued a judgement of trademark infringement and unfair competition between Qi Shuai Company and other appellants (Defendants) versus Siemens Company and other plaintiff (Plaintiff). The court dismissed the appeal and upheld the original judgement. The court demanded that Defendants shall immediately cease infringement, with damage of RMB 100 million.

The Supreme People's Court held that, Defendant's use of 'Shanghai Siemens Electric Appliance Co., Ltd' on the accused products infringed on the trademark rights of Plaintiff. Defendants used the trade name 'Shanghai Siemens Electric Appliance Co., Ltd' on the packaging promotion activities of the accused products. Since the term '西门子' (Simens) in that trade name was identical to the Chinese trademark '西门子' (Simens) and the trade name of Plaintiff, this might mislead relevant public into believing that the accused products were products of Siemens and Siemens China Company. Therefore, these acts fell under the scope of the unauthorized use of other's trade names with certain influence and the use of others registered trademarks as part of the trade name in accordance with Anti-Unfair Competition Law in 2017, which constituted unfair competition.

Regarding the amount of damage, the court considered the high reputation of Plaintiffs' tradename, the malice of Defendants, the large scale and long duration of the infringement, and factors such as the profit margin of the washing machine products and reasonable expenses. Therefore, the damage amount shall be determined above the statutory limit.

Source: Supreme People's Court

最高院再审：不提倡通过“维权”赚取利润

近日，株式会社纳益其尔(NATURE REPUBLIC CO.,LTD.)（以下简称“纳益其尔”）与天津众妆供应链管理有限公司（以下简称“众妆公司”）、邯郸市复兴区华洋化妆品专营店（以下简称“华洋化妆品专营店”）侵害商标权纠纷案再审判决书公开，最高院再审改判众妆公司及华洋化妆品专营店立即停侵权行为，即停止销售侵害株纳益其尔注册商标专用权的产品，并销毁库存侵权产品，驳回株式会社纳益其尔的其他诉讼请求。

最高院再审认为，众妆公司提供的证据显示其交易链条完整，交易渠道合法，交易方式符合一般交易习惯，能够证明众妆公司系合法取得被诉侵权商品，且其对被诉侵权商品的进货尽到了与其经营规模、专业程度等相适应的合理注意义务，从而推定众妆公司实际不知道也不应当知道所销售的商品为侵权商品，其主观上不存在过错，其合法来源抗辩成立。

同时再审法院明确，民事主体作为知识产权的权利人，有权合法、合理维护其自身权益；但知识产权保护的目的是倡导、鼓励使用具有创造性的智力成果，并将无形的知识财富转化为有形的物质财富，从而促进生产力的发展；如果将知识产权“维权”作为赚取利润的手段和工具，

将“诉讼”作为牟利的途径，不仅不符合知识产权保护的宗旨，也不利于维护市场交易秩序的稳定，同时亦在一定程度上浪费了司法资源，此种行为不应予以鼓励和提倡。

来源：最高人民法院

Supreme People's Court: Discouraging Profiting through Enforcement

Recently, the Supreme People's Court issued a retrial judgement of trademark infringement dispute between NATURE REPUBLIC CO., LTD.(Plaintiff) versus Zhongzhuang Limited and Huyang Cosmetics Store (Defendants). The retrial judgement stated that the Defendants shall immediately cease infringement, and destroy the accused products, but rejected other claims of the plaintiff, including damages.

The court held that the evidence provided by Defendants proved that its transaction chain was complete, the transaction channel was legal, and the transaction methods were in line with general business practices. The evidence proved that Defendants legally obtained the accused products and fulfilled duty of care in line with its business scale and professional level. Therefore, it was presumed that Defendants did not know the products were infringing products, which constituted legal source defense.

