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某楼盘售楼处因擅用人脸识别技术采集个人信息被罚款20万

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欧盟委员会发布数据传输标准合同条款相关问答

European Commission Publishes Q&A on Standard Contractual Clauses for Data Transfers

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因违反英国数据保护法人脸识别公司Clearview AI被罚款755万英镑

Facial Recognition Company Clearview AI is Fined GBP 7.55 Million for Breaching of UK's General Data Protection Regulation

德国联邦卡特尔局同意建立汽车行业数据网络

German Federal Cartel Office Agrees to Establish Data Network for Automotive Industry

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SPC: Decorative Patterns on Similar Goods Shall Reasonably Evade Others' Trademarks

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山东高院：传播“对未审结案件非客观评论的文章”，构成商业诋毁

Shandong High People's Court: Dissemination of "Articles with Non-Objective Comment on Pending Cases" Constitutes Commercial Defamation

Lex Machina发布2022年专利诉讼报告

Lex Machina Released 2022 Patent Litigation Report

华为与SolarEdge达成全球专利许可协议，结束在德国和中国的诉讼

Huawei Reached a Global Patent License Agreement with Solaredge Technologies, Ending Their Lawsuits Pending in Germany and China

立方竞争法周报 Weekly Competition Law News

宁夏一天然气公司因滥用市场支配地位被罚近120万元

2022年5月26日，国家市场监督管理总局（“市场监管总局”）发布宁夏长燃天然气有限公司（“长燃公司”）滥用市场支配地位案行政处罚决定书。此前，宁夏回族自治区市场监督管理厅（“宁夏市监厅”）经调查认定长燃公司在吴忠市红寺堡区管道燃气供应市场具有支配地位，没有正当理由实施搭售行为，将购买报警器、波纹管作为通气点火的前提条件，构成滥用市场支配地位，因此对长燃公司作出处罚决定，没收违法所得及罚款共计约111万元。长燃公司一名部门负责人因拒绝、阻碍反垄断执法机构调查取证，被单独处以5万元罚款。（[查看更多](#)）

A Ningxia Natural Gas Company Was Fined Nearly CNY 1.2 Million for Abusing of Dominant Market Position

On May 26, 2022, the State Administration for Market Regulation (“SAMR”) issued a decision on administrative penalty for the abuse of dominant market position by Ningxia Changran Natural Gas Co., Ltd. (“Changran”). Previously, after investigation, the Administration for Market Regulation of Ningxia Hui Autonomous Region (“Ningxia AMR”) found that Changran had a dominant position in the pipeline gas supply market in Hongsibao District, Wuzhong City, and carried out tying and bundling without justifiable reasons. Changran required customers to purchase alarms and bellows as a prerequisite for the venting and ignition, which constitutes an abuse of dominant market position. Therefore, Ningxia AMR made a penalty decision of fines and confiscation of illegal gains, totaling CNY 1.11 million. A department head of Changran was fined CNY 50,000 individually for refusing and obstructing the antitrust law enforcement authority investigating and collecting evidence. ([More](#))

辽宁省市监局：深入推进在政府采购和招标投标领域公平竞争审查实施

2022年5月23日，据媒体报道，辽宁省市场监督管理局（“辽宁省市监局”）将在5月至10月开展专项清理活动，将2022年度政府采购和招标投标文件全部纳入公平竞争审查范围，深入推进在政府采购和招标投标领域公平竞争审查实施，紧盯以不合理的条件排斥、限制经营者参与招标投标的行为，坚决制止滥用行政权力排除、限制竞争。（[查看更多](#)）

Liaoning AMR: Further Promote the Implementation of Fair Competition Review in the Field of Government Procurement and Bidding

On May 23, 2022, according to media report, the Liaoning Administration for Market Regulation (“Liaoning AMR”) will carry out special “clean-up” activities from this May to October to include all government procurement and bidding documents in 2022 in the scope of fair competition review, further promote the implementation of fair competition review in the above-mentioned fields, pay close attention to conducts that exclude or restrict operators’ participation in bidding and procurement with unreasonable conditions and resolutely stop the abuse of administrative power which excludes and restricts competition. (More)

市场监管总局：加快完善适合我国国情的公平竞争治理体系

近日，中共中央宣传部举行“中国这十年”新闻发布会，市场监管总局副局长蒲淳总结市场监管总局近十年在公平竞争方面取得的成效：公平竞争制度机制日趋完善，完善立法体系并实现

执法体制统一；市场竞争生态持续改善，查办垄断协议、滥用市场支配地位案277件，审结经营者集中案3822件；统一大市场建设深入推进，公平竞争审查制度实现四级政府全覆盖。今后，市场监管总局将不断健全公平竞争制度，加强竞争倡导和企业合规建设。（[查看更多](#)）

SAMR: Accelerate the Improvement of a Fair Competition Governance System Suitable for China's National Conditions

Recently, the Publicity Department of the Central Committee of the Communist Party of China (“CCCPC”) held a press conference on “China’s Ten Years”. Pu Chun, deputy director of SAMR, summarized the achievements of SAMR in fair competition in the past ten years: the fair competition mechanism and the legislative system have been gradually completed and the law enforcement system has been unified; the market competition ecology has continued to improve, and 277 cases of monopoly agreements and abusing of dominant market position have been handled and 3822 merger filing cases have been concluded; the construction of a unified market has been further advanced, and the fair competition review system has achieved full coverage of the four levels of governments. In the future, SAMR will continue to improve the fair competition system and strengthen competition advocacy and corporate compliance construction. ([More](#))

英国竞争与市场管理局要求天然气供应商BDS Fuels停止排他性垄断行为

2022年5月24日，英国竞争与市场管理局（“CMA”）发布公告称，在审查液化天然气供应商BDS Fuels的合同后，CMA发现BDS Fuels通过自动续期合同限制客户自由选择供应商。CMA称，BDS Fuels的自动续期条款未经客户明示同意，若客户想提前解除合同，需支付350英镑。现BDS Fuel承诺删除非法的自动续期条款，通知客户可自由更换供应商并向客户退还因提前解除合同收取的费用。若BDS Fuels未能履行承诺，CMA可采取进一步执法行动。（[查看更多](#)）

