



NEWSLETTER

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中信证券被罚，首席信息官等3人收到警示

CITIC Securities Fined and Three Employees Including Chief Information Officer Warned

报税公司与谷歌和Meta共享私人数据，可能面临数十亿美元罚款

Tax Preparers that Shared Private Data with Meta, Google Could be Fined Billions

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Guangdong High Court: The Amount of Statutory Damages Cannot Be Used as the Calculation Basis for Determining Punitive Damages Amount



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华为2022年专利许可收入5.6亿美元 公布4G和5G手机专利许可费率

Huawei's Patent Licensing Revenue in 2022 Amounted to USD 560 Million, and the Royalty Rates for 4G and 5G Mobile Phone Patents have been Disclosed

“TR”商标遭涉外定牌加工方侵权，获法院以填平性赔偿+2倍惩罚性赔偿保护

"TR" Trademark was Infringed by a Foreign Contractor, and the Court Awarded Compensatory Damages Plus Double Punitive Damages for Protection

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Putuo District People's Court: Trademark Owner's Lawsuit against Others for Trademark Infringement was Ruled to Constitute an Abuse of Rights

侵害“中亚”商标及不正当竞争案：江苏高院二审改判赔偿300万元，且股东承担连带责任

The Judgement of Trademark Infringement and Unfair Competition Involving 'Zhong Ya' Trademark Revised and the Shareholders Bore Joint and Several Liability

美国著名喜剧演员及两位作家起诉 OpenAI，称 ChatGPT 侵犯其书籍版权

American Comedian Sarah Silverman is Suing Open AI for Copyright Infringement

立方竞争法周报 Weekly Competition Law News

HKCC认可香港的士小巴商总会主动纠正提供车租建议的行为

2023年7月12日，香港竞争事务委员会（“HKCC”）发布公告，认可香港的士小巴商总会（“商会”）向其会员发出内部通告，表明将纠正过往向会员提供的士车租建议的行为。HKCC注意到，商会过往会不时发出没有约束力的车租建议，建议其会员，包括的士车行及个人的士车主，对的士车租作出调整；并且有会员曾采纳商会的建议来调整车租。HKCC向商会表达关注后，商会迅速作出回应，并于7月12日发出内部通告，通知会员将停止提供车租建议。（[查看更多](#)）

HKCC Welcomes Rectification by Taxi Association on Taxi Rental Fee Recommendation

On July 12, 2023, the Hong Kong Competition Commission (“HKCC”) issued a public announcement welcoming the issuance of an internal notice by the Hong Kong Taxi and Public Light Bus Association (“Taxi Association”) to its members, stating that it would rectify its previous practice of providing members with recommendations on taxi rental fees. The HKCC has noticed that the Taxi Association has issued non-binding fee recommendations to its members including both corporate and individual taxi owners, suggesting adjustments in taxi rental fees and some members did adopt the Taxi Association’s recommendations on some occasions and made corresponding adjustments. After the HKCC met with representatives of the Taxi Association to express its concern, the Taxi Association responded swiftly and issued an internal notice to its members, informing them that the Taxi Association would stop providing recommendations on taxi rental fees. ([More](#))

海南集中清理妨碍统一市场和公平竞争的政策措施

近日，海南省市场监督管理局与海南省发展改革委员会联合部署开展妨碍统一市场和公平竞争政策措施专项清理，打破地方保护和市场分割，营造公平统一高效的市场环境。此次清理重点包括妨碍各类经营主体依法平等进入和退出市场、妨碍商品和要素自由流动、影响生产经营成本、影响生产经营行为四个方面内容。（[查看更多](#)）

Hainan Concentratedly Cleans Up Policies and Measures Impeding Unified Market and Fair Competition

Recently, the Hainan Administration for Market Regulation and the Hainan Development and Reform Commission jointly deployed to carry out a special cleanup of policies and measures impeding a unified market and fair competition, to break local protection and market segmentation, and to create a fair, unified and efficient market environment. The focus of this cleanup includes four aspects: hindering various business entities from entering and exiting the market on an equal footing following the law, hindering the free flow of commodities and factors, affecting production and operation costs, and affecting production and operation activities. ([More](#))

拼多多跨境电商平台Temu在美起诉Shein违反美国反垄断法

2023年7月14日，拼多多控股的跨境电商平台Temu（Whaleco Inc.）在美国马萨诸塞州地方法院提起诉讼，指控Shein（Shein US Services, LLC）在与服装制造商的交易中违反美国反垄断法。Temu和Shein均为超快时尚行业的领先企业，以超低的价格满足消费者对前沿时尚的需求。在诉状中，Temu声称Shein实施了至少四项策略以限制竞争：Shein在格式合同中约定，若制造商向Temu供应产品，则需承担巨额罚款；Shein强迫制造商签署忠诚誓言，声明其不会与Temu开展业务，且对此保持沉默；Shein向Temu供应产品的制造商公开处以法外罚款；Shein向Temu发送大量虚假版权侵权通知，扰乱Temu上产品的销售。（[查看更多](#)）

Pinduoduo's Cross-Border eCommerce Platform Temu Sues Shein over US Anti-trust Law

