



No.336

2023.2

立方要闻周报

Weekly News By Lifang & Partners

NO.75

立方竞争法周报 Weekly Competition Law News

全国市场监管系统反垄断工作会议召开

The National Market Regulation System Anti-Monopoly Work Conference Convened

甘肃省首例垄断行政案件开庭审理

Gansu Court Trials the First Monopoly Administrative Case

因未完成涉外送达，最高院驳回苹果公司涉诉垄断案一审管辖裁定

SPC Dismissed the First-Instance Jurisdictional Ruling of Apple's Anti-Monopoly Case, Due to Service Failure

韩国将对四家德国车企合谋罚款423亿韩元

KFTC Fines German Automakers 42.3 Billion WON for Collusion

英国监管机构初步认定微软收购动视暴雪会引发竞争问题

CMA Finds Microsoft-Activision Deal Could Raise Competition Concerns

巴西反垄断机构批准必和必拓66亿美元收购OZ Minerals

Brazil Regulator Approves BHP's USD 6.6 billion Takeover of OZ Minerals

受美司法部干预，本特勒集团放弃与泰纳瑞斯钢管业务并购交易

Benteler Abandons Merger with Tenaris After DOJ's Investigation

欧盟委员会对博通收购VMware案实施停钟制度

European Commission Pauses Broadcom, VMware Probe



No.336

2023.2

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

中央网信办通报造谣传谣、恶意营销炒作典型案例

CAC Reported Typical Cases of Rumors and Malicious Marketing

中国计算机学会计算机安全专委会发布2023年网络安全十大发展趋势预测

China Computer Federation Computer Security Professional Committee Released Forecast of Ten Major Development Trends of Cyber Security in 2023

工信部通告2022年第四季度电信服务质量情况

MIIT Released the Circular on Telecommunication Service Quality in the Fourth Quarter of 2022

工信部通报46款存在侵害用户权益行为的APP

MIIT Released Bulletin on 46 APPs Infringing upon Rights and Interests of Users

广东省发布《横琴粤澳深度合作区发展促进条例》

Regulations on Promoting the Development of Guangdong-Macao In-depth Cooperation Zone in Hengqin Promulgated by Guangdong Province

湖南长银五八消费金融股份有限公司因未经同意查询个人信息被处罚75万元

Hunan Changyin 58 Consumer Finance Co., Ltd. Was Fined RMB 750,000 for Inquiry of Personal Information without Consent

浙江通管局发布关于侵害用户权益行为的APP情况通报

Zhejiang Communications Administration Released Bulletin on APPs Infringing upon Rights and Interests of Users

Meta因违反个人信息保护法被韩国个人信息保护委员会处罚660万韩元

Meta was Fined KRW 6.6 Million by the PIPC of Korea for Violating the Personal Information Protection Law

欧盟立法机构同意采取保障措施防止非法数据转移

EU Lawmakers' body Agrees on Safeguards against Illegal Data Transfers



No.336

2023.2

知识产权 Intellectual Property

国家知识产权局发布《中国知识产权保险发展白皮书（2022）》

CNIPA Issued *the White Paper on the Development of Intellectual Property Insurance in China (2022)*

2022中国汽车专利数据公布

Release of 2022 China Automotive Patent Data

ChatGPT商标被多个科技公司抢注

Squatting of the ChatGPT Trademark in China

福建高院：关于是否构成约定俗成的商品通用名称的判断

Fujian High People's Court Ruled on What Constitutes Generic Name of a Product

侵权和解后再次销售相同产品被判令惩罚性赔偿

Punitive Damages Awarded for Selling the Same Products after Settlement

吉祥搬家诉吉祥航空索赔3000万，河南高院认定反向混淆成立并判赔

Lucky Moving V. Lucky Airlines for RMB 30 million Court Affirming Reverse Confusion

人人视频遭奈飞、福克斯、迪士尼等海外出版方集体起诉

Renren Video was Collectively Sued by Netflix, Fox, Disney and other Overseas Publishers

紫光展锐向Sisvel针对智能手机、其他消费电子产品的5G标准必要专利池贡献专利

China-based 5G Chipset Designer UNISOC Contributes its Patents to Sisvel's 5G Standard-essential Patent Pool for Smartphones, other Consumer Electronics Products

爱马仕在Metabirkins NFT商标侵权案中胜诉

Hermès Wins Landmark MetaBirkins NFT Trademark Trial

立方竞争法周报 Weekly Competition Law News

全国市场监管系统反垄断工作会议召开

2023年2月9日，国家市场监督管理总局（“市场监管总局”）发布公告，全国市场监管系统反垄断工作会议暨民生领域反垄断执法专项行动部署会在山东省青岛市举行。会议总结2022年和过去5年反垄断工作，2022年全国依法办结各类垄断案件187件，罚没金额7.84亿元；审结经营者集中案794件，附条件批准5件；《反垄断法》完成颁布15年来首次修改，成功举办首届中国公平竞争政策宣传周。此外，会议还明确了2023年全国反垄断工作的五大重点。（[查看更多](#)）

The National Market Regulation System Anti-Monopoly Work Conference Convened

On February 9, 2023, the State Administration for Market Regulation (“SAMR”) issued an announcement that the National Market Regulation System Anti-Monopoly Work Conference & Deployment Meeting of Special Anti-Monopoly Law Enforcement Action in the People’s Livelihood Field was convened in Qingdao, Shandong Province. The meeting summarized the anti-monopoly work in 2022 and the past five years. In 2022, 187 monopoly cases of various types were handled in accordance with the law, with a fine of CNY 784 million; 794 merger filings were cleared, with 5 of them subject to conditions; the *Anti-Monopoly Law* was revised for the first time in 15 years since its promulgation, and the first China Fair Competition Policy Publicity Week was successfully held. In addition, the meeting also clarified five major priorities for national anti-monopoly work in 2023. ([More](#))

