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立方竞争法周报 Weekly Competition Law News

全国人大常委会将于6月21日至24日审议反垄断法修正草案

2022年5月30日，十三届全国人大常委会第一百一十八次委员长会议（“委员长会议”）举行。委员长会议决定，十三届全国人大常委会第三十五次会议（“常委会第三十五次会议”）将于6月21日至24日在北京举行。委员长会议建议，常委会第三十五次会议审议《反垄断法》等修正草案。（[查看更多](#)）

The Standing Committee of the National People's Congress will Review the Draft Amendment to the Anti-Monopoly Law from June 21 to 24

On May 30, 2022, the 118th Meeting of the Chairmen of the Standing Committee of the 13th National People's Congress (“Meeting of the Chairmen”) was held. The Meeting of the Chairmen decided that the 35th Meeting of the Standing Committee of 13th National People's Congress (“35th Meeting of NPCSC”) will be held from this June 21 to 24 in Beijing. The Meeting of the Chairmen suggested that the 35th Meeting of NPCSC review the draft amendments to the *Anti-Monopoly Law* and other laws. ([More](#))

意大利竞争管理局就制药集团Lediand滥用市场支配地位处以350万欧元罚款

2022年5月31日，意大利竞争管理局（“ICA”）发布公告，对制药集团Lediand处以350万欧元（约合人民币2300万）的罚款。经调查，Lediand及旗下四家子公司在用于治疗罕见疾病脑腱黄瘤病（“CTX”）的鹅去氧胆酸（“CDCA”）的药物生产和销售市场占据支配地位。自2017年6月以来，Lediand针对CDCA药物向意大利国家卫生服务局收取不公平的高价，并在价格谈判过程中存在拖延和阻碍行为。鉴于此，ICA对其处以350万欧元的罚款。（[查看更多](#)）

The Italian Competition Authority Fines Pharmaceutical Group Lediand EUR 3.5 Million for Abusing its Dominant Position

On May 31, 2022, the Italian Competition Authority (“ICA”) issued an announcement, imposing on Pharmaceutical Group Lediand a fine of EUR 3.5 million (approximately CNY 23 million). Through investigation, ICA found Lediand and its four subsidiaries held dominant position in the market for the production and sales of drugs containing chenodeoxycholic acid (“CDCA”), which are used to treat a rare disease named cerebrotendinous xanthomatosis (“CTX”). Since June 2017 Lediand has charged the Italian National Health Service unfairly excessive prices for the sale of CDCA drugs, and carried out dilatory and obstructive behaviors during the price negotiation procedure. Therefore, ICA imposed on Lediand a fine of EUR 3.5 million. ([More](#))

加拿大Visa、万事达和银行信用卡交换费垄断协议集体诉讼达成和解

2022年5月30日，据媒体报道，加拿大地区法院批准信用卡交换费垄断协议集体诉讼案件的和解计划。交换费（Interchange Fees）是指当消费者使用Visa或万事达信用卡支付时，商家需要向银行支付的费用。集体诉讼称，Visa、万事达和部分银行合谋设定更高的交换费，并实

施垄断规则，以限制商家的自由选择。目前，任何于2001年3月23日至2021年9月2日期间在加拿大接受Visa或万事达信用卡的商家都可申请参与和解金分配。 ([查看更多](#))

Settlements Approved in Credit Card Interchange Fees Monopoly Class Action against Visa, MasterCard and Certain Banks

On May 30, 2022, according to report media, some courts in Canada approved the settlement plan in the credit card interchange fees monopoly class action. Interchange Fees refers to the fees that merchants need to pay to banks when consumers use Visa or Mastercard credit card. The class action alleges that Visa, Mastercard and certain banks conspired to set higher interchange fees and to impose rules restricting merchants' free choice. Currently, any merchant who accepted Visa or Mastercard credit cards in Canada between March 23, 2001 and September 2, 2021 is eligible to claim settlement benefits. ([More](#))

谷歌与安卓软件开发商就Play应用商店涉嫌垄断达成和解

2022年5月29日，据媒体报道，谷歌在加州联邦法院与安卓应用程序软件开发商达成和解。此前，提起诉讼的软件开发商认为谷歌涉嫌垄断安卓应用程序生态系统。目前达成的该和解协议适用于在谷歌Play应用商店中年销售额达到200万美元的应用程序软件开发商，和解协议的具体条款尚未披露。 ([查看更多](#))

Google Settles with Android App Developers over Alleged Play Store Monopoly

On May 29, 2022, according to report media, Google has reached a settlement with Android App developers in California federal court. Previously, the developers suing Google for allegedly monopolizing the Android app ecosystem. The current settlement, the terms of which have not been disclosed, applies to developers who had up to USD 2 million in annual sales on Google's Play Store. ([More](#))