On July 14, 2023, Temu (Whaleco Inc.), a cross-border ecommerce platform controlled by Pinduoduo, filed a lawsuit in the United States District Court for the District of Massachusetts, accusing Shein (Shein US Services, LLC) of violating US antitrust laws in its transactions with clothing manufacturers. Both Temu and Shein are leading in the ultra-fast fashion industry, meeting consumers' demand for cutting-edge fashion at ultra-low prices. In the complaint, Temu claimed that Shein implemented at least four measures to limit competition: Shein stipulated in the adhesion agreements that if manufacturers supply products to Temu, they would have to face huge punitive damages; Shein forced manufacturers to sign loyalty oaths, stating that they would not work with Temu and remain silent; imposing extrajudicial fines on disobedient manufacturers for supplying product to Temu; Shein sent errant notices of copyright infringement to Temu in order to disrupt sales of products offered for sale on Temu. ([More](#))

欧盟附条件批准博通收购VMware

2023年7月12日，欧盟委员会（[European Commission](#)）公告附条件批准博通（Broadcom Inc.）收购VMware（VMware, Inc.）。拟议交易金额达610亿美元，经调查，欧盟委员会认定，通过收购VMware，博通将损害光纤通道主机总线适配器（FC HBA）全球供应市场的竞争。为解决欧盟委员会的竞争忧虑，博通提出其将保证开放开发和认证第三方 FC HBA 所需的互操作性应用程序编程接口，以不可撤销的开源许可证开放对于所有博通当前和未来的FC HBA驱动程序的源代码以及拆分负责博通FC HBA的工作团队与负责第三方认证和技术支持的团队。欧盟委员会认为这些措施解决了其担忧，决定批准该拟议交易。（[查看更多](#)）

European Commission Clears Acquisition of VMware by Broadcom, Subject to Conditions

On July 12, 2023, the European Commission issued a statement approving the proposed acquisition of VMware (VMware, Inc.) by Broadcom (Broadcom Inc.). The approval is conditional upon full compliance with the commitments offered by Broadcom. The proposed transaction amounted to \$61 billion, and after investigation, the European Commission determined that, through the acquisition of VMware, Broadcom would harm competition in the global supply market for Fibre Channel Host-Bus Adapters

(FC HBA). In order to address the competition concerns of the European Commission, Broadcom guaranteed access to the interoperability application programming interfaces as well as to the materials, tools and technical support necessary for the development and certification of third-party FC HBA, guaranteed access to the source code for all of Broadcom's current and future FC HBA drivers through an irrevocable open source license and committed to separate between the team working on Broadcom's FC HBA and the team in charge of third-party certification and technical support. The Commission agrees these commitments fully address the competition concerns and approved the proposed acquisition. ([More](#))

德国联邦卡特尔局发布2022/23年度报告

2023年7月11日，德国联邦卡特尔局（FCO）公布了其2022/2023年度报告。在执法方面，FCO处理了多起滥用市场支配地位案件，主要涉及运输部门与数字经济领域，涉及德国国家铁路公司、汉莎航空、亚马逊、苹果、谷歌等多家企业。在卡特尔案件中，FCO共对20家公司和7名自然人处以约2400万欧元的罚款，涉及桥梁伸缩缝和工业建筑行业。此外，FCO还审查了800起经营者集中案件，并对其中8起进行进一步审查。在立法方面，德国联邦议院于2023年7月6日通过了对《德国竞争法》（GWB）的第11修正案。 ([查看更多](#))

FCO Presents Its Annual Report for 2022/23

On July 11, 2023, the Federal Cartel Office (FCO) presents its annual report for 2022/23. In the aspect of law enforcement, the FCO handled multiple cases of abuse of market dominant position, mostly involving the transport sector and the digital economy, concerning the German national railway company, Lufthansa Airlines, Amazon, Apple, Google and many other companies. In cartel prosecution, the FCO imposed fines amounting to around 24 million euros on a total of 20 companies and seven individuals. The sectors concerned included expansion joints for bridges and the industrial construction sector. In merge control, the FCO examined around 800 merger projects. Eight of these mergers were closely examined in second phase proceedings. In the aspect of legislation, the German Bundestag passed the 11th amendment to the German Competition Act (GWB). ([More](#))

Ofcom提议对英国云基础设施市场进行调查

2023年7月10日，据媒体报道，英国通讯管理局（Ofcom）建议将云基础设施市场提交至英国竞争与市场管理局（CMA）进行调查。Ofcom指出，当前市场的运作远不如预期，亚马逊网络服务（Amazon Web Services），以及微软的公用云端服务平台（Microsoft Azure）控制了高达70%的市场份额。此外，更深层次的问题，如数据传出费用、互操作性的技术限制和承诺性支出折扣，可能阻碍了竞争。 ([查看更多](#))

