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浙江高院：缺少相关产品标识并不足以认定销售者存在过错

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TikTok “Stitch” Found not to Infringe Trademark Rights of UK Company in US

立方竞争法周报 Weekly Competition Law News

最高法院工作报告：审结垄断和不正当竞争案2.9万件

2023年3月8日，最高人民法院（“最高院”）发布工作报告全文。过去五年来，最高院依法维护市场公平竞争，审结垄断和不正当竞争案件2.9万件。审理医药、电信、建材、文化消费等领域垄断案件，依法惩处垄断协议、滥用市场支配地位行为，保护市场竞争活力和消费者合法权益。法院组织体系更趋完善，最高人民法院知识产权法庭统一审理全国范围内专利等技术类知识产权和垄断上诉案件。工作报告提出，2023年，最高院将继续加强反垄断和反不正当竞争司法。（[查看更多](#)）

SPC Work Report: Concluded 29,000 Cases of Monopoly and Unfair Competition

On March 8, 2023, the Supreme People's Court (“SPC”) released its work report. Over the past five years, the SPC has upheld fair market competition by concluding 29,000 cases related to monopoly and unfair competition. The court has handled monopoly cases in industries such as medicine, telecommunications, building materials, and cultural consumption, punishing monopolistic agreements and abuses of market dominance to protect market competition and consumer rights. The entire court system has become more perfect, and the SPC Intellectual Property Court is responsible for the hearing of patent and other technical intellectual property and monopoly appeal cases nationwide. The work report states that in 2023, the SPC will continue to strengthen its judicial work against monopolies and unfair competition. ([More](#))

2023政府工作报告再提加强反垄断

2023年3月5日，国务院总理李克强代表国务院向十四届全国人大一次会议作出政府工作报告。在2023年政府工作报告中，李克强总理指出过去五年来，政府不断加强反垄断和反不正当竞争，全面落实公平竞争审查制度，改革反垄断执法体制。依法规范和引导资本健康发展，依法坚决管控资本无序扩张。这是自2021年以来连续第三次在政府报告中提及反垄断工作。（[查看更多](#)）

2023 Government Work Report Reiterates Strengthening Anti-Monopoly

On March 5, 2023, Premier Li Keqiang delivered the government work report on behalf of the State Council at the first session of the 14th National People's Congress. In the 2023 government work report, Premier Li Keqiang pointed out that over the past five years, the government has continuously strengthened anti-monopoly and anti-unfair competition efforts, comprehensively implemented the fair competition review system, and reformed the anti-monopoly law enforcement system. The government has regulated and guided capital to develop healthily according to law, and resolutely controlled the disorderly expansion of capital according to law. This is the third consecutive time since 2021 that anti-monopoly work has been mentioned in the government report. ([More](#))

民生领域反垄断执法专项行动在各省持续推进

近日，多地（湖北、黑龙江、吉林、福建）市场监督管理局（“市监局”）陆续发布公告，将在各自管辖范围内开展2023年民生领域反垄断执法专项行动，主要针对三种垄断行为：（1）建材、日用消费品、汽车、医药等领域的垄断协议行为；（2）公用事业等自然垄断领域和原料药等垄断问题多发领域的滥用市场支配地位行为；（3）教育、医疗卫生、交通运输、工程建设等领域的行政垄断行为。（[查看更多](#)）

Special Anti-Monopoly Enforcement Actions in People's Livelihood Sector Continue to be Promoted in Various Provinces

Recently, several local Administrations for Market Regulation (“AMRs”) (Hubei, Heilongjiang, Jilin, and Fujian) have successively issued announcements stating that they will carry out a special anti-monopoly law enforcement campaign in the field of people's livelihood in 2023. The campaign will mainly target three types of monopoly behaviors: (1) monopoly agreements in areas such as building materials, daily consumer goods, automobiles, and pharmaceuticals; (2) abuse of dominant market position in natural monopolies such as public utilities and monopolistic-prone fields such as APIs; and (3) administrative monopoly behavior in fields such as education, health care, transportation, and engineering construction. ([More](#))

美国司法部持续关注竞争公司董事联结行为

2023年3月9日，美国司法部（the Department of Justice, “DOJ”）发布公告，宣布在反垄断局围绕《克莱顿法案》（Clayton Act）第八条进行执法的努力下，已有十家公司董事会中的至少十三名董事解除了或防止了董事联结（board interlocks）的情况。美国国会通过《克莱顿法案》第八条禁止公司董事和管理人员同时在竞争对手的董事会任职，并将此种董事联结行为认定为本身违法行为。反垄断局助理总检察长Jonathan Kanter表示，该部门将继续把《克莱顿法案》第八条作为执法重点，以解决非法的董事联结问题。（[查看更多](#)）

DOJ Continues to Monitor Board Interlocks of Competitors

On March 9, 2023, the US Department of Justice (DOJ) announced in a press release that the number of interlocks unwound or prevented had increased to at least thirteen directors from ten boards through its enforcement efforts under Section 8 of the *Clayton Act*. Section 8 of the *Clayton Act* prohibits directors and officers from serving simultaneously on the boards of competitors, which was made by Congress a *per se* violation of the antitrust laws. Assistant Attorney General Jonathan Kanter of the Justice Department's Antitrust Division stated that the department will continue to prioritize enforcement of Section 8 of the *Clayton Act* to address illegal board interlocks. ([More](#))