Meanwhile, the court clarifies that as the owners of intellectual property, they have the right to protect their interests. However, the purpose of intellectual property protection is to encourage the use of creative intellectual achievements, and transform intangible knowledge into tangible material wealth, so as to promote the development of productivity. If enforcement of intellectual property is used as a means for profits, it not only goes against the purpose of intellectual property protection, but also hinders the stability of market transaction order. Moreover, to some extent, it wastes judicial resources, which shall not be encouraged or advocated.

Source: Supreme People's Court

商品销售页面保留买家评论，构成商标性使用

广东省东莞市中级人民法院对上海丛榕贸易有限公司（以下简称“丛榕公司”）与欧阳兵兵、浙江淘宝网络有限公司侵害商标权及不正当竞争纠纷案的作出二审判决，判决驳回上诉，维持原判。此前，一审判决欧阳兵兵停止侵犯上海丛榕贸易有限公司注册商标专用权的行为及不正当竞争行为，赔偿经济损失及合理费用150000元，并赔礼道歉。

法院认为，欧阳兵兵在淘宝平台开设店铺，所销售的睡衣、睡袍的商品标题均包含“silkymiracle”字样，睡衣吊牌、衣领标签均印有“SILKYMIRCCLE”字样，属于商标性使用。被控侵权睡衣、睡袍与丛榕公司持有的第36434304号注册商标核定使用商品项目相同，且标识构成近似，此外，在网络购物中，买家的评论对消费者选择商品起到重要的参考作用，欧阳兵兵在收到丛榕公司投诉后，在明知销售的商品涉嫌侵权并已删除了商品名称上的“silkymiracle”字样的情况下，仍继续保留相关的买家评论，而没有采取措施删除相关评论或下架该商品链接，即便该评论并非由欧阳兵兵直接上传，但该评论图片中带有“SILKYMIRCCLE”或“SILKYMIRACLE”商标标识，欧阳兵兵在商品销售页面中保留相关买

家评论的行为，实际仍属于一种将案涉标识用于商业活动的使用行为，构成商标性使用。其行为已侵害丛榕公司上述注册商标专用权。

来源：广东省东莞中级人民法院

Dongguan Intermediate People's Court: Retaining Buyer Comments on Product Sales Pages Constitutes Trademark Use

Dongguan Intermediate People's Court issued a second-instance judgement of trademark infringement and unfair competition dispute between Congrong Limited (Plaintiff) versus Ouyang Bingbing (Defendant 1) and Taobao Limited (Defendant 2), dismissing the appeal and upholding the original judgement, which ordered that Defendant 1 shall cease infringement on the trademark of the plaintiff and unfair competition, and awarded damages of RMB 150,000.

The court held that Defendant 1 opened a store on Taobao platform, and the product titles of the pajamas and robes sold by him contained 'silkymiracle'. The hangtags and collar labels of the pajamas were printed with the term 'SILKYMIRCCLE', which constituted trademark use. The accused products are the designated goods of the alleged trademark, and the logo is similar to the alleged trademark. In addition, in online shopping, the comments of the buyers play an important role in consumers' product selection. Despite knowing that the sold products were suspected of infringement and having removed the term 'silkymiracle' from the product titles, after receiving the complaint from the plaintiff, Defendant 1 still retained the relevant buyer comments without taking measures to delete them or take down the product links. Even if the comments were not directly uploaded by Defendant 1, the images of the comments contained the 'SILKYMIRCCLE' or 'SILKYMIRACLE' trademarks. Defendant 1 retained buyer comments on the product sales page, which constituted the use of the disputed trademarks in commercial activities and trademark use. Such acts infringed on the plaintiff's aforementioned rights to trademark.