Ofcom Recommends Investigation into UK's Cloud Infrastructure Market

On July 10, 2023, according to media reports, the UK's telecoms regulator, Ofcom, is recommending the cloud infrastructure market be referred to the Competition and Markets Authority for investigation. In it, the Ofcom states the current market is simply not working as well as it should, noting that the two

major cloud providers, Amazon Web Services and Microsoft Azure, control up to 70 percent of the share alone. There are, of course, deeper issues at play too — like egress fees, technical restrictions on interoperability, and committed spend discounts — that the Ofcom suggests are potentially stifling competition. ([More](#))

欧盟延长关于Booking收购的决定

2023年7月10日，据媒体报道，欧盟委员会已延长关于在线旅行社Booking（Booking Holdings Inc.）价值16.3亿欧元（约合18亿美元）收购的决定期限。最新的截止日期为2023年9月6日。欧盟委员会担心，该交易可能会减少竞争，并警告称该交易将增强Booking的市场力量并增加酒店的成本。对此，Booking尚未提出补救措施。（[查看更多](#)）

EU Extends Deadline for Booking Holdings' Acquisition Decision

On July 10, 2023, according to media reports, the European Union has extended its deadline for a decision on online travel agency Booking Holdings' 1.63-billion-euro (\$1.8 billion) acquisition, giving the company until September 6th for a final decision. The Commission is concerned that the deal would reinforce Booking's market power and push up costs for hotels. In this regard, Booking has not proposed any remedies. ([More](#))

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

国家网信办等七部门联合公布《生成式人工智能服务管理暂行办法》

2023年7月10日，国家互联网信息办公室联合国家发展和改革委员会、教育部、科技部、工业和信息化部、公安部、广电总局公布《生成式人工智能服务管理暂行办法》（以下简称《办法》），《办法》自2023年8月15日起施行。国家互联网信息办公室有关负责人表示，出台《办法》，旨在促进生成式人工智能健康发展和规范应用，维护国家和社会公共利益，保护公民、法人和其他组织的合法权益。

《办法》对生成式人工智能服务实行包容审慎和分类分级监管，明确了提供和使用生成式人工智能服务总体要求。在信息安全保护方面，《办法》要求，提供者应当依法承担网络信息内容生产者责任，履行网络信息安全义务。涉及个人信息的，依法承担个人信息处理者责任，履行个人信息保护义务。提供者对使用者的输入信息和使用记录应当依法履行保护义务，不得收集非必要个人信息，不得非法留存能够识别使用者身份的输入信息和使用记录，不得非法向他人提供使用者的输入信息和使用记录。提供者应当按照《互联网信息服务深度合成管理规定》对图片、视频等生成内容进行标识。此外，《办法》还规定了安全评估、算法备案、投诉举报等制度，明确了法律责任，规定提供具有舆论属性或者社会动员能力的生成式人工智能服务的，应当按照国家有关规定开展安全评估，并按照《互联网信息服务算法推荐管理规定》履行算法备案和变更、注销备案手续。（[查看更多](#)）

Interim Measures for the Administration of Generative Artificial Intelligence Services Jointly Issued by CAC and Other Six Departments

On 10 July 2023, Cyberspace Administration of China, in conjunction with NDRC, Ministry of Education, Ministry of Science and Technology, Ministry of Industry and Information Technology, Ministry of Public Security and National Radio and Television Administration, announced the Interim Measures for the Administration of Generative Artificial Intelligence Services (*the “Measures”*), which will be implemented from 15 August 2023. The responsible person of CAC stated that *the Measures* are aimed to promote the healthy development and standardized application of generative AI, safeguard national security and public interests, and protect the legitimate rights and interest of citizens, legal persons, and other organizations.

The Measures adopt inclusive, prudent, classified, and hierarchical supervision of generative AI services, and specify the overall requirements for providing and using generative AI services. *The Measures* require providers of generative AI services to assume the responsibility of network information content producers in accordance with applicable laws and perform their obligations of network information security. Concerning personal information, providers shall assume the responsibility of personal information processors in accordance with applicable laws and perform their obligations of personal information protection. Providers should perform their obligations to protect input information and usage records of users in accordance with applicable laws. Additionally, they shall not collect unnecessary personal information, or illegally retain the input information and usage records that can identify users, or illegally provide the input information and usage records of users to others. Providers shall label generated content such as images, videos, etc. in accordance with the *Provisions on the Administration of Deep Synthesis of Internet-based Information Services*. In addition, *the Measures* regulate the systems for security assessment, algorithm filing, complaint reporting, etc., specify providers’ liabilities and stipulate that those who provide generative AI services with public opinion attributes or social mobilization shall undergo security assessment in accordance with relevant regulations, and go through the algorithm record-filing, changes in or cancellation of record-filing procedures according to *the Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services*. ([More](#))

国家网信办发文要求加强“自媒体”管理

2023年7月10日，中央网信办秘书局发布《关于加强“自媒体”管理的通知》（以下简称《通知》）。《通知》提出了13条工作要求，细化了违规行为类别、内容。《通知》要求网站平台应当有效防止“自媒体”假冒仿冒行为，规范信息来源标注，加强信息真实性管理，加注虚构内容或争议信息标签，完善谣言标签功能，规范账号运营行为，以及加大对“自媒体”所属MCN机构管理力度等。（[查看更多](#)）

