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立方要闻周报

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Chinese Police Conducted 80,000 Criminal Cases in Food, Drug and IP field

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Chongqing: the First Case of Malicious Trademark Registration through Relatives and Friends

使用“HDMI”被判定商标侵权，法院以销售数据确定侵权获利并加以惩罚性赔偿

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华鲁恒升与金象赛瑞的两起知识产权纠纷，法院终审判赔共2.18亿元

Two Intellectual Property Disputes between Hualu-Hengsheng and Golden Elephant Resulted in a Total of RMB 218 Million in Court Final Judgments

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SPC Reversed the Judgment on the Identification of the Parentage between the Hybrid Corn Varieties and Their Parent Varieties

InterDigital与LG电子、松下和三星签订专利许可协议

InterDigital Signed Patent License Agreements with LG Electronics, Panasonic and Samsung

联邦贸易委员会提议禁用竞业禁止条款

FTC Proposes Rule to Ban Noncompete Clauses

立方竞争法周报 Weekly Competition Law News

黄山7家游船公司达成垄断协议，共罚没约42.9万

2023年1月4日，国家市场监督管理总局（“市场监管总局”）发布了由安徽省市场监督管理局（“安徽省市监局”）对黄山市黄山区7家游船公司实施垄断协议作出的行政处罚决定。经查，2019年10月1日至2019年12月4日，7家游船公司就太平湖水面上运输客运事宜达成并实施了固定或者变更商品价格、分割销售市场的横向垄断协议，扰乱了市场竞争秩序。调查期间，黄山市黄山区太平湖游船发展有限责任公司第一个主动向调查机关报告并提供重要证据，得适用宽大制度获得80%的处罚减免。2022年11月21日，安徽省市监局决定没收7家当事企业违法所得，并每家企业处以各自2018年度销售额3%的罚款，共计约42.9万元。（[查看更多](#)）

7 Huangshan Tourist Ship Companies Fined and Confiscated for About CNY 0.429 Million for Monopoly Agreements

On January 4, 2023, the State Administration for Market Regulation (“SAMR”) published the administrative penalty decision issued by the Anhui Provincial Administration for Market Regulation (“Anhui AMR”) against 7 tourist ship companies in Huangshan District, Huangshan City for implementing monopoly agreements. Upon investigation, from October 1, 2019 to December 4, 2019, seven tourist ship companies concluded and implemented horizontal monopoly agreements on fixing or changing product prices and dividing the sales market of Taiping Lake water transportation passenger transportation business, which distorted the market competition order. During investigation, Huangshan City Huangshan District Taiping Lake Tourist Ship Development Co., Ltd. was the first company to report to the authority and provide important evidence, and was eligible to apply the leniency system and received an 80% penalty reduction. On November 21, 2022, Anhui AMR decided to confiscate the illegal income of the 7 companies involved, and imposed a fine of 3% of the companies’ 2018 annual sales, totaling about CNY 0.429 million. ([More](#))

市场监管总局发布试点委托经营者集中审查工作情况

2023年1月3日，市场监管总局召开试点委托经营者集中审查工作座谈会，总结成效及经验，部署下一阶段任务。自2022年8月1日启动试点以来，市场监管总局共委托审查经营者集中案件135件，占同期申报量的32.7%，试点省市局委托审查案件从立案到审结平均用时17.8天，与市场监管总局基本保持一致。此外，市场监管总局还上线了经营者集中反垄断审查业务系统，同步开发委托地方审查功能模块，使申报更加方便、快捷。（[查看更多](#)）

SAMR Releases the Pilot Delegated Merger Review Work Situations

On January 3, 2023, SAMR held a symposium on the work situations of pilot delegated merger review to summarize the work and experience and deploy the next-stage tasks. Since the launch of the pilot program on August 1, 2022, SAMR has delegated 135 cases of merger filings, accounting for 32.7% of the number of merger filings during the same period. The delegated merger review period takes an aver-

age of 17.8 days, which is roughly the same as that of SAMR. In addition, SAMR also launched an anti-monopoly review system for the concentration of operators and simultaneously developed functional modules for delegated provincial review, making the notifications more convenient and faster. ([More](#))

士卓曼因实施纵向垄断协议被罚3438万

2022年12月30日，市场监管总局发布了北京市市场监督管理局（“北京市市监局”）对士卓曼（北京）医疗器械贸易有限公司（“士卓曼”）的行政处罚决定。经调查，2015年10月至2021年6月间，士卓曼在全国范围内达成并实施了固定转售价格和限定最低价格的垄断协议，涉案商品为士卓曼品牌口腔种植体，士卓曼还制定了低价惩罚措施，强化了销售价格监控，其行为排除、限制了市场竞争。考虑到士卓曼积极配合调查，及时停止违法行为，北京市市监局最终决定责令当事人停止违法行为，处以其2020年度销售额3%的罚款，计34,385,525.65元。（[查看更多](#)）