英国竞争与市场管理局对谷歌广告业务再次展开反垄断调查

近日，英国竞争与市场管理局（“CMA”）发布公告称，对谷歌再次展开反垄断调查，此次调查针对谷歌是否存在滥用市场支配地位行为，限制数字广告技术市场的竞争。CMA认为，谷歌在广告技术中介的各个层面都处于强势地位，并以此向发布商和广告商收取费用，因此需要评估谷歌在广告销售、交易和发布三个关键环节的服务中，是否存在搭售、自我优待等限制竞争的行为，对竞争对手、客户以及消费者造成损害。 ([查看更多](#))

The Competition and Markets Authority Launches Second Investigation into Google's Advertising Business

Recently, the Competition and Markets Authority (“CMA”) announced its second investigation into Google, whether Google has abused its dominant market position to restrict competition in the digital advertising technology market. CMA found that Google had strong positions at various levels of the advertising technology intermediation, charging fees to both publishers and advertisers. So, it has to examine Google's service in 3 key parts of demand, exchange and publication of this chain, if there are restrictive behaviors such as tying and bundling, as well as self-preferencing, causing damage to competitors, customers and consumers. ([More](#))

美国法官裁定Cydia可对苹果公司提起反垄断诉讼

近日，据媒体报道，美国一法官裁定支持Cydia开发者的诉求，同意其向苹果公司提起反垄断诉讼。Cydia通过类似App Store的Cydia Store，为“越狱”的iOS设备提供各类软件以拓展基础程序功能，但苹果在2008年取消了Cydia Store的部分内容，并将其并入App Store。Cydia诉称苹果利用其垄断地位，一直试图扼杀其他应用商店。此前，一名法官因超出诉讼时效驳回了Cydia的起诉，此次Cydia重新起诉苹果在2018年到2021年进行的系统更新对其造成损害，该诉讼现已被接受。 ([More](#))

US Judge Rules Cydia Can File Antitrust Lawsuit against Apple

Recently, according to report media, a US judge has decided to allow the developer of Cydia to present its antitrust case against Apple. Cydia provided various softwares for “jailbroken” iOS devices to expand basic program functions, through the Cydia Store, which was similar to the App Store. But Apple lifted parts of the Cydia Store and incorporated them into its App Store in 2008. Cydia alleged that Apple had been trying to kill other app stores by taking advantage of its monopolistic position. Previously, a judge dismissed Cydia’s lawsuit for exceeding the statute of limitations. Now Cydia has re-sued Apple for damages caused by Apple’s system update from 2018 to 2021 and this lawsuit has been accepted. ([More](#))

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

《江苏省数字经济促进条例》审议通过

2022年5月31日，江苏省十三届人大常委会第三十次会议审议通过《江苏省数字经济促进条例》（“《条例》”）。《条例》分为九章，包括总则、数字技术创新、数字基础设施建设、数字产业化、产业数字化、治理和服务数字化、数据利用和保护、保障和监督，以及附则。

《条例》要求，推动数字技术创新，构建数字基础设施体系，提高数字产业整体竞争力，实现制造业、服务业、农业等产业数字化，推进政府治理和服务数字化，促进数据资源开发利用和健康发展。 ([查看更多](#))

Jiangsu Reviewed and Approved Regulations on Promoting Digital Economy

On May 31, 2022, the 30th Meeting of the Standing Committee of the 13th Jiangsu Provincial People’s Congress reviewed and approved the *Regulations on Promoting Digital Economy* (“Regulations”). The Regulations are divided into nine chapters, including General Provisions, Digital Technology Innovation, Digital Infrastructure Construction, Digital Industrialization, Industrial Digitalization, Governance and Service Digitalization, Data Utilization and Protection, Guarantee and Supervision and Supplementary Provisions. The Regulations require to improve digital technology innovation, build a digital infrastructure system, improve the overall competitiveness of the digital industry, realize the digitization of manufacturing, service, agriculture and other industries, promote the digitization of government governance and services, and enhance the development, utilization and healthy development of data resources. ([More](#))

《辽宁省大数据发展条例》审议通过

2022年5月31日，辽宁省十三届人大常委会第三十四次会议审议通过《辽宁省大数据发展条例》（“《条例》”）。《条例》分为九章，包括总则、基础设施、公共数据、工业大数据、

数据要素市场、数据安全、发展促进、法律责任，以及附则。《条例》要求，充分挖掘数据资源，发挥数据效用，加快大数据发展，建设数字辽宁、智造强省。（[查看更多](#)）

Liaoning Reviewed and Approved Regulations on Big Data Development

On May 31, 2022, the 34th Meeting of the Standing Committee of the 13th Liaoning Provincial People's Congress reviewed and approved the *Regulations on the Big Data Development in Liaoning Province* ("Regulations"). The Regulations are divided into nine chapters, including General Provisions, Infrastructure, Public Data, Industrial Big Data, Data Element Market, Data Security, Development Promotion, Legal Responsibilities, and Supplementary Provisions. The Regulations require fully exploiting data resources, giving full play to the utility of data, accelerating the development of big data, and building a digital Liaoning and a strong province with intelligence. ([More](#))

