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## 立方竞争法周报 Weekly Competition Law News

### 2022年中国公平竞争政策宣传周已闭幕

2022年11月14日至18日，为加强反垄断和反不正当竞争，国家市场监督管理总局（“市场监管总局”）、国务院反垄断委员会和有关部门共同开展首届中国公平竞争政策宣传周活动。活动期间，将举办第九届中国公平竞争政策国际论坛、金砖国家反垄断政策协调委员会视频会议、企业家圆桌会议和国务院反垄断委员会专家咨询组公平竞争政策研讨会。（[查看更多](#)）

### 2022 China Fair Competition Policy Promotion Week Has Been Closed

From November 14 to 18, 2022, in order to strengthen anti-monopoly and anti-unfair competition, the State Administration for Market Regulation (“SAMR”), the Anti-monopoly Commission of the State Council and relevant departments will jointly launch the first China Fair Competition Policy Promotion Week campaign. During the event, the 9th China Fair Competition Policy International Forum, the BRICS Anti-Monopoly Policy Coordination Committee video conference, the Entrepreneur Roundtable Meeting and the Fair Competition Policy Seminar of the Expert Advisory Group of the Anti-Monopoly Commission of the State Council will be held. ([More](#))

### 重庆市市监局开展行政垄断专项执法活动

2022年11月8日，重庆市市场监督管理局（“重庆市市监局”）发布公告，2022年11月以来，为推动政府和市场更好结合，重庆市市监局开展针对行政性垄断的专项执法活动，共查办5件行政垄断案件，着力打破地方保护和市场分割，有力推动经济社会高质量发展。（[查看更多](#)）

### Chongqing AMR Launches Special Law Enforcement Campaign Against Administrative Monopoly

On November 8, 2022, the Chongqing Municipal Administration for Market Regulation (“Chongqing AMR”) issued an announcement that since November 2022, in order to promote better cooperation between the government and the market, the Chongqing AMR has carried out special law enforcement campaign against administrative monopolies. A total of 5 administrative monopoly cases were investigated and handled, focusing on breaking local protection and market segmentation, and vigorously promoting high-quality economic and social development. ([More](#))

### 山西省市监局介绍2022年反垄断工作情况

2022年11月8日，山西省市场监督管理局（“山西省市监局”）举行新闻发布会，在会上，反垄断和反不正当竞争处负责人介绍了2022年山西省市监局的反垄断工作情况。2022年，山西省市监局立案调查滥用市场支配地位案件1起，垄断协议案件2起，案件涉及燃气、机动车检测、建设监理等领域，目前正推进6件市场监管总局交办案件的线索核查。山西省市监局在全省范围内

开展制止行政垄断专项活动，积极落实公平竞争审查制度，举办山西省反垄断培训班。（[查看更多](#)）

## Shanxi AMR Introduces 2022 Anti-Monopoly Work

On November 8, 2022, the Shanxi Provincial Administration for Market Regulation (“Shanxi AMR”) held a press conference, at which the leader of the Anti-Monopoly and Anti-Unfair Competition Division introduced the 2022 working situation of Shanxi AMR. In 2022, Shanxi AMR filed and investigated a case of abuse of market dominant position, and 2 cases of monopoly agreement, involving gas, motor vehicle inspection, construction supervision and other fields. Currently, it is advancing the verification of clues of 6 cases assigned by the SAMR. Shanxi AMR launched a special activity to stop administrative monopoly throughout the province, actively implemented the fair competition review system, and held Shanxi anti-monopoly training courses. ([More](#))

## 德国拟扩大对亚马逊的反垄断调查范围

2022年11月14日，据媒体报道，德国联邦卡特尔局称其将依据新规扩大对美国电子商务巨头亚马逊（Amazon）的两项调查，在新规定下，德国联邦卡特尔局可以在早期阶段就禁止任何反竞争行为。德国联邦卡特尔局主席Andreas Mundt在声明中表示，“我们正在两个调查程序中审查亚马逊是否以及如何阻碍了活跃于亚马逊平台市场、并与亚马逊自身的零售业务竞争的卖家的商业机会”。（[查看更多](#)）

## Germany Widens Amazon Investigation Under New Regulations

On November 14, 2022, according to news report, Germany’s antitrust watchdog said it had expanded two probes into US e-commerce giant Amazon making use of new regulation allowing it to prohibit any anti-competitive behavior at an earlier stage. “We are examining in both proceedings whether and how Amazon impedes the business opportunities of sellers that are active on the Amazon marketplace and compete with Amazon’s own retail business,” Federal Cartel Office President Andreas Mundt said in a statement. ([More](#))

