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

上海市信管局通报2022年7月通信网络安全防护管理情况

2022年8月15日，上海市通信管理局（“上海市信管局”）发布了关于通信网络安全防护管理情况的通报（2022年7月）。通报表明，近期，上海市信管局检查发现6家单位存在未落实通信网络安全防护管理责任等违规行为，18家单位的22个定级系统存在未按期落实通信网络安全防护管理整改要求等问题。上海市信管局要求这些单位在2022年9月15日前落实整改工作，否则将被依法依规处理。另外，截至2022年7月，上海市信管局共对46家网络安全评测评估服务机构予以备案登记。（[查看更多](#)）

Shanghai CA Reports the Situation of Communication Cyber Security Protection and Management in July 2022

On 15 August 2022, Shanghai Communication Administration (“Shanghai CA”) issued the *Report on the Situation of Communication Cyber Security Protection and Management (July, 2022)*. According to the report, recently, the Shanghai CA found that 6 units had failed to implement the responsibility of protecting and managing communication cyber security, and 22 grading systems of 18 units had failed to implement the rectification requirements on schedule. Shanghai CA required these units to implement the rectification work before 15 September 2022, otherwise they will be dealt with according to laws and regulations. In addition, as of July 2022, Shanghai CA has 46 cyber security evaluation service agencies put on record and registered. ([More](#))

杭州互联网法院发布个人信息保护十大典型案例

2022年8月19日，杭州互联网法院在成立五周年之际，发布了“个人信息保护十大典型案例”。此次发布的典型案例覆盖面广，明确了未在显著位置公布隐私政策，未主动提示用户阅读收集个人信息规则、在申请收集用户行踪轨迹（定位）等个人敏感信息时未同步告知用户其目的、在用户拒绝授权的情况下默认获取部分权限等，属于违法违规处理用户个人信息的侵害行为。（[查看更多](#)）

Hangzhou Internet Court Issues Ten Typical Cases of Personal Information Protection

On 19 August 2022, Hangzhou Internet Court issued *Ten Typical Cases of Personal Information Protection* on its fifth anniversary. The typical cases issued cover a wide range, and clearly indicate that failing to publish the privacy policy in a prominent position, failing to actively prompt users to read the rules for collecting personal information, failing to simultaneously inform users of the purpose when applying for collecting personal sensitive information such as the users’ whereabouts (location), and default access to some rights when the users refuse authorization, etc., are violations of laws and regulations in dealing with users’ personal information. ([More](#))

浙江网安部门发布十大典型案例

2022年8月15日，公安部网安局发布了浙江省公安厅网安部门在“百日行动”中侦破的“十大典型案例”。这些案例涉及的违法行为包括：非法获取公民个人信息，冒充公务人员实施诈骗；

通过网络非法盗币、制作木马并洗币；破坏服务器系统功能，抢占疫苗机会非法牟利；通过非法手段获取企业、法人工商登记信息；在网络发布大量虚假高薪招聘信息；开发软件非法入侵销售网站，自动抢购商品转卖牟利；非法获取、使用和转卖企业工商注册信息和公民个人信息进行牟利；兜售、使用密拍设备，并售卖偷拍内容牟利；非法侵入电商公司电脑，获取快递面单数据并贩卖牟利等。（[查看更多](#)）

Zhejiang Cyber Security Department Issues Ten Typical Cases

On 15 August 2022, the Network Security Bureau of the Ministry of Public Security released the *Ten Typical Cases* detected by the Cyber Security Department of Zhejiang Public Security Bureau in the *100-day Operation*. The illegal acts involved in these cases include: illegally obtaining citizens' personal information and posing as public servants to commit fraud; illegally stealing coins, making Trojans and washing coins through the Internet; destroying the function of the server system and seizing the chance of vaccine for illegal profit; illegally obtaining the industrial and commercial registration information of enterprises and legal persons; releasing lots of false well-paid recruitment information on the Internet; developing software to illegally invade sales websites, and automatically snap up goods for resale for profit; illegal acquiring, using and reselling corporate industrial and commercial registration information and citizens' personal information for profit; selling and using secret shooting equipment, and selling candid content for profit; illegally invading the computer of e-commerce company, obtaining the data of express order and selling for profit, etc. ([More](#))

CCRC发布《数据安全认证申请书》

2022年8月15日，中国网络安全审查技术与认证中心（“CCRC”）在其官网发布了《数据安全认证申请书》。此前，国家市场监督管理总局与国家互联网信息办公室联合发布了《关于开展数据安全认证工作的公告》及《数据安全认证实施规则》，鼓励网络运营者通过认证方式规范网络数据处理活动，加强网络数据安全保护。此次申请书的正式发布，代表着数据安全认证制度的落地。（[查看更多](#)）