甘肃省首例垄断行政案件开庭审理

近日，兰州知识产权法庭公开审理了兰州某出租车公司诉甘肃省市场监督管理局反垄断行政处理一案，此案系甘肃省首例垄断行政案件，亦系甘肃省高级人民法院自《关于在全省法院推进知识产权民事、行政和刑事案件审判“三合一”工作实施方案的通知》实施以来，兰州知识产权法庭审理的首起知识产权行政案件。该庭审中，兰州知识产权法庭围绕行政垄断的举报和处理事实，就处理行为是否合法进行了审理，目前该案仍在审理当中。（[查看更多](#)）

Gansu Court Trials the First Monopoly Administrative Case

Recently, the Lanzhou Intellectual Property Court (Lanzhou IP Court) publicly heard the case of a taxi company in Lanzhou suing the Gansu Provincial Administration for Market Regulation over its anti-monopoly administrative decision. This is the first administrative monopoly case in Gansu Province, and also the first IP administrative case heard by the Lanzhou IP Court since the implementation of the *Notice on the Implementation Plan for Promoting the “Three-in-One” Trial of Intellectual Property Civil Cases, Administrative Case and Criminal Cases in Provincial-wide People’s Courts*. During the trial of the case, the Lanzhou IP Court focused on the reporting and handling facts of administrative monopoly, and conducted a trial on whether the administrative behavior was legal. The case is still pending. ([More](#))

因未完成涉外送达，最高院驳回苹果公司涉诉垄断案一审管辖裁定

近日，裁判文书网公布了最高人民法院（“最高院”）对吕平诉苹果公司等滥用市场支配地位纠纷管辖权异议一案的终审裁定。此前，上诉人吕平起诉苹果公司等滥用市场支配地位，致使原告作为原审第三人滴答公司的用户遭受重大损失。在管辖权一审中，上海知识产权法院认定原案所涉垄断行为与北京知识产权法院在审的（2022）京73民初229号为同一垄断行为，裁定移送至北京知识产权法院审理，吕平遂上诉至最高院。最高院审查认定，本案因被告之一苹果公司为美国公司而具有涉外因素，管辖权异议由另一被告苹果北京公司受送达后提出，原审法院尚未向苹果公司及原审其他被告、原审第三人完成送达，此时作出移送管辖裁定未能保障相关当事人的诉讼权利，且该等缺陷无法在二审阶段弥补。最高院终审裁定撤销原审管辖裁定，本案发回上海知识产权法院重审。（[查看更多](#)）

SPC Dismissed the First-Instance Jurisdictional Ruling of Apple's Anti-Monopoly Case, Due to Service Failure

Recently, the China Judgements Online published the final ruling of the Supreme People's Court (SPC) on the jurisdictional reconsideration case of Lyu Ping v. Apple Inc., etc. (Apple) over abuse of dominant market position. Previously, the appellant Lyu Ping sued Apple and other defendants for abusing their market dominance, causing the plaintiff, as the third party (i.e. Dida Company)'s customer, to suffer substantial losses. In the first instance of jurisdiction, the Shanghai Intellectual Property Court (Shanghai IP Court) determined that the monopolistic behavior involved in the case were the same as those in the (2022) Jing 73 Min Chu No. 229 case heard by the Beijing Intellectual Property Court (Beijing IP Court), and ruled that the case should be transferred to the Beijing IP Court for trial. Later, Lyu Ping appealed to the SPC. The SPC determined that the case has foreign factors because Apple, one of the defendants, is an American company. The jurisdictional reconsideration was raised by the other defendant, Apple Beijing Co., after receiving the service, while the first-instance court had not completed the service to Apple, other defendants and the third party in the original trial. The ruling to transfer the jurisdiction fails to protect the litigation rights of the relevant parties, and these defects cannot be made up at the stage of second instance. The SPC made a final ruling to dismiss the original ruling, and the case was sent back to the Shanghai IP Court for retrial. ([More](#))

韩国将对四家德国车企合谋罚款423亿韩元

2023年2月9日，据媒体报道，韩国公平交易委员会（KFTC）宣布将对合谋抑制柴油车清洁排放技术的德国汽车企业处以合计423亿韩元的罚款。此次调查涉及的车企为奔驰、宝马、大众和奥迪。本案中，奔驰原本应被罚款207亿韩元，但因完全配合调查，预计将不必支付罚款。除奔驰外，宝马被罚款157亿韩元，奥迪被罚款60亿韩元，大众因未就该行为获得任何收益未被处以罚款。（[查看更多](#)）

KFTC Fines German Automakers 42.3 Billion WON for Collusion

On February 9, 2023, according to news report, the Korea Fair Trade Commission (KFTC) announced it would impose a combined fine of 42.3 billion won on German automakers for colluding to curb emis-

sions-cleaning technology for their diesel cars. Mercedes-Benz, BMW, Volkswagen and Audi were involved in collusion. In the case, Mercedes-Benz was fined 20.7 billion won, due to cooperated fully with KFTC, the company will not have to pay any fine. Except for Mercedes-Benz, BMW was fined 15.7 billion won and Audi 6 billion won, Volkswagen was not fined because it did not earn revenue relevant to the issue. ([More](#))

英国监管机构初步认定微软收购动视暴雪会引发竞争问题

2023年2月8日，英国竞争与市场管理局（Competition and Markets Authority, CMA）发布公告，调查认定微软（Microsoft）收购动视暴雪（Activision Blizzard）的交易会引发云市场和游戏机市场中的竞争问题。2022年1月，微软以687亿美元收购电子游戏发行商动视暴雪，CMA于2022年9月对该交易发起深入调查。经调查，CMA初步认定该交易会进一步巩固微软在云游戏领域的强势地位，减少微软在英国云游戏市场上面临的竞争；该交易还可能通过限制其他平台对动视暴雪游戏的访问权限削弱Xbox和PlayStation在英国游戏机市场中的竞争，最终损害英国游戏玩家。（[查看更多](#)）