DOJ起诉阻止捷蓝航空收购精神航空

2023年3月7日，DOJ发布公告，称已联合马萨诸塞州、纽约州和哥伦比亚特区总检察长发起民事反垄断诉讼，以阻止捷蓝航空公司（JetBlue Airways Corporation）以38亿美元收购其规模最大、

增长最快的超低成本竞争对手精神航空公司（Spirit Airlines, Inc.）。DOJ指出，如果允许该交易，两航司目前所竞争的航线价格将会上涨，此次收购还将使得其他航空公司之间也更容易合谋以向乘客收取更高票价或限制运力。（[查看更多](#)）

DOJ Sues to Block JetBlue's Acquisition of Spirit Airlines

On March 7, 2023, the DOJ announced that it has joined with Attorneys General of the Commonwealth of Massachusetts, the State of New York, and the District of Columbia to file a civil antitrust lawsuit aimed at blocking JetBlue Airways Corporation's USD3.8 billion acquisition of its largest and fastest-growing ultra-low-cost rival, Spirit Airlines, Inc. The DOJ stated that if allowed to proceed, the deal would result in higher prices for the routes currently competed by both airlines, and would make it easier for other airlines to collude to charge passengers higher fares or restrict capacity. ([More](#))

欧盟委员会联合多国机构对香料香精企业进行突击检查

2023年3月7日，欧盟委员会发布公告称对活跃于各欧盟成员国内的香料行业企业和协会进行了突击检查。与此同时，欧盟委员会也向该行业的数家企业发出了正式的信息要求。此次检查和信息要求主要涉及与供应香料及香精相关的潜在共谋行为，香料主要用于生产家用和个人护理用的消费品。欧盟委员会担忧全球香料行业企业和协会的行为可能违反了禁止实施卡特尔和限制性商业行为的欧盟反垄断规则。欧盟委员会已就此事与美国、英国和瑞士的竞争管理机构进行接触，并在征求其意见后实施了此次突击检查。（[查看更多](#)）

EU Commission and Multiple National Agencies Conduct Unannounced Inspections on Flavor and Fragrance Companies

On March 7, 2023, the European Commission announced that it carried out unannounced inspections at the premises of companies and an association active in the fragrance industry in various Member States. In parallel, the Commission has sent out formal requests for information to several companies active in the same sector. The inspections and requests for information concern possible collusion in relation to the supply of fragrances and fragrance ingredients. Fragrances are used in the manufacture of consumer products such as household and personal care products. The Commission has concerns that companies and an association in the fragrance industry worldwide may have violated EU antitrust rules that prohibit cartels and restrictive business practices. The Commission has contacted competition authorities in the United States, the United Kingdom, and Switzerland in relation to this matter and the inspections were conducted in consultation with them. ([More](#))

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

中消协发布《2022年个人信息保护领域消费者权益保护报告》

2023年3月8日，中国消费者协会（下称“中消协”）发布《2022年个人信息保护领域消费者权益保护报告》（下称《报告》）。《报告》认为，2022年我国在立法保护、司法保护、行政保

护和社会保护等方面，显著提升了消费者个人信息保护力度。《报告》指出，当前侵害消费者个人信息权益问题仍需引起社会各方高度重视，其问题主要表现在违反处理的必要性原则、违反个人信息处理质量原则、违反“告知-同意”规则、侵害个人信息权益的损害赔偿范围有待确定等方面。《报告》从强化消费者权益保护角度提出四点建议：一是再次启动《消费者权益保护法》修订，完善消费者个人信息保护法律制度。二是总结司法经验，针对责任界定、损害赔偿等争议问题及时出台配套司法解释等。三是加强行政治理，惩治侵害消费者个人信息权益的违法行为。四是强化社会共治，消协、企业与消费者协同建立个人信息保护社会共治体系。

[\(查看更多\)](#)

China Consumers Association Released the Report on Consumer Protection in the Field of Personal Information Protection in 2022

On 8 March 2023, China Consumers Association released the Report on Consumer Protection in the Field of Personal Information Protection in 2022 (the "Report"). The Report states that in 2022, significant efforts had been made to protect consumers' personal information in terms of legislative protection, judicial protection, administrative protection and social protection. The Report points out that the current problem of infringement of consumers' personal information rights and interests still needs to draw great attention from all walks of life. The problems are mainly manifested in the following aspects: violation of the principle of necessity of processing, violation of the principle of personal information processing quality, violation of the "notification-consent" rule, and the scope of damages for infringement of personal information rights and interests remaining to be determined. The Report puts forward four suggestions from the perspective of strengthening protection of consumers' rights and interests. First, initiate another round of revision to the Law on the Protection of Consumer Rights and Interests to improve the legal system for protection of consumers' personal information. Second, summarize judicial experience, and promulgate in a timely manner supporting judicial interpretations for controversial issues such as the definition of liability and damage compensation. Third, strengthen administrative governance to punish illegal acts of infringement of consumers' personal information rights and interests. Fourth, strengthen social co-governance. China Consumers Association, enterprises and consumers shall collaborate to establish the social co-governance system for personal information protection. [\(More\)](#)