CCRC Issues Application for Data Security Management Certification

On 15 August 2022, the China Cybersecurity Review Technology and Certification Center (“CCRC”) issued the *Application for Data Security Management Certification* on its official website. Previously, the State Administration for Market Regulation and the Cyberspace Administration of China jointly issued the *Announcement on Carrying out Data Security Management Certification* and the *Implementation Rules for Data Security Management Certification*, encouraging network operators to standardize network data processing activities and strengthen data security protection through certification. The official release of the application represents the landing of the data security management certification system. ([More](#))

江西银行因数据违规等被罚款324.5万元

2022年8月12日，中国人民银行南昌中心支行（“央行南昌支行”）公布了其对江西银行股份有限公司（“江西银行”）及相关责任人员作出的行政处罚决定。据调查，江西银行共涉及11项具体违法行为类型，包括未按规定履行客户身份识别义务；与身份不明的客户进行交易；违反

信用信息采集、提供、查询及相关管理规定等。央行南昌支行依法对其予以警告，并罚款324.5万元。另外，相关责任人员共8人也分别被处罚款。（[查看更多](#)）

Jiangxi Bank Fined CNY 3.245 Million for Data and Other Violations

On 12 August 2022, Nanchang Central Sub-branch of the People's Bank of China ("Nanchang Sub-branch of PCB") issued its administrative punishment decision on Jiangxi Bank Co., Ltd. ("Jiangxi Bank") and related responsible personnel. According to the investigation, Jiangxi Bank involved 11 specific types of illegal acts, including failing to fulfill the obligation of customer identification as required; trading with unidentified customers; violating regulations regarding credit information collection, provision, inquiry and related management regulations, etc. Nanchang Sub-branch of PBC warned it pursuant to law and fined it CNY 3.245 million. In addition, 8 responsible persons were also fined respectively. ([More](#))

移动公司一工作人员因出卖客户个人信息被判承担刑事及附带民事责任

2022年8月19日，最高人民法院在其微信公众号发布一起涉及侵犯公民个人信息的典型案例。在本案中，2020年5月至2021年7月，被告人张某利用其在移动营业厅工作之便，在办理业务过程中，未经顾客同意，私自将顾客手机号码及验证码发至各类微信群内，供他人注册软件账号，每注册成功一个账号获利几元至十几元不等。最终，张某共非法获利9876.5元。法院经审理认为，其行为构成侵犯公民个人信息罪。同时，该行为也侵害了不特定公民的民事权益，损害社会公共利益，应承担民事侵权责任。（[查看更多](#)）

A Staff of China Mobile Sentenced to Bear Criminal and Incidental Civil Liability for Selling Customers' Personal Information

On 19 August 2022, the Supreme People's Court issued a typical case involving infringement of citizens' personal information on its WeChat official account. In this case, from May 2020 to July 2021, the defendant Zhang, taking advantage of his job in the China Mobile, privately sent the customers' mobile phone numbers and verification codes to various WeChat groups without the customers' consent, for others to register software accounts. He could earn a profit ranging from several yuan to more than ten yuan from each successful registration of an account. Finally, Zhang illegally made a profit of CNY 9,876.5. After trial, the court held that his behavior constituted the crime of infringing citizens' personal information. Meanwhile, his behavior also infringed on the civil rights and interests of unspecified citizens, damaged the public interests, and should bear civil tort liability. ([More](#))

业委会在公众号公布起诉状被业主起诉侵权

2022年8月16日，中国法院网发布了一起涉及公民个人信息的案例。在本案中，某小区业委会在与4位业主进行诉讼期间，将法院送达的民事起诉状原文发表在其公众号上，未对起诉状上4位业主的个人信息予以遮挡处理。4位业主以隐私权被侵犯为由将业委会起诉至法院。法院认为，民事起诉状中记载的身份证号码、出生年月、住所地、电话号码等个人信息属于私密信息，纳入隐私权的保护范畴。递交民事起诉状的对象是特定的，并不意味着同意公开个人信息。因此，法院认定业委会的行为构成侵权。（[查看更多](#)）

An Owners' Committee Sued by the Owners against Infringement of Publishing the Complaint on WeChat Official Account