## 欧盟委员会就市场界定指南修订草案公开征求意见

2022年11月8日，欧盟委员会发布公告，邀请各利益相关方就市场界定指南（Market Definition Notion）修订草案发表意见。修订草案主要在以下关键的市场界定问题中提出了新的指导意见：解释了市场界定的原则；更加强调如创新、产品和服务的质量等非价格因素；澄清了市场界定的前瞻性应用，尤其是在预期将经历结构性变化的市场中；对数字市场中的市场界定提供了新指导；提出了创新密集型市场的界定原则；对地域市场界定提供了更多指导；澄清了定量方法的应用等。欧盟委员会将根据收集到的意见对修订草案进行修改，预期将在2023年第三季度发布新版市场界定指南。（[查看更多](#)）

## European Commission Seeks Feedback on Draft Revised Market Definition Notice

On November 8, 2022, the European Commission published an announcement, inviting all interested parties to comment on the draft revised *Market Definition Notice*. The draft revised *Market Definition Notice* provides new or additional guidance on various key market definition issues: explanations on the principles of market definition; greater emphasis on non-price elements such as innovation and quality of products and services; clarifications regarding the forward-looking application of market definition, especially in markets that are expected to undergo structural transitions; new guidance in relation to market definition in digital markets; new principles on innovation-intensive markets; more guidance on geographic market definition; and clarifications as regards the quantitative techniques etc. The Commission will review and finalize the draft with a view to having a new *Market Definition Notice* in place in Q3 2023. ([More](#))

## 欧盟委员会就微软收购动视暴雪展开调查

2022年11月8日，欧盟委员会发布公告，称已就微软（Microsoft）收购动视暴雪（Activision Blizzard）展开调查。微软和动视暴雪都是个人电脑、游戏机和移动设备的游戏开发商和发行商，以及个人电脑游戏的分销商。2022年9月30日，交易方将该交易告知委员会。委员会初步调查显示，该交易可能会导致游戏主机和个人电脑视频游戏分销市场中竞争严重减少。委员会尤其担心通过收购动视暴雪，微软可能会封锁对动视暴雪的游戏主机和个人电脑视频游戏的访问，特别是一些具有高知名度的非常成功的游戏。（[查看更多](#)）

## Mergers: Commission Opens In-Depth Investigation into the Proposed Acquisition of Activision Blizzard by Microsoft

On November 8, 2022, the European Commission issued a statement, stating that it had opened an in-depth investigation in to the proposed acquisition of Activision Blizzard by Microsoft. Microsoft and Activision Blizzard are both developers and publishers of games for PCs, game consoles and mobile devices as well as distributors of games for PCs. The proposed transaction was notified to the Commission on 30 September, 2022. The Commission's preliminary investigation shows that the transaction may significantly reduce competition on the markets for the distribution of console and PC video games. In particular, the Commission is concerned that, by acquiring Activision Blizzard, Microsoft may foreclose access to Activision Blizzard's console and PC video games, especially to high-profile and highly successful games. ([More](#))

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

### 信安标委就《网络安全标准实践指南—个人信息跨境处理活动安全认证规范V2.0（征求意见稿）》公开征求意见

2022年11月8日，全国信息安全标准化技术委员会（以下简称“信安标委”）秘书处组织编制了《网络安全标准实践指南—个人信息跨境处理活动安全认证规范V2.0（征求意见稿）》（以

下简称《指南》)。《指南》在2022年6月发布的版本上有所变化,适用情形调整为“个人信息处理者开展个人信息跨境处理活动”,并就认证主体、跨境处理活动双方签署的具有法律约束力的协议、个人信息保护机构职责、个人信息主体权利等方面均进行了明确和细化。《指南》为认证机构对个人信息处理者的个人信息跨境处理活动开展认证提供依据,也为个人信息处理者规范个人信息跨境处理活动提供参考。( [查看更多](#) )

### ***NISSTC Seeks Public Comments on the Practice Guidelines on Cyber Security Standards - Specification for Security Certification of Cross border Processing of Personal Information V2.0***

On 8 November 2022, the National Information Security Standardization Technical Committee (the "NISSTC") published *the Practice Guidelines on Cyber Security Standards - Specification for Security Certification of Cross border Processing of Personal Information V2.0 (Draft for Comments) (the "Guidelines")*. Compared with The version issued in June 2022, the Guidelines has changed, and the applicable situation is adjusted to "personal information processors carry out cross-border processing activities of personal information". And the Guidelines clarify and refine the certification subject, the legally binding agreement signed by both parties to cross-border processing activities, the responsibilities of personal information protection agencies, the rights of personal information subject, etc. The Guidelines provide the basis for certification authorities to certify personal information processors for cross-border processing of personal information, as well as reference for personal information processors to regulate cross-border processing of personal information. ([More](#))