《信息通信及互联网行业企业合规管理体系 指南》发布

2023年3月2日，由中国信息通信研究院牵头，二十余家单位共同起草完成的团体标准《信息通信及互联网行业企业合规管理体系 指南》（T/ISC 0023-2023）（下称《指南》）正式发布。

《指南》规定了信息通信及互联网企业建立、实施、评估、维护及改进合规管理体系，适用于开展合规管理相关工作的信息通信及互联网企业。并《指南》明确，数据安全与管理、个人信息保护、移动互联网应用程序等为信息通信及互联网企业合规管理重点领域。 [\(查看更多\)](#)

Release of Guidelines for the Compliance Management System of Information and Communications and Internet Enterprises

On 2 March 2023, the Guidelines for the Compliance Management System of Information and Communications and Internet Enterprises (T/ISC 0023-2023) (the "Guidelines") were officially released. The

Guidelines are a group standard jointly drafted by more than 20 entities, led by the China Academy of Information and Communications Technology Applicable to information and communications and Internet companies that carry out compliance management, the Guidelines stipulate that information and communications and Internet companies should establish, implement, evaluate, maintain and improve compliance management systems. In addition, the Guidelines specify that data security and management, personal information protection, and mobile Internet applications are key fields for the compliance management of information and communications and Internet companies. ([More](#))

上海数据交易所牵头启动国内首个数据交易链建设

2023年3月3日，据上海数据交易所消息，大数据流通与交易技术国家工程实验室与上海数据交易所正式启动国内首个数据交易链的建设工作，这也是国内数据流通交易领域的新一代基础设施建设项目。目前，上海数据交易所数据交易系统建立了登记、挂牌、交易、交付、清结算和凭证发放六大业务环节，通过建立数据交易链，利用区块链存证和智能合约等技术使这些业务环节更加安全、高效和透明。 ([查看更多](#))

Shanghai Data Exchange Takes the Lead in Launching the Construction of the First Data Trading Chain in China

On 3 March 2023, according to the Shanghai Data Exchange, the National Engineering Laboratory for Big Data Circulation and Trading Technology and the Shanghai Data Exchange officially launched the construction of the first data trading chain in China, which is also a new generation of infrastructure construction project in the field of domestic data circulation and trading. So far, the data trading system of the Shanghai Data Exchange has established six business segments, *i.e.*, registration, listing, trading, delivery, clearing and settlement, and issuance of vouchers. Through the establishment of data trading chain, as well as the use of blockchain proof of existence, smart contract and other technologies, these business segments will be more secure, efficient and transparent. ([More](#))

上海召开数据出境安全评估政策系列宣讲会（商务站）

2023年3月9日，上海召开数据出境安全评估政策系列宣讲会（商务站），共有63家企业代表参加。上海市网信办通报了目前数据出境安全评估申报受理情况，截至2023年3月9日，上海市网信办已解答咨询电话2100余通，接收正式申报材料270余件。上海市网信办还介绍了相关法律法规及申报材料注意事项。上海市信息安全测评认证中心专家重点围绕数据出境风险自评估实施及报告撰写进行了辅导。交流答疑时，针对企业代表提出的数据量统计、出境链路梳理、评估整改要求、法律环境描述等方面问题进行了回应及解答。 ([查看更多](#))

Seminar on Security Assessment Policy for Data Cross-border Transfer (for Businesses) Held in Shanghai

On 9 March 2023, Shanghai held a seminar on security assessment policies for cross-border transfer of data (for businesses), attended by representatives of 63 enterprises. The Shanghai Cyberspace Administration (the “SCA”) briefed on the current status of accepting applications for security assessment for cross-border transfer of data. By 9 March 2023, the SCA had responded to more than 2,100 telephone

inquiries and received more than 270 official applications. The SCA also briefed on the relevant laws and regulations as well as practical points for preparing the security assessment applications. Experts from the Shanghai Information Security Testing Evaluation and Certification Center provided tutorship with a focus on the implementation of the self-assessment of the risks of cross-border transfer of data and the drafting of the self-assessment report. During the exchange and Q&A, responses and answers were provided to questions raised by enterprise representatives with respect to calculation of relevant data, the sorting out of outbound links, requirements for evaluation and rectification, description of relevant legal environment, etc. ([More](#))

浙江省网信办发布数据出境安全评估申报工作问答（二）

2023年3月9日，浙江省网信办根据《数据出境安全评估办法》和《数据出境安全评估申报指南（第一版）》，结合近期咨询情况及完备性查验常见问题，发布了浙江省数据出境安全评估申报工作问答（二），主要回答了数据处理者在哪些情形下需要申报数据出境安全评估；哪些情形是数据出境行为；以及申报材料具体要求等相关问题。 ([查看更多](#))