On 16 August 2022, the China Court Net published a case involving citizens' personal information. In this case, during the litigation with four owners, an Owners' Committee issued the civil complaint served by the court on its WeChat official account, however, it did not block the personal information of four owners on the complaint. The four owners sued the Owners' Committee to the court on the grounds that their privacy rights were violated. The court held that personal information recorded in the civil complaint, such as ID number, date of birth, address, telephone number, etc., were privacy information and included in the protection of privacy. The civil complaint is specifically submitted to the court, and it does not mean that the owners agreed to disclose personal information. Therefore, the court decided that the behavior of the Owners' Committee constituted infringement. ([More](#))

9人因开发利用“爬虫”软件违规获取企业信息获刑

2022年8月16日，扬州网发布了一起侵犯公民个人信息罪典型案例。在本案中，自2021年3月起，9名被告人开发“爬虫”软件，以牟利为目的，出租含有违规获取企业信息的软件，并且出售利用软件获取的公民个人信息。法院认定其行为构成侵犯公民个人信息罪，对9名被告人分别判处有期徒刑7个月至拘役4个月，缓刑7个月不等的刑期，并处或单处罚金。（[查看更多](#)）

9 People Sentenced for Developing and Using “Crawler” Software to Obtain Enterprise Information Illegally

On 16 August 2022, the Yangzhou Net issued a typical case of the crime of infringing citizens' personal information. In this case, since March 2021, 9 defendants developed a “crawler” software, rented out the software containing enterprise information illegally obtained for profit, and sold citizens' personal information obtained by using the software. The court decided that the behavior constituted the crime of infringing citizens' personal information, and sentenced the 9 defendants to ranging from 7 months of fixed-term imprisonment to 4 months of detention and suspended for 7 months, and either a fine or a single fine. ([More](#))

俄罗斯修订《联邦个人数据法》，强化运营商数据安全保障

2022年8月11日，俄罗斯联邦通信、信息技术和大众传媒监督局（Roskomnadzor）领导的公共委员会举行了例行会议，会上讨论了最近通过的《联邦个人数据法》修正案以及在数字服务发展的背景下保护其主体权利的问题。本次修订主要旨在加强对个人数据的保护，强化网络运营商的义务与责任。部分修正案将于2022年9月1日生效。（[查看更多](#)）

Russia Amended Federal Personal Data Law to Strengthen the Data Security Responsibility of Operators

On 11 August 2022, the public committee led by the Russian Federation's Supervision Bureau of Communication, Information Technology and Mass Media (“Roskomnadzor”) held a regular meeting, at which the recently adopted amendments to the *Federal Personal Data Law* and the protection of its subject rights in the context of the development of digital services were discussed. This revision mainly aims to strengthen the protection of personal data and the obligations and responsibilities of network operators. Some amendments will come into effect on 1 September 2022. ([More](#))

美国国会议员要求联邦机构提供其购买公民数据的信息

2022年8月16日，美国众议院司法委员会主席Jerrold Nadler和众议院国土安全委员会主席Bennie G. Thompson致函司法部，国土安全部，联邦调查局，美国海关和边境保护局，美国移民和海关执法局，缉毒局和酒精、烟草、火器和爆炸物局，要求这7个联邦机构提供其从私营公司购买美国公民个人数据的信息。他们在信中指责这些联邦机构经常通过从私营公司购买数据集来获取有关当事人活动的信息，以规避关于搜查令的规定。他们希望更清楚地了解上述联邦机构购买商业数据的做法，这一做法是对防止不合理的搜查和扣押的法律保护的规避。（[查看更多](#)）

US Congressmen Request Information on Government Purchase of Americans' Private Data

On 16 August 2022, House Judiciary Committee Chair Jerrold Nadler and House Homeland Security Committee Chair Bennie G. Thompson sent a letter to the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigation, US Customs and Border Protection, US Immigration and Customs Enforcement, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, requesting information regarding the 7 agencies' purchasing of Americans' data from private companies. In the letter, they accused these federal agencies frequently circumvent warrant requirements by purchasing data sets from companies participating in the data market. They seek greater clarity on the agency practice of purchasing commercial data to sidestep legal protections against unreasonable search and seizure. ([More](#))

澳大利亚宣布加入全球跨境隐私规则论坛

2022年8月17日，澳大利亚政府官网宣布，澳大利亚加入了全球跨境隐私规则论坛。该论坛以2011年成立的APEC CBPR为基础，旨在更好地促进跨境数据流动，并向非APEC成员开放。它将建立一个认证体系，以帮助企业证明其符合国际公认的数据隐私标准。澳大利亚政府表示，其支持发展开放可靠的数字贸易环境，加强消费者和企业对数字交易的信任，并通过促进数据的安全流动来促进全球贸易。