UK Competition and Markets Authority Asks Liquefied Petroleum Gas Supplier BDS Fuels to Stop Exclusive Monopoly Acts

On May 24, 2022, the UK Competition and Markets Authority (“CMA”) issued an announcement stating that after scrutinizing contracts of the Liquefied Petroleum Gas (“LPG”) Supplier BDS Fuels, CMA found that BDS Fuels automatically renewed contracts to restrict customers’ free choice of suppliers. CMA alleged the automatic renewal clauses were not expressly agreed by customers, and customers were required to pay a GBP 350 fee if they wished to break the contracts. BDS Fuel has now agreed to remove unlawful automatic renewal clauses, inform customers that they can switch supplier freely and refund those customers who paid a fee to be released from their contract early. Should BDS Fuels fail to do either of these, CMA could step in and launch further enforcement action. ([More](#))

谷歌与Match Group就应用商店计费规则达成协议，允许使用替代性支付系统

2022年5月22日，据媒体报道，谷歌已与Tinder、Hinge和OkCupid背后的约会应用程序提供商Match Group达成协议，该协议将允许这些应用程序在继续保留在谷歌应用商店中的同时可提供替代性支付系统。此前，Match Group对谷歌提起诉讼，指控其非法垄断应用程序分发市场，强制应用开发者使用谷歌支付系统，并收取高达30%的佣金。在谷歌作出上述让步承诺后，Match Group已撤回其对谷歌的临时限制令请求。（[查看更多](#)）

Google Reaches Agreement on Google Play Store Billing Rules, Allowing Match Group to Use Alternate Payment System

On May 22, 2022, according to reports media, Google reached an agreement with Match Group, the dating app provider behind Tinder, Hinge, and OkCupid, that will allow its apps to remain on the Google Play Store while offering alternate payment systems. Previously, Match Group filed a complaint against Google, alleging Google illegally monopolized the market for distributing apps by requiring app developers to use Google's billing system and then taking up to a 30 percent cut. Match Group later withdrew its request for temporary restraining order against Google after Google made those concessions. ([More](#))

加拿大竞争局结束对药品专利诉讼和解协议是否影响竞争的调查

近日，加拿大竞争局（“CCB”）发布关于主动监测品牌药和仿制药制造商间专利诉讼和解协议的声明。CCB称，仿制药有助于控制药品成本，而品牌药制造商可能会向仿制药制造商支付延迟竞争的补偿金，以谋取垄断利润。根据《竞争法》第79条和第90.1条，如果和解协议中存在约定推迟仿制药进入加拿大国内市场的时间，或品牌药制造商向仿制药制造商支付补偿款项的条款，则会被认定为反竞争行为。目前证据表明，正在接受审查的协议并不违反《竞争法》，CCB因此决定结束调查。（[查看更多](#)）

Canada Competition Bureau Decides to Close Investigations to Potentially Anti-competitive Drug Patent Litigation Settlement Agreements

Recently, Canada Competition Bureau (“CCB”) issued statement regarding its proactive monitoring of patent litigation settlement agreements between branded and generic drug manufacturers. CCB alleged that, while generic drugs help to control prescription drug costs, the branded drug manufactures may pay to generic drug manufacturers to delay competition, in order to make more profit as a monopolist. Under sections 79 and 90.1 of the *Competition Act*, agreements will be regarded as anti-competitive if they contain clauses serving to delay the entry of the generic drug into the Canadian market, or payments as compensation from the brand manufacturer to the generic manufacturer. CCB recently decided to close the investigations as the evidence suggested that the agreements under review did not contravene the *Competition Act*. ([More](#))

CMA调查显示房地产搜索服务企业合并将减少竞争

近日，CMA针对房地产搜索服务提供商Dye & Durham收购TM Group的交易公布第二阶段调查结果。CMA认为，Dye & Durham和TM Group位列英国最大的几家房地产搜索服务提供商，在合并前存在激烈竞争，合并后的实体将成为相关市场上目前最大的参与者，仅面临有限的竞争，这可能导致房地产搜索服务价格上涨或服务质量降低。鉴于此，CMA认为解决该问题的唯一方法是Dye & Durham将TM Group出售给其他买家。（[查看更多](#)）

CMA's Investigation Shows the Property Search Services Merger Could Lessens Competition

Recently, CMA issues its in-depth Phase 2 investigation on the property search services merger acquisition of TM Group by Dye & Durham, stating that Dye & Durham and TM Group are 2 of the largest players in the supply of property search services in the UK and competed closely before the merger. The combined business would be by far the largest player in the market and face only limited competi-

tion, which could result in higher prices for property search services or lower quality services. On this basis, CMA set out its view that the only effective way to address the issues would be for Dye & Durham to sell TM Group to another buyer. ([More](#))

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

国家发展和改革委员会就“推动数字经济持续健康发展”会议作出回应

2022年5月24日，国家发展和改革委员会发布消息，对于5月17日全国政协委员在“推动数字经济持续健康发展”专题协商会上提出的建议作出回应，超前部署新型基础设施，夯实数字经济发展基础；深度挖掘数字要素价值，拓展数字经济发展空间；加快数字化转型，推动实体经济高质量发展；探索完善政策环境，促进平台经济规范健康发展。 ([查看更多](#))

The National Development and Reform Commission Responds to the Conference on Promoting the Sustainable and Healthy Development of the Digital Economy

On 24 May 2022, the National Development and Reform Commission released an announcement to respond to the suggestions put forward by members of the National Committee of the Chinese People's Political Consultative Conference at the special consultation meeting on Promoting the Sustainable and Healthy Development of the Digital Economy on May 17. It will Deploy new infrastructure in advance to consolidate the foundation for the development of the digital economy; dig deep into the value of digital elements to expand the development space of the digital economy; accelerate digital transformation to promote high-quality development of the real economy; explore and improve the policy environment to promote the standardized and healthy development of the platform economy. ([More](#))