### **信安标委就国标《信息安全技术 网络安全服务能力要求》征求意见**

2022年11月9日,信安标委就国家标准《信息安全技术 网络安全服务能力要求》公开征求意见(以下简称《能力要求》),建议反馈截止于2022年12月9日。《能力要求》从组织管理、项目管理、数据保护等方面对网络安全服务机构以及网络安全服务机构提出了具体要求。《能力要求》规定,网络安全服务机构应对服务过程中获取的数据(包括原始数据、加工分析产生的数据等)进行安全保护,并对不同种类网络安全服务提出了专项要求。( [查看更多](#) )

### ***NISSTC Seeks Public Comments on the Information Security Technology- Capability requirements of cybersecurity service***

On 9 November 2022, the NISSTC seeks public comments on the *Information Security Technology - Capability requirements of cybersecurity service (the "Capability Requirements")* by 9 December 2022. The Capability Requirements set out specific requirements for cybersecurity service institutions and such service agencies in terms of organizational management, project management, data protection, etc. Moreover, the Capability Requirements stipulate that a cybersecurity service agency shall protect the safety of data acquired in the course of its services, including the original data, data generated from processing and analysis, etc., and put forward special requirements for different types of cybersecurity services. ([More](#))

### 三部门印发《“十四五”全民健康信息化规划》

2022年11月7日，国家卫生健康委、国家中医药局、国家疾控局制定了《“十四五”全民健康信息化规划》（以下简称《规划》）。《规划》共五章，主要包括：一、系统梳理了“十三五”以来全民健康信息化的建设成效和存在问题以及面临的现状和形势；二、明确了“十四五”期间全民健康信息化建设的指导思想；三、规定了八个方面的主要任务，其中包括完善健康医疗大数据资源要素体系，推进数字健康融合创新发展体系，夯实网络与数据安全保障体系等任务；四、优先行动，在数据安全能力等八个方面提升行动；五、从五个方面保障规划落地实施。（[查看更多](#)）

### Three Departments Issue the 14th Five-Year Plan for the Informatization of the National Health

On 7 November 2022, the National Health Commission, the National Administration of Traditional Chinese Medicine and the National Administration of Disease Control and Prevention issued the 14th Five-Year Plan for the Informatization of the National Health (the "Plan"). The Plan consists of five chapters. It systematically clarifies the effects and existing issues in respect of the development of the information system for health care for all since the 13th Five-Year Plan; clarifies the guiding ideology of the development of the information system for the health care for all during the 14th Five-Year Plan period; stipulates eight main tasks, including improving the health care big data resource element system, promoting the digital health integration and innovation development system, and strengthening the network and data security system; gives priority to actions in eight aspects, including data security capabilities; and guarantees the implementation of the plan from five aspects. ([More](#))

### 工信部印发《中小企业数字化转型指南》

2022年11月8日，工业和信息化部（以下简称“工信部”）印发《中小企业数字化转型指南》（以下简称《指南》）。《指南》的适用范围及对象包括：一、中小企业，尤其是制造业中小企业；二、互联网平台企业、工业互联网平台企业、数字化转型服务商等中小企业数字化转型服务供给方；三、地方各级主管部门。《指南》旨在引导中小企业明晰转型思路、优化转型实践、提升转型效能，促进中小企业数字化转型产品服务供给水平提升，加强中小企业数字化转型政策支持，推动中小企业加快数字化转型进程。（[查看更多](#)）

### MIIT Issues the Digital Transformation Guidelines for SMEs

On 8 November 2022, the Ministry of Industry and Information Technology (the "MIIT") issued the Digital Transformation Guidelines for SMEs (the "Guidelines"). The applicable scope and objects of the Guidelines include: 1. small and medium-sized enterprises (SMEs), especially those engaged in the manufacturing industry; 2. providers providing digital transformation services for SMEs, such as Internet platform enterprises, industrial Internet platform enterprises and digital transformation service providers; and 3. local competent departments at all levels. The Guidelines aim to guide SMEs to clarify their thinking of transformation, optimize transformation practices and enhance transformation efficiency, promote the improvement of the supply of products and services of SMEs undergoing digital



transformation, strengthen policy support for SMEs' digital transformation, and accelerate their digital transformation. ([More](#))

## 工信部就《关于促进网络安全保险规范健康发展的意见（征求意见稿）》公开征求意见

2022年11月7日，工信部会同中国银行保险监督管理委员会起草了《关于促进网络安全保险规范健康发展的意见（征求意见稿）》（以下简称《意见》），意见反馈截止于2022年11月18日。