工业和信息化部通报84款存在侵害用户权益行为App

2022年6月1日，工业和信息化部（“工信部”）发布通报，依据《个人信息保护法》《网络安全法》《电信条例》和《电信和互联网用户个人信息保护规定》等法律法规，组织第三方检测机构对群众关注的生活服务类、日常工具类等移动互联网应用程序（“APP”）进行检查，对发现存在侵害用户权益行为的368款APP提出整改要求。截至2022年6月1日，尚有84款APP未按要求完成整改。（[查看更多](#)）

The Ministry of Industry and Information Technology Notified 84 Apps Violating the Rights and Interests of Users

On June 1, 2022, the Ministry of Industry and Information Technology ("MIIT") issued an announcement that in accordance with the *Personal Information Protection Law*, the *Cybersecurity Law*, the *Telecommunications Regulations*, and the *Regulations on the Protection of Personal Information of Telecommunications and Internet Users*, MIIT organized third-party testing agencies to inspect Apps such as life services and daily tools that are of concern to the public, and put forward rectification requirements for 368 Apps found to have violated users' rights and interests. Until June 1, 2022, there are still 84 Apps that have not completed the rectification as required. ([More](#))

上海市人民政府批复组建上海数据集团有限公司

2022年6月3日，上海市人民政府对外发布《同意组建上海数据集团有限公司的批复》（“《批复文件》”）。《批复文件》显示，今年5月23日，上海市人民政府同意上海市国有资产监督管理委员会（“上海市国资委”）组建上海数据集团有限公司，并要求上海市国资委按照规定程序，依法办理注册登记等手续。（[查看更多](#)）

Municipal Government of Shanghai Approved the Establishment of Shanghai Data Group Co., Ltd.

On June 3, 2022, the Shanghai Municipal Government issued the Approval for the Establishment of Shanghai Data Group Co., Ltd. ("Approval Document"). The Approval Document shows that on May 23 this year, the Shanghai Municipal Government agreed to the Shanghai State-owned Assets Supervision and Administration Commission ("Shanghai SASAC") to establish Shanghai Data Group Co., Ltd., and required Shanghai SASAC to go through the registration and other formalities in accordance with the prescribed procedures. ([More](#))

最高法院院长要求依法严惩各类涉网络信息、数据安全、知识产权等违法犯罪

2022年5月26日，中华人民共和国首席大法官、最高人民法院院长周强在数字经济法治论坛上发言时指出，要依法妥善审理数字经济新业态案件，共同构建开放、公平、非歧视的数字营商环境；依法严惩各类涉网络信息、数据安全、知识产权等违法犯罪，支持数字基础设施建设，促进完善数字安全体系，筑牢数字安全屏障。（[查看更多](#)）

The President of the Supreme Court: Severely Punish all Kinds of Crimes Related to Network Information, Data Security, Intellectual Property Rights in Accordance with the Law

On May 26, 2022, Zhou Qiang, the Chief Justice of the People's Republic of China and President of the Supreme People's Court, pointed out in his speech at the Digital Economy Rule of Law Forum that cases of new digital economy formats should be properly heard in accordance with the law, to jointly build an open, fair and non-discriminatory digital business environment. All kinds of crimes related to network information, data security, intellectual property rights, etc., should be severely punished to support the construction of digital infrastructure, promote the improvement of the digital security system, and build a strong digital security barrier. ([More](#))

天津人脸识别案二审：以刷脸作为唯一通行方式被判侵权

近日，顾某与兰州城关物业服务集团有限公司、兰州城关物业服务集团有限公司天津分公司（“城关物业天津分公司”）隐私权纠纷案二审作出判决。此前，城关物业天津分公司以人脸识别门禁作为唯一通行方式，因而被诉侵权。一审法院认为，此举系因疫情防控所需，未侵犯住户隐私权。二审法院审理指出，根据《最高人民法院关于审理使用人脸识别技术处理个人信息相关民事案件适用法律若干问题的规定》第10条，如果有业主或者物业使用人请求物业公司提供其他合理验证方式的，物业公司不能以智能化管理为由予以拒绝，因此撤销一审判决，要求城关物业天津分公司删除人脸信息，提供其他通行验证方式，并赔偿合理费用。（[查看更多](#)）

Second Instance of Case concerning Face Recognition in Tianjin: Using Face Recognition as the Only Way of Access is Sentenced to be Illegal