Straumann Fined CNY 34.38 Million for Vertical Monopoly Agreements

On December 30, 2022, SAMR issued the administrative penalty decision made by the Beijing Administration for Market Regulation (“Beijing AMR”) against Straumann (Beijing) Medical Device Trading Co., Ltd. (“Straumann”). Upon investigation, from October 2015 to June 2021, Straumann reached and implemented nationwide monopoly agreements fixing resale prices and limiting minimum prices. The products involved were Straumann brand oral implants. Straumann also formulated low-price punishment measures and strengthened the monitoring of sales prices. The company’s behaviors excluded and restricted market competition. Considering that Straumann actively cooperated with the investigation and stopped the illegal behavior in time, Beijing AMR decided to order the party to stop the illegal behavior and imposed a fine of 3% of its 2020 annual sales, totaling CNY 34,385,525.65. ([More](#))

FTC首次打击非法竞业禁止协议行为

2023年1月4日，据媒体报道，美国联邦贸易委员会（Federal Trade Commission，“FTC”）认定Prudential Security、O-I Glass和Ardagh Group对其雇员施加非法的竞业禁止限制，构成不公平竞争行为，违反了《联邦贸易委员会法案》第五条的规定。FTC命令总部位于密歇根的安保服务公司Prudential Security终止与其安保人员的协议，这是FTC首次命令企业不得进行此类交易。（[查看更多](#)）

FTC Charges Three Firms Over Noncompete Agreements

On January 3, 2023, according to news report, the Federal Trade Commission (FTC) found that Prudential Security, O-I Glass, and Ardagh Group engaged their workers in allegedly illegal noncompete agreements, which constituted an unfair method of competition and violated Section 5 of the *FTC Act*. FTC ordered Prudential Security, a Michigan-based security services company, to terminate the agreements with its security guards, marking the first time the antitrust regulator ordered companies to refrain from such deals. ([More](#))

CMA将对日立铁路收购泰雷兹集团地面运输系统业务展开深入调查

2023年1月3日，据媒体报道，英国竞争与市场管理局（Competition and Markets Authority, “CMA”）宣布将对日立铁路收购泰雷兹集团地面运输系统业务展开深入调查，该交易于2022年8月提出，价值15亿英镑。CMA担忧该交易可能会使得英国铁路路网公司Network Rail干线信号最新招标活动减少一个有力的竞争者，干线和城市信号市场上的竞争损失会导致Network Rail和伦敦交通局运行成本上升，并对纳税人和乘客们产生负面的连锁反应。（[查看更多](#)）

CMA Opens Phase Two Probe into Hitachi’s Acquisition of Thales’s Rail Infrastructure Division

On January 3, 2023, according to news report, the UK Competition and Markets Authority (CMA) announced to launch a thorough phase two probe into Hitachi Rail’s acquisition of Thales’s Ground Transportation Systems business. The transaction was announced last August, and is worth GBP 1.5 billion. CMA concerns that the move “could eliminate a credible competitor” from Network Rail’s new tendering process for mainline signaling, and the resulting loss of competition across both mainline and urban signaling markets could increase costs for Network Rail and Transport for London and have an adverse knock-on effect on taxpayers and passengers. ([More](#))

微软收购动视暴雪案审前听证会于1月3日召开

2023年1月3日，FTC在其官网公布了微软收购动视暴雪案审前听证会的信息，听证会于2023年1月当地时间下午3:00至3:30召开，为线上听证会，并向公众开放。此前，FTC对微软收购动视暴雪进行审查，主要关注各方的游戏组合与微软主机和硬件系统的结合，以及该交易将可能如何限制交易方的竞争对手。（[查看更多](#)）

Prehearing Scheduling Conference of Microsoft’s Acquisition of Activision Blizzard to be Held on January 3

On January 3, 2023, the FTC announced on its official website the information on the prehearing conference of Microsoft’s acquisition of Activision Blizzard. The hearing was planned to be held from 3:00 pm to 3:30 pm local time in January 2023. It will be an online hearing and open to the public. Previously, the FTC conducted a review of Microsoft’s acquisition of Activision Blizzard, focusing on the combination of each party’s game portfolio with Microsoft’s mainframe and hardware systems, and how the transaction might limit the competitors. ([More](#))

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

网信办面向社会公开征集《数字乡村建设指南1.0》修订意见和建议

2023年1月4日，中央网信办、农业农村部发布公告表示，拟于近期联合启动《数字乡村建设指南1.0》修订工作，面向社会公开征集修订意见和建议，截止日期为2023年1月20日。中央网信办、农业农村部等7部门曾于2021年7月发布了《数字乡村建设指南1.0》（以下简称《指南》）。《指南》提出了数字乡村建设的总体参考架构，具体包括信息基础设施、公共支撑平台、数字应用场景、建设运营管理和保障体系建设等内容。公告表示，一年多来，各地参照《指南》内容及有关要求，推动数字乡村建设取得良好开局。与此同时，各地在探索实践中也遇到了一些新的问题、新挑战。（[查看更多](#)）

CAC Seeks Public Comments on the Revision of the Guidelines for the Construction of Digital Countryside 1.0