《意见》内容主要包括：一、建立健全网络安全保险政策标准体系；二、加强网络安全保险产品服务创新；三、强化网络安全技术赋能保险发展；四、促进网络安全产业需求释放；五、培育网络安全保险发展生态。《意见》旨在加快推动网络安全产业和金融服务融合发展，培育网络安全保险新业态，促进企业加强网络安全风险管理，推动网络安全产业高质量发展。（[查看更多](#)）

### **MIIT Seeks Public Comments on the Opinions on Promoting the Healthy Development of Cybersecurity Insurance**

On 7 November 2022, the MIIT jointly with China Banking and Insurance Regulatory Commission drafted the *Opinions on Promoting the Healthy Development of Cybersecurity Insurance (Draft for Comments)* (the "Opinions"), seeking public comments by 18 November 2022. The Opinions mainly include establishing and improving the policies and standards system of cybersecurity insurance; strengthening the innovation in cybersecurity insurance products and services; boosting the development of cybersecurity insurance through network security technology; promoting the release of demands of the cybersecurity industry; and cultivating the ecology for the development of cybersecurity insurance. The Opinions aim to accelerate the integrated development of the cybersecurity industry and financial services, foster new forms of cybersecurity insurance, promote enterprises to strengthen cybersecurity risk management, and promote high-quality development of the cybersecurity industry. ([More](#))

### **2019年以来检察机关办理个人信息保护领域公益诉讼案件8361件**

2022年11月10日，最高检发布，2019年以来全国检察机关办理个人信息保护领域公益诉讼案件8361件。其中，2019年立案147件，2020年立案750件，2021年立案2276件，2022年1月至9月立案5188件。清华大学法学院教授余凌云在接受记者采访时表示，检察机关立案办理的个人信息保护领域公益诉讼案件数量逐年增加，与检察机关加大打击侵犯公民个人信息违法犯罪的力度密切相关，仅靠传统的民事维权手段与刑法手段都力有不逮，行政手段应是保护个人信息的关键。通过检查监督督促行政管理部门依法履职，将保护个人信息落到实处。（[查看更多](#)）

### **Since 2019, the Procuratorial Organs Have Handled 8361 Public Interest Litigation Cases in the Field of Personal Information Protection**

On 10 November 2022, the Supreme People's Procuratorate announced that since 2019, the national procuratorial organs have handled 8361 public interest litigation cases in the field of personal infor-

mation protection. 147 cases were filed in 2019, 750 in 2020, 2276 in 2021, and 5188 from January to September 2022. Yu Lingyun, a professor at the Law School of Tsinghua University, said in an interview that the number of public interest litigation cases in the field of personal information protection filed and handled by the procuratorial organs has increased year by year, which is closely related to the procuratorial organs' efforts to crack down on illegal crimes against citizens' personal information. Traditional civil rights protection means and criminal law means alone are inadequate, and administrative means should be the key to protecting personal information. Through supervision and urging the administrative departments to perform their duties according to law, the protection of personal information will be implemented. ([More](#))

### 盘锦银行因敏感数据存在泄露风险等案由被罚款140万元

2022年11月4日，辽宁银保监局发布了8张罚单，罚单主要针对盘锦银行股份有限公司及其相关责任人。罚单显示，盘锦银行股份有限公司因监管要求落实严重不到位、敏感数据信息存在泄露风险、外包管理职责存在缺失、瞒报信息系统突发事件，罚款人民币140万元。并且就相关人员对盘锦银行敏感数据信息存在泄露风险的行为，以及对盘锦银行监管要求落实严重不到位等行为作出警告处理。 ([查看更多](#))

### Panjin Bank Was Fined RMB 1.4 Million due to the Risk of Leakage of Sensitive Data

On 4 November 2022, the Liaoning Office of CBIRC issued eight fines, mainly targeting Panjin Bank Co., Ltd. and its relevant responsible persons. According to the fines, Panjin Bank Co., Ltd. was fined RMB 1.4 million for seriously failing to implement regulatory requirements, the risk of leaking sensitive data information, the lack of outsourcing management duties and concealing information system emergencies. In addition, it gave a warning to relevant persons responsible for the violation. ([More](#))