2022年8月17日，澳大利亚政府官网宣布，澳大利亚加入了全球跨境隐私规则（Global CBPR）论坛。该论坛以2011年成立的亚太经济合作组织跨境隐私规则体系（APEC CBPR）为基础，旨在更好地促进跨境数据流动，并向非APEC成员开放。它将建立一个认证体系，以帮助企业证明其符合国际公认的数据隐私标准。澳大利亚政府表示，其支持发展开放可靠的数字贸易环境，加强消费者和企业对数字交易的信任，并通过促进数据的安全流动来促进全球贸易。（[查看更多](#)）

Australia Joins the Global Cross-Border Privacy Rules Forum

On 17 August 2022, the Australian government announced that Australia joined the Global Cross-Border Privacy Rules (Global CBPR) Forum. The Forum builds on the Asia-Pacific Economic Cooperation Cross-Border Privacy Rules (APEC CBPR) formed in 2011, aiming to better facilitate the flow of data across borders and is open to participation by non-APEC members. It will establish a certifica-

tion system to help companies demonstrate compliance with internationally recognized data privacy standards. The Australian government said they support the development of an open and reliable digital trade environment, that strengthens consumer and business trust in digital transactions, and promotes global trade by facilitating the secure flow of data. ([More](#))

知识产权 Intellectual Property

最高知产法庭对我国首例“药品专利链接”案作出二审判决

8月19日，最高人民法院知识产权法庭就中外制药株式会社（简称中外制药，本案原告）诉温州海鹤药业有限公司（简称海鹤公司，本案被告）确认是否落入专利权保护范围纠纷一案作出二审判决。

原告为“ED-71制剂”专利权人和涉案上市专利药品的上市许可持有人。该案中，中外制药发现，被告申请注册了原告专利药品的仿制药上市许可申请，还作出其仿制药未落入相关专利权保护范围的声明。因此原告向北京知识产权法院提起确认是否落入专利权保护范围纠纷。

就涉案仿制药申请专利与涉案专利是否构成等同技术特征问题，最高法二审认为，捐献规则和禁止反悔规则都可以构成适用等同原则的限制，其目的都是在公平保护专利权人的利益和维护社会公众利益之间实现合理的平衡。由于中外制药株式会社并无合理理由或者证据证明其并未通过修改权利要求放弃涉案技术方案，故本案应当适用禁止反悔规则，不宜再涉案技术方案纳入其专利权的等同保护范围内。

来源：最高人民法院知识产权法庭

The Intellectual Property Tribunal of SPC Made Final Judgment on the First Drug Patent Linkage Case

The Intellectual Property Tribunal of the Supreme People's Court (SPC) made the final judgment on the first pharmaceutical patent linkage case.

Regarding the issue of whether the generic drug patent application and the patent concerned constitute equivalent technical features, the court held that both the donation rule and the estoppel rule can constitute restrictions applying the doctrine of equivalents, and both aim at striking a reasonable balance between fairly protecting the patentees and maintaining the interests of the public. Since the plaintiff has no reasonable cause or evidence to prove that it has not given up the case-related technical solution by amending the claims, the rule of estoppel shall apply to this case, and the technical solution of the defendant in this case shall not be incorporated into the equivalent protection scope of plaintiff's patent.

Source: The Intellectual Property Court of SPC

再审反转：未能举证证明行为直接损害及行为针对性不构成虚假宣传的不正当竞争行为

近日，上海知识产权法院就原告薪得付信息技术（上海）有限公司（以下简称薪得付公司）与

被告上海佩琪信息技术有限公司（以下简称佩琪公司）虚假宣传纠纷一案作出再审判决，认为该案一、二审对被告涉案行为是否构成不正当竞争的定性有误，并予以纠正。

在该案一、二审中，法院均认为被告网站宣传行为虽然不当、不实或夸大，会导致公众误解，但原告未能举证证明直接损害及行为针对性，因此不构成虚假宣传行为。

上海知识产权法院再审认为，在本案中，原、被告均是从事人力资源管理服务行业的公司，存在竞争关系。根据查明事实，被告确实有不真实的宣传介绍行为，会导致相关公众的误解，使得同一行业的经营者处于劣势，直接损害了同行业的其他经营者的利益，原告作为同业经营者中的一员，也属于这种泛主体不正当竞争行为的受害者。此外，根据反不正当竞争法的相关规定，对于虚假宣传行为的规制重点在于阻止虚假陈述，法院不宜对直接损害的针对性作出过于严苛的限制。因此，再审法院认定佩琪公司的被控侵权行为构成虚假宣传的不正当竞争。

来源：[上海知识产权法院](#)

Shanghai IP Court Clarifies Criteria for Proving the Direct Prejudice and Pertinence on False Promotion Shall not be Harsh

Recently, the Shanghai Intellectual Property Court (Shanghai IP Court) has published a retrial judgment on a dispute over false promotion, holding that the court of first and second instance were wrong in determining whether the defendant's acts constitute unfair competition.