Recently, the privacy dispute between Gu and Lanzhou Chengguan Property Service Group Co., Ltd., Lanzhou Chengguan Property Service Group Co., Ltd. Tianjin Branch (“Chengguan Tianjin Branch”) was concluded in the second instance. Previously, Chengguan Tianjin Branch used face recognition as the only way of access control and was therefore accused of infringement. The court of first instance held that the behavior was for epidemic prevention and did not violate the privacy rights of residents. The court of the second instance pointed out that, according to Article 10 of the *Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Related to the Use of Face Recognition Technology to Process Personal Information*, if any owner or property user requests the property service company to provide other reasonable verification methods, the property service company cannot refuse it on the grounds of intelligent management. Therefore, the first-instance judgment was revoked, and Chengguan Tianjin Branch was required to delete the face information, provide other verification methods and compensate for reasonable expenses. ([More](#))

加州隐私保护局发布《加州隐私权利法》条例草案

2022年5月31日，加州隐私保护局发布了《加州隐私权利法》（“CPRA”）条例草案。CPRA涉及美国隐私法中长期争论的问题，如通过浏览器信号传达的用户偏好的有效性。根据拟议的CPRA条例，所涵盖的企业必须尊重通过浏览器设置发送的选择退出信号，作为用户偏好的有效沟通方式。CPRA赋予消费者选择退出“共享”个人信息、出售个人信息以及在某些情况下处理敏感个人信息的权利。（[查看更多](#)）

California Privacy Protection Agency Released Proposed Regulations on California Privacy Rights Act

On 31 May 2022, the California Privacy Protection Agency released draft regulations for the *California Privacy Rights Act* (“CPRA”). The proposed CPRA regulations address long-debated issues in U.S. privacy law, such as the effectiveness of user preferences communicated through browser signals. Under the proposed CPRA regulations, covered businesses must respect these opt-out signals sent through browser settings as effective communication of user preferences. CPRA grants consumers the right to opt-out of “sharing” personal information, selling personal information, and processing sensitive personal information in certain contexts. ([More](#))

新加坡个人数据保护委员会创建数据匿名化工具

2022年5月30日，新加坡个人数据保护委员会（“PDPC”）发布声明称，已创建出数据匿名化工具。该数据匿名化工具将免费提供，旨在帮助各团体通过匿名化技术改造其数据集合。该匿名化工具还另附有操作手册以指导用户使用。（[查看更多](#)）

The Personal Data Protection Commission of Singapore Creates Data Anonymization Tool

On May 30, 2022, The Personal Data Protection Commission of Singapore (“PDPC”) issued an announcement that it had launched a data anonymization tool. The data anonymization tool is free and is intended to assist organizations in transforming data sets through anonymization techniques. The tool also features an infographic that instructs users on how to use it. ([More](#))

墨西哥数据保护机构发布使用人工智能技术处理数据的推荐指南

2022年5月31日，墨西哥国家透明、信息获取和个人数据保护研究所（“INAI”）发布《使用人工智能技术处理数据的推荐指南》（“《推荐指南》”）。《推荐指南》通过推荐各种人工智能的使用和提出遵守个人数据安全义务来促进个人信息的适当与合乎道德的使用。这些建议涉及不同的主题，例如：人工智能在公共安全中的应用；人工智能在教育领域的应用；人工智能与设计隐私保护；使用人工智能进行海量数据分析中的个人信息和保护；在虚拟和增强现实技术中保护个人数据；人工智能与云计算；及在公共和私营部门的活动中使用带有人工智能的机器人设备。（[查看更多](#)）

Mexico’s National Institute for Transparency Publishes Recommendations Guidance on AI

On May 31, 2022, Mexico’s National Institute for Transparency, Access to Information and Personal Data Protection (“INAI”) released its *Recommendations Guidance for the Processing of Personal Data*

Related to the Use of Artificial Intelligence (“Recommendations Guidance”). The Recommendations Guidance promotes the appropriate and ethical use of personal information through various AI uses and compliance with the obligations of the duty of security of personal data. The recommendations concern topics such as AI and its implication in public security; AI in the education sector; AI and privacy by design; personal information and protection in massive data analysis for AI; protection of personal data in the technologies of virtual and augmented reality; AI and cloud computing; and the use of robotic devices with AI in activities within the public and private sectors. ([More](#))

泰国《个人数据保护法》正式实施

2022年6月1日，泰国《个人数据保护法》（“PDPA”）正式生效。PDPA是泰国第一部旨在管理数字时代数据保护的律法，被认为与欧洲《通用数据保护条例》相当。PDPA所涉及的关键领域包括数据处理，数据收集，数据存储和数据同意协议，其规定使用个人数据的数据控制者和处理者必须获得数据所有者的同意，并且仅将其用于明确目的。对不遵守规定者，最高处以500万泰铢的行政罚款和100万泰铢的刑事罚款。（[查看更多](#)）

Thailand’s Personal Data Protection Act Came into Force

On June 1, 2022, Thailand’s *Personal Data Protection Act* (“PDPA”) became fully enforceable. The PDPA is the first Thai law designed to govern data protection in the digital age and has been considered comparable to the European *General Data Protection Regulation*. Key aspects of the PDPA include data processing, data collection, data storage, and data consent protocols. The PDPA mandates that data controllers and processors who use personal data must receive consent from data owners and use it only for expressed purposes. It imposes punishment for non-compliance of up to THB 5 million in administrative fines and THB 1 million in criminal fines. ([More](#))