On 4 January 2023, the Cyberspace Administration of China (“CAC”) and the Ministry of Agriculture and Rural Affairs (“MARA”) announced that they plan to jointly launch the revision of *the Guidelines for the Construction of Digital Countryside 1.0* (the “Guidelines”) in the near future and seek public opinions and suggestions on the revision until 20 January 2023. CAC, MARA and seven other departments had released the *Guidelines* in July 2021. The *Guidelines* provide the overall reference framework for the construction of digital villages, specifically including information infrastructure, public support platform, digital application scenarios, construction and operation management, and establishment of security system. The announcement states that a good start has been made in different localities across the country in promoting the construction of digital villages by reference to the *Guidelines* and related requirements over the past year. At the same timer, some new problems and challenges have been encountered in different localities in their explorations and practice. ([More](#))

全国信安标委就《网络安全标准实践指南—车外画面局部轮廓化处理效果验证（征求意见稿）》公开征求意见

2023年1月6日，为指导汽车数据处理者规范开展车外画面数据收集，验证车外画面人脸、车牌局部轮廓化处理效果，全国信息安全标准化技术委员会秘书处（以下简称“全国信安标委”秘书处）发布了《网络安全标准实践指南—车外画面局部轮廓化处理效果验证（征求意见稿）》（以下简称《实践指南（征求意见稿）》），并向社会公开征求意见，截止日期为2023年1月20日。《实践指南（征求意见稿）》给出了验证车外画面进行人脸、车牌局部轮廓化处理效果的流程、方法及验证标准，可为汽车数据处理者及有关机构验证局部轮廓化处理效果提供参考。（[查看更多](#)）

NISSTC Seeks Public Comments on the Practice Guidance on Cyber Security Standards — Verification of the Effects of Partial Contour Processing of Exterior Images of Vehicles (Draft for Comment)

On 6 January 2023, in order to guide the vehicle data processor to carry out the data collection of exterior images in a standardized manner, and verify the effect of the contour processing of the face and license plate part of the exterior image, the National Information Security Standardization Technical Committee (“NISSTC”) issued *the Practice Guidance on Cyber Security Standards — Verification of*

the Effects of Partial Contour Processing of Exterior Images of Vehicles (Draft for Comment) (the "Practice Guide ") and sought public comments until 20 January 2023. The Practice Guide sets forth the procedures, methods and verification standards for verifying the effects of contour processing of the face and license plate part of the exterior images outside the vehicle. These may provide reference for vehicle data processors and relevant organizations to verify the effects of partial contour processing. ([More](#))

团体标准《互联网广告 匿名化实施指南》发布

2023年1月3日，在中国广告协会（CAA）与中国通信标准化协会（CCSA）共同组织下，由中国信通院牵头制定的双编号团体标准T/CAAAD 004-2022 | T/CCSA 424-2022《互联网广告 匿名化实施指南》(以下简称“《指南》”)发布，并于2023年1月6日正式实施。《指南》规定了互联网广告匿名化的概述、目标和原则，提出了匿名化过程和组织措施，并给出了技术指引建议。《指南》适用于各类互联网广告业务，包括广告投放、程序化交易、广告监测等应用场景下的数据匿名化处理活动，其他领域的相关活动也可参照进行。 ([查看更多](#))

Release of Group Standards *Digital Advertising-Implementation Guide of Anonymization*

On 3 January 2023, under the joint organization of the China Advertising Association (“CAA”) and the China Communications Standardization Association (“CCSA”), the double-numbered group standard T/CAAAD 004-2022 | T/CCSA 424-2022, *the Digital Advertising-Implementation Guide of Anonymization (the "Guide")*, which was developed under the leadership of the China Academy of Information and Communications Technology, was released and officially implemented on 6 January 2023. The Guide provides an overview of the anonymization of Internet advertising, sets forth the objectives and principles, and details the anonymization process and organizational measures and technical guidelines. The Guide apply to various internet advertising businesses, including data anonymization processing activities under such application scenarios as advertisement placement, programmatic trading and advertisement monitoring, and can be applied *mutatis mutandis* to relevant activities in other fields. ([More](#))

《数据资产管理实践白皮书（6.0版）》正式发布

2023年1月4日，《数据资产管理实践白皮书（6.0版）》正式发布。白皮书是大数据技术标准推进委员会在数据资产管理领域的系列研究报告。白皮书总结了数据资产管理活动职能的核心理念与实践要点，提出了战略规划、组织架构、制度体系、平台工具、长效机制五大数据资产管理保障措施，提倡企业体系化开展数据资产管理工作，提升数据资源化效率，创新数据资产化模式，引导企业充分融入数据要素市场发展，加速数据资产价值释放。该白皮书预测，未来，数据资产管理将朝着统一化、专业化、敏捷化的方向发展，提高数据资产管理效率，主动赋能业务，推动数据资产安全有序流通，持续运营数据资产，充分发挥数据资产的经济价值和社会价值。 ([查看更多](#))