CMA Finds Microsoft-Activision Deal Could Raise Competition Concerns

On February 8, 2023, the UK Competition and Markets Authority (CMA) issued an announcement, provisionally concluded that Microsoft's proposed acquisition of Activision Blizzard (Activision) could raise concerns about cloud and console gaming. In January 2022, Microsoft entered into a USD 68.7 billion deal to buy Activision. CMA initiated an in-depth investigation into the deal in September 2022. The CMA provisionally found that the proposed acquisition would reinforce this strong position and substantially reduce the competition that Microsoft would otherwise face in the cloud gaming market in the UK; also the deal may weaken competition between Xbox and PlayStation in the UK by restricting the access that other platforms have to Activision's games, in turn harming UK gamers. ([More](#))

巴西反垄断机构批准必和必拓66亿美元收购OZ Minerals

2023年2月6日，据媒体报道，巴西反垄断机构批准了矿业巨头必和必拓（BHP Group）以66亿美元收购澳大利亚金属生产商OZ Minerals的交易，该决定由巴西经济保护行政委员会（the Administrative Council for Economic Defence）做出。2022年12月，必和必拓与OZ Minerals签署了一份计划实施约定以正式启动拟议收购程序，该收购计划仍需满足其他条件。这是必和必拓十多年来最大的一笔交易，用以扩大其在清洁能源和电动汽车所使用的关键材料领域的业务。（[查看更多](#)）

Brazil Regulator Approves BHP's USD 6.6 billion Takeover of OZ Minerals

On February 6, 2023, according to news report, Brazilian competition regulator has approved the proposed USD 6.6 billion acquisition of Australian copper and gold producer OZ Minerals by mining giant BHP Group (BHP). The approval decision has been issued by the Administrative Council for Economic Defence. In December 2022, BHP signed a scheme implementation deed with OZ Minerals to

formally proceed with the proposed takeover process and the scheme is still subject to other conditions. This is BHP's biggest deal in more than a decade to expand its presence in clean energy and key materials used in electric vehicles. ([More](#))

受美司法部干预，本特勒集团放弃与泰纳瑞斯钢管业务并购交易

2023年2月6日，美国司法部发布公告，在司法部对拟议交易提出竞争关切后，本特勒集团（Benteler）放弃以4.6亿美元向钢管巨头泰纳瑞斯（Tenaris）出售钢铁和管材生产设施的交易。泰纳瑞斯是一家总部位于卢森堡的钢管巨头，主要通过其子公司Maverick Tube Corp经营全球炼钢和石油业务；本特勒集团是一家提供用于汽车制造的钢管和产品服务的奥地利公司，在美国路易斯安那州拥有一个无缝钢管厂。拟议交易将合并美国国内两家供应用于开采石油和天然气的无缝钢管和生产套管的企业，进一步提升本就较高的行业集中度，巩固泰纳瑞斯在市场中无可争议的支配者地位，使市场面临价格上涨、质量下降和创新减少的威胁。 ([查看更多](#))

Benteler Abandons Merger with Tenaris After DOJ's Investigation

On February 6, 2023, the U.S. Department of Justice (DOJ) issued an announcement, stating that after DOJ raised competition concerns about the deal, Benteler Steel & Tube Manufacturing Corp. (Benteler) has walked away from Tenaris, S.A.'s (Tenaris) planned USD 460 million take-over of Benteler's state-of-the-art steel and tube manufacturing facility. Tenaris is a Luxembourg corporation operating a global network of steelmaking and oil business primarily through its subsidiary Maverick Tube Corp. Benteler is a privately-owned company registered in Austria which provides steel pipes and products and services used in automotive manufacturing, operating a state-of-the-art seamless steel pipe mill in Louisiana. The proposed transaction would have combined two domestic suppliers of seamless tubing and production casing, important types of steel pipe used in the extraction of oil and gas. The transaction would have increased concentration in an already concentrated industry, cementing Tenaris as the undisputed dominant player in the market. The proposed acquisition would have threatened higher prices, lower quality, and less innovation in this market. ([More](#))

欧盟委员会对博通收购VMware案实施停钟制度

2023年2月5日，据媒体报道，欧盟委员会对通信半导体公司博通（Broadcom）收购VMware案实施停钟。2022年12月20日，欧盟委员会宣布对博通以610亿美元收购软件供应商VMware并购案展开第二阶段调查。2023年1月31日，欧盟委员会对外宣布暂停对该并购案的第二阶段调查，停钟决定自1月24日起生效。委员会发言人表示，若申报方未能及时提供委员会要求的重要信息，第二阶段调查将迅速重启；申报方提供缺失的信息后，审查“时钟”将重新计时，委员会作出审查决定的最终期限也会随之调整。 ([查看更多](#))

European Commission Pauses Broadcom, VMware Probe

On February 5, 2023, according to news report, the European Commission has paused the investigation into Broadcom's acquisition of VMware. On December 20, 2022, the European Commission announced to open in-depth investigation into the proposed USD 61 billion deal. The Commission said it

stopped the clock on its investigation on January 31, effective January 24. According to a Commission spokesperson, the procedure in merger investigation is activated if the parties fail to provide, in a timely fashion, an important piece of information that the Commission has requested from them; once the missing information is supplied by the parties, the clock is re-started and the deadline for the Commission's decision is then adjusted accordingly. ([More](#))

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

中央网信办通报造谣传谣、恶意营销炒作典型案例

2023年2月13日，网信中国发布消息称，近期“江西学生胡某宇事件”持续引发网民关注，网上相关谣言不断发酵，严重误导公众判断，造成恶劣社会影响。对此，网信部门督促网站平台认真履行信息内容管理主体责任，严厉打击网上借机造谣传谣以及恶意营销炒作行为。网信部门对各大网站平台开展排查整治，累计处置违法违规账号1894个，总结并通报了4类典型案例，包括“编造离奇失踪原因”“杜撰事件调查进展情况”“假冒事件相关人员身份”“无底线蹭炒事件热点”。网信办呼吁广大网民提升辨别能力，不信谣、不传谣，积极参与监督举报，主动提供相关线索，共同营造风清气正的网络空间。 ([查看更多](#))