### 推特或因数据合规问题面临罚单

2022年11月11日，据报道，推特因涉嫌滥用用户数据而长期处于美国联邦贸易委员会（FTC）的监视之下。2011年，因Twitter的数据安全漏洞导致黑客获取了敏感用户信息，Twitter与联邦贸易委员会达成了一项和解协议。2022年5月，联邦贸易委员会指控Twitter使用双因素认证提供的电话号码和电子邮件地址进行定向广告，对Twitter处以1.5亿美元罚款，并对Twitter必须如何处理用户数据实施了严格的规定。然而，就在推特签署第二项更为严格的合规和监管和解协议的六个月后，据报道称，该公司又一次成为美国联邦贸易委员会的靶子，或将面临价值数百万美元的民事罚款。 ([查看更多](#))

### Twitter Might Face Fines due to problem of Data Compliance

On 11 November 2022, according to the report, Twitter has long been under the watchful eye of the US Federal Trade Commission (FTC) for misusing users' data. In 2011, Twitter entered a consent decree with the FTC that Twitter's data security lapses led hackers to obtain sensitive user information. In May, the FTC charged Twitter with new violations for using phone numbers and email addresses pro-

vided for two-factor authentication for targeted advertising. The FTC fined Twitter \$150 million and imposed strict rules on how Twitter must handle user data. Twitter was put into FTC's crosshairs just six months after the company signed its second consent decree agreeing to rigorous compliance and oversight. If Twitter rolled out new products without proper compliance checks, according to the report, it may face millions of dollars fines. ([More](#))

## 韩国个人信息保护委员会对DS&G违反《个人信息保护法》的行为处以罚款

2022年11月7日，韩国个人信息保护委员会（下称“PIPC”）决定，对DS&G Ltd.违反2011年《个人信息保护法》（2020年修订）第24（2）、29和39（6）条的行为处以1140万韩元的罚款，并发布整改令。PIPC调查发现，DS&G违反了实施安全措施、限制对居民登记号码的处理以及删除个人信息的义务。（[查看更多](#)）

### South Korea: PIPC Fines DS&G for PIPA Violations

On 7 November 2022, the Personal Information Protection Commission (PIPC) imposed a fine of KRW 11,400,000 and issued a corrective order against DS&G Ltd., for a violation of Articles 24(2), 29, and 39(6) of the Personal Information Protection Act 2011 (as amended in 2020). The PIPC investigation found that DS&G violated its obligations to implement security measures, confining the processing of resident registration numbers and deleting personal information. ([More](#))

## 丹麦数据保护局发布针对地方档案馆的个人数据处理指南

2022年11月7日，丹麦数据保护部门宣布，其已发布地方档案馆处理个人数据的指南，以确保数据保护规则不会对地方档案馆的工作构成障碍。丹麦数据保护部门特别指出，曾与地方档案馆的代表举行过会议，以深入了解他们日常面临的数据保护挑战，并最终促使准则尽可能易懂和实用。具体而言，丹麦数据保护部门指出，准则涵盖了数据保护规则对地方档案馆工作的重要性，并载有丹麦数据保护部门建议地方档案馆遵循的具体准则。（[查看更多](#)）

### Datatilsynet in Denmark Publishes Guidelines for Local Archives' Personal Data Processing

On 7 November 2022, the Danish data protection authority (Datatilsynet) announced guidelines published for local archives' processing of personal data. The guidelines aim to ensure the work of local archives when complying with data protection rule. The Datatilsynet specifically pointed out that it had held meetings with representatives of local archives to gain an in-depth understanding of the data protection challenges they faced daily, and ultimately to make the guidelines easy to understand and practical as possible. Specifically, the Datatilsynet noted the importance of data protection rules for the work of local archives is contained in the guidelines, as well as the specific guidelines that the Datatilsynet recommends local archives follow. ([More](#))

## 知识产权 Intellectual Property

### 北京知产法院推行商标行政诉讼繁简分流

11月8日，北京知识产权法院召开商标行政诉讼繁简分流新闻发布会，向社会公布商标行政纠纷繁简分流工作情况、具体举措和典型案例。此次发布会为当事人提供更加优质的司法服务，探索构建商标行政案件繁简分程序提出了几项具体措施：审判事务性工作诉前集约处理、细化繁简分流标准、充分运用多元解纷手段、速审程序再加速以及积极应用信息化辅助手段。宋鱼水副院长表示，通过创新完善、优化符合知识产权案件审判规律的诉讼程序，真正实现商标行政案件的快慢分道、繁简分流。

来源：北京知产法院

### Beijing IP Court Implements Separation of Complicated and Simple Trademark Administrative Proceedings

On November 8, the Beijing IP Court held a press conference on the separation of complicated and simple administrative proceedings, and disclosed to the public the work of the separation of complicated and simple administrative disputes, specific measures and typical cases. The press conference provided better judicial services for the parties concerned, and proposed several specific measures for the establishment of procedures for separating complicated and simple cases of trademark administrative cases: intensive pre-trial for routine work of trial, detailed standards for separating complicated and simple cases, full use of diversified means of dispute settlement, re-acceleration of quick trial procedures, and active application of auxiliary means of information technology. According to Song Yushui, the vice president of the Court, through innovating, improving and optimizing the legal procedures in line with the trial of intellectual property cases, the speedy trial and the slow trial as well as the separation of complicated cases and simple cases will be realized.