In the first and second instance of this case, the courts held that although the acts of promotion of the Defendant's website were improper, untrue or exaggerated, which would mislead the public, but the Plaintiff failed to prove the direct prejudice and the pertinence of the acts, the Defendant's acts did not constitute false promotion acts.

The court held that the Plaintiff and the Defendant are in a competitive relationship. According to the facts, the Defendant did have false promotion acts, which would mislead the relevant public, putting all the competitors in the same industry in a disadvantageous position, and directly harm the interests of them. As a member of the operators in the same industry, the Plaintiff is also a victim of such acts of extensive unfair competition. In addition, according to the relevant provisions of the Anti-unfair Competition Law, the focus of false promotion is for prevention of false statement, the court should not impose strict criteria on the direct prejudice and pertinence. Therefore, the retrial court ruled that the Defendant's act constituted unfair competition under false advertising.

Source: [Shanghai IP Court](#)

北京互联网法院明确网页的整体界面编排效果是否构成汇编作品的认定

近日，北京互联网法院就原告北京万可公共关系咨询有限公司与被告深圳市乐智教育科技有限公司知识产权与竞争纠纷一案作出判决，责令被告赔偿损失、赔礼道歉。

原告发现被告在其经营的网站上抄袭、盗用了原告绝大部分网页的相关内容，被告网站全面复制了原告网站的主要内容和图片。此外，被告还将原告的服务客户品牌展示墙、全球服务网络、获奖图片盗用并予以展示，进行虚假宣传，遂提起诉讼。

法院认为，原告网页中包含的文字、图片等信息材料，其中的单个元素可能是常用设计元素，

但是网页设计者通过智力劳动对其进行了独特的选材和编排，体现了设计者独特的审美观和创造力，具有一定的独创性，且在互联网上以数字的形式固定。这一创作方式，符合汇编作品的基本特征，属于我国著作权法保护的汇编作品，故原告对其网站首页等多个页面构成的汇编作品享有著作权。原告网站上线后，即已公开，他方具备接触的可能性。经比对被告网站与原告官网构成实质性相似，被告多处、多次高度引用了原告的网页源代码，故应认定被告网页已经实质性地侵犯了原告网页具有独创性的部分，并将与原告网站首页实质性相似的页面置于互联网络中，已构成对该作品信息网络传播权的侵犯。

来源：[北京互联网法院](#)

Beijing Internet Court Determined That the Overall Interface Layout Effect of the Webpage Constitutes a Compilation Work

Recently, Beijing Internet Court has made a judgment on the case of copyrights and unfair competition dispute, ordering the defendant to apologize and compensate for the losses.

The court held that the plaintiff's webpage contained information such as text and images, in which individual elements may be common design elements, but the webpage designer, through intellectual work, made a unique selection and arrangement for them, which reflects the designer's unique aesthetic and creativity, has a certain degree of originality, and is fixed in the form of numbers on the Internet. Therefore, the plaintiff shall have the copyright to the compilation work comprising the home page and other pages of its website. Upon comparison, the defendant's website was substantially similar to the plaintiff's official website, and the defendant had quoted the plaintiff's web page source code on many occasions. Therefore, the defendant's website had infringed upon plaintiff's copyrights on web pages.