Meta因Instagram服务侵犯儿童隐私而面临巨额罚款

近日，据媒体报道，Facebook所有者Meta平台公司因在其Instagram服务上侵犯儿童隐私而面临爱尔兰数据监管机构（“DPC”）潜在的巨额罚款。DPC认为，该案涉及Facebook在Instagram社交网络服务的背景下处理儿童的某些个人数据，特别是与儿童操作商业帐户，以及适用于儿童帐户的某些默认设置有关。（[查看更多](#)）

Meta Faces Large Fine for Breaching Children’s Privacy on Instagram Service

Recently, according to a media report, Facebook owner Meta Platforms is facing a potentially large fine from the Irish data regulation authority (“DPC”) for violating children’s privacy on its Instagram service. The DPC said the case concerns the processing of certain personal data of children by Facebook in the context of the Instagram social networking service, in particular relating to the operation by children of business accounts and certain default settings, which were applied to children’s accounts. ([More](#))

微软将提供标准化的在线身份验证系统

近日，微软发布声明，将从今年8月开始，为客户提供一个标准化的在线身份验证系统Entra管理系统。微软的Entra管理系统包括Verified ID功能，可用于向需要用户验证的实体识别自己

的身份。该系统的推出旨在应对各种使用虚假账户访问敏感在线网络的情形，包括用于微软自身的Azure云平台。 ([查看更多](#))

Microsoft to Offer Standardized Online Identity Verification System

Microsoft announced that it would offer customers a standardized online identity verification system, Entra management systems, beginning in August. Microsoft's Entra management systems, which include Verified ID, offer users the ability to identify themselves to entities that require user verification. The launch is in response to various people using fake accounts to access sensitive online networks, including Microsoft's own Azure cloud platform. ([More](#))

知识产权 Intellectual Property

分装销售“五芳斋”正品粽，上海知产法院终审判决构成商标侵权

近日，上海知识产权法院对五芳斋公司与苏蟹阁公司、赢礼公司侵害商标权纠纷上诉案作出终审判决，纠正一审判决，认定分装销售“五芳斋”正品散装粽构成商标侵权。此前，一审法院判决仅认定赢礼公司、苏蟹阁公司侵犯五芳斋公司在包装盒类商品上注册的“五芳斋”商标专用权，赔偿3万元。

本案中，五芳斋公司经核准注册第9720610号“五芳”商标、第10379873号“美味五芳”商标、第331907号“五芳斋”商标，核定使用商品为第30类粽子等，以及第3781249号“五芳斋”商标，核定使用商品为第16类印刷出版物、纸板盒或纸盒等。被告赢礼公司提供粽子及印有“五芳斋”等文字和图形商标的假冒礼盒，苏蟹阁公司进行组合销售。

上海知产法院经审理后认为，虽然涉案礼盒中的散装粽子是五芳斋的正品，但涉案礼盒与正品礼盒并不一样，礼盒粽也属于粽子类商品，涉案行为属于在同一种商品上使用与注册商标近似的商标。将散装粽装入假冒礼盒对外销售，易使相关公众对礼盒粽商品产生混淆误认，破坏礼盒上的注册商标与礼盒内商品的来源指示关系，侵占正品礼盒粽的市场份额，会对五芳斋公司的商业声誉产生影响，涉案行为侵害了五芳斋公司在注册商标专用权。考虑到被告销售数量较少，且确实购买了五芳斋公司的散装粽，未对原告造成较大损失。综上，法院认为，被告涉案行为构成商标侵权，但综合考量案情后对于原审判决金额予以维持。

来源：[上海知识产权法院](#)

Shanghai Intellectual Property Court: Selling Genuine "Wufangzhai" Bulk Rice Dumplings in Counterfeit Gift Boxes Constituted Trademark Infringement

Recently, the Shanghai Intellectual Property Court made a final judgment on the appeal case over trademark infringement dispute between Wufangzhai Company and Suxiege Company and Yingli Company, correcting the first instance judgment, and ruling that subpackaging and selling genuine bulk rice dumplings of "Wufangzhai" constituted trademark infringement.

The court held that although the bulk rice dumplings in the boxes were genuine products of Wufangzhai, the box was not the same as the genuine box, and the rice dumplings with box also belonged to

the rice dumplings of Class 30, the defendant's act is to use a mark similar to the registered trademark on the same goods. Selling bulk rice dumplings in counterfeit gift boxes is likely to confuse and mislead the public, destroy the relationship between the registered trademark on the gift boxes and the source of the goods in the boxes, encroach on the market share of the genuine goods, and affect the commercial reputation of the plaintiff. Considering that the defendant sold a small number of rice dumplings and did purchase bulk rice dumplings from Wufangzhai, which did not cause large losses to the plaintiff, the court ruled that the defendant's act constituted trademark infringement, and upheld the amount of damages.