CAC Reported Typical Cases of Rumors and Malicious Marketing

On 13 February 2023, according to the news released by Cyberspace Administration of China (the "CAC"), the "Student Hu Case of Jiangxi Province" has been attracting the attention of the netizens recently and the spreading of the relevant rumors have seriously misled the public and caused adverse social impact. In this regard, the CAC urged website platforms to earnestly fulfill their responsibilities as subjects of information content management, and severely cracked down on online acts which take the opportunity to start or spread rumors and to engage in malicious marketing activities. The cyberspace administration authorities have launched investigations and rectifications on all major websites and platforms, disposed of 1894 illegal and irregular accounts accumulatively, and summarized and notified four typical cases, including "fabricating the bizarre reasons for the disappearance of persons concerned", "fabricating the progress of the investigation of an incident", "forging the identities of persons involved in an incident" and "hyping up attention-grabbing issues without any scruple". The CAC has appealed to all netizens to improve their discernment ability, refuse to believe in or spread rumors, actively participate in supervision and reporting, take the initiative to provide the relevant clues, and jointly create a clean and righteous cyberspace. ([More](#))

中国计算机学会计算机安全专委会发布2023年网络安全十大发展趋势预测

2023年2月9日，由中国计算机学会主办，中国计算机学会计算机安全专业委员会承办的2023年网络安全十大发展趋势预测在京发布，来自国家网络安全主管部门、高校、科研院所、相关部委、大型央企、民营企业等不同团体的专委会委员进行投票，最终确定2023年网络安全十大发展趋势预测，包括：1.数据安全治理成为数字经济的基石；2.智能网联汽车安全成为产业重点；3.

关键信息基础设施保护领域成为行业增长点；4.隐私计算技术得到产学研界共同关注；5.数据安全产业迎来高速增长；6.国产密码技术将得到更加广泛地应用；7.供应链安全风险成为重要挑战；8.信创需求将全面爆发；9.网络安全云化服务被用户广泛接纳；10.人工智能网络攻防呈现对抗发展演化。（[查看更多](#)）

China Computer Federation Computer Security Professional Committee Released Forecast of Ten Major Development Trends of Cyber Security in 2023

On 9 February 2023, a forecast of ten major development trends of cyber security in 2023 was publicly released in Beijing. This forecast has been sponsored by the China Computer Federation and undertaken by the China Computer Federation Computer Security Professional Committee. Committee members from such different groups as competent cyber security authorities of the State, colleges and universities, scientific research institutes, the relevant ministries and commissions, large central enterprises and private enterprises cast their vote, and finally determined ten major development trends forecast for cyber security in 2023, which include: 1.data security governance becomes the cornerstone of the digital economy; 2. safety of intelligent and connected vehicles becomes an industrial focus; 3. protection of key information infrastructure becomes an industry growth point; 4. privacy computing technology attracts attention from the industry, academia and research community; 5. data security industry ushers in rapid growth; 6. domestic cipher technologies will be widely applied; 7. security risk management of supply chain becomes a major challenge; 8. information-innovation demand will erupt in all respects; 9. cloud services for cyber security will be widely accepted by users; and 10. artificial intelligence network attacks and defenses against such attacks will show development and evolution through confrontations. ([More](#))

工信部通告2022年第四季度电信服务质量情况

2023年2月8日，工业和信息化部信息通信管理局通告2022年第四季度电信服务质量情况。通告分别介绍了电信服务重点工作情况、电信用户投诉申诉情况、经营及消费提示。其中，电信用户投诉申诉情况方面，电信用户申诉中信息安全投诉占比3.3%，互联网信息服务投诉中个人信息保护类投诉占比10.1%，不良手机应用与垃圾信息投诉中，网络安全、信息安全及个人信息及权限类投诉分别占比11%、42%和47%。工信部还公布了2022年第四季度用户申诉主要涉及的移动转售企业名单以及2022年第四季度互联网信息服务投诉处理及时率未达标的企业名单。（[查看更多](#)）

MIIT Released the Circular on Telecommunication Service Quality in the Fourth Quarter of 2022

On 8 February 2023, the information and communications administration of the Ministry of Industry and Information Technology (the “MIIT”) released the *Circular on Telecommunication Service Quality in the Fourth Quarter of 2022* (the “Circular”). The Circular respectively introduces the key information about the telecom services, the complaints of telecom users and the tips on operation and consumption. In particular, 3.3% of all complaints of telecom users relate to information security, and 10.1% of all complaints about Internet information services relate to personal information protection. For complaints about bad mobile applications and spam information, 11%, 42%, and 47% of such complaints relate to network security, information security, and personal information and authorization, re-

spectively. The MIIT also released the list of companies engaging in resale of mobile services that are mainly involved in user complaints in the fourth quarter of 2022, as well as the list of enterprises that fail to meet the prescribed standards for timely handling complaints about Internet information services in the fourth quarter of 2022. ([More](#))

工信部通报46款存在侵害用户权益行为的APP

2023年2月8日，工业和信息化部信息通信管理局组织第三方检测机构对生活服务类移动互联网应用程序（APP）及第三方软件开发工具包（SDK）进行检查，发现46款APP（SDK）存在侵害用户权益行为并予以通报。上述APP主要涉及问题包括：违规互联网弹窗信息推送服务、强迫收集非必要个人信息；超范围收集个人信息；违规收集个人信息以及APP强制、频繁、过度索取权限等。（[查看更多](#)）

MIIT Released Bulletin on 46 APPs Infringing upon Rights and Interests of Users

On 8 February 2023, the information and communications administration of the MIIT, after organizing third-party testing institutions to examine mobile internet applications (APP) and third-party software development kits (SDK) in the category of life services, found that 46 APPs (or SDKs) infringe upon the rights and interests of users and circulated a bulleting accordingly. The problems mainly include: illegal Internet pop-up information push services, forced collection of unnecessary personal information; collection of personal information beyond the scope; illegal collection of personal information and forced, frequent and excessive requests for authorizations by Apps. ([More](#))