上海立法保障因防疫采集的个人信息不得泄露

2022年5月24日，上海市十五届人大常委会第四十次会议表决通过了《上海市人民代表大会常务委员会关于进一步促进和保障城市运行“一网统管”建设的决定》（“《决定》”）。《决定》明确，信息核验中采集、处理个人疫情防控信息应当遵守个人信息保护相关法律、法规的规定，采集的个人信息仅用于疫情防控需求，任何单位和个人不得泄露。 ([查看更多](#))

Shanghai Legislation Guarantees that Personal Information Collected for the Epidemic Prevention shall not be Leaked

On 24 May 2022, the 40th Meeting of the Standing Committee of the 15th Shanghai Municipal People's Congress passed the *Decision on Further Promoting and Guaranteeing the Construction of "Unified Network, Unified Management" for Urban Operation* ("Decision"). The Decision clarifies that the collection and processing of personal information for verification in epidemic prevention and control shall comply with the relevant laws and regulations on personal information protection. The collected personal information is only used for epidemic prevention and control needs, and no organization or individual may disclose it. ([More](#))

最高人民法院发布《关于加强区块链司法应用的意见》

2022年5月25日，最高人民法院发布《最高人民法院关于加强区块链司法应用的意见》，明确人民法院加强区块链司法应用总体要求及人民法院区块链平台建设要求，充分发挥区块链优化业务流程的重要作用，不断提高司法效率，充分挖掘区块链互通联动的巨大潜力，增强司法协同能力，充分利用区块链联盟互认可信的价值属性，服务经济社会治理。 ([查看更多](#))

The Supreme People's Court issued the *Opinions on Strengthening Blockchain Application in the Judicial Field*

On 25 May 2022, the Supreme People's Court ("SPC") issued the *Opinions on Strengthening Blockchain Application in the Judicial Field* ("Opinions"), stating the overall requirements and specific requirements on building the blockchain platforms of the people's courts. The Opinions propose to make the most of the data tamper-proof technology of blockchain to further enhance judicial credibility, to give full play of the essential role of blockchain in optimizing business processes to constantly improve judicial efficiency, to excavate the tremendous potential of blockchain connectivity to enhance judicial collaboration and to leverage properties of the blockchain alliance of mutual recognition and trustworthiness to facilitate economic and social governance. ([More](#))

全国信息安全标准化技术委员会发布《信息安全技术互联网平台及产品服务隐私协议要求（征求意见稿）》

2022年5月26日，全国信息安全标准化技术委员会发布《信息安全技术互联网平台及产品服务隐私协议要求（征求意见稿）》（“《隐私协议要求》”）。《隐私协议要求》规定了互联网平台及产品服务隐私协议编制程序、具体内容、发布形式，增加隐私协议的可读性、透明性，以及处理隐私协议相关的争议纠纷等方面的要求，适用于规范个人信息处理者制定、发布隐私协议的过程，也适用于主管监管部门、第三方评估机构等对隐私协议进行监督、管理和评估。 ([查看更多](#))

The National Information Security Standardization Technical Committee issues the *Privacy Agreement Requirements for Internet Platforms, Products and Services of Information Security Technology (Draft)*

On 26 May 2022, the National Information Security Standardization Technical Committee issued the *Privacy Agreement Requirements for Information Security Technology on Internet Platforms, Products and Services (Draft)* ("Requirements"). The Requirements stipulate the demands of the preparation procedures, specific content and released form of the privacy agreements for Internet platforms, products and services, as well as the necessities of increasing the readability and transparency of the privacy agreements and handling disputes related to the privacy agreements. The Requirements apply to regulating the process of personal information processors formulating and publishing privacy agreements, as well as the supervision, management and evaluation of privacy agreements by competent regulatory authorities and third-party evaluation agencies. ([More](#))

香港就首例未获同意披露个人资料案件提起公诉

2022年5月24日，香港个人资料私隐专员公署（“私隐公署”）对首例未获同意披露个人资料案件提起公诉。被告涉嫌违反《个人资料（私隐）条例》（“《私隐条例》”）第64（3A）条规定的罪行，在未获同意的情况下披露姓名、手提电话号码、职业、住址及雇主名称等个人资

料。这是自《私隐条例》于2021年10月生效以来，私隐公署首例就未获同意披露个人资料罪作出起诉的个案。 ([查看更多](#))

Hong Kong Prosecutes the First Case of Non-Consent Disclosure of Personal Data

On 24 May 2022, the Hong Kong Office of the Privacy Commissioner for Personal Data (“PCPD”) prosecuted the first case of non-consensual disclosure of personal data. The defendant is suspected of breaching Section 64(3A) of the *Personal Data (Privacy) Ordinance* (“PDPO”) by disclosing personal information such as name, mobile phone number, occupation, residential address and employer name without consent. This is the first case in which the PCPD has prosecuted the crime of disclosing personal data without consent since PDPO came into effect in October 2021.