White Paper on Data Asset Management Practices (Version 6.0) Officially Issued

On 4 January 2023, the *White Paper on Data Asset Management Practices (Version 6.0)* (the "White Paper") was officially issued. The White Papers are a series of research reports prepared by the Technical Standard Promotion Committee for Big Data in the field of data asset management. The White Paper summarizes the core philosophy and practice elements of data asset management activities, proposing five measures to ensure data asset management: strategic planning, organizational structure, institutional system, platform tools, and long-term mechanism. It also advocates that enterprises carry out data asset management in a systematic manner, improve the efficiency of data resource utilization, innovate the data asset utilization model, guiding enterprises to fully integrate into the development of the data element market, and accelerating the realization of data asset value. The White Paper predicts that in the future, data asset management will develop in the direction of unification, professionalism and agility, to improve the efficiency of data asset management, actively enable business, promote the safe and orderly circulation of data assets, continuously operate data assets, and give full play to the economic and social values of data assets. ([More](#))

中国信通院发布《数据安全治理实践指南(2.0)》

2023年1月5日，在第二届数据安全治理峰会上，中国信息通信研究院正式发布《数据安全治理实践指南（2.0）》。《数据安全治理实践指南（2.0）》基于大量的企业调研和数据安全治理能力评估工作，吸收行业数据安全治理经验，对2021年7月发布的《数据安全治理实践指南（1.0）》进行了迭代更新。 ([查看更多](#))

CAICT Issues Practice Guidance on Data Security Governance (2.0)

On 5 January 2023, at the 2nd Data Security Governance Summit, the China Academy of Information and Communications Technology (the "CAICT") released *the Practice Guidance on Data Security Governance (2.0)*. It is based on a large number of enterprise surveys and evaluation of data security governance capacity, drawing on data security governance practices in the industry. This version is an iterative update to the Practice Guidance on Data Security Governance (1.0) promulgated in July 2021. ([More](#))

浙江省网信办发布《数据出境安全评估申报材料指引》

2023年1月6日，浙江省网信办编制并发布《浙江省数据出境安全评估申报材料指引》（以下简称“《指引》”），指引数据处理者提高申报材料的完整性、准确性、一致性。申报材料各项文件的日期信息都需要补充完善，例如自评估工作开展的起止时间、数据在境外保存期限、经办人授权委托期限等。自评估工作为申报之日前3个月内完成，且至申报之日未发生重大变化。申报材料中的法律文件及相关证明材料以中文版本为准，若仅有非中文版本，须同步提交准确的中文译本。 ([查看更多](#))

Zhejiang Cyberspace Administration Issues the Guidelines of Zhejiang Province for Application Materials in Security Assessment for Cross-border Data Transfer

On 6 January 2023, the Zhejiang Cyberspace Administration prepared and issued the *Guidelines of Zhejiang Province for Application Materials in Security Assessment for Cross-border Data Transfer* (the "Guidelines"), in order to guide data processors to improve the completeness, accuracy and consistency of application materials. The date information of each document in the application materials is required to be supplemented and completed, for example, the starting and ending time of the self-assessment, the period for overseas storage of data, the period of authorization and entrustment of agent, etc. The self-assessment shall be completed within three months before the date of application, and no major change shall have occurred since the date of application. The Chinese version of the legal documents and relevant supporting materials in the application materials shall prevail; if there is only a non-Chinese version, the accurate Chinese translation shall be submitted at the same time. ([More](#))

山东省威海蓝海银行受到行政处罚，涉消费者金融信息保护等违法行为

2023年1月4日，中国人民银行威海市中心支行行政处罚公示信息显示，威海蓝海银行因涉及消费者金融信息保护等有关违法行为而被处以警告，并被罚款76.66万元。违法行为类型涉及：1. 提供虚假的或者隐瞒重要事实的统计报表；2. 未按规定履行客户身份识别义务；3. 未按规定保存客户身份资料和交易记录；4. 未按规定履行消费者金融信息保护义务。 ([查看更多](#))

Administrative Penalty on Weihai Lanhai Bank in Shandong Province Involving Protection of Consumers' Financial Information and Other Illegal Acts

On 4 January 2023, according to the administrative penalty publicity information of the People's Bank of China Weihai Central Sub-branch, Weihai Lanhai Bank in Shandong Province was issued a warning and fined RMB 766,600 for related violations involving consumer financial information protection. The types of illegal acts involve: 1. providing false statistical statements or ones concealing important facts; 2. failing to perform the obligations of customer identification as required; 3. failing to keep customer identity information and transaction records as required; and 4. failing to perform the obligations of consumer financial information protection as required. ([More](#))

苹果公司被法国隐私监管机构 CNIL 罚款800万欧元

2022年 12月29日，法国国家信息与自由委员会（CNIL）对苹果公司处以800万欧元罚款，因为苹果公司在将用于广告目的的标识符存入和/或写入终端之前，未得到法国iPhone（iOS 14.6版本）用户的同意。CNIL发现，在iOS 14.6操作系统下，当用户访问App Store时，系统会默认自动读取用于多种目的的标识符，其中包括用于定制AppStore上显示的广告的目的，这些都没有经过用户同意。CNIL还表示，用户必须采取“大量行动”才能禁用该功能。因此，CNIL裁定苹果违反了数据保护法第82条，并对其处以800万欧元的罚款。 ([查看更多](#))