Source: Beijing IP Court

### 北京知识产权法院：未经授权或超越授权处理其他经营者数据的行为构成不正当竞争

近日，北京知识产权法院就深圳市腾讯计算机系统有限公司、腾讯科技（深圳）有限公司、腾讯科技（北京）有限公司（原审原告）与惠州市淘卓网络科技有限公司（原审被告）不正当竞争纠纷案作出二审判决，驳回上诉，维持原判，认定被告被诉分时出租腾讯视频VIP账号的行为构成反不正当竞争法第二条规定的的不正当竞争行为。

法院认为，首先，本案被诉的“分时租赁”账号行为，并非反不正当竞争法具体列举的不正当竞争行为。其次，被告将腾讯视频VIP账号进行分时出租的行为，使得网络用户无需按照腾讯视频服务协议所确定的模式向腾讯公司购买即可获取相应的VIP会员权益，降低了腾讯视频的用

户粘性，减少了腾讯视频带来的流量利益和会员费收益。因此，原告的合法权益已因被诉行为受到损害。

数据控制者通过代码限制界定其数据可处理区域，设置用户行为规则，他人破坏或者违反代码限制而处理该数据，即构成“未经授权”。进而，如果被告没有获得处理数据的授权，或者这种授权已被明确撤销，构成未经授权或超越授权。被告的行为属于超越授权。被告获得了腾讯视频VIP账号，但其使用明显有悖于正常的账号使用方式（不仅是协议约定的使用方式），而且有悖于诚实信用以及商业道德。因此，被告的行为构成不正当竞争。

来源：北京知识产权法院

### **Beijing IP Court Ruled that the Act of Processing Other Operators' data without Authorization or Beyond Authorization Constitutes Unfair Competition**

Recently, the Beijing IP Court made a second instance judgment on the unfair competition dispute between Tencent and the defendant, upholding the original judgment, and determined that the defendant's act of renting Tencent's video VIP account in different periods constitutes unfair competition.

The court held that, first of all, the "time sharing" account act is not the unfair competition act specifically listed in *the Anti unfair Competition Law*. Secondly, the defendant rented the Tencent video VIP account in a time-sharing manner, so that network users could obtain the VIP membership rights without purchasing from Tencent according to the mode complied in the Tencent video service agreement. The act reduced the user stickiness of Tencent video, and reduced the membership fee benefits brought by Tencent video. Therefore, the legitimate rights and interests of the plaintiff have been damaged by the defendant's act.

The data controller defines its data processing area through code restrictions, setting user's act rules, and others destroy or violate code restrictions to process the data, which constitutes "unauthorized" acts. Furthermore, if the defendant has not obtained the authorization to process data, or such authorization has been expressly cancelled, it shall constitute unauthorized acts or beyond the authorization. The defendant's act is beyond the authorization. The defendant obtained Tencent Video VIP account, but its use is obviously contrary to the normal way of using the account (not only the way agreed in the agreement), but also against good faith and business ethics. Therefore, the defendant's act constitutes unfair competition.

Source: Beijing IP Court

### **北京知识产权法院：盗用他人网站数据信息为自己网站引流的行为构成不正当竞争**

近日，北京知识产权法院就北京车质网信息技术有限公司（原审原告）与北京奥蒂思品牌管理咨询有限公司、赵朋（原审被告）不正当竞争纠纷案作出二审判决，驳回上诉，维持原判，认定被告盗用原告网站数据信息为自己网站引流的行为构成不正当竞争。

法院认为，原告的用户投诉信息虽然来自于消费者，但经过原告的加工编辑整理，形成了格式

规范、内容清晰的投诉信息数据集合，原告为其付出了相应劳动和经济投入，使之成为脱离于单个原始投诉信息的数据，能够为其带来经营利益，这种合法商业模式和经营资源应当受到法律保护。作为同业竞争者，被告违背诚实信用原则，用复制和搬运的手段将他人积累的投诉信息据为己有，并公然作为自身经营资源予以展示和使用，不仅会给对方经营者造成直接经济损失，更会损害他人依法从事合法经营、公平参与市场竞争的合法权益。该行为在本质上系违背诚信原则攫取和损害他人经营优势的不正当竞争行为。

来源：北京知识产权法院

## Beijing IP Court Ruled that Embezzlement of Other Websites' data and Information to Attract Attention Constitutes Unfair Competition

Recently, the Beijing IP Court made a second instance judgment on the case of unfair competition dispute, upholding the original judgment, and ruled that the defendant's embezzlement of the plaintiff's website data information for its own website constitutes unfair competition.