([More](#))

贵州发布中国首套数据交易规则体系

2022年5月27日，贵阳大数据交易所数据交易规则发布活动在贵阳举行，发布了数据要素流通交易规则、数据产品成本评估指引、数据产品交易价格评估指引、数据资产价值评估指引、数据交易合规性审查指南、数据交易安全评估指南、数据商准入及运行管理指南等一系列文件，从核心上探索解决“数据确权难”、“数据定价难”、“数据监管难”等难题。 ([查看更多](#))

Guizhou Releases China’s First Data Transaction Rules System

On 27 May 2022, the Guiyang Big Data Exchange’s Release Event of *Data Trading Rules* was held in Guiyang. On the event, a series of documents such as *Data Element Circulation Trading Rules*, *Data Product Cost Evaluation Guidelines*, *Data Product Transaction Price Evaluation Guidelines*, *Data Asset Value Evaluation Guidelines*, *Data Transactions Compliance Review Guidelines*, *Data Transaction Security Evaluation Guidelines*, *Data Provider Access and Operation Management Guidelines* etc., to explore and solve problems such as difficulty in confirming data rights, data pricing and data supervision. ([More](#))

某楼盘售楼处因擅用人脸识别技术采集个人信息被罚款20万

2022年5月27日，河南禹州市市场监督管理局发布通报称，在组织开展打击侵害消费者个人信息执法行动中，查处一起侵害消费者人脸识别信息案件。一楼盘售楼处擅自使用人脸识别技术采集消费者个人信息，储存大量到访客户人脸识别抓拍图片及视频数据，分析当日客流人数、客户具体到访时间及人脸识别相似度等信息，违反了《中华人民共和国消费者权益保护法》第二十九条第一款的规定，被处罚金20万元。 ([查看更多](#))

A Real Estate Company’s Sales Office is Fined CNY 200,000 for Unauthorized Use of Facial Recognition Technology to Collect Personal Information

On 27 May 2022, the Administration for Market Regulation of Yuzhou, Henan issued a notice stating that in a law enforcement action against infringement of consumer’s personal information, a case of above-mentioned area was investigated and handled. The sales office of a real estate company used facial recognition technology to collect personal information of consumers without their authorization, stored a large number of face-captured pictures and videos of visiting customers to analyze the number of visiting customers on the day and the specific visit time of customers, as well as to study the similarity of their face recognition and other information. Those conducts violated the provisions of the first

paragraph of Article 29 of the *Consumer Protection Law of the People's Republic of China* and therefore the company was fined CNY 200,000. ([More](#))

欧盟委员会发布数据传输标准合同条款相关问答

2022年5月25日，欧盟委员会发布了关于《欧盟通用数据保护条例》下数据传输标准合同条款（“SCCs”）的问答文件。2021年6月4日，委员会根据GDPR发布了新的SCCs，用于将数据从欧盟/欧洲经济区或其他受GDPR约束的控制者或处理者传输到欧盟/欧洲经济区以外的不受GDPR约束控制者或处理者的情况。今年12月27日，用于国际数据传输的新SCCs将全面取代现有的旧版SCCs。问答文件为SCCs的使用提供实用指导，并协助利益相关者根据GDPR进行合规工作。 ([查看更多](#))

European Commission Publishes Q&A on Standard Contractual Clauses for Data Transfers

On 25 May 2022, the European Commission published a Q&A on Standard Contractual Clauses (“SCCs”) for data transfers under the EU General Data Protection Regulation (“GDPR”). On 4 June 2021, the Commission issued new SCCs under the GDPR for data transfers from controllers or processors in the EU/EEA or otherwise subject to the GDPR to controllers or processors established outside the EU/EEA and not subject to the GDPR. On 27 December, the new set of SCCs for international data transfers will replace the existing SCCs. These Q&As provide practical guidance on the use of the SCCs and assist stakeholders in their compliance efforts under the GDPR. ([More](#))

扎克伯格因参与剑桥分析数据泄露行为被华盛顿特区总检察长起诉

2022年5月23日，美国华盛顿特区总检察长对马克·扎克伯格提起诉讼，指控其在2016年选举中曾直接参与允许政治咨询公司剑桥分析公司在美国选民不知情的情况下收集数百万美国选民的个人信息，并应为此行为承担责任。对扎克伯格的起诉基于数十万份文件，包括员工和举报人的证词。该起诉声称扎克伯格知晓与该行为相关的数据泄露风险，但仍向第三方开发者开放Facebook。 ([查看更多](#))

Zuckerberg Is Sued by Washington D.C. Attorney General for Participating in the Cambridge Analytica Data Breach

On 23 May 2022, the Washington D.C. attorney general has sued Mark Zuckerberg in an attempt to hold the Facebook co-founder accountable for his actions in the 2016 election for allowing political consulting firm Cambridge Analytica to collect the personal data of millions of Americans. The lawsuit alleges that Zuckerberg was directly involved in a policy that allowed Cambridge Analytica to collect personal data on U.S. voters without their knowledge. The indictment against Zuckerberg, based on hundreds of thousands of documents, including testimony from employees and whistleblowers, said Zuckerberg was aware of the data breach risks associated with the strategy and still opened Facebook to third-party developers. ([More](#))

因违反英国数据保护法人脸识别公司Clearview AI被罚款755万英镑

2022年5月23日，英国信息专员办公室（“ICO”）宣布对人脸识别公司Clearview AI处以755万英镑（约合人民币5044万元）的罚款，原因是在全球数据库中使用英国公民的面部图像。ICO发

现，Clearview AI的多种行为违反了英国数据保护法，包括未能以公平和透明的方式使用英国居民信息；收集居民信息时没有正当理由；未能制定阻止数据被无限期保留的流程；未能满足生物识别数据的保护标准；当居民查询自己是否在此数据库中时，要求提供包括照片在内的其他个人信息。ICO 还发布执法通知，命令Clearview AI停止获取和使用在互联网上公开的英国居民的个人数据，并从其系统中删除英国居民的数据。（[查看更多](#)）

Facial Recognition Company Clearview AI is Fined GBP 7.55 Million for Breaching of UK's General Data Protection Regulation

On 23 May 2022, the U.K. Information Commissioner's Office ("ICO") announced a GBP 7.55 million fine against facial recognition company Clearview AI over the use of U.K. citizens' facial images in its global database. ICO found that Clearview AI breached UK's data protection laws by: failing to use the information of people in the UK in a way that is fair and transparent; failing to have a lawful reason for collecting people's information; failing to have a process in place to stop the data being retained indefinitely; failing to meet the higher data protection standards required for biometric data; and asking for additional personal information, including photos, when asked by members of the public if they are on their database. ICO has also issued an enforcement notice, ordering the company to stop obtaining and using the personal data of UK residents that is publicly available on the internet, and to delete the data of UK residents from its systems. ([More](#))