Source: Shanghai Intellectual Property Court

以非善意取得的商标权起诉他人侵权，构成权利滥用

近日，北京知识产权法院审结了上诉人马某某与被上诉人周大福公司等侵害商标权纠纷一案，认定马某某以非善意取得的商标权对周大福公司正当使用行为提起侵权之诉，构成权利滥用，故判决驳回上诉，维持原判。

二审法院认定，马某某在后申请注册的“jiaoren骄人”商标与周大福公司在先使用的“骄人”标识构成近似，其在明知周大福公司“骄人”标识知名度的情况下申请“jiaoren骄人”商标，主观上不具有善意。并且，马某某并未对其“jiaoren骄人”商标进行有效使用，其还申请注册多件与高知名度商标相近似的其他商标。故二审法院认定马某某申请注册“jiaoren骄人”商标的行为违反诚实信用原则，其据以主张商标权利的权利基础不具有正当性。同时，已有生效判决驳回马某某以相同理由提起的诉讼。综上，周大福公司在涉案产品上使用“骄人”标识的行为并未侵害马某某的商标权，而马某某以非善意取得的商标权对周大福公司正当使用行为提起侵权之诉并要求赔偿，构成权利滥用。

来源：北京知识产权法院

Filing an Infringement Lawsuit Based on the Trademark Right Not Acquired in Good Faith Constitutes Abuse of Rights

Recently, the Beijing Intellectual Property Court made a judgment on the dispute over trademark infringement between Ma and Chow Tai Fook, ruling that Ma filed an infringement lawsuit based on the trademark rights acquired in bad faith, against Chow Tai Fook's legitimate use, which constituted abuse of rights. The court rejected the appeal and upheld the first instance judgment.

The second instance court held that the trademark "jiaoren" that Ma applied for registration later was similar to the "Jiaoren" logo previously used by Chow Tai Fook, and that Ma applied for the trademark with full knowledge of the popularity of Chow Tai Fook's logo, which was not in good faith. Moreover, Ma did not make effective use of his trademark "jiaoren" and applied for registration of several other trademarks similar to the high-profile trademark. Therefore, the court ruled that Ma's application for registration of the trademark of "jiaoren" violated the principle of good faith and the right basis for his claim was not legitimate.

Source: Beijing Intellectual Property Court

侵权人拒不提供证据，法院确定赔偿数额50万元

江苏省高级人民法院对丽枫舒适公司与云龙区丽枫酒店等侵害商标权纠纷一案作出二审判决，判决云龙区丽枫酒店停止侵权，赔偿经济损失及合理开支共计50万元。

本案中，双方均是从事酒店业务经营者，被告云龙区丽枫酒店在经营活动中多处使用与原告丽枫舒适公司涉案商标相似的“麗枫酒店”等标识及字样，容易使相关公众产生混淆误认，构成商标侵权。原告向法院申请调查取证，但被告在其有能力提供相关发票明细、账簿及资料而拒不提交的情况下，二审法院参考原告主张的赔偿额及已有税务开票信息，并综合考虑涉案商标知名度、侵权情节等相关因素，确定赔偿数额为50万。

本案是适用举证妨碍制度并据此确定赔偿数额的典型案件，对于探索精细化审理知识产权案件，努力解决损害赔偿计算难、举证难等问题具有借鉴意义。

来源：江苏省高级人民法院

The Infringer Refused to Provide Evidence, and the Court Awarded Damages of RMB 500,000

Jiangsu High people's Court made a second instance judgment on the dispute over trademark infringement, ordering the defendant to stop the infringement and pay damages of RMB 500,000.

In this case, both parties are hotel operators, and the defendants repeatedly used the logo and words of "Lifeng Hotel" similar to the plaintiff's trademark in business activities, which may cause confusion among the general public and constituted trademark infringement. The plaintiff applied to the court for investigation, the defendant was able to provide relevant invoice details information but refused to submit. The court referred to the damages claimed by the plaintiff and the existing tax billing information, and comprehensively considered the popularity of the trademark, infringement and other relevant factors, and awarded damages of RMB 500,000.

This case is a typical case of applying the obstruction of evidence system to award the damages, which provides reference for exploring the refined trial of intellectual property cases and trying to solve the problems of calculation and proof of damages.