Zhejiang Cyberspace Administration Issues Q&As on Application for Security Assessment of Outbound Data Transfers (Batch II)

On 9 March 2023, Zhejiang Cyberspace Administration issued Q&As on Application for Data Cross-border Transfer Security Assessment (Batch II), in accordance with the Security Assessment Measures for Outbound Data Transfers and the Guide to Applications for Security Assessment of Outbound Data Transfers (First Edition), and in light of recent inquiries and common questions about completeness checking. The Q&As mainly dealt with the following questions: the circumstances under which data processors are required to apply for security assessment of outbound data transfers; which activities constitute cross-border transfer of data; and other relevant questions such as specific requirements for application materials. ([More](#))

岳麓网警开出长沙首张违反《数据安全法》罚单

2023年3月9日，长沙晚报掌上长沙发布消息称，近日，长沙市公安局岳麓分局网络安全保卫大队查处了长沙市首起违反《数据安全法》的行政案件，对涉案公司依法处以行政警告，并处罚款5万元。经查，该涉案公司相关服务器存在未授权访问漏洞，用户隐私数据存在泄露风险。经过进一步核实，该公司未制定数据安全管理制度、未开展等级保护备案工作，严重违反了《数据安全法》第二十七条、第二十九条规定。 ([查看更多](#))

Changsha Issues First Fine for Violations of the Data Security Law

On 9 March, 2023, Changsha Evening News reported that the Cyber Security Protection of the Yuelu Branch of the Changsha Public Security Bureau has recently investigated and handled the first administrative case involving violations of the Data Security Law of the PRC in Changsha, and imposed an administrative warning and a fine of CNY50,000 on the company involved. After investigation, the relevant server of the company involved was found to have unauthorized access vulnerabilities, and user privacy data were at risk of leakage. Upon further verification by the authorities, the company failed to establish a data security management system and failed to carry out filing work for grade-based data

protection, which seriously violated the provisions of Article 27 and Article 29 of the Data Security Law. ([More](#))

广州发布“数据保护与数据跨境服务平台”

2023年3月3日，中新社广州电，据下一代互联网国家工程中心粤港澳大湾区创新中心消息，“数据保护与数据跨境服务平台”已在广州南沙正式发布。该服务平台将建设并开放个人信息保护影响评估、数据出境自评估、APP合规自查等服务。下一代互联网国家工程中心副主任张汉卓表示，“数据保护与数据跨境服务平台”通过“技术+服务”的形式，为企业提供包括数据分级分类、数据清单、风险管理等有针对性的业务合规服务，帮助企业构建数据跨境安全合规的有效路径；预计该服务平台将于今年年中正式对外服务。 ([查看更多](#))

Data Protection and Cross-border Data Service Platform Launched in Guangzhou

On 3 March 2023, China News Service (Guangzhou) reported that, according to the Guangdong-Hong Kong-Macau Greater Bay Area Innovation Center of China Future Internet Engineering Center, the Data Protection and Cross-border Data Service Platform has been officially launched in Nansha, Guangzhou. The service platform will develop and open personal information protection impact assessment, self-assessment for cross-border data transfer, self-assessment of APP compliance and other services. Zhang Hanzhuo, deputy director of the China Future Internet Engineering Center, said that the Data Protection and Cross-border Data Service Platform will, in the form of "technology plus services", provide enterprises with targeted business compliance services such as data classification, data lists and risk management, and help enterprises build an effective path for cross-border data transfer security compliance. The service platform is expected to be able to provide services in the middle of this year. ([More](#))

美国国会山安全事件：“数以百计”的立法者及家人身份数据泄露

2023年3月9日，据NBC报道，美国联邦众议院一名高级官员表示，周二，华盛顿特区在线健康保险市场发生的“重大数据泄露”事件可能暴露了数百名立法者和工作人员的个人身份信息。而发往参议院各办公室的一封邮件通知显示，参议员及其工作人员的数据也受到该泄露事件影响。该通知提到，泄露的数据包括“全名、注册日期、关系（本人、配偶、孩子）和电子邮件地址，但并不涉及其他个人身份信息。” ([查看更多](#))

Data Breach Hits 'Hundreds' of Lawmakers and Staff on Capitol Hill

On 9 March 2023, according to NBC, a top House official said that a “significant data breach” at the health insurance marketplace for Washington, D.C., on Tuesday potentially exposed personal identifiable information of hundreds of lawmakers and staff. According to an email sent to Senate offices, the data breach has also affected Senate offices and their staff. The notice said that the “data included the full names, date of enrollment, relationship (self, spouse, child), and email address, but no other Personally Identifiable Information (PII).” ([More](#))

知识产权 Intellectual Property

国家知识产权局开展商标法及其实施条例修改论证考察

近日，国家知识产权局条法司会同知识产权保护司、商标局赴山东省和江苏省开展商标法及其实施条例修改实地论证考察并召开征求意见会。与会人员表示，此次修法正合时宜，修订内容回应社会关切，优化商标法的体系结构、规制商标恶意注册及相应后果、完善商标授权确权程序、强化商标使用义务、加强商标监督管理等条款，着重解决商标法实施过程中出现的“重注册、轻使用”、“恶意注册”、“商标授权确权程序复杂”等问题，亮点突出，期待尽快落地实施。