德国联邦卡特尔局同意建立汽车行业数据网络

2022年5月24日，德国联邦卡特尔局发布公告称，对拟议的 "Catena-X " 合作项目不采取反对立场。GAIA-X倡议（欧洲云计划）旨在为欧洲创建具有竞争力的数据基础设施，Catena-X合作项目是该倡议的第一个重要组成部分。该合作项目旨在为汽车行业的合作创建一个数据网络，通过开发接口和标准来连接不同的跨行业云服务，从而创建一个欧洲数据基础设施，减少对美国和中国信息技术提供商的依赖。（[查看更多](#)）

German Federal Cartel Office Agrees to Establish Data Network for Automotive Industry

On 24 May 2022, German Federal Cartel Office issued an announcement that it has no objections to the planned start of the Catena-X cooperation. Catena-X is a first major component of the GAIA-X initiative to create a competitive data infrastructure in Europe. Catena-X aims to create a data network for collaboration in the automotive industry, to establish a European data infrastructure by developing interfaces and standards for connecting different cross-industry cloud services. This is intended to reduce dependence on American and Chinese IT providers. ([More](#))

推特因涉嫌侵犯用户数据隐私支付1.5亿美元

2022年5月25日，据媒体报道，Twitter已同意支付1.5亿美元，以解决其滥用电话号码等个人信息进行广告的指控。此前，美国司法部（"DOJ"）和联邦贸易委员会（"FTC"）指控其收集用户的电话号码和电子邮件地址，声称用来确保用户的账户安全，但没有披露它也使用这些用户个人信息进行有定向广告推送。Twitter 的欺骗行为违反了 2011 年 FTC 的协议指令，该指令明确禁止该公司歪曲其隐私和安全的做法。根据拟议的新指令，Twitter 必须支付 1.5 亿美元的罚款，并被禁止从其欺骗性收集的数据中获利。（[查看更多](#)）

Twitter Will Pay USD 150 Million for Alleged Violation of User Data Privacy

On 25 May 2022, Twitter has agreed to pay USD 150 million to solve its allegations of misuse of private information such as phone numbers for advertising. Previously, DOJ and FTC alleged that although Twitter told users that it collected their phone numbers and email addresses to ensure the security of their accounts, but it did not disclose that it also used users' contact information to help targeted advertisers reach their audiences. Twitter's deception violates a 2011 FTC consent order that explicitly prohibited the company from misrepresenting its privacy and security practices. Under the proposed order, Twitter must pay a \$150 million penalty and is banned from profiting from its deceptively collected data. ([More](#))

知识产权 Intellectual Property

最高法院：专利权利要求中使用环境特征的认定

近日，最高人民法院对东莞光距电子有限公司与宁波普能通讯设备有限公司侵害实用新型专利权纠纷一案做出二审判决，改判被告停止侵权，并赔偿经济损失及合理开支共计15万元。

在本案中，最高院对专利权利要求中使用环境技术特征的认定作出进一步明确，最高院认为，使用环境特征是指权利要求中用来描述发明所使用的背景或条件的技术特征，是通过限定专利技术方案本身之外的技术内容来限定专利技术方案，一般表现为限定专利技术方案的使用背景、条件、适用对象等，进而限定专利技术方案。常见的使用环境特征多表现为限定专利技术方案的安装、连接、使用等条件和环境，但并不仅限于那些与被保护技术方案安装位置或连接结构直接有关的结构特征。对于产品权利要求而言，用于说明有关被保护技术方案的用途、适用对象、使用方式等的技术特征，也属于使用环境特征。写入权利要求的使用环境特征属于权利要求的必要技术特征，对于权利要求的保护范围具有限定作用，限定程度根据个案情况确定。一般而言，被诉侵权技术方案可以适用于使用环境特征所限定的使用环境的，即视为具有该使用环境特征。

本案中，法院根据被诉侵权产品的实际用途，结合本领域普通技术人员的理解，认为被诉侵权技术方案可以适用于涉案专利权利要求1记载的使用环境特征，应当认定具备该技术特征。本案对于使用环境特征的认定及是否具备使用环境特征的认定作出明确，对于同类案件具有指导意义。

来源：最高人民法院

SPC: Identification of the Use Environmental Technical Features in Patent Claims

Recently, The Supreme People's Court (SPC) made a second instance judgment on the dispute over utility model patent infringement, ordering the defendant to stop the infringement and pay damages of RMB 150,000.

In this case, SPC further clarified the identification of use environment technical features in the patent claims. SPC held that the use environment features refers to technical features to describe the background or conditions of the invention, which are used to limit the patent technical solution by limiting

technical content other than the patented technical solution itself, generally manifested as limiting the use background, conditions, application objects, etc. The common use environment features include limiting the installation, connection, use and other conditions and environment of the patented technical solution, but are not limited to the structural features directly related to the installation position or connection structure of the protected technical solution. For product claims, the technical features used to illustrate the use of the protected technical solution, the object of application, the way of use, etc., also belong to the use environment features. The use environment features in the claims are necessary technical features of the claims and have a limiting effect on the scope of protection of the claims, and the degree of limitation is determined according to the circumstances of each case. Generally, if the infringing technical solution can be applied to the use environment defined by the use environment features, it is deemed to have the use environment features.

In this case, the court, based on the actual use of the infringing products and the understanding of ordinary technicians in the field, held that the infringing technical solution could be applied to the use environmental features in claim 1 of the patent, and shall be deemed to have the technical features. This case clarifies the identification of the use environment features and whether it has the use environment features, which is of guidance for similar cases.