The court held that although the plaintiff's users' complaint information came from consumers, after the plaintiff's processing, editing and sorting, a set of complaint information data with standardized format and content was formed. The plaintiff invested in making the data set separated from a single original complaint information, which can bring business benefits to it. This legal business model and business resources shall be protected.

As a competitor in the same industry, the defendant violated the principle of good faith, took the complaint information accumulated by others as his own by means of copying, and publicly displayed and used it as his own business resources, which will not only cause direct economic prejudice to the other operator, but also damage the legitimate rights and interests of others to participate in market competition fairly.

Source: Beijing IP Court

## 沃尔沃汽车就侵权向GALA乐队致歉

近日，沃尔沃汽车的官方抖音账号发布了一条《你们的热烈与澎湃，由我守护》的车型展示混剪视频，使用了国内摇滚乐队GALA的一首《YOUNG FOR YOU》作为背景音乐，但是并未取得乐队任何授权。11日晚间，沃尔沃汽车官博发文致歉，称此前因代理公司的工作失误及沃尔沃方面的监管不力，造成了对GALA乐队一首音乐作品的侵权。已第一时间下架该侵权内容，并且正在与版权方积极沟通，寻求妥善处理方案。同时，沃尔沃汽车表示，会在今后的传播工作中，加强知识产权管理，完善审查流程。

来源：界面新闻

## Volvo Apologizes to GALA for Copyright Infringement

Recently, Volvo Cars' official Tiktok account released a video about model display, using a song of

the domestic rock band GALA "YOUNG FOR YOU" as the background music, but without authorization. On the evening of the 11th, Volvo Car's official blog published an apology, saying that a musical work of GALA was infringed because of the agency's work mistakes and Volvo's inadequate supervision. The infringing content has been removed at the first time, and Volvo communicated with the copyright owner to seek a proper solution. At the same time, Volvo stated that it would strengthen intellectual property management and improve the review process in the future.

Source: JIEMIAN

### “马牌”之争：大陆马牌获赔475万元

日前，北京知识产权法院就大陆马牌轮胎（中国）有限公司（原审原告）与马牌汽车零部件（江西）有限公司、南昌大众润滑油品有限公司、北京邦达悦兴贸易有限公司（原审被告）侵害商标权及不正当竞争纠纷案作出二审判决，驳回上诉，维持原判。一审法院责令被告停止侵权，并赔偿经济损失475万元。

法院认为，大陆马牌公司对企业字号“马牌”进行了大量的宣传使用，在汽车轮胎行业具有较高知名度，属于具有一定影响的企业名称。作为同业竞争者，马牌江西公司在成立时理应知晓大陆马牌公司所使用的企业字号“马牌”并进行合理避让，但其仍将“马牌”作为企业字号进行使用，引人误认为其经营的商品与大陆马牌公司具有特定联系，其行为已构成不正当竞争。公司名称经核准注册亦不能成为其不正当竞争行为的合法抗辩事由。

来源：北京知识产权法院

### The Dispute of "Continental Tires": Continental was Awarded RMB4.75 Million against Copycat

The Beijing IP Court made a second instance judgment on the dispute between Continental Tires (China) Co., Ltd. (the Continental) and Jiangxi Continental Tires (the Jiangxi Continental) over trademark infringement and unfair competition, upholding the original judgment. The court of first instance ordered the Jiangxi Continental to stop the infringement and pay the damages of RMB 4.75 million.

The court held that the Continental promoted and used its enterprise name "Continental" substantially, which was well-known in the automobile tire industry. As a competitor in the same industry, the Jiangxi Continental should have known the enterprise name "Continental" used by the Continental when it was founded, and avoided conflict reasonably, but it still used "Continental" as the enterprise name, which led public to mistake that the products it operated had a specific connection with the Continental, and its acts had constituted unfair competition. The approval and registration of a company's name shall not be a legitimate defense of its unfair competition.