广东省发布《横琴粤澳深度合作区发展促进条例》

2023年2月8日，广东人大网发布《横琴粤澳深度合作区发展促进条例》（以下简称“条例”）全文，该条例共有8章66条，自2023年3月1日起施行。《条例》第五十五条提出，支持合作区在国家数据跨境传输安全管理制度框架下，开展数据跨境传输安全管理试点，建设固网接入国际互联网的绿色通道。支持合作区、澳门相关高等学校、科研机构在确保个人信息和重要数据安全前提下，实现科学研究数据依法跨境互联互通。（[查看更多](#)）

Regulations on Promoting the Development of Guangdong-Macao In-depth Cooperation Zone in Hengqin Promulgated by Guangdong Province

On 8 February 2023, the Website of Guangdong People's Congress issued the *Regulations on Promoting the Development of Guangdong-Macao In-depth Cooperation Zone in Hengqin* (the “Regulations”). The Regulations consist of eight chapters and 66 articles in total and will come into force as of 1 March 2023. Article 55 of the Regulations puts forward that the Cooperation Zone is supported, under the framework of the national security management system for cross-border data transmission, to carry out the pilot program of security management of cross-border data transmission and to build a green channel for fixed networks to access the international internet. The Regulations also indicate its support for lawful cross-border interconnection of scientific research data in the Cooperation Zone, related Macao universities, colleges, and research institutions, on the premise that the security of personal information and important data is ensured. ([More](#))

湖南长银五八消费金融股份有限公司因未经同意查询个人信息被处罚75万元

2023年2月8日，中国人民银行长沙中心支行公布的行政处罚信息公示表显示，湖南长银五八消费金融股份有限公司因“未经同意查询个人信息”，被中国人民银行长沙中心支行处75万元罚款。（[查看更多](#)）

Hunan Changyin 58 Consumer Finance Co., Ltd. Was Fined RMB 750,000 for Inquiry of Personal Information without Consent

On 8 February 2023, the administrative punishment information announcement form made public by the Changsha Central Sub-branch of the People's Bank of China shows that Hunan Changyin 58 Consumer Finance Co., Ltd. was fined RMB 750,000 for inquiry of personal information without consent. ([More](#))

浙江通管局发布关于侵害用户权益行为的APP情况通报

2023年2月3日，浙江省通信管理局（下称“浙江通管局”）发布消息称，近期组织了第三方检测机构对27款手机应用软件开展检测工作，其中22款APP存在“违规收集个人信息”、“超范围收集个人信息”、“违规使用个人信息”、“强制用户使用定向推送功能”等相关问题，浙江通管局已书面要求问题APP相关企业限期整改。（[查看更多](#)）

Zhejiang Communications Administration Released Bulletin on APPs Infringing upon Rights and Interests of Users

On 3 February 2023, the Zhejiang Communications Administration said in an announcement that a third-party testing agency has recently been organized to carry out the testing of 27 mobile phone applications. Among them, 22 APPs were found to have related problems such as "illegal collection of personal information", "excessive collection of personal information", "illegal use of personal information", and "forced use of the directional push function". The Zhejiang Communications Administration has requested the relevant enterprises to rectify the problematic APPs within a time limit. ([More](#))

Meta因违反个人信息保护法被韩国个人信息保护委员会处罚660万韩元

2023年2月8日，Facebook和 Instagram的母公司Meta，被韩国个人信息保护委员会罚款660万韩元。韩国个人信息保护委员会对 Meta 调查发现，如果用户拒绝提供他们的轨迹信息，或者拒绝提供他们在其他在线网站的浏览记录，Meta就会阻止用户使用 Facebook和 Instagram服务。该委员会表示，轨迹信息不是Meta提供 Facebook和 Instagram服务所需的最低限度的个人信息，因此，阻止拒绝提供轨迹信息的用户注册和使用在线服务违反了《个人信息保护法》。（[查看更多](#)）

Meta was Fined KRW 6.6 Million by the PIPC of Korea for Violating the Personal Information Protection Law

On 8 February 2023, Meta, the parent company of Facebook and Instagram, was fined KRW 6.6 million by the Personal Information Protection Commission (the “PIPC”) of Korea. Meta has been investigated by the PIPC over allegations that it blocks people from using Facebook and Instagram services if they refuse to provide their behavioral information, or a record of their activities on other online sites. The commission said it has concluded that the behavioral information is not the minimum personal information required to provide Facebook and Instagram services and thus preventing people refusing to offer behavioral information from signing up and using the online services is a violation of the Personal Information Protection Act. ([More](#))

欧盟立法机构同意采取保障措施防止非法数据转移

2023年2月9日，欧洲议会（European Parliament）的工业、研究和能源委员会（Industry, Research and Energy Committee）同意采取严格的保护措施，以防止非欧盟国家政府非法获取欧盟数据。该委员会将于下月寻求欧盟立法者的支持，使其能够就欧盟委员会（European Commission）《数据法案》（Data Act）草案的最终细节与欧盟国家开始谈判。该草案规定了在使用智能设备、机械和消费产品中产生的欧盟消费者和公司数据的权利和义务，这是旨在遏制美国科技巨头权力的系列规则的一部分。该委员会引入了防止云服务提供商进行非法国际数据传输的保障措施，并对企业向政府的数据请求设置了更严格的条件。（[查看更多](#)）