Source: [The Supreme People's Court](#)

广东高院改判“永泉”商标案，法定赔偿顶格判赔1000万

广东高院对广东永泉阀门科技有限公司（下称广东永泉公司）与永泉阀门有限公司（下称东莞永泉公司）等侵害商标权及不正当竞争纠纷一案做出二审判决，撤销原判，判决被告停止侵权，赔偿经济损失及合理开支共计1000万元。

关于侵权赔偿数额，本案在适用裁量性赔偿方式酌定赔偿数额时，重点考虑了以下因素：1）司法救济力度与广东永泉公司知名度相适应；2）两被告公司等多个被诉标识侵害广东永泉多达十个权利商标，情节严重，其中被诉标识“永泉阀门”构成在同一种商品上使用与他人注册商标相同的商标，性质恶劣，甚至可能触犯刑法；3）东莞永泉公司同时实施企业字号混淆、域名混淆以及虚假宣传等多个不正当竞争行为；4）被诉行为所涉产品多，价值高、规模大；5）被诉行为侵权时间跨度长，直至二审期间仍持续侵权；6）广东永泉公司维权周期长，合理维权支出较大；7）本案被诉侵权行为性质恶劣，应予严惩。

综上，法院按法定赔偿上限确定本案赔偿数额，即对侵害注册商标专用权行为判赔500万元，对不正当竞争行为判赔500万元，两项合计1000万元。

来源：[广东省高级人民法院](#)

Guangdong High People's Court Award the Maximum Statutory Damages of RMB 10,000,000 in the "Yongquan" Trademark Case for both Trademark Infringement and Unfair-Competition

Guangdong High People's Court made a second instance judgment on the dispute over trademark infringement and unfair competition for "Yongquan" between Guangdong Yongquan Valve Technology Co., LTD. (Guangdong Yongquan) and Yongquan Valve Co., LTD. (Dongguan Yongquan), revoking the first instance judgment, ordering the defendant to stop the infringement and pay damages of RMB 10,000,000.

Regarding the amount of damages, this case focused on the following factors:

- (1) The strength of judicial remedies is consistent with the reputation of Guangdong Yongquan;
- (2) More than ten Guangdong Yongquan trademarks been infringed, the circumstances were serious, and the mark "Yongquan valve" constituted the use of a trademark identical to a registered trademark on the same type of commodities, which may even violate the *Criminal Law*;
- (3) Dongguan Yongquan simultaneously implemented a number of unfair competition acts such as enterprise name misleading, domain names misleading and false promotion;
- (4) The infringing products are large in quantity, high in value and large in scale;
- (5) The infringement lasted a long time, and the defendant continued to infringe even during the second trial;
- (6) Guangdong Yongquan spent a lot of time and money to defend its right;
- (7) The serious infringement shall be severely punished.

In summary, the court awarded the maximum judicial damage in this case, i.e., RMB 5,000,000 for trademark infringement and RMB 5,000,000 for unfair competition, totaling RMB 10,000,000.

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

最高院再审认定：同类商品上的装饰性图案亦应合理避让他人商标

最高人民法院对斐乐体育有限公司（以下简称斐乐公司）因与被申请人鹏程皮鞋店侵害商标权纠纷一案作出再审判决，撤销原判，判决鹏程皮鞋店停止侵权，赔偿经济损失及合理开支共计10000元。

本案的一、二审均认为鹏程皮鞋店销售的被诉侵权产品使用的“EILA”图案只是起到一种装饰作用，与涉案商标字母构成不同，鹏程皮鞋店还在门店店招和销售的鞋盒、鞋套等上标注了“日泰皮鞋”和“Ritai”标志，不易导致公众混淆，应认定二者不构成近似，故不构成商标侵权。

最高院认为，（1）本案被诉侵权产品为黑色运动鞋，在该鞋后跟处有“EILA”图案。该图案与163333号商标图片相比对，在文字构成、字体、设计风格、整体外观方面仅存在细微差异。其次，本案中虽然鹏程皮鞋店在门店店招和销售的鞋盒、鞋套等上标注了“日泰皮鞋”和“Ritai”标志，但该种使用方式并不影响其使用“EILA”的性质。对于被诉侵权产品而言，“EILA”并非有特殊含义的描述性特征，相关公众以一般注意力为标准，难以将其与商品特征或事实描述相联系，“EILA”向相关公众传达的是识别商品来源的功能，而非简单的装饰性图案。（2）无论是生产商还是销售商，使用装饰性图案都应对他人商标进行合理避让。

来源：最高人民法院

SPC: Decorative Patterns on Similar Goods Shall Reasonably Evade Others' Trademarks

SPC made a retrial judgment on the dispute over trademark infringement between Fila Sports Co., LTD. and Pengcheng Leather Shoes Shop, revoking the first instance judgment, ordering the defendant to stop the infringement and pay damages of RMB 10,000.

The first and second instance judgments both held that the "EILA" pattern only played a decorative role on the infringing products, which was different from the composition of the Fila's trademark, and the defendant also marked "Ritai Leather Shoes" and "Ritai" logo on the store sign and the shoe boxes, etc., which was not easy to mislead public, thus did not constitute trademark infringement.

SPC held that:

(1) The infringing product is black sports shoes with "EILA" pattern on the heel. This pattern is only slightly different from the NO.163333 trademark in text composition, font, design style and overall appearance. Secondly, although the defendant marked "Ritai shoes" and "Ritai" logo in the store sign and shoe boxes, etc., it does not affect the nature of its use of "EILA". For the infringing products, "EILA" is not a descriptive feature with special meaning, and it is difficult to associate it with the goods characteristics or the factual description for the public with general attention. The function of "EILA" is to identify the source of goods rather than a simple decorative pattern.

(2) Both the manufacturers and the sellers shall reasonably avoid others' trademarks when use decorative patterns.