Source: Jiangsu High People's Court

最高院：源代码比对并非计算机软件著作权侵权判断的必备环节

最高人民法院对信诺瑞得软件公司诉智恒网安公司侵害计算机软件著作权纠纷案做出二审判决，判决维持原判，此前一审判决被告停止侵权，赔偿经济损失及合理开支共计50万元。

最高院认为，在计算机软件著作权侵权纠纷中，源代码的比对并非判断被诉侵权软件是否侵害权利软件著作权的必备条件和必须环节，计算机软件著作权的侵权判断仍然应当遵循接触加实质性相似的侵权判断标准。如果权利人已经举证证明被诉侵权软件存在与权利软件相同的自主命名信息、设计缺陷、冗余设计等特有信息，可以认为权利人完成了初步举证责任，此时举证责任转移至被诉侵权人，如被诉侵权人并未提交相反证据或者提交的相反证据不足以推翻侵权认定的，应当承担相应的侵权责任。

本案中，被诉侵权软件在软件核心程序结构及配置等方面存在与权利软件相同或高度近似的信息，尤其是针对软件具有创造性的部分，被诉侵权软件直接出现了权利软件曾用名及错误命

名。被告虽否认其使用权利软件，但未能对上述不合理相似之处作出合理解释，亦未能提供相反证据以证明其未实施侵权行为。被告应当承担相应的侵权责任。

来源：最高人民法院

The Supreme Court (SPC) : Source Code Comparison Is Not a Necessary Step in Determining Computer Software Copyright Infringement

SPC made a second judgement on the dispute over computer software copyright infringement between Sino-Red Software Co. and Zhiheng Net Security Co., upholding the first instance judgment, which ordered the defendant to stop infringement and pay damages of RMB 500,000.

SPC held that the comparison of source code is not the necessary condition and necessary link to judge computer software copyright infringement, and the judgment shall still follow the judgment criteria of contact plus substantial similarity. If the right holder has proved that the infringed software has the same self-named information, design defects, redundant design and other unique information as the right software, it can be considered that the right holder has completed the preliminary burden of proof, and the burden of proof shifted to the infringer, if the infringer did not submitted contrary evidence or the contrary evidence submitted was insufficient to overturn the infringement determination, the infringer shall bear the corresponding infringement responsibility.

In this case, the infringing software had the same or highly similar information to the right software in terms of software core program structure and configuration, especially for the creative part of the software, the infringing software directly appeared with the former name and misnomer of the right software. Although the defendant denied its use of the right software, it failed to provide a reasonable explanation for the above unreasonable similarities and failed to provide contrary evidence to prove that it did not commit infringement. The defendant shall bear the corresponding infringement liability.

Source: The Supreme People's Court

法院判赔275.3万元：全国首例“万词霸屏”不正当竞争纠纷案

苏州市中级人民法院对百度公司诉苏州闪速推公司不正当竞争纠纷一案作出判决，判决被告停止侵权，赔偿经济损失及合理开支共计275.3万元。

本案中，被告苏州闪速推公司专门为他人提供主要针对百度搜索引擎的“万词霸屏”服务，即通过制造虚假页面占据搜索结果首页一条甚至几条搜索结果，实现“霸屏”，扰乱百度搜索的正常排序结果。

苏州中院审理后认为，首先，被告与原告存在竞争关系；其次，被告通过租赁“高权重网站”二级目录，并将大量关键词及非人工编写页面发布到二级目录等网络技术手段实施了涉案行为；第三，被告的行为违背百度公司的意愿并导致其网络产品或服务无法正常运行；第四，被告的行为是商业行为、扰乱行为，而非公益、创新行为；第五，其在二级目录创设网页的行为是将同类合法经营者相关的劳动成果窃取过来，违背诚实信用的原则；第六，涉案行为影响了搜索引擎正常排名行为，对其他经营者、消费者和市场秩序都产生了消极影响。因此，法院认定被告涉案行为构成不正当竞争。

本案作为“全国万词霸屏生效裁判第一案”，对互联网不正当竞争专条的构成要件及搜索引擎领域商业道德的标准进行了有益探索，为同类案件的审理提供了可供参考借鉴的经验。

来源: 苏州市中级人民法院

Damages of RMB 2.753 Million Was Awarded: The First Case of "Tens of Thousands of Words to Dominate the Screen" Over Unfair Competition Dispute

Suzhou Intermediate People's Court made a judgment on the case of Baidu Inc. v. Suzhou Shan Sutui Inc. over unfair competition dispute, ruling that the defendant shall stop infringement and pay damages of RMB 2.753 million.

In this case, the defendant specially provided "Dominate the screen" service mainly aimed at Baidu's search engine, that is, by creating false pages to occupy one or even several search results on the first page, to dominate the screen and disrupt the normal sorted results of the search.

The court held that, firstly, the defendant and the plaintiff had a competitive relationship; secondly, the defendant rented a secondary directory of a "high-weight website" and published a large number of keywords and non-manually written pages to the secondary directory; third, the defendant's act violated Baidu's will and caused its network products or services to fail to operate normally; fourth, the defendant's act was a commercial or disruptive act, rather than a public welfare or innovative act; fifth, the act was to steal the labor results of similar operators, which violated the principle of good faith; sixth, the act affected the normal ranking of search engines, which was harmful to other operators, consumers and market order. Therefore, the court ruled that the defendant's act constituted unfair competition.