EU Lawmakers' body Agrees on Safeguards against Illegal Data Transfers

On 9 February 2023, the European Parliament's Industry, Research and Energy Committee agreed to stringent safeguards to prevent non-EU governments from gaining illegal access to EU data. The committee will next month seek the support of EU lawmakers for amendments which will allow it to start negotiations with EU countries on the final details of the European Commission's draft Data Act. The draft law lays out rights and obligations on the use of EU consumer and corporate data generated in smart gadgets, machinery and consumer products, part of a raft of rules aimed at curbing the power of U.S. tech giants. The committee introduced safeguards against unlawful international data transfer by cloud service providers and set stricter conditions on business-to-government data requests. ([More](#))

知识产权 Intellectual Property

国家知识产权局发布《中国知识产权保险发展白皮书（2022）》

近日，国家知识产权局知识产权发展研究中心、中国人民财产保险股份有限公司举行新闻发布会，正式联合发布业内首份《中国知识产权保险发展白皮书(2022)》(以下简称“白皮书”)。白皮书指出，截至2022年底，全国已有超过22个省、99个地市开展了知识产权保险业务，累计为超过2.8万家企业的近4.6万余件专利、商标、地理标志及集成电路布图设计提供了逾1100

亿元风险保障。白皮书建议，持续完善对知识产权价值评估的探索，提高知识产权价值评估方法和风险防控水平，丰富保险产品与服务。

来源：中国网

CNIPA Issued the White Paper on the Development of Intellectual Property Insurance in China (2022)

Recently, the Intellectual Property Development Research Center of the China National Intellectual Property Administration (CNIPA) and PICC Property and Casualty Company Limited held a press conference to officially jointly release the industry's first White Paper on the Development of Intellectual Property Insurance in China (2022) (the "White Paper"). The white paper pointed out that by the end of 2022, more than 22 provinces and 99 cities had carried out intellectual property insurance business, providing more than RMB 110 billion of risk protection for nearly 46000 patents, trademarks, GIs and integrated circuit layout designs of more than 28000 enterprises. The White Paper proposes to continuously improve the exploration of the valuation of intellectual property rights, enhance the methods for the valuation of intellectual property rights and the level of risk prevention and control, and enrich insurance products and services.

Source: CNIPA

2022中国汽车专利数据公布

近日，中国汽车技术研究中心发布《2022中国汽车专利数据统计分析》。2022年中国汽车专利公开量36.22万件，同比增长12.94%，增长率显著提高。其中，发明专利授权量为9.45万件，同比增长12.77%。新能源汽车、智能网联汽车领域的专利占比达41.95%；其中新能源汽车专利公开量同比增长13.32%，智能网联汽车专利公开量同比增19.77%，增长速度较快；电子电器、车身及车身附件和发动机仍是传统领域的布局重点。

来源：中国汽车技术研究中心

Release of 2022 China Automotive Patent Data

Recently, China Automotive Technology and Research Center released the Statistical Analysis of 2022 China Automotive Patent Data. In 2022, there will be 362,200 open automobile patents in China, up 12.94% year-on-year. Of this total, 94,500 were authorized for invention patents, up 12.77 percent on last year's same period. Patents relating to new energy vehicles and intelligent connected vehicles account for 41.95%. In particular, the disclosed patents relating to new energy vehicles are up 13.32% year-on-year, and those relating to intelligent connected vehicles are up 19.77% year-on-year with relatively fast growth rates. The electronic and electrical appliances, vehicle bodies and vehicle accessories, and engines are still the key points in the layout of the traditional fields.

Source: China Automotive Technology and Research Center

ChatGPT商标被多个科技公司抢注

近期，聊天机器人ChatGPT的爆火引发关注。天眼查App显示，“CHATGPT”已被多方抢注商标，申请人包括深圳、合肥、广州、四川等地的科技、贸易公司及多名自然人，国际分类涉及广告销售、科学仪器、网站服务等，当前商标状态均为申请中。

来源：中国经济周刊

Squatting of the ChatGPT Trademark in China

Recently, the explosion of chat robot ChatGPT has attracted attention. According to the Tianyancha App, "CHATGPT" has been squatted by many applicants, which include science and technology, trading companies and many individuals in Shenzhen, Hefei, Guangzhou, Sichuan and other places. The international classification involves advertising sales, scientific instruments, website services, etc. The current trademark status is under application.

Source: China Economic Weekly

福建高院：关于是否构成约定俗成的商品通用名称的判断

福建省高级人民法院就南平市建阳区御窑陶瓷研究所与南平建阳余家电子商务有限公司侵害商标权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，赔偿原告经济损失10000元。二审法院对被告有关“七彩曜变”属于约定俗成的商品通用名称的上诉主张不予支持。

二审法院认为，产品的相关市场并不限于特定区域而是涉及全国范围的，应以全国范围内相关公众的通常认识为标准判断是否属于约定俗成的通用名称。只有基于历史传统、风土人情、地理环境等原因，某些商品所对应的相关市场相对固定时，才能以特定地域范围内的相关公众的通常认知作为判断依据。而本案中，被诉侵权产品销售范围显然并不局限于福建建阳地区，而是销往全国各地，被告所谓的相关市场只是以福建建阳地区的建盏制作师傅的认知作为判断标准，这一群体显然不能代表法定意义上的“相关公众”。由于并不存在较为固定的相关市场，故应以全国范围内相关公众的通常认识为标准判断“七彩曜变”是否属于约定俗成的通用名称。因此，结合在案证据，“七彩曜变”并不属于约定俗成的商品通用名称。

来源：福建高院

Fujian High People's Court Ruled What Constitutes Generic Name of a Product

Fujian High People's Court issued a judgment of second instance on the trademark dispute case, and rejected the appeal. The court of first instance ordered the defendant to stop infringement and pay the damages of RMB 10,000. The court of second instance uphold the judgement, rejecting appellant's claim that "Colorful Glow" was generic name of a product.