CAC Issues an Official Document Calling For Better Administration of We-Media

On 10 July 2023, the Secretariat of the Office of the Central Cyberspace Affairs Commission issued Notice on Strengthening the Administration of We-Media (*the “Notice”*). *The Notice* put forward 13 work requirements, detailing the categories and content of possible violations. *The Notice* requires website platforms to effectively prevent we-media impersonating and counterfeiting, standardize the labeling of information sources, strengthen the management of information authenticity, annotate labels for fictitious content or controversial information, improve the rumor labelling function, regulate

account operation behaviors, and strengthen the management of we-media affiliated with MCN institutions. ([More](#))

国家金融监督管理总局发布《汽车金融公司管理办法》

2023年7月11日，为进一步加强汽车金融公司监管，引导其依法合规经营和持续稳健运行，国家金融监督管理总局修订发布了《汽车金融公司管理办法》（以下简称《办法》），自2023年8月11日起施行。在公司治理与内部控制方面，《办法》提出汽车金融公司应当建立完善数据治理体系，确保数据治理资源配置，制定并实施系统化的制度、流程和方法，建立数据质量控制机制，强化数据安全。《办法》还明确汽车金融公司应当建立和完善消费者权益保护工作机制，规范产品和服务信息披露，依法保护消费者个人信息。在风险管理方面，汽车金融公司应当建立与信息系统运行管理模式相匹配的信息科技风险管理体系，强化网络安全、数据安全、业务连续性、外包等领域的风险防控，保障信息系统安全、稳定运行。（[查看更多](#)）

China National Administration of Financial Regulation Issues the Regulations on the Administration of Auto Finance Companies

On 11 July 2023, China National Administration of Financial Regulation, to further strengthen the supervision of auto finance companies and guide them to operate in compliance with applicable laws and regulations and develop steadily, issued the Regulations on the Administration of Auto Finance Companies (the "Regulations"), which will be implemented from 11 August 2023. In terms of corporate governance and internal control, the Regulations stipulate that auto finance companies shall establish and improve their data governance system, ensure the allocation of data governance resources, formulate and implement systematic frameworks, processes and methods, establish mechanisms for controlling data quality, and strengthen data security management. The regulations also specify that auto finance companies shall establish and improve mechanisms for protecting consumer rights, standardize the disclosure of products and service information, and protect consumer personal information in accordance with the law. Regarding risk management, auto finance companies shall establish technology risk management systems that match the information system operation and management mode, strengthen risk prevention and control in network security, data security, business continuity, outsourcing, etc., and ensure safe and stable operation of information systems. ([More](#))

工信部 国家金管局发布《关于促进网络安全保险规范健康发展的意见》

2023年7月17日，工业和信息化部和国家金融监督管理总局发布《工业和信息化部 国家金融监督管理总局关于促进网络安全保险规范健康发展的意见》（以下简称《意见》）。

《意见》明确，要鼓励保险公司面向不同行业场景的差异化网络安全风险管理需求，开发多元化网络安全保险产品。面向重点行业企业开发网络安全财产损失险、责任险和综合险等，面向信息技术产品开发产品责任险，面向网络安全产品开发网络安全专门保险，面向网络安全服务开发职业责任险等产品，并面向电信和互联网、能源、金融、医疗卫生等重点行业，以及工业互联网、车联网、物联网等新兴融合领域开展网络安全保险服务试点。（[查看更多](#)）

MIIT and China National Administration of Financial Regulation Issue the *Opinions on Promoting the Standardized and Healthy Development of Cyber Security Insurance*

On 17 July 2023, the Ministry of Industry and Information Technology (the “MIIT”) and China National Administration of Financial Regulation jointly published the “Opinions on Promoting the Standardized and Healthy Development of Cyber Security Insurance” (the “Opinions”).

The *Opinions* specify that insurance companies shall be encouraged to develop diversified cyber security insurance products for different cyber security risk management needs in different industrial scenarios. Insurance companies should develop network security property insurance, liability insurance and comprehensive insurance for enterprises in key industries, product liability insurance for information technology products, special network security insurance for network security products, and professional liability insurance for network security services. Additionally, pilot cyber security and insurance services should be developed in telecommunications and Internet, energy, finance, medical and health care and other key industries as well as in emerging integrated areas such as industrial internet, connected vehicles and IoT. ([More](#))

浙江通过首家企业个人信息出境标准合同备案

据浙江省互联网信息办公室2023年7月10日消息，近日，邦贝液压机械(杭州)有限公司提交的个人信息出境标准合同通过了浙江省互联网信息办公室组织的备案审核，是浙江省首家通过订立标准合同实现个人信息合规出境的企业。 ([查看更多](#))

First Enterprise Filing Standard Contract for Outbound Transfer of Personal Information Passed in Zhejiang

According to the news of Zhejiang Internet Information Office on 10 July 2023, recently, the standard contract for outbound transfer of personal information submitted by BONDOLI & PAVESI HYDRAULIC AND MECHANICAL COMPONENT (HANGZHOU) CO., LTD. passed the filing examination organized by Zhejiang Internet Information Office, and it is the first enterprise in Zhejiang to achieve compliance with the regulatory regime governing outbound transfer of personal information by way of filing of a standard contract. ([More](#))