Apple Was Fined 8 Million Euros By CNIL

On 29 December 2022, the CNIL imposed an administrative fine of 8 million euros on the company Apple because it did not collect the consent of iPhone's French users (iOS 14.6 version) before depositing and/or writing identifiers used for advertising purposes on their terminals. The CNIL found that under the old version 14.6 of the operating system of the iPhone, when a user visited the App Store, iden-

tifiers used for several purposes, including personalization of ads on the App Store, were by default automatically read on the terminal without obtaining consent. And the user had to perform a large number of actions in order to deactivate this setting. Therefore, CNIL ruled that Apple violated Article 82 of the Data Protection Law and imposed a fine of 8 million euros on it. ([More](#))

英国数据伦理与创新中心和中央数字和数据办公室联合更新了《算法透明度记录标准》

2023年1月5日，英国数据伦理与创新中心（下称“CDEI”）与中央数字和数据办公室（下称“CDDO”）联合更新了《算法透明度记录标准》(The Algorithmic Transparency Recording Standard)，以帮助公共部门组织其所使用的算法工具及使用原因提供清晰的信息。算法透明度意味着对算法工具如何支持决策进行公开，包括以完整、公开、可理解、容易获得和免费的形式提供有关算法工具和算法辅助决策的信息。该标准是英国政府国家数据战略的一部分，这一战略致力于探索一种适当而有效的方式，以提高公共部门算法辅助决策的透明度。（[查看更多](#)）

CDEI and CDDO Updates Algorithmic Transparency Recording Standard

On 5 January 2023, the Centre for Data Ethics and Innovation (“CDEI”) along with the Central Digital and Data Office (“CDDO”) updated the Algorithmic Transparency Recording Standard. The standard helps public sector organisations provide clear information about the algorithmic tools they use. The algorithmic transparency requires openness on how algorithmic tools support decision-making, which includes providing information on algorithmic tools and algorithm-assisted decisions in a complete, open, understandable, easily accessible, and free format. The standard is part of the Government’s National Data Strategy, which includes a commitment to explore an appropriate and effective way to deliver greater transparency on algorithm-assisted decision making in the public sector. ([More](#))

知识产权 Intellectual Property

第一批知识产权代理行业“蓝天”专项整治行动警示案例发布

国家知识产权局发布第一批“蓝天”专项整治行动警示案例，集中在商标代理方面，包括代理不以使用为目的恶意抢注涉新冠疫情防控、奥运热词等商标申请，伪造、变造公文、签名或者史料造假等行为，接受同一商标案件中利益冲突双方委托、虚假宣传、诋毁同行等以不正当手段招揽业务等违法行为。国知局提醒专利、商标代理机构和从业人员要引以为戒，自觉守法规范经营，共同营造良好行业环境。

来源：国知局

Release of the First Batch of "Blue Sky" Special Rectification Action Warning Cases in the Intellectual Property Agency Industry

The China National Intellectual Property Administration(the "CNIPA") has released the first batch of "blue sky" special rectification action cases, which focuses on the aspect of trademark agency. The cases include the acts of maliciously registering trademark applications not for the purpose of use such as the COVID-19 epidemic prevention and control and the Olympic words, forging or altering official documents, signatures or historical materials fabrication, etc., illegal acts such as soliciting business by improper means, such as accepting entrustment from both parties having a conflict of interest in the same trademark case, making false advertising and slandering people of the same trade.

Source: CNIPA

中国警方侦破食药环和知识产权领域犯罪案件8万起

2022年全国公安机关食药侦部门组织开展“昆仑2022”专项行动，向食药环和知识产权领域突出违法犯罪发起攻势，取得显著成效。截至去年11月底，警方共侦破食药环和知识产权领域犯罪案件8万起，抓获一大批违法犯罪嫌疑人。依法严厉打击各类制售假药劣药、生产销售不符合标准医用器材、生产销售不符合卫生标准的化妆品等犯罪活动。警方还将打击矛头指向污染环境、非法采矿等破坏生态环境犯罪，深挖彻查犯罪链条，依法严惩相关犯罪，积极推动源头治理。

来源：中国新闻网

Chinese Police Conducted 80,000 Criminal Cases in Food, Drug and IP field

In 2022, the food and drug investigation departments under national Public Security Bureau organize and carry out the "Kunlun 2022" Special Initiative, to attack prominent crimes in the food, drug, environment and intellectual property fields and achieve remarkable results. By the end of November 2011, the police had conducted more than 80,000 criminal cases in food, drug, environment and intellectual property field, and arrested a large number of criminal suspects. The police, in accordance with the law, severely cracked down on various criminal activities such as production and sale of counterfeit and substandard medicines, substandard medical apparatuses and devices, and cosmetics that fail to comply with the hygiene standards. The police also target the cracking down on such crimes as environmental pollution and illegal mining as the target of the crackdown, dig out and thoroughly investigate criminal clues, severely punish relevant crimes in accordance with the law, and actively promote the treatment from the source.