Source: [Beijing Internet Court](#)

二审改判100万元：“益禾堂”商标遭恶意攀附，法院适用证据披露规则定赔

广州知识产权法院就武汉熠汇饮科技有限公司与广州一诺餐饮管理有限公司（以下简称一诺公司）、乔文龙、尹亮亮侵害商标权及不正当竞争纠纷一案作出二审判决，判决维持原判责令被告停止侵权，将赔偿金额由一审判决的30万元提高至100万元，并由被告一诺公司承担一审和二审的全部诉讼费用。

本案中，“益禾堂”商标在原告熠汇饮公司的持续经营和推广下，在奶茶品牌中已经具有了一定的知名度。法院认为被告一诺公司突出使用“益禾堂”字样并将其申请注册为商标的行为具有攀附的恶意。被告在商标申请未核准注册的情况下大肆开展招商加盟业务，这种许可使用的侵权行为属于源头侵权，造成的影响范围大、损失后果严重。法院通过适用证据披露规则，在被告拒不提交相关财务资料的情况下，认定被告一诺公司构成举证妨碍。在参考权利人熠汇饮公司的诉讼请求及在案证据后，认定被告一诺公司侵犯了原告熠汇饮公司的“益禾堂”注册商标专用权，并将赔偿金额改为100万元。

来源：[广州知识产权法院](#)

As the Trademark "Yihetang" Was Maliciously Attached, the Court Ruled to Compensate RMB 1, 000, 000 according to the Rule on Evidence Disclosure

The Guangzhou Intellectual Property Court (Guangzhou IP Court) made the second-instance judgment over the dispute of infringement on trademark and unfair competition, upheld the first instance judgement by ordering the defendant to stop the infringement and increase the amount of compensation from RMB 300,000 to RMB 1,000,000.

In this case, the trademark "Yihetang" has gained popularity in the milk tea brand. The court held that the defendant used the word "Yihetang" prominently and applied for registration as a trademark with malice. The defendant conducted investment promotion and franchise business in a large scale before the trademark application for registration was approved. Such infringement through license is infringement from the source, which caused great impact and serious losses. By applying the rules of evidence disclosure, the court found that the defendant constituted an obstruction of proof when the defendant refused to submit relevant financial information. The court decided that the defendant infringed on the plaintiff's trademark, and increase the amount of damages to RMB 1,000,000.

Source: [Guangzhou IP Court](#)

“金银花”商标侵权系列案现不同判决结果：公共领域初始含义不能被独占

据报道，江西、江苏和广东等地多家企业因生产了“金银花花露水”等产品，而被“金银花”商标持有人上海碧丽化妆品有限公司起诉索赔，已有判决的绝大多数案件中，企业被判构成侵权并赔偿。

近日，在两起“金银花”相关案件中，广东省中山市中级人民法院（以下简称中山中院）二审撤销了原审判决，认定被告的两家江西公司不构成商标侵权，并驳回原告上海碧丽化妆品公司的诉讼请求。中山中院认为，涉案“金银花”商标属于直接表示商品的主要原料等特点，商标权人不能独占商标标识原属于公共领域的那些初始含义。两被诉企业在被诉侵权花露水商品上使用“金银花花露水”字样的同时，也在该文字的上方标示了其自有的注册商标。两公司在被诉侵权产品上标示“金银花花露水”字样只是为了说明或描述自己商品的特点，且没有直接套用“金银花”商标或突出使用“金银花”字样，属于正当使用商标标识的行为。

据悉，最高人民法院、四川高院均已对此前法院支持碧丽公司的相关案件进行再审提审，目前尚未有提审后的判决结果。

来源: [广东省中山市中级人民法院](#)

Different Judgements in the "honeysuckle" Trademark Infringement Series Cases: The Initial Meaning of the Public Domain Cannot Be Exclusive

It is reported that a number of enterprises have been sued by the "honeysuckle" trademark holder for producing "honeysuckle toilet water" and other products, and in the vast majority of cases where judgments have been made, the enterprises have been ordered to constitute infringement and compensation.

Recently, in two cases related to "honeysuckle", the Intermediate People's Court of Zhongshan,

Guangdong Province, reversed the original judgment, and found that the defendant did not constitute trademark infringement, and rejected the plaintiff's claim. The court held that the "honeysuckle" trademark in question was a direct indication of the main raw materials of the goods and other characteristics, and the trademark owner could not exclusively occupy those initial meanings of the trademark mark that originally belonged to the public domain. When the two accused enterprises used the words "honeysuckle toilet water" on the alleged infringing products, they also indicated their own registered trademark above the words. The two companies indicated the words "honeysuckle toilet water" on the alleged infringing product just to illustrate or describe the characteristics of their own products, and did not directly use the trademark "Honeysuckle" or highlight the words "Honeysuckle". Such acts should be considered as use of the trademark.

It is reported that the Supreme People's Court and the Sichuan High people's Court have both retried the relevant cases for arraignment, and the judgment after arraignment is not yet available.