广东省互联网信息办公室关于个人信息出境标准合同备案的通知

2023年7月10日，广东省互联网办公室发布《关于个人信息出境标准合同备案的通知》（以下简称《通知》）。《通知》规定了适用范围、材料准备、备案方式及咨询方式等。

《通知》要求，个人信息处理者应当严格按照《个人信息出境标准合同备案指南（第一版）》要求准备材料。根据《个人信息出境标准合同办法》规定，个人信息处理者通过订立标准合同的方式向境外提供个人信息，应当在标准合同生效之日起10个工作日内向所在地省级网信部门备案。 ([查看更多](#))

Guangzhou Internet Information Office issues the Notice on Filing Standard Contract for Outbound Transfer of Personal Information

On 10 July 2023, Guangdong Internet Information Office issued the Notice on Filing Standard Contract for Outbound Transfer of Personal Information (*the "Notice"*). *The Notice* regulates the scope of application, document preparation, filing methods and consultation methods.

The Notice requires that personal information processors shall prepare documents in strict compliance with the Guidelines for Filing Standard Contracts for Outbound Transfer of Personal Information (First Edition). According to the Measures for Standard Contracts for Outbound Transfer of Personal Information, if a personal information processor provides personal information to overseas entities, it shall sign a standard contract and file the standard contract to the provincial cyberspace administration office within 10 working days from the date the standard contract comes into effect. ([More](#))

中信证券被罚，首席信息官等3人收到警示

2023年7月13日，深圳证监局发布了对中信证券采取出具警示函措施的决定。深圳证监局表示，经查，发现中信证券在2023年6月19日的网络安全事件中，存在机房基础设施建设安全性不足，信息系统设备可靠性管理疏漏等问题，违反了《证券期货业网络和信息安全管理办法》。深圳证监局决定依据《网络和信息安全管理办法》以及《证券期货业网络安全事件报告与调查处理办法》的规定，对公司采取出具警示函的行政监管措施。深圳证监局要求中信证券对相关问题进行全面整改，并于3个月内完成上述整改工作并向该局报送整改报告。

与此同时，深圳证监局还对中信证券首席信息官兼信息技术中心行政负责人等三人采取出具警示函的行政监管措施。（[查看更多](#)）

CITIC Securities Fined and Three Employees Including Chief Information Officer Warned

On 13 July 2023, Shenzhen Securities Regulatory Bureau issued a decision to issue a warning letter to CITIC Securities. Shenzhen Securities Regulatory Bureau found that CITIC Securities had insufficient security measures in its data center infrastructure and vulnerabilities in reliability of management of information system equipment during the cyber security incident on 19 June 2023, which violated *the Measures for the Network and Information Security Management of the Securities and Futures Industry*. Shenzhen Securities Regulatory Bureau decided to impose administrative supervisory measures by issuing a warning letter to the company based on *the Measures for the Internet Information Security Management* and *the Measures for Reporting and Investigating Securities and Futures Industry Cybersecurity Incidents*. Shenzhen Securities Regulatory Bureau required CITIC Securities to comprehensively rectify the relevant issues and complete the rectification work within 3 months, submitting a rectification report to the Bureau. At the same time, Shenzhen Securities Regulatory Bureau also took administrative supervisory measures by issuing warning letters to three individuals, including the Chief Information Officer who is also the head of the Information Technology Center of CITIC Securities. ([More](#))

报税公司与谷歌和Meta共享私人数据，可能面临数十亿美元罚款

2023年7月12日，美国国会议员透露了对报税公司进行为期七个月调查的结果，调查发现，H&R Block、TaxAct和TaxSlayer“多年来”与谷歌和Meta“不计后果地共享”了可能数以亿计纳税人的敏感个人和财务数据，明显违反了禁止纳税人在未经客户同意的情况下共享纳税申报信息的法律。国会议员在给美国联邦贸易委员会等机构的信中写道：“这些公司共享了数百万纳税人的纳税申报表数据，这意味着他们可能面临数十亿美元的潜在刑事责任”。（[查看更多](#)）

Tax Preparers that Shared Private Data with Meta, Google Could be Fined Billions

On 12 July 2023, U.S. Congress Members revealed the results of a seven-month investigation into tax-filing companies. Lawmakers found that H&R Block, TaxAct, and TaxSlayer "recklessly shared" potentially hundreds of millions of taxpayers' sensitive personal and financial data with Google and Meta "for years" in apparent violation of laws prohibiting tax preparers from sharing tax return information without customers' consent. "The companies shared millions of taxpayers' tax return data, meaning they could face billions of dollars in potential criminal liability," lawmakers wrote in a letter to federal agencies. ([More](#))