来源：国家知识产权局

CNIPA Conducts Demonstration and Inspection of the Revision of the Trademark Law and its Implementing Regulations

Recently, the Legal Affairs Department of the China National Intellectual Property Administration (CNIPA), in concert with the Intellectual Property Protection Department and the Trademark Office, conducted field demonstration and inspection of the revision of the Trademark Law and its Implementing Regulations in Shandong Province and Jiangsu Province, and held a consultation meeting. The participants said that this amendment is timely as the revised content responds to the social concerns, and introduces provisions in respect of the optimization of the systematic structure of the Trademark Law, regulation of malicious trademark registration and the corresponding consequences, improvement of the procedures for the authorization and confirmation of trademark rights, strengthening of the obligations in the use of trademarks and strengthening of the supervision and administration of trademarks, etc., focusing on the resolution of issues such as "repeated registration but light use", "malicious registration" and "complicated procedures for the authorization and confirmation of trademark rights" arising from the implementation of the Trademark Law.

Source: CNIPA

检察机关2022年办理知识产权民事行政诉讼监督案件937件

3月7日下午，最高人民检察院检察长张军在十四届全国人大一次会议上作最高检工作报告。报告称，检察机关2022年办理知识产权民事行政诉讼监督案件937件，是2018年的6.7倍。2022年，检察机关起诉侵犯商标权、专利权、著作权及商业秘密等犯罪1.3万人，比2018年上升51.2%。最高检及天津、山西、山东、海南等29个省级检察院组建知识产权检察办公室，一体履行刑事、民事、行政检察职能。与国家知识产权局、国家版权局共建协同保护机制，挂牌督办重大、影响性案件。

来源：最高人民检察院

China Procuratorates Handled 937 Cases of Supervision of IPR Civil & Administrative Proceedings in 2022

Procurator-General Zhang Jun of the Supreme People's Procuratorate (SPP) delivered a work report to the SPP at the first session of the 14th National People's Congress on March 7, 2020. According to the report, procuratorial offices in China handled 937 cases of supervision of IPR civil and administrative proceedings in 2022, 6.7 times the number in 2018. In 2022, Chinese procuratorial offices prosecuted 13,000 persons for infringement of trademarks, patents, copyrights and trade secrets, an increase of 51.2% over 2018. The SPP and 29 provincial procuratorates including Tianjin, Shanxi, Shandong and Hainan will set up intellectual property procuratorial offices to perform criminal, civil and administrative procuratorial functions. Efforts shall also be made to establish a coordinated protection mechanism with the CNIPA and the National Copyright Administration, and supervise the handling of major and influential cases.

Source: SPP

上海首例规避技术保护措施类侵犯著作权刑事案件被起诉

1月31日，被告人刘某因涉嫌侵犯著作权罪被上海市普陀区人民检察院提起公诉，该案系上海市首例规避技术保护措施类侵犯著作权刑事案件。2022年2月，公安机关在工作中发现，有人某二手交易平台上销售破解版医疗设备密钥，涉嫌侵犯知识产权。检察机关认定，刘某于2020年3月至7月期间，以营利为目的，未经著作权人许可，从网上购买破解版密码狗、获取算码器软件、维修手册等作品，并利用互联网等渠道，故意向他人发行提供用于避开技术措施的破解版加密狗，通过信息网络向公众传播医疗设备生产企业享有著作权的算码器软件、维修手册等作品，非法经营数额合计人民币15余万元的行为触犯刑法，应当以侵犯著作权罪追究其刑事责任。近日，刘某因涉嫌侵犯著作权罪被普陀区人民检察院提起公诉。

来源：上海普陀区人民检察院

Shanghai First Criminal Copyright Infringement Case Prosecuted for Circumventing Technical Protection Measures

On January 31, 2020, the defendant Liu was prosecuted by the Putuo District People's Procuratorate for suspected copyright infringement. This is the first criminal copyright infringement case involving circumventing technical protection measures in Shanghai. In February 2022, the public security found out at work that someone, suspected of infringing intellectual property rights, was selling cracked versions of medical equipment keys on a second-hand trading platform. The procuratorial office ascertained that Liu, during the period from March to July 2020, for the purpose of making profits, without the permission of the copyright owner, purchased cracked encryption dogs, obtained encryption software, maintenance manuals and other works from the Internet, and deliberately distributed to others the cracked encryption dogs used to avoid technical measures, and disseminated to the public through the information network the encryption software, maintenance manuals and other works to which the medical equipment manufacturers enjoyed copyright, with the total illegal business turnover amount of more than RMB 150,000, which violated the Criminal Law, and Liu shall be investigated for criminal liability for the crime of copyright infringement. Recently, Liu was prosecuted by the Putuo District People's Procuratorate for suspected copyright infringement.