Source: [The Intermediate People's Court of Zhongshan, Guangdong Province](#)

涉案价值达1.1亿元：广西特大假冒注册商标电子烟案

日前，贺州警方成功破获了一起广西特大假冒注册商标电子烟案，累计涉案金额1.1亿元人民币，并捣毁跨市制假窝点2处。

2022年5月25日，贺州市公安局平桂分局依托贺州智慧公安建设，成功破获了一起假冒注册商标电子烟案，现场抓获8人，查获成品电子烟3万余支，涉案金额6000余万元。

2022年8月8日，由贺州市公安局治安支队牵头，会同平桂分局等单位民警于远赴贵港市平南县，摧毁该假冒伪劣电子烟团伙的另一生产窝点，查获假冒注册商标电子烟成品1.87万支，抓获涉案人员5人，成品电子烟货值315.1万元，涉案金额5000万余元。

目前，该假冒注册商标电子烟案宣告侦破。

来源：央广网

An Extraordinarily Large Counterfeit Registered Trademark E-cigarette Case Involved a Value of RMB 110 Million

Recently, the Hezhou police in Guangxi Province successfully cracked a large counterfeit registered e-cigarette case in Guangxi, involving a cumulative amount of RMB 110 million in case value, and crashed two counterfeit manufacturing sites in two cities.

On May 25, 2022, relying on the information from intelligent public security construction built by the police, the police successfully cracked a counterfeit registered e-cigarette case, arresting eight people on the spot, and seizing more than 30,000 finished e-cigarettes, involving a total amount of more than RMB 60 million.

On August 8, 2022, the police destroyed another production site of the counterfeit e-cigarette, seizing 18,700,000 finished counterfeit registered e-cigarettes with worth RMB 3,151,000, arrested five people involved in the case, and the case value is more than RMB 50 million.

Source: [CNR News](#)

索赔额高至30亿元：日本制铁起诉宝钢股份专利侵权

8月17日晚间，宝山钢铁股份有限公司（以下称“宝钢股份”）公告称，已陆续收到日本制铁株式会社（以下称“日本制铁”）起诉该公司三起专利侵权案件的法院传票、起诉状等相关材料，案件将在日本东京地方法院开庭审理。

日本制铁称，宝钢股份向丰田汽车供应的电磁钢板侵犯了其三项专利，并针对三件专利分别向法院提起诉讼。宝钢股份披露，上述三起案件的索赔金额均为204亿日元左右（约合10.2亿元人民币），合计索赔额超过30亿元。据悉，宝钢股份自2019年起向丰田汽车批量供应电磁钢板，电磁钢板也被称为硅钢，是新能源汽车驱动电机的核心原材料，系日本制铁的关键产品之一。宝钢股份表示其将积极应诉。

来源：[互联网综合](#)

Nippon Steel Corporation Sues Baosteel for Patent Infringement and Claims for Damages of RMB 3 Billion

Nippon Steel claims that the electromagnetic steel plates supplied by Baosteel to Toyota infringes three of its patents, and has filed lawsuits. Baosteel disclosed that the amount of damages claimed in all three cases was about JPY 20.4 billion (about RMB 1.02 billion), with a combined claim of more than RMB 3 billion. It is reported that Baosteel has been supplying bulk electromagnetic steel plates to Toyota since 2019. Electromagnetic steel plates, also known as silicon steel, are the core raw materials for new energy vehicle drive motors, and are one of the key products of Nippon Steel. Baosteel claimed it will actively respond to the lawsuit. And the case will be heard in the Tokyo District Court in Japan.

Source: [Web Reports](#)

法院驳回上诉请求：NBA起诉中国网店售假

8月16日，美国的联邦第七巡回上诉法院维持了伊利诺伊联邦地区法院就中国的网上零售商HANWJH等与美国公司NBA Properties, Inc.（缩写为NBAP）商标权侵权一案的裁决。判定HANWJH等网上零售商销售了假冒的美国职业篮球联赛（NBA）的周边产品，侵犯了NBAP的商标权。

据悉，零售商HANWJH等在其开设的亚马逊网上商店里提供205种假冒商品以供伊利诺伊州居民购买，包括41种不同的篮球短裤，有五个不同的尺码可供选择。NBAP还指控这些零售商在其商品上使用了伪造的NBA商标，并谎称得到了NBA的授权。2020年9月，NBAP的调查员从HANWJH的网店以一个伊利诺伊州居民的身份和地址订购了一条短裤，并成功地接收了该商品，随后NBAP对HANWJH等提起了商标侵权诉讼。

来源：[The Seventh Federal Circuit Court of Appeals](#)

NBA Wins Counterfeit Case Versus Chinese Online Stores

On August 16, the U.S. Court of Appeals for the Seventh Circuit upheld the decision of the U.S.