OpenAI受到美国联邦贸易委员会调查

据2023年7月14日JDSupra消息，美国联邦贸易委员会（FTC）对人工智能聊天器ChatGPT背后的公司OpenAI正式发起调查。FTC在其民事调查要求书中告知OpenAI，将调查OpenAI是否存在“不公平或欺骗性”的隐私和数据安全行为，以及与造成损害消费者利益风险相关的“不公平或欺骗性”行为。FTC要求OpenAI提供在其大型语言模型（“LLM”）和LLM产品（即ChatGPT）的开发和部署过程中如何处理个人信息的内容。例如，FTC关注OpenAI是否删除，过滤或匿名化训练数据中出现的个人信息。同样，FTC要求OpenAI解释如何降低其LLM产品生成包含个人信息的输出的风险。（[查看更多](#)）

FTC Launches Investigation into OpenAI

According to the news of JDSupra on 14 July 2023, the FTC has officially launched an investigation into OpenAI, the company behind ChatGPT. According to the Civil Investigative Demand (“CID”) sent to OpenAI, the FTC is focused on whether OpenAI has engaged in unfair or deceptive privacy and data security practices or engages in unfair or deceptive practices relating to risks of harm to consumers.

Specifically, the CID requests information about how OpenAI handles personal information at various points in the development and deployment of its Large Language Models (“LLMs”) and LLM Products (i.e., ChatGPT). For example, the FTC is concerned with whether OpenAI removes, filters, or anonymizes personal information appearing in training data. Similarly, the FTC requests that OpenAI explain how it mitigates the risk of its LLM Products generating outputs containing personal information. ([More](#))

知识产权 Intellectual Property

广东高院改判：法定赔偿的数额不能作为确定惩罚性赔偿数额的计算基数

近日，广东省高级人民法院发布深圳市超频三科技股份有限公司（“超频三公司”）与东莞市安而惠照明科技有限公司（“安而惠公司”）侵害外观设计专利权纠纷案的二审判决书。

一审法院认为，以一般消费者的知识水平与认知能力，对被诉侵权设计与本案专利进行综合判断，难以认定两者的整体视觉效果存在实质性差异，被诉侵权设计与本案专利近似，落入本案专利权保护范围，二审法院对该项予以维持；二审法院变更了一审法院确定的赔偿金额。

对于惩罚性赔偿数额的计算基数，二审法院认为，本案适用惩罚性赔偿确定东莞安而惠公司的赔偿数额，首先，超频三公司应证明对东莞安而惠公司适用惩罚性赔偿具有必要性，即：故意侵权并情节严重。其次，本案具备适用惩罚性赔偿的现实可行性，包括形式上的现实可行性，即：超频三公司应明确赔偿数额、计算方式以及所依据的事实和理由；以及实质上的现实可行性，即：依据在案证据或举证妨碍规则能够查明赔偿的基数。专利案件适用惩罚性赔偿的，原告的实际损失数额、被告的侵权获利或者专利许可使用费的合理倍数均可以作为确定赔偿数额的计算基数。若被告构成举证妨碍的，法院可以参考原告的主张和证据确定惩罚性赔偿数额的计算基数；但法定赔偿的数额不能作为确定惩罚性赔偿数额的计算基数。

来源：广东省高级人民法院

Guangdong High Court: The Amount of Statutory Damages Cannot Be Used as the Calculation Basis for Determining Punitive Damages Amount

Recently, Guangdong High Court issued a second-instance judgement of the design patent infringement dispute between Shenzhen Chao Pin Limited (Plaintiff) and Dongguan An Er Hui Limited (Defendant).

The first-instance court held that it was hard to recognize substantial differences in overall visual effect between the accused design and the patent, based on the knowledge and cognition of consumers. The second-instance court upheld this finding, but modified the amount of damages.

In terms of the calculation basis of the punitive damages amount, the second-instance court held that punitive damages shall be applied to determine the amount of damages. Firstly, Plaintiff shall prove the necessity of applying punitive damages, namely intentional infringement and serious circumstances. Secondly, this case met the criteria of applying punitive damages, namely, Plaintiff shall specify the amount of damages, calculation method, the facts and reasons on which they were based, and the calculation basis for determining the damages amount able to be ascertained based on the evidence or the rules of burden of proof. In patent cases where punitive damage can be applied, the actual loss of plaintiff, the infringing profits of defendant or reasonable multiple of the patent licensing fee, can be used as the calculation basis for determining the damages amount. However, the amount of statutory damages cannot be used as the calculation for determining punitive damages amount.

Source: Guangdong High Court

华为2022年专利许可收入5.6亿美元 公布4G和5G手机专利许可费率

在7月13日举办的“跨越创新边界——2023创新和知识产权论坛”上，华为副总裁、知识产权部部长樊志勇表示，2022年，华为专利许可收入为5.6亿美元。

华为还在此次论坛上公布了其4G和5G手机、Wi-Fi 6设备和物联网产品的专利许可费率。华为是这些领域标准必要专利最大的持有企业之一。华为对4G和5G手机设置的许可费率上限分别为每台1.5美元和2.5美元，对Wi-Fi 6消费类设备设置的许可费率为每台0.5美元。

据华为介绍，华为近十年累计投入的研发费用达到9773亿元(人民币，下同)。2022年，华为研发费用支出为1615亿元，占其全年收入的25.1%。华为在2022年欧盟工业研发投资排行榜上位列第4位。

来源：中国新闻网

Huawei's Patent Licensing Revenue in 2022 Amounted to USD 560 Million, and the Royalty Rates for 4G and 5G Mobile Phone Patents have been Disclosed

Huawei, announced that Huawei's patent licensing revenue in 2022 amounted to USD 560 million, and also disclosed the royalty rates for its 4G and 5G smartphones, Wi-Fi 6 devices, and IoT products. Huawei is one of the largest holders of standard-essential patents in these areas. The maximum royalty rates for 4G and 5G smartphones are USD1.5 and USD2.5 per device respectively. The royalty rate for Wi-Fi 6 consumer device is set at USD 0.5 per device.