Source: [The Supreme People's Court](#)

“奥迪小满广告抄袭”事件引热议

5月21日，奥迪与刘德华合作的一条名为《今日小满，人生小满就好》的广告片发布后受到质疑，一名叫“北大满哥”的博主指出广告视频文案抄袭其去年发布的视频作品，并将两个视频进行了逐句对比，对比结果显示，广告片中的文案和“北大满哥”视频中的高度相似。5月22日，相关方先后发布声明：奥迪承认“监管不力、审核不严”，承接制作广告的上思广告公司承认在未与版权方沟通的情况下直接使用了“北大满哥”的文案内容，刘德华发文表示对“北大满哥”造成的困扰深感遗憾。

5月25日凌晨，北大满哥再回应奥迪小满创意广告文案抄袭一事，称接受了奥迪和上思负责人的当面道歉，目前三方已经达成协议，将去年的小满作品文案进行了免费授权，并表示没有收钱，商业诉求从不是他的目的。

来源: [人民日报](#)

立方短评:

关于刘德华使用文案拍摄了该广告的行为是否构成侵权？有观点认为，刘德华侵犯了“北大满哥”文字作品的“表演权”。笔者认为不尽然，此“表演”非彼“表演”。刘德华在拍摄广告视频过程中的行为，只是生活中所说的通常意义上的表演，但生活中所说的表演不同于著作权法“表演权”中的“表演”。根据著作权法的规定，表演权是“公开表演作品，以及用各种手段公开播送作品的表演的权利”，我国著作权法中的“表演权”为现场传播，仅规制现场表演和机械表演两种类型的行为。本次事件中，刘德华的行为显然并非现场表演，而机械表演在我国就仅指将对作品的表演使用机器设备向现场公众进行播放的行为（例如商场播放音乐，属

于机械表演的一种典型形式），不包括公开放映电影和通过无线电、有线电视和互联网传播对作品的表演。刘德华的行为显然没有落入表演权的范畴之内。因此，笔者认为，刘德华参与拍摄的行为，并不存在对“北大满哥”文案的侵权。

刘德华的这段广告应当属于广告代言么？是否有代言人责任？对此，笔者认为，当然属于商业广告代言行为。但根据目前广告法的相关规定，广告代言人只有进行了虚假广告造成消费者损害的情况下，才有可能作为代言人与广告主连带承担法律责任，因此，笔者认为，刘德华亦不存在广告代言人的相关法律责任。笔者不禁想到近期另一起艺人代言的重磅事件，即最近引发热议的“景甜广告代言违法处罚”事件，根据有关报道，正是由于其所代言的涉事公司生产之“果蔬类”食品仅为普通食品并无有效证据证实具有“阻止油脂和糖分吸收”功效，而导致代言艺人涉及虚假广告受到相应处罚。

The Incident of "Audi's Seasonal Greetings Advertisement Plagiarism" Arouse Discussions

On May 21, Audi and Andy Lau collaborated on an advertisement titled "*Today is Lesser Fullness, Life is good when it is less full*", which was questioned after released. A blogger named "Peking University Mange" (Mange) pointed out that the work of the video plagiarized his video work released last year, and compared the two videos sentence by sentence, which showed that the work of the two was highly similar.

On May 22, relevant parties successively issued statements: Audi admitted that "supervision is weak and audit is not strict", and Shangsi Advertising Company admitted that it directly used the copywriting of Mange's work without communicating with him, Andy Lau expressed his deep regret for the trouble brought to Mange.

In the early morning of May 25, Mange responded again, saying that he accepted the face-to-face apology from Audi and Shangsi. At present, the three parties have reached an agreement that Mange will license his work for free, and he said that he did not request monetary compensation, commercial claims were never his purpose.

Source: [People's Daily](#)

Lifang & Partners:

Does Andy Lau's use of the work to shoot the advertisement constitute copyright infringement?

There is a view that Andy Lau violated the "performance rights" of Mange's writing works. However, we believe that this "performance" is not the "performance" in the *Copyright Law*. Andy Lau's act of shooting the advertising video is just a performance in the usual sense in life, but the performance in life is not the same as the "performance right" in the *Copyright Law*.

According to the *Copyright Law*, the right of performance is "the right to publicly perform works and to publicly broadcast the performance of works by various means". The "performance right" in *Copyright Law* refers to live transmission, which only regulates live performance and mechanical performance. In this incident, Andy Lau's act was not a live performance, and mechanical performance in China only refers to the act that using machines to broadcast the performance to the public (such as playing music in a shopping mall, which is a typical mechanical performance), excluding public screening of movies and the performances of works transmitted by radio, cable and the Internet. Andy Lau's act obviously did not fall within the scope of performance rights. Therefore, we believe that Andy Lau's participation in the filming does not infringe on the copywriting of Mange.

Does Andy Lau's advertisement belong to an advertising endorsement? Is there an endorsement responsibility?

We hold that it certainly belongs to commercial advertising endorsement. However, according to the provisions of the current *Advertising Law*, an advertising spokesperson may only bear legal liability as a spokesperson jointly and severally with the advertiser if he conducts false advertisements and causes damage to consumers, therefore, we believe that Andy Lau is not legally liable as an advertising spokesperson. We can't help but think of another recent incident of artists endorsement, that is, the recent "Jing Tian advertising endorsement illegal punishment" incident. According to the report, it was because the "fruit and vegetable" food products of the company involved in the endorsement were only ordinary food products and there was no valid evidence to prove their effectiveness in "blocking the absorption of fats and sugars", resulting in corresponding penalties for endorsement artists involved in false advertising.

山东高院：传播“对未审结案件非客观评论的文章”，构成商业诋毁

近日，山东高级人民法院对山东世纪阳光纸业集团有限公司（下称阳光纸业公司）与山鹰国际控股股份公司（下称山鹰公司）、浙江山鹰纸业有限公司（下称浙江山鹰公司）商业诋毁纠纷案做出终审裁定，裁定驳回再审申请，此前二审判决被告赔偿经济损失及合理开支100万元。

本案中，山鹰公司在其网站上发布《一审裁决被撤销纸业专利纠纷历时7年被判异地重审》一文，虽然其并非文章的作者和最初发布者，但法院认为商业诋毁行为不仅限于编造行为，还包括传播行为，故该抗辩不能成立。涉案文章以阳光纸业公司诉浙江山鹰公司专利侵权的诉讼情况为蓝本，对文章发布时尚未审结的案件进行评论，且该评论非基于客观中立立场，而是使用消极负面、没有事实依据的语言评论阳光纸业公司的诉讼行为，足以使相关公众产生阳光纸业公司以专利诉讼之名恶意打压竞争对手等误解，侵害了阳光纸业公司的商业声誉，构成商业诋毁行为。

来源：山东高级人民法院

Shandong High People's Court: Dissemination of "Articles with Non-Objective Comment on Pending Cases" Constitutes Commercial Defamation

Recently, Shandong Higher People's Court made a final judgement on the case of Sunshine Paper Co., LTD. (Sunshine Paper) v. Shanying International Co., LTD. (Shanying) and Zhejiang Shanying Paper Co., LTD. (Zhejiang Shanying) over commercial defamation, rejecting the application for a retrial. Previously, the second instance judgment ordered the defendants to pay damages of RMB 1,000,000.