This judgment, as the first effective judgment of "Tens of thousands of words to dominate the screen" case in China, makes useful explorations on the constituent elements of the special provisions for unfair competition on the Internet and the standards of business ethics in the field of search engines, and provides experience for reference in the trial of similar cases. .

Source: [Suzhou Intermediate People's Court](#)

谷歌向欧盟300余家出版商支付新闻使用费

近日, 谷歌与德国、法国及其他4个欧盟国家的300余家出版商签署了协议, 谷歌将向出版商支付新闻使用费, 并将推出一个工具, 方便其他方也与其签署类似协议。

谷歌负责新闻和出版伙伴关系事务的总监苏琳娜·康纳尔 (Sulina Connal) 表示, 谷歌与德国、匈牙利等300余家国家、地方和专门的新闻出版机构签署了协议, 更多的讨论正在进行之中, 谷歌将发布新的工具, 以向数千家新闻出版商提供要约。该工具将为出版商提供一个拓展性的新闻预览协议, 允许谷歌在支付许可费后展示新闻片段和缩略图。

来源: [usnews.com](#)

Google Pays More Than 300 EU Publishers for News Usage

The Alphabet Google unit has signed deals to pay more than 300 publishers in Germany, France and four other EU countries for their news and will roll out a tool to make it easier for others to sign up.

“So far we have agreements that cover over 300 national, local and specialist news publications in Germany, Hungary, France, Austria, the Netherlands and Ireland, and many more discussions are ongoing,” Sulina Connal, director of news and publishing partnerships, said in a blog post, “We are now announcing the launch of a new tool to make offers to thousands of other news publishers, starting with Germany and Hungary, and rolling it out to other EU countries in the over the next few months.”

Source: [usnews.com](#)

仲裁赔偿9500万美元：夏普侵犯LG Display技术专利

5月23日，日本夏普公司（Sharp Corp.）宣布其接受新加坡国际仲裁中心（SIAC）的裁决，并承认侵犯了韩国LG Display公司（LG Display Co., Ltd.）的专利。此前，SIAC下达裁决命令夏普公司向LG Display公司赔偿9500万美元。

2013年，LG Display和夏普签订了交叉授权使用协议，互相授权对方使用与显示技术有关的专利并支付使用费。2019年，LG Display认为夏普违反了该合同，侵犯了其专利，于是向SIAC寻求仲裁，并要求夏普赔偿8.4亿美元。

来源：知识产权家

Arbitration Awarded Damages of USD 95 million: Sharp Infringed LG Display Technology Patents

On May 23, Sharp Corp. announced that it accepted the ruling by Singapore International Arbitration Center (SIAC) and admitted to infringing the patents of LG Display Co. Previously, the SIAC ordered Sharp to pay damages of USD 95 million .

In 2013, LG Display and Sharp signed a cross-licensing agreement, licensing each other patents related to display technology and paying royalties. In 2019, LG Display claimed that Sharp had violated that contract and infringed its patents, and filed for arbitration with SIAC and argued USD 840 million for damages.

Source: Intellectual Property Specialist

美国FTC：专利禁令可能不符合公共利益

5月16日，美国FTC（联邦贸易委员会）主席Lina Khan和专员Rebecca Slaughter就飞利浦诉泰雷兹案向美国ITC（国际贸易委员会）出具公共利益声明，主张ITC在SEP案件中应审慎颁发禁令。

FTC认为，对于本就意在进行专利授权的专利权人来说，其完全能够通过美国法院获得足够的救济，而将合标产品排除在美国市场之外会在无法提供同等救济的情况下伤害美国消费者和其他市场参与者利益。FTC还认为，一方面实施人已有获得许可的意愿，另一方面SEP权利人已向美国地区法院寻求救济，而地区法院可以就过往及未来的许可费做出判决，这种情况下，ITC颁发哪怕是有限的禁令，也不符合公共利益。

来源：FTC

FTC: Patent Exclusion Order May Not Be in Public Interest

On May 16, The Chair Lina Khan and the Commissioner Rebecca Slaughter of FTC issued a *Public Interest Statement* on the Philips v. Thales case, urging the ITC to consider the impact that issuing an exclusion order against a willing licensee implementing a standard would have on competition and consumers in the United States.

“Where a complainant seeks to license and can be made whole through remedies in a different U.S. forum, an exclusion order barring standardized products from the United States will harm consumers and other market participants without providing commensurate benefits,” the statement said.

As a general matter, exclusionary relief is incongruent and against the public interest where a court has been asked to resolve FRAND terms and can make the SEP holder whole. When a District Court can make a complainant whole, both for past royalties with prejudgment interest and by establishing a future royalty rate, even a limited exclusion order is not in public interest.

Source: [Federal Trade Commission](#)

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