Source: China News

重庆查获首例亲友组团恶意注册商标系列案

近日，重庆市荣昌区市场监督管理局查处一起商标代理机构及其代理的6个注册商标申请人恶意注册商标的行为。该案为重庆首个亲友组团恶意注册商标案。

2022年9月，重庆市荣昌区市场监督管理局收到国家知识产权局的案件移送函，反映辖区内一商标代理机构及其多家关联企业商标代理有关问题。经查，从2018年至今，该商标代理机构陆续为其6家关联企业代理不以使用为目的的恶意商标注册申请共173件。6家关联企业法定代表人及股东均系该商标代理机构法定代表人的亲友，此关联企业从注册至今并未实际开展经营活动。2022年12月，重庆市荣昌区市场监督管理局认定当事人代理明知委托人不以使用为目的的恶意申请商标注册的行为，对当事人给予警告并罚款。

来源：中国新闻网

Chongqing: the First Case of Malicious Trademark Registration through Relatives and Friends

Recently, the Chongqing Administration for Market Regulation (“Chongqing AMR”) investigated and dealt with a case of malicious trademark registration by a trademark agency and six trademark applicants represented by the agency. This case is the first case of malicious trademark registration through relatives and friends. In September 2022, Chongqing AMR received the letter of case transfer from the CNIPA regarding trademark agency disciplinary acts. According to the investigation, since 2018, the trademark agency has successively represented 173 malicious trademark applications for its six affiliated enterprises that are not intended for use. The legal representatives and shareholders of the six affiliates are relatives and friends of the legal representative of the trademark agency, and the affiliates have not actually started the business since the registration. In December 2022, the “Chongqing AMR” found that the parties concerned, acting for and knowing full well that the clients maliciously applied for trademark registration not for the purpose of use, gave the parties concerned a warning and fined them.

Source: China News

使用“HDMI”被判定商标侵权，法院以销售数据确定侵权获利并加以惩罚性赔偿

广东省深圳市中级人民法院就HDMI许可管理公司（下称原告）与深圳鑫大瀛科技有限公司（下称被告）侵害商标权纠纷案作出二审判决，认定被告销售的数据线商品上使用了与原告注册商标“HDMI”相同的标识，构成商标侵权。

法院认为，被告在因实施商标侵权行为被行政处罚之后，仍然再次实施侵权行为，原告据此主张被告故意侵害其依法享有的注册商标专用权且情节严重，具有事实依据，应当适用惩罚性赔偿。实际损失数额、违法所得数额、因侵权行为获利难以计算的，人民法院依法参照权利许可使用费的倍数合理确定，并以此作为惩罚性赔偿数额的计算基数。本案从阿里巴巴调取的被告销售数据结合被告提交的行业利润报告显示的电子产品净利润率、毛利润率，可以计算被告侵权获利，参照HDMI公司提交的权利许可使用费确定计算基数已无必要，故本案最终以被告销售数据确定侵权获利赔偿基数。

来源：深圳中院

The Court Found that the Use of "HDMI" Constitute Trademark Infringement with Punitive Damages

The Shenzhen Intermediate People's Court has made the judgment of second instance on the trademark infringement dispute case, and ruled that the logo identical to the plaintiff's registered trademark "HDMI" is used on the data line sold by the defendant, constituting trademark infringement.

The court held that the defendant continued to commit infringement after being given administrative punishment for trademark infringement, and the plaintiff claimed that the defendant intentionally infringed on the defendant's exclusive right to use the registered trademark, and the circumstances were serious, which had factual basis, and shall apply punitive damages. Where it is difficult to calculate the actual losses, illegal gains, or profits from infringement, a court shall, in accordance with the law, reasonably determine the amount of actual losses, illegal gains, or profits from infringement by reference to multiples of licensing fees of rights, and use this as the calculation base for punitive damages. In this case, the infringement profits of the defendant can be calculated based on the sales data of the defendant obtained from Alibaba and combined with the net profit rate and gross profit rate of the electronic products shown in the industry profit report submitted by the defendant. It was unnecessary to determine the calculation base by referring to the royalty of rights submitted by HDMI Company, therefore, the final damages base of infringement profits shall be determined based on the infringing profits of defendant.