District Court of Illinois in a trademark infringement case involving Chinese online retailer HANWJH and U.S. company NBA Properties, Inc. (NBAP). It was found that online retailers such as HANWJH sold counterfeit NBA merchandise, infringing the NBAP's trademark rights.

It is reported that retailers such as HANWJH are offering 205 counterfeit items in their Amazon online store for Illinois residents, including 41 different basketball shorts, available in five different sizes. NBAP also accused the retailers of using counterfeit NBA trademarks on their merchandise and falsely claiming to be authorized by the NBA. In September 2020, NBAP investigators ordered a pair of shorts from HANWJH's online store with the identity and address of an Illinois resident and successfully received the item, and NBAP subsequently filed a trademark infringement lawsuit against HANWJH.

Source: [The Seventh Federal Circuit Court of Appeals](#)

吉百利成功注册单一紫色商标

近日，英格兰和威尔士高等法院推翻了英国知识产权局的一个裁决，判定了英国食品公司吉百利（Cadbury UK Ltd.）可以将其巧克力棒的包装上的紫色注册为商标。

2004年，吉百利公司申请了将其标志性的紫色注册为商标，遭到了雀巢公司的反对。雀巢也有一条以紫色包装为特色的产品线Quality Street。2019年，英国知识产权局针对吉百利的两个商标分别做出了无效宣告。然而，根据今年6月提交给英格兰和威尔士高等法院的文件，这两个公司于去年解决了他们在颜色注册方面的争议，并且雀巢撤回了对吉百利三个商标的反对意见。吉百利公司在法庭上表示公众一定可以将其包装上的紫色与吉百利关联起来，其潘通色号体系可以精确且永久地固定颜色及其使用，法院支持了该观点。

英格兰和威尔士高等法院认为这一裁决并不意味着颜色商标的注册难度大大降低了，因为商标申请人需要提供令人信服的证据来证明其商标在消费者心目中的“显著性”，“吉百利紫色”已被使用了100多年因此具有这种“显著性”。

来源: [UKIPO](#)

Cadbury Successfully Registered Purple Color as a Trademark

The High Court of England and Wales has overturned a decision by the UK Intellectual Property Office (UKIPO), ruling that British food company Cadbury UK Ltd. can register trademark for the purple color on the packaging of its chocolate bars.

In 2004, Cadbury applied to trademark its iconic purple color, which was opposed by Nestlé. Nestlé also has a product line called Quality Street that features purple packaging. In 2012, a district court ruled in favor of Cadbury for exclusive rights to the purple trademark. In 2013, Nestlé successfully appealed. In 2019, the UK Intellectual Property Office invalidated two Cadbury trademarks, 3,025,822 and 3,019,361. However, the two companies settled their dispute over the color registrations last year and Nestlé withdrew its objections to Cadbury's three trademarks, according to documents filed in the High Court of England and Wales in June this year. The court upheld Cadbury's argument in court that the public must be able to associate the purple color on its packaging with Cadbury, and that its Pantone matching system fixes the color and its use precisely and permanently.

Source: [UKIPO](#)

俄罗斯新法律草案：非法屏蔽受版权保护的内容将受到惩罚

近日，俄罗斯就非法屏蔽受版权保护的内容行为提出了一项法律草案，该草案由俄罗斯经济发展部（Ministry of Economic Development）提出，旨在解决《俄罗斯联邦民法典》关于因非法屏蔽或删除而被剥夺发行权利的赔偿规定空白的问题。

这项草案允许独占性许可持有人向网站发送删除通知，要求网站在24小时内删除涉嫌侵权的内容。如果通知是非法的，并且合法内容被屏蔽或删除，受到损害的一方可以直接向通知发送者索赔。

来源：torrentfreak.com

New Russian Draft Law: Illegal Blocking of Copyrighted Content Will be Punished

Recently, a draft law on illegal blocking of copyrighted content was proposed by the Russian Ministry of Economic Development to fill a gap in the *Civil Code of the Russian Federation (The Draft)* regarding compensation for deprivation of distribution rights due to illegal blocking or deletion.

The draft aims to make life easier for online services by removing uncertainty when responding to a notice. When a takedown notice is sent to a service provider, a direct line on liability will connect the sender and the owner of the content. In the event that the notice is illegal and legal content is blocked or taken down, the injured party will be able to claim compensation directly from the sender.

Source: torrentfreak.com

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