Source: Putuo District People's Procuratorate

上海知识产权法院：聘用同行员工及对员工离职后的竞业限制不构成不正当竞争

上海知识产权法院就上海甲悦医疗器械有限公司（原审原告）与上海微创心通医疗科技有限公司（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。一审法院认定被告的行为不构成不正当竞争。

法院认为，经营者扰乱市场竞争秩序，损坏其他经营者或者消费者合法权益，且属于违反反不正当竞争法第二章及专利法、商标法、著作权法等规定之外情形的，人民法院可以适用反不正当竞争法第二条予以认定。就因人才流动产生的法律关系而言，民法典有关合同的规定、劳动合同法、公司法以及反不正当竞争法商业秘密条款等均可能会予以调整。虽然人才也是经营者参与市场竞争的重要资源，但在不涉及商业秘密的情况下，反不正当竞争法对人才流动的调整和规范应当遵循兜底性和谦抑性，最大限度为人才流动和经营者自由竞争营造宽松的法律环境。一方面，如果经营者与相关人员存在劳动合同、合作协议或者相关人员属于经营者高级管理人员的，因人员流动产生的争议原则上应当通过专门调整双方间法律关系的民法典、劳动合同法、公司法等寻求救济，不应直接主张适用反不正当竞争法。另一方面，如果经营者主张其他经营者对于相关人员的流动构成不正当竞争，在不涉及侵害商业秘密的情况下，应当举证证明其他经营者采取了违反商业道德的手段促成相关人员离职，并造成了相应的损害后果。本案中，在案证据不能证明被告采取了有违商业道德的恶意诱导、主动恶意挖角，并阻止员工回归原告等损害竞争对手的合法权益等不正当手段，也未扰乱市场竞争秩序，故不具有不正当性，不构成反不正当竞争法第二条规制的不正当竞争。

来源：上海知识产权法院

Shanghai IP Court Affirms that Employment of Employees in the Same Industry and Restriction on Non-competition of Employees Do Not Constitute Unfair Competition

The Shanghai Intellectual Property Court (Shanghai IP Court) made the second-instance judgment on the unfair competition dispute case, upholding the original judgment. The court of first instance ruled that the defendant's act did not constitute unfair competition.

The court held that an operator damages the legitimate rights and interests of other operators or consumers and constitutes a violation other than the Anti-unfair Competition Law, the Patent Law, the Trademark Law, the Copyright Law and other provisions, the court may confirm the same in accordance with Article 2 of the Anti-unfair Competition Law. With regard to legal relationships arising out of talent flow, provisions of the Civil Code regarding contracts, the Labor Contract Law, the Company Law, as well as the trade secret clause in the Anti-Unfair Competition Law may be adjusted. Although talents are also important resources for operators to participate in market competition, as long as no trade secrets are involved, the adjustment and regulation of talent flow in the Anti-unfair Competition Law shall be all-inclusive and modest in order to create a relaxed legal environment for talent flow and

free competition of operators. On the one hand, in the event that there is a labor contract or cooperation agreement between an operator and relevant personnel or relevant personnel serve as senior officers of the operator, for disputes arising from personnel flow, remedies shall be sought through the civil code, the labor contract law, the Company Law and others that specifically adjust the legal relations between the two parties in principle, and it shall not be directly claimed for application of the Anti-unfair Competition Law. On the other hand, if the operator claims that the other operator has constituted unfair competition with respect to the turnover of the relevant personnel, the operator shall provide evidence to prove that the other operator has adopted means in violation of commercial ethics to induce the relevant personnel to leave and has caused the corresponding damages, provided that no infringement of commercial secrets is involved. In this case, the documented evidence cannot prove that the defendant has adopted improper means such as malicious inducement in violation of business ethics, active and malicious poaching, preventing employees from returning to the plaintiff, etc. to damage the legitimate rights and interests of competitors, and has not disturbed the market competition order. Therefore, the act is not unfair and does not constitute unfair competition regulated by Article 2 of the Anti-unfair Competition Law.

Source: Shanghai IP Court

河南省高级人民法院：关于外观设计产品装潢是否已经起到区分商品来源作用的认定

河南省高级人民法院就河南惠洁新型建材科技有限公司、河南惠洁管业有限公司（原审原告）与商水县留华家电城（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。原审法院驳回原告诉求。

法院认为，如果一种外观设计专利因保护期届满或者其他原因导致专利权终止，该外观设计就进入了公有领域，任何人都可以自由利用。若主张该设计系反不正当竞争法保护的包装装潢，权利人应当提供充分的证据证明，使用该设计的商品已具有一定影响，该设计已经实际具有区别商品来源的作用，他人对该设计的使用会导致相关公众的混淆或者误认。特别对于形状构造类装潢而言，因形状构造本身与商品本体不可分割，相关公众往往更容易将其视作商品本体的组成部分，而一般不会直接将其与商品的特定生产者、提供者联系起来。即使使用该形状构造的商品已经成为知名商品，在缺乏充分证据的情况下，不能直接得出相关公众已经将该种形状构造与特定的生产者、提供者联系起来的结论，权利人的证明责任更重。本案中，原告提供的证据虽能证明企业在经营过程中获得了多项荣誉，产品在行业内也具有一定影响，但依据现有证据尚不足以认定案涉产品装潢已经起到区分商品来源的作用。

来源：河南省高级人民法院

Henan High People's Court Ruled on Whether the Decoration of Design has Served to Distinguish the Source of Products

The Henan High People's Court has made a judgment of second instance on the unfair competition dispute case, upholding the original judgment. The court of first instance rejected the plaintiff's claims.