Source: Shenzhen Intermediate People's Court

华鲁恒升与金象赛瑞的两起知识产权纠纷，法院终审判赔共2.18亿元

山东华鲁恒升化工股份有限公司（下称“华鲁恒升”）是一家以化肥、化工、热电、气体为主营业务的公司。四川金象赛瑞化工股份有限公司（下称“金象赛瑞”）以生产销售化工原料、化肥为主营业务，产品统一使用“象”牌商标为中国驰名商标。从华鲁恒升披露的信息来看，华鲁恒升与金象赛瑞的两起知识产权纠纷（涉及发明专利侵权和技术秘密侵权）已经进行多年，近期，华鲁恒升等被告在最高院作出的终审判决中败诉，两起案件的涉案金额共2.18亿元。

金象赛瑞诉称，其拥有加压气相淬冷法三聚氰胺生产技术的商业秘密。金象赛瑞认为华鲁恒升等四被告非法获取、披露并使用其商业私密，构成了对其商业秘密的严重侵犯，索赔9800万元。同时，金象赛瑞和焯晶科技以发明专利专用权人的身份，于广州知识产权法院起诉华鲁恒升等四被告共同合作实施三聚氰胺项目的工程设计、制造、施工等行为，侵犯了其发明专利专用权，并索赔1500万元。广东高院一审判决华鲁恒升赔偿金象赛瑞经济损失及合理维权费用共计8000万元。华鲁恒升等四被告不服该判决，并向最高院提起上诉。近日，最高院做出终审判决，判决华鲁恒升等四被告连带赔偿四金象赛瑞、焯晶科技经济损失及合理费用1.2亿元，并销毁现存的侵权蜜胺生产系统即华鲁恒升10万吨/年三聚氰胺项目（一期）等。

来源：华鲁恒升官方网站

Two Intellectual Property Disputes between Hualu-Hengsheng and Golden Elephant Resulted in a Total of RMB 218 Million in Court Final Judgments

Shandong HUALU-HENGSHENG Group Co., Ltd. (“Hualu-Hengsheng”) is a company mainly engaged in chemical fertilizer, chemical industry, thermal power and gas. Sichuan Golden-Elephant Sincerity Chemical Co., Ltd. (“Golden-Elephant”) is mainly engaged in the production and sales of chemical raw materials and fertilizers, and its products uniformly use the "elephant" brand trademark as a well-known trademark in China. The two intellectual property disputes between Hualu-Hengsheng and the Golden-Elephant have been going on for many years. Recently, Hualu-Hengsheng and other defendants lost the lawsuit in the final judgment made by the Supreme People's Court(the “SPC”). The two cases involved a total amount of RMB218 million. Golden Elephant claimed that the four defendants, including Hualu-Hengsheng, illegally obtained, and disclosed and used its trade secrets, constituting infringement of its trade secrets, and sought damages of RMB 98 million. Meanwhile, Golden-Elephant filed a lawsuit with the Guangzhou Intellectual Property Court against Hualu-Hengsheng and other three defendants for patent infringement, and claimed RMB15 million. Guangdong High People's Court ruled in the first instance that Hualu-Hengsheng shall pay the damages of RMB 80 million for Golden-Elephant. Four defendants including Hualu -Hengsheng appealed to the SPC. Recently, the SPC made the final judgment and ruled that four defendants including Hualu-Hengsheng shall jointly pay the damages of RMB120 million for Golden Elephant and Yejing Technology and destroy the existing infringing products.

Source: [Hualu-Hengsheng](#)

上海三中院对假冒法国波尔多“BORDEAUX”地理标志集体商标案作出终审裁定

近日，上海市第三中级人民法院（下称“上海三中院”）对一起涉嫌假冒法国波尔多“BORDEAUX”等地理标志集体商标的假冒注册商标罪上诉案作出驳回上诉，维持原判的终审裁定。

被告为谋取非法利益，在未取得授权的情况下，生产制造假冒法国波尔多地理标志商标“BORDEAUX”的葡萄酒。其间，姜某（另案处理）提供带有“BORDEAUX”注册商标的酒标委托加工，被告采购酒汁及配件、组织员工灌装葡萄酒、粘贴酒标，姜某购买上述假冒波尔多葡萄酒销售至赵某越（另案处理）的酒庄等地。

法院认为，原审被告单位烟台某葡萄酒有限公司、上诉人王某元未经注册商标所有人许可，在同一种商品上使用与其注册商标相同的商标，情节特别严重，其行为均已构成假冒注册商标罪，依法均应予惩处。

来源：上海三中院

Shanghai No.3 Intermediate People's Court Made Final Judgement on the Criminal Case on Counterfeiting the Collective GI "BORDEAUX"

Shanghai Third Intermediate People's Court made the final ruling on the case on counterfeiting the collective Geographical identification ("GI") "BORDEAUX". And the court held that the defendant's act constituted the crime of counterfeiting the registered trademark

In order to seek illegal interests, the defendant produced the wine with the GI collective trademark "BORDEAUX" without authorization. During that period, Jiang provided the wine labels with the registered trademark "BORDEAUX"; the defendant purchased wine and accessories, organizing employees to fill wine and stick wine labels; and Jiang bought the counterfeit Bordeaux wine and sold them to Zhao 's winery and other places.

The court held that the defendant used the same trademark as the registered trademark on the same production without the permission of the owner of the registered trademark. The defendants' acts had constituted the crime of counterfeit the registered trademark.