The court held that where the relevant market of the product is not limited to specific regions, but covers all the country, the common knowledge of the relevant public nationwide shall be the standard to judge whether the name is a generic name. Only when the relevant market of some products is relatively stable due to such reasons as historical tradition, natural conditions and social customs and geographic environment, can the normal cognition of relevant public within a specific geographical scope be taken as the judgment basis. In this case, however, the scope of sales of the alleged infringing products was evidently not limited to the Jianyang area, Fujian Province, but were sold throughout the country. The so-called relevant market of the defendant was based on the perception of handicraft masters in the Jianyang area as a benchmark. This group evidently did not represent the "relevant public" in the statutory sense. As there was no fixed relevant market, the common knowledge of the relevant public nationwide should be taken as the standard to determine whether "Colorful Glow" was a generic name. Therefore, based on the current evidences, "Colorful Glow" was not a conventionally accepted generic name of a product.

Source: Fujian High People's Court

侵权和解后再次销售相同产品被判令惩罚性赔偿

最高人民法院就金民海（原审原告）与郑东新区白沙镇百佳五金机电劳保建材经营部（下称“百佳经营部”）、郑州佰发商贸有限公司侵害发明专利权纠纷案作出二审判决，认定百佳经营部构成重复侵权，适用惩罚性赔偿。

法院认为，在判断是否对百佳经营部适用惩罚性赔偿时应审查其是否具有主观故意和侵权情节是否严重。本案中，百佳经营部曾因销售被诉侵权产品，被金某某诉至原审法院，后双方达成《和解协议》，百佳经营部承诺停止侵权并赔偿经济损失及合理费用共计3万元。百佳经营部在经历前案诉讼后，已明知涉案专利权人，也明知其销售被诉侵权产品侵害涉案专利权，但在前案中作出停止侵权承诺并支付赔偿款后，仍然再次销售被诉侵权产品，具有侵权的故意，构成重复侵权，属于《最高人民法院关于审理侵害知识产权民事案件适用惩罚性赔偿的解释》第四条规定的“其他可以认定为情节严重的情形”，应承担惩罚性赔偿责任。

来源：最高院

Punitive Damages Awarded for Selling the Same Products after Settlement

According to the second-instance judgment rendered by the Supreme People's Court (SPC) on the dispute over infringement upon invention patent, it is confirmed that the defendant commits repetitive infringement and thus the punitive damages shall be applicable.

The court held that when judging whether to apply the punitive damages to the defendant, the court shall examine whether the defendant has malice and whether the infringement circumstance is serious. In this case, the defendant was brought before the court of first instance for selling the product alleged to have infringed upon intellectual property rights. Both parties reached a settlement agreement afterwards, under which the defendant undertook to stop infringement and pay the damages in total of RMB30,000. The defendant, after the litigation of the previous case, knew the patentee of the case-related patent and the infringement of the case-related patent by selling the alleged infringing prod-

ucts, but continued to sell the alleged infringing products after making commitments to cease infringement and payment of damages in the previous case, had the intention of infringement and constituted repeated infringement. The defendant's acts fell under "other circumstances that can be deemed as serious circumstances" as specified in Article 4 of the Interpretation of Supreme People's Court on the Application of Punitive Damages in Hearing Civil Cases of Infringement upon Intellectual Property Right, and the defendant shall be liable for punitive damages.

Source: SPC

吉祥搬家诉吉祥航空索赔3000万，河南高院认定反向混淆成立并判赔

河南省高级人民法院就“吉祥搬家诉吉祥航空”作出二审判决，驳回上诉，维持原判。郑州吉祥搬家公司2004年2月成立并申请第39类“吉祥”商标，2006年10月28日核准注册。2006年5月8日，东部快线航空有限公司更名为上海吉祥航空有限公司。2018年1月30日，吉祥航空公司作为唯一股东设立上海吉祥航空物流有限公司。

一审二审法院均认为，吉祥航空公司使用“吉祥航空”等含有“吉祥”文字之行为，不构成商标侵权；吉祥航空公司、吉祥航空物流公司将吉祥作为字号注册并使用其企业名称，但二者在服务目的、内容、方式、对象存在很大差异，普通的消费者能够对二者服务进行区分，不会造成混淆和误认，因此吉祥航空不构成不正当竞争。

河南高院认为，商标法意义上的混淆包括正向混淆与反向混淆，反向混淆是指由于在后被诉标识的使用，使得相关公众可能会误认为在先商标权人的商品或服务来源于在后被诉标识的使用者，或两者之间存在某种特定的联系。本案中，吉祥航空物流公司在宣传中所使用的“吉祥物流如翼达”“吉祥落地配”“吉祥出品茅台专线”等短语均未标注其自身所在的航空领域，仅体现出物流货运服务特征，与案涉商标核定使用范围中的货运类似，上述行为容易割裂吉祥搬家公司与案涉注册商标之间的固有联系，妨碍涉案商标发挥识别商品来源的基本功能，构成商标侵权。法院责令吉祥航空物流公司赔偿吉祥搬家公司经济损失及维权费用共计100万元。

来源：河南省高院

Lucky Moving V. Lucky Airlines for RMB 30 million Court Affirming Reverse Confusion

The Henan High People's Court has made the judgment of second instance on "Lucky Moving v Lucky Airline", rejected the appeal. Zhengzhou Lucky Moving Co, which was incorporated in February 2004, applied for registration of "Lucky" trademark under Class No 39, which was approved on 28 October 2006. On May 8, 2006, Eastern Express Airlines Co., Ltd. changed its name to Lucky Airlines Co., Ltd. On January 30, 2018, Lucky Airlines established Shanghai Lucky Aviation Logistics Co., Ltd. as the sole shareholder.

The court held that the confusion in the Trademark Law also includes reverse confusion. Reverse confusion refers to the situation where the use of later alleged logos may mislead the relevant public that

the products or services of the prior trademark right holder originate from the users of later alleged logos, or that there is a certain connection between the two. In this case, the phrases including "Lucky" used by Lucky Aviation Logistics Company in its publicity did not indicate the aviation sector where it was located, but only reflected the characteristics of logistics and cargo services, similar to the cargo services within the approved scope of use of the trademark involved in this case. The aforesaid act easily severed the inherent link between Lucky Moving Company and the disputed registered trademark and prevented the trademark concerned from optimising the basic function of identifying the source of products, thus constituting trademark infringement. The court ordered Lucky Aviation Logistics Co to pay the damages of RMB 1 million.