The court held that if a design patent is terminated upon expiry of its protection period or due to any other reason, the design enters the public domain and anyone may use it freely. If the right holder asserts that the design is packaging and decoration protected by the Anti-Unfair Competition Law, it shall provide adequate evidence to prove that the products using the said design have certain influence, the design has actually served to distinguish the source of products, and others' use of the said design will confuse or mislead the relevant public. Particularly in the case of decoration such as shape and structure, as the shape and structure are indivisible from the products, the relevant public is more likely to deem the shape and structure as an integral part of the products, and generally will not associate the shape and structure with the specific manufacturer or provider of the products. Even if the products with the said shape and structure are well-known products, in the absence of adequate evidence, it is impossible to conclude that the relevant public associates the said shape and structure with the specific manufacturer or provider, so the right holder bears a higher burden of proof. In this case, although the evidence provided by the plaintiff can prove that the company has received various awards in its business operations and that its products have certain influence in the industry, but existing evidence is inadequate to establish that the decoration of the products involved in this case has served to distinguish the source of products.

Source: Henan High People's Court

“爱马仕”获认驰名商标，将楼盘项目命名为“爱马仕主题公寓”被判赔200万元

山东省高院就爱马仕国际（HERMES INTERNATIONAL）（原审原告）与山东沪港建业房地产开发有限公司（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。一审法院认定，被告侵犯了原告“爱马仕”注册商标专用权，并且被告的行为构成不正当竞争。

法院认为，驰名商标的认定需符合“按需认定”要求，综合考虑相关公众对涉案商标的知晓程度、涉案商标实际使用及持续宣传的时间、程度和地理范围，涉案商标作为驰名商标受保护的记录等因素，足以使相关公众认为被诉商标与驰名商标具有相当程度的联系，而减弱驰名商标的显著性、贬损驰名商标的市场声誉，或者不正当利用驰名商标的市场声誉，属于“误导公众，致使该驰名商标注册人的利益可能受到损害”。本案中，被告将涉案公寓命名为“爱马仕主题公寓”并将“爱马仕”、“HERMES”商标突出使用于商品房的建设、销售、展览和广告宣传等商业活动。而原告爱马仕国际所主张的权利商标注册在第18类箱包、皮具等商品上，与商品房开发、建设非相同、类似商品服务。因此，权利商标是否达到驰名程度，是认定商标侵权的前提。结合“爱马仕”品牌历史，在国际上以及中国境内宣传、使用情况以及受保护记录。该被诉侵权行为发生时，两权利商标已在中国境内成为社会公众广为知晓的商标，已经达到了驰名程度。被告具有误导公众以及攀附原告驰名商标知名度和美誉度的主观故意，减弱了原告驰名商标的显著性，不正当利用了驰名商标的市场声誉牟取不法利益，对原告爱马仕国际的合法利益造成损害。

来源：山东省高级人民法院

"Hermes" Recognised as Well-known Trademark, with Damages of RMB 2 Million Awarded Against Naming of Real Estate Project as "Hermes Theme Apartment"

Shandong High People's Court has made a judgment of second instance in a trademark infringement and unfair competition dispute case, and upheld the original judgment. The court of first instance ruled that the defendant had infringed upon the plaintiff's exclusive rights to use the "Hermes" registered trademark, and that the defendant's action constituted unfair competition.

The court held the view that the determination of a well-known trademark shall comply with the requirement of "determination as needed". Taking into account factors such as the relevant public's awareness of the trademark involved in this case, the period of actual use of the trademark involved in this case and the continued promotion, the extent and geographical scope, the record of the trademark involved in this case being protected as a well-known trademark, etc, it is sufficient to make the relevant public believe that the alleged trademark and the well-known trademark are related to a certain extent, thereby diluting the distinctiveness of the well-known trademark or derogating the market reputation of the well-known trademark, or using the market reputation of the well-known trademark improperly, this falls under "misleading the public, causing possible harm to the interests of the registrant of the said well-known trademark". In this case, the defendant named the apartment "Hermes Theme Apartment" and used the "Hermes" and "HERMES" trademarks prominently in commercial activities such as the construction, sale, exhibition and advertising. The rights claimed by the plaintiff, Hermès International, were registered on Class 18 luggage and leather products, which were not identical with or similar to the development and construction of commercial housing. Therefore, whether the right trademark was famous or not was the prerequisite for determining trademark infringement. According to the history of "Hermes" brand, publicity, use and protection records in the world and in China. At the time of the alleged infringement, the trademarks of the two rights had become trademarks widely known to the public in China and had reached the level of well-known. The defendant had the intention to mislead the public and attach itself to the awareness and good reputation of the plaintiff's well-known trademark, which weakened the distinctiveness of the plaintiff's well-known trademark and improperly used the market reputation of the well-known trademark to seek illegal interests, causing damage to the legitimate interests of the plaintiff, Hermes International.