According to Huawei, the company has invested RMB 977.3 billion in research and development over the past decade. In 2022, Huawei's R&D expenditure reached RMB 161.5 billion, accounting for 25.1% of its annual revenue. Huawei ranked fourth on the 2022 EU Industrial R&D Investment Ranking.

Source: China News

“TR”商标遭涉外定牌加工方侵权，获法院以填平性赔偿+2倍惩罚性赔偿保护

近日，上海市浦东新区人民法院发布了东莞市TR轴承有限公司与浙江翔宇密封件有限公司侵害商标权纠纷案的判决书，判定浙江翔宇构成注册商标专用权侵权。

本案中，被告翔宇公司未尽合理审查义务、未规范使用授权商标，其在涉案产品上印制、贴附与原告“TR”权利商标完全相同的标识，侵害了原告的注册商标专用权。关于是否使用惩罚性赔偿，法院认为，原告成立时间早，产品出口至世界各地，权利商标使用时间长，已为相关公众广为知晓并具有较高知名度，双方存在长年且稳定的合作关系，被告应当清楚原告商标的基本情况，在原告与印度商标权利人存在诸多争议甚至涉及诉讼的情况下，原告争议相对方的委托，并将大量侵权产品出口至印度，不利于上述争议的解决，更有损原告的商标权益及声誉，

可以认定被告具有侵害原告注册商标专用权的故意，被告侵权故意明显、情节严重可予适用惩罚性赔偿。

来源：上海市浦东新区人民法院

"TR" Trademark was Infringed by a Foreign Contractor, and the Court Awarded Compensatory Damages Plus Double Punitive Damages for Protection

Recently, Pudong District People's Court issued a judgement of trademark infringement dispute between TR Limited and Xiang Yu Limited. The court recognized that Defendant constitutes infringement on trademark.

In this case, the defendant failed to fulfill its duty of reasonable examination and to properly use authorized trademark. The defendant printed and affixed a sign that was identical to the plaintiff's 'TR' registered trademark on products at issue, which is infringing. The plaintiff had been established for a long time, with its products exported worldwide. The trademark had been widely known, with a high reputation among the relevant public. The plaintiff and the defendant had a long-term and stable cooperation. The defendant should have been clear about the basic situation of plaintiff's trademark. Despite the disputes and litigation involving the plaintiff and the trademark rights owner in India, the plaintiff, as the partner of the plaintiff, accepted the commission of the opposite party in the dispute and exported a large quantity of the accused products, which was detrimental to the resolution of the aforementioned dispute and harmed the rights, interests and reputation of plaintiff's trademark. Therefore, the court recognized that the defendant intentionally infringed on the exclusive rights of plaintiff's trademark. Regarding the intention and serious circumstances of the defendant, punitive damages could be applied.

Source: Pudong District People's Court, Shanghai

上海普陀法院：商标权人起诉他人商标侵权，被判决构成权利滥用

近日，上海市普陀区人民法院发布了上海翼堃新型建材有限公司与上海新型建材岩棉有限公司、上海新型建材岩棉大丰有限公司侵害商标权纠纷案的判决书，判定翼堃公司构成权利滥用。

本案中，被诉侵权商品与翼堃公司商标核定使用商品类别并不相同且两商标不构成近似，不致造成混淆，翼堃公司关于新型建材岩棉公司、新型建材岩棉大丰公司在生产销售的同种商品上使用与注册商标近似的商标，构成商标侵权的主张，难以成立。

法院认为，本案翼堃公司提起诉讼的行为明显有违诚实信用原则，已超出正当维权的界限，系对注册商标许可使用权和民事起诉权的滥用。翼堃公司违反注册商标规范使用的要求，将被许可使用商标中的“樱花”文字部分抽离单独使用，且在实际使用商标时超出核定使用商品范围，翼堃公司未做合理避让，翼堃公司的不规范使用方式难谓善意。翼堃公司作为建材同业经营者，在经商标侵权行政处罚后，理应对相关事实及法律评价具有一定的预判，翼堃公司提起

与行政处罚及18871号案侵权行为表现形式完全相同的本案诉讼并非正当的维权诉讼，而是将提起诉讼作为干扰市场同业主体的手段。

来源：知产宝

Putuo District People's Court: Trademark Owner's Lawsuit against Others for Trademark Infringement was Ruled to Constitute an Abuse of Rights

Recently, Putuo District People's Court issued a judgment in the trademark infringement dispute case between Yikun Limited versus Shanghai Rockwool Limited., and Shanghai Rockwool Dafeng Limited. The court recognized that Yikun Limited constituted an abuse of rights.