Source: Dongguan Intermediate People's Court, Guangdong,

最高院再审改判，集体商标注册人诉特定商家虚假宣传不正当竞争胜诉

近日，最高人民法院对唐山市陶瓷协会与长沙顺淘电子商务有限公司（以下简称“长沙顺淘公司”）不正当竞争纠纷作出再审判决，改判李峰，张金连带赔偿唐山市陶瓷协会经济损失及合理开支5万元。

最高院认为，唐山市陶瓷协会系地理标志集体商标“唐山骨质瓷”的注册人，集体商标的注册人负有对该商标进行有效管理和控制的职责。唐山市陶瓷协会在宣传推广唐山骨质瓷时系从事商品活动的经营者。唐山市陶瓷协会在宣传推广唐山骨质瓷、维护骨质瓷行业竞争秩序和唐山骨质瓷声誉的过程中，与长沙顺淘公司具有竞争关系。长沙顺淘公司的被诉宣传行为，可能对唐山市陶瓷协会的合法权益造成损害。唐山市陶瓷协会与本案具有直接利害关系，具备适格的原告主体资格。虽然长沙顺淘公司的宣传并未提及“唐山”这一特定地区或与“唐山骨质瓷”的联系，唐山市陶瓷协会也未以侵害商标权为由提起诉讼，但唐山地区是我国骨质瓷的主要产地，“唐山骨质瓷”是地理标志集体商标，“新骨瓷”宣传会降低唐山骨质瓷的美誉度，甚至

为唐山骨质瓷带来负面评价，使唐山市陶瓷协会作为同业经营者在陶瓷行业的竞争优势减弱或丧失。涉案行为损害了唐山市陶瓷协会的合法权益，构成虚假宣传不正当竞争。

来源：最高人民法院

Supreme People's Court: Retrial Judgement on Collective Trademark Registrant Suing a Seller for False Advertising and Unfair Competition

Recently, Supreme People's Court issued a retrial judgement of unfair competition between Ceramic Association of the Tangshan versus Taoshun Limited. The retrial judgement revised the previous judgement, and awarded damages of RMB 50,000.

The court held that the plaintiff is the registrant of geographic indications collective trademark ‘唐山骨质瓷’(Tangshan Bone China), and has responsibility to effectively manage and control the use of the trademark. In this process of promoting and maintaining the reputation of ‘唐山骨质瓷’(Tangshan Bone China), the plaintiff has a competitive relationship with the defendant. The promotion activities of the defendant, which were the subject of the lawsuit, may have infringed on the legitimate rights and interests of the plaintiff. Ceramic Association of the Tangshan has a direct interest in this case, and is eligible to be the plaintiff. Though the promotion of the defendant did not specifically mention the connection between Tangshan and ‘唐山骨质瓷’ (Tangshan Bone China), and the plaintiff did not file a lawsuit on trademark infringement, since Tangshan is the major production area of bone china in China and ‘唐山骨质瓷’ (Tangshan Bone China) is geographic indications collective trademark, the promotion of ‘新骨瓷’(New Bone China) by the defendant would lower the reputation of Tangshan Bone China and even bring negative comments, weakening or losing the competitive advantage of the defendant as an operator in the ceramic industry. The acts infringed on the legitimate rights and interests of the plaintiff and constituted false advertising and unfair competition.

Source: Supreme People's Court

“好时”构成驰名商标，“好时之吻”等注册满五年商标禁止使用并判赔300万元

近日，山东省高级人民法院对好时公司（THE HERSHEY COMPANY）与皇家喜铺（福建）文化传播有限公司（以下简称“皇家喜铺公司”）、福州赫尔希食品有限公司（以下简称“赫尔希公司”）、安徽省帝业食品科技有限公司（以下简称“帝业公司”）、青岛优同连锁商业有限公司侵害商标权及不正当竞争纠纷作出二审判决，判决驳回上诉，维持原判，此前一审判决皇家喜铺公司、赫尔希公司停止侵权，皇家喜铺公司、赫尔希公司赔偿好时公司经济损失及合理费用300万元，帝业公司对其中的50万元承担连带责任。

法院认为，好时公司的第159261号“KISSES”商标、第1239102号“好时”商标应当被认定为驰名商标，且该商标在2013年8月皇家喜铺公司最早申请注册“KISSES”“好时之吻”商标时已经驰名。皇家喜铺公司作为与好时公司同业经营者，理应知晓好时公司商标的知名度，在申请注册