In this case, Shanying issued an article on its website: "*The first instance judgment was revoked, paper patent dispute lasted for 7 years and was sentenced to retrial in another place*". Although Shanying was not the author or the initial publisher of the article, the court held that commercial defamation is not limited to fabrication, but also includes dissemination.

The article was based on the litigation situation of Sunshine Paper v. Zhejiang Shanying over patent infringement, and made comments on the pending case. The comments were not based on an objective and neutral position, but used negative language without factual basis to comment on Sunshine Paper's litigation behavior, which was sufficient to make the relevant public to misunderstand that Sunshine Paper was maliciously suppressing its competitors by means of patent litigation, etc. It infringed on the commercial reputation of Sunshine Paper and constituted commercial defamation.

Source: Shandong High People's Court

Lex Machina发布2022年专利诉讼报告

2022年5月19日，Lex Machina发布2022年专利诉讼报告（2022 Patent Litigation Report），研究了美国联邦地区和上诉法院、专利审判和上诉委员会（PTAB）的专利诉讼趋势，主要调查了2019至2021年期间受理的案件，包括仿制药（ANDA）和PTAB案件申请、活跃地区、法官、律师事务所、当事人、案件决议、调查结果和损害赔偿等方面的新兴趋势。

（1）地区法院亮点：

- ①2019至2021年，专利案件申请和源自专利案件的联邦上诉案件申请保持相对稳定，但ANDA申请量继续下降；
- ②专利案件申请正在更多地整合到前三大法院，从2019年的47%增长至2021年的57%；
- ③奥尔布赖特法官被指派审理的案件量占2021年提交的所有专利案件的23%；
- ④2019至2021年提交的专利案件中，WSOU Investments LLC是最大的原告方，三星是最大的被告方；
- ⑤2019至2021年终止的联邦专利上诉案件中，34%最终被撤销。

（2）PTAB亮点：

- ①2020至2021年，联邦PTAB上诉案件申请量下降了40%；
- ②2019至2021年终止的联邦PTAB上诉案件中，23%最终被撤销；
- ③2019至2021年提交的PTAB申请中，三星是最活跃的申请人。

来源：中科院IP信息

Lex Machina Released 2022 Patent Litigation Report

On May 19, 2022, Lex Machina released its annual Patent Litigation Report. The report examines patent litigation trends in federal district and appellate courts, as well as the Patent Trial and Appeal Board (PTAB). This is the first report to showcase the newest federal appellate analytics and trends in patent litigation in the federal courts of appeals.

Findings from the report include:

Highlights in District Court

Patent case filings, and federal appellate case filings originating from patent cases, have remained relatively stable for the last three years, with the exception of ANDA filings that continue to decline.

Patent case filings are consolidating more into the top three courts, from 47% in 2019 to 57% in 2021.

Judge Albright was assigned to 23% of all patent cases filed in 2021.

For patent cases filed from 2019 to 2021, WSOU Investments LLC was the top plaintiff and Samsung was the top defendant.

34% of federal patent appellate cases that terminated from 2019 to 2021 were ultimately reversed.

Highlights in PTAB

Federal PTAB appellate case filings fell 40% between 2020 and 2021.

23% of federal PTAB appellate cases that terminated from 2019 to 2021 were ultimately reversed.

Samsung was the most active petitioner in PTAB petitions filed from 2019 to 2021.

Source: [Lex Machina](#)

华为与SolarEdge达成全球专利许可协议，结束在德国和中国的诉讼

5月20日，华为宣布与 SolarEdge Technologies Inc. 达成一份全球专利许可协议。

华为表示，该协议基于两家公司对对方创新能力的认可，允许其在协议期内使用自己的专利技术。该协议包含相互授予对方的专利交叉许可及其他权利安排，并促成双方和解专利诉讼。专利许可协议的具体条款为双方保密信息。双方将结束在德国和中国的诉讼。

据悉，华为在智能光伏领域提供从户用、工商业、大型地面电站到电池储能系统和微网的全场景解决方案，产品包括智能组串式逆变器、智能组串式储能、智能光伏组件控制器、智能光伏管理系统等。

来源: [IT之家](#)

Huawei Reached a Global Patent License Agreement with Solaredge Technologies, Ending Their Lawsuits Pending in Germany and China

On May 20, Huawei announced that it reached a global patent license agreement with Israeli smart energy solutions provider SolarEdge Technologies, allowing the two companies to use each other's patented technologies based on the recognition of their innovation capabilities. The agreement includes a cross license that covers patents relating to both companies' products, and other rights arrangements. In addition, the agreement will facilitate the settlement of patent litigation between the two parties, which will end their lawsuits pending in Germany and China. The specific terms of the patent license agreement are not revealed.

The Israel-based SolarEdge Technologies is a global leading photovoltaic inverter manufacturer founded in 2006. In 2018, the company accused Huawei and German distributor Wattkraft of infringing three of its patents involving solar inverter and optimizer technology. In October 2021, the Board of Appeal of the European Patent Office rejected SolarEdge's appeal against the patent revocation procedure EP 29 30 839 B1, stating that the multilevel inverter patent is outdated.

Source: [ithome.com](#)

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