Source: Beijing IP Court

## 最高院：杂交品种亲本可以作为技术秘密受到保护

近日，最高人民法院审结上诉人武威市搏盛种业有限责任公司（以下简称搏盛种业公司）与被上诉人河北华穗种业有限责任公司（以下简称华穗种业公司）侵害技术秘密纠纷一案，驳回搏盛种业公司的上诉，维持原判。一审法院经审理认为，搏盛种业公司在其生产经营活动中使用“W68”技术信息，构成侵权，判决搏盛种业公司停止侵权，赔偿经济损失及维权合理开支共计150.5万元。

最高院认为，通过育种创新活动获得的具有商业价值的育种材料，在具备不为公众所知悉并采取相应保密措施等条件下，可以作为商业秘密依法获得法律保护。本案“W68”作为“万糯2000”亲本的事实已经证明，其在组配具有优良农艺性状、良好制种产量的杂交种中具备商业价值，具有竞争优势。因此，在其符合不为公众所知悉，并经权利人采取相应保密措施的条件，可以作为商业秘密获得反不正当竞争法的保护。

来源：最高院

## SPC Ruled that the Parents of Hybrid Varieties Can be Protected as Technical Secret

Recently, the SPC made a second instance judgment on the case of infringement of technical secrets, upholding the original judgment. The court of first instance held that the defendant's use of "W68" technical information in its production and business activities constituted an infringement, and decided that the defendant shall stop the infringement, and pay the damages of RMB1.505 million.

The SPC ruled that breeding materials with commercial value through breeding innovation activities can be legally protected as trade secrets under the conditions that they are not known to the public and confidentiality measures are taken. The fact that "W68" in this case is the parent of "Wannuo 2000" has been proved. "W68" has commercial value and competitive advantage. Therefore, under the condition that it is not known to the public and confidentiality measures are taken, it can be protected by *the Anti unfair Competition Law* as trade secret.

Source: SPC

## Grande被判共同侵权 赔偿4670万美元

近日，奥斯汀联邦陪审团裁定互联网服务提供商Grande Communications Networks 公司（Grande）因其用户盗版了1403个版权作品，构成侵权，须向多家唱片公司，包括环球音乐集团、索尼音乐娱乐公司、华纳唱片公司等支付超4670万美元。陪审团认定，Grande未能履行其关于网络盗版的联邦法律义务，因此应对故意侵权负责。按照每个作品33000美元的赔偿费用，须支付超4670万美元。Grande辩称，其只是一家互联网服务提供商，从未诱导或鼓励任何侵权行为。

来源：digital music news



## Grande was Awarded More than USD46.7 Million for Contributory Infringement

An Austin federal jury has found Grande Communications liable for willful infringement of 1,403 copyrighted sound recordings. The Texas-based internet provider must pay USD46,766,200 in damages to a group of prominent record label plaintiffs which includes Sony Music Entertainment, Universal Music Group, and Warner Music Group, among others. The jury found that Grande Communications failed to meet its federal legal obligations regarding online piracy on its network and therefore was liable for willful infringement. Grande argued that it is "merely an internet service provider and never induced or encouraged anyone to infringe the plaintiffs' copyrights."

Source: [The Recording Industry Association of America](#)

## 苹果AirPods专利侵权案达成和解

苹果公司已经在一个 AirPods 专利侵权案中原告达成和解。Seung Jin Kim 和 Pinn Inc.公司此前起诉苹果公司专利侵权，他们声称 6 年前上市的初代 AirPods 侵犯了他们的无线耳机技术相关的专利权。Kim 希望苹果公司每卖出一套 AirPods 就给他们 60 美分的专利费，当时的赔偿总额为 4200 万美元。Kim 确实持有两项无线耳机技术的专利，但苹果公司辩称，该公司 AirPods 的相关研发工作可以追溯到产品推出前的十年。该案的陪审团遴选程序本应于11月8日开始，但法院接到通知说苹果和 Kim 已经达成和解。

来源: [RPRNA](#)

## Apple has reached a settlement with the plaintiff in an AirPods patent infringement case

Apple has reached a settlement with the plaintiff in an AirPods patent infringement case. It is reported that Seung Jin Kim and Pinn Inc previously sued Apple for patent infringement. Specifically, they claimed that the original AirPods, which went on the market six years ago, infringed on their patents related to wireless earphone technology. Kim wanted Apple to pay them 60 cents in royalties for every set of AirPods sold, which at the time totaled USD42 million. While Kim does hold two patents on wireless earphone technology, Apple argues that the company's work on AirPods goes back a decade before the product launched. The jury selection process in the case was supposed to begin Nov. 8, but the court was notified that Apple and Kim had reached a settlement, meaning Apple gave Kim a sum of money to drop the case.

Source: [RPRNA](#)

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 [www.lifanglaw.com](http://www.lifanglaw.com)

 Email: [info@lifanglaw.com](mailto:info@lifanglaw.com)

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261