商标时理应遵循诚实信用原则，避免与他人商标相同或近似，从而更好的区分商品或服务的来源，但皇家喜铺公司申请注册的商标复制、抄袭好时公司商标的行为极为明显，明显具有攀附好时公司商标的知名度和商誉牟取非法利益的意图，可以认定皇家喜铺公司申请注册涉案商标具有主观恶意。法院还认为，虽然好时公司提起本案诉讼时间距皇家喜铺公司的商标核准注册时间已超过5年，但皇家喜铺公司涉案商标为恶意注册，因此好时公司主张权利并不受五年的时间限制，最终判决皇家喜铺公司、赫尔希公司等停止侵权及承担相应的赔偿责任。

来源：山东省高级人民法院

‘Kisses’ and “Hershey” were Recognized as Well-known Trademark, and Defendants were affirmed Infringement due to Malice even after Registration of 5 Years with damages of RMB 3 Million

Recently, Shandong High People’s Court issued the second-instance judgment of trademark infringement and unfair competition between THE HERSHEY COMPANY (Plaintiff) versus Huangjia Xipu Limited (Defendant 1), He Erxi Limited (Defendant 2), and Diye Limited (Defendant 3), dismissing the appeal, and upholding the original judgement, which ordered that Defendant 1 and Defendant 2 shall cease infringement, with damages of RMB 3 million.

The court held that the trademarks ‘KISSES’ and ‘好时’ (Hershey) of the plaintiff are well-known trademarks, by the time Defendant 1 first applied to register trademarks ‘KISSES’ and ‘好时之吻’ (Hershey Kisses) in August 2013. As a trade operator in the same industry as the plaintiff, the Defendant 1 should have been aware of the fame of the plaintiff’s trademarks. When applying to register trademarks, Defendant 1 should have followed the principals of good faith, and avoided using trademarks that were identical or similar to those of others so as to better differentiate the source of products and service. However, the act of Defendant copying and imitating the trademarks of the plaintiff was evident, which clearly demonstrated the intention to exploit the fame and reputation of the plaintiff for illegal gain. This can be considered malicious. The court also held that though the time between the plaintiff filing the present lawsuit and Defendant 1’s trademark registration approval had exceeded five years, the disputed trademarks were maliciously registered by Defendant 1. Therefore, the plaintiff’s claims were not subject to the five-year time limitation. As a result, the final judgement decided that the defendants shall cease infringement and bear corresponding liability for damage.

Source: Shandong High People’s Court

美国法官最新裁定：纯AI生成的艺术作品不受版权保护

近日，一名联邦法官裁定，完全由人工智能生成的艺术作品不受版权保护，因为“人类作者身份是有效版权主张的重要组成部分”。

美国版权局此前拒绝了原告斯蒂芬·塞勒的版权申请，因为该作品缺乏人类作者的身份，原告在哥伦比亚特区的美国地方法院对这一决定提出了质疑。法官Beryl Howell近日发布的备忘录意见中指出，原告和版权局都在动议中提出了即决判决，“提出了一个完全由人工系统产生的

作品是否有资格获得版权的唯一问题”，最终法官驳回了原告要求即决判决的动议，批准了版权局的动议，并下令结案。

来源：arstechnica.com

US judge: Art Created Solely by Artificial Intelligence Cannot be Copyrighted

Art generated entirely by artificial intelligence cannot be copyrighted because "human authorship is an essential part of a valid copyright claim," a federal judge ruled on 18 August 2023.

The US Copyright Office previously rejected plaintiff Stephen Thaler's application for a copyright because the work lacked human authorship, and he challenged the decision in US District Court for the District of Columbia. Thaler and the Copyright Office both moved for summary judgment in motions that "present the sole issue of whether a work generated entirely by an artificial system absent human involvement should be eligible for copyright," Judge Beryl Howell's memorandum opinion issued Friday noted.

Source: [Ars Technica](https://arstechnica.com)

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