Source: Shandong High People's Court

浙江高院：缺少相关产品标识并不足以认定销售者存在过错

浙江高院就广州赫斯汀服饰有限公司（下称“赫斯汀公司”）与嘉兴越邦电子商务有限公司（下称“越邦公司”）著作权侵权纠纷案作出再审判决，驳回广州赫斯汀服饰有限公司的再审申请。一审法院责令越邦公司立即停止销售侵犯赫斯汀公司美术作品著作权的行为，包括删除网店中的商品信息、停止销售侵权产品等。

法院认为，产品或者其包装上应有产品质量检验合格证明、中文标明的产品名称、生产厂厂名和厂址等信息系《中华人民共和国产品质量法》的要求，与销售者应当承担的对产品知识产权合法性的合理注意义务并不完全相同。本案中，被诉侵权服装属于一般的日常消费品，即使缺少相关产品标识，也不能仅据此就认定越邦公司知道或应当知道被诉产品侵害著作权。综上，

赫斯汀公司未能证明越邦公司在展示被诉侵权服装图片和销售被诉侵权服装的过程中存在主观过错，二审法院认定越邦公司的合法来源抗辩成立并无不当。

来源：浙江省高级人民法院

Zhejiang High People's Court Affirms that Lack of Relevant Product Identification is not Sufficient to Identify the Seller as at Fault

Zhejiang High People's Court made the retrial judgment on the copyright infringement dispute case, and rejected the application for retrial of the plaintiff in the original trial. The court of first instance ordered the defendant to immediately cease selling the copyright of the plaintiff's artwork, including deleting information about the products in the online store and ceasing selling the infringing products.

The court held that the presence of a product quality certificate on the product or its packaging, and information such as product name and producer's name and address in Chinese on the product or its packaging was required by the Product Quality Law. This was not exactly the same as the seller's duty of due diligence in respect of the legality of intellectual property rights of the product. In this case, the alleged infringing clothing was a type of ordinary everyday consumer product. Even if the clothing lacked relevant product labels, the court could not conclude that the defendant knew or should have known the copyright infringement by the alleged products. In summary, the plaintiff failed to prove that the defendant had fault in the course of display and sale of the alleged infringing clothing. It was appropriate for the court of second instance to rule that the defendant's legitimate source defense was established.

Source: Zhejiang High People's Court

美国专利商标局2023年正式实施电子专利授权

从2023年4月18日开始，美国专利商标局（USPTO）将正式实施电子专利授权（eGrants），不再以纸质形式发放和邮寄专利授权书，以节省时间、减少浪费、促进绿色经济。专利申请人和公众在签发当天就能在专利中心、电子专利申请管理系统上立即查看、打印完整的已授权专利。在过渡期内，USPTO将提供电子专利授权书的纸质副本，送达专利权人的通信地址；过渡期之后，专利授权副本等资料将需要支付一定象征性费用。电子专利授权书将成为正式的法定专利授权书。

来源：USPTO

USPTO Officially Implemented Electronic Patent Authorization in 2023

Starting from April 18, 2023, the United States Patent and Trademark Office (USPTO) is implementing electronic patent issuance to reduce pendency of patent applications, foster a green economy by reducing paper waste, and permit complete issued patents to be viewable and printable by both the applicants as well as the public immediately upon issuance in Patent Center, the USPTO's electronic patent application filing and management system. Patent grants will no longer be issued on paper. During a transition period, the USPTO will provide a paper copy of the electronic patent grant, delivered to

the patentee's correspondence address of record. After the transition period, a selection of patent grant copies will be available for purchase at a nominal charge. The electronic patent grant will be the official statutory patent grant.

Source: USPTO

TikTok “Stitch” 在美被判未侵犯英国公司商标权

近日，抖音公司在洛杉矶说服了联邦陪审团，其Stitch功能不侵犯属于英国视频编辑公司Stitch Editing Ltd的商标权。陪审团驳回了Stitch Editing Ltd的说法：TikTok通过使用“Stitch”这个名字来宣传TikTok自家社交媒体平台的“拼接”视频技术，从而使消费者对Stitch Editing Ltd的品牌产生混淆。TikTok认为，Stitch Editing在其名称中的商标并没有赋予其“全球垄断使用‘Stitch’一词来指代视频剪辑组合在一起的过程”。

来源: 路透社

TikTok “Stitch” Found not to Infringe Trademark Rights of UK Company in US

Bytedance's TikTok Inc persuaded a federal jury in Los Angeles that its Stitch feature does not violate trademark rights belonging to British video-editing company Stitch Editing Ltd. The jury rejected Stitch Editing's argument that TikTok confuses consumers by using the Stitch name to brand the popular social-media platform's technology for "stitching" videos together. TikTok has argued that Stitch Editing's trademark in its name does not give it a "global monopoly on use of the word 'Stitch' to refer to the process of combining video clips together."

Source: Reuters

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