In this case, the accused products and the approved scope of the use of Yikun's trademark are not in the same class, and the two trademarks are not similar, thereby not causing confusion. Yikun claimed that Rockwool used the trademark similar to the registered trademark on products they produced and sold.

The court held that Yikun's act of filing a lawsuit clearly violates the principle of good faith, exceeding the limits of legitimate rights, and constitutes an abuse of the right to use a registered trademark and the right of civil litigation. Yikun violated the requirements for the proper use of a registered trademark with separately using the "樱花" (cherry blossom) part of the licensed trademark, and exceeding the approved scope of products in actual use. Yikun improperly used the trademark, without reasonable avoidance, which could not be considered in good faith. As a business operator in the building materials industry, Yikun should have had a certain anticipation of the relevant facts and legal evaluations after being subjected to administrative penalties for trademark infringement. The lawsuit filed by Yikun, which has the same form of infringement as the administrative penalty and Case No. 18871, is not a legitimate rights protection lawsuit but a means to disrupt the market and interfere with industry entities.

Source: Putuo District People's Court, Shanghai

侵害“中亚”商标及不正当竞争案江苏高院二审改判赔偿300万元，且股东承担连带责任

近日，江苏省高级人民法院发布了广东中亚铝业有限公司与江西中亚铝业有限公司、无锡英阁门窗有限公司、海安旺美装饰材料商行等侵害商标权及不正当竞争纠纷案的判决书。

本案中，关于江西中亚公司企业名称是否对广东中亚公司构成不正当竞争，二审法院充分考虑了广东中亚公司企业字号的承继、江西中亚公司成立时广东中亚公司的知名度等因素，认定江西中亚公司构成不正当竞争。

关于江西中亚公司股东是否应当对公司的侵权债务承担连带责任的问题，二审法院结合刘先勇、杨敏存在利用公司名义多次注册被诉侵权商标，且公司存在财务混同的极大可能性，认定江西中亚公司股东刘先勇、杨敏与公司构成共同侵权。二审法院依据被诉商标的注册情况，结

合公司与股东之间是否存在意思联络、财产混同等客观情节予以综合判断，对司法实践中类似案例的判决具有重要的指导意义。

来源：江苏省高级人民法院

The Judgement of Trademark Infringement and Unfair Competition Involving ‘Zhong Ya’ Trademark Revised and the Shareholders Bore Joint and Several Liability

Recently, Jiangsu High Court issued a judgement of trademark infringement and unfair competition dispute between Guangdong Zhong Ya Limited versus Jiangxi Zhong Ya Limited, Wuxi Ying Ge and Haian Wang Mei Decoration Materials Trading Firm.

In this case, regarding whether the trade name of Jiangxi Zhong Ya constitutes unfair competition, the second-instance court fully considered factors such as the inheritance of Guangdong Zhong Ya’s trade name, and the reputation of Guangdong Zhong Ya at the time of Jiangsu Zhong Ya’s establishment. The second-instance court recognized that Jiangxi Zhong Ya constituted unfair competition.

In terms of shareholders’ liability for infringement debt of the company, the second-instance court, considering that the two shareholders registered the trademark at issue in name of the company rapidly and the likelihood of hotchpot within the company, held that the shareholders Liu Xiangyong and Yang Min were jointly and severally liable for the company’s infringement. The second-instance court made the judgement based on circumstances such as the registration status of the accused trademark, the existence of intentional liaison between the company and shareholders, the hotchpot etc., which has important guiding significance for similar cases in judicial practice.

Source: Jiangsu High Court

美国著名喜剧演员及两位作家起诉 OpenAI，称 ChatGPT 侵犯其书籍版权

据 Business Insider 7月10日报道，美国著名喜剧演员萨拉·西尔弗曼（Sarah Silverman）因为其书籍被人工智能聊天机器人ChatGPT非法使用，而起诉了该机器人的开发公司OpenAI。除了西尔弗曼之外，还有两位作家也加入了这场诉讼，他们分别是克里斯托弗·戈登（Christopher Golden）和理查德·卡德雷（Richard Kadrey）。

据法院文件显示，这三位原告指控OpenAI侵犯了他们的版权，因为该公司未经过他们的同意，在训练ChatGPT时使用了他们的书籍作为数据来源。西尔弗曼等原告还指出，OpenAI通过使用他们和其他许多版权作品来“获取商业利益和丰厚的收益”。

来源: Businessinsider

American Comedian Sarah Silverman is Suing Open AI for Copyright Infringement

Comedian Sarah Silverman is suing the company behind ChatGPT, alleging copyright infringement of her book. The other plaintiffs are writer Christopher Goldenr and writer Richard Kadrey.



The three plaintiffs allege that when prompted, ChatGPT will produce a summary of their works. They claim this is copyright infringement, as they did not consent to their books being fed to ChatGPT.

Silverman and the other plaintiffs allege that OpenAI "benefit commercial and profit richly" from their copyrighted works and multiple other copyrighted materials.

Source: [Business Insider](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

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