Source: Shanghai Third Intermediate People's Court

最高院改判：关于杂交玉米品种与其亲本品种的亲子关系认定

近期，最高人民法院对荆州市恒彩农业科技有限公司与甘肃金盛源农业科技有限公司、郑州市华为种业有限公司侵害植物新品种权纠纷案作出二审判决，认定被诉侵权玉米种子是使用“WH818”“T37”作为父、母本生产获得的。上诉人关于被诉侵权玉米种子系使用“WH818”“T37”作为父、母本生产的上诉主张成立，最高院判决被上诉人停止侵权行为，并赔偿经济损失和合理开支共计22万元。

法院认为，目前玉米杂交品种与亲本品种的亲子关系鉴定缺少行业标准，杂交玉米品种与其亲本品种的亲子关系这一事实可以结合双方的举证情况来认定。一般而言，在实际玉米育种生产中，使用不同的亲本通过杂交选育得到相同或者极近似品种的几率很小。因此，如果品种权人能够证明被诉侵权杂交种与使用授权品种作为父、母本杂交选育的杂交种构成基因型相同或者极近似品种时，可以初步推定被诉侵权杂交种使用了授权品种作为亲本的可能性较大，此时应转由被诉侵权人提供证据，证明其实际并未使用品种权人所主张的授权品种作为亲本，在被诉侵权人并未提供证据或者提供的证据不足以推翻上述初步认定的，可以认定被诉侵权杂交种使用了授权品种作为亲本。根据上诉人的举证情况，最高院认定被诉侵权玉米种子是使用“WH818”“T37”作为父、母本生产获得的。

来源：最高人民法院

SPC Reversed the Judgment on the Identification of the Parentage between the Hybrid Corn Varieties and Their Parent Varieties

Recently, the Supreme People's Court ("SPC") rendered the second-instance judgment in a dispute over the infringement upon the rights of new plant varieties. According to the judgment, the allegedly infringing corn seeds were produced by using "WH818" and "T37" as the male parent and female parent. The appellant's claim in the appeal that the alleged infringing corn seed line used "WH818" and

"T37" as the male parent and female parent to produce the corn was tenable, and the SPC ruled that the appellee shall stop the infringement and pay the damages of RMB220,000.

The court held that at present, the paternity identification of hybrid corn varieties and their parents lacks industry standards, and the fact that the paternity identification of hybrid corn varieties and their parents can be determined by combining the evidence of both parties. Generally speaking, in the actual maize breeding production, the probability of using different parents to obtain the same or very similar varieties through cross breeding is very small. Therefore, if the variety obligee can prove that the sued infringing hybrid and the hybrid bred by using the authorized variety as the male parent and female parent are of the same or very similar genotype, it can be preliminarily presumed that the sued infringing hybrid is more likely to use the authorized variety as the parent. At this time, the accused infringer shall provide evidence to prove that it has not actually used the authorized variety claimed by the variety obligee as the parent. If the accused infringer does not provide evidence or the evidence provided is insufficient to overturn the above preliminary determination, it can be determined that the accused infringed hybrid uses the authorized variety as the parent. According to the evidence provided by the appellant, the SPC determined that the sued infringing corn seeds were produced using "WH818" and "T37" as the male parent and female parent.

Source: SPC

InterDigital与LG电子、松下和三星签订专利许可协议

近日，美国移动和视频技术研发公司InterDigital日前发布公告称，已与LG电子、松下和三星签订专利许可协议。据悉，InterDigital与LG电子签订的是HEVC和VVC的许可协议，涵盖电视、个人电脑等产品。InterDigital指出，双方之前的许可协议已于2022年12月31日到期，新协议于2023年1月1日生效。

来源：集微网

InterDigital Signed Patent License Agreements with LG Electronics, Panasonic and Samsung

US mobile and video technology company InterDigital announced that it has signed patent licensing agreements with LG Electronics, Panasonic and Samsung. It is reported that InterDigital and LG Electronics signed a license agreement for HEVC and VVC, covering televisions, personal computers and other products. InterDigital notes that the previous licence agreement between the Parties has expired on December 31, 2022 and the new agreement will enter into force on January 1, 2023.

Source: Jjwei

美国联邦贸易委员会提议禁用竞业禁止条款

近日，美国联邦贸易委员会（Federal Trade Commission）提出了一项新规则，禁止雇主对工人实施竞业禁止。联邦贸易委员会正在就拟议规定征求公众意见，其依据是一项初步裁决，即非

竞争行为构成了不公平竞争方式，因此违反了《联邦贸易委员会法》第5条。联邦贸易委员会表示通过停止竞业禁止，新规则提案每年可以增加近3,000亿美元的工资，并为大约3,000万美国人扩大就业机会。

来源：FTC

FTC Proposes Rule to Ban Noncompete Clauses

The Federal Trade Commission (“FTC”) proposed a new rule that would ban employers from imposing noncompetes on their workers. The FTC is seeking public comment on the proposed rule, which is based on a preliminary finding that noncompetes constitute an unfair method of competition and therefore violate Section 5 of the Federal Trade Commission Act. The FTC estimates that the new proposed rule could increase wages by nearly \$300 billion per year and expand career opportunities for about 30 million Americans.

Source: FTC

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