Source: [Henan High People's Court](#)

人人视频遭奈飞、福克斯、迪士尼等海外出版方集体起诉

根据企查查官网显示，近日人人视频关联企业上海众多美网络科技有限公司新增多个开庭公告。从案件内容来看，原告包括环球、派拉蒙、索尼、华纳兄弟、奈飞、迪士尼、二十世纪福克斯等影视和娱乐行业的全球巨头企业，案由多为著作权权属、侵权纠纷、侵害作品信息网络传播权纠纷。人人视频最近一次引发大范围舆论关注是在2021年6月，人人视频在苹果应用商店下架，人人视频中“快看”板块也发布下线整改通知，通知称，将对于问题严重、影响恶劣的账号及违规内容，从严从重处置。2021年7月，人人视频虽然在应用商店中重新上架，但大量影视内容并未恢复。对于全球巨头企业的此次集体起诉，人人视频的未来将如何发展存在问题。

来源: [中国经济网](#)

Renren Video was Collectively Sued by Netflix, Fox, Disney and other Overseas Publishers

According to the Qichacha, recently Renren Video's affiliated company Shanghai Zhongduomei Network Technology Co., Ltd. added several court announcements. From the content of the case, the plaintiffs include global giants in the film and television and entertainment industries such as Universal, Paramount, Sony, Warner Brothers, Netflix, Disney, and 20th Century Fox. The causes of the case are mostly copyright ownership, infringement disputes, and infringement of the right to network dissemination of work information. The last time Renren Video attracted widespread public attention was in June 2021, Renren Video was removed from the Apple App Store. The "quick look" section of Renren Video also issued an offline rectification notice, which said that accounts and illegal content with serious problems and bad impact will be dealt with severely. In July 2021, although Renren Video was put on the shelves again in the App Store, a large number of film and television content has not been restored. For the collective prosecution of global giants, there are problems about how Renren Video will develop in the future.

Source: [China Economic Network](#)

紫光展锐向Sisvel针对智能手机、其他消费电子产品的5G标准必要专利池贡献专利

近日，Sisvel宣布：总部位于上海的5 G芯片设计公司紫光展锐已加入Sisvel的消费电子产品（智能手机、平板电脑等）5 G多模专利池。根据Counterpoint Research的数据，紫光展锐在2021年第二、第三季度的全球智能手机芯片组市场份额为3%，是全球第四大市场参与者。Sisvel总裁马蒂亚·福利亚科（Mattia Fogliacco）表示，Sisvel为提供更多有吸引力的专利许可条款做出了努力。

来源：Foss Patents

China-based 5G Chipset Designer UNISOC Contributes its Patents to Sisvel's 5G Standard-essential Patent Pool for Smartphones, other Consumer Electronics Products

Recently, Sisvel announced that Shanghai-based 5G chip design company UNISOC has joined Sisvel's 5G Multimode patent pool for consumer electronics products (smartphones, tablets, etc.). According to Counterpoint Research, UNISOC's global smartphone chipset market share in the period from Q2 2021 to Q3 2022 was 9%, making it the fourth largest player. Sisvel president Mattia Fogliacco explained his firm's efforts to offer palatable licensing terms.

Source: Foss Patent

爱马仕在Metabirkins NFT商标侵权案中胜诉

2月8日，纽约南区联邦地区法院宣判，奢侈品品牌爱马仕赢得了对NFT MetaBirkins创始人梅森·罗斯柴尔德（Mason Rothschild）的商标诉讼。该案是测试NFT艺术表达的界限是否违反国家知识产权法的首个法律案件。罗斯柴尔德的主要论点是罗杰斯测试的应用。罗杰斯测试起源于1989年的罗杰斯诉格里马尔迪（Rogers v. Grimaldi）案。这一法律测试指出，如果艺术家进行了艺术表达，而不仅仅是销售商品，并且没有误导消费者，那么他们就可以免受商标侵权的保护。并且罗斯柴尔德认为NFT MetaBirkins属于艺术创作，是言论自由的一部分，应受美国宪法第一修正案的保护。

陪审团最终裁定，罗斯柴尔德未经授权复制爱马仕标志性的铂金包（Birkin Bag），总售价超过100万美元，该行为可能导致消费者混淆。并且陪审团认为，罗斯柴尔德对手提包图像的使用不应受到美国宪法第一修正案关于言论自由权的保护。陪审团裁定罗斯柴尔德就商标侵权、淡化和域名抢注的违法行为向爱马仕赔偿133,000美元。

来源：IPwatchdog

Hermès Wins Landmark MetaBirkins NFT Trademark Trial

Luxury brand Hermes won its trademark lawsuit against Mason Rothschild, the founder of NFT MetaBirkins, in a ruling handed down in the United States District Court for the Southern District of New York on February 8th. The trial was the first legal case that tested the bounds of artistic expression in NFTs against the country's intellectual property laws. Rothschild's primary argument was the application of the Rogers Test, originating from the 1989 case *Rogers v. Grimaldi*. This legal test states that artists are protected from trademark infringement if they make an artistic expression, rather than just selling a good, and do not mislead consumers. And Rothschild argues that NFT MetaBirkins is an artistic creation, part of free speech, protected by the First Amendment. The jury ruled that Rothschild's unauthorized versions of Hermès's iconic Birkin bags and sold for a total of over USD 1 million, were likely to confuse consumers. The jury found that Rothschild's use of the bag's likenesses did not constitute a protected form of speech under the first amendment. The jury awarded Hermès USD133,000 in damages for trademark infringement, dilution and a violation called "cybersquatting".

Source : [IPwatchdog](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.




Subscribe to our WeChat community


扫码关注公众号“立方律师事务所”和“竞争法视界”


北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 首尔

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Seoul

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261